

1 Daniel Bornstein, State Bar No. 181711  
THE CHANLER GROUP  
2 2560 Ninth Street  
Parker Plaza, Suite 214  
3 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
RUSSELL BRIMER

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 01 2011

CLERK OF THE SUPERIOR COURT  
By PMGORDON Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF ALAMEDA  
9 UNLIMITED CIVIL JURISDICTION  
10

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 BANGKIT (U.S.A.), INC.; and DOES 1-150,  
15 inclusive,

16 Defendants.

Case No. RG11602430

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL  
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People's  
4 right to be informed of the presence of lead, a toxic chemical found in backpacks and cutting  
5 tools with grips sold in California.

6 2. By this Complaint, plaintiff seeks to remedy Defendants' continuing failure to  
7 warn California citizens about their exposure to lead, present in or on certain backpacks and  
8 cutting tools with grips that defendant manufactures, imports, distributes, and/or offer for sale to  
9 consumers and businesses throughout the State of California.

10 3. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
11 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course  
12 of doing business shall knowingly and intentionally expose any individual to a chemical known  
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
14 warning to such individual...." (*Cal. Health & Safety Code § 25249.6.*)

15 4. On February 27, 1987, California identified and listed lead as a chemical known  
16 to cause birth defects and other reproductive harm. Lead became subject to the warning  
17 requirement one year later and was therefore subject to the "clear and reasonable warning"  
18 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*  
19 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the "LISTED  
20 CHEMICAL."

21 5. Defendant manufactures, imports, distributes, and/or sells backpacks and cutting  
22 tools with grips containing lead including, but not limited to, *Cal Sport Active Travel Backpack*  
23 *Item No. S-203, (7 64608 00203 2)* and *Bazic All-Purpose Cutter, Item # 120, (7 64608 00120 2).*

24 6. All such backpacks and cutting tools with grips containing lead, shall hereinafter  
25 be collectively referred to as the "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the State of  
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*  
28 *seq.* about their exposure to lead in conjunction with Defendants' distribution, importation,

1 manufacture, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects  
2 Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For Defendants' violation of Proposition 65, plaintiff seeks preliminary injunctive  
4 and permanent injunctive relief to compel Defendants to provide purchasers or users of the  
5 PRODUCTS with the required warning regarding the health hazards of Lead. (*Cal. Health &*  
6 *Safety Code § 25249.7(a).*)

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

9 **PARTIES**

10 10. RUSSELL BRIMER is a citizen of the state of California who is dedicated to  
11 protecting the health of California citizens through the elimination or reduction of toxic  
12 exposures from consumer and commercial products, and brings this action in the public interest  
13 pursuant to California Health & Safety Code § 25249.7.

14 11. BANGKIT (U.S.A.), INC. ("BANGKIT") is a person doing business within the  
15 meaning of California Health & Safety Code § 25249.11.

16 12. BANGKIT manufactures, imports, distributes, and/or offers the PRODUCTS for  
17 sale or use in the state of California or implies by its conduct that it manufactures, imports,  
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

19 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
20 doing business within the meaning of California Health & Safety Code § 25249.11.

21 14. MANUFACTURER DEFENDANTS engage in the process of researching, testing,  
22 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
23 engage in the process of research, testing, designing, assembling, fabricating, and/or  
24 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or  
25 use in the state of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
27 doing business within the meaning of California Health & Safety Code § 25249.11.  
28



1 the state of California, or otherwise purposefully avail themselves of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65 - Against All Defendants)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the state of California have expressly stated in Proposition 65 that  
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other  
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

11 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly  
12 and intentionally expose any individual to a chemical known to the state to cause cancer or  
13 reproductive toxicity without first giving clear and reasonable warning to such individual...."  
14 (*Id.*)

15 27. On or about February 1, 2011, a sixty-day notice of violation (the "Notice"),  
16 together with the requisite Certificate of Merit, was provided to BANGKIT, and various public  
17 enforcement agencies stating that as a result of DEFENDANTS manufacture and/or distribution  
18 of the PRODUCTS, purchasers and users in the state of California were being exposed to lead  
19 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
20 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
21 such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or  
23 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
24 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
25 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
26 continued to occur beyond BANGKIT'S receipt of the Notice. Plaintiff further alleges and  
27 believes that such violations will continue to occur into the future.

1           29. After receipt of the claims asserted in the Notice, the appropriate public  
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
3 DEFENDANTS under Proposition 65.

4           30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
5 use in California by DEFENDANTS contained lead above the allowable state limits.

6           31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
8 lead.

9           32. Lead was present in or on the PRODUCTS in such a way as to expose individuals  
10 to lead through dermal contact and ingestion during the reasonably foreseeable use of the  
11 PRODUCTS.

12           33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
13 continues to cause consumer and workplace exposures to lead, as such exposure is defined by 27  
14 CCR § 25602(b).

15           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
16 the PRODUCTS would expose individuals to lead through dermal contact and ingestion.

17           35. DEFENDANTS intended that such exposures to lead from the reasonably  
18 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
19 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to  
20 individuals in the State of California.

21           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
22 consumers and/or other individuals in the State of California who were or who could become  
23 exposed to lead through dermal contact and ingestion during the reasonably foreseeable use of  
24 the PRODUCTS.

25           37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
26 directly by California voters, individuals exposed to lead through dermal contact and ingestion,  
27 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS  
28

1 without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable  
2 harm, for which harm they have no plain, speedy, or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
5 Safety Code § 25249.7(b).

6 39. As a consequence of the above-described acts, California Health & Safety Code  
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged  
13 herein;

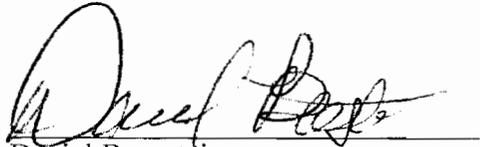
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or  
16 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
17 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to lead;

18 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

19 4. That the Court grant such other and further relief as may be just and proper.

20 Dated: October 31, 2011

21 Respectfully Submitted,  
22 THE CHANLER GROUP

23 By: 

24 Daniel Bornstein  
25 Attorneys for Plaintiff  
26 RUSSELL BRIMER  
27  
28