

FILED
San Francisco County Superior Court

JUN 10 2019

CLERK OF THE COURT

BY: 
Deputy Clerk

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10 LAURENCE VINOCUR

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 LAURENCE VINOCUR,

15 Plaintiff,

16 v.

17 ARGENTO SC BY SICURA INC.; *et al.*,

18 Defendants.

Case No. CGC-19-572526

**~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: June 10, 2019

Time: 9:30 a.m.

Crtrm.: 302

Judge: Hon. Ethan P. Schulman

Reservation No.: 04240610-03


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In the above entitled action, Plaintiff Laurence Vinocur and Defendant Argento SC by Sicura Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving their Proposition 65 Settlement and Consent Judgment, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, Judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: June 10, 2019



JUDGE OF THE SUPERIOR COURT
ETHAN P. SCHULMAN

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
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9 Attorneys for Plaintiff
LAURENCE VINO CUR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,
Plaintiff,
v.
ARGENTO SC BY SICURA INC.; *et al.*,
Defendants.

Case No. CGC-19-572526
CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur (Vinocur)
4 and defendant Argento SC by Sicura Inc. (Argento), with Vinocur and Argento each referred to
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Vinocur is a resident of the State of California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Argento employs ten or more persons and Plaintiff alleges that Argento is a person in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, California Health and Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Vinocur alleges that Argento manufactures, imports, sells and/or distributes for sale in
16 California vinyl flask holders containing di(2-ethylhexyl)phthalate (DEHP), and that it does so
17 without providing the health hazard warning that Vinocur alleges is required by Proposition 65.
18 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are limited to the vinyl flask holders
22 containing DEHP in the *BLKSMITH Irish Coffee Mug with 1oz Flask and Holder, XB0305-BKX,*
23 *#59-6087-749058-001299-24-2, UPC #1 91205 4110 0, 8oz Hunters Flask, UPC #1 91205 06028 6,*
24 *and Avalanche 7pc Flask Set, UPC # 4 92605 73076 3,* manufactured, imported, or purchased for
25 resale by Argento and distributed, sold and/or offered for sale in the State of California, hereinafter
26 the “Products.”

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1 **1.6 Notice of Violation**

2 On October 24, 2018, Vinocur served Argento and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation (Notice), alleging that Argento violated Proposition 65 when it
4 failed to warn its customers and consumers in California that the some of the Products expose users
5 to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is
6 diligently prosecuting an action to enforce the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On January 3, 2019, Vinocur commenced the instant action (Complaint), naming Argento as
9 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

10 **1.8 No Admission**

11 Argento denies the material, factual and legal allegations contained in the Notice and
12 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
13 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
14 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be
15 construed as, an admission by Argento of any fact, finding, conclusion of law, issue of law, or
16 violation of law. This section shall not, however, diminish or otherwise affect Argento’s obligations,
17 responsibilities, and duties under this Consent Judgment.

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Argento as to the allegations contained in the Complaint, that venue is proper in the
21 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
25 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

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1 **INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, Argento shall only
4 manufacture for sale, import for sale, and purchase for resale in California Products that are either
5 Reformulated Products as defined by Section 2.2 or labeled with a clear and reasonable warning as
6 set forth in Section 2.3. If, after the Effective Date, Argento sells Products that are not Reformulated
7 Products via mail order catalog and/or the internet to customers located in California, Argento shall
8 also provide warnings for such Products by identifying the specific Product to which the warning
9 applies as specified in Sections 2.4 through 2.6.

10 **2.2 Reformulation Standard**

11 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1
12 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
13 accredited by the State of California, a federal agency, or a nationally recognized accrediting
14 organization. For purposes of compliance with this reformulation standard, testing samples shall be
15 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology
16 CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA)
17 methodology 8270D, or other methodologies utilized by federal or state government agencies to
18 determine phthalate content in a solid substance.

19 **2.3 Clear and Reasonable Warnings**

20 Commencing on or before the Effective Date, Argento shall provide clear and reasonable
21 warnings for all Products provided for sale to customers in California in accordance with this
22 Section pursuant to Title 27, California Code of Regulations, § 25600, *et seq.* Each warning shall be
23 prominently placed with such conspicuousness as compared with other words, statements, designs,
24 or devices as to render it likely to be read and understood by an ordinary individual under customary
25 conditions before purchase or use and shall be provided in a manner such that it is clearly associated
26 with the specific Product to which the warning applies.

27 **Warning.** The warning shall consist of the following statement (Warning):
28

1 △ **WARNING:** This product can expose you to DEHP, which is
2 known to the State of California to cause birth
3 defects or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov.

4 **Short-Form Warning.** Argento may, but is not required to, use the following
5 short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the
6 additional requirements in Sections 2.5 and 2.6, as follows:
 (b)

7 △ **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov
8

9 **Foreign Language Requirement.** Where a consumer product sign, label or
10 shelf tag^(e) used to provide a warning includes consumer information in a language other than English,
11 the warning must also be provided in that language in addition to English.

12 **2.4 Product Warnings**

13 Argento shall affix a warning to the Product label or otherwise directly on each Product
14 provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to
15 customers located in California. For the purpose of this agreement, “Product label” means a display
16 of written, printed or graphic material that is printed on or affixed to a Product or its immediate
17 container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no
18 smaller than the largest type size used for other consumer information on the product. The warning
19 shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b),
20 respectively.

21 **2.5 Mail Order Catalog Warnings**

22 In the event that, after the Effective Date, Argento prints new catalogs and sells Products via
23 mail order through such catalogs to customers located in California, Argento shall provide a warning
24 for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a
25 manner that clearly associates the warning with the specific Product being purchased. Any warning
26 provided in a mail order catalog shall be in the same type size or larger than other consumer
27 information provided for the Product within the catalog and shall be provided on the same page and
28 in the same location as the display and/or description of the Product. The catalog warning may use

1 the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product
2 label also uses the Short-Form Warning content.

3 **2.6 Internet Warnings**

4 If, after the Effective Date, Argento sells Products via the internet to customers located in
5 California, Argento shall provide warnings for each Product both on the Product label in accordance
6 with Section 2.4, and by prominently displaying the warning to the customer prior to completing the
7 purchase or during the purchase of the Products without requiring customers to seek out the warning.
8 The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in
9 conjunction with the sale of the Products via the internet shall appear either: (a) on the same web
10 page on which the Product is displayed; (b) on the same web page as the order form for the Product;
11 or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning
12 shall appear in any of the above instances adjacent to or immediately following the display or
13 description of the Product for which it is given in the same type size or larger than the Product
14 description text. The internet warning may use the Short-Form Warning content described in
15 Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning
16 content.

17 **MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalty Payments**

19 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
20 in the Notice, Complaint, and this Consent Judgment, Argento agrees to pay \$2,000 in civil
21 penalties. Argento’s civil penalty payment will be allocated according to Health and Safety Code
22 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
23 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
24 percent (25%) of the penalty payment retained by Vinocur. Argento shall issue its payment in two
25 checks made payable to (a) “OEHHA” in the amount of \$1,500; and (b) “Laurence Vinocur, Client
26 Trust Account” in the amount of \$500. Vinocur’s counsel shall send OEHHA’s portion of the
27 penalties paid by Argento to OEHHA.

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1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 Shortly after the other settlement terms had been finalized, the Parties negotiated the
3 compensation to be paid to Vinocur's counsel under general contract principles and the private
4 attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all work
5 performed through the mutual execution of this Consent Judgment and court approval of the same,
6 but exclusive of fees and costs on appeal, if any. Argento agrees to pay \$23,000 by a check made
7 payable to "The Chanler Group" for all fees and costs incurred investigating, bringing this matter to
8 Argento's attention, litigating, negotiating a settlement in the public interest and through the mutual
9 execution of this Consent Judgment and court approval of the same.

10 **3.3 Payment Timing; Payments Held in Trust**

11 All payments due under this Consent Judgment shall be held in trust until the Court approves
12 the Parties' settlement. Argento shall deliver its civil penalty and attorneys' fee reimbursement
13 payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully
14 executed by the Parties. Argento's counsel shall provide Vinocur's counsel with written
15 confirmation following its receipt of the settlement funds. Thereafter, Argento's counsel shall hold
16 the settlement funds in trust until the Court grants the motion for approval of this Consent Judgment
17 contemplated by Section 5. The checks due under Section 3.1 and 3.2 of this Consent Judgment
18 shall be delivered to Vinocur's counsel to the address in Section 3.4 by overnight courier, with a
19 tracking number, such that payment is received by plaintiff's counsel on or before five (5) days after
20 the Effective Date.

21 **3.4 Payment Address**

22 All payments required by this Consent Judgment shall be delivered to the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

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1 **CLAIMS COVERED AND RELEASED**

2 **4.1 Vinocur’s Release of Proposition 65 Claims**

3 Vinocur, acting on his own behalf and in the public interest, releases Argento and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys (collectively, Releasees) and each entity to whom Argento directly or indirectly distributes
6 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
7 customers, retailers, franchisers, cooperative members, licensors and licensees, including The TJX
8 Companies, Inc. (Downstream Releasees) for any violations arising under Proposition 65 for
9 unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by
10 Argento prior to the Effective Date, as set forth in the Notice and Complaint. Compliance with the
11 terms of this Consent Judgment constitutes compliance with Proposition 65 by Argento with respect
12 to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold
13 or distributed for sale by Argento after the Effective Date.

14 **4.2 Vinocur’s Individual Release of Claims**

15 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a
16 release to Argento, Releasees, and Downstream Releasees which shall be effective as a full and final
17 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
18 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
19 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
20 exposures to DEHP in Products manufactured, imported, distributed or sold by Argento before the
21 Effective Date. Nothing in Section 4 affects Vinocur’s right to commence or prosecute an action
22 under Proposition 65 against a Releasee or Downstream Releasee that does not involve Argento’s
23 Products.

24 **COURT APPROVAL**

25 This Consent Judgment shall be null and void if, for any reason, it is not approved and
26 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and
27 Argento agree to support the entry of this agreement as a judgment, and to obtain the Court’s
28 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to

1 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval
2 of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of obtaining
3 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to
4 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement
5 in a timely manner. For purposes of this section, “best efforts” shall include, at a minimum,
6 supporting the motion for approval, responding to any objection that any third-party may file or
7 lodge, and appearing at the hearing before the Court if so requested.

8 **SEVERABILITY**

9 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
10 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
11 remaining provisions shall not be adversely affected.

12 **GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Argento
16 may provide Vinocur with written notice of any asserted change in the law, and shall have no further
17 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
18 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Argento
19 from its obligation to comply with any pertinent state or federal law or regulation.

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22 **NOTICE**

23 Unless specified herein, all correspondence and notice required by this Consent Judgment
24 shall be in writing and sent by: (a) personal delivery, (b) first-class registered or certified mail, return
25 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
26 addresses:

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To Argento:
Jack Scaba, Chief Executive Officer
Argento SC by Sicura Inc.
1407 Broadway, Suite 2201
New York, NY 10018

To Vinocur:
Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a Copy To:
Aaron J. Solomon, Esq.
OVED & OVED LLP
401 Greenwich Street
New York, NY 10013

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

COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

COMPLIANCE WITH REPORTING REQUIREMENTS

Vinocur and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

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MODIFICATION

This Consent Judgment may be modified only by: (a) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.


AGREED TO:

AGREED TO:

Date: 4/23/19

Date: 4/22/2019

By: 
LAURENCE VINO CUR

By: 
Steven Scaba, Vice President
Argento SC by Sicura Inc