

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Ecological Rights Foundation (“ERF”) and Smart International, Inc. (“SMART”), collectively referred to as the “Parties.”

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

1.3 On January 8, 2020, ERF served SMART and various public enforcement agencies with Notices of Violations of Proposition 65 alleging that SMART violated Proposition 65 by failing to give clear and reasonable warnings to those residents of California who use filaments incorporating a styrene monomer which SMART has manufactured, imported, distributed, marketed, and/or sold. Collectively the April 24, 2019 Notice to Kodak and the January 8, 2020 Notice to SMART will be referred to hereinafter as “the Notices”. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.4 ERF alleges that SMART 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 in the operation of 3D printers or 3D pens, they are exposed to styrene, a chemical known to the State of California to cause cancer.

1.5 For purposes of this Settlement Agreement, “Covered Products” means the following filaments incorporating a styrene monomer: (1) ABS filaments, (2) PC-ABS filaments and (3) HIPS filaments which are manufactured, sold, offered for sale or distributed by SMART, including but not limited to those Covered Products sold with Kodak’s name and trade dress.

1.6 SMART denies all material allegations in the Notices, but enters into this Agreement for the purpose of resolving the claims set forth in the Notices and avoiding litigation. ERF alleges that Covered Products manufactured, imported, distributed, marketed or sold by SMART 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, distributed or sold by SMART for use in California require a warning under Proposition 65, pursuant to Health and Safety Code Section 25249.6.

1.7 This Settlement Agreement resolves claims that are denied and disputed. ERF and SMART enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims that were raised in the Notices for failure to provide Proposition 65 warnings for alleged exposure to styrene from use of the Covered Products. SMART denies the material factual and legal allegations contained in the Notices. Nothing in this Settlement Agreement shall be construed as an admission by SMART 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 SMART of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by SMART. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of any party under this Agreement.

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

2. **INJUNCTIVE RELIEF**

2.1 **Warning Statements for Covered Products**

(a) No later than sixty (60) days after the Effective Date, SMART shall ensure that any Covered Products manufactured, imported, distributed, marketed, or sold in California shall include the following warning statements 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 USE THIS PRODUCT IN A WELL-VENTILATED AREA.

(b) The Section 2.1(a) warning statements to be affixed to or printed on the Covered Products or their packaging, and printed in the Covered Products' instruction booklets – if any.

(c) For any Covered Product that is sold by SMART on the internet to persons located in California, within 14 days of the Effective Date, SMART shall include the Section 2.1 warning statement, either on each Covered Product's display page or by otherwise prominently displaying the warning statement to the purchaser prior to completing the purchase. In addition, within 30 days of the Effective Date, SMART shall provide a letter to all United States licensees, distributors and retailers of the Covered Products that SMART is in contact with explaining the requirement of Proposition 65 for products sold to California purchasers via the internet/e-commerce or catalog, and informing such licensees, distributors and retailers of the Section 2.1 warning statement that SMART is providing for such sales.

(d) The warnings 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 six (6) point font. The words "WARNING" and "ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA" shall be in upper case letters and bold as in the above warnings in this paragraph. 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.

(e) The warnings specified in Sections 2.1(a) and (b) are not required for products already in the stream of commerce or placed into the stream of commerce by SMART within 60 days after the Effective Date.

(f) Notwithstanding the reference to 6-point font in Section 2.1(d) supra, within 120 days of the Effective Date, the warning specified in Section 2.1(a) and (d) shall be in no smaller than 12-point font on all Covered Products placed into the stream of a commerce by SMART after that date.

3. REIMBURSEMENT OF FEES AND COSTS

3.1 Attorneys’ Fees and Litigation Costs

Pursuant to Health and Safety Code section 25249.7(b)(2), SMART shall reimburse Ecological Rights Foundation’s counsel for \$19,000 in ERF’s fees and costs incurred as a result of investigating and bringing this matter to SMART’s attention, and negotiating a settlement in the public interest. The payment shall be made payable to Brian Gaffney Attorney Client Trust Account in six monthly payments with the first payment due on July 15, 2021, with subsequent payments due by the 15th day of each of the next five months. The first five (5) payments shall be in the amount of \$3,167.00, and the final payment shall be in the amount of \$3,165.00. ERF’s counsel shall provide relevant W-9 forms to SMART’s counsel no later than five (5) days after the Effective Date. Payment to ERF’s counsel shall be made via wire transfer to the wiring address provided by ERF’s counsel or 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

3.2 Civil Penalties and Payments In Lieu of Penalties

Pursuant to Health and Safety Code section 25249.7(b)(2), SMART shall pay \$500 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. Defendant will provide these payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount of \$375 and 2) “Ecological Rights Foundation” in the amount of \$125. The payments to OEHHA and ERF shall be sent no later than fourteen (14) days after the Effective Date and after ERF provides to SMART W-9s for each of the payees in Section 3 of the Agreement. All payments to ERF and OEHHA shall be sent via the wiring address provided by ERF’s counsel or via USPS certified mail, return receipt requested, to the following addresses:

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061

The payment to OEHHA shall be sent via US Mail to 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 SMART and SMART RELEASEES

ERF acting on its own behalf releases SMART and its parents, subsidiaries, assigns, predecessors, successors, affiliated entities, members, marketplaces, directors, officers, agents, employees, insurers, and attorneys, each entity with whom SMART has entered into licensing agreement in relation to the Covered Products (including, but not limited to, Kodak), and each entity to whom SMART directly or indirectly distributes or sells, or has distributed or sold, the

Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and all other downstream entities in the distribution chain (including Kodak), and the predecessors, successors, affiliates, and assigns of any of the foregoing in this paragraph (collectively, the “Releasees”), from all claims raised in the Notices 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 or could be asserted by ERF against SMART based on the Notices alleging failure to provide Proposition 65 warnings in connection with alleged exposures to styrene from 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, 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”) 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 SMART of any nature, character, or kind, limited to and arising out claims that were asserted against SMART and Releasees based on the Notices for failure to provide Proposition 65 warnings for the alleged exposure to styrene from the Covered Products.

4.2 SMART’S Release of ERF and ERF Releasers

SMART, on behalf of itself, and its Releasees hereby waives any and all claims against ERF and the ERF Releasers, for any and all actions taken or statements made by ERF and/or the ERF Releasers, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65, against SMART 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 SMART, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims 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 SMART 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 SMART and Releasees with the terms of this Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposure to styrene from Covered Products manufactured, distributed, sold or offered for sale by SMART.

4.5 Dismissal of Kodak. Within 14 days of Ecological Rights Foundation's receipt of the sixth monthly payment specified in Section 3.0 above and receipt of SMART's notice to ERF of its full compliance with Section 2 of this Agreement, Ecological Rights Foundation shall file a dismissal without prejudice of Kodak in San Francisco Superior Court case number CGC-19-580009.

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 SMART cease to provide a Proposition 65 warning statement or equivalent on a Covered Product as a result of this change in the law, SMART 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 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.

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 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, and (iii) via email on any party by the other party to the following addresses:

For SMART:

Gioia Greco
Smart International, Inc.
2035 Sunset Lake Road, Suite B-2
Newark, Delaware 19702
ggreco@smart3d.tech

With a copy to:

Lauren M. Michals
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
lmichals@nixonpeabody.com

For Ecological Rights Foundation:

Fredric Evenson
Ecology Law Center
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

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

(signatures on following page/ rest of page intentionally left blank)

AGREED TO:

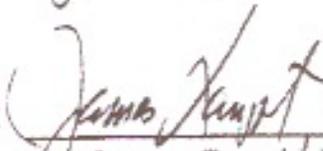
Date: July 5th 2021

By: 
Gioia Greco
Smart International Inc.

AGREED TO: Date:
June 30, 2021

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

By:  EXEC. DIR.
James Lamport, Executive Director