

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“Agreement”) is entered into by and between Ecological Rights Foundation and Office Depot, LLC (“Office Depot”), with Ecological Rights Foundation and Office Depot each individually referred to as a “Party” and both collectively as the “Parties.” Ecological Rights Foundation is a California non-profit corporation dedicated to protecting human and environmental health, including raising awareness of, and reducing exposures to, toxic chemicals. Office Depot is a retailer of consumer products.

1.2 Notice of Violation

On May 24, 2019, Ecological Rights Foundation served Office Depot and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Office Depot violated Proposition 65 when it failed to warn people in California that use of filaments incorporating a styrene monomer, with 3D printers or 3D pens, will expose them to styrene, a chemical known to the State of California to cause cancer (“the Notice”). No public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.3 Covered Products

The products covered by this Settlement Agreement are filaments incorporating a styrene monomer used in the operation of 3D printers or 3D pens, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments – that are manufactured, sold, or distributed for sale in California by Office Depot (hereinafter referred to as “Covered Products”).

1.4 General Allegations

Ecological Rights Foundation has alleged in its action entitled *Ecological Rights Foundation v. 3D Print Of North America, Inc., et al.* filed in the San Francisco

Superior Court and bearing Case No. CGC-19-580009 (the “Action”), that Office Depot employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), that Office Depot manufactures, sells, and distributes for sale in California the Covered Products, that styrene is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, and that Office Depot failed to provide the warning required by Proposition 65 for exposures to styrene.

1.5 No Admission, and Denial of Allegations

Office Depot denies the material, factual, and legal allegations contained in the Notice and the Action and maintains that all of the Covered Products that it has sold and distributed in California have been sold, and are, in compliance with all laws, including because Office Depot alleges that it is a “retail seller” as that term is defined and used in 27 Cal. Code of Regulations §25600.2, and that it (1) has not sold any of the Covered Products under a brand or trademark that is owned or licensed by it or any affiliated entity, (2) has not knowingly introduced a listed chemical into the Covered Products, or knowingly caused a listed chemical to be created in the Covered Products, (3) has not covered, obscured or altered a warning label that has been affixed to the Covered Products pursuant to subsection (b), (4) has not received a notice or warning materials for the exposure pursuant to subsections (b) and (c) and nor sold the Covered Products without conspicuously posting or displaying the warning; and (5) (a) has no actual knowledge of the potential consumer product exposure requiring the warning, and (b) there is a manufacturer, producer, packager, importer, supplier, or distributor of the product who: (A) is a “person in the course of doing business” under Section 25249.11(b) of the Act, and (B) has designated an agent for service of process in California, or has a place of business in California. Additionally, Office Depot contends that it has not taken possession of the Covered Products as a result of sales practices which result in the Covered Products being shipped directly to customers. Furthermore,

Office Depot contends that any claim for civil penalties or injunctive relief is barred by the applicable statutes of limitations, and that the claims asserted have been released through settlements with other parties that have become effective either by the approval of government authorities expressly or through the passage of time.

As such, nothing in this Settlement Agreement shall be construed as an admission by Office Depot of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Office Depot of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Office Depot. This Section shall not, however, diminish or otherwise affect Office Depot's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this Settlement Agreement is approved by the court in the Action.

1.7 Dismissal of the Action

On or before thirty (30) days after the Effective Date, Ecological Rights Foundation shall dismiss the Action with prejudice as to Office Depot. Upon dismissal, each party shall bear its own fees and costs except as to the payments and other obligations under this Agreement which shall remain operative notwithstanding the dismissal.

2. OBLIGATION OF NOTICE TO MANUFACTURERS OR DISTRIBUTORS

2.1 Notice Obligation

Within twenty-one (21) days after the Effective Date, Office Depot agrees to send, by email to the extent there is any existing email contact related to the purchase and sale of Covered Products, and U.S. certified or registered mail on Office Depot letterhead, to its upstream manufacturers or distributors of the Covered Products Office Depot sold within the four years preceding the Effective Date the following notice:

Office Depot is sending this letter pursuant to a Proposition 65 settlement with Ecological Rights Foundation wherein Office Depot agreed to notify its manufacturers or distributors of Covered Products that Ecological Rights Foundation contends you must have a legible Proposition 65 warning online and on packaging of all your filaments incorporating a styrene monomer used in the operation of 3D printers or 3D pens, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. Ecological Rights Foundation contends the Proposition 65 warning must specifically warn that when using filaments incorporating a styrene monomer, including ABS filaments, PC-ABS filaments, and HIPS filaments, users of those filaments may be exposed to styrene, a chemical known to the State of California to cause cancer.

Plaintiff's counsel may also provide to Office Depot information concerning styrene and the release of styrene from the Covered Products on or before the fifth business day after the Effective Date (the "Styrene Information"). The Styrene Information shall be provided to Office Depot through its counsel in an electronic graphic form (such as .pdf or .tif file). Office Depot shall provide the Styrene Information to its manufacturers or distributors of the Covered Products simultaneously with providing the above notice.

2.2 Product Warnings

Except to the extent that 27 California Code of Regulations Section 25600.2 is modified or repealed or otherwise is no longer applicable to such Covered Products or the sale of such Covered Products, Office Depot agrees to comply with Health & Safety Code § 25249.5 et seq. and 27 California Code of Regulations Section 25600.2 with respect to Covered Products it sells in the future, provided, however, that this paragraph shall not be deemed to impose any obligation on Office Depot as a retail seller that is more burdensome than that required by 27 California Code of Regulations Section

25600.2.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Office Depot agrees to pay, whether personally or on its behalf by another, \$200.00 in civil penalties no later than ten (10) business days after the Effective Date, or the date after which Office Depot receives W-9's for the payees, whichever is later. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Ecological Rights Foundation, and delivered to the address in Section 3.3 herein. Office Depot, whether personally or on its behalf by another, will provide its payment in two checks made payable as follows: (1) "OEHHA" in the amount of \$150.00; and (2) "Ecological Rights Foundation" in the amount of \$50.00. The payments to OEHHA and ERF shall be sent via USPS certified mail, return receipt requested, to the following addresses. The payment to ERF shall be delivered to:

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

The payment to OEHHA shall be delivered to:

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

3.2 Attorneys' Fees and Costs

No later than ten (10) business days after the Effective Date or such later date when Law Offices Of Brian Gaffney APC provides a W-9 for the recipient of the

following payment, Office Depot agrees to pay, whether personally or on its behalf by another, \$12,800.00, in the form of a check made payable to “Law Offices Of Brian Gaffney, APC” as and for all fees and costs incurred investigating, bringing this matter to the attention of Office Depot’s management, and negotiating a settlement via USPS certified mail, return receipt requested, to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Ecological Rights Foundation’s Release of Proposition 65 Claims

Ecological Rights Foundation acting on its own behalf, and *not* on behalf of the public, releases Office Depot, its parents, subsidiaries, affiliated entities under common ownership by its ultimate parent corporation, directors, officers, agents employees, attorneys, and each entity to whom Office Depot has directly or indirectly distributed or sold the Covered Products, including, but not limited, to downstream distributors, wholesalers, and retailers (all whether those persons’ and entities’ identities are known or unknown), and customers, franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 and its implementing statutes and regulations raised in the Notice or in the Complaint through the Effective Date based on or related to or arising out of sales of the Covered Products. The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Office Depot.

4.2 Ecological Rights Foundation’s Individual Release of Claims

Ecological Rights Foundation, in its individual capacity only and *not* in its representative capacity, provides a release herein which shall be effective as a full and

final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Ecological Rights Foundation raised in the Notice or in the Complaint of any nature, character, or kind, whether known or unknown, suspected or unsuspected, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to styrene in the Covered Products manufactured, imported, distributed, or sold by Office Depot prior to the Effective Date. The Parties understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Covered Products, or any component parts thereof, or any distributors or suppliers who sold the Covered Products, or any component parts thereof to Office Depot. Nothing in this Section affects Ecological Rights Foundation's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Office Depot's manufacture, distribution, or sale of Covered Products.

4.3 Representations and Warranties Concerning Other Clients and Claims

By their execution of this Agreement, except to the extent such agreement may be forbidden by the equivalent of Rule 5.6(b) of the ABA Model Rules of Professional Conduct or any other applicable ethical rules or legal requirements, Ecological Rights Foundation and its counsel represent and warrant that, to the best of their knowledge, they have not had any communication with any other person who intends to bring a claim against Office Depot on any matter. Ecological Rights Foundation and its counsel further represent and warrant that they are not aware, at the time of their execution of this Agreement, of any other client(s) currently represented by Ecological Rights Foundation's counsel, or any persons or entities who are currently in the client intake process or have contacted Ecological Rights Foundation's counsel but have not yet hired them, who have a potential claim against Office Depot. In addition, Ecological Rights Foundation's counsel represents and warrants that they currently do not represent any other person(s) and are not soliciting for any other person(s) with claims against Office Depot, and affirm that Ecological Rights Foundation's counsel does not currently

represent any other individual who it knows has claims against Office Depot. Ecological Rights Foundation's counsel agrees and understands that this representation is a material part of the consideration that Office Depot receives in exchange for Office Depot's execution of this Agreement and its payment of the consideration stated above as attorney's fees.

4.4 Office Depot's Release of Ecological Rights Foundation

Office Depot, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Ecological Rights Foundation and its attorneys and other representatives, for any and all actions taken or statements made by Ecological Rights Foundation and its attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.5 Waiver of Civil Code Section 1542

Each of the releasing parties identified in Section 4.1, 4.2 and 4.4 expressly assumes and accepts the risk that any fact with respect to any matter covered by this Agreement could hereafter be found to be other than, or different from, the facts now believed by any of the Parties to be true. The releasing parties agree that the release provisions hereof shall remain effective notwithstanding any such difference(s) in fact(s). This Agreement shall not be subject to attack on the ground that any or all of the theories or factual assumptions used for negotiating purposes are for any reason inaccurate or inappropriate.

The releasing parties, after reviewing the provisions of Section 1542 of the California Civil Code set out below, hereby expressly waive any rights or protections provided by said Section 1542, and expressly acknowledge that this Agreement and the releases contained in it include claims both known and unknown to the releasing parties as of the time of execution of this Agreement. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF 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.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Office Depot may provide written notice to Ecological Rights Foundation of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

<p>For Office Depot:</p> <p>Office Depot Attn: General Counsel 6600 N Military Trl Boca Raton, FL 33487</p>	<p>For Ecological Rights Foundation:</p> <p>Fredric Evenson Ecology Law Center P.O. Box 1000 Santa Cruz, CA 95061 evenson@ecologylaw.com</p> <p>With a copy to: Law Offices Of Brian Gaffney, APC 446 Old County Rd #100-310 Pacifica, CA 94044</p>
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Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

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

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. **COMPLIANCE WITH HEALTH & SAFETY CODE§ 25249.7(f)**

Ecological Rights Foundation and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

12. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms

and conditions of this Settlement Agreement.

AGREED TO:

DATED: May __, 2022

For Ecological Rights Foundation:

By: _____

Name: _____

Its: _____

For Office Depot:

DATED: May __, 2022

5/10/2022

By: Alicia Trinley

Name: Alicia Trinley

Its: VP, Associate General Counsel

Approved as to form and content, and as to the representations and warranties contained in Section 4.3:

Counsel for Ecological Rights Foundation:

DATED: May __, 2022

By: _____
Brian Gaffney
Law Offices of Brian Gaffney, APC

Counsel For Office Depot, LLC:

DATED: May 10, 2022

By: Michael Geibelson
Michael A. Geibelson
Robins Kaplan LLP

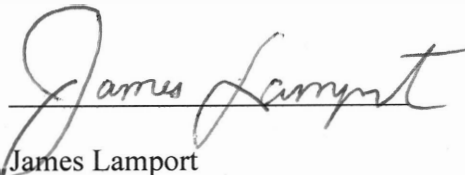
and conditions of this Settlement Agreement.

AGREED TO:

DATED: May 11, 2022

For Ecological Rights Foundation:

By:



Name: James Lamport

Its: Executive Director

For Office Depot:

DATED: May __, 2022

By: _____

Name: _____

Its: _____

Approved as to form and content, and as to the representations and warranties contained in Section 4.3:

Counsel for Ecological Rights Foundation:

DATED: May __, 2022

By:

Brian Gaffney
Law Offices of Brian Gaffney, APC

Counsel For Office Depot, LLC:

DATED: May __, 2022

By:

Michael A. Geibelson
Robins Kaplan LLP

and conditions of this Settlement Agreement.

AGREED TO:

DATED: May __, 2022

For Ecological Rights Foundation:

By: _____

Name: _____

Its: _____

For Office Depot:

DATED: May __, 2022

5/10/2022

By: Alicia Trinley

Name: Alicia Trinley

Its: VP, Associate General Counsel

Approved as to form and content, and as to the representations and warranties contained in Section 4.3:


Counsel for Ecological Rights Foundation:

DATED: May 10, 2022

By: 
Brian Gaffney
Law Offices of Brian Gaffney, APC

Counsel For Office Depot, LLC:

DATED: May 10, 2022

By: 
Michael A. Geibelson
Robins Kaplan LLP