

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 **Ecological Rights Foundation & XYZprinting, Inc.**

This Settlement Agreement is entered into by and between Ecological Rights Foundation (“ERF”) and XYZprinting, Inc. (“XYZ”), collectively referred to as the “Parties.”

1.2 **General Allegations**

ERF alleges that XYZ has 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 in the operation of 3d printers or 3d pens. 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.

ERF further alleges that XYZ has distributed, marketed and/or sold in the State of California 3D printers utilizing filaments incorporating a styrene monomer. ERF further contends that when California residents use these 3D printers and the above identified filaments, they are exposed to styrene, a chemical known to the State of California to cause cancer.

For purposes of this Settlement Agreement, “Covered Products” means (1) XYZ filaments incorporating a styrene monomer, and (2) XYZ 3D printers utilizing such filaments, that are or will be distributed, marketed or sold for use in California by XYZ and its parents, subsidiaries, assigns, predecessors, successors, members and affiliated entities.

1.3 Notices of Violation

On April 24, 2019, ERF served XYZ and various public enforcement agencies with a Notice of Violations of Proposition 65 for XYZ filaments. On January 8, 2020, ERF served XYZ and various public enforcement agencies with Notices of Violations of Proposition 65 for XYZ filaments and XYZ 3D printers. The above referenced Notices of Violations are hereinafter referenced collectively as “Notices”). The Notices provided XYZ and others, including public enforcers, with notice that alleged that XYZ was in violation of California Health & Safety Code § 25249.6 for failing to warn California consumers and customers that the Covered Products expose users to styrene. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.4 No Admission

XYZ denies the material factual and legal allegations contained in the Notices. Nothing in this Settlement Agreement shall be construed as an admission by XYZ 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 XYZ of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by XYZ. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of any party under this Settlement Agreement. Notwithstanding the allegations in the Notices, XYZ maintains that it has not violated Proposition 65, knowingly, intentionally or otherwise.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which all parties have signed this Settlement Agreement, but no later than August 7, 2020.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

XYZ affixed the warnings below to the packaging for all filament Covered

Products beginning on July 15, 2019. XYZ has affixed the warnings below to the packaging for all 3D printer Covered Products beginning on January 20, 2020.

WARNING: This product can expose you to chemicals including styrene which is known to the State of California to cause cancer. For more information, visit www.P65Warnings.ca.gov.

XYZ will continue to provide such warnings for all Covered Products distributed or offered for sale in California, but will modify the warning for 3D printers as follows within 45 days of the Effective Date.

For 3D Printers

WARNING: This 3D Printer - when used with a styrene filament (ABS / HIPS / or PC-ABS) can expose you to chemicals, including Styrene, which is known to the State of California to cause cancer. For more information, visit [www.P65 Warnings.ca.gov](http://www.P65Warnings.ca.gov).

XYZ shall affix the above warning statements to or print them on the Covered Products packaging, and print the warning statements in the Covered Products' instruction booklets (if any). XYZ shall also ensure that the warning statements are included in any online material promoting the Covered Products which may be viewed by consumers in California - on each Covered Products' display page or by otherwise prominently displaying the warning statement to the purchaser prior to completing the purchase. The warning statements 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. Warnings may be contained in the same section of the instruction booklets that contains other safety warnings concerning the use of the Covered Products. 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 font. The word

“WARNING” shall be in upper case letters and bold as in the above warnings in this paragraph.

In addition, within 45 days of the Effective Date XYZ shall provide a letter to customers of Covered Products who purchased a Covered Product at any time during the three years prior to July 15, 2019, and to current customers of Covered Products explaining the requirements of Proposition 65 for products sold in California along with warning labels that can be affixed to the Covered Products’ packaging, if the Covered Product packaging does not currently contain the above warning statement.

3. REIMBURSEMENT OF FEES AND COSTS

3.1 Attorneys’ Fees and Litigation Costs

XYZ shall reimburse ERF’s counsel for \$25,000.00 in ERF’s fees and costs incurred as a result of investigating and bringing this matter to XYZ’ attention, and negotiating a settlement in the public interest. The payment shall be made payable to Brian Gaffney Attorney Client Trust Account and delivered by no later than 45 days of the Effective Date 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), XYZ shall pay \$36,675.00 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. Defendant will provide these payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount of \$27,506.25 and 2) “Ecological Rights Foundation” in the amount of \$9,168.75.

The payments to OEHHA and Ecological Rights Foundation shall be delivered no later than 45 days of the Effective Date to the following addresses: The payment to Ecological Rights Foundation shall be delivered to:

Fredric Evenson
109 Quarry Lane
Santa Cruz, CA 95060

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 XYZ

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 XYZ and its respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities, members, marketplaces directors, officers, agents, employees, and attorneys, and each entity to whom XYZ directly or indirectly distributes or sells the Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees and all other upstream and downstream entities in the distribution chain, and the predecessors, successors, and assigns of any of them (collectively, the “Releasees”), from all claims for violations of Proposition 65 for all Covered Products sold or distributed by XYZ through the Effective Date based on failure to warn about 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 have been asserted against XYZ and/or the Releasees for failure to provide warnings for 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 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 XYZ and/or any of the Releasees of any nature, character, or kind, whether known or unknown or suspected or unsuspected, arising out of the alleged or actual exposure to Styrene from use of the Covered Products.

4.2 XYZ' Release of ERF

XYZ, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against ERF, its attorneys and other representatives, for any and all actions taken or statements made by ERF and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65, against XYZ in this matter or 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 Notices and relating to the Covered Products will develop or be discovered. ERF, on the one hand, and XYZ, 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement 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, validity, construction and performance 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, and XYZ ceases to provide a Proposition 65 warning statement or equivalent on a Covered Product as a result of this change in the law, XYZ shall provide written notice to ERF 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, a Covered Product is so affected.

7. NOTICES

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

For XYZ:

General Counsel or NKG Authorized Legal Representative
Legaldepartment@kinpo.com.tw
No. 147, Sec. 3, Beishen Rd., Shengkeng Dist.
New Taipei City 222, Taiwan, R.O.C.
886-2-2662-2660

With a copy to:
Gregory J. Patterson
Musick, Peeler & Garrett LLP
2801 Townsgate Road Suite 200
Westlake Village, California 91361

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.

8. ENTIRE 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.

10. COUNTERPARTS: SIGNATURES

This Settlement 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.

11. 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).

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all the terms and conditions contained in this Settlement Agreement.

AGREED TO:

Date: _____

By: _____

Frank Ho
Authorized Representative
XYZprinting, Inc.

AGREED TO:

Date: August 13, 2020

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

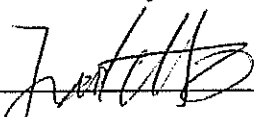
BY: *James Lamport, EXEC. DIR.*
JAMES LAMPORT, EXECUTIVE DIRECTOR

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all the terms and conditions contained in this Settlement Agreement.

AGREED TO:

Date: 07, Aug, 2020

By: 
Frank Ho
Authorized Representative
XYZprinting, Inc.

AGREED TO:

Date: _____

By: _____
James Lamport, Executive Director
Ecological Rights Foundation