

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Ecological Rights Foundation (“ERF”) and IC3D, Inc. (“IC3D”), singularly referred to as “Party” and collectively referred to as the “Parties.”

1.2 On August 4, 2021 ERF served IC3D and various public enforcement agencies with a Notice of Violation (“Notice”) of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”) alleging that IC3D violated Proposition 65 by failing to give clear and reasonable warnings to those residents of California who use filaments incorporating a styrene monomer which IC3D has manufactured, imported, distributed, marketed, and/or sold. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.3 For purposes of this Settlement Agreement, “Covered Products” means all ABS filaments which are or will be manufactured, directly or indirectly sold, offered for sale or distributed by IC3D for use in California.

1.4 ERF alleges that IC3D has manufactured, imported, distributed, marketed, and/or sold in the State of California 3D 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 incorporating a styrene monomer 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 alleges that Covered Products manufactured, imported, distributed, marketed and/or sold by IC3D release styrene into the air. ERF further alleges that people using the Covered Products, and others present nearby, 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 IC3D for use in

California require a warning under Proposition 65, pursuant to Health and Safety Code Section 25249.6.


1.5 ERF and IC3D enter into this Settlement Agreement pursuant to a full and final settlement of any and all claims that were raised in the Notice for failure to provide Proposition 65 warnings for alleged exposure to styrene from use of the Covered Products. IC3D denies all material allegations in the Notice, but enters into this Agreement for the purpose of resolving the claims set forth in the Notice and avoiding litigation. Nothing in this Settlement Agreement shall be construed as an admission by IC3D 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 IC3D of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by IC3D. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of any Party under this Agreement.

1.6 The term “Effective Date” means the date that this Agreement is fully executed by ERF and IC3D.

2. INJUNCTIVE RELIEF

2.1 Warning Statements for Covered Products

(a) No later than 45 days after the Effective Date, IC3D shall ensure that all Covered Products manufactured, imported, distributed, marketed, sold and/or offered for sale in California shall include the following warning statement with the Covered Products as set forth below:

 WARNING: ABS filaments when used for 3D Printing can expose you and others nearby 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 shall be affixed to or printed on the Covered Products or, if Covered Products are sold solely in packaging, on their packaging.

(c) For any Covered Product that is marketed, sold and/or offered for sale by IC3D on the internet to persons located in California, within 14 days of the Effective Date IC3D shall

include the Section 2.1(a) 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, and will condition distribution and sales of the Covered Products to the Releasees, as defined *infra*, on the agreement by the Releasees to provide such online warning statements.

(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 Section 2.1(a) 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 – except for Covered Products sold in 1 kg size or smaller where words other than “WARNING” and “ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA” may be in ten (10) point font. The words “WARNING” and “ALWAYS USE THIS PRODUCT IN A WELL-VENTILATED AREA” shall be in upper case letters and bold, as shown in Section 2.1(a) above. 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.

2.2. Notice to Releasees

No later than 45 days following the Effective Date, IC3D shall provide notice by mail on its letterhead to all its distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees of the Covered Products during the past three years as follows:

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

The notice provided by IC3D pursuant to this section shall also instruct the Releasees that they must attach stick-on labels to the packaging of Covered Products in the inventory of the Releasees. The stick-on labels provided by IC3D shall comply with Section 2.1(a) above.

Defendants shall provide such stick-on labels in sufficient quantity and for sufficient duration to meet the inventory needs of each Releasee.

3. REIMBURSEMENT OF FEES AND COSTS

3.1 Attorneys' Fees and Litigation Costs

Pursuant to Health and Safety Code section 25249.7(b)(2), IC3D shall reimburse ERF's counsel for \$21,000 in ERF's attorneys fees and costs incurred as a result of investigating and bringing this matter to IC3D's attention, and negotiating a settlement in the public interest. The payment shall be made payable to Brian Gaffney Attorney Client Trust Account and sent no later than fourteen (14) days after the Effective Date 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), IC3D shall pay \$7,500 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 \$5,625 and 2) "Ecological Rights Foundation" in the amount of \$1,875. The payments to OEHHA and Ecological Rights Foundation shall be sent no later than fourteen (14) days after the Effective Date. All payments shall be sent via USPS certified mail, return receipt requested, to the following addresses: The payment to Ecological Rights Foundation shall be delivered to:

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

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 IC3D

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 IC3D and its parents, subsidiaries, assigns, predecessors, successors, affiliated entities, members, marketplaces, directors, officers, agents, employees, insurers, and attorneys, each entity to whom IC3D directly or indirectly distributes or sells, the Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members (collectively, the “Releasees”), from all claims raised in the 60-Day Notice 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 asserted against IC3D based on the Notice alleging failure to provide Proposition 65 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 payments 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 IC3D of any nature, character or kind, limited to and arising out of claims that were

asserted against IC3D based on the Notice for failure to provide Proposition 65 warnings for alleged exposure to styrene from use of the Covered Products.

4.2 IC3D's Release of ERF and ERF Releasors

IC3D, on behalf of itself, and its Releasees hereby waives any and all claims against ERF and the ERF Releasors, for any and all actions taken or statements made by ERF and/or the ERF Releasors, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65, against IC3D 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 IC3D, 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 IC3D 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 IC3D with this Agreement constitutes compliance with Proposition 65 with respect to exposure to styrene from use of the Covered Products.

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.

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 on any Party by the other Party to the following addresses:

For IC3D:
Mr. Michael Cao
CEO
IC3D, Inc.
1697 Westbelt Drive
Columbus, Ohio 43228

With a copy to:
Gawronski Legal LLC
56 W. Pacemont Road
Columbus, Ohio 43202

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

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

11.2 If a change in the composition of any of the Covered Products eliminates all

styrene from such Covered Products, IC3D may remove the warning statement from only such specific changed Covered Products without being deemed in breach of this Agreement. If a change in the composition of any of the Covered Products creates the need for a Proposition 65 reproductive toxin warning under Proposition 65, IC3D may add this to the Section 2.1(a) warning statement so as to satisfy its new warning obligation without being deemed in breach of this Agreement.

11.3 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable 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, IC3D may alter the warning statement or remove the warning from Covered Products as permitted by the change in law, regulation, or other exemption without being deemed in breach of this Agreement.

11.4 At least sixty (60) days in advance of altering or removing the warning statement in accordance with Sections 11.2 or 11.3 above, IC3D shall provide written notice to ERF identifying the Covered Products affected, the changed law or Covered Products composition, and the proposed warning alteration or removal. ERF shall have an opportunity to provide comments and to meet and confer with IC3D regarding the proposed alteration or removal before it is fully implemented.

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.

AGREED TO:

Date: _____

By: _____

Michael Cao, CEO
IC3D, Inc.

AGREED TO:

Date: November, 4, 2021

ECOLOGICAL RIGHTS FOUNDATION


Ecological Rights Foundation

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

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.

AGREED TO:

Date: 11/5/2021

By: 
Michael Cao, CEO
IC3D, Inc.

AGREED TO:

Date: _____

By: _____
James Lamport, Executive Director
Ecological Rights Foundation