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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 3D PRINT OF NORTH AMERICA, INC., et al.,

21 Defendants.

22 Case No. CGC-19-580009

23 [PROPOSED] CONSENT JUDGMENT
24 AS TO ULTIMAKER USA INC.

25 **1. INTRODUCTION**

26 1.1 On October 15, 2019, the Ecological Rights Foundation (“ERF”) acting on behalf of
27 itself and the general public, filed a Complaint for civil penalties and injunctive relief
28 (“Complaint”) in San Francisco Superior Court, Case No. CGC-19-580009 against defendant
ULTIMAKER USA INC. (also referred to herein as “Ultimaker” 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
filaments incorporating a styrene monomer including acrylonitrile-butadiene-styrene (ABS)

1 filaments, polycarbonate ABS (PC-ABS) filaments and high impact polystyrene (HIPS) filaments
2 in the operation of 3d printers or 3d pens. The Complaint further alleges that use of such Covered
3 Products in the operation of 3d printers or 3d pens expose people to Styrene, a chemical known to
4 the State of California to cause cancer. The Complaint was based upon a 60-Day Notice letter,
5 sent by ERF on April 24, 2019 to Ultimaker, the California Attorney General, all District
6 Attorneys, and all City Attorneys with populations exceeding 750,000.

7 For purposes of this settlement and Consent Judgment, “Covered Products” means the
8 following Ultimaker filaments incorporating a styrene monomer: (1) ABS filaments, (2) PC-ABS
9 filaments and (3) HIPS filaments which are sold, offered for sale or distributed by Ultimaker in
10 California for use in 3d printing.

11 Defendant is a business that employs more than ten persons, and manufactures,
12 distributes, and sells Covered Products. Plaintiff alleges that Covered Products that Defendant
13 distributes, markets and sells - when heated in the operation of 3d printers or 3d pens - release
14 Styrene into the air. Plaintiff further alleges that people using the Covered Products in the
15 operation of 3d printers or 3d pens, and others standing in the same room, inhale styrene in the
16 normal course of use. Pursuant to Health and Safety Code Section 25249.8, Styrene is a
17 chemical known to the State of California to cause cancer. ERF alleges that Covered Products
18 that are manufactured, distributed or sold by Defendant for use in California require a warning
19 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. For purposes of this
20 Consent Judgment, ERF and Ultimaker (each a “Party” and collectively, the “Parties”) stipulate
21 that this Court has jurisdiction over the allegations of violations contained in the Complaint and
22 personal jurisdiction over Ultimaker, that venue is proper in the County of San Francisco, and
23 that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution
24 of the allegations contained in the Complaint.

25 1.2 This Consent Judgment resolves claims that are denied and disputed. The parties
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
27 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
28


1 not constitute an admission with respect to any material allegation of the Complaint, each and
2 every allegation of which Ultimaker denies, nor may this Consent Judgment, or compliance with
3 it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
4 Ultimaker.

5 1.3 The term “Effective Date” means the date that this Consent Judgment is entered by
6 the Court.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Warnings on Covered Products**

9 (a) As of the Effective Date, for all Covered Products manufactured, distributed or
10 offered for sale in California, Ultimaker shall include the following warning statements:

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

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

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

28 The words “WARNING” and “ALWAYS USE THIS PRODUCT IN A WELL-

1 VENTILATED AREA" shall be in upper case letters and bold as in the above warnings
2 in this paragraph. The warning symbol to the left of the word "WARNING" must be a
3 black exclamation point in a yellow equilateral triangle with a black outline.

4 **2.2 Notice to Downstream Releasees and Retailers**

5 No later than 14 days following the Effective Date, Ultimaker shall provide notice
6 by mail on its letterhead to all its distributors, wholesalers, customers, retailers,
7 franchisees, cooperative members, and licensees of the Covered Products during the past
8 three years ("Downstream Releasees and Retailers") as follows:

9 This letter is sent as a **notice and warning** that your California sales inventory may
10 include the following Ultimaker Filament (ABS-M2560; Item numbers 1621, 1622, 1623,
11 1624, 1625, 1626, 1627, 1628, 1629 and 1630) which may expose users to Styrene, a
12 chemical known to the State of California to cause cancer.

13 The notice provided by Ultimaker pursuant to this section shall also instruct the
14 Downstream Releasees and Retailers that they must attach stick-on labels to the front of
15 Covered Products in the inventory of the Downstream Releasees and Retailers, and
16 instruct that the Section 2.1(a) warning statement is included in any online material by
17 Downstream Distributors and Retailers promoting Covered Products which may be
18 viewed by consumers in California.

19 The stick-on labels provided by Ultimaker shall comply with Sections 2.1(a) and
20 2.1(b) above. Ultimaker shall provide such stick-on labels in sufficient quantity and for
21 sufficient duration to meet the inventory needs of each Downstream Releasee and
22 Retailer.

23 **3. SETTLEMENT PAYMENTS**

24 **3.1 Civil Penalties and Payments In Lieu of Penalties**

25 Pursuant to Health and Safety Code section 25249.7(b)(2), Ultimaker shall pay \$3,500.00
26 in civil penalties. The penalty payment will be allocated in accordance with California Health
27 and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
28 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining

1 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
2 payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount
3 of \$2,625.00 and 2) "Ecological Rights Foundation" in the amount of \$875.00.

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

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

8 Fredric Evenson
9 109 Quarry Lane
10 Santa Cruz, CA 95060

11 The payment to OEHHA shall be delivered to:

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

17 3.2 Attorneys' Fees and Litigation Costs

18 Ultimaker shall reimburse ERF's counsel for \$25,000.00 in ERF's fees and costs
19 incurred as a result of investigating and bringing this matter to Ultimaker's attention, and
20 negotiating a settlement in the public interest. The payment shall be made payable to "Brian
21 Gaffney Attorney Client Trust Account" and sent no later than fourteen (14) days after the
22 Effective Date via USPS certified mail, return receipt requested, to the following address:

23 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
24 446 Old County Road, Suite 100-310
25 Pacifica, California 94044

26 4. RELEASE OF ALL CLAIMS

27 4.1 Release of Ultimaker

28 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 Ultimaker, and its parents, subsidiaries, affiliated entities, marketplaces
directors, officers, agents, employees, attorneys and each entity to whom Ultimaker directly or

1 indirectly distributes or sells the Covered Products, including but not limited to Dynamism.com,
2 other downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
3 members and licensees and all other upstream and downstream entities in the distribution chain,
4 and the predecessors, successors, and assigns of any of them (collectively, the “Releasees”), from
5 all claims through the Effective Date based on alleged failure to provide Proposition 65 warnings
6 about alleged exposures to Styrene from use of the Covered Products. This settlement is a full,
7 final and binding resolution of all claims that were or could have been asserted against Ultimaker,
8 and/or the Releasees for failure to provide Proposition 65 warnings for alleged exposures to
9 Styrene contained in the Covered Products.

10 In further consideration of the promises and agreements herein contained, and for the
11 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein which
12 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
13 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands
14 against Ultimaker and/or any of the Releasees of any nature, character, or kind, whether known or
15 unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to
16 Styrene from use of the Covered Products.

17 **4.2 Ultimaker’s Release of ERF**

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

23 **4.3 California Civil Code Section 1542**

24 It is possible that other claims not known to the Parties arising out of the facts alleged in
25 the Notice and relating to the Covered Products will develop or be discovered. ERF on behalf of
26 itself only, on one hand, and Ultimaker, on the other hand, acknowledge that this Agreement is
27 expressly intended to cover and include all such claims up through the Effective Date, including
28

1 all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and
2 4.2 above may include unknown claims, and nevertheless waive California Civil Code section
3 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

9 **5. ENFORCEMENT OF JUDGMENT**

10 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
11 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
12 San Francisco County, giving the notice required by law, enforce the terms and conditions
13 contained herein. In the event that a dispute arises with respect to any of the provisions of this
14 Consent Judgment, the Parties shall meet and confer within 10 days after either Party receives
15 written notice of an alleged violation of this Agreement. In any proceeding brought by either party
16 to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or remedies
17 as may be provided by law for any violation of Proposition 65 or this Consent Judgment.

18 **6. MODIFICATION OF JUDGMENT**

19 6.1 This Consent Judgment may be modified only upon written agreement of the parties
20 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
21 as provided by law and upon entry of a modified Consent Judgment by the Court.

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

23 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
24 this Consent Judgment.

1 **8. AUTHORITY TO STIPULATE**

2 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the party represented and legally to bind that party.

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

6 9.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
7 California Attorney General on behalf of the parties so that the Attorney General may review this
8 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
9 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
10 and in the absence of any written objection by the Attorney General to the terms of this Consent
11 Judgment, the parties may then submit it to the Court for approval.

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
14 the parties with respect to the entire subject matter hereof and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
18 to exist or to bind any of the parties.

19 **11. GOVERNING LAW**

20 11.1 The validity, construction and performance of this Consent Judgment shall be
21 governed by the laws of the State of California, without reference to any conflicts of law provisions
22 of California law.

23 **12. EXECUTION AND COUNTERPARTS**

24 12.1 This Consent Judgment may be executed in counterparts which taken together shall
25 be deemed to constitute one document.

1 **13. COURT APPROVAL**

2 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect,
3 and cannot be used in any proceeding for any purpose.

4 **14. NOTICES**

5 14.1 In the event that a dispute arises with respect to any of the provisions of this
6 Agreement, the Parties shall meet and confer within 14 days after either Party receives
7 written notice of an alleged violation of this Agreement.

8 14.2 Any notices or payments due under this Consent Judgment shall be sent by
9 USPS certified mail, return receipt requested.

10
11 If to Ecological Rights Foundation: Fredric Evenson
12 Ecology Law Center
13 P.O. Box 1000
14 Santa Cruz, CA 95061

15 With a copy to:
16 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
17 446 Old County Road, Suite 100-310
18 Pacifica, California 94044

19 If to ULTIMAKER USA INC.:
20 303 Wyman Street, Suite 300
21 Waltham, MA 02451

22 With a copy to:
23 Shelley Hurwitz
24 Holland & Knight LLP
25 400 South Hope Street
26 8th Floor
27 Los Angeles, California 90071

28 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.

1 IT IS SO STIPULATED:

2
3 DATED: September 17, 2020

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

4
5 BY: *James Lampion*, EXEC. DIR.
6 JAMES LAMPION, EXECUTIVE DIRECTOR

7
8 DATED: 16th September 2020

ULTIMAKER USA INC.

9
10 BY: *Jos Burger*

11 Signed By: Jos Burger <j.burger@ultimaker.com>
12 17/09/2020 10:39:40 CEST
13 ID: 6334766a-bc8d-44d3-8356-796e04e30036
14 Auth: Scribble



15 ITS: CEO

16 IT IS SO ORDERED, ADJUDGED AND DECREED:

17 DATED: _____

18 _____

19 JUDGE OF THE SUPERIOR COURT

