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8 Counsel for Plaintiff
9 ECOLOGICAL RIGHTS FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 ECOLOGICAL RIGHTS FOUNDATION,

13 Plaintiff,

14 v.

15 WOLF & ASSOCIATES, INC. DBA AIRWOLF
3D, WOLF, INC., INGRAM MICRO INC.,
16 AMAZON.COM INC., & DOES 1 through 10,
inclusive,

17 Defendants.

Case No. CGC-21-596304

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANTS WOLF &
ASSOCIATES, INC. DBA AIRWOLF 3D
AND INGRAM MICRO INC.**

18
19 **1. INTRODUCTION**

20 1.1 On October 28, 2021, the Ecological Rights Foundation (“ERF”) acting on behalf
21 of itself and in the public interest, filed a Complaint for civil penalties and injunctive relief in
22 San Francisco Superior Court, Case No. CGC-21-596304 against *inter alia* defendant WOLF &
23 ASSOCIATES, INC. DBA AIRWOLF 3D (referred to herein as “WOLF”) and INGRAM
24 MICRO INC. (referred to herein as “INGRAM”). WOLF and INGRAM will collectively be
25 referred to herein as “WOLF and INGRAM” or “Defendants”). ERF alleges, among other
26 things, that Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement
27 Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”) by failing to
28 give clear and reasonable warnings to those residents of California who use filaments

1 incorporating a styrene monomer Defendants have distributed, marketed, and/or sold.

2 1.2 ERF alleges that Defendants have distributed, marketed, and/or sold in the State of
3 California filaments incorporating a styrene monomer. ERF contends that when California
4 residents use these filaments in the operation of 3D printing devices, they are exposed to styrene,
5 a chemical known to the State of California to cause cancer.

6 1.3 For purposes of this Consent Judgment, “Covered Products” means the following
7 filaments incorporating a styrene monomer: FLAME RETARDENT ABS (SKU# F25902, UPC
8 # 857842005928); HIPS (SKU# F09903, UPC # 857842005355); MG94 ABS (SKU# F06101,
9 UPC # 852971061012), Airwolf PREMIUM MG94 ABS SERIES FILAMENT 2.88MM
10 NATURAL (VPN: F06203SKU: 8XC012) that are or will be distributed, marketed, or sold
11 directly or indirectly by Defendants in California.

12 1.4 The Complaint is based upon a 60-Day Notice letter that ERF sent on August 4,
13 2021 to Defendants, the California Attorney General, all District Attorneys, and all City
14 Attorneys with populations exceeding 750,000 that Defendants were in violation of California
15 Health & Safety Code § 25249.6 for failing to warn California consumers and customers that the
16 Covered Products expose users to styrene (hereinafter “Notice.”) No public enforcer has
17 diligently prosecuted the allegations set forth in the Notice.

18 1.5 ERF alleges that Covered Products distributed, marketed or sold by Defendants
19 release Styrene into the air. ERF further alleges that people using the Covered Products in the
20 operation of 3D printing devices, and others standing in the same room, inhale styrene in the
21 normal course of use. Pursuant to Health and Safety Code Section 25249.8, Styrene is a
22 chemical known to the State of California to cause cancer. ERF alleges that Covered Products
23 manufactured, distributed or sold by Defendants for use in California require a warning under
24 Proposition 65, pursuant to Health and Safety Code Section 25249.6. The parties stipulate that
25 this Court has personal jurisdiction over Defendants as to the allegations of violations contained
26 in the Complaint, that venue is proper in the County of San Francisco, and that this Court has
27 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
28 contained in the Complaint.


1 1.6 This Consent Judgment resolves claims that are denied and disputed. WOLF
2 maintains that since at least November 2014, WOLF has included Material Safety Data Sheets
3 containing Proposition 65 warnings on the airwolf3d.com product pages relating to ABS printing
4 materials. ERF and Defendants enter into this Consent Judgment pursuant to a full and final
5 settlement of any and all claims that were raised in the Complaint, based on the Notice, arising
6 out of the facts or conduct related to Defendants alleged therein, for the purpose of avoiding
7 prolonged litigation. This Consent Judgment shall not constitute an admission with respect to
8 any material allegation of the Complaint, each and every allegation of which Defendants denies,
9 nor may this Consent Judgment, or compliance with it, be used as evidence of any wrongdoing,
10 misconduct, culpability or liability on the part of Defendants. However, this section shall not
11 diminish or otherwise affect the obligations, responsibilities, and duties of any party under this
12 Consent Judgment.

13 1.7 The term “Effective Date” means the date that this Consent Judgment is entered
14 by the Court.

15 **2. INJUNCTIVE RELIEF**

16 2.1 Warning Statement for Covered Products

17 (a) As of the Effective Date, WOLF will ensure that all Covered Products shall include
18 the following warning statement with the Covered Product as set forth below:

19 ** WARNING:** This Filament - when used in the operation of 3D printing devices or 3D
20 Pens - can expose you and others in the same room to styrene, a chemical known to the
21 State of California to cause cancer. www.P65Warnings.ca.gov.

22 **ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA.**

23 The warning requirements of Proposition 65 and compliance as outlined by the Office of
24 Environmental Health Hazard Assessment state that the manufacturer can choose whether to put
25 warning labels on their products or to provide notices to their distributors, importers or retail
26 sellers, and WOLF is not statutorily obligated to affix labels to their products. However, in the
27 spirit of settlement and compromise, WOLF will affix the above warning statement on the
28 Covered Products and packaging, and printed in the Covered Products’ instruction booklets (if

1 any).

2 (b) INGRAM will contractually require the manufacturers from which it purchases any
3 Covered Products to comply with all applicable laws, including without limitation, Proposition
4 65 in regards to the Covered Products.

5 (c) For all Covered Products that are sold on the internet to persons located in California,
6 within 14 calendar days of the Effective Date WOLF shall ensure that the above warning
7 statement is included in any online material promoting the Covered Products which may be
8 viewed by consumers in California, on each Covered Product's display page and by otherwise
9 prominently displaying the warning statement to the purchaser prior to completing the purchase.

10 (d) The warnings shall be displayed with such conspicuousness, as compared with other
11 words, statements, designs, or devices as to render them likely to be read and understood by an
12 ordinary individual under customary conditions of purchase or use. The type size of the warning
13 must be legible, and no smaller than any other warning provided with the Covered Products and
14 in no case less than twelve (12) point font. The words "WARNING" and "ALWAYS USE THIS
15 PRODUCT IN A WELL-VENTILATED AREA" shall be in upper case letters and bold as in the
16 above warnings in this paragraph. The warning symbol to the left of the word "WARNING"
17 must be a black exclamation point in a yellow equilateral triangle with a black outline, except
18 that if the sign, label, or booklet for the Products does not use the color yellow, the symbol may
19 be in black and white.

20 2.2 Notice to Downstream Releasees

21 The warning requirements of Proposition 65 and compliance as outlined by the Office of
22 Environmental Health Hazard Assessment do not require Defendants to provide notices to
23 downstream releasees. However, in the spirit of settlement and compromise, WOLF will, with
24 reasonable assistance from INGRAM, provide notices to the Downstream Defendant Releasees
25 no later than 30 days following the Effective Date, by mail, email, or other notice on its
26 letterhead to all WOLF's customers and INGRAM's customers, of the Covered Products during
27 the past three years for whom Defendants have contact information and shall provide as follows:
28

1 This letter is sent as a **notice and warning** that your California sales inventory
2 may include Wolf & Associates styrene filaments which may expose users to
Styrene, a chemical known to the State of California to cause cancer.

3 The notice provided by Defendant pursuant to this section shall also recommend the
4 Downstream Defendant Releasees to include online warnings consistent with Section 2.1(a), and
5 attach stick on labels to the front of Covered Products in the inventory of the Downstream
6 Defendant Releasees.

7 3. **SETTLEMENT PAYMENTS**

8 3.1 Civil Penalties and Payments In Lieu of Penalties

9 Pursuant to Health and Safety Code section 25249.7(b)(2), Defendants shall jointly pay a
10 one-time payment of \$200.00 in civil penalties. The penalty payment will be allocated in
11 accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of
12 the penalty amount remitted to the California Office of Environmental Health Hazard
13 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Ecological Rights
14 Foundation. Defendants will provide these payments in two checks for the following amounts
15 made payable to: 1) “OEHHA” in the amount of \$150.00 and 2) “Ecological Rights Foundation”
16 in the amount of \$50.00.

17 The payments to OEHHA and Ecological Rights Foundation will be paid by WOLF and
18 sent no later than fourteen (14) calendar days after the Effective Date. All payments shall be sent
19 via USPS certified mail, return receipt requested, to the following addresses: The payment to
20 Ecological Rights Foundation shall be delivered to:

21 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
22 446 Old County Road, Suite 100-310
23 Pacifica, California 94044

24 The payment to OEHHA shall be delivered to:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

28 3.2 Attorneys Fees and Litigation Costs

1 Defendants shall jointly pay ERF's counsel \$14,800.00 for ERF's fees and costs incurred
2 in this matter. The payments shall be made payable to "LAW OFFICES OF BRIAN GAFFNEY
3 APC". Payments shall be made with the payment schedule as follows:

4 Payment 1: \$2,800.00 due fourteen (14) calendar days after the Effective Date.

5 Payment 2: \$3,000.00 due thirty (30) calendar days after the Effective Date.

6 Payment 3: \$3,000.00 due sixty (60) calendar days after the Effective Date.

7 Payment 4: \$3,000.00 due ninety (90) calendar days after the Effective Date.

8 Payment 5: \$3,000.00 due one hundred twenty (120) calendar days after the Effective
9 Date.

10 The above payments shall be paid by WOLF, and sent via USPS certified mail, return
11 receipt requested to the following address:

12 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
13 446 Old County Road, Suite 100-310
14 Pacifica, California 94044

15 4. **RELEASE OF CLAIMS**

16 4.1 Release of Defendant

17 ERF acting on its own behalf and on behalf of its past and current agents, representatives,
18 attorneys, successors and/or assignees (all of whom, collectively, are defined as the "ERF
19 Releasers"), releases WOLF and INGRAM, and their respective parents, subsidiaries, assigns,
20 predecessors, successors, affiliated entities, members, marketplaces, directors, officers, agents,
21 employees, insurers, and attorneys, and each entity to whom WOLF or INGRAM directly or
22 indirectly distributes or sells the Covered Products, including, but not limited to, downstream
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees,
24 all other downstream entities in the distribution chain, and the predecessors, successors, and
25 assigns of any of them (collectively, the "Downstream Defendant Releasees"), from all claims
26 raised in the Notice and in the Complaint through the Effective Date and all actions, causes of
27 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and
28 demands against WOLF and INGRAM and/or any of the Downstream Defendant Releasees of

1 any nature, character, or kind, limited to and arising out of claims based on alleged failure to
2 provide Proposition 65 warnings for alleged exposures to styrene from use of the Covered
3 Products. This settlement is a full, final, and binding resolution of all claims that were asserted
4 or could have been asserted against WOLF or INGRAM and/or the Downstream Defendant
5 Releasees for the failure to provide Proposition 65 warnings for alleged exposures to styrene
6 from use of the Covered Products.

7 4.2 Release of ERF and ERF Releasors

8 WOLF and INGRAM, on behalf of itself and its Releasees, hereby waives any and all
9 claims against ERF and the ERF Releasors, for any and all actions taken or statements made by
10 ERF and/or the ERF Releasors, whether in the course of investigating claims or otherwise
11 seeking to enforce Proposition 65, against WOLF and INGRAM in this matter with respect to the
12 Covered Products.

13 4.3 California Civil Code Section 1542

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

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
25 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

26 ERF and WOLF and INGRAM each acknowledge and understand the significance and
27 consequences of this specific waiver of California Civil Code section 1542.

28 5. **ENFORCEMENT OF JUDGMENT**

1 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
2 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
3 San Francisco County, giving the notice required by law, enforce the terms and conditions
4 contained herein. In the event that a dispute arises with respect to any of the provisions of this
5 Consent Judgment, the Parties shall meet and confer within 14 calendar days after either Party
6 receives written notice of an alleged violation of this Agreement. In any proceeding brought by
7 either party to enforce this Consent Judgment, such party may seek whatever fines, costs,
8 penalties or remedies as may be provided by law for any violation of this Consent Judgment.

9 5.2 This Court shall retain jurisdiction of this matter to implement and enforce the
10 terms this Consent Judgment.

11 **6. SERVICE ON THE ATTORNEY GENERAL**

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

18 **7. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
20 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
21 provisions remaining shall not be adversely affected.

22 **8. GOVERNING LAW**

23 The validity, construction and performance of this Consent Judgment shall be
24 governed by the law of the State of California.

25 **9. NOTICE**

26 **9.1 Notice of Alleged Violation of this Agreement**

27 In the event that a dispute arises with respect to any of the provisions of this Agreement,
28 the Parties shall meet and confer within 14 calendar days after either Party receives written

1 notice of an alleged violation of this Agreement.

2 **9.2 Notice Provided Pursuant to this Agreement**

3 Unless specified herein, all correspondence and Notice required to be provided pursuant
4 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) USPS
5 Priority Mail; or (ii) overnight or two-day courier on any party by the other party to the
6 following addresses:

7
8 For WOLF:

9 Erick Wolf
10 Airwolf 3D
11 6580 Spencer Street, B4
12 Las Vegas, NV 89119

13 With a copy to:
14 Jessica Helliwell
15 The Helliwell Law Firm
16 27758 Santa Margarita Pkwy, # 509
17 Mission Viejo, CA 92691

18
19 For INGRAM:

20 General Counsel
21 Ingram Micro Inc.
22 3351 Michelson Drive, Suite 100
23 Irvine, California 92612

24 With a copy to:
25 Jessica Helliwell
26 The Helliwell Law Firm
27 27758 Santa Margarita Pkwy, # 509
28 Mission Viejo, CA 92691

For Ecological Rights Foundation:

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061

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

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

3 **10. ENTIRE AGREEMENT**

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

10 **11. EXECUTION AND COUNTERPARTS**

11 This Consent Judgment may be executed in counterparts and by PDF signature, which
12 when taken together shall constitute one document.

13 **12. MODIFICATION**

14 This Consent Judgment may be modified only by a written agreement of the Parties, and
15 upon entry of a modified Consent Judgment by the Court thereon.

16 **13. COURT APPROVAL**

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

19 **14. AUTHORIZATION**

20 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
21 party he or she represents to enter into this Consent Judgment, have read, understood and agree
22 to all the terms and conditions contained in this Consent Judgment, and are authorized to execute
23 it on behalf of the party represented and legally to bind that party.

24 AGREED TO:

25 Date: 5-22-22

26 By: Erick Wolf
27 Erick Wolf, President
28 WOLF & ASSOCIATES, INC. dba
AIRWOLF 3D

1 AGREED TO:

2 Date: _____

3 By: _____

4 ALAIN MONIE
5 Chief Executive Officer
6 INGRAM MICRO, INC.

7 AGREED TO:

8 Date: 5/24/2022

9 By: James Lampport
10 James Lampport, Executive Director
11 Ecological Rights Foundation

12 IT IS SO ORDERED, ADJUDGED AND DECREED:

13 DATED: _____

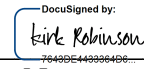
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15 JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: _____

By:  _____

Name:
Title:
INGRAM MICRO, INC.

AGREED TO:

Date: _____

By: _____
James Lamport, Executive Director
Ecological Rights Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT