

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between John Moore (“Moore”) and Argento SC by Sicura Inc. (“Argento”), with Moore and Argento each individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Argento employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that Argento manufactures, sells, and distributes for sale in California, exercise equipment with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”); and compact mirrors or makeup mirrors with vinyl/PVC components containing DEHP, and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as (i) exercise equipment with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”); and compact mirrors/makeup mirrors with vinyl/PVC components containing DEHP that are manufactured for sale, imported for sale, purchased for sale, sold, or distributed for sale in California by Argento, including, but not limited to, (i) the grip component of the *TKO Core Training Workout Ab Wheel Roller TKO-AW003 CHYG / UPC No. 8 46816 03366*

I;; and (ii) the vinyl exterior of the Beauty Muse Compact Mirror, CM 007-SI / UPC No. 8 46816 06061 2.

#### **1.4 Notice of Violation**

On October 21, 2015, Moore served Argento, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Argento violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

#### **1.5 No Admission**

Argento denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, sold, and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Argento of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Argento of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Argento. This Section shall not, however, diminish or otherwise affect Argento’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 19, 2016.

## **2. REFORMULATED PRODUCTS AND WARNINGS**

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

Commencing on the Effective Date and continuing thereafter, Argento agrees to only manufacture for sale, purchase for sale, or distribute for sale in California: (a) “Reformulated Products” as defined by subsection 2.2 below, or (b) Products that are

sold with a clear and reasonable warning in accordance with subsection 2.3 below.

## **2.2 Reformulated Products**

For purposes of this Settlement Agreement, Reformulated Products are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

## **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Argento that are not Reformulated Products, Argento agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Argento further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing the following statement:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

In the event that Argento sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Argento agrees to pay \$6,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Moore. Moore’s counsel shall be responsible for delivering OEHHA its portion of any penalty payment(s) made under this Settlement Agreement.

##### **3.1.1 Initial Civil Penalty**

Within five days of the Effective Date, Argento shall make an initial civil penalty payment of \$2,000. Argento shall provide its payment in a single check made payable to “John Moore, Client Trust Account.”

##### **3.1.2 Final Civil Penalty; Waiver**

On March 1, 2017, Argento will make a final civil penalty payment of \$4,000. Pursuant to title 11 Cal. Code Regs. section 3203(c), the final civil penalty will be waived in its entirety if, by February 15, 2017, an officer of Argento provides Moore’s counsel with signed declaration certifying that, as of the date of the declaration, all Products sold or distributed for sale in California by Argento are Reformulated Products, and that Argento will continue to offer only Reformulated Products in California in the future. The option to provide a declaration certifying complete reformulation in lieu of making

the final civil penalty payment required by this Section is a material term, and time is of the essence.

### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Argento agrees to pay \$13,000 to Moore and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Argento's management, and negotiating this Settlement Agreement. Argento's payment shall be delivered in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Moore's Release of Argento**

This Settlement Agreement is a full, final, and binding resolution between Moore and Argento, of any violation of Proposition 65 that was or could have been asserted by Moore on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Argento, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Argento directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about

exposures to DEHP in Products manufactured, sold or distributed for sale in California by Argento before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Moore on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Argento and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold, or offered for sale by Argento before the Effective Date.

The releases provided by Moore under this Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the public.

#### **4.2 Argento's Release of Moore**

Argento, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Argento may provide written notice to Moore of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

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

For Argento:

Jack Scaba, President  
Argento SC by Sicura Inc.  
1407 Broadway, Suite 2201  
New York, NY 10018

with a copy to:

Todd O. Maiden, Esq.  
Reed Smith LLP  
101 2<sup>nd</sup> Street  
San Francisco, California 94105

For Moore:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**11. AUTHORIZATION**

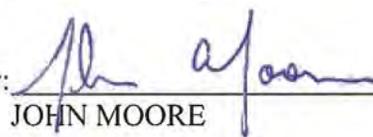
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 6/9/2016 \_\_\_\_\_

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
JOHN MOORE

By:  \_\_\_\_\_  
Jack Scaba, President  
ARGENTO SC BY SICURA INC.