

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

5 Attorneys for Plaintiff the Center for Advanced Public Awareness

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10

11 CENTER FOR ADVANCED PUBLIC
AWARENESS, in the public interest,

12 Plaintiff,

13 vs.
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15 ARGENTO SC BY SICURA, INC., a New
York Corporation; ROSS STORES, INC., a
Delaware Corporation; and DOES 1 through
16 50, inclusive,

17 Defendants.
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CASE NO.: RG19022178

Assigned for all purposes to the Honorable
Winifred Y. Smith, Dept. D-21

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

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2 **1. INTRODUCTION**

3 **1.1. Center for Advanced Public Awareness and Argento, Inc.**

4 This Consent Judgment is entered into by and between plaintiff the Center for Advanced
5 Public Awareness (“CAPA” or “Plaintiff”) and defendant Argento SC By Sicura, Inc.
6 (“Argento”) with Argento and CAPA each individually referred to as a “Party” and collectively
7 as the “Parties.”

8 **1.2. Plaintiff**

9 CAPA is a not-for profit corporation duly organized and existing in the State of
10 California, which seeks to promote awareness of exposures to toxic chemicals and to improve
11 human health by reducing or eliminating hazardous substances used in consumer products.

12 **1.3. Defendant Argento**

13 Plaintiff alleges Argento employs ten or more persons and is a person in the course of
14 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
15 California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

16 **1.4. General Allegations**

17 CAPA alleges that Argento has manufactured, sold, and/or distributed for sale in
18 California, certain products described more specifically below containing Di-(2-ethylhexyl)
19 phthalate (“DEHP”) and Diisononyl Phthalate (“DINP”), chemicals listed by the State of
20 California under Proposition 65, without providing a required Proposition 65 warning. DEHP
21 and DINP shall be referred to hereinafter as the “Listed Chemicals.”

22 **1.5. Product Description**

23 The products covered by this Consent Judgment are the Argento earbuds that are
24 imported, sold and/or distributed for sale in California by Argento, including with UPC No:
25 191205022192 (“Covered Products”).

26 **1.6. Notice of Violation**

27 On July 16, 2018, CAPA served Argento, Ross Stores, Inc. (“Ross”) and the requisite
28 public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Argento

1
2 violated Proposition 65. The Notice alleged that Argento failed to warn its customers and
3 consumers in California that the Covered Products contain DEHP and DINP.

4 **1.7. Complaint**

5 On June 7, 2019, Plaintiff, who was and is acting in the interest of the general public in
6 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
7 County of Alameda against Argento and Does 1 through 50, alleging violations of Health &
8 Safety Code §25249.6 based on the alleged exposures to DEHP and DINP contained in the
9 Covered Products sold by Argento.

10 **1.8. No Admission**

11 The Parties enter into this Consent Judgment as a full and final settlement of all claims
12 that were raised or that could have been raised in the Notice, arising out of the facts and/or
13 conduct alleged therein. Argento denies the material, factual and legal allegations contained in
14 CAPA’s Notice and the Complaint and maintains that all Covered Products that they have sold
15 and distributed in California have been and are in compliance with all applicable laws, and are
16 completely safe for their intended use. Nothing in this Consent Judgment shall be construed as
17 an admission by Argento of any fact, finding, conclusion, issue of law, or violation of law, nor
18 shall compliance with this Consent Judgment constitute or be construed as an admission by
19 Argento of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
20 denied by Argento. However, this section shall not diminish or otherwise affect Argento’s
21 obligations, responsibilities, and duties hereunder.

22 **1.9. Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has
24 jurisdiction over Argento as to the allegations contained in the Complaint; (2) that venue is proper
25 in the County of Alameda; and (3) that this Court has jurisdiction to enter and enforce the
26 provisions of this Consent Judgment.
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2 **1.10. Effective Date**

3 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
4 which the Court approves this Consent Judgment, which shall include any unopposed tentative
5 ruling granting approval of this Consent Judgment.

6 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

7 **2.1. Reformulation Standard and Schedule**

8 Commencing on the Effective Date, and continuing thereafter, Covered Products that are
9 imported, manufactured and/or sold or offered for sale or purchase for sale in or into California,
10 shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning
11 requirements with respect to DEHP and DINP if they meet the standard of “Reformulated
12 Products.” “Reformulated Products” shall mean Covered Products with accessible components
13 containing less than or equal to 1,000 parts per million (0.1%) DEHP and DINP in each
14 accessible component when analyzed pursuant to Environmental Protection Agency testing
15 methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized
16 by federal or state agencies for the purpose of determining DEHP and DINP content in a solid
17 substance.

18 **2.2. Warning Option**

19 Covered Products that do not meet the warning exemption standard set forth in Section 2.1
20 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall
21 only be required as to Covered Products that Defendant manufactures, sells or ships to
22 consumers, retailers, or distributors located in California after 60 days from the Effective Date.
23 No Proposition 65 warning for DEHP or DINP shall be required as to any Covered Products that
24 are already in the stream of commerce as of the Effective Date.

25 **2.3. Warning Language**

26 Commencing on the Effective Date, Argento shall ensure that any unreformulated
27 Covered Products that it ships to California retailers or for sale in California includes a clear and
28 reasonable warning. The warning shall be affixed to the packaging or labeling using language
 similar to the warnings below:

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3 ⚠ **WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl)
4 and/or Diisononyl Phthalate, which are known to the State of California to cause
5 cancer and birth defects or other reproductive harm. For more information go to
6 www.P65Warnings.ca.gov.

7 OR

8 ⚠ **[California Proposition 65] WARNING:** Cancer and Reproductive Harm -
9 www.P65Warnings.ca.gov.

10 The warning shall be prominently displayed with such conspicuousness as compared with
11 other words, statements, designs, or devices as to render it likely to be read and understood by an
12 ordinary individual under customary conditions before purchase or use. Each warning shall be
13 provided in a manner such that the consumer or user is reasonably likely to understand to which
14 the specific Product the warning applies, so as to minimize the risk of consumer confusion. In the
15 event that the Office of Environmental Health Hazard Assessment promulgates one or more
16 regulations requiring or permitting warning text and/or methods of transmission different than
17 those set forth above, Argento shall be entitled to use, at its discretion, such other warning text
18 and/or methods of transmission without being deemed in breach of this Agreement.

19 **2.4. Accessible Component**

20 The term “Accessible Component” shall mean any component of the Covered Product that
21 could be touched by a person during reasonably foreseeable use.

22 **3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

23 Argento shall pay a civil penalty of \$3,000, to be apportioned in accordance with
24 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
25 State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the
26 remaining 25% of the penalty remitted to CAPA. Argento shall issue two separate checks for the
27 penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State
28 of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in
the amount of \$2,250, representing 75% of the initial civil penalty and (b) one check to
“Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the amount
of \$750, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the

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2 above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
3 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who
4 shall furnish a W2 at least five calendar days before payment is due.

5 The payments shall be delivered CAPA's counsel at the following address within ten days
6 of the Effective Date of this Consent:

7 James Kawahito, Esq.
8 Kawahito Law Group APC
9 222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

10 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

11 The Parties acknowledge that CAPA and its counsel offered to resolve this dispute
12 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
13 any fee reimbursement issue to be resolved after the material terms of the agreement had been
14 settled. The parties reached an accord on the compensation due to CAPA and its counsel under
15 general contract principles and the private attorney general doctrine codified at California Code of
16 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
17 Consent Judgment. Argento shall reimburse CAPA and its counsel in the total amount of
18 \$27,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to
19 the attention of Argento, negotiating this Consent Judgment, drafting the Complaint, and
20 preparing the papers necessary briefing to obtain the Consent Judgment from this Court. Argento
21 shall make the check payable to "Kawahito Law Group APC" and shall deliver payment within
22 ten days of the Effective Date to:

23 James Kawahito, Esq.
24 Kawahito Law Group APC
25 Attn. CAPA v. Argento
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

26 To allow for the issuance of a timely payment to be rendered pursuant to the above,
27 CAPA shall provide Argento with a completed IRS Form W-9 for the Kawahito Law Group APC
28 upon request.

5. RELEASE OF CLAIMS

5.1. CAPA's Release of Argento and Ross

This Consent Judgment is a full, final and binding resolution between CAPA, on behalf of itself and the public interest, and its past and current agents, representatives, attorneys, successors and/or assignees (the "Releasors"), on the one hand, and Argento, its respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, licensees, and each entity to whom Argento directly or indirectly distributes or sells the Covered Products, including but not limited to downstream retailers (including but not limited to Ross), distributors, wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees, and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of Proposition 65 that was or could have been asserted by CAPA against Argento or the Releasees based on the alleged failure to warn about alleged exposures to DEHP and DINP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Argento (either directly or through any of the Releasees) in California before the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Argento with respect to the alleged or actual failure to warn about exposures to DEHP and DINP from Covered Products manufactured, imported, sold or distributed for sale by Argento after the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to the alleged or actual failure to warn about exposures to DEHP and DINP from Covered Products manufactured, imported, sold or distributed for sale by Argento after the Effective Date.

5.2. Argento's Release of CAPA

Argento on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

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2 **6. COURT APPROVAL**

3 This Consent Judgment is not effective until it is approved and entered by the Court and
4 shall be null and void if, for any reason, it is not approved and entered by the Court.

5 **7. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any provisions of this Consent
7 Judgment are deemed by a court to be unenforceable, the validity of the remaining provisions
8 shall not be adversely affected.

9 **8. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed,
12 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
13 then Argento may provide Plaintiff with written notice of any asserted change in the law, and
14 shall have no further obligations pursuant to this Consent Judgment, with respect to, and to the
15 extent that, the Covered Products are so affected.

16 **9. NOTICES**

17 Unless specified herein, all correspondence and notice required to be provided pursuant to
18 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
19 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
20 or (c) a recognized overnight courier on any Party by the other at the following addresses:

21 For Argento: Brett Oberst
22 Doll Amir and Eley LLP
23 725 S. Figueroa St. Ste 3275
24 Los Angeles, CA 90017
boberst@dollamir.com

25 For CAPA: Center for Advanced Public Awareness, Inc.
26 2342 Shattuck Ave. #347
27 Berkeley, CA 94704

28 with a copy to: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Argento

222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

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

10. COUNTERPARTS; FACSIMILE 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7

CAPA and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code Section 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, CAPA and Argento and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

14. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and 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 Consent Judgment.


AGREED TO:

AGREED TO:

Date: 09/24/2019

Date: 10/2/2019

By: 
Center for Public Awareness, Inc.

By: 
Argento SC By Sicura, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT