

FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF MARIN**

10
11 CENTER FOR ENVIRONMENTAL,
HEALTH, a non-profit corporation,

12 Plaintiff,

13 v.

14 BANGKIT (U.S.A.), INC., and Defendant
15 DOES 1 through 200, inclusive;

16 Defendants.
17

CASE NO. CIV-1006648

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT BANGKIT (U.S.A.),
INC.**

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1. INTRODUCTION

1.1 On December 22, 2010, Plaintiff Center for Environmental Health ("CEH"), a non-profit corporation acting in the public interest, filed a complaint in Marin County Superior Court, entitled *Center for Environmental Health v. Bangkit (U.S.A.), Inc.*, Marin County Superior Court Case Number CIV-1006648 (the "Action"), for civil penalties and injunctive relief pursuant to the provisions of California Health & Safety Code §25249.5 et seq. ("Proposition 65").

1.2 Defendant Bangkit (U.S.A.), Inc. ("Bangkit") is a "person in the course of doing business" under Proposition 65 and manufactures, distributes and/or sells vinyl pencil pouches (the "Products") in the State of California. Bangkit and CEH are referred to collectively herein as the Parties.

1.3 On or about August 31, 2010, CEH served Bangkit and the appropriate public enforcement agencies with the requisite 60-day notice that Bangkit is in violation of Proposition 65. CEH's notice and the Complaint in this Action allege that Bangkit exposes individuals who use or otherwise handle the Products to lead and/or lead compounds (referred to interchangeably herein as "Lead"), chemicals known to the State of California to cause cancer, birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege that Bangkit's conduct violates Health & Safety Code §25249.6, the warning provision of Proposition 65.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and personal jurisdiction over Bangkit as to the acts alleged in CEH's Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein.

1.5 The Parties enter into this Consent Judgment effective on the date when this Consent Judgment is approved by the Court by the signing of the Order below, and

1 conditional upon such approval, pursuant to a settlement of certain disputed claims between the
2 Parties as alleged in the Complaint. By executing this Consent Judgment, the Parties do not
3 admit any facts or conclusions of law. It is the Parties' intent that nothing in this Consent
4 Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue
5 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
6 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
7 of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
8 argument or defense the Parties may have in any other or future legal proceedings. This Consent
9 Judgment is the product of negotiation and compromise and is accepted by the parties, for
10 purposes of settling, compromising and resolving issues disputed in this action, including future
11 compliance by Bangkit with Section 2 of this Consent Judgment, and shall not be used for any
12 other purpose, or in any other matter.

13 **1.6** Bangkit denies the material factual and legal allegations contained in
14 CEH's Notices and maintains that all products that it has sold and distributed in California,
15 including the Products, have been and are in compliance with all laws. Nothing in this Consent
16 Judgment shall be construed as an admission by Bangkit of any fact, finding, issue of law, or
17 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
18 an admission by Bangkit of any fact, finding, conclusion, issue of law or violation of law, such
19 being specifically denied by Bangkit. However, this section shall not diminish or otherwise
20 affect the obligations, responsibilities and duties of Bangkit under this Consent Judgment.

21 **2. COMPLIANCE - REFORMULATION**

22 **2.1 Lead Reformulation.** As of the date when the Court signs the Order
23 below approving this Consent Judgment, (the "Compliance Date"), Bangkit agrees as follows:

24 (a) Bangkit shall not manufacture, ship, or sell or offer for sale, or cause to be
25 manufactured, distributed, shipped, or sold, any Product that contains any component, or is made
26 of any material, that contains more than 0.03 percent Lead by weight (300 parts per million
27 ("ppm"));

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1 (b) On or after August 14, 2011, Bangkit shall not manufacture, distribute, ship, or
2 sell, or cause to be manufactured, distributed, shipped, or sold, any Product unless such Product
3 contains less than 0.01 percent Lead by weight (100 ppm), provided that, if the Consumer
4 Product Safety Commission (“CPSC”) determines that it is not technically feasible for
5 manufacturers of Products to meet this 100 ppm limit, Bangkit shall be required to comply with
6 the provisions of 2.1(a) herein.

7 **2.2 Supplier Specifications and Testing.** Bangkit shall include in its
8 specifications a requirement that suppliers provide Product that complies with the Lead content
9 requirements of Section 2.1 of this Consent Judgment. Bangkit shall request from its suppliers
10 test results of the Products certifying that the Products meet the requirements of Section 2.1.

11 **2.3 Pre-market testing.** On or before the Compliance Date, Bangkit, itself or
12 through its agents, shall test a representative sample of the various designs of the Product it is
13 currently offering for sale to determine whether such Products comply with the levels of lead as
14 set forth in Section 2.1 of this Consent Judgment. Such testing shall be conducted by an
15 independent laboratory.

16 **2.4 Confirmatory testing by CEH.** CEH intends to conduct periodic testing
17 of the Products. Such testing shall be conducted by an independent laboratory. In the event that
18 CEH’s testing demonstrates Lead levels in excess of the requirements of Section 2.1 for any
19 Product sold in California, CEH shall inform Bangkit of the alleged violation(s), including
20 information sufficient to permit Bangkit to identify the Product(s). Bangkit shall, within twenty
21 (20) days following such notice, provide CEH at the address listed in Section 11, with: (a)
22 information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment;
23 and (b) a detailed description of corrective action that it has undertaken or proposes to undertake
24 to address the alleged violation. If there is a dispute over the sufficiency of the proposed
25 corrective action or its implementation, CEH shall promptly notify Bangkit and the Parties shall
26 meet and confer before CEH seeks the intervention of the Court to resolve the dispute. This
27 remedy is in addition to any other remedies available to enforce the terms of this Consent
28 Judgment.

1 **2.5 Documentation.** The results of all testing performed and obtained from
2 suppliers pursuant to this Consent Judgment shall be retained by Bangkit for a period of three
3 years from the date of the testing and shall be made available to CEH upon request.

4 **3. SETTLEMENT PAYMENTS**

5 **3.1** Bangkit shall pay a total of \$20,000 as a settlement payment. Any failure
6 by Bangkit to comply with the payment terms herein shall be subject to a stipulated late fee in
7 the amount of \$100 for each day after the delivery date the payment is received. The late fees
8 required under this section shall be recoverable, together with reasonable attorneys' fees, in an
9 enforcement proceeding brought pursuant to section 5 of this Consent Judgment. The total
10 amount paid by Bangkit shall be allocated by CEH as follows:

11 **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health and
12 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for
13 Environmental Health. CEH shall provide seventy-five percent (75%) of the civil penalty to the
14 Safe Drinking Water and Toxic Enforcement Fund in accordance with Health and Safety Code
15 § 25249.12.

16 **3.1.2 Monetary Payment in Lieu of Penalty:** \$6,150 shall be paid to
17 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
18 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
19 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
20 CEH intends to conduct periodic testing of the Products as set forth in Section 2.4. In addition,
21 as part of its Community Environmental Action and Justice Fund, CEH will use four percent of
22 such funds to award grants to grassroots environmental justice groups working to educate and
23 protect people from exposures to toxic chemicals. The method of selection of such groups can
24 be found at the CEH web site at www.ceh.org/justicefund.

25 **3.1.3 Attorneys' Fees and Costs:** \$12,850 shall be used to reimburse
26 CEH and its attorneys for a portion of their reasonable investigation fees and costs, attorneys'
27 fees, and any other costs incurred as a result of investigating, bringing this matter to Bangkit's
28 attention, litigating and negotiating a settlement in the public interest, and securing entry of this

1 Consent Judgment. This payment shall be made by check payable to Center for Environmental
2 Health.

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4 **3.2** The total settlement amount for Defendant shall be paid in two separate
5 checks made payable to the Lexington Law Group and delivered to the offices of the Lexington
6 Law Group (Attn: Howard Hirsch), 1627 Irving Street, San Francisco, California 94122
7 according to the following schedule:

8 **3.2.1** On or before April 1, 2011: \$10,000

9 **3.2.2** On or before May 1, 2011: \$10,000

10 **4. MODIFICATION OF CONSENT JUDGMENT**

11 **4.1** This Consent Judgment may be modified by written agreement of CEH
12 and Bangkit, or upon motion of CEH or Bangkit as provided by law.

13 **5. ENFORCEMENT OF CONSENT JUDGMENT**

14 **5.1** Either Party may, by motion or application for an order to show cause
15 before the Superior Court of the County of Marin, enforce the terms and conditions contained in
16 this Consent Judgment. Should the moving party prevail on any motion, application for an order
17 to show cause or other proceeding to enforce a violation of this Consent Judgment, the moving
18 party shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such
19 motion or application.

20 **6. APPLICATION OF CONSENT JUDGMENT**

21 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
22 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
23 them.

24 **7. RELEASE**

25 **7.1** In further consideration of the promises and agreements herein contained,
26 and for the payments to be made pursuant to Section 3 above, CEH, on behalf of itself, its past
27 and current agents, representatives, successors and/or assignees, and in the interest of the general
28 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
legal action and releases all claims, including, without limitation, all actions, and causes of

1 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
2 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
3 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
4 (collectively "Claims"), that were brought or could have been brought against Bangkit and its
5 affiliates, subsidiaries, and their respective officers, directors, representatives, shareholders,
6 agents, employees, and sister and parent companies, licensors, licensees, retailers, franchisees,
7 dealers, customers, owners, subsidiaries, and their respective officers, and directors (collectively
8 "Releasees") that arise under Proposition 65 and that could have been asserted including such
9 Claims as relate to Bangkit's and each of its Releasees' alleged failure to warn about exposures
10 to or identification of Lead contained in any Products manufactured, distributed or sold by
11 Bangkit on or prior to the date of entry of this Consent Judgment.

12 **8. SEVERABILITY**

13 **8.1** In the event that any of the provisions of this Consent Judgment are held
14 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
15 affected.

16 **9. GOVERNING LAW**

17 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
18 State of California.

19 **10. RETENTION OF JURISDICTION**

20 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
21 the terms this Consent Judgment.

22 **11. PROVISION OF NOTICE**

23 **11.1** All notices required pursuant to this Consent Judgment and
24 correspondence shall be sent to the following:

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26 For CEH: Howard Hirsch
27 Lexington Law Group
28 1627 Irving Street
San Francisco, CA 94122

1 For CEH: Howard Hirsch
2 Lexington Law Group
3 1627 Irving Street
4 San Francisco, CA 94122

4 For Bangkit: Jim Slaughter
5 Slaughter & Slaughter LLP
6 2 San Joaquin Plaza, Suite 240
7 Newport Beach, CA 92660

7 **12. COURT APPROVAL**

8 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no
9 further force or effect. CEH will prepare and file a Motion for Approval of this Consent
10 Judgment. The Parties agree to support a Motion for Approval of this Consent Judgment.

11 **13. EXECUTION AND COUNTERPARTS**

12 **13.1** The stipulations to this Consent Judgment maybe executed in counterparts
13 and by means of facsimile, which taken together shall be deemed to constitute one document.

14 **14. AUTHORIZATION**

15 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
17 into and execute the Consent Judgment on behalf of the party represented and legally bind that
18 party. The undersigned have read, understand and agree to all of the terms and conditions of this
19 Consent Judgment. Except as provided herein, each party is to bear its own fees and costs.

20 **AGREED TO:**

21 CENTER FOR ENVIRONMENTAL HEALTH

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Signature

24
25 CHARLIE PIZARRO

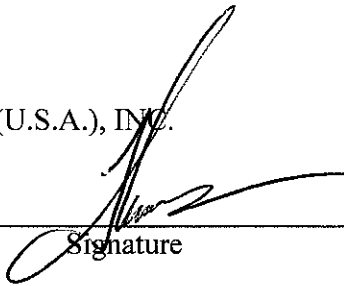
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27 ASSOCIATE DIRECTOR

Title

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BANGKIT (U.S.A.), INC.



Signature

Handy Hioe

Printed Name

President

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between the Parties, the settlement is approved and judgment is hereby entered according to the terms herein.

JUL 27 2011

Dated: _____

ROY CHERNUS

Judge, Superior Court of the State of California