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Attorneys for Plaintiff

Endorsed
FILED
ALAMEDA COUNTY

OCT 16 2019

CLERK OF THE SUPERIOR COURT

By Alanna Hayman
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,
v.
THE CONTAINER STORE, INC.,
Defendant.

Case No.: RG19006062

CONSENT JUDGMENT

Judge: Jo-Lynne Q. Lee
Dept.: 18
Hearing Date: October 15, 2019
Hearing Time: 3:00 PM

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and The Container Store,
4 Inc. (“Container Store” or “Defendant”) with Ferreiro and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Container Store is alleged to be
8 a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Container Store vinyl & mesh
12 pouches without providing a clear and reasonable exposure warning pursuant to Proposition 65.
13 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer
14 and reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about July 23, 2018, Ferreiro served
16 Container Store, and various public enforcement agencies with documents entitled “60-Day Notice
17 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of
19 Container Store vinyl & mesh pouches expose users in California to DEHP. No public enforcer has
20 brought and is diligently prosecuting the claims alleged in the Notice. On February 7, 2019, Ferreiro
21 filed a complaint (the “Complaint”) in the matter.

22 **1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has**
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

28

1 1.5 Defendant denies the material allegations contained in the Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means Container Store vinyl &
10 mesh pouches that are manufactured, distributed and/or offered for sale in California by Container
11 Store, including but not limited to SKU 10065781, SKU 10049960, SKU 10049962, SKU
12 10066314, SKU 10066221, and SKU 10066222.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: COMMITMENT TO WARN**

16 3.1 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
17 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
18 this §§ 3.1, 3.2 and 3.3 must be provided for all Covered Products that Defendant manufactures,
19 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
20 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
21 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
22 consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

23 (a) **Warning.** The "Warning" shall consist of the statement:

24 **⚠ WARNING:** This product can expose you to chemicals including Di(2-
25 ethylhexyl) phthalate (DEHP), which are known to the State of California
26 to cause cancer, and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov.

27 (b) **Alternative Warning:** Container Store may, but is not required to, use the
28 alternative short-form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

1 3.2 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov. A
2 **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word “**WARNING:**”
3 in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the
4 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
5 outline, except that if the sign or label for the Covered Product does not use the color yellow, the
6 symbol may be in black and white. The symbol must be in a size no smaller than the height of the
7 word “**WARNING:**”.

8 3.3 The warning content set forth in § 3.1 shall be provided using any one of the
9 following methods:

10 3.3.1 The warning shall be affixed to or printed on the Covered Product’s
11 packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process,
12 provided that the warning is displayed with such conspicuousness, as compared with other words,
13 statements, or designs as to render it likely to be read and understood by an ordinary individual
14 under customary conditions of purchase or use. A warning may be contained in the same section
15 of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
16 concerning the use of the Covered Product and shall be at least the same size as those other safety
17 warnings.

18 3.3.2 Container Store may provide a point-of-sale warning. Such warning shall be
19 presented in any of the following forms:

20 3.3.3 a) In-store Sales of the Covered Products. Customers purchasing Covered
21 Products directly from Container Store’s California retail stores will receive the Proposition 65
22 warnings set forth in Section 3.1 above via register purchase display or on customers’ printed
23 receipts.

24 b) Internet sales of the Covered Products. If Container Store sells Covered
25 Products via an internet website to customers located in California, the warning requirements of
26 this section shall be satisfied if one of the warnings set forth in Section 3.1 appears either: (a) on
27 the same web page on which a Covered Product is displayed and/or described; (b) on the same page
28

1 as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser
2 prior to purchase during the checkout process.

3 **3.4 Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by either materially adhering to §§ 3.1, 3.2 and 3.3 of this
5 Consent Judgment or by complying with warning requirements adopted by the State of California's
6 Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

7 **4. MONETARY TERMS**

8 **4.1 Civil Penalty.** Container Store shall pay \$2,500.00 as a Civil Penalty pursuant to
9 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
10 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
11 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
12 § 25249.12(d).

13 **4.1.1** Within ten (10) days of the later of (i) the Effective Date; or (ii) Container
14 Store's receipt of a completed Form W-9 or any other required tax-related documentation,
15 Container Store shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in
16 the amount of \$1,875.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount
17 of \$625.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
18 payment address:

19 Evan J. Smith, Esquire
20 Brodsky & Smith, LLC
21 Two Bala Plaza, Suite 510
22 Bala Cynwyd, PA 19004

23 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
24 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

 For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
7 set forth above as proof of payment to OEHHA.

8 4.2 **Attorneys' Fees.** Within ten (10) days of the later of (i) the Effective Date; or (ii)
9 Container Store's receipt of a completed Form W-9 or any other required tax-related
10 documentation, Container Store shall pay \$27,000.00 to Brodsky & Smith, LLC ("Brodsky Smith")
11 as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of
12 investigating, bringing this matter to Container Store's attention, litigating and negotiating and
13 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
14 Procedure § 1021.5.

15 5. **RELEASE OF ALL CLAIMS**

16 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
17 acting on his own behalf, and on behalf of the public interest, and Container Store, and its parents,
18 shareholders, members, directors, officers, managers, employees, representatives, agents,
19 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
20 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
21 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
22 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
23 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
24 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
25 Notice, with respect to any Covered Products manufactured, distributed, or sold by Container Store
26 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
27 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
28 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
alleged in the Complaint, or that could have been brought pursuant to the Notice against Container

1 Store and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").
2 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
3 with regard to the Covered Products.

4 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
5 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
6 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
7 legal action and releases Container Store, Defendant Releasees, and Downstream Releasees from
8 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
9 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
10 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
11 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
12 from Covered Products manufactured, distributed, or sold by Container Store, Defendant Releasees
13 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
14 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
15 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
16 provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
18 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
19 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
20 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
21 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
22 DEBTOR OR RELEASED PARTY.

23 5.3 Container Store waives any and all claims against Ferreiro, his attorneys and other
24 representatives, for any and all actions taken or statements made (or those that could have been
25 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
26 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
27 and/or with respect to Covered Products.

28 6. **INTEGRATION**

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
13 by the other party at the following addresses:

14 For Container Store:

15 The Container Store Group, Inc.
16 The Container Store Inc.
17 Attn: Legal Department
18 500 Freeport Parkway
19 Coppell, TX 75019-3863

18 With a copy to:

19 Carol Brophy
20 Steptoe & Johnson LLP
21 Steuart Tower
22 1 Market Street, Ste. 1800
23 San Francisco, CA 94105

22 And

23 For Ferreiro:

24 Evan Smith
25 Brodsky & Smith, LLC
26 9595 Wilshire Blvd., Ste. 900
27 Beverly Hills, CA 90212

27 Any party, from time to time, may specify in writing to the other party a change of address to
28 which all notices and other communications shall be sent.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
6 **APPROVAL**

7 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
12 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
13 30 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

26 **13. RETENTION OF JURISDICTION**

27 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

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14. AUTHORIZATION

14.1 The undersigned 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 document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 10/14/19
By: *Anthony Ferreiro*
ANTHONY FERREIRO

Date: 10/11/19
By: *[Signature]*
THE CONTAINER STORE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 10/16/19

[Signature]
Judge of Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: FERREIRO V. THE CONTAINER STORE, INC.
CASE NUMBER: RG19006062

I certify that the following is true and correct: I am the clerk in **Dept. 18** of the Superior Court of California, County of Alameda and not a party to this cause. I served the **CONSENT JUDGMENT** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

✓ Brodsky & Smith, LLC
Attn: Smith, Evan J.
9595 Wilshire Boulevard, Suite 900
Beverly Hills. CA 90212

Steptoe & Johnson, LLP
Attn: Brophy, Carol Rene
Spear Tower
One Market Street #3900
San Francisco, CA 94105

I declare under penalty of perjury that the following is true and correct

Executed on October 16, 2019 at Oakland, California.

Chad Finke
Executive Officer/Clerk of the Superior Court

by Alanna Hayman
Alanna Hayman Deputy Clerk