

Electronically Received 04/19/2023 07:56 AM

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

FILED
Superior Court of California
County of Alameda

06/12/2023

Clad File, Executive Officer / Clerk of the Court

By: Nancy A. Rose Deputy
N. Rose

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

14 VOTUM ENTERPRISES LLC,

15 Defendant.

Case No.: 23CV029208

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: June 7, 2023

Hearing Time: 2:30 PM

Reservation #: 963046635585

16
17
18
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

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

9 **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Votum Unicorn Power toiletry
11 bags without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP
12 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer
13 and reproductive toxicity.

14 **1.3 Notice of Violation/Action.** On or about November 29, 2022, Bell served Votum,
15 The TJX Companies, Inc., and various public enforcement agencies with documents entitled “60-
16 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
17 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
18 Votum Unicorn Power toiletry bags expose users in California to DEHP. No public enforcer has
19 brought and is diligently prosecuting the claims alleged in the Notice. On March 9, 2023, Bell filed
20 a complaint (the “Complaint”).

21 **1.4**For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
23 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Action based on the facts alleged therein and
26 in the Notice.

27
28

1 1.5 Defendant denies the material allegations contained in Bell’s 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 Votum’s Unicorn Power
10 toiletry bags including, but not limited to, Batch # JYBS2022072549001 that are distributed,
11 shipped into California and/or offered for sale in California by Votum.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Votum directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
18 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
19 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
20 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
21 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 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 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
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 is known to the State of California to cause
11 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

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

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

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 the use of the Covered Product and shall be at least the same size as those other safety warnings.

1 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
3 Votum offers Products for sale to consumers in California. The requirements of this Section shall
4 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
5 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
6 warning to the purchaser prior to completing the purchase. To comply with this Section, Votum
7 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
8 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
9 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
10 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
11 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
12 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
13 Section 5 of this Agreement if they fail to meet the warning requirements herein.

14 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
16 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
17 Covered Product and exposures at issue after the Effective Date

18 4. **MONETARY TERMS**

19 4.1 **Civil Penalty.** Votum shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
20 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
21 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
22 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within ten (10) days of the Effective Date, Votum shall issue two separate
24 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)
25 "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall be
26 delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky & Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

17 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
18 forth above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Votum shall pay \$23,000.00 to Brodsky & Smith ("Brodsky
20 Smith") as complete reimbursement for Bell's attorneys' fees and costs incurred as a result of
21 investigating, bringing this matter to the attention of Votum, litigating and negotiating and
22 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
23 Procedure § 1021.5. Payment pursuant to this Section is as follows: Within ten (10) days of the
24 Effective Date, Votum shall issue (a) a check payable to "Brodsky & Smith" in the amount of
25 \$11,000.00 for immediate deposit; (b) a check payable to "Brodsky & Smith" in the amount of
26 \$4,000.00 for deposit forty (40) days after the Effective Date; (c) a check payable to "Brodsky &
27 Smith" in the amount of \$4,000.00 for deposit seventy (70) days after the Effective Date; and (d) a
28 check payable to "Brodsky & Smith" in the amount of \$4,000.00 for deposit one hundred (100)
days after the Effective Date.

5. **RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
on her own behalf, and on behalf of the public interest, and Votum, and its parents, shareholders,

1 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
2 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
3 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
4 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
5 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
6 including but not limited to, Marshalls of CA, LLC, T.J. Maxx of CA, LLC, The TJX Companies,
7 Inc. (collectively, “TJX”), and its parents, subsidiaries, agents, attorneys, divisions, subdivisions,
8 partners, and sister companies, and affiliates, franchisees, and their predecessors, successors and
9 assigns and cooperative members (“Downstream Releasees”), of all claims for violations of
10 Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured,
11 distributed, or sold by Votum prior to the Effective Date as set forth in the Notice. It is the Parties’
12 intention that this Consent Judgment shall have preclusive effect such that no other actions by
13 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
14 permitted to pursue and take any action with respect to any violation of Proposition 65 based on
15 exposure to DEHP from use of the Covered Products that was alleged in the Complaint, or that
16 could have been brought pursuant to the Notice against Votum and the Downstream Releasees
17 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
18 compliance with Proposition 65 with regard to exposure to DEHP from use of the Covered
19 Products.

20 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
21 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
22 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
23 and releases Votum, Defendant Releasees, and Downstream Releasees from any and all manner of
24 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
25 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature
26 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
27 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
28

1 manufactured, distributed, or sold by Votum, Defendant Releasees or Downstream Releasees. With
2 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
3 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
4 provisions of § 1542 of the California Civil Code, which provides as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
6 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
7 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
8 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
9 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
10 DEBTOR OR RELEASED PARTY.

11 5.3 Votum waives any and all claims against Bell, her attorneys and other
12 representatives, for any and all actions taken, or statements made (or those that could have been
13 taken or made) by Bell and her attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and with respect to Covered Products.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

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

27 **8. NOTICES**

28 8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendant:

4 Tedd S. Levine
5 Law Offices of Tedd S. Levine, LLC
6 31 Dock Rd., Ste. 162
7 Remsenburg, NY 11960

8 And

9 For Bell:

10 Evan Smith
11 Brodsky & Smith
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 Bell agrees to comply with the requirements set forth in California Health & Safety
23 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, the
27 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
28 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: 4/19/23

Date: 3/27/2023

23 By: 

23 By: 

24 EMA BELL

24 VOTUM ENTERPRISES LLC

25
26 **IT IS SO ORDERED, ADJUDGED AND DECREED:**
27
28

1 Dated: 6/12/2023

Dennis Hayashi

Judge of Superior Court

Dennis Hayashi / Judge

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28