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ENDORSED
FILED
San Francisco County Superior Court

MAR 13 2020

CLERK OF THE COURT
By: ANGELICA SUNGA
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11 KINGPUN CHENG,

12 Plaintiff,

13 vs.

14 CRICUT, INC., AND DOES 1-25,

15 Defendants.

CASE NO.: CGC-20-583721

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

(Cal. Health & Safety Code § 25249.6 et
seq.)

16 NATURE OF THE ACTION

17 1. Plaintiff KINGPUN CHENG (hereinafter, "Plaintiff") brings this representative
18 action, in the public interest of the citizens of the State of California (hereinafter, "citizens"), to
19 enforce the citizen's right to be informed of the presence of LEAD AND/OR LEAD
20 COMPOUNDS (hereinafter, "Lead") found in Defendant CRICUT, INC.'s (hereinafter,
21 "Defendant") products—specifically "Cricut Scoring Wheel Tip + Drive Housing
22 UPC093573546471" (hereinafter, "Products").

23 2. Plaintiff seeks to remedy Defendant's failure to warn citizens about the risks of
24 exposure to Lead present in Defendant's Products manufactured, distributed and/or offered for
25 sale to consumers throughout the State of California.

3. Defendant manufactures, distributes or offers for sale to consumers throughout the State of California Products containing detectable levels of Lead.

4. California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 et seq. (“Proposition 65”) states, “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Cal. Health & Safety Code* § 25249.6.)

5. Under Proposition 65, California identified and listed Lead as chemicals known to cause birth defects and other reproductive harm.

6. Defendant manufactures, distributes or sells Products containing Lead without a health hazard warning in California.

7. Defendant's failure to warn consumers and/or other individuals in the State of California about their exposure to Lead in conjunction with Defendant's sale of Products is a violation of Proposition 65 which subjects Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

8. For Defendant's violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel Defendant to provide purchasers or users of Products with the required warning regarding the health hazards of Lead. (*Cal. Health & Safety Code* § 25249.7(a).)

9. Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65, as provided for by *California Health & Safety Code* § 25249.7(b).

PARTIES

10. Plaintiff resides in the City of Carlsbad, County of San Diego, in the State of California and as such, as citizen of the state of California. Plaintiff is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, represented by and through its counsel of record, Parker A. Smith. Plaintiff brings this action in the public interest pursuant to *California Health & Safety Code* § 25249.7.

11. Cricut, Inc. is a person doing business within the meaning of *California Health & Safety Code* § 25249.11.

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13. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

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(Violation of Proposition 65 – Against Defendant)

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18. On October 2, 2019, a sixty-day notice of violation, together with the requisite certificates of merit, was provided to Defendant, other potential violators and various public

1 enforcement agencies, including the California Attorney General's Office, stating that as a result
2 of the Defendant's sale of Products, purchasers and users in the State of California were being
3 exposed to Lead resulting from the reasonably foreseeable users of the Products without the
4 individual purchasers and users first having been provided with a "clear and reasonable warning"
5 regarding such toxic exposures.

6 19. Defendant manufactures, distributes and/or offers Products for sale or use in
7 violation of *California Health & Safety Code § 25249.6* and Defendant's manufacture,
8 distribution and/or offering of Products for sale or use in violation of *California Health & Safety*
9 *Code § 25249.6* has continued to occur beyond Defendant's receipt of Plaintiff's sixty-day Notice
10 of Violation. Plaintiff further alleges and believes that such violations will continue to occur into
11 the future.

12 20. After receipt of the claims asserted in the sixty-day notices of violation, the
13 appropriate public enforcement agencies have failed to commence and diligently prosecute a
14 cause of action against Defendants under Proposition 65.

15 21. The Products manufactured, distributed, and/or offered for sale or use in California
16 by Defendants contained Lead above the allowable state limits.

17 22. Defendant knew or should have known that the Products manufactured, distributed,
18 and/or for sale or use by Defendant in California contained Lead.

19 23. Lead was present in or on the Products in such a way as to expose individuals to
20 Lead through dermal contact and/or ingestion during the reasonably foreseeable use of the
21 Products.

22 24. The normal and reasonably foreseeable use of the Products have caused and
23 continue to cause consumer exposure to Lead, as such exposure is defined by 27 CCR§ 25602(b).

24 25. Defendant had knowledge that the normal and reasonably foreseeable use of the
25 Products would expose individuals to Lead through dermal contact and/or ingestion.

26 26. Defendant intended that such exposures to Lead from the reasonably foreseeable
27 use of the Products would occur by its deliberate, non-accidental participation in the manufacture,
28 distribution and/or offer for sale or use of the Products to purchasers, consumers, or users in the
State of California.

27. Defendant failed to provide a “clear and reasonable warning” to those consumers and/or other individuals in the State of California who were or who could become exposed to Lead through dermal contact and/or ingestion during the reasonably foreseeable use of the Products.

28. Contrary to the express policy and statutory prohibition of Proposition 65, enacted directly by California voters, individuals exposed to Lead through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

29. As a consequence of the above-described acts, each Defendant is liable for a maximum civil penal of \$2,500.00 per day for each violation pursuant to *California Health & Safety Code § 25249.7(b)*.

30. As a consequence of the above-described acts, *California Health & Safety Code* § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

31. Wherefore, Plaintiff prays for judgment against Defendant as set forth hereinafter.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. That the Court, pursuant to *California Health & Safety Code § 25249.7(b)*, assess civil penalties against Defendant, in the amount of \$2,500.00 per day for each violation alleged herein;

2. That the Court, pursuant to *California Health & Safety Code § 25249.7(a)*, preliminarily and permanently enjoin Defendant from manufacturing, distributing or offering Products for sale or use in California, without providing “clear and reasonable warnings” as detailed by *27 CCR § 25601*, as to the harms associated with exposures to Lead;

3. That the Court grant Plaintiff reasonable attorneys' fees and cost of suit; and the Court grant such other and further relief as may be just and proper.

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Dated: March 10, 2020

Respectfully Submitted,

By: 

Parker A. Smith, Esq.
SY AND SMITH, PC
Attorney for Plaintiff