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5 Attorneys for Plaintiff
JOHN MOORE
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION
10

11 JOHN MOORE

12 Plaintiff,

13 v.

14 THE CONTAINER STORE, INC.; and DOES 1
15 through 150, inclusive,

16 Defendants.

Case No. CIV 1105958

[PROPOSED] CONSENT JUDGMENT

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28 **[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 John Moore and The Container Store, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (hereinafter
4 “Moore” or “Plaintiff”) and defendant The Container Store, Inc. (hereinafter “Container Store”
5 or “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each
6 individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Container Store employs ten or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (hereinafter “Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Container Store manufactured, distributed, sold and/or offered for
17 sale cases for CDs/DVDs containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the
18 state of California without the requisite health hazard warnings. DEHP is listed pursuant to
19 Proposition 65 as known to the state of California to cause birth defects and other reproductive
20 harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: cases,
23 including drawers, for CDs/DVDs containing DEHP manufactured, distributed, sold and/or
24 offered for sale in the state of California by Container Store that were/are supplied to the
25 Container Store by Ontouch, Inc., including, but not limited to the *HIPCE Premium CD Wallet*,
26 *CDHW-24, #10040968*, hereinafter the “Products.”

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1 **1.6 Notice of Violation**

2 On April 25, 2011, Moore served Container Store and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that
4 provided the recipients with notice of alleged violations of California Health & Safety Code
5 §25249.6 for failing to warn consumers that the Products exposed users in California to DEHP.

6 **1.7 Complaint**

7 On or about December 8, 2011, Moore, who was and is acting in the interest of the
8 general public in California, filed, or will file, a complaint (hereinafter “Complaint” or
9 “Action”) in the Superior Court in and for the County of Marin against The Container Store,
10 Inc. and Does 1 through 150, alleging, *inter alia*, violations of California Health & Safety Code
11 § 25249.6 based on the alleged exposures to DEHP contained in the Products.

12 **1.8 No Admission**

13 Container Store denies the material factual and legal allegations contained in Moore’s
14 Notice and Complaint, and maintains that all Products sold and distributed in California have
15 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
16 as an admission by Container Store of any fact, finding, issue of law, or violation of law; nor
17 shall compliance with this Consent Judgment constitute or be construed as an admission by
18 Container Store of any fact, finding, conclusion, issue of law, or violation of law, such being
19 specifically denied by Container Store. However, this section shall not diminish or otherwise
20 affect Container Store’s obligations, responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Container Store as to the allegations contained in the Complaint, that venue is
24 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 23,
28 2012.

1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards**

3 For purposes of this Consent Judgment, "Reformulated Products" are defined as those
4 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in
5 each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency
6 testing methodologies 3580A and 8270C or any other methodology utilized by federal or state
7 agencies for the purpose of determining DEHP content in a solid substance. Although the
8 Parties disagree as to whether any of the Products that yield more than 1,000 parts per million of
9 DEHP in a phthalate test may result in exposure of DEHP to users of the Products in excess of
10 the applicable maximum allowable dose levels ("MADL") pursuant to Proposition 65, the
11 Parties agree that exposure to Reformulated Products will not require a Proposition 65 warning,
12 as such exposures will not result in an exposure of more than the applicable MADL for DEHP
13 as a chemical known to cause reproductive harm. For the purposes of this Section 2.1, the term
14 "Accessible Component" means a polyvinyl chloride or other soft plastic vinyl or synthetic or
15 leather component of a Product that could be touched by a person during reasonably foreseeable
16 use.

17 As of the Effective Date, Container Store shall manufacture, import, distribute, sell
18 and/or offer for sale in California, only Products that qualify as Reformulated Products or that
19 include warnings in accordance with Section 2.2 below.

20 Compliance with the terms of this Consent Judgment by Container Store constitutes
21 compliance with Proposition 65 with respect to DEHP in Container Store's Products.

22 **2.2 Warning Requirement**

23 Commencing on the Effective Date, Container Store shall, for all Products sold in
24 California that are not Reformulated Products, provide clear and reasonable warnings as set forth
25 in subsections 2.2(a) and (b). Each warning shall be prominently placed with such
26 conspicuousness, as compared with other words, statements, designs, or devices as to render it
27 likely to be read and understood by an ordinary individual under customary conditions before
28 purchase or use. Each warning shall be provided in a manner such that the consumer or user

1 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
2 confusion.

3 (a) **Retail Store Sales.**

4 (i) **Product Labeling.** Container Store shall affix a warning to the
5 packaging, labeling, or directly on each Product sold in retail outlets in California by Container
6 Store or any person selling the Products, that states:

7 **WARNING:** This product contains DEHP, a phthalate
8 chemical known to the state of California to
9 cause birth defects and other reproductive
10 harm.

11 (ii) **Point-of-Sale Warnings.** Alternatively, Container Store may
12 provide warning signs in the form below and post the warnings in close proximity to the point of
13 display of the Products.

14 **WARNING:** This product contains DEHP, a phthalate
15 chemical known to the state of California to
16 cause birth defects and other reproductive
17 harm.

18 Where more than one Product is sold in proximity to other like items or to those
19 that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the
20 following statement shall be used:¹

21 **WARNING:** This product contains DEHP, a phthalate
22 chemical known to the state of California to
23 cause birth defects and other reproductive
24 harm.

25 [*list products for which warning is required*]

26 Notwithstanding the form of the warning signs required as set forth above in this Section
27 2.2(a)(ii), to the extent that point-of-sale warnings posted as of the Effective Date vary from the
28 form set forth above, Container Store may continue to utilize such existing warning signs for no
longer than sixty (60) days after the Effective Date.

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 **(b) Mail Order Catalog and Internet Sales.**

2 In the event that Container Store sells Products via mail order catalog or internet to
3 customers located in California after the Effective Date that are not Reformulated Products,
4 Container Store shall provide a warning for Products sold via mail order catalog or the internet to
5 California residents: (1) in the mail order catalog; or (2) on the internet. Warnings given in the
6 mail order catalog or on the internet shall identify the specific Product to which the warning
7 applies as further specified in Sections 2.2(b)(i) and (ii).

8 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
9 order catalog must be in the same type size or larger than the Product description text within the
10 catalog. The following warning shall be provided on the same page and in the same location as
11 the display and/or description of the Product:

12 **WARNING:** This product contains DEHP, a phthalate
13 chemical known to the state of California to
14 cause birth defects and other reproductive
 harm.

15 Where it is impracticable to provide the warning on the same page and in the same
16 location as the display and/or description of the Product, Container Store may utilize a designated
17 symbol to cross reference the applicable warning and shall define the term "designated symbol"
18 with the following language on the inside of the front cover of the catalog or on the same page as
19 any order form for the Product(s):

20 **WARNING:** Certain products identified with this symbol
21 ▼ and offered for sale in this catalog contain
22 DEHP, a phthalate chemical known to the
 state of California to cause birth defects and
 other reproductive harm.

23 The designated symbol must appear on the same page and in close proximity to the
24 display and/or description of the Product. On each page where the designated symbol appears,
25 Container Store must provide a header or footer directing the consumer to the warning language
26 and definition of the designated symbol.

1 If Container Store elects to provide warnings in the mail order catalog, then the
2 warnings must be included in all catalogs offering to sell one or more Products printed after the
3 Effective Date.

4 (ii) **Internet Warning.** A warning may be given in conjunction with
5 the sale of the Products via the internet, provided it appears either: (a) on the same web page on
6 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
7 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
8 during the checkout process. The following warning statement shall be used and shall appear in
9 any of the above instances adjacent to or immediately following the display, description, or price
10 of the Product for which it is given in the same type size or larger than the Product description
11 text:

12 **WARNING:** This product contains DEHP, a phthalate
13 chemical known to the state of California to
14 cause birth defects and other reproductive
15 harm.

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

20 **WARNING:** Products identified on this page with the
21 following symbol ▼ contain DEHP, a
22 phthalate chemical known to the state of
23 California to cause birth defects and other
24 reproductive harm.

25 3. **MONETARY PAYMENTS**

26 3.1 **Initial Civil Penalty**

27 Container Store shall pay an initial civil penalty of \$1,500 to be apportioned in
28 accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these
29 funds remitted to the state of California's Office of Environmental Health Hazard Assessment
30 and the remaining 25% of the initial civil penalty to Moore, as provided by California Health &
31 Safety Code § 25249.12(d).

1 **3.2 Final Civil Penalty**

2 Container Store shall pay a final civil penalty of \$8,500 on or before June 30, 2012.
3 However, the final civil penalty shall be waived in its entirety if Container Store certifies in
4 writing, via a signed declaration from an appropriate Container Store employee, that all Products
5 sold or shipped into California from June 15, 2012 and after shall be Reformulated Products as
6 defined in Section 2.1, above.

7 **3.3 Reimbursement of Plaintiff's Fees and Costs**

8 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
9 before reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
10 this fee issue to be resolved after the material terms of the agreement had been settled. The
11 Parties then agreed to resolve the fee and cost issue shortly after the other settlement terms had
12 been tentatively finalized, subject to agreement on fees and costs. The Parties then attempted to
13 (and did) reach an accord on the compensation due to Moore and his counsel under general
14 contract principles and the private attorney general doctrine codified at California Code of Civil
15 Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred
16 on appeal. Under these legal principles, Container Store shall pay the amount of \$28,500 for
17 fees and costs incurred investigating, litigating and enforcing this matter, including the fees
18 and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
19 approval of this Consent Judgment in the public interest.

20 **3.4 Payment Procedures**

21 **(a) Funds Held In Trust.** All payments required by Sections 3.1 and 3.3
22 shall be delivered no later than ten days after the Effective Date to either The Chanler Group or
23 the attorney of record for Container Store, and shall be held in trust pending the Court's approval
24 of this Consent Judgment.

25 Payments delivered to The Chanler Group shall be made payable, as follows:

- 26 **(i)** One check made payable to "The Chanler Group in Trust for
27 OEHHA" in the amount of \$1,125;

1 (ii) One check made payable to "The Chanler Group in Trust for
2 Moore" in the amount of \$375; and

3 (iii) One check made payable to "The Chanler Group in Trust" in the
4 amount of \$28,500.

5 Payments delivered to Barg, Coffin, Lewis & Trapp, LLP shall be made payable,
6 as follows:

7 (i) One check made payable to "Barg, Coffin, Lewis & Trapp, LLP in
8 Trust for OEHHA" in the amount of \$1,125;

9 (ii) One check made payable to "Barg, Coffin, Lewis & Trapp, LLP in
10 Trust for Moore" in the amount of \$375; and

11 (iii) One check made payable to "Barg, Coffin, Lewis & Trapp, LLP in
12 Trust for The Chanler Group" in the amount of \$28,500.

13 If Container Store elects to deliver payments to its attorney of record, the attorney of
14 record shall confirm, in writing within five days of deposit, that the funds have been deposited in
15 a trust account.

16 Within five days of the date of the hearing on which the Court approves the Consent
17 Judgment, the payments being held in trust by the attorney of record for Container Store shall be
18 delivered to The Chanler Group in three separate checks payable, as follows:

19 (i) One check made payable to "The Chanler Group in Trust for
20 OEHHA" in the amount of \$1,125;

21 (ii) One check made payable to "The Chanler Group in Trust for
22 Moore" in the amount of \$375; and

23 (iii) One check made payable to "The Chanler Group" in the amount of
24 \$28,500.

25 If the penalty payments required by Section 3.2 above are not waived, payments shall be
26 delivered to The Chanler Group made payable, as follows:

27 (i) One check made payable to "The Chanler Group in Trust for
28 OEHHA" in the amount of \$6,375;

1 (ii) One check made payable to "The Chanler Group in Trust for
2 Moore" in the amount of \$2,125.

3 (b) **Issuance of 1099 Forms.** After the Consent Judgment has been approved
4 and the settlement funds have been transmitted to Plaintiff's counsel, Container Store shall issue
5 five separate 1099 forms, when reasonably available, as follows:

6 (i) The first 1099 shall be issued to the Office of Environmental
7 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
8 68-0284486) in the amount of \$1,125;

9 (ii) The second 1099 shall be issued to Moore in the amount of \$375,
10 whose address and tax identification number shall be furnished upon
11 request; and

12 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-
13 3171522) in the amount of \$28,500.

14 (iv) If the final penalty in Section 3.2 above is paid, the fourth 1099
15 shall be issued to the Office of Environmental Health Hazard Assessment,
16 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
17 of \$6,375;

18 (v) If the final penalty in Section 3.2 above is paid, the fifth 1099 shall
19 be issued to Moore in the amount of \$2,125, whose address and tax
20 identification number shall be furnished upon request.

21 (c) **Payment Address.** All payments to the Chanler Group shall be delivered
22 to the following payment address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

3 This Consent Judgment is a full, final and binding resolution between Moore, on behalf
4 of himself and in the public interest, and Container Store, of any violation of Proposition 65 that
5 was or could have been asserted by Moore against Container Store, its parents, subsidiaries,
6 affiliated entities that are under common ownership, directors, officers, employees, attorneys,
7 representatives, shareholders, agents and each entity to whom Container Store directly or
8 indirectly distributes or sells Products, including but not limited to past and present downstream
9 distributors, wholesalers, customers, retailers, franchisees, auctioneers, dealers, cooperative
10 members, licensors, licensees, owners, purchasers, users, parent companies, corporate affiliates,
11 and subsidiaries, and Ontouch, Inc., (and its past and present downstream distributors,
12 wholesalers, customers, retailers, franchisees, auctioneers, dealers, cooperative members,
13 licensors, licensees, owners, purchasers, users, parent companies, corporate affiliates, and
14 subsidiaries), and their respective past and current officers, directors, principals, partners,
15 members, attorneys, representatives, shareholders, agents, and employees (collectively
16 "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the
17 Products as set forth in the Notice manufactured, distributed, sold and/or offered for sale by
18 Container Store and supplied to Container Store by Ontouch, Inc.

19 **4.2 Plaintiff's Public Release of Proposition 65 Claims**

20 Moore acting on his own behalf and in the public interest releases Container Store and
21 Releasees from all claims for violations of Proposition 65 up through the Effective Date based
22 on exposure to DEHP from the Products as set forth in the Notice manufactured, distributed,
23 sold and/or offered for sale by Container Store and supplied to Container Store by Ontouch, Inc.
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
25 with respect to exposures to DEHP from the Products as set forth in the Notice.

26 **4.3 Plaintiff's Individual Release of Claims**

27 Moore also, in his individual capacity only and *not* in his representative capacity,
28 provides a release herein to Container Store and to Releasees which shall be effective as a full

1 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
2 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any
3 nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and
4 arising out of alleged or actual exposures to DEHP in the Products manufactured, distributed,
5 sold and/or offered for sale by Container Store and supplied to the Container Store by Ontouch,
6 Inc.

7 **4.4 Defendant's Release of Plaintiff**

8 Container Store on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and
10 other representatives, for any and all actions taken or statements made (or those that could have
11 been taken or made) by Moore and his attorneys and other representatives, whether in the course
12 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
13 with respect to the Products.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the court and
16 shall be null and void if, for any reason, it is not approved and entered by the court within one
17 year after it has been fully executed by all Parties, in which event any monies that have been
18 provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen
19 (15) days after the one-year period has expired.

20 **6. SEVERABILITY**

21 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
22 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
23 provisions remaining shall not be adversely affected.

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of
26 California and apply within the state of California. In the event that Proposition 65 is repealed
27 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
28 Container Store shall provide written notice to Moore of any asserted change in the law, and

1 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
2 extent that, the Products are so affected.

3 **8. NOTICES**

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

8 To Container Store:

9 Joshua A. Bloom
10 Barg, Coffin, Lewis & Trapp, LLP
11 350 California Street, 22nd Floor
12 San Francisco, CA 94104-1435

13 With a copy to:

14 Tyler Drinkwine
15 The Container Store, Inc.
16 500 Freeport Parkway
17 Coppell, Texas 75019

18 To Moore:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile or by portable
28 document format (.pdf), each of which shall be deemed an original, and all of which, when
taken together, shall constitute one and the same document. A facsimile or .pdf signature shall
be valid as the original.

29 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

30 Moore agrees to comply with the reporting form requirements referenced in California
Health & Safety Code § 25249.7(f).

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Moore shall prepare and file all documents necessary to obtain Court approval of this
3 Consent Judgment. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7,
4 a Motion to Approve the Agreement (“Noticed Motion”) is required to obtain judicial approval
5 of this Consent Judgment. Moore shall make best efforts to provide to Container Store for
6 review no later than thirty (30) days after the Effective Date a draft Motion to Approve the
7 Consent Judgment and supporting papers, and shall make best efforts to file such motion and
8 supporting papers no later than forty (40) days after the Effective Date. In furtherance of
9 obtaining such approval, Moore, Container Store, and their respective counsel, agree to
10 mutually employ their best efforts, including at a minimum that Container Store join in or file a
11 joinder in the Noticed Motion and participate in any oral argument before the Court on the
12 hearing of the Noticed Motion, to support the entry of this agreement as a Consent Judgment
13 and obtain approval of the Consent Judgment by the Court in a timely manner.

14 **12. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the parties
16 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
17 motion of any party and entry of a modified Consent Judgment by the court.

18 **13. AUTHORIZATION**

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

22 **14. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
28 deemed to exist or to bind any of the parties.

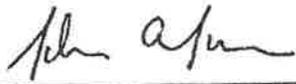
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AGREED TO:

AGREED TO:

Date: MARCH 26, 2012

Date: _____

By: 
Plaintiff JOHN MOORE

By: _____
Defendant THE CONTAINER STORE,
INC.

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AGREED TO:

Date: _____

AGREED TO:

Date: 3/26/12

By: _____
Plaintiff JOHN MOORE

By: Stan Cudde
Defendant THE CONTAINER STORE,
INC.