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RUSSELL BRIMER
6

ENDORSED
FILED
ALAMEDA COUNTY

OCT 09 2013

CLERK OF THE SUPERIOR COURT
By S. McMullen Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION
13

14
15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 BANGKIT U.S.A., INC; and DOES 1-150,
inclusive,

19 Defendants.
20

Case No. RG11602430

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: May 22, 2013

Time: 3:00 p.m.

Dept. 18

Judge: Hon. Marshall Whitley

Reservation No. R-1384277

1 Plaintiff, Russell Brimer, and defendant, Bangkit U.S.A., Inc., having agreed through their
2 respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in
3 the form of a Consent Judgment, and following this Court's issuance of an order approving the
4 Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
6 Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby
7 entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement
9 under Code of Civil Procedure section 664.6.

10 **IT IS SO ORDERED.**

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12 Dated: 10/9/13

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14 _____
15 JUDGE OF THE SUPERIOR COURT

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Kimberly Colwell

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
Daniel Bornstein, State Bar No. 181711
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6 Attorneys for Plaintiff
RUSSELL BRIMER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

BANGKIT U.S.A., INC.; and DOES 1 through
150, inclusive,

Defendants.

Case No. RG11602430

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff Russell Brimer ("Brimer"
4 or "Plaintiff") and Defendant Bangkit, U.S.A., Inc. ("Bangkit" or "Defendant"), with Plaintiff and
5 Defendant collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Brimer is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Bangkit employs 10 or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Brimer alleges that Bangkit has manufactured, distributed and/or sold, in the State of
16 California, (a) backpacks, and (b) various cutting tools with grips that expose users to lead,
17 without first providing "clear and reasonable warnings" under Proposition 65. Lead is listed as a
18 reproductive and developmental toxicant pursuant to Proposition 65. Backpacks containing lead
19 and cutting tools with grips containing lead are referred to herein as the "Products."

20 **1.5 Notice of Violation**

21 On February 1, 2011, Brimer served Bangkit and various public enforcement agencies
22 with a document entitled "60-Day Notice of Violation" ("Notice") that provided public enforcers
23 and Bangkit with notice of Bangkit's alleged violations of Health & Safety Code § 25249.6 for
24 failing to warn consumers in California that the Products that Defendant manufactured,
25 distributed and/or sold exposed users to lead.

26 **1.6 Complaint**

27 On November 1, 2011, Brimer, acting in the interest of the general public in California,
28 filed the instant action ("Complaint") in the Superior Court for the County of Alameda, alleging

1 violations of Health & Safety Code § 25249.6 based on the exposures to lead contained in
2 Products manufactured, distributed, and/or sold by Bangkit.

3 **1.7 No Admission**

4 This Consent Judgment resolves claims that are denied and disputed by Defendant. The
5 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
6 claims between the Parties for the purpose of avoiding prolonged litigation. Bangkit denies the
7 material, factual, and legal allegations contained in the Notice and Complaint and maintains that
8 all Products it has manufactured, distributed and/or sold in California, including the Products,
9 have been, and are, in compliance with all applicable laws. Nothing in this Consent Judgment
10 shall be construed as an admission by Bangkit of any fact, finding, conclusion, issue of law, or
11 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
12 an admission by Bangkit of any fact, finding, conclusion, issue of law, or violation of law, such
13 being specifically denied by Bangkit. However, this Section shall not diminish or otherwise
14 affect Defendant's obligations, responsibilities, and duties under this Consent Judgment.

15 **1.8 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
18 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
19 of this Consent Judgment.

20 **1.9 Effective Date**

21 For the purposes of this Consent Judgment, the term "Effective Date" shall mean March
22 31, 2013.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1** As of the Effective Date, Bangkit shall not purchase, import, manufacture, or
25 supply to an unaffiliated third party any Product that will be sold or offered for sale to consumers
26 in California unless such Product contains no more than to 100 parts per million ("ppm") of lead
27 when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and
28 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of

1 determining lead content in a solid substance, and yields no more than 1.0 micrograms of lead
2 per sample when any surface is tested according to NIOSH 9100 testing methodology applied to
3 the Products.

4 **2.2** If Brimer, any other person or entity represented by The Chanler Group, acting in
5 the public interest, or the State of California, subsequently enters into a Consent Judgment
6 relating to lead contained in (a) backpacks and/or (b) cutting tools, that provides a lead content
7 limit which is more than 100 ppm, Bangkit shall be allowed to utilize such level to comply with
8 the definition of "Reformulated Products" under this Consent Judgment.

9 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

10 In settlement of all the claims referred to in this Consent Judgment, Bangkit shall pay a
11 total of \$7,000 in civil penalties in accordance with this Section. Each penalty payment will be
12 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
13 of the funds remitted to the California Office of Environmental Health Hazard Assessment
14 ("OEHHA") and the remaining 25% of the penalty remitted to Brimer, as follows:

15 **3.1 Initial Civil Penalty**

16 Bangkit shall pay an initial civil penalty in the amount of \$1,000 on or before March 30th 11.
17 2013. Bangkit shall issue two separate checks to: (a) "OEHHA" in the amount of \$750; and (b)
18 "The Chanler Group in Trust for Russell Brimer" in the amount of \$250. All penalty payments
19 shall be delivered to the addresses listed in Section 3.3 below.

20 **3.2 Final Civil Penalty**

21 Bangkit shall pay a final civil penalty of \$6,000 on or before December 31, 2013. The
22 final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2013, an
23 officer of Bangkit provides Brimer with written certification that, as of the date of such
24 certification and continuing into the future, Bangkit has met the reformulation standard specified
25 in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered
26 for sale in California by Bangkit are Reformulated Products. Brimer must receive any such
27 certification on or before December 15, 2013. The certification in lieu of a final civil penalty
28 payment provided by this Section is a material term, and time is of the essence. Bangkit shall

1 issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of
2 \$4,500; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,500.

3 **3.3 Payment Procedures**

4 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

5 (a) All payments owed to Brimer pursuant to Sections 3.1 through 3.2,
6 shall be delivered to the following payment address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Sections 3.1 through 3.2, shall be delivered directly to OEHHA
12 (Memo line "Prop 65 Penalties") at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyrics
15 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Mike Gyrics
19 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
20 1001 I Street
Sacramento, CA 95814

21 With a copy of the checks payable to OEHHA mailed to The Chanler
22 Group at the address set forth above in 3.3.1(a), as proof of payment to
23 OEHHA.

24 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Bangkit shall issue
25 separate 1099 forms for each payment to Brimer, whose address and tax identification number
26 shall be furnished upon request after this Consent Judgment has been fully executed by the
27 Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

2 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Brimer
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
6 had been finalized. The parties then attempted to (and did) reach an accord on the compensation
7 due to Brimer and his counsel under general contract principles and the private attorney general
8 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through
9 the mutual execution of this agreement. Bangkit shall pay \$18,500 for fees and costs incurred as
10 a result of investigating, bringing this matter to Bangkit's attention, and negotiating a settlement
11 in the public interest. Bangkit shall issue a separate 1099 for fees and costs (EIN: 94-3171522)
12 and shall deliver seven separate payments, with each check payable to "The Chanler Group," to
13 the address listed in Section 3.3.1 above, as follows: (a) one payment of \$500 on or before March
14 ^{H.H.}30, 2013; and (b) six payments of \$3,000 each on or before April^{H.H.}30, 2013, May^{H.H.}30, 2013, June^{H.H.}30,
15 2013, July^{H.H.}30, 2013, August^{H.H.}30, 2013, and September^{H.H.}30, 2013.

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Plaintiff's Public Release of Proposition 65 Claims**

18 Plaintiff acting on his own behalf and in the public interest releases Defendant and
19 Defendant's parents, subsidiaries, affiliated entities under common ownership, directors, officers,
20 employees, attorneys, and each entity to whom Defendant directly or indirectly distributes or sells
21 the Products, including, but not limited, to its downstream distributors, wholesalers, customers,
22 retailers, franchisees, cooperative members, and licensees ("Releasees") from all claims for
23 violations of Proposition 65 up through the Effective Date based on exposures to lead from the
24 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
25 constitutes compliance with Proposition 65 with respect to exposures to lead from the Products as
26 set forth in the Notice.

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1 **5.2 Plaintiff's Individual Release of Claims**

2 Plaintiff also, in his individual capacity only and *not* in his representative capacity, and on
3 behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
4 assignees, provides a release to Defendant and Releasees which shall be effective as a full and
5 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
6 attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature,
7 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising
8 out of alleged or actual exposures to lead in the Products manufactured, distributed or sold by
9 Defendant.

10 **5.3 Defendant's Release of Plaintiff**

11 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
13 other representatives, for any and all actions taken or statements made (or those that could have
14 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
15 of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or
16 with respect to the Products.

17 **6. SEVERABILITY**

18 If, subsequent to Court approval of this Consent Judgment, any of the provisions of this
19 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
20 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
21 provision is not severable from the remainder of the Consent Judgment.

22 **7. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
25 months after it has been fully executed by all Parties. In the event this Consent Judgment is (a)
26 not entered by this Court within nine months (or thereafter) of the Effective Date for any reason
27 whatsoever; or (b) is entered by the Court and subsequently overturned by any appellate court,
28 any monies that have been provided to Brimer or his counsel pursuant to Sections 3 and/or 4

1 above shall be refunded within fifteen (15) days after receiving a written demand from Defendant
2 requesting the return of such funds.

3 **8. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
6 inapplicable by reason of law generally, or as to lead and/or the Products, then Defendant shall
7 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
8 that, the Products are so affected.

9 **9. NOTICES**

10 When any Party is entitled to receive any notice under this Consent Judgment, the notice
11 shall be sent by certified mail and electronic mail to the person(s) identified below:

12 To Defendant:

13 Handy Hioe
14 Bangkit USA, Inc.
15 2939 Bandini Blvd.
16 Vernon, CA. 90058

17 With copy to:

18 Kenneth E. Chyten, Esq.
19 Law Office of Kenneth E. Chyten
20 300 East Esplanade Drive, Suite 900
21 Oxnard, CA. 93036

22 To Brimer:

23 The Chanler Group
24 Attn: Proposition 65 Coordinator
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 Any Party may modify the person and address to whom the notice is to be sent by sending each
other Party notice by certified mail and/or other verifiable form of written communication.

10. POST EXECUTION ACTIVITIES

Brimer agrees to comply with the reporting form requirements referenced, in California
Health & Safety Code §25249.7(f). The parties acknowledge that, pursuant to Health & Safety
Code §25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent

1 Judgment. In furtherance of obtaining such approval, Brimer and Bangkit, and their respective
2 counsel agree to mutually employ their best efforts to support the entry of this agreement as a
3 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
4 For purposes of this paragraph, "best efforts" shall include, at a minimum, cooperating on the
5 drafting and filing of any papers in support of the requisite motion for judicial approval.

6 **11. MODIFICATION**

7 This Consent Judgment may be modified only: (1) by a written agreement of the Parties;
8 or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
9 Court.

10 **12. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
16 deemed to exist or to bind any of the parties.

17 **13. ATTORNEY'S FEES**

18 **13.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
20 unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term "substantial justification" shall carry the same meaning as used in the Civil
22 Discovery Act, Code of Civil Procedure § 2016.010 *et seq.*

23 **13.2** Except as specifically provided in the above paragraph and in Section 3.2 above,
24 each Party shall bear its own costs and attorney's fees in connection with this action.

25 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile or portable
27 document format (PDF) signature, each of which shall be deemed an original, and all of which,
28 when taken together, shall constitute one and the same document.


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15. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

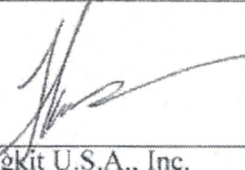
AGREED TO:

Date: March 8, 2013

By: 
Plaintiff Russell Brimer

AGREED TO:

Date: 3/7/2013

By: 
Bangkit U.S.A., Inc.