

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Ecological Rights Foundation (“ERF”) and Intguard Inc. dba Intservo (“Intguard”).

1.2 On April 24, 2019 ERF served AMAZON.COM INC. (“Amazon”) and various public enforcement agencies with a Notice of Violations of the California Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”), California Proposition 65 Notice No. 2019-00886 (“Notice”) alleging that Amazon violated Proposition 65 by failing to give clear and reasonable warnings to those residents of California who use filaments incorporating a styrene monomer. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On October 15, 2019, ERF filed suit against Amazon in San Francisco Superior Court Case No. CGC-19-580009 (the “Action”).

1.3 ERF alleges that Amazon through Intguard has manufactured, imported, distributed, marketed and/or sold in the State of California filaments incorporating a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-ABS) filaments, and high impact polystyrene (HIPS) filaments. ERF contends that when California residents use these filaments they are exposed to styrene, a chemical known to the State of California to cause cancer. ERF alleges that Covered Products, as defined in Section 1.5 *infra*, manufactured, imported, distributed, marketed and/or sold by Intguard release styrene into the air. ERF further alleges that people using the Covered Products, and others standing in the same room, inhale styrene in the normal course of use. Pursuant to Health and Safety Code Section 25249.8, Styrene is a chemical known to the State of California to cause cancer. ERF alleges that Covered Products manufactured, imported, distributed, marketed and/or sold by Intguard for use in California require a warning under Proposition 65, pursuant to Health and Safety Code section 25249.6.

1.4 Intguard denies all the material, factual and legal allegations made in the Notice and Action and maintains that all of the products that it has imported, sold and distributed in California, including through Amazon, have been and are in compliance with all laws. Intguard enters into this Agreement on behalf of Amazon in regard to the Covered Products, with whom Intguard has an indemnification and defense agreement for the Covered Products. Through this Settlement Agreement, Intguard is accepting any alleged liability for Amazon and enters into this Agreement for the sole purpose of resolving disputed claims and avoiding protracted litigation.

1.5 For purposes of this Settlement Agreement, “Covered Products” means the following specific products: (1) eSUN 1.75mm Brown ABS 3D Printer Filament 1kg Spool (2.2lbs), Brown; (2) eSUN 1.75mm Brown ABS 3D Printer filament 1kg Spool (2.2lbs), Black; (3) eSUN 1.75mm Blue ABS 3D Printer filament 1kg Spool (2.2lbs), Blue; (4) eSUN 1.75mm Clear ABS 3D Printer Filament 1kg Spool (2.2lbs), Glass ABS; (5) eSUN 1.75mm ASA 3D Printer Filament 0.5KG Spool, 0.5KG Natural White; (6) eSUN ABS Gold 1.75mm filament 1kg/2.2lb Spool for 3D Pen/Printer. 3doodler,lulzbot,maker; (7) eSUN 1.75mm ASA 3D Printer Filament 1KG Spool, 1KG Black; (8) eSUN 1.75mm Blue ABS+ 3D Printer Filament 1kg Spool (2.2lbs), Blue; (9) eSUN 1.75mm Green ABS 3D Printer Filament 1kg Spool (2.2lbs), Green; (10) eSUN 1.75mm Glow in The Dark ABS 3D Printer Filament 1kg Spool (2.2lbs) Luminous Green; (11) eSUN 1.75mm Natural ABS 3D Printer Filament 1kg Spool (2.2lbs), Natural; (12) eSUN 1.75mm Orange ABS 3D Printer filament 1kg Spool (2.2lbs), Orange; (13) eSUN 1.75mm Peak Green ABS 3D Printer filament 1kg Spool (2.2lbs), Peak Green; (14) eSUN 1.75mm Pink ABS 3D Printer filament 1kg Spool (2.2lbs), Pink; (15) eSUN 1.75mm Purple ABS 3D Printer filament 1kg Spool (2.2lbs), Purple; (16) eSUN 1.75mm Red ABS 3D Printer Filament 1kg Spool (2.2lbs), Red; (17) eSUN 1.75mm Silver ABS 3D Printer Filament 1kg Spool (2.2lbs), Silver; (18) eSUN 1.75mm White ABS 3D Printer Filament 1kg Spool (2.2lbs), White; (19) eSUN Hips Filament 1.75mm White 1kg (2.2lb) Spool; (20) eSUN 3mm White Hips 3D Printer Filament 1KG Spool (2.2lbs), White; (21) eSUN 3mm White ABS 3D Printer Filament 1kg Spool (2.2lbs), White; (22) eSUN 3mm

Blue ABS 3D Printer filament 1kg Spool (2.2lbs), Blue; (23) eSUN 3mm Black ABS+ 3D Printer filament 1kg Spool (2.2lbs), Black; (24) eSUN 3mm Black ABS 3D Printer Filament 1kg Spool (2.2lbs), Actual Diameter 2.85mm +/- 0.05mm, Black; (25) eSUN 1.75mm Yellow ABS 3D Printer Filament 1kg Spool (2.2lbs), Yellow; (26) eSUN 1.75mm White ABS+ 3D Printer Filament 1kg Spool (2.2lbs), White. Without limiting the Covered Products, the Parties note that that when sold on www.amazon.com the Covered Products are identified by the following “ASIN NUMBERS” B00MVIPT8, B00MV7T25E, B00MVIPIXI, B07QDKKZST, B07BSPR8K5, B00VDW90MS, B07KKP7713, B01C2COMA2, B00MVIQ710, B00MVIQ9T0, B00MVIP85Q, B00MVIPAK4, B00MVIPL5I, B00MVIPCQ6, B00MVIPR5M, B00MVIPEQ4, B00MVIPH0W, B00MV7T3TO, B00NOBYRWO, B01F0I7CV6, B00MVIQ6QG, B00NOBYC6U, B01C2CUTO0, B00MVIQ2XS, B00MVIPNLU, B018F5878I.

1.6 This Settlement Agreement resolves claims that are denied and disputed. ERF and Intguard enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims for failure to provide Proposition 65 warnings for alleged exposure to styrene from use of the Covered Products. Nothing in this Settlement Agreement shall be construed as an admission by Intguard of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Intguard of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Intguard. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of any party under this Agreement.

1.7 The term “Effective Date” means the date that this Agreement is fully executed by ERF and Intguard.

2. INJUNCTIVE RELIEF

2.1 Warning Statements for Covered Products

(a) No later than thirty (30) days after the Effective Date (“Warning Effective Date”), Intguard shall ensure that any and all Covered Products it manufactures, imports, distributes,

markets or offers for sale in California shall include the following warning statement with the Covered Product as set forth below:

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

ALWAYS OPERATE THIS PRODUCT IN A WELL-VENTILATED AREA.

There shall be no obligation for Intguard to provide the warning statement for Covered Products that were supplied by Intguard to third parties (including but not limited to Amazon) prior to the Warning Effective Date, which shall be permitted to be sold through without a warning.

(b) The Section 2.1(a) warning statement is to be affixed to or printed on the Covered Products packaging.

(c) The Section 2.1(a) warning statement shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices as to render them likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The type size of the warning must be legible, and no smaller than any other warning provided with the Covered Products, and in no case less than twelve (12) point on the Covered Products packaging. The words "WARNING" and "ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA" shall be in upper case letters and bold as in Section 2.1(a) above. The warning symbol to the left of the word "WARNING" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign, label, or booklet for the Products does not use the color yellow, the symbol may be in black and white.

(d) For any Covered Product that is sold by Intguard on the internet to persons located in California, within 60 days of the Effective Date, Intguard shall include the Section 2.1(a) warning statement on the internet such that it clearly associates the warning with the specific Covered Product being purchased. Alternatively, a photograph of the Section 2.1(a) warning statement affixed to or printed on the Covered Product packaging is sufficient for the internet

warning. Further, Intguard will provide written notice to any Releasees, as defined *infra*, to which Intguard distributes or sells the Covered Products that each Covered Product sold on the internet to persons located in California must include online the Section 2.1(a) warning statement.

(e) In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates regulations requiring or permitting specific safe harbor warning text and/or methods of transmission specifically for styrene in 3D printing filaments that are different than those set forth above, Intguard shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

3. REIMBURSEMENT OF FEES AND COSTS

3.1 Attorneys’ Fees and Litigation Costs

Pursuant to Health and Safety Code section 25249.7(b)(2), Intguard shall reimburse ERF’s counsel for \$22,500.00 in ERF’s fees and costs incurred as a result of investigating and bringing this matter to Intguard’s attention, and negotiating a settlement in the public interest. The payment shall be made payable to Brian Gaffney Attorney Client Trust Account and sent no later than fourteen (14) days after the Effective Date via USPS certified mail, return receipt requested, to the following address:

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
2370 Market Street, Suite 103-318
San Francisco, CA 94114

3.2 Civil Penalties and Payments In Lieu of Penalties

Pursuant to Health and Safety Code section 25249.7(b)(2), Intguard shall pay \$7,500.00 in civil penalties. 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. Intguard will provide these

payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount of \$5,625.00 and 2) “Ecological Rights Foundation” in the amount of \$1,875.00. The payments to OEHHA and Ecological Rights Foundation shall be sent no later than fourteen (14) days after the Effective Date. All payments shall be sent via USPS with tracking service, to the following addresses: The payment to Ecological Rights Foundation shall be delivered to:

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
2370 Market Street, Suite 103-318
San Francisco, CA 94114

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

4. RELEASE OF ALL CLAIMS

4.1 Release of Intguard

ERF acting on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees (all of whom, collectively, are defined as the “ERF Releasers”), releases Intguard, Intservo, Amazon, and each of their parents, subsidiaries, assigns, predecessors, successors, affiliated entities, members, marketplaces, directors, officers, shareholders, agents, employees, representatives, insurers, and attorneys, each entity to whom Intguard directly or indirectly distributes or sells the Covered Products, including, but not limited to, downstream distributors, wholesalers, resale customers, customers, retailers, franchisees, cooperative members, all other downstream entities in the distribution chain, and the predecessors, successors, affiliates, and assigns of any of the foregoing in this paragraph (collectively, the “Releasees”), from all claims raised in the Notice through the Effective Date based on alleged failure to provide Proposition 65 warnings for alleged exposures to styrene from use of the Covered Products. This settlement is a full, final, and binding resolution of all claims that were asserted in

the Notice alleging failure to provide Proposition 65 warnings in connection with alleged exposures to styrene from use of the Covered Products.

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 3, above, the ERF Releasors, acting on behalf of themselves alone and not in the public interest, provide 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 against Intguard or any of the Releasees of any nature, character, or kind, limited to and arising out claims that were asserted based on the Notice for failure to provide Proposition 65 warnings for the alleged exposure to styrene from use of the Covered Products.

4.2 Intguard's Release of ERF and ERF Releasors

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

4.3 California Civil Code Section 1542

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

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

4.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Intguard with this Agreement constitutes compliance with Proposition 65 with respect to exposure to styrene from use of the Covered Products.

4.5 Public Benefit. It is Intguard's understanding that the commitments it has agreed to herein, and actions to be taken by Intguard under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code Tit. 11, Section 3201. As such, it is the intent of Intguard that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect Intguard's failure to provide a warning concerning exposure to lead from the Covered Products it has manufactured, imported, distributed, or offered for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Intguard is in material compliance with this Settlement Agreement.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Agreement shall be governed by the law 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, or in the event there is a Safe Use Determination or other demonstrated or recognized exemption to/from the Proposition 65 warning requirements for styrene as to the Covered Products, and Intguard ceases

to provide a Proposition 65 warning statement or equivalent on a Covered Product as a result of any such event, Intguard shall provide written notice to ERF of any asserted change in the law or their warning obligation, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, a Covered Product is so affected.

7. AGREEMENT

This Settlement 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 the Parties hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

8. NOTICES

8.1 Notice of Alleged Violation of this Agreement

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

8.2 Notices Provided Pursuant to this Agreement

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) USPS Priority Mail; or (ii) overnight or two-day courier, with a courtesy copy via email on any party by the other party to the following addresses:

For Intguard:

William Q. Dai
Intguard Inc.
100 Dominion Drive, Suite 102
Morrisville, NC 27560
admin@intguard.com

With a copy to:
H. Kim Sim
John A. Conkle
CONKLE, KREMER & ENGEL PLC
3130 Wilshire Boulevard, Suite 500
Santa Monica, California 90403
k.sim@conklelaw.com & j.conkle@conklelaw.com

For Ecological Rights Foundation:

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061
evenson@ecologylaw.com

With a copy to:

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
2370 Market Street .Suite 103-318
San Francisco, CA 94114
brian@gaffneylegal.com

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

9. COUNTERPARTS: SIGNATURES

This Agreement may be executed in counterparts and by facsimile or .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)

ERF agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

11. MODIFICATION

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

12. COURT JURISDICTION

This Agreement is enforceable and binding, and may be enforced by a court proceeding or


by any other procedure permitted by law. The terms and conditions of this Agreement are admissible and subject to disclosure for purposes of enforcing this Agreement pursuant to Code of Civil Procedure section 664.6 or any other proceeding permitted by law. The terms of this paragraph prevail over any contrary provisions in this Agreement.

13. AUTHORIZATION

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

AGREED TO:

Date: 12/12/2022

By: 
William Dai, President
Intguard, Inc.

AGREED TO:

Date: 12/15/2022

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

BY:  *JAMES LAMPORT, EXEC. DIR.*
JAMES LAMPORT, EXECUTIVE DIRECTOR