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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 3D PRINT OF NORTH AMERICA, INC., et al.,
21 Defendants.

22 Case No. CGC-19-580009

23 [PROPOSED] ^(fby) CONSENT JUDGMENT
24 AS TO DEFENDANT SHAXON
25 INDUSTRIES, INC.

FILED
San Francisco County Superior Court

AUG 07 2020

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

26 **1. INTRODUCTION**

27 1.1 On October 15, 2019, the Ecological Rights Foundation ("ERF") acting on behalf
28 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
of itself and the general public, filed a Complaint for civil penalties and injunctive relief
("Complaint") in San Francisco Superior Court, Case No. CGC-19-580009 against defendant
SHAXON INDUSTRIES, INC. (referred to herein as "SHAXON") and Fry's Electronics, Inc.
The Complaint alleges, among other things, that SHAXON and Fry's Electronics, Inc. violated
provisions of the Safe Drinking Water and Toxic 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 use SHAXON filaments incorporating a styrene

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1 monomer including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-
2 ABS) filaments and high impact polystyrene (HIPS) filaments, (collectively "Covered
3 Products"), in the operation of 3d printers or 3d pens. The Complaint further alleges that use of
4 such Covered Products in the operation of 3d printers or 3d pens expose people to Styrene, a
5 chemical known to the State of California to cause cancer. The Complaint was based upon a 60-
6 Day Notice letter, sent by ERF on April 24, 2019 ("the April 24, 2019 Notice Letter") to
7 SHAXON, Fry's Electronics, Inc. and the California Attorney General, all District Attorneys,
8 and all City Attorneys with populations exceeding 750,000.

9 SHAXON is a business that employ more than ten persons, and manufactures, distributes,
10 and sell Covered Products. Covered Products that SHAXON distributes, markets and sells -
11 when heated in the operation of 3d printers or 3d pens - release Styrene into the air. People using
12 the Covered Products in the operation of 3d printers or 3d pens, and others standing in the same
13 room, inhale styrene in the normal course of use. Pursuant to Health and Safety Code Section
14 25249.8, Styrene is a chemical known to the State of California to cause cancer. ERF alleges
15 that Covered Products that are manufactured, distributed or sold by Defendant for use in
16 California require a warning under Proposition 65, pursuant to Health and Safety Code Section
17 25249.6.

18 For purposes of this Consent Judgment, ERF and SHAXON (each a "Party" and
19 collectively, the "Parties") stipulate that this Court has jurisdiction over the allegations of
20 violations contained in the Complaint and personal jurisdiction over SHAXON, that venue is
21 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
22 Judgment as a full settlement and resolution of the allegations contained in the Complaint.

23 1.2 This Consent Judgment resolves claims that are denied and disputed. The Parties
24 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
25 between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment
26 shall not constitute an admission with respect to any material allegation of the Complaint, each
27 and every allegation of which SHAXON denies, nor may this Consent Judgment, or compliance
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1 with it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
2 SHAXON.

3 1.3 The term "Effective Date" means the date that this Consent Judgment is entered by
4 the Court.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Warnings on Covered Products**

7 (a) As of the Effective Date, for all Covered Products to be manufactured, distributed
8 or offered for sale in California, SHAXON shall include the following warning statement:

9 **⚠ WARNING:** This Filament - when used in the operation of 3D Printers or 3D
10 Pens - can expose you and others in the same room to styrene, a chemical known
11 to the State of California to cause cancer. www.P65Warnings.ca.gov.

12 **ALWAYS OPERATE THIS PRODUCT IN A WELL-VENTILATED AREA.**

13 (b) SHAXON shall affix the warning statement to or print them on the Covered
14 Products and their packaging, and print the warning statement in the Covered Products'
15 instruction booklets (if any); SHAXON shall also ensure that the warning statement is included
16 in any online material promoting the Covered Products which may be viewed by consumers in
17 California - on each Covered Products' display page or by otherwise prominently displaying the
18 warning statement to the purchaser prior to completing the purchase. The warning statements
19 shall be displayed with such conspicuousness, as compared with other words, statements,
20 designs, or devices as to render them likely to be read and understood by an ordinary individual
21 under customary conditions of purchase or use. Warnings may be contained in the same section
22 of the instruction booklets that contain other safety warnings concerning the use of the Covered
23 Products. The type size of the warning must be legible, and no smaller than any other warning
24 provided with the Covered Products, and in no case less than twelve (12) point font.

25 The words "WARNING" and "ALWAYS USE THIS PRODUCT IN A WELL-
26 VENTILATED AREA" shall be in upper case letters and bold as in the above warnings
27 in this paragraph. The warning symbol to the left of the word "WARNING" must be a
28 black exclamation point in a yellow equilateral triangle with a black outline.

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1 **2.2 Notice to Downstream Releasees**

2 (a) No later than 14 days following the Effective Date, SHAXON shall provide
3 notice by mail on its letterhead to all its distributors, wholesalers, customers, retailers,
4 franchisees, cooperative members, and licensees of the Covered Products during the past
5 three years directly or indirectly, sold, offered for sale or distributed the Covered
6 Products in California ("Downstream Defendant Releasees") as follows:

7 This letter is sent as a **notice and warning** that your California sales inventory may
8 include SHAXON filaments incorporating a styrene monomer including acrylonitrile-
9 butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments and high
10 impact polystyrene (HIPS) filaments - which may expose users to styrene, a chemical
known to the State of California to cause cancer.

11 (b) The notice provided by SHAXON pursuant to this section shall also notify
12 the Downstream Defendant Releasees that SHAXON will attach stick-on labels to the
13 front of Covered Products in the inventory of the Downstream Defendant Releasees. The
14 stick-on labels provided by SHAXON shall comply with Sections 2.1(a) and 2.1(b)
15 above. SHAXON shall provide such stick-on labels in sufficient quantity and for
16 sufficient duration to meet the inventory needs of each Downstream Defendant Releasee.

17 **3. SETTLEMENT PAYMENTS**

18 **3.1 Civil Penalties and Payments In Lieu of Penalties**

19 Pursuant to Health and Safety Code section 25249.7(b)(2), SHAXON shall pay
20 \$12,000.00 in civil penalties. The penalty payment will be allocated in accordance with
21 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount
22 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and
23 the remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will
24 provide these payments in two checks for the following amounts made payable to: 1) "OEHHA"
25 in the amount of \$9,000.00 and 2) "Ecological Rights Foundation" in the amount of \$3,000.00.

26 The payments to OEHHA and Ecological Rights Foundation shall be sent no later than 10
27 days after the Effective Date. All payments shall be sent via USPS certified mail, return receipt
28 requested, to the following addresses:

1 All payments to Ecological Rights Foundation shall be delivered to:

2 Fredric Evenson
3 109 Quarry Lane
4 Santa Cruz, CA 95060

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 SHAXON shall reimburse ERF's counsel for \$30,000.00 in ERF's fees and costs
13 incurred as a result of investigating and bringing this matter to SHAXON's attention, and
14 negotiating a settlement in the public interest. The payment shall be made payable to
15 "Brian Gaffney Attorney Client Trust Account" and sent no later than fourteen (14) days
16 after the Effective Date via USPS certified mail, return receipt requested, to the following
address:

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310

Pacifica, California 94044

17 **4. RELEASE OF ALL CLAIMS**

18 **4.1 Release of Shaxon**

19 ERF acting on its own behalf, on behalf of the public interest, and on behalf of ERF's
20 past and current agents, representatives, attorneys, successors and or assignees (all of whom,
21 collectively, are defined as the "ERF Releasers"), releases SHAXON, and its parents,
22 subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and
23 each entity to whom SHAXON directly or indirectly distributes or sells the Covered Products,
24 including but not limited to, downstream distributors, wholesalers, customers, retailers,
25 franchisees, cooperative members, and licensees and all other upstream and downstream entities,
26 in the distribution chain, and the predecessors, successors, and assigns of any of them
27 (collectively, the "Releasees"), from all claims for violations of Proposition 65 for all Covered
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1 Products sold or distributed by Shaxon through the Effective Date based on failure to warn about
2 alleged exposures to Styrene from use of the Covered Products. This settlement is a full, final
3 and binding resolution of all claims that were or could have been asserted against SHAXON,
4 and/or the Releasees for failure to provide warnings for alleged exposures to Styrene contained
5 in the Covered Products.

6 In further consideration of the promises and agreements herein contained, and for the
7 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein
8 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes
9 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
10 demands against SHAXON and/or any of the Releasees of any nature, character, or kind,
11 whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged
12 or actual exposure to Proposition 65 chemicals from use of the Covered Products. Compliance
13 with the terms of this Consent Judgment constitutes compliance with Proposition 65 as to the
14 issues raised in the April 24, 2019 Notice Letter with regard to the Covered Products.

15 **4.2 Shaxon's Release of ERF**

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

21 **4.3 Dismissal of Fry's Electronics, Inc.**

22 No later than 14 days following the Effective Date, ERF shall file a Request for
23 Dismissal without prejudice as to defendant Fry's Electronics, Inc. in San Francisco Superior
24 Court Case No. CGC-19-580009. Within 7 days of receiving a conformed copy from the San
25 Francisco Superior Court, ERF will deliver a conformed copy to the Law Offices of Curtis C.
26 Chen & Associates by email.

27 **4.4 California Civil Code Section 1542**

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1 It is possible that other claims not known to the Parties arising out of the facts alleged in
2 the Notice and relating to the Covered Products will develop or be discovered. ERF on behalf of
3 itself only, on one hand, and SHAXON, on the other hand, acknowledge that this Agreement is
4 expressly intended to cover and include all such claims up through the Effective Date, including
5 all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and
6 4.2 above may include unknown claims, and nevertheless waive California Civil Code section
7 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERF and SHAXON each acknowledge and understand the significance and consequences
12 of this specific waiver of California Civil Code section 1542.

13 **5. ENFORCEMENT OF JUDGMENT**

14 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
15 hereto. Each Party may, by noticed motion or order to show cause before the Superior Court of
16 San Francisco County, giving the notice required by law, enforce the terms and conditions
17 contained herein. In the event that a dispute arises with respect to any of the provisions of this
18 Consent Judgment, the Parties shall meet and confer within 10 days after either Party receives
19 written notice of an alleged violation of this Agreement. In any proceeding brought by either
20 Party to enforce this Consent Judgment, such Party may seek whatever fines, costs, penalties or
21 remedies as may be provided by law for any violation of Proposition 65 or this Consent
22 Judgment.

23 **6. MODIFICATION OF JUDGMENT**

24 6.1 This Consent Judgment may be modified only upon written agreement of the
25 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
26 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.
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1 **7. TERMINATION AND RETENTION OF JURISDICTION**

2 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment.

4 **8. AUTHORITY TO STIPULATE**

5 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
7 of the Party represented and legally to bind that Party.

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

9 9.1 ERF shall serve a copy of this Consent Judgment, signed by both Parties, on the
10 California Attorney General on behalf of the Parties so that the Attorney General may review
11 this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five
12 (45) days after the Attorney General has received the aforementioned copy of this Consent
13 Judgment, and in the absence of any written objection by the Attorney General to the terms of
14 this Consent Judgment, the Parties may then submit it to the Court for approval.

15 **10. ENTIRE AGREEMENT**

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

22 **11. GOVERNING LAW**

23 11.1 The validity, construction and performance of this Consent Judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts of law
25 provisions of California law.
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1 **12. EXECUTION AND COUNTERPARTS**

2 12.1 This Consent Judgment may be executed in counterparts which taken together shall
3 be deemed to constitute one document.

4 **13. COURT APPROVAL**

5 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
6 effect, and cannot be used in any proceeding for any purpose.

7 **14. NOTICES**

8 14.1 In the event that a dispute arises with respect to any of the provisions of this
9 Agreement, the Parties shall meet and confer within 14 days after either Party receives
10 written notice of an alleged violation of this Agreement.

11 14.2 Any notices or payments due under this Consent Judgment shall be sent by
12 USPS certified mail, return receipt requested.

13 If to Ecological Rights Foundation: Fredric Evenson
14 Ecology Law Center
15 P.O. Box 1000
Santa Cruz, CA 95061

16 With a copy to:
LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
17 446 Old County Road, Suite 100-310
18 Pacifica, California 94044

19 If to SHAXON:
Benjamin Shir-Kwei Wang
20 4852 E. La Palma Avenue
Anaheim, CA 92807

21 With a copy to:
22 Curtis C. Chen, Attorney At Law
23 Law Offices of Curtis C. Chen & Associates
24 535 Anton Blvd., Suite 900
Costa Mesa, CA 92626

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

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28 IT IS SO STIPULATED:

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DATED: 5/27/20

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

BY: *James Lampert*, EXEC. DIR.
JAMES LAMPORT, EXECUTIVE DIRECTOR

DATED: 5-22-2020

SHAXON INDUSTRIES, INC.

BY: *Brent Wang*
ITS: VICE PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: 8/7/20

Richard Ulmer

JUDGE OF THE SUPERIOR COURT

RICHARD ULMER