


FILED
San Francisco County Superior Court

SEP 15 2020

CLERK OF THE COURT

BY:  Deputy Clerk

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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 STAPLES, INC., et al.,

21 Defendants.

Case No. CGC-20-584232


**[PROPOSED] CONSENT JUDGMENT
AS TO WOBBLEWORKS, INC.**

22 **1. INTRODUCTION**

23 1.1 On April 24, 2020, the Ecological Rights Foundation (“ERF”) acting on behalf of
24 itself and the general public, filed a Complaint for civil penalties and injunctive relief
25 (“Complaint”) in San Francisco Superior Court, Case No. CGC-20-584232 against defendant
26 WOBBLEWORKS, INC. (also referred to herein as “WOBBLEWORKS” or “Defendant”). The
27 Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking
28 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*
29 (“Proposition 65”) by failing to give clear and reasonable warnings to those residents of
30 California who use 3D pens intended to be used with filaments incorporating a styrene monomer

1 including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS)
2 filaments and high impact polystyrene (HIPS) filaments.

3 1.2 3D pens which Defendant has previously or currently manufactures, distributes,
4 markets and/or sells in the State, including specifically the 3Doodler Create Pen Sets
5 (discontinued); 3Doodler Create+ Pen Sets; 3Doodler PRO Pen Sets (discontinued); 3Doodler
6 PRO+ Pen Sets (due to release in 2020) (“3D Pen Products”); ABS filament plastic refill
7 products, including single and mixed color sets, packs, tubes and bundles, and add on kits that
8 contain a styrene monomer (“Filament Products”) (each of the above WOBBLEWORKS 3D Pen
9 Products and WOBBLEWORKS Filament Products collectively hereinafter are referred to as
10 “Covered Products”).

11 1.3 Defendant is a business that has employed more than ten persons, and
12 manufactures, distributes, and sells Covered Products.

13 1.4 ERF alleges that when 3d pens heat the filaments incorporating a styrene monomer,
14 the Covered Products release Styrene into the air. People using the Covered Products, and others
15 standing in the same room, inhale styrene in the normal course of use. Pursuant to Health and
16 Safety Code Section 25249.8, Styrene is a chemical known to the State of California to cause
17 cancer. ERF alleges that Covered Products that are manufactured, distributed or sold by
18 Defendant for use in California require a warning under Proposition 65, pursuant to Health and
19 Safety Code Section 25249.6. For purposes of this Consent Judgment, the parties stipulate that
20 this Court has jurisdiction over the allegations of violations contained in the Complaint and
21 personal jurisdiction over WOBBLEWORKS, that venue is proper in the County of San
22 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
23 and resolution of the allegations contained in the Complaint.

24 1.5 This Consent Judgment resolves claims that are denied and disputed. The parties
25 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
26 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
27 shall not constitute an admission with respect to any material allegation of the Complaint, each
28

1 and every allegation of which WOBBLEWORKS denies, nor may this Consent Judgment, or
2 compliance with it, be used as evidence of any wrongdoing, misconduct, culpability or liability
3 on the part of WOBBLEWORKS.

4 1.6 The term "Effective Date" means the date that this Consent Judgment is entered by
5 the Court.

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Warning Statements on Covered Products**

8 (a) As of the Effective Date, for all Covered Products manufactured, distributed or
9 offered for sale in California, WOBBLEWORKS shall affix the appropriate following warning
10 statements for 3D Pen Products and Filament Products to the packaging of the Covered Products:

11 For 3d Pen Products:

12 **⚠ WARNING:** This 3D Printing Device - when used with a styrene filament (ABS /
13 HIPS / or PC-ABS) - can expose you and others in the same room to Styrene, which is a
14 chemical known to the State of California to cause cancer. For more information, go to
www.P65Warnings.ca.gov.

15 **ALWAYS OPERATE YOUR 3D PRINTING DEVICE IN A WELL-
VENTILATED AREA.**

16 For Filament Products:

17 **⚠ WARNING:** This filament, when used for 3D printing, can expose you and others in
18 the same room to Styrene, which is known to the State of California to cause cancer. For
19 more information, go to www.P65Warnings.ca.gov.

20 **ALWAYS OPERATE YOUR 3D PRINTING DEVICE IN A WELL-
VENTILATED AREA.**

21 (b) As of the Effective Date, WOBBLEWORKS shall ensure that the Section 2.1(a)
22 warning statements are included in any online material promoting or selling the Covered
23 Products which may be viewed by consumers in California - on each Covered Products' display
24 page or by otherwise prominently displaying the warning statement to the purchaser prior to
25 completing the purchase.

26 (c) Within sixty (60) days after the Effective Date, WOBBLEWORKS shall print the
27 warning statement in the Covered Products' instruction booklets (if any). This warning statement
28 contained in the instruction booklets need not be printed in color if the warning statement is also

1 displayed in online materials and on the exterior of the package. Warning statements may be
2 contained in the same section of the instruction booklets that contain other safety warnings
3 concerning the use of the Covered Products.

4 (d) All the warning statements referenced in Section 2 shall be displayed with such
5 conspicuousness, as compared with other words, statements, designs, or devices as to render
6 them likely to be read and understood by an ordinary individual under customary conditions of
7 purchase or use. The type size of the warning must be legible, and no smaller than any other
8 warning provided with the Covered Products.

9 The words "WARNING" and "ALWAYS OPERATE YOUR 3D PRINTING DEVICE
10 IN A WELL-VENTILATED AREA" shall be in upper case letters and bold as in the above
11 warnings in this paragraph. The warning symbol to the left of the word "WARNING" must be a
12 black exclamation point in a yellow equilateral triangle with a black outline.

13 (e) WOBBLEWORKS shall not sell any Covered Products direct to consumers in
14 California in physical retail stores unless the warning statements comply with the above.

15 (f) Section 2 of this Agreement shall not serve to limit WOBBLEWORKS in any
16 way from providing any other warnings, instructions, directions, explanations, or information
17 regarding its Covered Products, including but not limited to adding any other chemicals to the
18 above warning statements should it become necessary, precautionary, or relevant under
19 Proposition 65.

20 (g) The Parties acknowledge that there may be instances where due to procedural
21 formats by online retailer marketplaces, including but not limited to Amazon.com Inc.,
22 WOBBLEWORKS may not have an option to timely include the warning statements in section
23 2.1(b) for future Covered Products. If such circumstance arises, WOBBLEWORKS shall make
24 reasonable efforts to resolve the issue so that the warnings contained in 2.1(a) and (b) are
25 immediately published. WOBBLEWORKS shall include the operative Proposition 65 warning
26 set by statute during this period, not to exceed thirty (30) days of the first publication of a new
27 product page or listing to the online retailer marketplace. Nothing in this provision relieves
28

1 WOBBLERWORKS from its obligations above regarding warning statements on the Covered
2 Products' packaging and instruction booklets as detailed in this section.

3 **2.2 Notice to Downstream Releasees**

4 No later than 14 days following the Effective Date, WOBBLERWORKS shall provide
5 notice by mail, and where customary, by email, on its letterhead to all its direct distributors,
6 wholesalers, retailers, franchisees, cooperative members, and licensees of the Covered Products
7 related to California sales only, during the past three years ("Downstream Defendant
8 Releasees"). The notice the following statement:

9 (a) This letter is sent as a **notice and warning** that your California sales
10 inventory may include 3Doodler Create Pen Sets (discontinued); 3Doodler Create+ Pen Sets;
11 3Doodler PRO Pen Sets (discontinued); 3Doodler PRO+ Pen Sets (due to release in 2020) ("3D
12 Pen Products"); ABS filament plastic refill products, including single and mixed ABS color sets,
13 ABS packs, ABS tubes and ABS bundles, which may expose users to Styrene, a chemical known
14 to the State of California to cause cancer. For more information, go to
15 www.P65Warnings.ca.gov.

16 The notice provided by WOBBLERWORKS pursuant to this section shall also instruct the
17 Downstream Defendant Releasees that:

18 (1) For inventory sold online, Downstream Defendant Releasees are required to provide
19 an online warning in compliance with Section 2.1 for each of the Covered Products, and

20 (2) WOBBLERWORKS will be including a warning notice insert with the shipment of all
21 Covered Product for use by Downstream Defendant Releasees.

22 (3) For inventory sold in physical retail stores, the Downstream Defendant Releasee must
23 attach stick on labels to the front of Covered Products in the inventory of the Downstream
24 Defendant Releasees. The online warning, insert and stick-on labels provided by
25 WOBBLERWORKS shall comply with 2.1(a) and 2.1(b) above. WOBBLERWORKS shall provide
26 such inserts and stick-on labels in sufficient quantity and for sufficient duration to meet the
27 inventory needs of each Downstream Defendant Releasee.
28

1 **3. SETTLEMENT PAYMENTS**

2 **3.1 Civil Penalties and Payments In Lieu of Penalties**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), WOBBLEWORKS shall pay
4 ten thousand dollars (\$10,000.00) in civil penalties. The penalty payment will be allocated in
5 accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of
6 the penalty amount remitted to the California Office of Environmental Health Hazard
7 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Ecological Rights
8 Foundation. Defendant will provide these payments in two checks for the following amounts
9 made payable to: 1) “OEHHA” in the amount of seven thousand five hundred dollars (\$7,500.00)
10 and 2) “Ecological Rights Foundation” in the amount of three thousand five hundred dollars
11 (\$3,500.00).

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

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

16 Fredric Evenson
17 109 Quarry Lane
 Santa Cruz, CA 95060

18 The payment to OEHHA shall be delivered to:

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

22 **3.2 Attorneys’ Fees and Litigation Costs**

23 WOBBLEWORKS shall reimburse ERF’s counsel for twenty five thousand dollars
24 (\$25,000.00) in ERF’s fees and costs incurred as a result of investigating and bringing this matter
25 to WOBBLEWORKS’ attention, and negotiating a settlement in the public interest. The payment
26 shall be split into two separate payments: (1) no later than fourteen (14) days after the Effective
27 Date, WOBBLEWORKS shall pay the amount of ten thousand dollars (\$10,000.00); (2) no later
28

1 than forty-five (45) days after the Effective Date, WOBBLWORKS shall pay the amount of
2 fifteen thousand dollars (\$15,000.00).

3 Each such attorney fee payment shall be made payable to "Brian Gaffney Attorney Client
4 Trust Account" and sent via USPS certified mail, return receipt requested, to the following
5 address:

6 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
7 446 Old County Road, Suite 100-310
8 Pacifica, California 94044

8 **4. RELEASE OF ALL CLAIMS**

9 **4.1 Release of WOBBLWORKS**

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

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

4 **4.2 WOBBLEWORKS' Release of ERF**

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

10 **4.3 California Civil Code Section 1542**

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

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

22 ERF and WOBBLEWORKS each acknowledge and understand the significance and
23 consequences of this specific waiver of California Civil Code section 1542.

24 **5. ENFORCEMENT OF JUDGMENT**

25 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
26 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
27 San Francisco County, giving the notice required by law, enforce the terms and conditions
28

1 contained herein. In the event that a dispute arises with respect to any of the provisions of this
2 Consent Judgment, the Parties shall meet and confer within 10 days after either Party receives
3 written notice of an alleged violation of this Agreement. In any proceeding brought by either
4 party to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
5 remedies as may be provided by law for any violation of Proposition 65 or this Consent
6 Judgment.

7 5.2 WOBBLEWORKS and any Releasees who have complied with the terms of this
8 Agreement, including but not limited to Paragraph 2.2, shall not be found to have violated this
9 Agreement because any other person has failed to provide warnings.

10 **6. MODIFICATION OF JUDGMENT**

11 6.1 Except as otherwise provided in Paragraphs 6.2, this Consent Judgment may be
12 modified only upon written agreement of the parties and upon entry of a modified Consent
13 Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry
14 of a modified Consent Judgment by the Court.

15 6.2 In the event that WOBBLEWORKS reformulates any of the Filament Products to
16 eliminate all styrene from such Filament Products, WOBBLEWORKS may remove the warning
17 statement from only such specific reformulated Filament Product(s) without being deemed in
18 breach of this Agreement. If WOBBLEWORKS elects to make such a change which would
19 essentially modify the Covered Products identified in this Agreement, WOBBLEWORKS shall
20 send written notice to the ERF addressees set forth in Section 14 of its decision and includes
21 identification of the reformulation of the product at least sixty (60) days in advance of
22 implementing any such changes. ERF shall have an opportunity to provide comments and to
23 meet and confer regarding the proposed changes before they are fully implemented.

24 6.3 This Section shall not preclude any rights of WOBBLEWORKS to seek modification
25 or other relief by the Court as provided by law should Proposition 65 be repealed in whole or in
26 part as it relates to styrene or as to the Covered Products.

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 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 this
11 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
13 and in the absence of any written objection by the Attorney General to the terms of this Consent
14 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.

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 written
10 notice of an alleged violation of this Agreement.

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

13
14 If to Ecological Rights Foundation: Fredric Evenson
15 Ecology Law Center
16 P.O. Box 1000
17 Santa Cruz, CA 95061
18 Email: evenson@ecologylaw.com

19 With a copy to: LAW OFFICES OF BRIAN GAFFNEY, A
20 Professional Corporation
21 446 Old County Road, Suite 100-310
22 Pacifica, California 94044
23 Email: brian@gaffneylegal.com

24 If to WOBBLEWORKS, INC.: Daniel Cowen
25 WobbleWorks, Inc.
26 89 5th Avenue, Suite 602
27 New York, New York 10003
28 Email: daniel@the3doodler.com

With a copy to: Christine Monroe
Greben & Associates
351 Paseo Nuevo, 2nd Floor
Santa Barbara, California 93101
Email: christine@grebenlaw.com

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

3
4 IT IS SO STIPULATED:

5
6 DATED: _____

ECOLOGICAL RIGHTS FOUNDATION

7 BY: _____

8 ITS: _____

9
10 DATED: July 17, 2020

WOBBLEWORKS, INC.

11 BY:  _____

12 DANIEL COWEN
13 CEO

14 IT IS SO ORDERED, ADJUDGED AND DECREED:

15 DATED: _____

16 _____
17 JUDGE OF THE SUPERIOR COURT

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

3
4 IT IS SO STIPULATED:

5
6 DATED: July 20, 2020

7 ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

8 BY: *James Lampion* EXEC. DIR.
9 JAMES LAMPOR, EXECUTIVE DIRECTOR

10 DATED: _____

11 WOBBLEWORKS, INC.

12 BY: _____
13 DANIEL COWEN
14 CEO

15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16 DATED: *Sept. 15, 2020*

Ethan P. Schulman

17 JUDGE OF THE SUPERIOR COURT

18 ETHAN P. SCHULMAN
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