



FILED
ALAMEDA COUNTY

AUG 01 2013

CLERK OF THE SUPERIOR COURT
By Pam Williams Deputy

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Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
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Telephone: 310.623.1926
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Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

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

Defendants.

CASE NO. RG11609193
CONSENT JUDGMENT [PROPOSED]

Dept: 15
Judge: Hon. Ioana Petrou
Complaint filed: December 20, 2011

**FILE BY
FAX**

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff Consumer Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and defendant Bangkit (U.S.A.), Inc dba Bazic Products. ("Bangkit"), with each a Party and collectively referred to as "Parties."

1.2 Bangkit employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health

MARGARET J. DOWNLI
JUN 14 2013

1 & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and manufactures, distributes, and sells
2 Pencil Pouches.

3 **1.3 Notices of Violation.**

4 1.3.1 On or about June 7, 2011, CAG served Bangkit and various public
5 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “June
6 7, 2011 Notice”) that provided the recipients with notice of alleged violations of Health
7 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
8 di(2-ethylhexyl)phthalate (DEHP) contained in Pencil Pouches.

9 1.3.2 On or about December 27, 2012, CAG served Bangkit and various public
10 enforcement agencies with a document entitled “60-Day Notice of Violation” (the
11 “December 27, 2012 Notice”) that provided the recipients with notice of alleged
12 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California
13 of exposures to di(2-ethylhexyl)phthalate (DEHP) contained in Pencil Pouches.

14 1.3.3 No public enforcer has commenced or diligently prosecuted the
15 allegations set forth in the June 7, 2011 or December 27, 2012 Notices.

16 **1.4 Complaint.**

17 On December 20, 2011, CAG filed a Complaint for civil penalties and injunctive relief
18 (“Complaint”) in Alameda Superior Court, Case No. RG11609193. The Complaint alleges,
19 among other things, that Bangkit violated Proposition 65 by failing to give clear and reasonable
20 warnings of exposure to DEHP from Pencil Pouches.

21 **1.5 Consent to Jurisdiction**

22 For purposes of this Consent Judgment, the parties stipulate that this Court has
23 jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Bangkit as to the acts alleged in the Complaint, that venue is proper in the City
25 and County of Alameda and that this Court has jurisdiction to enter this Consent Judgment as a
26 full settlement and resolution of the allegations contained in the Complaint and of all claims
27 which were or could have been raised by any person or entity based in whole or in part, directly
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1 or indirectly, on the facts alleged therein or arising therefrom or related to.

2 **1.6 No Admission**

3 This Consent Judgment resolves claims that are denied and disputed. The parties enter
4 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
5 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
6 constitute an admission with respect to any material allegation of the Complaint, each and every
7 allegation of which Bangkit denies, nor may this Consent Judgment or compliance with it be
8 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Bangkit.

9 **2. DEFINITIONS**

10 2.1 “Covered Products” means Pencil Pouches sold by Bangkit.

11 2.2 “Effective Date” means the date that this Consent Judgment is entered by the
12 Court.

13 **3. INJUNCTIVE RELIEF/REFORMULATION**

14 3.1 Within 30 days of the Effective Date Bangkit shall not sell or offer for sale in
15 California Covered Products that contain DEHP with more than 0.1% DEHP by weight.

16 **4. SETTLEMENT PAYMENT**

17 4.1 **Reimbursement of Attorneys’ Fees and Costs:** Within ten business days of the
18 Effective Date, Bangkit shall pay \$75,000 to “Yeroushalmi & Associates” as reimbursement for
19 the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs
20 and expenses for all work performed through the approval of this Consent Judgment.
21 Yeroushalmi & Associates will donate \$5,000 of the attorneys’ fees to an organization that helps
22 benefit kids with autism. The donation to the charity was decided upon by Yeroushalmi &
23 Associates without being part of the negotiation process.

24 4.2 **Civil Penalties.** Bangkit shall issue two separate checks for a total amount of four
25 thousand dollars (\$4,000) as penalties pursuant to Health & Safety Code § 25249.12: (a) one
26 check made payable to the State of California’s Office of Environmental Health Hazard
27 Assessment (OEHHA) in the amount of \$3,000, representing 75% of the total penalty; and (b)
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1 one check to Consumer Advocacy Group, Inc. in the amount of \$1,000, representing 25% of the
2 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
3 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
4 \$4,000. The second 1099 shall be issued in the amount of \$1,000 to CAG and delivered to:
5 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
6 90212.

7 **4.3 Payment In Lieu of Civil Penalties:** Bangkit shall pay \$1,000 in lieu of civil
8 penalties to “Consumer Advocacy Group, Inc.” CAG will use this payment for investigation of
9 the public’s exposure to Proposition 65 listed chemicals through various means, laboratory fees
10 for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through
11 various mediums, including but not limited to consumer product, occupational, and
12 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
13 and retained experts who assist with the extensive scientific analysis necessary for those files in
14 litigation, in order to reduce the public’s exposure to Proposition 65 listed chemicals by notifying
15 those persons and/or entities believed to be responsible for such exposures and attempting to
16 persuade those persons and/or entities to reformulate their products or the source of exposure to
17 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
18 the same public harm as allegedly in the instant Action. Further, should the court require it,
19 CAG will submit under seal, an accounting of these funds as described above as to how the funds
20 were used. The check shall be made payable to “Consumer Advocacy Group, Inc.” and delivered
21 to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
22 Beverly Hills, California 90212.

23
24 **4.4** Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
25 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

26 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

27 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
28 behalf of itself and in the public interest and Bangkit and its officers, directors, insurers,

1 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
2 companies and their successors and assigns (“Defendant Releasees”), including but not limited to
3 each of its suppliers, customers, distributors, wholesalers, retailers, or any other person in the
4 course of doing business, and the successors and assigns of any of them, who may use, maintain,
5 distribute or sell Covered Products (“Downstream Defendant Releasees”), for all claims for
6 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
7 Covered Products as set forth in the Notice. Bangkit and Defendant Releasees’ compliance with
8 this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP
9 from Covered Products as set forth in the Notice.

10 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
11 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
12 indirectly, any form of legal action and releases all claims, including, without limitation, all
13 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
14 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
15 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
16 fixed or contingent (collectively “Claims”), against Bangkit, Defendant Releasees, and
17 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
18 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
19 Products manufactured, distributed, or sold by Bangkit and Defendant Releasees. In furtherance
20 of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG hereby waives
21 any and all rights and benefits which it now has, or in the future may have, conferred upon it
22 with respect to the Claims arising from any violation of Proposition 65 or any other statutory or
23 common law regarding the failure to warn about exposure to DEHP from Covered Products by
24 virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:
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26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
28 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
 DEBTOR.

1 CAG understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
3 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
4 any violation of Proposition 65 or any other statutory or common law regarding the failure to
5 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
6 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
7 not be able to make any claim for those damages against Bangkit or the Defendant Releasees or
8 Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
9 consequences for any such Claims arising from any violation of Proposition 65 or any other
10 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
11 Products as may exist as of the date of this release but which CAG does not know exist, and
12 which, if known, would materially affect their decision to enter into this Consent Judgment,
13 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
14 negligence, or any other cause.

15 **6. ENFORCEMENT OF JUDGMENT**

16 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
17 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
18 California, City and County of Alameda, giving the notice required by law, enforce the terms and
19 conditions contained herein. A Party may enforce any of the terms and conditions of this
20 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly
21 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
22 such Party's failure to comply in an open and good faith manner.

23 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
24 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
25 Violation ("NOV") to Bangkit. The NOV shall include for each of the Covered Products: the
26 date(s) the alleged violation(s) was observed and the location at which the Covered Products
27 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
28

1 Covered Products, including an identification of the component(s) of the Covered Products that
2 were tested.

3 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
4 alleged violation if, within 30 days of receiving such NOV, Bangkit serves a Notice of
5 Election (“NOE”) that meets one of the following conditions:

6 (a) The Covered Products were shipped by Bangkit for sale in
7 California before the Effective Date, or

8 (b) Since receiving the NOV Bangkit has taken corrective action by
9 either (i) requesting that its customers in California remove the Covered Products
10 identified in the NOV from sale in California and destroy or return the Covered Products
11 to Bangkit, or (ii) providing a clear and reasonable warning for the Covered Products
12 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

13 6.2.2 **Contested NOV.** Bangkit may serve an NOE informing CAG of its
14 election to contest the NOV within 30 days of receiving the NOV.

15 (a) In its election, Bangkit may request that the sample(s) Covered
16 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
17 laboratory.

18 (b) If the confirmatory testing establishes that the Covered Products do
19 not contain DEHP in excess of the level allowed in Section 3.1 CAG shall take no further
20 action regarding the alleged violation. If the testing does not establish compliance with
21 Section 3.1, Bangkit may withdraw its NOE to contest the violation and may serve a new
22 NOE pursuant to Section 6.2.1.

23 (c) If Bangkit does not withdraw an NOE to contest the NOV, the
24 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
25 an order enforcing the terms of this Consent Judgment.
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1 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **7. ENTRY OF CONSENT JUDGMENT**

5 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
6 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
7 Bangkit waive their respective rights to a hearing or trial on the allegations of the Complaint.

8 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
9 and any and all prior agreements between the parties merged herein shall terminate and become
10 null and void, and the actions shall revert to the status that existed prior to the execution date of
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
15 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

16 **8. MODIFICATION OF JUDGMENT**

17 8.1 This Consent Judgment may be modified only upon written agreement of the
18 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
19 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

20 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
21 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
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23 **9. RETENTION OF JURISDICTION**

24 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
25 terms of this Consent Judgment.

26 **10. DUTIES LIMITED TO CALIFORNIA**

27 This Consent Judgment shall have no effect on Covered Products sold outside the State of
28 California.

1 **11. SERVICE ON THE ATTORNEY GENERAL**

2 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General so that the Attorney General may review this Consent Judgment
4 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
5 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
6 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
7 the parties may then submit it to the Court for approval.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
10 and attorney fees in connection with this action.

11 **13. ENTIRE AGREEMENT**

12 13.1 This Consent Judgment contains the sole and entire agreement and understanding
13 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
17 deemed to exist or to bind any of the parties.

18 **14. GOVERNING LAW**

19 14.1 The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California, without reference to any conflicts of law
21 provisions of California law.

22 14.2 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
26 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
27 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
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1 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
2 resolved against the drafting Party should not be employed in the interpretation of this Consent
3 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

4 **15. EXECUTION AND COUNTERPARTS**

5 15.1 This Consent Judgment may be executed in counterparts and by means of
6 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
7 one document.

8 **16. NOTICES**

9 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
10 Class Mail.

11
12 If to CAG:

13 Reuben Yeroushalmi, Esq.
14 9100 Wilshire Boulevard, Suite 610E
15 Beverly Hills, CA 90212
(310) 623-1926

16 If to Bangkit:

17 Bangkit (U.S.A.), Inc.
18 2939 Bandini Blvd.
Vernon, CA 90058

19 With a copy to:

20 Kenneth Chyten
21 Law Office of Kenneth E. Chyten
22 300 East Esplanade Drive, Ste. 900
Oxnard, CA 93036

23 **17. AUTHORITY TO STIPULATE**

24 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
26 of the party represented and legally to bind that party.

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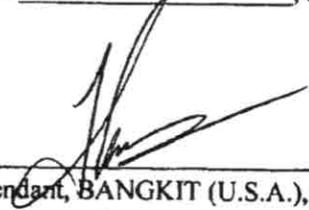
AGREED TO:

Date: _____, 2013

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: 6/12, 2013

By: 
Defendant, BANGKIT (U.S.A.), INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date: 6-6, 2013

Date: _____, 2013

By:  Michel Sassoon
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
Defendant, BANGKIT (U.S.A.), INC.

IT IS SO ORDERED.

Date: 8/1/13


JUDGE OF THE SUPERIOR COURT

Ioana Petrou