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7 Attorneys for Plaintiff, Kingpun Cheng

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

10 KINGPUN CHENG,

11 Plaintiff,

12 vs.

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

14 Defendants.

CASE NO.: CGC-20-583721

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]
CONSENT DECREE**

Complaint Filed: March 13, 2020

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Consent Decree (“Consent Decree”) is hereby entered
4 into by and between Kingpun Cheng acting on behalf of the public interest (hereinafter “Cheng”)
5 and Cricut, Inc. (hereinafter “Cricut” or “Defendant”). Together, Cheng and Defendant shall be
6 referred to hereafter as the “Parties” and each of them individually as a “Party.”

7 Cheng is an individual residing in California who contends that he seeks to promote
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products. Defendant employs ten or more persons
10 and is a person in the course of doing business for purposes of Proposition 65, Cal. Health &
11 Safety Code § 25249.6 et seq.

12 **1.2 Allegations**

13 Cheng alleges that Defendant has offered for sale in the State of California, and has sold
14 in California scoring wheel tips and drive housings and other products which contain lead, and
15 that such sales have not been accompanied by Proposition 65 warnings. Lead is a chemical
16 known to the State of California, pursuant to title 27 of the California Code of Regulations section
17 27001, to cause cancer and reproductive toxicity.

18 **1.3 Covered Products Description**

19 The products that are covered by this Consent Decree are defined as Cricut Scoring Wheel
20 Tip + Drive Housing (UPC093573546471). All such items shall be referred to herein as the
21 “Covered Products.”

22 **1.4 Notice of Violation/Complaint**

23 In October 2019, Cheng provided Defendant, Michaels Stores, Inc. (“Michaels”), and
24 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
25 pursuant to Health & Safety Code section 25249.7, subd. (d) (the “Notice”). The Notice alleged
26 that Defendant and Michaels were in violation of Proposition 65 for failing to warn consumers
27 and customers that the Covered Products exposed users in California to lead. No public enforcer
28

1 filed an action to pursue the allegations in the Notice within sixty (60) days of service of the
2 Notice.

3 On March 13, 2020, Cheng, acting in the interest of the general public in the State of
4 California, filed a complaint in the Superior Court of San Francisco County alleging violations of
5 *Health & Safety Code section 25249.6 (the "Complaint") based on the alleged failure to warn of*
6 exposures to lead contained in Covered Products manufactured, distributed, or sold by Defendant.

7 Defendant denies all allegations in Cheng's Notice and Complaint. Defendant maintains
8 that the Products have been, and are, in compliance with all laws and that Defendant has not
9 violated Proposition 65.

10 **1.5 Stipulation as to Jurisdiction/No Admission**

11 For purposes of this Consent Decree only, the Parties stipulate that this Court has
12 jurisdiction over the Parties and the subject matter of the action, and that venue is proper in the
13 County of San Francisco.

14 Nothing in this Consent Decree shall be construed as an admission by Defendant of any
15 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Decree
16 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
17 law, or violation of law, such being specifically denied by Defendant. However, this Section
18 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties
19 under this Consent Decree.

20 **1.6 Effective Date**

21 For purposes of this Consent Decree, the term "Effective Date" shall mean the date this
22 Consent Decree is entered as a judgment of the Court. All Covered Products already shipped on
23 or before the "Effective Date" or within ninety (90) days thereafter are deemed to be covered by
24 the waiver and release provisions of Section 4 of this Consent Decree and shall not be subject to
25 any future enforcement action. The reformulation and warning requirements of Sections 2.1 and
26 2.2 shall apply to any Covered Products shipped later than ninety (90) days after the Effective
27 Date.
28

Commencing ninety (90) days after the Effective Date, Defendant shall not sell or offer to sell in California Covered Products unless the Covered Products have a warning or meet the reformulation requirements of Section 2 of this Consent Decree. The requirements set forth in *this Section 2 shall not apply to any Covered Products that as of the Effective Date are in the* stream of commerce.

The Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the Covered Products contain less than 0.051% of lead in their accessible surfaces when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or equivalent.

The Covered Products that Defendant manufactures, distributes, markets, sells, or ships for sale in California shall be deemed to comply with Proposition 65 with regard to lead if the Covered Products are accompanied by the warning language or substantially similar language as that set forth in Section 2.3.

Where required under Section 2.2 above, Defendant shall provide either of the Proposition
65 warnings as follows:

or

2.4 Where utilized as an alternative to meeting the reformulation criteria set forth in Section 2.1, Defendant shall provide the warning language set forth in Section 2.3 either:

1 (a) With the unit package of the Covered Products or affixed to the Covered Products.
2 Such warning shall be prominently affixed to or printed on each Covered Product's label or
3 package or the Covered Product itself. If printed on the label, the warning shall be contained in
4 the same section that states other safety warnings, if any, concerning the use of the Covered
5 *Product; Defendant may continue to utilize, on an ongoing basis, unit packaging containing*
6 substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only
7 to the extent such packaging materials have already been printed within ninety (90) days of the
8 Effective Date; or,

9 (b) In the owner's manual of another product in which the Covered Product is a
10 component, but only if the other product: (i) may cause serious injury or bodily harm unless used
11 as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has
12 one or more features a consumer must read about in order to know how to program or use the
13 Covered Product. If the warning is given in the owner's manual pursuant to this subsection, it
14 shall be located in one of the following places in the manual: the outside of the front cover; the
15 inside of the front cover; the first page other than the cover; or the outside of the back cover. The
16 warning shall be printed or stamped in the manual or contained in a durable label or sticker
17 affixed to the manual in a font no smaller than the font used for other chemically-related safety
18 warnings in the manual, if any. Alternatively, the warning may be included in a safety warning
19 section of the owner's manual. Defendant may continue to utilize, on an ongoing basis, owner's
20 manuals containing substantively the same Proposition 65 warnings and without the additional
21 admonitions as those set forth in Section 2.3 above, but only to the extent such manuals have
22 already been printed within ninety (90) days of the Effective Date. Owner's manual warnings
23 may only be allowed if the owner's manual is sold in the same package and at the same time as
24 the other product and not for Covered Products sold separately.

25 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed
26 pursuant to the terms of this Consent Decree. The Parties recognize that these are not the
27 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
28 and that they may or may not be appropriate in other circumstances.

1 **3. REIMBURSEMENT OF FEES AND COSTS**

2 Defendant shall reimburse Cheng's counsel for fees and costs, incurred as a result of
3 investigating, bringing this matter to Defendant's attention, and for the work performed through
4 execution of this agreement and approval of the Consent Decree. Defendant shall pay Cheng's
5 *counsel \$30,000 for all attorneys' fees, expert and investigation fees, and related costs associated*
6 with this matter and the Notice. Within five (5) business days of the Effective Date, Defendant
7 shall send a check payable to "Sy and Smith, PC" via certified mail to the address for Cheng's
8 counsel referenced in Section 7 of this Consent Decree. Other than the payment required
9 hereunder, each side is to bear its own attorneys' fees and costs.

10 **4. CHENG'S GENERAL RELEASE**

11 As to those matters raised in the Complaint and in the Notice, Cheng, on behalf of
12 himself, hereby waives, releases, and forever discharges Defendant, its parent companies,
13 corporate affiliates, subsidiaries, officers, directors, agents, stockholders, predecessors,
14 successors, and assigns and each of its distributors, wholesalers, licensors, licensees, auctioneers,
15 retailers (including but not limited to Michaels), franchisees, dealers, customers, owners,
16 purchasers, users and their respective officers, directors, attorneys, representatives, stockholders,
17 agents, and employees, and sister and parent entities (collectively, "Released Parties") from any
18 and all claims or causes of action of any type whatsoever, including for injunctive relief,
19 damages, penalties, fines, costs, expenses, or any other liability of any nature, that were raised or
20 could have been raised based on the allegations in the Complaint as of the Effective Date.

21 Cheng, on behalf of the public interest, hereby waives, releases, and forever discharges
22 all claims based on the allegations in the Notice.

23 Compliance with the Consent Decree by Defendant shall constitute compliance with
24 Proposition 65 by the Released Parties with respect to the presence of lead in the Covered
25 Products.

26 With respect to the foregoing waivers and releases in this paragraph, Cheng hereby
27 specifically waives any and all rights and benefits which he now has, or in the future may have,
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1 conferred by virtue of the provisions of section 1542 of the California Civil Code, which provides
2 as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
5 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
7 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
9 OR RELEASED PARTY.

8 **5. SEVERABILITY AND MERGER**

9 If, subsequent to the execution of this Consent Decree, any of the provisions of this
10 document are held by a court to be unenforceable, the remaining provisions shall continue in full
11 force and effect.

12 This Consent Decree contains the sole and entire agreement of the Parties, and any and all
13 prior negotiations and understandings related hereto shall be deemed to have been merged within
14 it. No representations or terms of agreement other than those contained herein exist or have been
15 made by any Party with respect to the other Party or the subject matter hereof.

16 **6. GOVERNING LAW**

17 The terms of this Consent Decree shall be governed by the laws of the State of California
18 and apply within the State of California.

19 **7. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant
21 to this Consent Decree shall be in writing and personally delivered or sent by (i) first-class,
22 (registered or certified mail) return receipt requested; or (ii) overnight courier, on any party by the
23 other party at the following addresses:
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1 For Defendant:

2 Navi Dhillon, Esq.
3 navidhillon@paulhastings.com
4 Monica Molina, Esq.
5 monicamolina@paulhastings.com
6 Paul Hastings
7 101 California St., 48th Floor
8 San Francisco, CA 94111

6 and

7 For Cheng:

8 Parker Smith, Esq.
9 Sy and Smith, PC
10 11622 El Camino Real, Suite 100
11 San Diego, CA 92130

12 Any party may specify in writing to the other party a change of address to which all notices and
13 other communications shall be sent.

14 **8. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

15 This Consent Decree may be executed in counterparts and by email or facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7, subd. (f)**

19 Cheng agrees to comply with the requirements set forth in California Health & Safety
20 Code section 25249.7, subd. (f) and to promptly bring a Motion for Approval of this Consent
21 Decree. Defendant shall support approval of such Motion.

22 This Consent Decree shall not be effective until it is approved and entered by the Court
23 and shall be null and void if, for any reason, it is not approved and entered by the Court within
24 twelve (12) months after it has been fully executed by the Parties.

25 **10. MODIFICATION**

26 This Consent Decree may be modified only by further stipulation of the Parties and the
27 approval of the Court or upon the granting of a motion brought to the Court by either Party.

28 **11. DISMISSAL**

Concurrent with the entry of this Consent Decree, this Action will be deemed dismissed

1 with prejudice by the Court. Notwithstanding the dismissal of this action, the Court retains
2 jurisdiction to resolve any disputes or enforce any terms under this Consent Decree.

3 **12. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Decree on behalf of their
5 *respective Parties and have read, understood, and agree to all of the terms and conditions of this*
6 document, and certify that they are fully authorized by the Party they represent to execute the
7 Consent Decree on behalf of the Party represented and to legally bind that Party. Except as
8 explicitly provided herein, each Party is to bear its own fees and costs.

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10 **[Signatures Follow]**
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1 **IT IS HEREBY SO STIPULATED:**

2 **AGREED TO:**

AGREED TO:

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4 Date: _____

Date: 10/13/2021

5 By: _____

By: [Signature]

6 KINGPUN CHENG

On Behalf of:
CRICUT, INC.

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10 **IT IS SO ORDERED AND THIS ACTION IS HEREBY DISMISSED WITH PREJUDICE.**

11 Date: _____

By: _____

Ethan P. Schulman
Judge of the Superior Court

1 **IT IS HEREBY SO STIPULATED:**

2 **AGREED TO:**

AGREED TO:

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4 Date: Kingpun Cheng Date: _____

5 By: Kingpun Cheng By: _____

6 KINGPUN CHENG

On Behalf of:
CRICUT, INC.

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10 **IT IS SO ORDERED AND THIS ACTION IS HEREBY DISMISSED WITH PREJUDICE.**

11 Date: _____ By: _____

12 Ethan P. Schulman
13 Judge of the Superior Court
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