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

21 Defendants.

Case No. CGC-19-580009


22 ~~[PROPOSED]~~ CONSENT JUDGMENT
23 AS TO BASF CORPORATION

24 **1. INTRODUCTION**

25 1.1 On October 15, 2019, the Ecological Rights Foundation (“ERF”) acting on behalf
26 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
27 (“Complaint”) in San Francisco Superior Court, Case No. CGC-19-580009 against defendant
28 BASF CORPORATION (also referred to herein as “BASF” or “Defendant”). The Complaint
alleges, among other things, that Defendant 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
BASF filaments incorporating a styrene monomer including, without limitation, acrylonitrile-

FILED
San Francisco County Superior Court

SEP 15 2020

CLERK OF THE COURT
BY: 
Deputy Clerk

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

8 Defendant is a business that employs more than ten persons, and is the US affiliate of a
9 non-US BASF entity that manufactures, distributes, and sells Covered Products. The Complaint
10 alleges that Covered Products that Defendant distributes, markets and sells - when heated in the
11 operation of 3d printers or 3d pens - release Styrene into the air. The Complaint further alleges
12 that people using the Covered Products in the operation of 3d printers or 3d pens, and others
13 standing in the same room, inhale styrene in the normal course of use. Pursuant to Health and
14 Safety Code Section 25249.8, Styrene is a chemical known to the State of California to cause
15 cancer. ERF alleges that Covered Products that are manufactured, distributed or sold by
16 Defendant for use in California require a warning under Proposition 65, pursuant to Health and
17 Safety Code Section 25249.6. Solely for purposes of this Consent Judgment, the parties stipulate
18 that this Court has jurisdiction over the allegations of violations contained in the Complaint and
19 personal jurisdiction over BASF, that venue is proper in the County of San Francisco, and that
20 this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
21 the allegations contained in the Complaint.

22 1.2 This Consent Judgment resolves claims that are denied and disputed. The parties
23 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
24 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
25 shall not constitute an admission with respect to any material allegation of the Complaint, each
26 and every allegation of which BASF denies, nor may this Consent Judgment, or compliance with
27 it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
28 BASF.

1 1.3 The term “Effective Date” means the date that this Consent Judgment is entered by
2 the Court.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Warning Statements for Covered Products**

5 As of the Effective Date, for all Covered Products manufactured, distributed or offered
6 for sale in California, BASF shall include the following warning statement (unless OEHHA
7 adopts Proposition 65 warnings specific to 3D printing products):

8 **▲ California Residents Only – WARNING:** This Product can expose you to styrene, a
9 chemical known to the State of California to cause cancer. USE WITH ADEQUATE
10 VENTILATION. See www.P65Warnings.ca.gov.

11 BASF shall affix the warning statements on the Covered Products’ packaging. BASF
12 shall ensure that the warning statement is included in any online material offering the Covered
13 Product for sale in California - for example, on each Covered Products’ online display page or by
14 otherwise prominently displaying the warning statement to the purchaser prior to completing the
15 purchase (to the extent the Covered Products are made available on-line by BASF and/or its
16 authorized distributor(s)). The warnings shall be displayed with such conspicuousness, as
17 compared with other words, statements, designs, or devices as to render them likely to be read
18 and understood by an ordinary individual under customary conditions of purchase or use. The
19 type size of the warning must be legible, and no smaller than any other warning provided with
20 the Covered Products, and in no case less than twelve (12) point font.

21 The words in upper case letters and/or bold in the above warning statement in this
22 paragraph shall be so represented in all warning statements affixed or online. The warning
23 symbol to the left of the word “WARNING” must be a black exclamation point in a yellow
24 equilateral triangle with a black outline.

25 **2.2 Notice to Downstream Releasees**

26 No later than 30 days following the Effective Date, BASF shall provide notice by mail on
27 company letterhead to all distributors, wholesalers, direct customers, retailers, franchisees,
28 cooperative members, and licensees of the Covered Products during the past three years
 (“Downstream Defendant Releasees”) as follows:

1
2 This letter is sent as a **notice and warning** that your California sales inventory may include
3 filaments used in 3D printers and pens incorporating a styrene monomer, including acrylonitrile-
4 butadiene-styrene (ABS) filaments designated as Ultrafuse ABS/Innofil 3D ABS and ABS
5 Fusion+; polycarbonate ABS (PC-ABS) filaments designated as Ultrafuse TPU 85A; and high
6 impact polystyrene (HiPS) filaments designated Ultrafuse HiPs; which may expose users to
7 styrene, a chemical known to the State of California to cause cancer.

8 The notice provided by BASF pursuant to this section shall also instruct the Downstream
9 Defendant Releasees that, unless already bearing a warning compliant with Proposition 65,
10 pursuant to Health and Safety Code Section 25249.6, they must attach stick-on labels to the front
11 of Covered Products packaging, if any, in the inventory of the Downstream Defendant Releasees.
12 The stick-on labels provided by BASF shall comply with Section 2.1 above. BASF shall provide
13 such stick-on labels in sufficient quantity and for sufficient duration to meet the inventory needs
14 of each Downstream Defendant Releasee. For purposes of this Paragraph, BASF's written
15 instruction to its distributors to forward BASF's instructions to the distributor(s)' California
16 customers shall constitute sufficient notice to those distributor customers in California who are
17 only indirect customers of BASF.

18 **3. SETTLEMENT PAYMENTS**

19 **3.1 Civil Penalties and Payments In Lieu of Penalties**

20 Pursuant to Health and Safety Code section 25249.7(b)(2), BASF shall pay \$10,000.00 in
21 civil penalties. The penalty payment will be allocated in accordance with California Health and
22 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
23 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
24 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
25 payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount
26 of \$7,500.00 and 2) "Ecological Rights Foundation" in the amount of \$2,500.00.

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

All payments to Ecological Rights Foundation shall be delivered to:

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

4 The payment to OEHHA shall be delivered to:

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

10 **3.2 Attorneys' Fees and Litigation Costs**

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

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

19 **4. RELEASE OF ALL CLAIMS**

20 **4.1 Release of BASF**

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

1 and/or the Releasees for failure to provide warnings for alleged exposures to Styrene contained
2 in the Covered Products.

3 In further consideration of the promises and agreements herein contained, and for the
4 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein
5 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes
6 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
7 demands against BASF (and/or any of its affiliates) and/or any of the Releasees of any nature,
8 character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising
9 out of the alleged or actual exposure to Styrene from use of the Covered Products.

10 **4.2 BASF's Release of ERF**

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

16 **4.3 California Civil Code Section 1542**

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

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

27 ERF and BASF each acknowledge and understand the significance and consequences of
28 this specific waiver of California Civil Code section 1542.

1 **5. ENFORCEMENT OF JUDGMENT**

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

11 **6. MODIFICATION OF JUDGMENT**

12 6.1 This Consent Judgment may be modified only upon written agreement of the parties
13 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any
14 party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

16 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the
17 terms this Consent Judgment.

18 **8. AUTHORITY TO STIPULATE**

19 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
21 of the party represented and legally to bind that party.

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

23 9.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
24 California Attorney General on behalf of the parties so that the Attorney General may review this
25 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
26 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
27 and in the absence of any written objection by the Attorney General to the terms of this Consent
28 Judgment, the parties may then submit it to the Court for approval.

1 **10. ENTIRE AGREEMENT**

2 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
3 the parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the parties.

8 **11. GOVERNING LAW**

9 11.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 **12. EXECUTION AND COUNTERPARTS**

13 12.1 This Consent Judgment may be executed in counterparts which taken together shall
14 be deemed to constitute one document.

15 **13. COURT APPROVAL**

16 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
17 effect, and cannot be used in any proceeding for any purpose.

18 **14. NOTICES**

19 14.1 In the event that a dispute arises with respect to any of the provisions of this
20 Agreement, the Parties shall meet and confer within 14 days after either Party receives written
21 notice of an alleged violation of this Agreement.

22 14.2 Any notices or payments due under this Consent Judgment shall be sent by USPS
23 certified mail, return receipt requested.

24
25 If to Ecological Rights Foundation: Fredric Evenson
26 Ecology Law Center
27 P.O. Box 1000
28 Santa Cruz, CA 95061

With a copy to:
LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation

1 446 Old County Road, Suite 100-310
2 Pacifica, California 94044

3 If to BASF CORPORATION: General Counsel
4 BASF Corporation
5 100 Park Avenue,
6 Florham Park, NJ 07932


7 With a copy to: Associate General Counsel, Litigation
8 BASF Corporation
9 100 Park Avenue,
10 Florham Park, NJ 07932

11 And:
12 Stanley W. Landfair
13 Robert S. Schuda
14 Jessica L. Duggan
15 DENTONS US LLP
16 One Market Plaza, Spear Tower, 24th Floor
17 San Francisco, California 94105-1101

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

20 IT IS SO STIPULATED:

21 DATED: _____ ECOLOGICAL RIGHTS FOUNDATION
22 BY: _____
23 ITS: _____

24 DATED: JULY 1, 2020 _____ BASF CORPORATION
25 BY:  _____
26 NADER MAHMOUD
27 IT'S: VICE PRESIDENT MARKET AND
28 CUSTOMER DEVELOPMENT NORTH AMERICA

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

1 446 Old County Road, Suite 100-310
2 Pacifica, California 94044

3 If to BASF CORPORATION: General Counsel
4 BASF Corporation
5 100 Park Avenue,
6 Florham Park, NJ 07932

7 With a copy to: Associate General Counsel, Litigation
8 BASF Corporation
9 100 Park Avenue,
10 Florham Park, NJ 07932

11 And: Stanley W. Landfair
12 Robert S. Schuda
13 Jessica L. Duggan
14 DENTONS US LLP
15 One Market Plaza, Spear Tower, 24th Floor
16 San Francisco, California 94105-1101

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

19 IT IS SO STIPULATED:

20 DATED: JULY 2, 2020 _____

21 ECOLOGICAL RIGHTS FOUNDATION

22 *Ecological Rights Foundation*

23 BY: *James Lampton*, EXEC. DIR.
24 JAMES LAMPORT, EXECUTIVE DIRECTOR

25 DATED: _____

26 BASF CORPORATION

27 BY: _____

28 ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

29 DATED *Sept. 15, 2020*

30 *Ethan P. Schulman*

JUDGE OF THE SUPERIOR COURT
ETHAN P. SCHULMAN