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ENDORSED
 FILED
 ALAMEDA COUNTY

APR 09 2019

CLERK OF THE SUPERIOR COURT
 By ALICIA ESPINOZA
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

10 EMA BELL,

11 Plaintiff,

12 vs.

13 ARGENTO SC BY SICURA, INC.,
 14 ROSS STORES, INC.,

15 Defendants.

Case No.:

RG 19014323

COMPLAINT FOR CIVIL PENALTIES AND
 INJUNCTIVE RELIEF

(Violation of Health & Safety Code § 25249.5 et
 seq.)

16 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
 17 of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
 20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
 21 at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
 22 "[n]o person in the course of doing business shall knowingly and intentionally expose any
 23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
 24 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
 26 of the citizens of the State of California to enforce the People's right to be informed of the health
 27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
 28

1 Firestone steering wheel covers sold and/or distributed by defendants Argento SC By Sicura, Inc.
2 (“Sicura”) and Ross Stores, Inc. (“Ross Stores”) (collectively, “Defendants”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
5 known to the State to cause cancer and it has come under the purview of Proposition 65
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
8 known to cause reproductive toxicity.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that
10 operate within California or sell products therein to comply with Proposition 65 regulations.
11 Included in such regulations is the requirement that businesses must label any product containing
12 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
13 intentionally” exposing any person to it.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
16 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
17 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
18 Code § 25249.7.

19 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in
20 California, without a requisite exposure warning, Firestone steering wheel covers (the
21 “Products”) that expose persons to DEHP.

22 7. Defendants’ failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
24 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and
25 civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendants for their violations of
27 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

28

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

PARTIES

10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Sicura, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Sicura is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12. Defendant Ross Stores, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Ross Stores is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

13. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendants conducted, and continue to conduct, business in the County of Alameda with respect to the Products.

14. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

3 15. This Court has jurisdiction over Defendants because each Defendant is either a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or has otherwise purposefully availed itself of the California
7 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
8 consistent and permissible with traditional notions of fair play and substantial justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On January 31, 2019, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California
12 citizens to DEHP contained in the Products without proper warning, subject to a private action to
13 Defendants and to the California Attorney General's office and the offices of the County District
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons
15 wherein the herein violations allegedly occurred.

16 17. The Notice complied with all procedural requirements of Proposition 65 including
17 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
18 least one person with relevant and appropriate expertise who reviewed relevant data regarding
19 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
20 private action.

21 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
22 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
23 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which
24 are the subject of Plaintiff's notice of violation.

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
26 Notice to Defendants, as required by law.

27 **FIRST CAUSE OF ACTION**

28 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

1 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
2 this complaint as though fully set forth herein.

3 21. Defendants have, at all times mentioned herein, acted as manufacturers,
4 distributors, and/or retailers of the Product.

5 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65
6 list of chemicals known to be hazardous to human health.

7 23. The Product does not comply with the Proposition 65 warning requirements.

8 24. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since September 22, 2018, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the Product. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can
15 occur through direct skin contact with the Product during routine use when the s Product is
16 grasped with bare hands during driving. Concentrations of gas phase DEHP can be expected to
17 build within the small, enclosed interior of the vehicle cabin. This gas phase DEHP can be
18 inhaled by the vehicle occupants. A 2009 study measured phthalates in the interior air of 23
19 automobiles during the winter and summer months, with summertime temperatures inside the
20 cars reaching up to 70°. Overall concentrations of carbonyl compounds was 40% higher in the
21 summer and the most frequently detected phthalates were DnBP and DEHP with detectable
22 DEHP concentrations ranging from 335 to 3656ng. Finally, while mouthing of the Product does
23 not seem likely, some amount of exposure through ingestion can occur by touching the Product
24 with subsequent touching of the user's hand to mouth.

25 26. Plaintiff, based on her best information and belief, avers that such exposures will
26 continue every day until clear and reasonable warnings are provided to Product purchasers and
27 users or until this known toxic chemical is removed from the Product.

27. Defendants have knowledge that the normal and reasonably foreseeable use of the Product exposes individuals to DEHP, and Defendants intends that exposures to DEHP will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products to consumers in California

28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this Complaint.

29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: April 9, 2019

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