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13 Counsel for Plaintiff
14 ECOLOGICAL RIGHTS FOUNDATION

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO**

17 ECOLOGICAL RIGHTS FOUNDATION,

18 Plaintiff,

19 v.

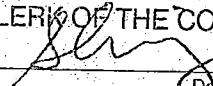
20 MONOPRICE, INC., et al.,

21 Defendants.

4
FILED
San Francisco County Superior Court

OCT 04 2021

CLERK OF THE COURT

BY:  Deputy Clerk

Case No. CGC-19-579995


[PROPOSED] CONSENT JUDGMENT
AS TO WALMART INC.

22 **1. INTRODUCTION**

23 1.1 On October 15, 2019, the Ecological Rights Foundation (“ERF”) acting on behalf
24 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
25 (“Complaint”) in San Francisco Superior Court, Case No. CGC-19-579995 against defendant
26 Walmart Inc. (also referred to herein as “Walmart” or “Defendant”). The Complaint alleges,
27 among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic
28 Enforcement Act of 1986, Health and Safety Code sections 25249.5, *et seq.* (Proposition 65) by
failing to give clear and reasonable warnings to those residents of California who, in the
operation of 3d Printers using styrene monomer filaments—including acrylonitrile-butadiene-

1 styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments and high impact polystyrene
2 (HIPS) filaments—are exposed to Styrene, a chemical known to the State of California to cause
3 cancer. The Complaint was based upon a 60-Day Notice letter, sent by ERF on April 24, 2019 to
4 Walmart, FlashForge USA, Inc., Tevo 3D Electronic Technology Co. Ltd., the California
5 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
6 750,000 (hereinafter, “the 60-Day Notice”).

7 1.2 For purposes of this Consent Judgment, “Covered Products” are defined as: (1)
8 the Flash Forge Creator Pro 3D Printer with Walmart Catalog Item ID 116567550 sold by
9 Ingram Micro, Inc. (“Ingram Micro”); and (2) the Tevo Tarantula i3 TR-01A Printer with
10 Walmart Catalog Item ID 573506677 sold by Sunsea Grocery on Walmart.com in California.

11 1.3 Defendant is a business that employs more than ten persons, and operates an
12 online marketplace on which Covered Products were sold.

13 1.4 Plaintiff alleges that: (a) the Covered Products heat the above-identified filaments
14 and thus release Styrene into the air; and (b) people using the 3D printers with filaments
15 incorporating a styrene monomer, and others standing in the same room, inhale styrene in the
16 normal course of use. Pursuant to Health and Safety Code Section 25249.8, Styrene is a
17 chemical known to the State of California to cause cancer. ERF alleges that Covered Products
18 sold by Defendant for use in California require a warning under Proposition 65, pursuant to
19 Health and Safety Code section 25249.6.

20 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has
21 jurisdiction over the allegations of violations contained in the Complaint and personal
22 jurisdiction over Walmart, that venue is proper in the County of San Francisco, and that this
23 Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
24 allegations contained in the Complaint.

25 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
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1 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
2 shall not constitute an admission with respect to any allegation of the Complaint, each and every
3 allegation of which Walmart denies, nor may this Consent Judgment, or compliance with it, be
4 used as evidence of any alleged wrongdoing, misconduct, culpability or liability on the part of
5 Walmart.

6 1.7 The term "Effective Date" means the date that this Consent Judgment is entered
7 by the Court.

8 **2. INJUNCTIVE RELIEF**

9 2.1 After the date of execution of this Consent Judgment by ERF and Walmart,
10 Ingram Micro shall not sell the Flash Forge Creator Pro 3D Printer with Walmart Catalog Item
11 ID 116567550 and Sunsea Grocery shall not sell the Tevo Tarantula i3 TR-01A Printer with
12 Walmart Catalog Item ID 573506677 on Walmart.com in California.

13 **3. SETTLEMENT PAYMENTS**

14 **3.1 Civil Penalties and Payments In Lieu of Penalties**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), Ingram Micro, on behalf of
16 itself and Walmart, shall pay \$500.00 in civil penalties. The penalty payment will be allocated in
17 accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of
18 the penalty amount remitted to the California Office of Environmental Health Hazard
19 Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Ecological Rights
20 Foundation. Ingram Micro, on behalf of itself and Defendant, will provide these payments in two
21 checks for the following amounts made payable to: (1) "OEHHA" in the amount of \$375.00; and
22 (2) "Ecological Rights Foundation" in the amount of \$125.00.

23 The payments to OEHHA and Ecological Rights Foundation shall be sent no later than
24 ten (10) days after the Effective Date. All payments shall be sent via USPS certified mail, return
25 receipt requested, to the following addresses:

26 All payments to Ecological Rights Foundation shall be delivered to:
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1 Fredric Evenson
2 Ecology Law Center
3 P.O. Box 1000
4 Santa Cruz, CA 95061

5 The payment to OEHHA shall be delivered to:

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

11 **3.2 Attorneys' Fees and Litigation Costs**

12 Ingram Micro, on behalf of itself and Walmart, shall reimburse ERF's counsel for
13 \$17,500.00 in ERF's fees and costs incurred as a result of investigating and bringing this matter
14 to Walmart's attention, and negotiating a settlement in the public interest. The payment shall be
15 made payable to "Brian Gaffney Attorney Client Trust Account" and sent no later than fourteen
16 (14) days after the Effective Date via USPS certified mail, return receipt requested, to the
17 following address:

18 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
19 446 Old County Road, Suite 100-310
20 Pacifica, California 94044

21 **4. RELEASE OF ALL CLAIMS**

22 **4.1 Release of Walmart, Ingram Micro, and Sunsea Grocery**

23 ERF acting on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees (all of whom, collectively, are defined as the "ERF
25 Releasers"), releases Walmart, and its parents, direct and indirect subsidiaries, affiliated entities,
26 marketplaces, directors, officers, agents, employees, attorneys and each entity that sold or
27 distributed, directly or indirectly, any Covered Products to Walmart or to whom Walmart
28 directly or indirectly distributes or sells the Covered Products, including but not limited to,
upstream and downstream vendors, manufacturers, distributors, wholesalers, customers, retailers,
franchisees, cooperative members and licensees and all other downstream entities in the

1 distribution chain, and the predecessors, successors, and assigns of any of them, Ingram Micro,
2 and Sunsea Grocery (collectively, the "Releasees"), from all claims raised in the 60-Day Notice
3 and in the Complaint for violations of Proposition 65 through the Effective Date based on failure
4 to warn about alleged exposures to Styrene from use of the Covered Products. This settlement is
5 a full, final and binding resolution of all claims that were asserted against Walmart, and/or the
6 Releasees based on the 60-Day Notice alleging failure to provide warnings for alleged exposures
7 to Styrene contained in the Covered Products.

8 In further consideration of the promises and agreements herein contained, and for the
9 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein
10 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes
11 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
12 demands against Walmart and/or any of the Releasees of any nature, character, or kind, limited
13 to and arising out of the claims that were asserted against Walmart and/or the Releasees, based
14 on the 60-Day Notice for failure to provide warnings for alleged exposure to Styrene from use of
15 the Covered Products.

16 4.2 Walmart's Release of ERF

17 Walmart, on behalf of itself and the Releasees, hereby waives any and all claims against
18 ERF and the ERF Releasors for any and all actions taken or statements made (or those that could
19 have been taken or made) by ERF and/or its attorneys and other representatives, whether in the
20 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
21 matter or with respect to the Covered Products.

22 4.3 California Civil Code Section 1542

23 It is possible that other claims not known to the Parties arising out of the facts alleged in
24 the Notice and relating to the Covered Products will develop or be discovered. ERF on behalf of
25 itself only, on one hand, and Walmart, on the other hand, acknowledge that this Agreement is
26 expressly intended to cover and include all such claims up through the Effective Date, including
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1 all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and
2 4.2 above may include unknown claims, and nevertheless waive California Civil Code section
3 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

4 A general release does not extend to claims that the creditor or releasing
5 party does not know or suspect to exist in his or her favor at the time of executing
6 the release and that, if known by him or her, would have materially affected his or
7 her settlement with the debtor or released party.

8 ERF and Walmart each acknowledge and understand the significance and consequences
9 of this specific waiver of California Civil Code section 1542.

10 **5. ENFORCEMENT OF JUDGMENT**

11 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
12 hereto. The parties may, by noticed motion before the Superior Court of San Francisco County,
13 giving the notice required by law, enforce the terms and conditions contained herein. However,
14 in the event that a dispute arises with respect to any of the provisions of this Consent Judgment,
15 the Parties shall meet and confer within 10 days after either Party receives written notice of an
16 alleged violation of this Agreement, and make a good faith attempt to resolve the dispute before
17 a noticed motion is filed. In any proceeding brought by either party to enforce this Consent
18 Judgment, such party may seek whatever fines, costs, penalties or remedies as may be provided
19 by law for any violation of Proposition 65 or this Consent Judgment.

20 **6. MODIFICATION OF JUDGMENT**

21 6.1 This Consent Judgment may be modified only upon written agreement of the parties
22 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any
23 party as provided by law and upon entry of a modified Consent Judgment by the Court.

24 **7. TERMINATION AND RETENTION OF JURISDICTION**

25 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the
26 terms this Consent Judgment.
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1 **8. AUTHORITY TO EXECUTE CONSENT JUDGMENT**

2 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally bind that party.

5 **9. SERVICE ON THE ATTORNEY GENERAL**

6 9.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
7 California Attorney General on behalf of the parties so that the Attorney General may review this
8 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
9 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
10 and in the absence of any written objection by the Attorney General to the terms of this Consent
11 Judgment, the parties may seek Court approval and entry of an order approving.

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
14 the parties with respect to the entire subject matter hereof and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
18 deemed to exist or to bind any of the parties.

19 **11. GOVERNING LAW**

20 11.1 The validity, construction and performance of this Consent Judgment shall be
21 governed by the laws of the State of California, without reference to any conflicts of law
22 provisions of California law.

23 **12. EXECUTION AND COUNTERPARTS**

24 12.1 This Consent Judgment may be executed in counterparts which taken together shall
25 be deemed to constitute one document.

1 **13. COURT APPROVAL**

2 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4 **14. NOTICES**

5 14.1 Any notices or payments due under this Consent Judgment shall be sent by USPS
6 certified mail, return receipt requested.

7 If to Ecological Rights Foundation: Fredric Evenson
8 Ecology Law Center
9 P.O. Box 1000
Santa Cruz, CA 95061

10 With a copy to:
11 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
12 446 Old County Road, Suite 100-310
Pacifica, California 94044

13 If to WALMART INC.:
14 Thomas L. Van Wyngarden
15 Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, 36th Floor
Los Angeles, CA 90017-5524

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

18
19 ECOLOGICAL RIGHTS FOUNDATION

20 DATED AUGUST 13, 2021 —

Ecological Rights Foundation
21
22 BY: *James L. Lampton* EXEC. DIR.
JAMES LAMPORT, EXECUTIVE DIRECTOR

1 DATED August 13, 2021 WALMART INC.

2 By: 

3 Thomas L. Van Wyndarden

4 ITS: Counsel and authorized signatory

5 IT IS SO ORDERED, ADJUDGED AND DECREED:

6 DATED: Oct. 9, 2021

7 
JUDGE OF THE SUPERIOR COURT

8 ETHAN P. SCHULMAN