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FILED

Superior Court of California
County of San Francisco

AUG 20 2024

CLERK OF THE SUPERIOR COURT
By *Vivian Pa. Pomeda*
Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 v.

14 ARGENTO SC BY SICURA INC.,

15 Defendant.

Case No.: CGC-24-614308

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: August 20, 2024

Hearing Time: 9:30 AM

Complaint Filed: April 30, 2024

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting
3 on behalf of the public interest (hereinafter “Bell”) and Argento SC By Sicura Inc. (“Argento” or
4 “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as
5 a “Party.” Bell is an individual residing in California that seeks to promote awareness of exposures
6 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
7 contained in consumer products. Argento is alleged to be a person in the course of doing business
8 for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Bell alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of gift set bags that include *Pink*
11 *Sky*, *Polish'd*, *Mia Charro*, *Dabley Lee*, *Simplified*, *Mimicoco*, and/or *Plum Pretty Sugar* body
12 care products, non-exclusive exemplars of which include the Glow Getter body care gift set bags,
13 UPC # 191205671536, without providing a clear and reasonable exposure warning pursuant to
14 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm.

16 1.3 **Notice of Violation/Action.** On or about December 15, 2023, Bell served The TJX
17 Companies, Inc. (“TJX”), Argento, and various public enforcement agencies with documents
18 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
19 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
20 customers that use of its body care gift sets, including but not limited to the Glow Getter body care
21 gift set bags, UPC # 191205671536, expose users in California to DEHP. No public enforcer has
22 brought and is diligently prosecuting the claims alleged in the Notice. On April 30, 2024, Bell filed
23 the complaint (the “Complaint”) in the above captioned action (the “Action”).

24 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
26 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
27 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution

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1 of all claims which were or could have been raised in the Action based on the facts alleged therein
2 and in the Notice.

3 1.5 Defendant denies the material allegations contained in Bell's Notice and Complaint
4 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
5 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
6 shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
8 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means Gift Set Bags that include
12 *Pink Sky, Polish'd, Mia Charro, Dabley Lee, Simpliefied, Mimicoco, and/or Plum Pretty Sugar*
13 body care products, non-exclusive examples of which include, but are not limited to, the Glow
14 Getter body care gift set bags, UPC # 191205671536, that are manufactured, distributed, shipped
15 into California and/or offered for sale in California by Argento.

16 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

19 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
20 signed by both Parties, and continuing thereafter, Covered Products that Argento directly
21 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
22 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
23 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
24 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
25 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
26 Product.

1 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
2 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
3 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
4 and 8270C or other methodology utilized by federal or state government agencies for the purpose
5 of determining the phthalate content in a solid substance.

6 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
7 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
8 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
9 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
10 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
11 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
12 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

13 (a) **Warning.** The “Warning” shall consist of the statement:

14 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
15 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
16 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

17 (b) **Alternative Warning:** Argento may, but is not required to, use the alternative short-
18 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

19 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

20 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
21 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
22 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
23 triangle with a black outline, except that if the sign or label for the Covered Product does not use
24 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
25 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
26 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
27 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
28 displayed with such conspicuousness, as compared with other words, statements, or designs as to

1 render it likely to be read and understood by an ordinary individual under customary conditions of
2 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
3 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
4 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
5 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
6 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Argento
7 shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
8 applicable warning regulations adopted by the State of California’s Office of Environmental Health
9 Hazard Assessment (“OEHHA”).

10 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
11 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
12 Argento offers Products for sale to consumers in California. The requirements of this Section shall
13 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
14 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the
15 warning to the purchaser prior to completing the purchase. To comply with this Section, Argento
16 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
17 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
18 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
19 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
20 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
21 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
22 Section 5 of this Agreement if they fail to meet the warning requirements herein.

23 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
25 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
26 Product and exposures at issue within sixty (60) days after the Effective Date.

1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Argento shall pay \$1,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within ten (10) days of the Effective Date, Argento shall issue two separate
7 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b) "Ema
8 Bell" in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be delivered
9 to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky Smith
12 Two Bala Plaza, Suite 805
13 Bala Cynwyd, PA 19004

14 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
15 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
above as proof of payment to OEHHA.

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Argento shall pay
\$16,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
incurred as a result of investigating, bringing this matter to the attention of Argento, litigating and

1 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
2 of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
5 on her own behalf, and on behalf of the public interest, and Argento, and its predecessors,
6 successors, direct and indirect parent companies, direct and indirect subsidiary companies,
7 companies under common control with any of the foregoing, affiliated, and its and their past,
8 present and future officers, directors, shareholders, interest holders, members, partners, attorneys,
9 insurers, trustees, agents, employees, managers, representatives, assigns, and successor-in-interest,
10 and all persons acting by, through, under or in concert with them, (“Defendant Releasees”), , and
11 all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
12 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
13 customers, licensors, licensees retailers, including but not limited to TJX, its’ parents, subsidiaries,
14 and affiliates, franchisees, and cooperative members, and their respective predecessors, successors,
15 past, present, and future officers, direct and indirect parent companies, direct and indirect subsidiary
16 companies, companies under common control with any of the foregoing, affiliates, and its and their
17 past, present and future officers, directors, shareholders, interest holders, members, partners,
18 attorneys, insurers, trustees, agents, employees, managers, representatives, assigns, and successors
19 in interest, and all persons acting by, through, under or in concert with them, and each of them
20 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
21 DEHP from use of the Covered Products manufactured, distributed, or sold by Argento within 60
22 days after the Effective Date of this Consent Judgment. It is the Parties’ intention that this Consent
23 Judgment shall have preclusive effect such that no other actions by private enforcers, whether
24 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and
25 take any action with respect to any violation of Proposition 65 based on exposure to DEHP from
26 use of the Covered Products that was alleged in the Complaint, or that could have been brought
27 pursuant to the Notice against Argento and the Downstream Releasees (“Proposition 65 Claims”).
28

1 Argento's compliance with the terms of this Consent Judgment constitutes compliance with
2 Proposition 65 by Argento with regard to exposure to DEHP from use of the Covered Products.

3 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
4 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
5 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
6 and releases Argento, Defendant Releasees, and Downstream Releasees from any and all manner
7 of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
8 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
9 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
10 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
11 manufactured, distributed, or sold by Argento, Defendant Releasees or Downstream Releasees.
12 With respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically
13 waives any and all rights and benefits which she now has, or in the future may have, conferred by
14 virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
16 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
17 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
18 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
19 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
20 **THE DEBTOR OR RELEASED PARTY.**

21 5.3 Argento waives any and all claims against Bell, her attorneys and other
22 representatives, for any and all actions taken, or statements made (or those that could have been
23 taken or made) by Bell and her attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and with respect to Covered Products.

26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been
merged within it. No representations or terms of agreement other than those contained herein exist
or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Andrew V. Jablon
14 Resch Polster & Berger LLP
15 1840 Century Park E., 17th Fl.
Los Angeles, CA 90067

16 And

17 For Bell:

18 Evan Smith
19 Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile or other
24 form of electronic transmission (e.g., via .PDF), each of which shall be deemed an original, and all
25 of which, when taken together, shall constitute one and the same document.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. SUCCESSORS AND ASSIGNS**

15 11.1 This Consent Judgment shall apply to and be binding upon Bell and Argento, and
16 the successors or assigns of any of them.

17 **12. MODIFICATION**

18 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
19 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

20 **13. ATTORNEY'S FEES**

21 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
22 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

23 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
24 pursuant to law.

25 **14. RETENTION OF JURISDICTION**

26 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.


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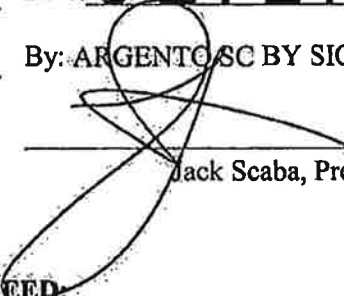
15. AUTHORIZATION

15.1 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 document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:


AGREED TO:

Date: 7/2/24
By: 
LMA BELL

Date: 6-24-24
By: ARGENTO SC BY SICURA INC.

Jack Scaba, President

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 8/20/24


Judge of Superior Court
RICHARD B. ULMER