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

11 EMA BELL,

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No.: RG19014323

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: April 2, 2020

Hearing Time: 2:30 PM

Reservation #: R-2147781

1 **1. INTRODUCTION**

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

10 1.2 **Allegations and Representations.** Plaintiffs allege that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of both (i) Firestone steering
12 wheel covers; and (ii) TKO jump ropes without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65.

14 1.3 **Notices of Violation/Complaint.** On or about January 31, 2019, Plaintiff Bell
15 served Argento, and various public enforcement agencies with documents entitled "60-Day
16 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) alleging that Defendant
17 violated Proposition 65 for failing to warn consumers and customers that use of Firestone steering
18 wheel covers expose users in California to DEHP. On or about August 22, 2018, Plaintiff
19 Espinoza served Technical Knockout, Inc., and various public enforcement agencies with
20 documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)
21 alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that
22 use of TKO jump ropes expose users in California to DEHP. Argento was subsequently identified
23 as the manufacturer/supplier of the TKO jump ropes and entered into negotiations with Plaintiffs
24 to resolve Plaintiffs' claims concerning the Products in the Notices. The aforementioned notices
25 are collectively referred to as the "Notices." No public enforcer has brought and is diligently
26 prosecuting the claims alleged in the Notices. On April 9, 2019, Bell filed a complaint (the
27 "Complaint") in the matter pertaining to DEHP exposure from use of Firestone steering wheel
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covers. On November 15, 2019, the Complaint was amended in order to add Espinoza's allegations pertaining to DEHP exposure from use of TKO jump ropes that are also manufactured, distributed, offered for sale and/or sold by Defendant (the "Amended Complaint"). The Complaint and Amended Complaint are collectively referred to herein as, the "Action."

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Action based on the facts alleged therein and/or in the Notices.

1.5 Defendant denies the material allegations contained in the Notices and Action and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Covered Products (as defined below), have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment. Notwithstanding the allegations in the Notice or Action, Defendant maintains that it has not knowingly manufactured, or caused to be manufactured, the Covered Products for sale in California in violation of Proposition 65.

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means steering wheel covers, including the Firestone steering wheel covers, and jump ropes, including the TKO jump ropes, that are manufactured, distributed and/or offered for sale in California by Argento.

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

1 **3. INJUNCTIVE RELIEF: WARNINGS**

2 **3.1 Reformulation of Covered Products or Provide Warning.** As of the date this
3 Consent Judgment is signed by the Parties, and continuing thereafter, Covered Products that
4 Argento directly manufactures, imports, distributes, sells, or offers for sale in California shall
5 either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and
6 reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent
7 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the standard
8 set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to
9 any Reformulated Product.

10 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products
11 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
12 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
13 and 8270C or other methodology utilized by federal or state government agencies for the purpose
14 of determining the phthalate content in a solid substance.

15 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
16 by the Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
17 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
18 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
19 shall be no obligation for Defendant to provide a warning for Covered Products that enter the
20 stream of commerce prior to the date this Consent Judgment is signed by both Parties. The
21 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or
22 (b), respectively:

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

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

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

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

2 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the
3 word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning
4 symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow
5 equilateral triangle with a black outline, except that if the sign or label for the Covered Product
6 does not use the color yellow, the symbol may be in black and white. The symbol must be in a
7 size no smaller than the height of the word "**WARNING:**". The warning shall be affixed to or
8 printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or
9 electronic device or automatic process, providing that the warning is displayed with such
10 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
11 read and understood by an ordinary individual under customary conditions of purchase or use. A
12 warning may be contained in the same section of the packaging, labeling, or instruction booklet
13 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at
14 least the same size as those other safety warnings.

15 If Argento sells Covered Products via an internet website to customers located in
16 California, the warning requirements of this section shall be satisfied if the foregoing warning
17 appears either: (a) on the same web page on which a Covered Product is displayed and/or
18 described; (b) on the same page as the price for the Covered Product; or (c) on one or more web
19 pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a
20 symbol consisting of a black exclamation point in a yellow or white equilateral triangle may
21 appear adjacent to or immediately following the display, description, price, or checkout listing of
22 the Covered Product, if the warning statement appears elsewhere on the same web page in a
23 manner that clearly associates it with the product(s) to which the warning applies.³ Under no
24 circumstance shall Argento be responsible or liable for placing the Warning or Alternative
25 Warning for Covered Products on any third party's website.

26 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
27 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
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Judgment or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

4. MONETARY TERMS

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

4.1.1 Within ten (10) days of the Effective Date, Argento shall issue three (3) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$250.00; and to (c) "Brodsky & Smith, LLC in Trust for Espinoza" in the amount of \$250.00. Payment owed to Plaintiffs pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

1 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Argento shall pay
2 \$23,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
3 Plaintiffs' attorneys' fees and costs incurred as a result of investigating, bringing this matter to
4 Argento's attention, litigating and negotiating and obtaining judicial approval of a settlement in
5 the public interest, pursuant to Code of Civil Procedure § 1021.5.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs
8 each acting on his or her own behalf, and on behalf of the public interest, and Argento, and its
9 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
12 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
13 not limited to TKO Strength & Performance Inc., Ross Stores, Inc., manufacturers, suppliers,
14 distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
15 members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on
16 exposure to DEHP from Covered Products as set forth in the Notices, with respect to any Covered
17 Products manufactured, distributed, or sold by Argento prior to the Effective Date. This Consent
18 Judgment shall have preclusive effect such that no other person or entity, whether purporting to
19 act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any
20 action with respect to any violation of Proposition 65 that was alleged in the Action, or that could
21 have been brought pursuant to the Notices against Argento and/or Defendant Releasees and/or the
22 Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with the
23 terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
24 Covered Products.

25 5.2 In addition to the foregoing, Plaintiffs, each on behalf of themselves, their past and
26 current agents, representatives, attorneys, and successors and/or assignees, and not in their
27 representative capacity, hereby waive all rights to institute or participate in, directly or indirectly,
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1 any form of legal action and releases Argento, Defendant Releasees, and Downstream Releasees
2 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
3 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
4 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
5 contingent, now or in the future, with respect to any alleged violations of Proposition 65
6 manufactured, distributed, or sold by Argento, Defendant Releasees or Downstream Releasees.
7 With respect to the foregoing waivers and releases in this paragraph, Plaintiffs hereby specifically
8 waive any and all rights and benefits which they now have, or in the future may have, conferred
9 by virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 5.3 Argento waives any and all claims against Plaintiffs, their attorneys and other
17 representatives, for any and all actions taken or statements made (or those that could have been
18 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
20 and/or with respect to Covered Products.

21 6. INTEGRATION

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have been
24 merged within it. No representations or terms of agreement other than those contained herein
25 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

26 7. GOVERNING LAW

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. In the event that Proposition 65 is repealed or
is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then

Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

8. NOTICES

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

For Defendant:

Steven I. Appelbaum
OVED & OVED LLP
401 Greenwich Street
New York, NY 10013

And

For Plaintiffs:

Evan Smith
Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

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

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by
2 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
3 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
4 within 30 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
7 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
8 proceed on its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either
12 Party.

13 **12. ATTORNEY'S FEES**

14 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

16 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **13. RETENTION OF JURISDICTION**

19 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **14. AUTHORIZATION**

22 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
23 their respective Parties and have read, understood and agree to all of the terms and conditions of
24 this document and certify that he or she is fully authorized by the Party he or she represents to
25 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
26 Except as explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

Date: 12/30/2017

By: 
GABRIEL ESPINOZA

AGREED TO:

Date: 11/10/2017

By: 
EMMA BELL

AGREED TO:

Date: 12/23/2019

By: 
ARGENTO SC BY SICURA, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court