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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 MAKERGEAR, LLC.

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-19-580009 against defendant
MAKERGEAR, LLC. (also referred to herein as “Makergear” 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)
2 filaments, (collectively “Covered Products”), in the operation of 3d printers or 3d pens. The
3 Complaint further alleges that use of such Covered Products in the operation of 3d printers or 3d
4 pens expose people to Styrene, a chemical known to the State of California to cause cancer. The
5 Complaint was based upon a 60-Day Notice letter, sent by ERF on April 24, 2019 to Makergear,
6 the California Attorney General, all District Attorneys, and all City Attorneys with populations
7 exceeding 750,000.

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


21 1.2 This Consent Judgment resolves claims that are denied and disputed. The parties
22 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
23 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
24 shall not constitute an admission with respect to any material allegation of the Complaint, each
25 and every allegation of which Makergear denies, nor may this Consent Judgment, or compliance
26 with it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
27 Makergear.

1 1.3 The term “Effective Date” means the date that this Consent Judgment is entered by
2 the Court.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Warnings on Covered Products**

5 As of the Effective Date, for all Covered Products manufactured, distributed or offered
6 for sale in California, Makergear shall include the following warning statements:

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

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

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

23 The words “WARNING” and “ALWAYS USE THIS PRODUCT IN A WELL-
24 VENTILATED AREA” shall be in upper case letters and bold as in the above warnings
25 in this paragraph. The warning symbol to the left of the word “WARNING” must be a
26 black exclamation point in a yellow equilateral triangle with a black outline.

27 **2.2 Notice to Downstream Releasees**

28 No later than 14 days following the Effective Date, Makergear shall provide notice

1 by mail on its letterhead to all its distributors, wholesalers, customers in California,
2 retailers, franchisees, cooperative members, and licensees that received and/or sold the
3 Covered Products during the past three years (“Downstream Defendant Releasees”) as
4 follows:

5 This letter is sent as a **notice and warning** that your California sales inventory may
6 include Makergear ABS filaments which may expose users to Styrene, a chemical known
7 to the State of California to cause cancer.

8 The notice provided by Makergear pursuant to this section shall also instruct the
9 Downstream Defendant Releasees that they must attach stick on labels to the front of
10 Covered Products in the inventory of the Downstream Defendant Releasees. The stick-
11 on labels provided by Makergear shall comply with Sections 2.1 above. Makergear shall
12 provide such stick-on labels in sufficient quantity and for sufficient duration to meet the
13 inventory needs of each Downstream Defendant Releasee.

14 **3. SETTLEMENT PAYMENTS**

15 **3.1 Civil Penalties and Payments In Lieu of Penalties**

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

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

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

27 Fredric Evenson
28 109 Quarry Lane
Santa Cruz, CA 95060

1 The payment to OEHHA shall be delivered to:

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

7 **3.2 Attorneys' Fees and Litigation Costs**

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

14 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
15 446 Old County Road, Suite 100-310
16 Pacifica, California 94044

17 **4. RELEASE OF ALL CLAIMS**

18 **4.1 Release of Makergear**

19 ERF acting on its own behalf and on behalf of its past and current agents, representatives,
20 attorneys, successors and/or assignees (all of whom, collectively, are defined as the "ERF
21 Releasers"), releases Makergear, and its parents, subsidiaries, affiliated entities, marketplaces
22 directors, officers, agents, employees, attorneys and each entity to whom Makergear directly or
23 indirectly distributes or sells the Covered Products, including but not limited to, downstream
24 distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees
25 and all other upstream and downstream entities in the distribution chain, and the predecessors,
26 successors, and assigns of any of them (collectively, the "Releasees"), from all claims for
27 violations of Proposition 65 through the Effective Date based on failure to warn about alleged
28 exposures to Styrene from use of the Covered Products. This settlement is a full, final and
binding resolution of all claims that were or could have been asserted against Makergear, and/or
the Releasees for failure to provide warnings for alleged exposures to chemicals contained in the

Covered Products.

1 In further consideration of the promises and agreements herein contained, and for the
2 payment to be made pursuant to Section 3 above, the ERF Releasors provide a release herein
3 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes
4 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
5 demands against Makergear and/or any of the Releasees of any nature, character, or kind,
6 whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged
7 or actual exposure to Proposition 65 chemicals from use of the Covered Products.

8 **4.2 Makergear's Release of ERF**

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

14 **4.3 California Civil Code Section 1542**

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

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

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

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5. ENFORCEMENT OF JUDGMENT

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

6. MODIFICATION OF JUDGMENT

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

7. TERMINATION AND RETENTION OF JURISDICTION

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

8. AUTHORITY TO STIPULATE

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

9. SERVICE ON THE ATTORNEY GENERAL

9.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney General may review this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment,

1 and in the absence of any written objection by the Attorney General to the terms of this Consent
2 Judgment, the parties may then submit it to the Court for approval.

3 **10. ENTIRE AGREEMENT**

4 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
5 the parties with respect to the entire subject matter hereof and any and all prior discussions,
6 negotiations, commitments and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
9 deemed to exist or to bind any of the parties.

10 **11. GOVERNING LAW**

11 11.1 The validity, construction and performance of this Consent Judgment shall be
12 governed by the laws of the State of California, without reference to any conflicts of law
13 provisions of California law.

14 **12. EXECUTION AND COUNTERPARTS**

15 12.1 This Consent Judgment may be executed in counterparts which taken together shall
16 be deemed to constitute one document.

17 **13. COURT APPROVAL**

18 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
19 effect, and cannot be used in any proceeding for any purpose.

20 **14. NOTICES**

21 14.1 In the event that a dispute arises with respect to any of the provisions of this
22 Agreement, the Parties shall meet and confer within 14 days after either Party receives
23 written notice of an alleged violation of this Agreement.

24 14.2 Any notices or payments due under this Consent Judgment shall be sent by
25 USPS certified mail, return receipt requested.

26 If to Ecological Rights Foundation: Fredric Evenson
27 Ecology Law Center
28 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

If to MAKERGEAR, LLC.:

MakerGear, LLC.
23632 Mercantile Road, Unit G
Beachwood, OH 44122

With a copy to:

David A. Meyer
Ulmer & Berne LLP
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202-2409

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.

IT IS SO STIPULATED:

DATED: _____

ECOLOGICAL RIGHTS FOUNDATION

BY: _____

ITS: _____

DATED: 12/1/2020 _____

MAKERGEAR, LLC.

BY: [Signature] _____

ITS: CEO _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

With a copy to:

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

If to MAKERGEAR, LLC.:

MakerGear, LLC.
23632 Mercantile Road, Unit G
Beachwood, OH 44122

With a copy to:

David A. Meyer
Ulmer & Berne LLP
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202-2409

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.

IT IS SO STIPULATED:

DATED: 11/28/20

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

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

DATED: _____

MAKERGEAR, LLC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT