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12 VOTIVO, LTD.

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
16 UNLIMITED CIVIL JURISDICTION

17  
18 RUSSELL BRIMER ) Case No. CGC 06-450704  
19 Plaintiff, )  
20 v. ) **STIPULATION AND [PROPOSED]**  
21 VOTIVO, Ltd.; and DOES 1 through 150, ) **ORDER RE: CONSENT JUDGMENT**  
22 Defendants. )  
23 )

1       **1. INTRODUCTION**

2               **1.1 Russell Brimer and VOTIVO, Ltd.**

3               This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter  
4 “Brimer” or “Plaintiff”) and defendant VOTIVO, Ltd., (hereinafter “VOTIVO” or “Defendant”),  
5 with Brimer and VOTIVO collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

11              VOTIVO employs ten or more persons and is a person in the course of doing business for  
12 purposes of Proposition 65.

13              **1.4 General Allegations**

14              Brimer alleges that VOTIVO has manufactured, distributed and/or sold in the State of  
15 California certain candles, soaps and other aromatics with decorative metal seals containing lead.  
16 Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
17 Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of  
18 California to cause birth defects and other reproductive harm. Lead shall be referred to herein as the  
19 “Listed Chemical.”

20              **1.5 Product Description**

21              The products that are covered by this Consent Judgment are defined as follows: “Candles,  
22 Soaps and Other Aromatics with decorative metal seals containing lead.” All such products with  
23 decorative metal seals shall be referred to herein as the “Products.”

24              **1.6 Notices of Violation**

25              On or about January 13, 2006, Brimer served VOTIVO and various public enforcement  
26 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided  
27 VOTIVO and such public enforcers with notice that alleged that VOTIVO was in violation of  
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1 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the  
2 Products that VOTIVO sold exposed users in California to the Listed Chemical. On August 11,  
3 2006, Brimer served a supplemental notice on VOTIVO and all required public enforcers expanding  
4 plaintiff's prior allegations concerning the products to include soaps and other aromatics with  
5 decorative metal seals containing lead ("Supplemental Notice").

6 **1.7 Complaint**

7 On March 28, 2006, Brimer, acting in the interest of the general public in California, filed a  
8 complaint (hereinafter referred to as the "Complaint" or the "Action") in the Superior Court in and  
9 for the City and County of San Francisco against VOTIVO, Ltd. and Does 1 through 150, (*Brimer v.*  
10 *Votivo, Ltd.*, CGC-06-450704) alleging violations of Health & Safety Code §25249.6 based on the  
11 alleged exposures to the Listed Chemical contained in Products sold by VOTIVO. The 60-day  
12 period associated with the issuance of the Supplemental Notice has run, with no authorized public  
13 enforcer of Proposition 65 initiating an action against the Noticed Party based on the additional  
14 allegations therein contained. The parties hereby stipulate that the definition of "Products" in the  
15 Complaint shall be deemed expanded to include soaps and other aromatics with decorative metal  
16 seals (containing lead).

17 **1.8 No Admission**

18 VOTIVO denies the material factual and legal allegations contained in Brimer's Notice and  
19 Complaint and maintains that all products that it has sold and distributed in California, including the  
20 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be  
21 construed as an admission by VOTIVO of any fact, finding, issue of law, or violation of law, nor  
22 shall compliance with this Consent Judgment constitute or be construed as an admission by  
23 VOTIVO of any fact, finding, conclusion, issue of law or violation of law, such being specifically  
24 denied by VOTIVO. However, this Section shall not diminish or otherwise affect the obligations,  
25 responsibilities and duties of VOTIVO under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28 jurisdiction over VOTIVO as to the allegations contained in the Complaint, that venue is proper in

1 the County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions  
2 of this Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 15,  
5 2006.

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

7 After the Effective Date, VOTIVO shall not sell, ship or offer to be shipped for sale in  
8 California Products containing decorative metal seals with more than one tenth of one percent  
9 (0.1%) of lead by weight.

10 **3. MONETARY PAYMENTS**

11 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

12 The total penalty amount shall be \$60,000 which shall be paid by VOTIVO as set forth  
13 herein. Pursuant to Health & Safety Code §25249.7(b), VOTIVO shall pay 50% of the penalty  
14 within 20 days of the signature by both parties to this Stipulation, which payment shall be held in  
15 trust by HIRST & CHANLER LLP until court approval of this Consent Judgment. The remaining  
16 50% of the penalty in the amount of \$30,000, shall be paid within 3 court days of approval by the  
17 Court of this Consent Judgment. Said payments shall be made payable to the "HIRST &  
18 CHANLER LLP in Trust For Russell Brimer" and shall be mailed to plaintiff's counsel at the  
19 following address:

20 HIRST & CHANLER LLP  
21 Attn: Proposition 65 Controller  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

25 **3.2 Apportionment of Penalties Received**

26 All penalty monies received shall be apportioned by Brimer in accordance with Health &  
27 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California's Office  
28 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies  
retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all  
responsibility for apportioning and paying to the State of California the appropriate civil penalties

1 paid in accordance with this Section.

2 **4. REIMBURSEMENT OF FEES AND COSTS**

3 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
5 issue to be resolved after the material terms of the agreement had been settled. VOTIVO then  
6 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
7 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
8 Brimer and his counsel under the private attorney general doctrine codified at California Code of  
9 Civil Procedure §1021.5 for all work performed through the Effective Date of this Consent  
10 Judgment, and anticipated for issuing a supplemental notice and submitting this Consent Judgment  
11 for Court approval. Under the private attorney general doctrine, VOTIVO shall reimburse Brimer  
12 and his counsel for fees and costs incurred as a result of investigating, bringing this matter to  
13 VOTIVO's attention, litigating and negotiating a settlement in the public interest and seeking the  
14 Court's approval of the settlement agreement.

15 VOTIVO shall pay Brimer and his counsel \$40,000 for all attorneys' fees, expert and  
16 investigation fees, litigation and related costs. Payment of said fees and costs will be made in two  
17 installments: One half of this amount will be made within 20 days of the signature by both parties  
18 on this Stipulation. Said payment shall be held in trust by HIRST & CHANLER LLP until approval  
19 by the Court of this Consent Judgment. The other half of this amount will be payable within 3 court  
20 days of the approval by the Court of this Consent Judgment. Payments shall be made payable to  
21 HIRST & CHANLER LLP and shall be mailed to the following address:

22 HIRST & CHANLER LLP  
23 Attn: Proposition 65 Controller  
24 2560 Ninth Street  
25 Parker Plaza, Suite 214  
26 Berkeley, CA 94710-2565

26 **5. RELEASE OF ALL CLAIMS**

27 **5.1 Release of VOTIVO and Downstream Customers**

28 In further consideration of the promises and agreements herein contained, and for the

1 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current  
2 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general  
3 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
4 action and releases all claims, including, without limitation, all actions, and causes of action, in law  
5 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
6 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
7 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
8 VOTIVO and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,  
9 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate  
10 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
11 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This  
12 release is limited to those claims that arise under Proposition 65, as they relate to VOTIVO's alleged  
13 failure to warn about exposures to the Listed Chemical contained in the Products.

#### 14 **5.2 VOTIVO's Release of Brimer**

15 VOTIVO waives any and all claims against Brimer, his attorneys and other representatives,  
16 for any and all actions taken or statements made (or those that could have been taken or made) by  
17 Brimer and his attorneys and other representatives, whether in the course of investigating claims or  
18 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the  
19 Products.

#### 20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved as to all products defined in  
22 paragraph 1.5 and entered by the Court and shall be null and void if, for any reason, it is not  
23 approved as to all products defined in paragraph 1.5 and entered by the Court within one year after it  
24 has been fully executed by all Parties. In the event that this Consent Judgment is not approved by  
25 the Court, all monies that have been provided to Plaintiff or his counsel pursuant to Section 3 and/or  
26 Section 4 above, shall be refunded within twenty (20) days.

#### 27 **7. SEVERABILITY**

28 If, subsequent to Court approval of this Consent Judgment, any of the provisions of this

1 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
2 remaining shall not be adversely affected.

3 **8. ATTORNEYS' FEES**

4 In the event that, after Court approval: (1) a dispute arises with respect to any provision of  
5 this Consent Judgment; (2) any party or third party seeks modification of this Consent Judgment  
6 pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to enforce the  
7 terms of this Consent Judgment, Brimer shall be entitled to reasonable attorneys' fees and costs  
8 pursuant to CCP §1021.5.

9 **9. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California  
11 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
12 rendered inapplicable by reason of law generally, or as to the Products, then VOTIVO shall provide  
13 written notice to Brimer of any asserted change in the law, and shall have no further obligations  
14 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so  
15 affected.

16 **10. NOTICES**

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

21 To VOTIVO:

22 David F. Wood, State Bar No. 68063  
23 WOOD, SMITH, HENNING & BERMAN LLP  
24 10960 Wilshire Boulevard, 18th Floor  
25 Los Angeles, CA 90024-3804

26 To Brimer:

27 Proposition 65 Controller  
28 HIRST & CHANLER LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Brimer agrees to comply with the reporting form requirements referenced in Health & Safety  
9 Code §25249.7(f)..

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Brimer and VOTIVO agree to mutually employ their best efforts to support the entry of this  
12 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
13 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a  
14 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly,  
15 Plaintiff agrees to file Motion to Approve the Agreement (“Motion”), within a reasonable period of  
16 time after the Execution Date (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the  
17 Parties’ counsel based on unanticipated circumstances). VOTIVO shall have no additional  
18 responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with  
19 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of  
20 the Motion or with regard to Plaintiff’s counsel appearing for a hearing thereon.

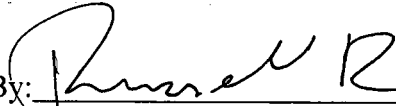
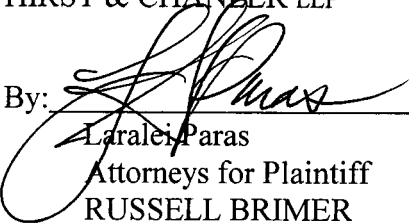
21 **14. MODIFICATION**

22 This Consent Judgment may be modified only by: (1) written agreement of the Parties and  
23 upon entry of a modified Consent Judgment by the Court thereon; or (2) motion of any Party as  
24 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
25 General shall be served with notice of any proposed modification to this Consent Judgment at least  
26 fifteen (15) days in advance of its consideration by the Court.  
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1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 Consent Judgment.  
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<p>6 <b>AGREED TO:</b></p> <p>7 Date: <u>10.16.06</u></p> <p>8</p> <p>9 By:  10 Plaintiff Russell Brimer</p>	<p>6 <b>AGREED TO:</b></p> <p>7 Date: _____</p> <p>8</p> <p>9 By: _____ 10 Defendant VOTIVO, Ltd.</p>
<p>12 <b>APPROVED AS TO FORM:</b></p> <p>13</p> <p>14 Date: <u>10.16.06</u></p> <p>15 HIRST &amp; CHANLER LLP</p> <p>16 By:  17 Laralei Paras 18 Attorneys for Plaintiff 19 RUSSELL BRIMER</p>	<p>12 <b>APPROVED AS TO FORM:</b></p> <p>13</p> <p>14 Date: _____</p> <p>15 WOOD, SMITH, HENNING &amp; BERMAN LLP</p> <p>16</p> <p>17 By: _____ 18 David F. Wood 19 Attorneys for Defendant VOTIVO, LTD.</p>

20 **IT IS SO ORDERED.**

21 Date: \_\_\_\_\_

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23 JUDGE OF THE SUPERIOR COURT  
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**15. AUTHORIZATION**

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 Consent Judgment.

<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>October 17, 2006</u></p> <p>VOTIVO, Ltd.</p> <p>By: <u>Edgar F. Lee</u> Edgar F. Lee, President Defendant</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Laralei Paras Attorneys for Plaintiff RUSSELL BRIMER</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>WOOD, SMITH, HENNING &amp; BERMAN LLP</p> <p>By: _____ David F. Wood Attorneys for Defendant VOTIVO, LTD.</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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**15. AUTHORIZATION**

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 Consent Judgment.

<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff Russell Brimer</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant VOTIVO, Ltd.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Laralei Paras Attorneys for Plaintiff RUSSELL BRIMER</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>10/23/06</u></p> <p>WOOD, SMITH, HENNING &amp; BERMAN LLP</p> <p>By: <u>[Signature]</u> David F. Wood Attorneys for Defendant VOTIVO, LTD.</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT