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6 LAURENCE VINO CUR

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12
13 LAURENCE VINO CUR,

14 Plaintiff,

15 v.

16 RM ACQUISITION, LLC d/b/a RAND
MCNALLY, *et al.*,

17 Defendants.
18

Case No.: 17CV318943

**[PROPOSED] CONSENT JUDGMENT
AS TO RM ACQUISITION, LLC d/b/a
RAND MCNALLY**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Vinocur”), and RM Acquisition, LLC dba Rand McNally (“Rand McNally”), with Vinocur and
5 Rand McNally each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Rand McNally employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Rand McNally imports, sells, or distributes for sale in California,
16 vinyl/PVC cases for electronic devices that contain di(2-ethylhexyl)phthalate (“DEHP”) without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Products” are defined as vinyl/PVC cases for
21 electronic devices allegedly containing DEHP that are imported, sold, or distributed for sale in
22 California by Rand McNally, including, but not limited to, the *Rand McNally Hard Case for 7” GPS*
23 *and other electronics, UPC #0 70609 00519 5, ISBN: 0-528-00519-7.*

24 **1.6 Notice of Violation**

25 On April 27, 2017, Vinocur served Rand McNally, and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Rand McNally violated
27 Proposition 65 by failing to warn its customers and consumers in California of the health hazards
28

1 associated with exposures to DEHP from the Products. No public enforcer has commenced or is
2 diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On November 9, 2017, Vinocur filed the instant action (“Complaint”), naming Rand McNally
5 as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice.

7 **1.8 No Admission**

8 Rand McNally denies the material, factual, and legal allegations contained in the Notice and
9 Complaint. Nothing in this Consent Judgment shall be construed as an admission of any fact,
10 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
11 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law. This Section shall not, however, diminish or otherwise affect Rand
13 McNally’s obligations, responsibilities, and duties under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Rand McNally as to the allegations in the Complaint, that venue is proper in the
17 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
18 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
21 Rand McNally receives Notice of Court approval or entry of this Consent Judgment..

22 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

23 **2.1 Commitment to Reformulate or Warn**

24 Within 90 days of the Effective Date and continuing thereafter, Rand McNally shall only
25 manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a)
26 Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by Rand
27 McNally with a clear and reasonable warning pursuant to Section 2.3.
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1 **2.2 Reformulation Standard**


2 For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products
3 that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed
4 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
5 methodology utilized by federal or state government agencies for the purpose of determining DEHP
6 content in a solid substance.

7 **2.3 Clear and Reasonable Warning**

8 Commencing no later than 90 days of the Effective Date and continuing thereafter, all
9 Products, as defined herein, Rand McNally sells and/or distributes for sale in California, which do not
10 qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section.
11 Rand McNally further agrees that the warning will be prominently placed with such conspicuousness
12 when compared with other words, statements, designs or devices as to render it likely to be read and
13 understood by an ordinary individual under customary conditions of use. For purposes of this
14 Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning
15 affixed to the packaging, label, tag, via electronic means, or directly to a Product sold in California
16 and containing one of the following statements:

17  **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov
18

19 OR

20  **WARNING:** This product can expose you to chemicals
21 including DEHP, which is known to the
22 State of California to cause birth defects or
23 other reproductive harm. For more information
24 go to www.P65Warnings.ca.gov

25 OR

26 For Products Manufactured Before August 30, 2018:

27 **WARNING:** This product contains chemicals known to the State
28 of California to cause cancer, birth defects or other
 reproductive harm.

1 **2.4** In the event that the Office of Environmental Health Hazard Assessment promulgates
2 one or more regulations requiring or permitting specific safe harbor warning text and/or methods of
3 transmission different than those set forth above, Rand McNally shall be entitled to use, at its
4 discretion, such other warning text and/or method of transmission without being deemed in breach of
5 this Settlement.

6 **MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
9 this Consent Judgment, Rand McNally shall pay \$4,250 in civil penalties. The civil penalty payment
10 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
11 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
12 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Vinocur. Within 30
13 days of the Effective Date, Rand McNally shall provide its payment in two checks for the following
14 amounts made payable to (a) “OEHHA” in the amount of \$3,187.50; and (b) “Laurence Vinocur
15 Trust Account” in the amount of \$1,062.50. Vinocur’s counsel shall be responsible for remitting
16 Rand McNally’s payment under this Consent Judgment to OEHHA.

17 **3.2 Reimbursement of Attorney’s Fees and Costs**

18 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
20 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
21 other settlement terms had been finalized, the Parties negotiated the compensation due to Vinocur and
22 his counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
24 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
25 on appeal, if any. Under these legal principles, Rand McNally shall pay \$24,750 for all fees and
26 costs incurred by Vinocur for investigating, bringing this matter to Rand McNally’s attention,
27 litigating and negotiating a settlement in the public interest. Rand McNally’s payment shall be
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1 delivered in the form of a check payable to “The Chanler Group” within 20 days of the Effective
2 Date.

3 **3.3 Payment Address**

4 All payments required by this Consent Judgment shall be delivered to:

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Vinocur’s Public Release of Proposition 65 Claims**

12 Vinocur, acting on his own behalf and in the public interest, releases Rand McNally and
13 Patriarch Partners, LLC, and their parents, subsidiaries, and affiliated entities under common
14 ownership, and each of their directors, officers, employees, and attorneys, (“Releasees”), and each
15 entity to whom Rand McNally directly or indirectly distributes or sells the Products including,
16 without limitation, its downstream customers, distributors, wholesalers, and retailers (“Downstream
17 Releasees”) for any violation arising under Proposition 65 pertaining to the failure to warn about
18 exposures to DEHP from Products sold or distributed for sale by Rand McNally prior to the
19 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
20 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold
21 or distributed for sale by Rand McNally after the Effective Date.

22 **4.2 Vinocur’s Individual Release of Claims**

23 Vinocur, in his individual capacity only and *not* in any representative capacity, also provides a
24 release to Rand McNally, Releasees, and Downstream Releasees, which shall be effective as a full
25 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character
27 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
28 exposures to DEHP in Products sold or distributed for sale by Rand McNally before the Effective
Date.

1 **4.3 Rand McNally’s Release of Vinocur**

2 Rand McNally, on its own behalf, and on behalf of its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
4 Vinocur, and his attorneys and other representatives, for any and all actions taken or statements
5 made by Vinocur, and his attorneys and other representatives, whether in the course of investigating
6 the claims which form the basis of this Notice of Violation, otherwise seeking to enforce
7 Proposition 65 against it in this matter, or with respect to the Products.

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and shall
10 be null and void if it is not approved and entered by the Court within one year after it has been fully
11 executed by the Parties, or by such additional time as the Parties may agree in writing.

12 **6. SEVERABILITY**

13 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
14 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
15 adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of California
18 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
19 rendered inapplicable by reason of law generally or as to the Products, then Rand McNally may
20 provide written notice to Vinocur of any asserted change in the law, and shall have no further
21 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
22 Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
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28

1 **Rand McNally:**

2 Ryan Landis
3 Polisinelli LLP
4 2049 Century Park East, Suite 2900
5 Los Angeles, CA 90067
6 rlandis@polsinelli.com

7 **Vinocur:**

8 Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710-2565

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **10. POST EXECUTION ACTIVITIES**

20 Vinocur agrees to comply with the reporting form requirements referenced in Health and
21 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
22 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
23 which motion Vinocur shall draft and file. In furtherance of obtaining such approval, the Parties
24 agree to mutually employ their best efforts, and those of their counsel, to support the entry of this
25 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
26 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
27 approval, responding to any objection that any third-party may file or lodge, and appearing at the
28 hearing before the Court if so requested.

1 **11. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
4 of any Party, and the entry of a modified consent judgment thereon by the Court.

1 **12. AUTHORIZATION**

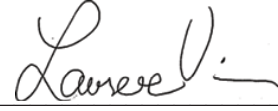
2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
3 have read, understand, and agree to all of the terms and conditions contained herein.

4 **AGREED TO:**

AGREED TO:

5 Date: 6/22/18 _____

Date: _____

6
7 By:  _____

By: _____

8 LAURENCE VINOUCUR

GRACE CHANG, CFO
RM Acquisition, LLC dba Rand McNally

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12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: _____

By: _____
LAURENCE VINOUCUR

AGREED TO:

Date: 06.18.18

By: 
GRACE CHANG, CFO
RM Acquisition, LLC dba Rand McNally