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6 Santa Cruz, California 95061
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7 Email: evenson@ecologylaw.com

8 Counsel for Plaintiff
9 ECOLOGICAL RIGHTS FOUNDATION

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 ECOLOGICAL RIGHTS FOUNDATION,

14 Plaintiff,

15 v.

16 WOLF & ASSOCIATES, INC. DBA AIRWOLF
3D, 3D SYSTEMS, INC., INGRAM MICRO INC.,
17 AMAZON.COM INC., & DOES 1 through 10,
inclusive,

18 Defendants.

Case No. CGC-21-596304

**[PROPOSED] CONSENT JUDGMENT AS TO 3D
SYSTEMS, INC.**

19
20 **1. INTRODUCTION**

21 1.1 On October 28, 2021, the Ecological Rights Foundation (“ERF”) acting on behalf of itself
22 and in the public interest, filed a Complaint for civil penalties and injunctive relief in San Francisco
23 Superior Court, Case No. CGC-21-596304 (“Complaint”) against *inter alia* defendant 3D SYSTEMS,
24 INC. (referred to herein as “3D SYSTEMS” or “Defendant” and together with ERF as the “Parties”).
25 ERF alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and
26 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”) by
27 failing to give clear and reasonable warnings to those residents of California who use filaments
28

1 incorporating a styrene monomer 3D SYSTEMS has distributed, marketed, and/or sold.

2 1.2 ERF alleges that 3D SYSTEMS has distributed, marketed, and/or sold in the State of
3 California filaments incorporating a styrene monomer. ERF contends that when California residents use
4 these filaments in the operation of 3D printers or 3D pens they are exposed to styrene, a chemical known
5 to the State of California to cause cancer.

6 1.3 For purposes of this Consent Judgment, “Covered Products” means filaments incorporating
7 a styrene monomer, including acrylonitrile-butadiene-styrene (ABS) filaments, polycarbonate ABS (PC-
8 ABS) filaments, and high impact polystyrene (HIPS) filaments, that are or will be distributed, marketed,
9 or sold directly or indirectly by 3D SYSTEMS in California.

10 1.4 The Complaint is based upon a 60-Day Notice letter dated August 4, 2021 that ERF sent to
11 3D SYSTEMS, the California Attorney General, all District Attorneys, and all City Attorneys with
12 populations exceeding 750,000 that 3D SYSTEMS was alleged to be in violation of California Health &
13 Safety Code § 25249.6 for failing to warn California consumers and customers that the Covered Products
14 expose users to styrene at levels that require a warning (hereinafter “Notice”). No public enforcer has
15 diligently prosecuted the allegations set forth in the Notice.

16 1.5 Defendant is a business that employs more than ten persons. ERF alleges that Covered
17 Products distributed, marketed or sold by Defendant release styrene into the air. ERF further alleges that
18 people using the Covered Products in the operation of 3D printers or 3D pens, and others standing in the
19 same room, inhale styrene in the normal course of use. Pursuant to Health and Safety Code Section
20 25249.8, styrene is a chemical known to the State of California to cause cancer. ERF alleges that
21 Covered Products manufactured, distributed or sold by Defendant for use in California require a warning
22 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. The Parties stipulate that this
23 Court has jurisdiction over 3D SYSTEMS as to the allegations of violations contained in the Complaint,
24 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
25 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint.

26 1.6 This Consent Judgment resolves claims that are denied and disputed by 3D SYSTEMS.
27 ERF and Defendant enter into this Consent Judgment pursuant to a full and final settlement of any and all
28 claims that were raised in the Notice or Complaint, for the purpose of avoiding prolonged litigation. This


1 Consent Judgment shall not constitute an admission with respect to any material fact, allegation,
2 regulation or law in the Notice or Complaint, each and every fact, allegation, regulation or law, all of
3 which Defendant denies. Further, this Consent Judgment, or compliance with it, shall not be used by ERF
4 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendant. However,
5 this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of any party
6 under this Consent Judgment.

7 1.7 The term “Effective Date” means the date that this Consent Judgment is entered by the
8 Court.

9 **2. INJUNCTIVE RELIEF**

10 2.1 Warning Statement for Covered Products

11 (a) As of the Effective Date, all Covered Products shall include the following warning statement
12 with the Covered Products as set forth below:

13  **CA WARNING:** This filament when used in the operation of 3D Printers can expose you and
14 others in the same room to styrene, a chemical known to the State of California to cause cancer.
15 For more information, go to www.P65Warnings.ca.gov.

16 **ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA.**

17 The warning statement shall be affixed to or printed on the Covered Products packaging, and printed in
18 the Covered Products’ instruction booklets (if any).

19 (b) For all Covered Products that are sold on the internet to persons located in California,
20 within fourteen (14) days of the Effective Date 3D SYSTEMS shall ensure that the above warning
21 statement is included in any 3D SYSTEMS’ online material promoting the Covered Products which may
22 be viewed by consumers in California, on each Covered Product’s display page or by otherwise
23 prominently displaying the warning statement to the purchaser prior to completing the purchase.

24 (c) The warnings shall be displayed with such conspicuousness, as compared with other
25 words, statements, designs, or devices as to render them likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. The type size of the warning must be legible
27 and no smaller than any other warning provided with the Covered Products and in no case less than
28 twelve (12) point font on the Covered Products packaging. The words “WARNING:” and “USE THIS

1 PRODUCT IN A WELL-VENTILATED AREA” shall be in upper case letters and bold as in the above
2 warnings in this paragraph. The warning symbol to the left of the word “WARNING” must be a black
3 exclamation point in a yellow equilateral triangle with a black outline, except that if the sign, label, or
4 booklet for the Products does not use the color yellow, the symbol may be in black and white.

5 2.2 Notice to Downstream Releasees

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

9 This letter is sent as a **notice and warning** that your California sales inventory may include 3D
10 SYSTEMS styrene filaments which may expose users to styrene, a chemical known to the State
11 of California to cause cancer.

12 The notice provided by Defendant pursuant to this section shall also instruct the Downstream
13 Releasees that they must both include online warnings consistent with Section 2.1(a), and attach labels to
14 the front of Covered Products in the inventory of the Downstream Releasees. The labels provided by
15 Defendant shall comply with Section 2.1(a) above. Defendant shall provide such labels in sufficient
16 quantity and for sufficient duration to meet the inventory needs of each Downstream Releasee.

17 3. SETTLEMENT PAYMENTS

18 3.1 Civil Penalties and Payments In Lieu of Penalties

19 Pursuant to Health and Safety Code section 25249.7(b)(2), 3D SYSTEMS shall pay \$200 in civil
20 penalties. The penalty payment will be allocated in accordance with California Health and Safety Code
21 section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
22 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount
23 paid to ERF. Defendant will provide these payments in two checks for the following amounts made
24 payable to: 1) “OEHHA” in the amount of \$150 and 2) “Ecological Rights Foundation” in the amount of
25 \$50.

26 The payments to OEHHA and ERF shall be sent no later than fourteen (14) days after the
27 Effective Date. All payments shall be sent via USPS certified mail, return receipt requested, to the
28 following addresses. The payment to ERF shall be delivered to:

1 Fredric Evenson
2 Ecology Law Center
3 P.O. Box 1000
4 Santa Cruz, CA 95061

5 The payment to OEHHA shall be delivered to:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 3.2 Attorneys' Fees and Litigation Costs

12 3D SYSTEMS shall reimburse ERF's counsel for \$19,800 in ERF's fees and costs incurred as a
13 result of investigating and bringing this matter to Defendant's attention, and negotiating a settlement in
14 the public interest. The payment shall be made payable to "Brian Gaffney Attorney Client Trust
15 Account" and sent no later than fourteen (14) days after ERF or its counsel informs Defendant in writing
16 that the Consent Judgment has been entered by the Court via USPS certified mail, return receipt
17 requested, to the following address:

18 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
19 446 Old County Road, Suite 100-310
20 Pacifica, California 94044

21 4. **RELEASE OF CLAIMS**

22 4.1 Release of Defendant

23 ERF acting in the public interest and on its own behalf and on behalf of its past and current
24 agents, representatives, attorneys, successors and/or assignees (all of whom, collectively, are defined as
25 the "ERF Releasers"), releases 3D SYSTEMS, and its parents, subsidiaries, assigns, predecessors,
26 successors, affiliated entities, members, marketplaces, directors, officers, agents, employees, and
27 attorneys, and each entity to whom 3D SYSTEMS directly or indirectly distributes or sells the Covered
28 Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers,
franchisees, cooperative members and licensees, including, but not limited to, Amazon.com Inc. and
Ingram Micro Inc., and all other downstream entities in the distribution chain, and the predecessors,
successors, and assigns of any of them (collectively, the "Releasees"), from all claims raised in the

1 Notice or in the Complaint through the Effective Date based on alleged failure to provide Proposition 65
2 warnings for alleged exposures to styrene from use of the Covered Products. This settlement is a full,
3 final, and binding resolution of all claims that were asserted or could have been asserted against 3D
4 SYSTEMS and/or the Releasees for the failure to provide Proposition 65 warnings for alleged exposures
5 to styrene from use of the Covered Products.

6 In further consideration of the promises and agreements herein contained, and for the payment to
7 be made pursuant to Section 3, above, the ERF Releasors provide a release herein which shall be
8 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
9 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands against 3D SYSTEMS
10 and/or any of the Releasees of any nature, character, or kind, limited to and arising out of claims that
11 were or could have been asserted against 3D SYSTEMS and/or the Releasees based on the Notice or
12 Complaint for failure to provide warnings for the alleged exposure to styrene from use of the Covered
13 Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
14 65, with respect to exposures to styrene from the Covered Products as set forth in the Notice or the
15 Complaint.

16 4.2 Release of ERF and ERF Releasors

17 3D SYSTEMS, on behalf of itself and its Releasees, hereby waives any and all claims against
18 ERF and the ERF Releasors, for any and all actions taken or statements made by ERF and/or the ERF
19 Releasors, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65,
20 against 3D SYSTEMS in this matter with respect to the Covered Products.

21 4.3 California Civil Code Section 1542

22 It is possible that other claims not known to the Parties arising out of the facts alleged in the
23 Notice or Complaint and relating to the Covered Products will develop or be discovered. ERF on behalf
24 of itself only, on one hand, and 3D SYSTEMS, on the other hand, acknowledge that this Consent
25 Judgment is expressly intended to cover and include all such claims up through the Effective Date,
26 including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1
27 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542
28

1 as to any such unknown claims. California Civil Code section 1542 reads as follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
3 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
4 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.

5 ERF and 3D SYSTEMS each acknowledge and understand the significance and consequences of
6 this specific waiver of California Civil Code section 1542.

7 **5. ENFORCEMENT OF JUDGMENT**

8 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.
9 The Parties may, by noticed motion or order to show cause before the Superior Court of San Francisco
10 County, giving the notice required by law, enforce the terms and conditions contained herein. In the event
11 that a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties shall meet
12 and confer within ten (10) days after either Party receives written notice of an alleged violation of this
13 Consent Judgment. In any proceeding brought by either party to enforce this Consent Judgment, such
14 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
15 of Proposition 65 or this Consent Judgment.

16 5.2 This Court shall retain jurisdiction of this matter to implement and enforce the terms of
17 this Consent Judgment.

18 **6. SERVICE ON THE ATTORNEY GENERAL**

19 ERF shall serve a copy of this Consent Judgment, signed by the Parties, on the California
20 Attorney General concurrently with filing and serving the motion for approval in court. Service on the
21 Attorney General shall occur no later than forty five (45) days prior to the date the motion for approval
22 will be heard in court.

23 **7. SEVERABILITY**

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

1 **8. GOVERNING LAW**

2 The validity, construction and performance of this Consent Judgment shall be governed by the
3 law of the State of California.

4 **9. NOTICE**

5 9.1 Notice of Alleged Violation of this Consent Judgment

6 In the event that a dispute arises with respect to any of the provisions of this Consent Judgment,
7 the Parties shall meet and confer within fourteen (14) days after either Party receives written notice of the
8 dispute.

9 9.2 Notice Provided Pursuant to this Consent Judgment

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

13 For 3D SYSTEMS:

14 Keith Roberson
15 333 Three D Systems Circle
16 Rock Hill, SC 29730
17 Keith.Roberson@3dsystems.com

18 With a copy to:

19 Malcolm Weiss
20 Jennifer MikoLevine
21 Hunton Andrews Kurth LLP
22 550 South Hope Street
23 Suite 2000
24 Los Angeles, CA 90071
25 MWeiss@hunton.com
26 JMikoLevine@hunton.com

27 For Ecological Rights Foundation:

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

With a copy to:

1 LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
2 446 Old County Road, Suite 100-310
3 Pacifica, California 94044
4 gaffneylegal@gmail.com

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

7 **10. ENTIRE AGREEMENT**

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

14 **11. EXECUTION AND COUNTERPARTS**

15 This Consent Judgment may be executed in counterparts and by PDF signature, which when taken
16 together shall constitute one document.

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only by a written agreement of the Parties, and upon
19 entry of a modified Consent Judgment by the Court thereon.

20 **13. COURT APPROVAL**

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

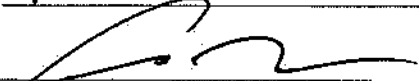
23 **14. AUTHORIZATION**

24 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he
25 or she represents to enter into this Consent Judgment, has read, understood and agrees to all the terms and
26 conditions contained in this Consent Judgment, and is authorized to execute it on behalf of the party
27 represented and legally to bind that party.

28 //

1 AGREED TO:

2
3 Date: March 2, 2022

4 By: 
5 Andrew M. Johnson
6 EVP, CLO & Secretary
7 3D SYSTEMS, INC.

8 AGREED TO:

9 Date: _____

10 By: _____
11 James Lamport, Executive Director
12 Ecological Rights Foundation

13 IT IS SO ORDERED, ADJUDGED AND DECREED:

14 DATED: _____

15
16 _____
17 JUDGE OF THE SUPERIOR COURT
18
19
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21
22
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24
25
26
27
28

1 AGREED TO:

2
3 Date: _____

4 By: _____

5 Andrew M. Johnson
6 EVP, CLO & Secretary
7 3D SYSTEMS, INC.

7 AGREED TO:

8 Date: March 9, 2022

9
10 ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

11 BY: *James Lampert, EXEC. DIR.*
12 JAMES LAMPART, EXECUTIVE DIRECTOR

13
14 IT IS SO ORDERED, ADJUDGED AND DECREED:

15
16 DATED: _____

17 _____

18 JUDGE OF THE SUPERIOR COURT