

**COPY**

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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**DEC 20 2011**

CLERK OF THE SUPERIOR COURT

By S. McMullen

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11  
12 CONSUMER ADVOCACY GROUP, INC.,  
in the public interest,

13  
14 Plaintiff,

15 v.

16  
17 BANGKIT (U.S.A.), Inc., dba BAZIC  
PRODUCTS, a California Corporation, and  
18 DOES 1-20;

19 Defendants.

CASE NO. **RG11609193**

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code, §*  
*25249.5, et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

20  
21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants BANGKIT (U.S.A.), INC. dba BAZIC PRODUCTS, and DOES 1-20, as follows:

23 ///  
24 ///  
25 ///  
26 ///

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant BANGKIT (U.S.A.), INC., dba BAZIC PRODUCTS ("BANGKIT") is a California corporation, qualified to do business and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term "Defendants" includes BANGKIT and Does 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Health and Safety Code  
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
4 employees at all relevant times.

5 **JURISDICTION**

6 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
8 those given by statute to other trial courts. This Court has jurisdiction over this action  
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 9. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their manufacture,  
16 distribution, promotion, marketing, or sale of their products within California to render  
17 the exercise of jurisdiction by the California courts permissible under traditional notions  
18 of fair play and substantial justice.

19 10. Venue is proper in the County of Alameda because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
21 because Defendants conducted, and continue to conduct, business in the County of  
22 Alameda with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28

1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
3 from contamination, to allow consumers to make informed choices about the products  
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
5 fit.

6 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
9 chemicals and chemical families. Proposition 65 imposes warning requirements and  
10 other controls that apply to Proposition 65-listed chemicals.

11 13. All businesses with ten (10) or more employees that operate or sell products in California  
12 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
13 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
14 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
15 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
16 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

17 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
19 "Threaten to violate" means "to create a condition in which there is a substantial  
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 15. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
24 Phthalate ("DEHP")-bearing products, of exposing, knowingly and intentionally, persons  
25 in California to the Proposition 65-listed chemicals of such products without first  
26 providing clear and reasonable warnings of such to the exposed persons prior to the time  
27 of exposure. Plaintiff later discerned that Defendants engaged in such practice.  
28

1 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
2 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
3 to the list of chemicals known to the State to cause developmental male reproductive  
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
5 months after addition of DEHP to the list of chemicals known to the State to cause  
6 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
7 requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 17. On or about June 07, 2011, Plaintiff gave notice of alleged violations of Health and  
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
11 private action to Defendants and to the California Attorney General, County District  
12 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
13 people in whose jurisdictions the violations allegedly occurred, concerning the product  
14 Pencil Pouches ("Pencil Pouches"), an exemplar is Bazic Products, Pencil Pouch, Item  
15 #803.

16 18. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
17 products involved, the likelihood that such products would cause users to suffer  
18 significant exposures to DEHP, and the corporate structure of each of the Defendants.

19 19. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
20 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
21 Plaintiff who executed the certificate had consulted with at least one person with relevant  
22 and appropriate expertise who reviewed data regarding the exposures to DEHP, which is  
23 the subject of the Proposition 65-listed chemicals of this action. Based on that  
24 information, the attorney for Plaintiff who executed the Certificate of Merit believed  
25 there was a reasonable and meritorious case for this private action. The attorney for  
26 Plaintiff attached to the Certificate of Merit served on the Attorney General the  
27 confidential factual information sufficient to establish the basis of the Certificate of  
28 Merit.

1 20. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
2 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
3 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

4 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notices of the alleged violations to Defendants, and the public prosecutors  
6 referenced in Paragraph 17.

7 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
8 any applicable district attorney or city attorney has commenced and is diligently  
9 prosecuting an action against the Defendants.

### 10 FIRST CAUSE OF ACTION

11 (By Consumer Advocacy Group, Inc. and against BANGKIT (U.S.A.), INC. dba BAZIC  
12 PRODUCTS, and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
13 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

#### 14 Pencil Pouches

15 (Exemplar: Bazic Products, Pencil Pouch, Item #803)

16 23. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
17 paragraphs 1 through 22 of this complaint as though fully set forth herein.

18 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
19 distributor, promoter, or retailer of Pencil Pouches a consumer product designed for use  
20 for transporting products and goods from Defendant's stores.

21 25. Plaintiff is informed, believes, and thereon alleges that Pencil Pouches contains DEHP.

22 26. Defendants knew or should have known that DEHP has been identified by the State of  
23 California as a chemical known to cause cancer and reproductive toxicity and therefore  
24 was subject to Proposition 65 warning requirements. Defendants were also informed of  
25 the presence of DEHP in Pencil Pouches within Plaintiff's notice of alleged violations  
26 further discussed above at Paragraph 17.

27 27. Plaintiff's allegations regarding Pencil Pouches concern "[c]onsumer products  
28 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
2 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
3 25602(b). Pencil Pouches is a consumer product, and, as mentioned herein, exposures to  
4 DEHP took place as a result of such normal and foreseeable consumption and use.

5 28. Plaintiff is informed, believes, and thereon alleges that between June 7, 2008 and the  
6 present, each of the Defendants knowingly and intentionally exposed their employees and  
7 California consumers and users of Pencil Pouches, which Defendants manufactured,  
8 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
9 clear and reasonable warning of such to the exposed persons before the time of exposure.  
10 Defendants have distributed and sold the Pencil Pouches in California. Defendants know  
11 and intend that California consumers will use and consume the Pencil Pouches thereby  
12 exposing them to DEHP. Defendants thereby violated Proposition 65.

13 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
14 Persons sustain exposures by handling Pencil Pouches without wearing gloves or any  
15 other personal protective equipment, or by touching bare skin or mucous membranes with  
16 gloves after handling Pencil Pouches, as well as through hand to mouth contact, hand to  
17 mucous membrane, or breathing in particulate matter dispersed from Pencil Pouches.

18 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of  
19 Proposition 65 as to Pencil Pouches have been ongoing and continuous to the date of the  
20 signing of this complaint, as Defendants engaged and continue to engage in conduct  
21 which violates Health and Safety Code section 25249.6, including the manufacture,  
22 distribution, promotion, and sale of Pencil Pouches, so that a separate and distinct  
23 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
24 by Pencil Pouches as mentioned herein.

25 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.

1 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from the Pencil Pouches, pursuant to  
3 Health and Safety Code section 25249.7(b).

4 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.  
6

7 **PRAYER FOR RELIEF**

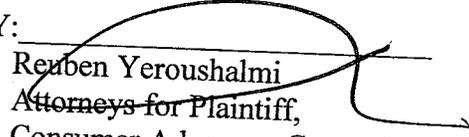
8 Plaintiff demands against each of the Defendants as follows:

- 9 1. A permanent injunction mandating Proposition 65-compliant warnings;  
10 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
11 3. Costs of suit;  
12 4. Reasonable attorney fees and costs; and  
13 5. Any further relief that the court may deem just and equitable.  
14

15 Dated: 12/15, 2011

YEROUSHALMI & ASSOCIATES

18 BY:

19   
20 Reuben Yeroushalmi  
21 Attorneys for Plaintiff,  
22 Consumer Advocacy Group, Inc.  
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