

ENDORSED
FILED
ALAMEDA COUNTY

MAY 24 2016

CLERK OF THE SUPERIOR COURT

By TERRE SHERIDAN Deputy

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6 LAURENCE VINOUCUR

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11
12 LAURENCE VINOUCUR,

13 Plaintiff,

14 v.

15 INTRACOM, U.S.A., INC., *et al.*,

16 Defendants.

Case No. RG15776639

**~~[PROPOSED]~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO DEFENDANT
INTRACOM, U.S.A., INC.**

Date: May 24, 2016

Time: 3:00 p.m.

Dept.: 18

Judge: Hon. Jo-Lynne Q. Lee

Reservation No.: R-1728019

EXHIBIT 1

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Attorneys for Defendant
INTRACOM, U.S.A., INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,) Case No. RG15776639
)
Plaintiff,) [PROPOSED]
) CONSENT JUDGMENT AS TO
v.) DEFENDANT INTRACOM, U.S.A., INC.
)
INTRACOM, U.S.A., INC.; and DOES 1-)
150, inclusive,)
)
Defendants.)
)
)

1 **1. INTRODUCTION**

2 **1.1 Laurence Vinocur and Intracom Corporation**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 ("Vinocur" or "Plaintiff") and defendant Intracom, U.S.A., Inc. ("Intracom" or "Defendant"), with
5 Vinocur and Intracom collectively referred to as the "Parties."

6 **1.2 Laurence Vinocur**

7 Vinocur is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Intracom U.S.A. Inc.**

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

14 **1.4 General Allegations**

15 Vinocur alleges that Intracom has manufactured, imported, distributed and/or sold headsets
16 with vinyl/PVC components containing di(2-ethylhexyl)phthalate ("DEHP") for use in the State of
17 California without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause reproductive harm.

19 **1.5 Notice of Violation**

20 Vinocur served Intracom and various public enforcement agencies with a document
21 entitled "60-Day Notice of Violation", dated March 13, 2015, alleging that Intracom violated
22 Proposition 65 by failing to warn consumers that headsets with vinyl/PVC components including,
23 but not limited to, the *Manhattan Stereo Headset, # 175517, UPC # 7 66623 17551 7*, exposed
24 users in California to DEHP ("Notice"). To the best of the parties' knowledge, no public enforcer
25 has prosecuted the allegations set forth in the Notice.

26 **1.6 Complaint**

27 On July 5, 2015, Vinocur filed a complaint in the Superior Court in and for the County of
28 Alameda against Intracom and Does 1 through 150, *Vinocur v. Intracom, U.S.A. Inc., et al.*, Case

1 No. RG15776639 ("Complaint" or "Action"), alleging violations of California Health & Safety
2 Code § 25249.6, based on the alleged unwarned exposures to DEHP contained in certain headsets
3 with vinyl/PVC components sold by Intracom in the State of California. Intracom filed an answer
4 denying the material allegations of the Complaint and asserting affirmative defenses.

5 **1.7 No Admission**

6 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
7 were raised in either the Notice or Complaint, or that could have been raised in the Notice or
8 Complaint, arising out of the facts or conduct alleged therein. Intracom denies the material,
9 factual and legal allegations contained in the Notice and the Complaint, and maintains that it is not
10 a person subject to Proposition 65 and that all of the products it has manufactured, imported,
11 distributed and/or sold in the State of California, including the Covered Products, as defined in
12 Section 2.1 below, have been, and are, in compliance with all laws. Intracom does not admit any
13 facts or conclusions of law including, but not limited to, any facts or conclusions of law
14 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
15 or equitable requirements relating to DEHP in Covered Products, such being specifically denied
16 by Intracom. Nothing in this Consent Judgment shall be construed as an admission by Intracom of
17 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this
18 Consent Judgment constitute or be construed as an admission by Intracom of any fact, conclusion
19 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive
20 or impair any right, remedy, argument or defense Intracom may have in this or any other future
21 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is
22 accepted by Intracom for purposes of settling, compromising, and resolving issues disputed in this
23 action. However, this Section shall not diminish or otherwise affect the obligations,
24 responsibilities and duties of Intracom under this Consent Judgment.

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, Intracom stipulates that this Court has
27 jurisdiction over Intracom as to the allegations contained in the Complaint, that venue is proper in
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1 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment.

3 **2. DEFINITIONS**

4 **2.1** "Covered Product[s]" means the *Manhattan Stereo Headsets, # 175517, UPC # 7*
5 *66623 17551 7*, with vinyl/PVC components containing DEHP identified in the Complaint, which
6 are manufactured, imported, sold and/or distributed for sale in California by Intracom.

7 **2.2** For purposes of this Consent Judgment, the term "Execution Date" shall mean the
8 date that this Consent Judgment is signed by all Parties.

9 **2.3** For purposes of this Consent Judgment, the term "Effective Date" shall mean the
10 date that this Consent Judgment is entered by the Court, including any tentative rulings date in
11 which the ruling is not contested by any party.

12 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

13 **3.1 Reformulation Commitment and Standards**

14 Within ninety days after the Effective Date (the "Reformulation Deadline"), Covered
15 Products Intracom manufactures for sale in California shall contain less than or equal to 1,000
16 parts per million ("ppm") of DEHP in each Accessible Component, when analyzed pursuant to
17 EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
18 state agencies for the purpose of determining DEHP content in a solid substance ("Reformulated
19 Products"). For purposes of this Consent Judgment, "Accessible Component" shall mean a
20 component of a product that can be touched by a person during normal, intended and foreseeable
21 use of the product.

22 On or before the Reformulation Deadline, Intercom shall demonstrate its compliance with
23 this Section by providing plaintiff with written certification, that (as of such date) all of the
24 Covered Products it manufactures for sale in California, if any, are Reformulated Products and
25 that only Reformulated Products will be manufactured for sale in California in the future.

26 **3.2 Sales of Covered Products with Warnings**

27 Nothing in this Consent Judgment shall preclude Intracom from fulfilling customer orders,
28 shipping, and/or selling in California Covered Products manufactured before the Reformulation

1 Deadline, following the warning procedure set forth in this Section. Any Covered Products
2 manufactured before the Reformulation Deadline that do not qualify as Reformulated Products,
3 and that Intracom sells or offers for sale in California, may be sold after the Effective Date so long
4 as Intracom applies the following compliant Proposition 65 warnings to such Covered Products,
5 which reads, "WARNING: This product contains a chemical known to the State of California to
6 cause cancer and birth defects or other reproductive harm." The warning shall be provided on the
7 packaging of the Products, or on the Products, with such conspicuousness as to be likely to be
8 seen by a typical consumer under ordinary conditions of use.

9 Proposition 65 warnings for DEHP shall not be applied to any Covered Products
10 manufactured after the Reformulation Deadline, which products must be Reformulated Products
11 pursuant to Section 3.1, above.

12 3.3 Reformulated Products Are Deemed to Comply

13 Reformulated Products shall be deemed to comply with Proposition 65 as it relates to the
14 presence of DEHP in the Covered Products and shall be exempt from any Proposition 65 warning
15 requirements regarding exposure to DEHP.

16 4. MONETARY PAYMENTS

17 4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

18 In settlement of all the claims referred to in this Consent Judgment, Intracom has been
19 assessed \$3,000 in civil penalties in accordance with this Section. Vinocur will allocate penalty
20 payment in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
21 of the funds remitted to the California Office of Environmental Health Hazard Assessment
22 ("OEHHA") and the remaining 25% of the penalty remitted to Vinocur.

23 Within five (5) business days of the Execution Date, Intracom shall issue a check payable
24 to "Sheppard, Mullin, Richter and Hampton Client Trust Account" in the amount of \$3,000.
25 Sheppard Mullin shall provide The Chanler Group with written confirmation within five (5) days
26 of receipt of the funds described below in this paragraph that the funds have been deposited in the
27 Sheppard Mullin trust account. Within five (5) days of the Effective Date, Sheppard Mullin shall
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1 issue a check for the civil penalty payment to "The Chanler Group in Trust for Laurence Vinocur"
2 in the amount of \$3,000.

3 **4.2 Reimbursement of Plaintiff's Fees and Costs**

4 The Parties reached an accord on the compensation due to Vinocur and his counsel under
5 general contract principles and the private attorney general doctrine codified at California Code of
6 Civil Procedure § 1021.5, for all work performed through the Effective Date, including the fees
7 and costs incurred as a result of investigating, bringing this matter to Intracom's attention,
8 negotiating a settlement in the public interest, and obtaining court approval of the same. Under
9 these legal principles, Intracom shall pay the amount of \$35,000 in seven (7) equal monthly
10 installments to reimburse Plaintiff's fees and costs incurred investigating, litigating and enforcing
11 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
12 obtaining the Court's approval of this Consent Judgment in the public interest, the first installment
13 being due within five (5) business days of the Execution Date, and each subsequent installment
14 being due every 30 days thereafter until the seventh installment is paid. Intracom shall issue a
15 check for each installment due prior to the Effective Date payable to "Sheppard Mullin Client
16 Trust Account" in the amount of \$5,000 to be held in trust by Sheppard Mullin for The Chanler
17 Group. Sheppard Mullin shall provide The Chanler Group with written confirmation within five
18 (5) days of receipt that the funds have been deposited in the Sheppard Mullin trust account.
19 Within five (5) calendar days of the Effective Date, Sheppard Mullin shall issue a check payable
20 to "The Chanler Group" in an amount equal to the sum of all installments paid prior to the
21 Effective Date. Intracom shall issue a check for each installment due after the Effective Date
22 payable to "The Chanler Group" in the amount of \$5,000. Intracom shall be liable for payment of
23 interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are
24 not received within two business days of the due date.

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1 **4.3 Payment Procedures**

2 All payments owed to Vinocur and his counsel pursuant to this agreement, shall be
3 delivered to the following payment address:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

9 If for any reason this Consent Judgment is not entered by the Court within nine (9) months
10 of its complete execution by the parties, Plaintiff shall meet and confer with Intracom about
11 mutually agreeable steps the parties can take so as to seek entry of the Consent Judgment. If such
12 steps cannot be agreed to between the Parties, Plaintiff shall promptly return to Intracom any and
13 all monies paid by Intracom herein under Sections 4.1 and 4.2 to Vinocur and The Chanler Group
14 upon Intracom's written request.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Vinocur's Release of Intracom**

16 In consideration of the promises and agreements contained herein and for the payments to
17 be made pursuant to Section 4, above, Vinocur, acting on behalf of himself, his past and current
18 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
19 public pursuant to Health & Safety Code § 25249.7(d), hereby releases Intracom, its parents,
20 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
21 attorneys, shareholders ("Defendant Releasees"), and all of its downstream distributors,
22 wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and any
23 other person or entity to whom they directly or indirectly distribute or sell Covered Products
24 ("Downstream Defendant Releasees"), from any and all claims, including, without limitation, all
25 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
26 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
27 fees, and attorneys' fees) of any nature whatsoever, fixed or contingent (collectively "Claims")
28 related to any alleged or actual violation of Proposition 65 that has been or could have been

1 asserted by Vinocur in the public interest in his Notice and Complaint regarding the alleged failure
2 to warn about exposure to DEHP in Covered Products manufactured, distributed, or sold by
3 Intracom as set forth in the Notice prior to the Effective Date, and hereby waives all rights to
4 institute or participate in, directly or indirectly, any such Claims, against Intracom, Defendant
5 Releasees, and Downstream Defendant Releasees.

6 **5.2 Vinocur's Waiver of Section 1542**

7 Vinocur also, in his individual capacity only and *not* in his representative capacity,
8 provides a general release herein to Intracom, Defendant Releasees, and Downstream Defendant
9 Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
10 causes of action in law or in equity, suits, obligations, costs, expenses, attorneys' fees, damages,
11 fines, penalties, losses, claims, liabilities and demands of Vinocur of any nature, character or kind,
12 known or unknown, suspected or unsuspected, arising out of alleged exposure to, or failure to
13 warn of, DEHP under Proposition 65 with respect to the Covered Products manufactured,
14 distributed or sold by the Effective Date, above, so long as the Consent Judgment is entered by the
15 Court. Vinocur acknowledges that he is familiar with Section 1542 of the California Civil Code,
16 which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
20 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR.

22 Vinocur, in his individual capacity only and *not* in his representative capacity, expressly
23 waives and relinquishes any and all rights and benefits which he may have under, or which may be
24 conferred on his by the provisions of Section 1542 of the California Civil Code as well as under
25 any other state or federal statute or common law principle of similar effect, to the fullest extent
26 that he may lawfully waive such rights or benefits pertaining to the released matters. In
27 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
28 complete release notwithstanding the discovery or existence of any such additional or different
claims or facts arising out of the released matters.

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1 **5.3 Intracom's Release and Waiver of Section 1542**

2 Intracom waives any and all Claims against Vinocur, his attorneys, and his representatives
3 for any and all actions taken or statements made by Vinocur and his attorneys and his
4 representatives prior to the Effective Date, whether in the course of investigating claims or
5 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect
6 to the Covered Products. Intracom acknowledges that it is familiar with Section 1542 of the
7 California Civil Code, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

11 Provided that the Consent Judgment is entered by the Court, Intracom expressly waives and
12 relinquishes any and all rights and benefits which it may have under, or which may be conferred
13 on it by, the provisions of Section 1542 of the California Civil Code, as well as under any other
14 state or federal statute or common law principle of similar effect, to the fullest extent that it may
15 lawfully waive such rights or benefits pertaining to the released matters.

16 **5.4 Upstream Entities**

17 The Parties further understand and agree that the releases set forth in Section 5 shall not
18 extend upstream to any entities who sold the Covered Products or any component parts thereof to
19 Intracom.

20 **6. COURT APPROVAL**

21 **6.1 Waiver of Trial**

22 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on
23 the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any
24 and all interim rulings, including all pleading, procedural, and discovery orders. Nothing in this
25 Section shall preclude either Party from appealing an order denying the entry of this settlement, in
26 whole or part, as a judgment.

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1 **6.2 Court Approval Required**

2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
3 noticed motion is required to obtain judicial approval of this Consent Judgment. The Parties agree
4 to mutually employ their and their respective counsel's best efforts to support the entry of this
5 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
6 timely manner. If this Consent Judgment is not approved by the Court within nine months of
7 complete execution by the parties, then: (a) this Consent Judgment and any and all prior
8 agreements between the Parties shall terminate and become null and void, and the action shall
9 revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of
10 this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or
11 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be
12 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the
13 Parties agree to meet and confer to determine whether to modify the terms of the Consent
14 Judgment and to resubmit it for approval.

15 **7. MISCELLANEOUS**

16 **7.1 Governing Law**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California, and shall apply only to Covered Products offered for sale in the State of California. In
19 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
20 generally, or as to the Covered Products, then Intracom may provide written notice to Vinocur of
21 any asserted change in the law, and shall have no further injunctive obligations pursuant to this
22 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected. If
23 Proposition 65 or associated regulations are amended to require or allow different text, font,
24 and/or methods of warning than specified above, Intracom, after providing written notice to
25 Vinocur, may substitute such text, font, and/or methods of warning for product warnings required
26 under this Consent Judgment.

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1 **9. MODIFICATION**

2 **9.1 Modification**

3 This Consent Judgment may be modified by written agreement of the Parties and upon
4 entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a
5 modified Consent Judgment by the court.

6 **9.2 Subsequent Legislation**

7 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
8 DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to
9 request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment
10 for good cause shown. If the requested modification is opposed, the prevailing party shall be
11 entitled to its reasonable fees and costs.

12 **9.3 Notice; Meet and Confer**

13 Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall
14 first attempt in good faith to meet and confer with the other Party for a period of 30 days prior to
15 filing a motion to modify the Consent Judgment.

16 **10. ENTIRE AGREEMENT**

17 This Consent Judgment contains the sole and entire agreement and understanding of the
18 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
20 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
21 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
22 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
23 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
24 waiver unless set forth in writing between the Parties.

25 **11. RETENTION OF JURISDICTION**

26 This Court shall retain jurisdiction of this matter to implement or modify the Consent
27 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof,
28 under C.C.P. § 664.6.

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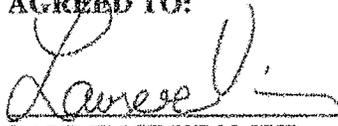
12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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 Consent Judgment.

AGREED TO:



LAURENCE VINO CUR

Dated: 3/2/2016

AGREED TO:



INTRACOM, U.S.A., INC.

By: Michael J. Gellert
(Print Name)

Its: CFO
(Title)

Dated: 2/29/16