

1 Brian Gaffney (State Bar No. 168778)
2 LAW OFFICES OF BRIAN GAFFNEY APC
3 446 Old County Road, Suite 100-310
4 Pacifica, CA 94044
5 Telephone: (650) 219 3187
6 Email: brian@gaffneylegal.com

7 Fredric Evenson (State Bar No. 198059)
8 ECOLOGY LAW CENTER
9 P.O. Box 1000
10 Santa Cruz, California 95061
11 Telephone: (831) 454-8216
12 Email: evenson@ecologylaw.com

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 AMAZON.COM, INC., et al.,

21 Defendants.

22 Case No. CGC-19-580007

23 [PROPOSED] CONSENT JUDGMENT
24 AS TO PLATINUM MICRO, INC.

25 **1. INTRODUCTION**

26 1.1 On October 15, 2019, the Ecological Rights Foundation (“ERF”) acting on behalf
27 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
28 (“Complaint”) in San Francisco Superior Court, Case No. CGC-19-580007 against defendant
PLATINUM MICRO, INC. (also referred to herein as “PLATINUM MICRO” 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 PLATINUM MICRO 3D pens intended to be used with filaments

1 incorporating a styrene monomer - which 3D pens Defendant distributes, markets and/or sells in
2 the State (such PLATINUM MICRO 3D pens hereinafter are referred to as “Covered Products”).
3 The Complaint further alleges that use of such Covered Products expose people to Styrene, a
4 chemical known to the State of California to cause cancer. The Complaint was based upon a 60-
5 Day Notice letter, sent by ERF on April 24, 2019 to PLATINUM MICRO, the California
6 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
7 750,000.

8 Defendant is a business that employs more than ten persons, and distributes, markets and
9 sells Covered Products. Covered Products that Defendant distributes, markets and sells heat the
10 filaments incorporating a styrene monomer and thus release Styrene into the air. People using the
11 Covered Products, and others standing in the same room, inhale styrene in the normal course of
12 use. Pursuant to Health and Safety Code Section 25249.8, Styrene is a chemical known to the
13 State of California to cause cancer. ERF alleges that Covered Products that are distributed,
14 marketed or sold by Defendant for use in California require a warning under Proposition 65,
15 pursuant to Health and Safety Code Section 25249.6. For purposes of this Consent Judgment,
16 the parties stipulate that this Court has jurisdiction over the allegations of violations contained in
17 the Complaint and personal jurisdiction over PLATINUM MICRO, that venue is proper in the
18 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
19 full settlement and resolution of the allegations contained in the Complaint.

20 1.2 This Consent Judgment resolves claims that are denied and disputed. The parties
21 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
22 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
23 shall not constitute an admission with respect to any material allegation of the Complaint, each
24 and every allegation of which PLATINUM MICRO denies, nor may this Consent Judgment, or
25 compliance with it, be used as evidence of any wrongdoing, misconduct, culpability or liability
26 on the part of PLATINUM MICRO or its distributors, wholesalers, retailers, franchisees,
27
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1 cooperative members, and licensees of the Covered Products, including Walmart, Inc. and its
2 affiliates.

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 distributed, marketed or offered
8 for sale in California, PLATINUM MICRO shall include the following warning statements:

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

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

13 (b) PLATINUM MICRO shall affix the Section 2.1(a) warning statements on the
14 Covered Products' packaging, and print the warning statement in the Covered Products'
15 instruction booklets (if any). PLATINUM MICRO shall also ensure that the Section 2.1(a)
16 warning statement is included in any online material promoting the Covered Products which may
17 be viewed by consumers in California - on each Covered Products' display page or by otherwise
18 prominently displaying the warning statement to the purchaser prior to completing the purchase.
19 The warnings shall be displayed with such conspicuousness, as compared with other words,
20 statements, designs, or devices as to render them likely to be read and understood by an ordinary
21 individual under customary conditions of purchase or use. Warnings may be contained in the
22 same section of the instruction booklets that contain other safety warnings concerning the use of
23 the Covered Products. The type size of the warning must be legible, and no smaller than any
24 other warning provided with the Covered Products, and in no case less than twelve (12) point
25 font.

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

1 exclamation point in a yellow equilateral triangle with a black outline.

2 **2.2 Notice to Past Customers**

3 No later than 14 days following the Effective Date, PLATINUM MICRO shall provide
4 notice by mail on its letterhead to all of its customers of the Covered Products during the past
5 three years as follows:

6 This letter is sent as a **notice and warning** pursuant to Proposition 65 that your use of
7 PLATINUM MICRO' 3D Pens or TITANIUM MICRO 3D Pens and/or 3D Pen Kits with
8 filaments containing styrene ("ABS filaments") (even if purchased from other vendors) may
9 expose users to Styrene, a chemical known to the State of California to cause cancer.

10 **3. SETTLEMENT PAYMENTS**

11 **3.1 Civil Penalties and Payments In Lieu of Penalties**

12 Pursuant to Health and Safety Code section 25249.7(b)(2), PLATINUM MICRO shall
13 pay \$1,500.00 in civil penalties. The penalty payment will be allocated in accordance with
14 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount
15 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and
16 the remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will
17 provide these payments in two checks for the following amounts made payable to: 1) "OEHHA"
18 in the amount of \$1,125.00 and 2) "Ecological Rights Foundation" in the amount of \$375.00.

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

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

23 Fredric Evenson
24 109 Quarry Lane
25 Santa Cruz, CA 95060

26 The payment to OEHHA shall be delivered to:

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

1 **3.2 Attorneys' Fees and Litigation Costs**

2 PLATINUM MICRO shall reimburse ERF's counsel for \$18,000.00 in ERF's fees and
3 costs incurred as a result of investigating and bringing this matter to PLATINUM MICRO's
4 attention, and negotiating a settlement in the public interest. The payment shall be made payable
5 to "Brian Gaffney Attorney Client Trust Account" and sent no later than fourteen (14) days after
6 the Effective Date via USPS certified mail, return receipt requested, to the following address:

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

10 **4. RELEASE OF ALL CLAIMS**

11 **4.1 Release of PLATINUM MICRO**

12 ERF acting on its own behalf and on behalf of its past and current agents, representatives,
13 attorneys, successors and/or assignees (all of whom, collectively, are defined as the "ERF
14 Releasers"), releases PLATINUM MICRO and its distributors, wholesalers, customers, retailers,
15 franchisees, cooperative members, and licensees of the Covered Products including but not
16 limited to Walmart, Inc. and its affiliates from all claims through the Effective Date based on
17 alleged failure to provide Proposition 65 warnings about alleged exposures to Styrene from use
18 of the Covered Products. This settlement is a full, final and binding resolution of all claims that
19 were or could have been asserted against PLATINUM MICRO for failure to provide Proposition
20 65 warnings for alleged exposures to Styrene contained in the 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 Releasers 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 PLATINUM MICRO of any nature, character, or kind, whether known or
26 unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure
27 to styrene from use of the Covered Products.
28

1 **4.2 PLATINUM MICRO' Release of ERF**

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

7 **4.3 California Civil Code Section 1542**

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

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

19 ERF and PLATINUM MICRO each acknowledge and understand the significance and
20 consequences of this specific waiver of California Civil Code section 1542.

21 **5. ENFORCEMENT OF JUDGMENT**

22 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
23 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
24 San Francisco County, giving the notice required by law, enforce the terms and conditions
25 contained herein. In the event that a dispute arises with respect to any of the provisions of this
26 Consent Judgment, the Parties shall meet and confer within 10 days after either Party receives
27 written notice of an alleged violation of this Agreement. In any proceeding brought by either
28

1 party to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
2 remedies as may be provided by law for any violation of Proposition 65 or this Consent
3 Judgment.

4 **6. MODIFICATION OF JUDGMENT**

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

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

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

11 **8. AUTHORITY TO STIPULATE**

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

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

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

22 **10. ENTIRE AGREEMENT**

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

3 **11. GOVERNING LAW**

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

7 **12. EXECUTION AND COUNTERPARTS**

8 12.1 This Consent Judgment may be executed in counterparts which taken together shall
9 be deemed to constitute one document.

10 **13. COURT APPROVAL**

11 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
12 effect, and cannot be used in any proceeding for any purpose.

13 **14. NOTICES**

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

17 14.2 Any notices or payments due under this Consent Judgment shall be sent by USPS
18 certified mail, return receipt requested.

19
20 If to Ecological Rights Foundation: Fredric Evenson
21 Ecology Law Center
22 P.O. Box 1000
23 Santa Cruz, CA 95061

24 With a copy to:
25 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
26 446 Old County Road, Suite 100-310
27 Pacifica, California 94044

28 If to PLATINUM MICRO, INC.:
Barbara R. Adams
CLARK HILL LLP
One Embarcadero Center, Suite 400
San Francisco, CA 94111

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: August 6, 2020

PLATINUM MICRO, INC.

11 BY: 
12 CHALERMCHAI SIRICHALERMCHAI
13 PRESIDENT

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: 8/10/20

7 ECOLOGICAL RIGHTS FOUNDATION
8 *Ecological Rights Foundation*
9 BY: *James Lampion T.* EXEC. DIR.
10 JAMES LAMPORT, EXECUTIVE DIRECTOR

11
12 DATED: _____

13 PLATINUM MICRO, INC.
14 BY:
15 CHALERMCHAI SIRICHALERMCHAI
16 PRESIDENT

17 IT IS SO ORDERED, ADJUDGED AND DECREED:

18 DATED: _____

19 _____
20 JUDGE OF THE SUPERIOR COURT