

3-21-14

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FILED
ALAMEDA COUNTY

MAY 07 2014

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

5 Attorneys for Plaintiff
6 CONSUMER ADVOCACY GROUP, INC.

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

10
11 CONSUMER ADVOCACY GROUP, INC., in
the public interest,

Case No. RG13678789

12 Plaintiff,

~~PROPOSED~~ CONSENT JUDGMENT AND
ORDER

13 v.

Health & Safety Code § 25249.5 et seq.

14 ARGENTO SC BY SICURA, INC., a New
15 York Corporation; SICURA DESIGNS, INC.,
a Delaware Corporation; IWAVE SICURA
16 MEDIA, INC., a New York Corporation;
TECHNICAL KNOCKOUT, INC., a Delaware
17 Corporation; MARSHALLS OF MA, INC., a
Massachusetts Corporation; ROSS STORES,
18 INC., a Delaware Corporation; ROSS DRESS
FOR LESS, INC., a Virginia Corporation; and
19 DOES 1-20,

ACTION FILED: May 8, 2013
TRIAL DATE: ~~Vacated~~ Maintained

20 Defendants.

21 1. INTRODUCTION

22 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc.
23 (referred to as "CAG) acting on behalf of itself and in the interest of the public and defendant, Argento SC by Sicura,
24 Inc. (referred to as "Argento") with each a Party to the action and collectively referred to as the "Parties."

25 1.2 Argento employs ten or more persons, is a person in the course of doing business for purposes of
26 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
27 ("Proposition 65"), and has manufactured, distributed, or sold the iWave™ Neptune 2.0 Speaker System, iWave™
28 OHM + Stereo Headphone, Computer Speakers, and Computer Laptop Locks ("Covered Products"). Pursuant to

BY FAX

1 Proposition 65, California has identified and listed lead and DEHP as chemicals known to cause cancer and birth
2 defects or other reproductive harm.

3 1.3 Notices of Violation.

4 On July 25, 2011, CAG served Argento, and various public enforcement agencies with a document entitled
5 "60-Day Notice of Violation" ("July 25, 2011 Notice") that provided the recipients with notice of alleged violations
6 of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP allegedly
7 contained in the iWave™ Neptune 2.0 Speaker System sold by Argento. No public enforcer has commenced or
8 diligently prosecuted the allegations set forth in the July 25, 2011 Notice.

9 On September 6, 2011, CAG served Argento, and various public enforcement agencies with a document
10 entitled "60-Day Notice of Violation" ("September 6, 2011 Notice") that provided the recipients with notice of
11 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
12 lead allegedly contained in the iWave™ OHM + Stereo Headphone sold by Argento. No public enforcer has
13 commenced or diligently prosecuted the allegations set forth in the September 6, 2011 Notice.

14 On November 2, 2012, CAG served Argento, and various public enforcement agencies with a document
15 entitled "60-Day Notice of Violation" ("November 2, 2012 Notice") that provided the recipients with notice of
16 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
17 lead allegedly contained in Computer Speakers sold by Argento. No public enforcer has commenced or diligently
18 prosecuted the allegations set forth in the November 2, 2012 Notice.

19 On November 9, 2012, CAG served Argento, and various public enforcement agencies with a document
20 entitled "60-Day Notice of Violation" ("November 9, 2012 Notice") that provided the recipients with notice of
21 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
22 DEHP allegedly contained in Computer Laptop Locks sold by Argento. No public enforcer has commenced or
23 diligently prosecuted the allegations set forth in the November 9, 2012 Notice.

24 1.4 Complaint.

25 On May 8, 2013, CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Alameda
26 County Superior Court, Case No. RG13678789, against Argento and other entities. The Complaint alleges, among
27 other things, that Argento violated Proposition 65 by failing to give clear and reasonable warnings of exposure to
28

1 lead and DEHP from the iWave™ Neptune 2.0 Speaker System, iWave™ OHM + Stereo Headphone, Computer
2 Speakers, and Computer Laptop Lock products.

3 **1.5 Consent to Jurisdiction**

4 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the
5 allegations of violations contained in the Complaint and personal jurisdiction over Argento as to the acts alleged in
6 the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter this
7 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all claims
8 which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the
9 facts alleged therein or arising therefrom or related to.

10 **1.6 No Admission**

11 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent
12 Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding
13 prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation
14 of the Complaint, each and every allegation of which Argento denies, nor may this Consent Judgment or compliance
15 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Argento.

16 **2. DEFINITIONS**

17 **2.1 "Covered Products"** means the iWave™ Neptune 2.0 Speaker System, iWave™ OHM + Stereo
18 Headphone, Computer Speakers and Computer Laptop Locks manufactured, licensed, distributed or sold by
19 Argento.

20 **2.2 "Effective Date"** means 10 days from the date that this Consent Judgment is approved by the Court.

21 **2.3 "DEHP"** means Di (2-ethylhexyl) Phthalate

22 **2.4 "Lead" or "lead"** means lead and lead compounds.

23
24 **2.5 "Notices"** means the July 25, 2011, September 2, 2011, November 2, 2012, and November 9, 2012
25 Notices identified in Section 1.3.

26 **3. INJUNCTIVE RELIEF/REFORMULATION**

27 **3.1** For any orders from its suppliers that Argento makes after February 18, 2014 of
28 the iWave™ Neptune 2.0 Speaker System and computer laptop lock products that are intended

1 for sale in California, Argento shall specify that such products shall not have more than 0.1%
2 (1000 parts per million) of DEHP. After April 19, 2014, Argento shall not distribute for sale in
3 California any iWave™ Neptune 2.0 Speaker System or computer laptop lock products that
4 contain more than 0.1% (1000 parts per million) of DEHP.

5 3.2 For any orders from its suppliers that Argento makes after February 18, 2014 of
6 the iWave™ OHM + Stereo Headphone and computer speaker products that are intended for sale
7 in California, Argento shall specify that such products shall not have more than 100 parts per
8 million of lead. After April 19, 2014, Argento shall not distribute for sale in California any
9 iWave™ OHM + Stereo Headphone or computer speaker products that contain more than 100
10 ppm of lead.

11 3.3 Argento shall place Proposition 65 compliant warnings on existing inventory of
12 the Covered Products that are intended to be shipped to retailers in California not later than April
13 4, 2014.

14 a. Argento may comply with Proposition 65 and this paragraph by affixing to
15 the packaging, labeling or directly on the Covered Products sold to any entity that Argento
16 reasonably understands maintains retail outlets in California, or resells to retail outlets in
17 California, that states:

18 **WARNING:** This product contains a chemical known to the State of California to
19 cause cancer or birth defects or other reproductive harm.
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23 **4. SETTLEMENT PAYMENT**

24 4.1 Within 10 days of the Effective Date or receipt of Forms W-9 from CAG, whichever is later,
25 Argento shall pay a total of \$70,000 in full and complete settlement of all monetary claims related to the Notices and
26 Complaint, as follows.

27 4.2 **Payment In Lieu of Civil Penalties:** Argento shall pay \$1,000 in lieu of civil penalties to
28 "Consumer Advocacy Group, Inc." CAG will use the payments for such projects and purposes related to

1 environmental protection, worker health and safety, or reduction of human exposure to hazardous substances ,
2 including but not limited to, administrative and litigation costs and fees (excluding attorneys' fees), laboratory fees
3 for testing samples for Proposition 65 listed chemicals, expert fees for evaluating exposures and merit to each
4 potential violation of Proposition 65, and the substantial cost of hiring consulting and retained experts who assist with
5 the extensive scientific analysis necessary for those files in litigation.

6 4.3 **Reimbursement of Attorneys Fees and Costs:** Argento shall pay \$67,000 to "Yeroushalmi &
7 Associates" as reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and other
8 litigation costs and expenses for all work performed through the approval of this Consent Judgment.

9 4.4 **Civil Penalty:** Argento shall issue two separate checks for a total amount of \$2,000 as penalties
10 pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of
11 Environmental Health Hazard Assessment (OEHHA) in the amount of \$1,500, representing 75% of the total penalty;
12 and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$500, representing 25% of the total penalty.
13 Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box
14 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued in the
15 amount of \$500 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly
16 Hills, California 90212

17 4.5 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
18 Blvd., Suite 240W, Beverly Hills, CA 90212.

19 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

20 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, acting on behalf of
21 itself and in the public interest, and Argento and its officers, directors, insurers, employees, parents, shareholders,
22 divisions, subdivisions, subsidiaries, partners, affiliates, sister companies and their successors and assigns
23 ("Defendant Releasees") and each of their suppliers, customers, licensees, distributors, wholesalers, retailers,
24 including but not limited to Marshalls of MA, Inc., Ross Stores, Inc. and Ross Dress For Less, Inc. or any other
25 person in the course of doing business, and the successors and assigns of any of them who may use, maintain,
26 distribute or sell the Covered Products, and all persons and entities who are downstream in the stream of commerce
27 from Argento who sell or distribute the Covered Products, and all their affiliates ("Downstream Defendant
28 Releasees"), for all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP

1 or lead from the Covered Products as set forth in the Notices. Compliance with the terms of this Consent Judgment
2 shall constitute compliance with Proposition 65 with respect to DEHP and lead from the Covered Products as set
3 forth in the Notices.

4 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
5 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
6 releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
7 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
8 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
9 (collectively "Claims"), against Argento, Defendant Releasees, and Downstream Defendant Releasees arising from
10 any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposures
11 to DEHP and lead in the Covered Products. In furtherance of the foregoing, as to alleged exposures to the Covered
12 Products, CAG hereby waives any and all rights and benefits which it now has, or in the future may have, conferred
13 upon it with respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code, which
14 provides as follows:

15
16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
17 NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

18 CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code
19 section 1542 is that even if CAG suffers future damages arising out of or resulting from, or related directly or
20 indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to
21 warn with respect to exposure to DEHP and lead from the Covered Products, CAG will not be able to make any
22 claim for those damages against Argento, the Defendant Releasees, or Downstream Defendant Releasees.
23 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may exist as of the date
24 of this release but which CAG does not know exist, and which, if known, would materially affect their decision to
25 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
26 error, negligence, or any other cause.

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1 **6. ENFORCEMENT OF JUDGMENT**

2 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. Subject to
3 Section 6.2, the Parties may, by noticed motion or order to show cause before the Superior Court of California,
4 Alameda County, giving the notice required by law, enforce the terms and conditions contained herein. A Party may
5 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides 30 days notice to
6 the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
7 such Party's failure to comply in an open and good faith manner.

8 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other proceeding to
9 enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of Violation ("NOV") to Argento. The
10 NOV shall include for each of the Covered Products: the date(s) the alleged violation(s) was observed and the
11 location at which the Covered Products were offered for sale, and shall be accompanied by all test data obtained by
12 CAG regarding the Covered Products, including an identification of the component(s) of the Covered Products that
13 were tested.

14 6.2.1 Non-Contested NOV. CAG shall take no further action regarding the alleged violation if,
15 within 30 days of receiving such NOV, Argento serves a Notice of Election ("NOE") that meets one of the
16 following conditions:

17 (a) The Covered Products were shipped by Argento for sale in California before the
18 Effective Date, or

19 (b) Since receiving the NOV, Argento has taken corrective action by either (i)
20 requesting that its customers in California remove the Covered Products identified in the NOV from sale in
21 California and destroy or return the Covered Products to Argento, or (ii) providing a clear and reasonable
22 warning for the Covered Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

23 6.2.2 Contested NOV. Argento may serve an NOE informing CAG of its election to contest
24 the NOV within 30 days of receiving the NOV.

25 (a) In its election, Argento may request that the sample(s) Covered Products tested
26 by CAG be subject to confirmatory testing at an EPA-accredited laboratory.

27 (b) If the confirmatory testing establishes that the Covered Products do not contain
28 lead in excess of the level allowed in Section 3.1 CAG shall take no further action regarding the alleged

1 violation. If the testing does not establish compliance with Section 3.1, Argento may withdraw its NOE to
2 contest the violation and may serve a new NOE pursuant to Section 6.2.1.

3 (c) If Argento does not withdraw an NOE to contest the NOV, the Parties shall meet
4 and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this
5 Consent Judgment.

6 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
7 prevailing party shall be entitled to recover its attorney's fees and costs.

8 **7. ENTRY OF CONSENT JUDGMENT**

9 7.1 CAG shall file a motion before the Honorable Kimberly Colwell of the Alameda County Superior
10 Court seeking approval of this settlement and proposed Consent Judgment pursuant to California Health & Safety
11 Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and Argento waive their respective rights to a
12 hearing or trial on the allegations of the Complaint. Upon entry of the Consent Judgment, Plaintiff shall dismiss
13 Defendants Sicura Designs, Inc., I-Wave Sicura Media, Inc., Technical Knockout, Inc., Marshalls of MA, Inc., Ross
14 Stores, Inc., and Ross Dress for Less, Inc., with such dismissals to be without prejudice.

15 7.2 Should this proposed Consent Judgment not be approved by the Court, (a) this proposed Consent
16 Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and
17 void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no
18 term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of
19 the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
20 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether
21 to modify the terms of the proposed Consent Judgment and to resubmit it for approval.

22 **8. MODIFICATION OF JUDGMENT**

23 8.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon
24 entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as provided by law and
25 upon entry of a modified Consent Judgment by the Court.

26 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer
27 with the other Party prior to filing a motion to modify the Consent Judgment.
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1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this
3 Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by Argento outside the State
6 of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the California
9 Attorney General so that the Attorney General may review this Consent Judgment prior to its submittal to the Court
10 for approval. No sooner than forty five (45) days after the Attorney General has received the aforementioned copy of
11 this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this
12 Consent Judgment, the parties may then submit it to the Court for approval.

13 **12. ATTORNEY FEES**

14 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs and attorney fees in
15 connection with this action.

16 **13. ENTIRE AGREEMENT**

17 13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
18 with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and
19 understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained
20 herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or
21 otherwise, shall be deemed to exist or to bind any of the Parties.

22 **14. GOVERNING LAW**

23 14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws
24 of the State of California, without reference to any conflicts of law provisions of California law.

25 14.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment
26 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to
27 revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and
28 their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted

1 against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the
3 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties
4 hereby waive California Civil Code § 1654.

5 **15. EXECUTION AND COUNTERPARTS**

6 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile or portable
7 document format (pdf), which taken together shall be deemed to constitute one document.

8 **16. NOTICES**

9 16.1 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.

10 If to CAG:

11 Reuben Yeroushalmi
12 9100 Wilshire Boulevard, Suite 240W
13 Beverly Hills, CA 90212
14 (310) 623-1926

15 If to Argento:

16 Steven Scaba,
17 Argento SC by Sicura, Inc.
18 1407 Broadway
19 Suite 2201
20 NY City, NY 10018

21 With a copy to:

22 John Dittoe
23 Reed Smith LLP
24 101 Second Street Suite 1800
25 San Francisco, CA 94105

26 **17. AUTHORITY TO STIPULATE**

27 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he
28 or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally
to bind that party.

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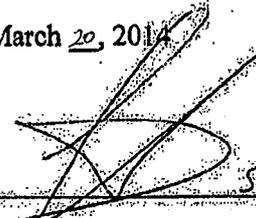
AGREED TO:

AGREED TO:

Date: March 20, 2014

Date: March 20, 2014

Name:  Michel Sasso

Name:  Steven Scaba

Title: Executive Director
CONSUMER ADVOCACY GROUP,
INC.

Title: VP
ARGENTO SC BY SICURA, INC.

IT IS SO ORDERED.

Date: 5/7/14



JUDGE OF THE SUPERIOR COURT

Case Title: Consent Judgment and Order
Case No. RG13678789

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

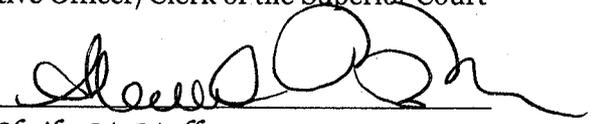
I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served the CONSENT JUDGMENT AND ORDER by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Reuben Yeroushalmi, Esq.
YEROUSHALMI & ASSOCIATES
9100 Wilshire Blvd., Suite 240W
Beverly Hills, CA 90212

John E. Dittoe, Esq.
REED SMITH, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

Dated: May 8, 2014

Executive Officer/Clerk of the Superior Court

By: 

Sheila McMullen, Deputy Clerk