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7 Attorneys for Plaintiff
8 SUSAN DAVIA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 ELFA INTERNATIONAL AB, THE
16 CONTAINER STORE, INC., THE
17 CONTAINER STORE GROUP, INC. and
18 DOES 1-150,

19 Defendants.

Case No. CIV 1703416

**CONSENT TO JUDGMENT AS TO
DEFENDANTS ELFA INTERNATIONAL
AB, THE CONTAINER STORE, INC. AND
THE CONTAINER STORE GROUP, INC.**

Action Filed: September 15, 2017
Trial Date: None Assigned

1 Elfa and TCS each received the May 5, 2016, Notice of Violation. The Parties represent that,
2 as of the date each executes this Agreement, they believe that no public enforcer is diligently
3 prosecuting a Proposition 65 enforcement action related to DINP in the Covered Products, as
4 identified in the Notice.

5 **1.6 Complaint**

6 On September 15, 2017, Davia, acting in the interest of the general public in California, filed a
7 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
8 1703416, alleging violations by Elfa, TCS and Does 1-150 of Health & Safety Code § 25249.6 based,
9 *inter alia*, on the alleged exposures to DINP contained in certain vinyl-coated utility and storage hook
10 products.

11 **1.7 No Admission**

12 This Agreement resolves claims that are denied and disputed by Elfa and TCS. The Parties
13 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
14 Parties for the purpose of avoiding prolonged litigation. Both Elfa and TCS deny the material factual
15 and legal allegations contained in the Notice and Action, maintain that they did not knowingly or
16 intentionally expose California consumers to DINP through the reasonably foreseeable use of the
17 Covered Product, and otherwise contend that all Noticed products they have manufactured,
18 distributed and/or sold in California have been and are in compliance with all applicable laws.
19 Nothing in this Agreement shall be construed as an admission by Elfa or TCS of any fact, finding,
20 issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed
21 as an admission by Elfa or TCS of any fact, finding, conclusion, issue of law, or violation of law, such
22 being specifically denied by Elfa and TCS. However, notwithstanding the foregoing, this section
23 shall not diminish or otherwise affect Elfa's and TCS' obligations, responsibilities, and duties under
24 this Agreement.

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
27 Elfa and TCS as to the allegations contained in the Complaint, that venue is proper in County of
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1 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As
2 an express part of this Agreement, pursuant to C.C.P. §664.6, the Court in which this action was filed
3 shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms
4 of the settlement.

5 **2. DEFINITIONS**

6 **2.1** The term “Complaint” shall mean the September 15, 2017, Complaint, Marin County
7 Superior Court Case No. CIV1703416.

8 **2.2** The term “Products” or “Covered Products” shall mean all Elfa coated utility and
9 storage hooks that contain DINP, including, but not limited to, Elfa round cord hook (10047343), Elfa
10 wide ladder hook (10047344), Elfa straight handled tool hook (10047345), Elfa utility lawn equipment
11 hook (10047346), Elfa vertical bike hook (10047347) and Elfa horizontal bike hook (10047349))

12 **2.3** The term “Phthalate Free” shall mean containing less than or equal to 1,000 parts per
13 million (“ppm”) of di(2-ethylhexyl phthalate) (“DEHP”), dibutyl phthalate (“DBP”), diisononyl
14 phthalate (“DINP”), diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl
15 phthalate (“BBP”) in any component of any Covered Product, as determined by duplicate quality
16 controlled tests using Environmental Protection Agency (“EPA”) testing methodologies 3580A and
17 8270C.

18 **2.4** “Effective Date” shall mean December 1, 2017, or the date on which this Consent
19 Judgment is fully executed by the Parties, whichever date is earlier.

20 **2.5** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10)
21 of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to
22 time.

23 **3. NON-MONETARY RELIEF**

24 **3.1 Existing Inventory of Covered Products**

25 Elfa and TCS are implementing a store-wide electronic notification program regarding
26 Covered Products. Once instituted, the program will obviate the need for any individual store
27 notification procedure.

1 **3.2 Product Reformulation Commitment**

2 **3.2.1** No later than the Effective Date, Elfa shall provide the Phthalate Free phthalate
3 concentration standards of Section 2.3 to the manufacturer or vendors of any Covered Product sold
4 in California and the vinyl coating component thereof (if known) and instruct each such entity not to
5 manufacture Covered Products or components thereof that do not meet the Phthalate Free
6 concentration standards of Section 2.3. Elfa shall maintain copies of all vendor correspondence
7 relating to the phthalate concentration standards for the two (2) years following the Effective Date.

8 **3.2.2** As of the Effective Date, Elfa shall not manufacture, or cause to be manufactured, for
9 sale in the United States, any Covered Product that is not Phthalate Free.

10 **3.3 Product Warning for Existing Inventory**

11 As of the Effective Date, Elfa shall not sell or ship any Covered Product to a California vendor
12 or retailer unless such Covered Products are confirmed to be Phthalate Free or are sold or shipped
13 with one of the clear and reasonable warnings set forth hereafter.

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

19 (a) **California Distribution.**

20 (i) **Point-of-sale warnings.** For all Covered Products sold in the
21 California, pursuant to Cal. Code Regs. tit. 27, § 25603(a)(2) [operative August 18, 2018] Elfa shall
22 ensure a warning appears either on the labeling of the Covered Product, by a placard on each
23 display shelf or rack from which any Covered Product is sold or inclusion on both the rolling receipt
24 displayed on a customer-facing computer screen and the printed customer receipt. The warning
25 shall appear directly beneath the product description and shall contain one of the following
26 statements:
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1 **4.3 Reimbursement of Plaintiff’s Fees and Costs**

2 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Elfa then expressed
5 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
6 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
9 that may be incurred on appeal. Under these legal principles, Elfa shall pay the amount of \$36,000
10 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
11 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of
12 this Agreement in the public interest.

13 **4.4 Payment Procedures**

14 Elfa shall deliver all settlement payment funds or checks required by this Agreement to its
15 counsel within two weeks of the date that this Agreement is fully executed by the Parties. Elfa’s
16 counsel shall confirm receipt of settlement funds or checks in writing to plaintiff’s counsel and,
17 thereafter, hold the amounts paid in trust until such time as the Court approves this settlement
18 contemplated by Section 7. Davia agrees to file and serve her motion to approve the settlement and
19 enter judgment for a hearing date within 90 days of execution of this Agreement.

20 Elfa’s counsel shall deliver to plaintiff’s counsel all settlement payment funds or checks
21 required by this Consent Judgment within five business days of the date the Court approves the
22 settlement. Elfa’s counsel shall deliver the settlement payments to plaintiff’s counsel as follows:

- 23 1. a civil penalty check in the amount of \$4,500 payable to “OEHHA” (EIN: 68-0284486,
24 Memo line “Prop 65 Penalties, 2016-00403”);
- 25 2. a civil penalty check in the amount of \$1,500 payable to “Susan Davia” (Tax ID to
26 be supplied on request, Memo line “Prop 65 Penalties, 2016-00403 and”); and
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- 1 3. an attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount
2 of \$36,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-
3 00403").

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 Elfa shall deliver all Section 4.2 additional civil penalty and attorney fee/cost payments by
13 delivering such Section 4.2 settlement payments, on or before the date agreed upon pursuant to
14 Section 4.2 or ordered by the Court, to Plaintiff's counsel as follows:

- 15 1. a civil penalty check in the amount of 75% of the penalty agreed upon or ordered by
16 the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop
17 65 Penalties, 2016-00403");
18 2. a civil penalty check in the amount of 25% of the penalty agreed upon or ordered by
19 the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be supplied upon
20 request), Memo line "Prop 65 Penalties, 2016-00403"); and
21 3. An attorney fee and cost reimbursement check, in the amount agreed upon or ordered
22 by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo
23 line "2016-00403").

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

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1 **5. CLAIMS COVERED AND RELEASE**

2 **5.1 Davia’s Release of Elfa and TCS**

3 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
4 herself and in the interest of the general public, and Elfa and TCS and each of their parent companies,
5 subsidiaries, attorneys, successors and assigns (“Defendant Releasees”) and each entity to whom Elfa
6 or TCS directly or indirectly distribute or sell the Covered Products, including, but not limited to,
7 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
8 licensors and licensees (“Downstream Releasees”) of any violation of Proposition 65 that was asserted
9 against Defendant Releasees regarding the failure to warn about exposure to DINP contained in the
10 Covered Products.

11 **5.1.2** Davia, on behalf of herself and in the interest of the general public, hereby waives,
12 and releases all Defendant Releasees from all claims for violation of Proposition 65 through the
13 Effective Date based upon exposures to DINP caused by Covered Products as set forth in plaintiff’s
14 August 25, 2016, 60-Day Notice to Elfa.

15 **5.1.3** The Parties understand and agree that this Section 5.1 release only extends upstream
16 to any entities that manufactured any Covered Product or any component parts thereof, or any
17 distributors or suppliers who sold any Covered Products or any component parts thereof to Elfa
18 and/or TCS and that such upstream release shall be limited to only the manufacture, distribution or
19 supply of Covered Products for or to Elfa and/or TCS and not for any other product besides Covered
20 Products.

21 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a
22 hearing or trial on the allegations of the Complaint.

23 **5.2 Elfa’s and TCS’ Release of Davia**

24 **5.2.1** Both Elfa and TCS waive any and all claims against Davia, her attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been taken
26 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
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1 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
2 respect to the Covered Products.

3 **5.2.2** The Parties also provide each other with a general release herein which shall be
4 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
5 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature,
6 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
7 the Action. The Parties acknowledge that each is familiar with Section 1542 of the California Civil
8 Code, which provides as follows:

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

14 The Parties expressly waive and relinquish any and all rights and benefits that each may have
15 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
16 as well as under any other state or federal statute or common law principle of similar effect, to the
17 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In
18 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
19 complete release notwithstanding the discovery or existence of any such additional or different
20 claims or facts arising out of the released matters.

21 **6. SEVERABILITY**

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

26 **7. COURT APPROVAL**

27 This Agreement is effective upon execution but must also be approved by the Court. If this
28 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to determine
whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and

1 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
2 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.

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

5 **8. GOVERNING LAW**

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

12 **9. NOTICES**

13 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent
14 by certified mail and electronic mail to the following:

15 For Elfa and TCS, to:

16 William A. Tindell, III, CEO
17 The Container Store Group, Inc.
18 The Container Store Inc.
19 500 Freeport Parkway
20 Coppel, TX 75019-3863

21 With a copy to their counsel:

22 Meredith A. Jones-McKeown
23 Sheppard Mullin Richter & Hampton LLP
24 Four Embarcadero Center, 17th Floor
25 San Francisco, CA 94111

26 For Davia to:

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

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

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

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

6 **11. MODIFICATION**

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

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

10 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
11 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
12 the Parties and their respective counsel agree to mutually employ their best efforts to support the
13 entry of this Agreement as a settlement agreement and obtain approval of the Agreement - sufficient
14 to render an order approving this agreement - by the Court in a timely manner. Any effort to impede
15 judicial approval of this Agreement shall subject such impeding party to liability for attorney fees
16 and costs incurred by the party seeking approval of this Agreement.

17 **13. ENTIRE AGREEMENT**

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

1 **14. ATTORNEY'S FEES**

2 **14.1** Should Davia, TCS, or Elfa prevail on any motion, application for order to show
3 cause or other proceeding to enforce a violation of this Agreement, such prevailing party shall be
4 entitled to their reasonable attorney fees and costs incurred as a result of such motion, order or
5 application, consistent with C.C.P. §1021.5.

6 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
7 shall bear its own costs and attorney's fees in connection with this action.

8 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
9 pursuant to law.

10 **15. NEUTRAL CONSTRUCTION**

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

19 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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17. AUTHORIZATION

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

IT IS SO AGREED

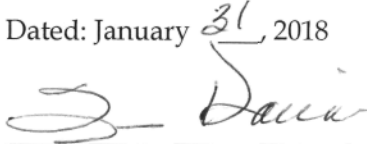
<p>Dated: February <u>2</u>, 2018</p> <p> Joan Manson The Container Store Group, Inc. The Container Store Inc.</p>	<p>Dated: January __, 2018</p> <p>_____ Plaintiff Susan Davia</p>
<p>Dated: February <u>2</u>, 2018</p> <p> SHARON TINDELL ELFA International AB</p>	

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17. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: January __, 2018</p> <hr/> <p>William A. Tindell, III, CEO The Container Store Group, Inc. The Container Store Inc.</p>	<p>Dated: January 31, 2018</p> <p></p> <hr/> <p>Plaintiff Susan Davia</p>
<p>Dated: January __, 2018</p> <hr/> <p>Per von Mentzer, CEO ELFA International AB</p>	