

Nov

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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.  
22 ECOLOGICAL RIGHTS FOUNDATION,  
23 Plaintiff,  
24 v.  
25 3D PRINT OF NORTH AMERICA, INC., et al.,  
26 Defendants.

**FILED**  
San Francisco County Superior Court

AUG 07 2020

CLERK OF THE COURT

BY: [Signature]  
Deputy Clerk

~~Case No. CGC-19-579995~~

Case No. CGC-19-580009

<sup>(rfu)</sup>  
[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANTS AFINIA 3D AND  
MICROBOARDS TECHNOLOGY LLC

Hearing Date: Aug 24 2020

27 **1. INTRODUCTION**

28 1.1 On October 15, 2019, the Ecological Rights Foundation (“ERF”) acting on behalf of itself and the general public, filed Complaints for civil penalties and injunctive relief (“Complaint”) in San Francisco Superior Court, Case Nos. CGC-19-579995 and CGC-19-580009 against defendants AFINIA 3D AND MICROBOARDS TECHNOLOGY LLC (referred to collectively herein as “Defendants”). The Complaints allege, among other things, that Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”) by failing to give clear and  
2 reasonable warnings to those residents of California who use 3d printers and filaments  
3 incorporating a styrene monomer including acrylonitrile-butadiene-styrene (ABS) filaments,  
4 polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments (3d  
5 printers and filaments incorporating a styrene monomer collectively hereinafter referred to as  
6 “Covered Products”). The Complaints further allege that use of such Covered Products expose  
7 people to Styrene, a chemical known to the State of California to cause cancer. The Complaints  
8 were based upon 60-Day Notice letters, sent by ERF on April 24, 2019 to Defendants, the  
9 California Attorney General, all District Attorneys, and all City Attorneys with populations  
10 exceeding 750,000.

11 Defendants are businesses that employ more than ten persons, and manufacture,  
12 distribute, and sell Covered Products. 3d printers that Defendants distribute, market and sell heat  
13 the above-identified filaments and thus release Styrene into the air. Styrene filaments that  
14 Defendants distribute, market and sell - when heated in the operation of 3d printers or 3d pens -  
15 release Styrene into the air. People using the Covered Products, and others standing in the same  
16 room, inhale styrene in the normal course of use. Pursuant to Health and Safety Code Section  
17 25249.8, Styrene is a chemical known to the State of California to cause cancer. ERF alleges  
18 that Covered Products that are manufactured, distributed or sold by Defendants for use in  
19 California require a warning under Proposition 65, pursuant to Health and Safety Code Section  
20 25249.6. 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 Defendants, 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 1.2 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  
27 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
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1 shall not constitute an admission with respect to any material allegation of the Complaint, each  
2 and every allegation of which Defendants deny, nor may this Consent Judgment, or compliance  
3 with it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
4 Defendants.

5 1.3 The term "Effective Date" means the date that this Consent Judgment is entered by  
6 the Court.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Warnings on Covered Products**

9 As of the Effective Date, for all Covered Products manufactured, distributed or offered  
10 for sale in California, Defendants shall include the appropriate following warning statements for  
11 3D printers and filaments:

12 **⚠ WARNING:** This 3D Printer - when used with a styrene filament (ABS / HIPS  
13 / or PC-ABS) - can expose you and others in the same room to styrene, a chemical  
14 known to the State of California to cause cancer. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

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

16 **⚠ WARNING:** This Filament - when used in the operation of 3D Printers or 3D  
17 Pens - can expose you and others in the same room to styrene, a chemical known  
18 to the State of California to cause cancer. [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

20 The warning statements shall be affixed to or printed on the Covered Products and their  
21 packaging, printed in the Covered Products' instruction booklets (if any), and included in any  
22 online material promoting the Covered Products. The warnings shall be displayed with such  
23 conspicuousness, as compared with other words, statements, designs, or devices as to render  
24 them likely to be read and understood by an ordinary individual under customary conditions of  
25 purchase or use. Warnings may be contained in the same section of the instruction booklets that  
26 contain other safety warnings concerning the use of the Covered Products. The type size of the  
27 warning must be legible, and no smaller than any other warning provided with the Covered  
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1 Products, and in no case less than twelve (12) point font.

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

6 **2.2 Notice to Downstream Releasees**

7 No later than 14 days following the Effective Date, Defendants shall provide  
8 notice by mail on its letterhead to all its distributors, wholesalers, customers, retailers,  
9 franchisees, cooperative members, and licensees of the Covered Products during the past  
10 three years ("Downstream Defendant Releasees") as follows:

11  
12 This letter is sent as a **notice and warning** that your California sales inventory may  
13 include the below Covered Products which may expose users to styrene, a chemical  
14 known to the State of California to cause cancer:

14 Afinia H400+ 3D Printer  
15 Afinia H+1 3D Printer  
16 Afinia H400 3D Printer  
17 Afinia H800+(PLUS) 3D Printer  
18 ABS Premium 1.75 Filament,1kg(2x500g),White  
19 ABS Premium 1.75 Filament,1kg(2x500g),Black  
20 ABS Premium 1.75 Filament,1kg(2x500g),Red  
21 ABS Premium 1.75 Filament,1kg(2x500g),Blue  
22 ABS Premium 1.75 Filament,1kg(2x500g),Yellow  
23 ABS Premium 1.75 Filament,1kg(2x500g),Green  
24 ABS PLUS Premium 1.75 Filament,1000g,White  
25 ABS PLUS Premium 1.75 Filament,1000g,Black  
26 ABS PLUS Premium 1.75 Filament,1000g,Red  
27 ABS PLUS Premium 1.75 Filament,1000g,Blue  
28 ABS PLUS Premium 1.75 Filament,1000g,Yellow  
ABS PLUS Premium 1.75 Filament,1000g,Green  
ABS PLUS Premium 1.75 Filament,1000g,6-Pack,Blk,Wht,Red,Ylw,Blu,Grn

26 The notice provided by Defendants pursuant to this section shall also instruct the  
27 Downstream Defendant Releasees that they must attach stick on labels to the front of  
28 Covered Products in the inventory of the Downstream Defendant Releasees. The stick-

1 on labels provided by Defendants shall comply with Sections 2.1 above. Defendants  
2 shall provide such stick-on labels in sufficient quantity and for sufficient duration to meet  
3 the inventory needs of each Downstream Defendant Releasee.

4 **3. SETTLEMENT PAYMENTS**

5 **3.1 Civil Penalties and Payments In Lieu of Penalties**

6 Pursuant to Health and Safety Code section 25249.7(b)(2), Defendants shall pay  
7 \$23,000.00 in civil penalties. The penalty payment will be allocated in accordance with  
8 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount  
9 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and  
10 the remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will  
11 provide these payments in two checks for the following amounts made payable to: 1) “OEHHA”  
12 in the amount of \$17,250.00 and 2) “Ecological Rights Foundation” in the amount of \$5,750.00.

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

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

17 Fredric Evenson  
18 109 Quarry Lane  
19 Santa Cruz, CA 95060

19 The payment to OEHHA shall be delivered to:

20 Mike Gyurics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 P.O. Box 4010  
24 Sacramento, CA 95812-4010

23 **3.2 Attorneys’ Fees and Litigation Costs**

24 Defendants shall reimburse ERF’s counsel for \$30,000 in ERF’s fees and costs  
25 incurred as a result of investigating and bringing this matter to Defendants’ attention, and  
26 negotiating a settlement in the public interest. The payment shall be made payable to  
27 “Brian Gaffney Attorney Client Trust Account” and sent no later than fourteen (14) days  
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1 after the Effective Date via USPS certified mail, return receipt requested, to the following  
2 address:

3 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation  
4 446 Old County Road, Suite 100-310  
5 Pacifica, California 94044

6 **4. RELEASE OF ALL CLAIMS**

7 **4.1 Release of Defendants**

8 ERF acting on its own behalf and on behalf of its past and current agents, representatives,  
9 attorneys, successors and/or assignees (all of whom, collectively, are defined as the “ERF  
10 Releasors”), releases Defendants, and its parents, subsidiaries, affiliated entities, marketplaces  
11 directors, officers, agents, employees, attorneys and each entity to whom Defendants directly or  
12 indirectly distributes or sells the Covered Products, including but not limited to, downstream  
13 distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees  
14 and all other upstream and downstream entities in the distribution chain, and the predecessors,  
15 successors, and assigns of any of them (collectively, the “Releasees”), from all claims for  
16 violations of Proposition 65 through the Effective Date based on failure to warn about alleged  
17 exposures to Styrene from use of the Covered Products. This settlement is a full, final and  
18 binding resolution of all claims that were or could have been asserted against Defendants, and/or  
19 the Releasees for failure to provide warnings for alleged exposures to chemicals contained in the  
20 Covered Products.

21 In further consideration of the promises and agreements herein contained, and for the  
22 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein  
23 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes  
24 of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and  
25 demands against Defendants and/or any of the Releasees of any nature, character, or kind,  
26 whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged  
27 or actual exposure to Proposition 65 chemicals from use of the Covered Products.

28 **4.2 Defendants’ Release of ERF**

1 Defendants, on behalf of themselves and the Releasees, hereby waives any and all claims  
2 against ERF and the ERF Releasors for any and all actions taken or statements made (or those  
3 that could have been taken or made) by ERF and/or its attorneys and other representatives,  
4 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65  
5 against it in this matter or with respect to the Covered Products.

6 **4.3 California Civil Code Section 1542**

7 It is possible that other claims not known to the Parties arising out of the facts alleged in  
8 the Notice and relating to the Covered Products will develop or be discovered. ERF on behalf of  
9 itself only, on one hand, and Defendants, on the other hand, acknowledge that this Agreement is  
10 expressly intended to cover and include all such claims up through the Effective Date, including  
11 all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and  
12 4.2 above may include unknown claims, and nevertheless waive California Civil Code section  
13 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

14 A general release does not extend to claims that the creditor or releasing  
15 party does not know or suspect to exist in his or her favor at the time of  
16 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.

17 ERF and Defendants each acknowledge and understand the significance and  
18 consequences of this specific waiver of California Civil Code section 1542.

19 **5. ENFORCEMENT OF JUDGMENT**

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

3 **6. MODIFICATION OF JUDGMENT**

4 6.1 This Consent Judgment may be modified only upon written agreement of the parties  
5 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any  
6 party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

8 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
9 terms this Consent Judgment.

10 **8. AUTHORITY TO STIPULATE**

11 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
12 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
13 of the party represented and legally to bind that party.

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

15 9.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the  
16 California Attorney General on behalf of the parties so that the Attorney General may review this  
17 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
18 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
19 and in the absence of any written objection by the Attorney General to the terms of this Consent  
20 Judgment, the parties may then submit it to the Court for approval.

21 **10. ENTIRE AGREEMENT**

22 10.1 This Consent Judgment contains the sole and entire agreement and understanding of  
23 the parties with respect to the entire subject matter hereof and any and all prior discussions,  
24 negotiations, commitments and understandings related hereto. No representations, oral or  
25 otherwise, express or implied, other than those contained herein have been made by any party  
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
27 deemed to exist or to bind any of the parties.



1 **11. GOVERNING LAW**

2 11.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California, without reference to any conflicts of law  
4 provisions of California law.

5 **12. EXECUTION AND COUNTERPARTS**

6 12.1 This Consent Judgment may be executed in counterparts which taken together shall  
7 be deemed to constitute one document.

8 **13. COURT APPROVAL**

9 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
10 effect, and cannot be used in any proceeding for any purpose.

11 **14. NOTICES**

12 14.1 In the event that a dispute arises with respect to any of the provisions of this  
13 Agreement, the Parties shall meet and confer within 14 days after either Party receives  
14 written notice of an alleged violation of this Agreement.

15 14.2 Any notices or payments due under this Consent Judgment shall be sent by  
16 USPS certified mail, return receipt requested.

17 If to Ecological Rights Foundation: Fredric Evenson  
18 Ecology Law Center  
19 P.O. Box 1000  
Santa Cruz, CA 95061

20 With a copy to:  
21 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation  
22 446 Old County Road, Suite 100-310  
Pacifica, California 94044

23 If to DEFENDANT Microboards Technology, LLC:  
24 Mitch Ackmann  
25 Microboards Technology, LLC  
26 8150 Mallory Court  
Chanhassen, MN 55317

27 With a copy to:  
28 GIANELLI | NIELSEN, APLC

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Eric T. Nielsen  
1014 -16th Street  
Modesto, CA 95354

If to DEFENDANT Afinia 3D:  
Mitch Ackmann  
Microboards Technology, LLC  
8150 Mallory Court  
Chanhassen, MN 55317

With a copy to:  
GIANELLI | NIELSEN, APLC  
Eric T. Nielsen  
1014 -16th Street  
Modesto, CA 95354

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

IT IS SO STIPULATED:

DATED: \_\_\_\_\_

ECOLOGICAL RIGHTS FOUNDATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: 3/26/20


AFINIA 3D

By: 

Its: PRESIDENT

DATED: 3/26/20

MICROBOARDS TECHNOLOGY LLC

By: 

Its: PRESIDENT

1 Eric T. Nielsen  
1014 -16th Street  
2 Modesto, CA 95354

3 If to DEFENDANT Afinia 3D:  
4 Mitch Ackmann  
Microboards Technology, LLC  
5 8150 Mallory Court  
6 Chanhassen, MN 55317

7 With a copy to:  
GIANELLI | NIELSEN, APLC  
8 Eric T. Nielsen  
9 1014 -16th Street  
10 Modesto, CA 95354

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

13 IT IS SO STIPULATED:  
14

15 DATED: April 6, 2020

16 ECOLOGICAL RIGHTS FOUNDATION

*Ecological Rights Foundation*

17  
18 By: James Lampion, EXEC. DIR.  
JAMES LAMPORT, EXECUTIVE DIRECTOR

19  
20 DATED: \_\_\_\_\_

AFINIA 3D

21 By: \_\_\_\_\_

22 Its: \_\_\_\_\_

23  
24 DATED: \_\_\_\_\_

MICROBOARDS TECHNOLOGY LLC

25 By: \_\_\_\_\_

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IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: 8/7/20

Richard B. Ulmer (Ulmer)

JUDGE OF THE SUPERIOR COURT

**RICHARD ULMER**