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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 THE CONTAINER STORE, INC.,

15 Defendant.

Case No.: RG19006062

CONSENT JUDGMENT

Judge: Jo-Lynne Q. Lee

Dept.: 18

Hearing Date: October 8, 2019

Hearing Time: 3:00 PM

Reservation #: R-2104651

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.

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: WARNINGS**

16 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
17 signed by both Parties, and continuing thereafter, Covered Products that Container Store directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
19 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
20 exposure warning pursuant to §§ 3.3, 3.4 and 3.5 below. For purposes of this Consent Judgment,
21 a “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in
22 § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
23 Reformulated Product.

24 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
25 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
26 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
27 and 8270C or any other methodology utilized by federal or state government agencies for the
28 purpose of determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3, 3.4 and 3.5 must be provided for all Covered Products that Defendant manufactures,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

8 (a) **Warning.** The “Warning” shall consist of the statement:

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

12 (b) **Alternative Warning:** Container Store may, but is not required to, use the
13 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

14 3.4 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov. A
15 **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**”
16 in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the
17 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
18 outline, except that if the sign or label for the Covered Product does not use the color yellow, the
19 symbol may be in black and white. The symbol must be in a size no smaller than the height of the
20 word “**WARNING:**”.

21 3.5 Where utilized as an alternative to meeting the criteria set forth in § 3.2 above, the
22 warning content set forth in § 3.3 shall be provided using any one of the following methods:

23 3.5.1 The warning shall be affixed to or printed on the Covered Product’s
24 packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process,
25 provided that the warning is displayed with such conspicuousness, as compared with other words,
26 statements, or designs as to render it likely to be read and understood by an ordinary individual
27 under customary conditions of purchase or use. A warning may be contained in the same section
28 of the packaging, labeling, or instruction booklet that states other safety warnings, if any,

1 concerning the use of the Covered Product and shall be at least the same size as those other safety
2 warnings.

3 3.5.2 Container Store may provide a point-of-sale warning. Such warning shall be
4 presented in any of the following forms:

5 3.5.3 a) In-store Sales of the Covered Products. Customers purchasing Covered
6 Products directly from Container Store's California retail stores will receive the Proposition 65
7 warnings set forth in Section 3.3 above via register purchase display or on customers' printed
8 receipts.

9 b) Internet sales of the Covered Products. If Container Store sells Covered
10 Products via an internet website to customers located in California, the warning requirements of
11 this section shall be satisfied if one of the warnings set forth in Section 3.3 appears either: (a) on
12 the same web page on which a Covered Product is displayed and/or described; (b) on the same page
13 as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser
14 prior to purchase during the checkout process.

15 3.6 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
16 compliance with this Consent Judgment by either materially adhering to §§ 3.3, 3.4 and 3.5 of this
17 Consent Judgment or by complying with warning requirements adopted by the State of California's
18 Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

19 **4. MONETARY TERMS**

20 4.1 **Civil Penalty.** Container Store shall pay \$2,500.00 as a Civil Penalty pursuant to
21 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
22 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
23 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
24 § 25249.12(d).

25 4.1.1 Within ten (10) days of the later of (i) the Effective Date; or (ii) Container
26 Store's receipt of a completed Form W-9 or any other required tax-related documentation,
27 Container Store shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in
28 the amount of \$1,875.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount

1 of \$625.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
2 payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 510
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 4.2 **Attorneys' Fees.** Within ten (10) days of the later of (i) the Effective Date; or (ii)
24 Container Store's receipt of a completed Form W-9 or any other required tax-related
25 documentation, Container Store shall pay \$27,000.00 to Brodsky & Smith, LLC ("Brodsky Smith")
26 as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of
27 investigating, bringing this matter to Container Store's attention, litigating and negotiating and
28 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
Procedure § 1021.5.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
31 acting on his own behalf, and on behalf of the public interest, and Container Store, and its parents,
32 shareholders, members, directors, officers, managers, employees, representatives, agents,

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
5 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
6 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
7 Notice, with respect to any Covered Products manufactured, distributed, or sold by Container Store
8 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
9 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
10 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
11 alleged in the Complaint, or that could have been brought pursuant to the Notice against Container
12 Store and/or the Downstream Releasees of the Covered Products (“Proposition 65 Claims”).
13 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
14 with regard to the Covered Products.

15 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
16 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases Container Store, Defendant Releasees, and Downstream Releasees from
19 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
20 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
21 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
22 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
23 from Covered Products manufactured, distributed, or sold by Container Store, Defendant Releasees
24 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
25 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
26 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
27 provides as follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
6 DEBTOR OR RELEASED PARTY.

7 5.3 Container Store waives any and all claims against Ferreiro, his attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been
9 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
11 and/or with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. GOVERNING LAW**

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
22 to the extent that, Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following addresses:

28 For Container Store:

The Container Store Group, Inc.
The Container Store Inc.
Attn: Legal Department
500 Freeport Parkway

1 Coppel, TX 75019-3863

2 With a copy to:

3 Carol Brophy
4 Steptoe & Johnson LLP
5 Steuart Tower
6 1 Market Street, Ste. 1800
7 San Francisco, CA 94105

8 And

9 For Ferreiro:

10 Evan Smith
11 Brodsky & Smith, LLC
12 9595 Wilshire Blvd., Ste. 900
13 Beverly Hills, CA 90212

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and
19 the same document.

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

22 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
23 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
24 Defendant agrees it shall support approval of such Motion.

25 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
26 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
27 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
28 30 days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

9 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
10 pursuant to law.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **14. AUTHORIZATION**

15 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood and agree to all of the terms and conditions of this
17 document and certify that he or she is fully authorized by the Party he or she represents to execute
18 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
19 explicitly provided herein each Party is to bear its own fees and costs.

20 **AGREED TO:**

AGREED TO:

21
22 Date: 8/19/19
23 By: Anthony Ferreiro
24 ANTHONY FERREIRO

Date: 7/24/2019
By: [Signature]
THE CONTAINER STORE, INC.

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

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Dated: _____

Judge of Superior Court