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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

1 JAMES KAWAHITO (SBN 234851)
KAWAHITO LAW GROUP APC
2 222 N. Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245
3 Telephone: (310) 746-5300
Facsimile: (310) 593-2520
4 Email: jkawahito@kawahitolaw.com

5 Attorneys for Plaintiff the Center for Advanced Public Awareness, Inc.

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9 CENTER FOR ADVANCED PUBLIC
AWARENESS, INC., in the public interest,

10 Plaintiff,

11 vs.

12 ARGENTO SC BY SICURA, INC., a New
13 York Corporation; ROSS STORES, INC., a
14 Delaware Corporation; and DOES 1 through
50, inclusive,

15 Defendants.
16

Case Number:

RG19022178

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health and Safety Code § 25249.5 *et*
seq.)

FILE BY
FAX

DEMAND FOR JURY TRIAL

17
18 Plaintiff the Center for Advanced Public Awareness, Inc., ("CAPA"), in the public interest,
19 alleges as follows as to matters within its own knowledge, and on information and belief as to all
20 other matters:

21 INTRODUCTION

22 1. This action seeks to remedy the alleged failure of Argento SC by Sicura, Inc.
23 ("Argento"), Ross Stores, Inc. ("Ross") and DOES 1-50 (hereinafter individually referred to as
24 "Defendant" and collectively as "Defendants") to warn consumers in California that they are
25 being exposed to Di-(2-ethylhexyl) phthalate ("DEHP") and Diisononyl Phthalate ("DINP"),
26 substances known to the State of California to cause cancer and developmental/reproductive
27 toxicity. Plaintiff alleges such exposures have occurred through the manufacture, distribution,
28

COMPLAINT

1 sale and consumer use of Argento's earbuds, which are imported, sold and/or distributed for sale
2 in California by Argento and Ross (the "Products"). California consumers are directly exposed
3 to DEHP and DINP through the touching of the components of the Products. In addition, DEHP
4 and DINP transferred to the hand is then ingested through hand to mouth contact. Finally, DEHP
5 and DINP are directly ingested when the Products are placed in the mouth.

6 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
7 Safety Code Section 25249.5 *et seq.* (hereinafter "Proposition 65"), it is unlawful for businesses
8 to knowingly and intentionally expose individuals in California to chemicals known to the State
9 to cause cancer and/or birth defects or other reproductive harm above the safe harbor levels,
10 which include the No Significant Risk Levels ("NSRLs") and/or Maximum Allowable Dose
11 Levels ("MADLs") without providing "clear and reasonable" warnings to individuals prior to
12 their exposure.

13 3. Despite the fact that Defendants' Products allegedly expose consumers to levels of DEHP
14 and DINP above the listed NSRLs and MADLs, Plaintiff contends that Defendants failed to
15 provide any warnings whatsoever about the carcinogenic hazards associated with DEHP and
16 DINP exposure. Moreover, Defendants' manufacture, packaging, distribution, marketing, and/or
17 sales of the Products without the required health hazard warnings causes consumers to be
18 involuntarily, unknowingly and unwittingly exposed to levels of DEHP and DINP that violate
19 Proposition 65. Thus, Defendants' conduct subjects them to civil penalties and injunctive relief.

20 **JURISDICTION AND VENUE**

21 4. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §
22 25249.7, which allows enforcement in any court of competent jurisdiction. The California
23 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,
24 Section 10, which grants the Superior Court "original jurisdiction in all cases except those given
25 by statute to other trial courts." The statute under which this is brought does not specify any other
26 court with jurisdiction.

5. This Court has jurisdiction over Defendants because they are business entities that do sufficient business, have sufficient minimum contacts or otherwise intentionally avails themselves of the California market through the sale, marketing, or use of the Products in the California market and/or by having such other contact with California so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

6. Venue is proper in this Court because, upon information and belief, one or more of the violations arise in Alameda County.

THE PARTIES

7. CAPA is a non-profit corporation organized under the laws of California acting in the interest of the general public seeking to further, among other causes, the protection of the environment, awareness of dangerous chemicals in consumer products, and corporate accountability. CAPA is a “person” within the meaning of Cal. Health & Safety Code § 25249.11(a) and brings this enforcement action in the public interest pursuant to Cal. Health & Safety Code § 25249.7(d).

8. CAPA is informed and believes, and thereon alleges, that defendant Argento is a New York corporation who supplies consumer products to various retail stores in the state of California. Argento is a “person in the course of doing business” within the meaning of Cal. Health & Safety Code § 25249.11(b).

9. CAPA is informed and believes, and thereon alleges, that Ross is a Delaware entity, which has distributed and sold numerous Products into the state of California. Ross is a “person in the course of doing business” within the meaning of Cal. Health & Safety Code § 25249.11(b)

10. CAPA is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1-50, but prays for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities become known.

1 11. CAPA is informed and believes, and thereon alleges, that each and all of the acts and
2 omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-50,
3 each acting as the agent for the other, with legal authority to act on the other's behalf. Upon
4 information and belief, the acts of Defendants were in accordance with, and represent the official
5 policies of Defendants.

6 12. At all times herein mentioned, upon information and belief, the Defendants, and each of
7 them, ratified each and every act or omission complained of herein. At all times herein
8 mentioned, upon information and belief, Defendants, and each of them, aided and abetted the acts
9 and omissions of each and all the other Defendants proximately causing the damages herein
10 alleged.

11 13. CAPA is informed and believes, and thereon alleges, that each of Defendants are in some
12 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
13 and transactions alleged herein.

14 **STATUTORY AND REGULATORY BACKGROUND**

15 14. The People of the State of California declared in Proposition 65 their right "[t]o be
16 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
17 harm." (Section 1(b) of Initiative Measure, Proposition 65).

18 15. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear
19 and reasonable warning" before being exposed to substances listed by the State of California as
20 causing cancer or reproductive toxicity. Cal. Health and Safety Code §25249.6 states, in pertinent
21 part:

22 No person in the course of doing business shall knowingly and
23 intentionally expose any individual to a chemical known to the
24 state to cause cancer or reproductive toxicity without first giving
25 clear and reasonable warning to such individual....

26 16. A product exposure to a chemical is one that "results from a person's acquisition,
27 purchase, storage, consumption, or other reasonably foreseeable use of a product" 27 C.C.R.
28 §25600(h).

1 17. Proposition 65 provides that any “person who violates or threatens to violate” the statute
2 may be enjoined in a court of competent jurisdiction. Cal. Health & Safety Code §25249.7. The
3 phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial
4 probability that a violation will occur” Cal. Health & Safety Code §25249.11(e). Violators are
5 liable for civil penalties of up to \$2,500 per day for each violation of the Act. Cal. Health &
6 Safety Code §25249.7.

7 18. On October 24, 2003, the State of California officially listed DEHP as a chemical known
8 to cause cancer. On October 24, 2004, one year after it was listed as a chemical known to cause
9 cancer and reproductive/developmental toxicity, DINP became subject to the clear and reasonable
10 warning requirement regarding under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety
11 Code §25249.10(b). Due to the toxicity of DEHP, the California Office of Environmental Health
12 Hazard Assessment (“OEHHA”) set the NSRL for exposure to DEHP at 310 micrograms per day
13 and a MADL of 410 micrograms per day for oral ingestion.

14 19. On December 20, 2013, the State of California officially listed DINP as a chemical known
15 to cause cancer. On December 20, 2014, on year after it was listed as a chemical known to cause
16 cancer, DINP became subject to the clear and reasonable warning requirement regarding cancer
17 under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety Code §25249.10(b). Due to the
18 toxicity of DINP, the California Office of Environmental Health Hazard Assessment (“OEHHA”) set the NSRL for exposure to DINP at 146 micrograms per day.

20 **STATEMENT OF RELEVANT FACTS**

21 20. CAPA purchased the Product in May 2018.

22 21. To test Defendants’ Products for phthalates, CAPA engaged a well-respected and
23 accredited testing laboratory to determine the amount of DEHP and DINP contained in the
24 Products pursuant to testing methods adopted by the Federal Consumer Products Safety
25 Commission. The testing revealed that the Product had levels of DEHP and DINP that CAPA
26 believes would result in exposure of DEHP and DINP to consumers far higher than the limit
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1 proscribed by the NSRL and MADL. CAPA also commissioned a wipe test to determine the
2 amount of DEHP and DINP that would be transferred from the Product to the skin.

3 22. Plaintiff alleges that Defendants' Products contain sufficient quantities of DEHP and DINP
4 such that individuals who handle the Products are exposed to significant amounts of DEHP and
5 DINP through the average and intended use of the Products. For example, ordinary consumers
6 absorb DEHP and DINP through the skin when they touch, use, and/or handle the Products.
7 Ordinary consumers also ingest DEHP and DINP via hand to mouth contact after they touch, use,
8 or handle the Products and then touch their mouths or other objects that are then placed in their
9 mouths. DEHP and DINP can also be directly ingested when the Products are placed in the
10 mouth.

11 23. Plaintiff alleges that Defendants know and intend that consumers will use the products in
12 manner stated above, and that they will be exposed to any chemicals such as DEHP and DINP that
13 exist in the Products.

14 24. At all times relevant to this action, Defendants, therefore, have knowingly and
15 intentionally exposed the users, consumers and/or handlers of the Products to DEHP and DINP
16 without first giving a clear and reasonable warning to such individuals.

17 25. CAPA is informed and believes, and thereon alleges, that Defendants have, since at least
18 September 2018, and continuing through the present, exposed consumers to DEHP and DINP
19 without providing clear and reasonable warnings regarding the cancer hazards of DEHP and
20 DINP.

21 26. As a proximate result of acts by Defendants, as persons in the course of doing business
22 within the meaning of Health & Safety Code §25249.11, Plaintiff alleges they have subjected
23 consumers to violative exposures through the normal and foreseeable use of the Products.

24 27. Any person acting in the public interest has standing to enforce violations of Proposition
25 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day
26 Notice of Violation and such public enforcers are not diligently prosecuting the action with such
27 time. Cal. Health & Safety Code §25249.7(d).

28. On July 16, 2018, CAPA provided a “60-Day Notice of Violations of California Health & Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000. Defendants were also provided a copy of the Notice. The Notice included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations including the chemicals involved, the routes of toxic exposure, and the specific product or type of product causing the violations. The Notice package to Defendants also included the most recent version of Appendix A, the Final Adopted Regulatory Text for Title 27 of the California Code of Regulations, Section 5903 as amended. In compliance with California Health & Safety Code § 25249.7(d) and 11 C.C.R. §3102, CAPA provided factual information – on a confidential basis – to the Attorney General sufficient to satisfy basis for the Certificate of Merit, including the testing performed by CAPA, and/or its litigation consultants, and the facts, studies, or other data supporting the Certificate.

29. After expiration of the sixty (60) day notice period, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under California Health & Safety Code §25249.5 *et seq.* against Defendants based on the allegations herein.

30. CAPA has engaged in good faith efforts to resolve the claims alleged herein prior to filing this complaint, however the parties were unable to do so, and as a result, CAPA has brought the instant action.

FIRST CAUSE OF ACTION

(Injunctive Relief Pursuant to Cal. Health & Safety Code §25249.5 *et seq.*)

31. CAPA incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 30, inclusive.

32. By committing the acts alleged in this Complaint, Plaintiff alleges that Defendants at all times relevant to this action, and continuing through the present, have violated California Health

1 & Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally
2 exposing individuals in California to chemicals known to the State of California to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,
4 consume or handle the Products containing DEHP and DINP, pursuant to California Health &
5 Safety Code §§25249.6 and 25249.11(f).

6 33. By the above-described acts, Plaintiff alleges Defendants have violated California Health
7 & Safety Code §25249.6 and are therefore subject to preliminary and permanent injunctions
8 ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future
9 customers, and to provide warnings to Defendants' past customers who purchased or used the
10 Products without receiving a clear and reasonable warning.

11 34. An action for injunctive relief under Proposition 65 is specifically authorized by California
12 Health & Safety Code §25249.7(a).

13 35. Plaintiff alleges that Defendants actions in selling the Products without clear and
14 reasonable warnings will irreparably harm the citizens of the State of California, for which harm
15 they have no plain, speedy, or adequate remedy at law.

16 36. In the absence of preliminary and then permanent injunctive relief, Plaintiff alleges that
17 Defendants will continue to create a substantial risk of irreparable injury by continuing to cause
18 consumers to be involuntarily, unknowingly and unwittingly exposed to DEHP and DINP through
19 the use, consumption and/or handling of the Products.

20 **SECOND CAUSE OF ACTION**

21 **(Civil Penalties Pursuant to Cal. Health & Safety Code §25249.5 *et seq*)**

22 37. CAPA incorporates by reference and re-alleges as if fully stated herein the material
23 allegations set out in paragraphs 1 through 36, inclusive.

24 38. By committing the acts alleged in this Complaint, Plaintiff alleges Defendants at all times
25 relevant to this action, and continuing through the present, have violated California Health &
26 Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
27 individuals in California to chemicals known to the State of California to cause cancer or
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1 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,
2 consume or handle the Products containing DEHP and DINP, pursuant to California Health &
3 Safety Code §§25249.6 and 25249.11(f).

4 39. By engaging in the above-described acts, Plaintiff alleges Defendants are liable, pursuant
5 to California Health & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per
6 violation for each unlawful exposure to DEHP and DINP from the Products in an amount in
7 excess of \$1 million.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, CAPA prays for relief and judgment against Defendants, and each of
10 them, as follows:

11 **As to the Causes of Action**

12 1. A preliminary and permanent injunction, pursuant to California Health &
13 Safety Code Code §25249.7(a), enjoining Defendants, their agents, employees, assigns and all
14 persons acting in concert or participating with Defendants, from manufacturing, distributing,
15 marketing or selling the Products in California without either reformulating the Products or
16 providing a clear and reasonable warning, within the meaning of Proposition 65, that the users
17 and/or handlers of the Products are exposed to DEHP and DINP;

18 2. An Order pursuant to California Health & Safety Code §25249.7(a)
19 compelling Defendants to use best methods to identify and locate each individual who purchased
20 the Products during the statutory period, and to provide a warning to such person that the use of
21 the Products will expose them to chemicals known to cause cancer;

22 3. An assessment of civil penalties pursuant to California Health & Safety
23 Code §25249.7(b) against Defendants in the amount of \$2,500 per day for each violation of
24 Proposition 65, in an amount to be determined at trial;

25 4. For an award to CAPA of its reasonable attorneys' fees and costs of suit
26 incurred herein; and

27 5. For such equitable or other relief as the Court may deem just and proper.
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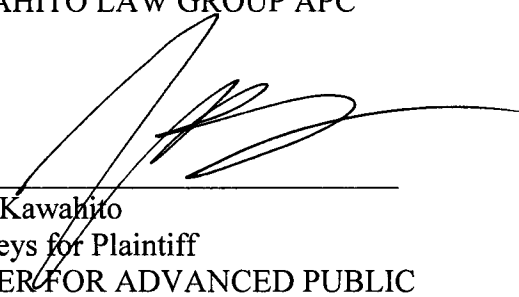
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REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable

Dated: June 7, 2019

KAWAHITO LAW GROUP APC

By: 
James Kawahito
Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC
AWARENESS