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1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

FILED
ALAMEDA COUNTY

MAY 05 2022

CLERK OF THE SUPERIOR COURT

By *Carroll Salgado*
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

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

15 Defendant.

Case No.: RG21099107

CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 520

Hearing Date: May 5, 2022

Hearing Time: 2:00 PM

Reservation #: 772644290329

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1. INTRODUCTION

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1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting on behalf of the public interest (hereinafter “Bell”), and Bangkit (U.S.A.), Inc. (“Bangkit” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties,” and each of them as a “Party.” Bell is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Bangkit is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

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1.2 **Allegations and Representations.** Bell alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Bazic Washable Mini Markers (the “Product”) without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

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1.3 **Notice of Violation/Complaint.** On or about November 23, 2020, Bell served Defendant, and various public enforcement agencies, with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the Products may expose users in California to DEHP. No public enforcer has brought, and is diligently prosecuting, the claims alleged in the Notice. On May 12, 2021, Bell filed a complaint (the “Complaint”) in the matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

1 1.5 Defendant denies the material allegations contained in Bell's Notice and Complaint,
2 maintains it has not violated Proposition 65, and that the Product has been tested, and the tests
3 show, no detectible levels of DEHP. Nothing in this Consent Judgment shall be construed as an
4 admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance
5 with this Consent Judgment constitute or be construed as an admission by Defendant of any fact,
6 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
7 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
8 duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means the Product that is
11 manufactured, distributed and/or offered for sale in California by Bangkit.

12 2.2 **Effective Date.** The term "Effective Date" means six months after this Consent
13 Judgment is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Reformulation of Any Covered Products That Contain DEHP In Excess of**
16 **0.1%.** Commencing after the Effective Date, Covered Products that Bangkit puts into the stream
17 of commerce for sale in California shall either: (a) contain levels of DEHP that do not exceed 0.1%
18 (1,000 parts per million (ppm)); (b) be Reformulated Products pursuant to § 3.2, below; or (c) be
19 labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
20 purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
21 compliance with the standard set forth in §3.2 below. The warning requirement set forth in §§ 3.3
22 and 3.4 shall not apply to any Reformulated Product, or to any Covered Product that contains DEHP
23 at levels less than 0.1%.

24 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
25 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
26 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
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1 and 8270C or other methodology utilized by federal or state government agencies for the purpose
2 of determining the phthalate content in a solid substance.

3 **3.3 Clear and Reasonable Warning.** A clear and reasonable exposure warning as set
4 forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant puts into the
5 stream of commerce for sale in California, after the Effective Date, that either (a) contains levels
6 of DEHP that exceed 0.1% (1,000 parts per million (ppm)); or (b) are not Reformulated Products.

7 **3.4** There shall be no obligation for Defendant to provide a warning for Covered
8 Products that Defendant causes to be put into the stream of commerce for sale in California prior
9 to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
10 described in §§ 3.3(a) or (b), respectively:

11 (a) **Warning.** The "Warning" shall consist of the statement:

12 **⚠ WARNING:** This product can expose you to chemicals including di(2-
13 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
14 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

15 (b) **Alternative Warning:** Bangkit may, but is not required to, use the alternative short-
16 form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

17 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

18 **3.5** A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
19 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to
20 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
21 triangle with a black outline, except that if the sign or label for the Covered Product does not use
22 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
23 than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the
24 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
25 automatic process, providing that the warning is displayed with such conspicuousness, as compared
26 with other words, statements, or designs as to render it likely to be read and understood by an
27 ordinary individual under customary conditions of purchase or use. A warning may be contained
28 in the same section of the packaging, labeling, or instruction booklet that states other safety

1 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
2 those other safety warnings.

3 If Bangkit sells Covered Products via an internet website to customers located in California,
4 the warning requirements of this section shall be satisfied if the foregoing warning appears either:
5 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the
6 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a
7 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a
8 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
9 immediately following the display, description, price, or checkout listing of the Covered Product,
10 if the warning statement appears elsewhere on the same web page in a manner that clearly associates
11 it with the product(s) to which the warning applies.

12 3.6 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by the State of California's Office
15 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Bangkit shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d), as set
21 forth in section 4.1.1.

22 4.1.1 Within ten (10) days of the Effective Date, Bangkit shall issue two separate
23 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)
24 "Brodsky & Smith in Trust for Bell" in the amount of \$500.00. Payment owed to Bell pursuant to
25 this Section shall be delivered to the following payment address:

26
27 Evan J. Smith, Esquire
28 Brodsky & Smith
Two Bala Plaza, Suite 805

1 Bala Cynwyd, PA 19004

2 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
3 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
13 forth above as proof of payment to OEHHA.

14 4.2 **Attorneys' Fees.** Within ten (10) days after this Consent Judgment is entered as a
15 Judgment by the Court, Bangkit shall pay \$18,000.00 to Brodsky & Smith ("Brodsky & Smith") as
16 complete reimbursement for Bell's attorneys' fees and costs incurred as a result of investigating,
17 bringing this matter to Bangkit attention, litigating and negotiating and obtaining judicial approval
18 of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
21 on her own behalf, and on behalf of the public interest, and Bangkit, and its parents, shareholders,
22 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
23 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
24 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
25 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
26 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
27 franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of
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1 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with
2 respect to any Covered Products manufactured, distributed, or sold by Bangkit as provided herein.
3 It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other
4 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
5 interest shall be permitted to pursue and/or take any action with respect to any violation of
6 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the
7 Notice against Bangkit and/or the Downstream Releasees of the Covered Products ("Proposition
8 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
9 Proposition 65 with regard to the Covered Products.

10 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
11 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
13 and releases Bangkit, Defendant Releasees, and Downstream Releasees from any and all manner
14 of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
15 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
16 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
17 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
18 manufactured, distributed, or sold by Bangkit, Defendant Releasees or Downstream Releasees.
19 With respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically
20 waives any and all rights and benefits which she now has, or in the future may have, conferred by
21 virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
25 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
26 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
27 DEBTOR OR RELEASED PARTY.

28 5.3 Bangkit waives any and all claims against Bell, her attorneys and other
representatives, for any and all actions taken or statements made (or those that could have been
taken or made) by Bell and her attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and/or with respect to Covered Products.

3 **6. INTEGRATION**

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
5 any and all prior negotiations and understandings related hereto shall be deemed to have been
6 merged within it. No representations or terms of agreement other than those contained herein exist
7 or have been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed or
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
13 to the extent that, Covered Products are so affected.

14 **8. NOTICES**

15 8.1 Unless specified herein, all correspondence and notices required to be provided
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
17 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
18 by the other party at the following addresses:

19 For Defendant:

20 Kenneth E. Chyten, Esq.
21 Law Office of Kenneth E. Chyten
22 300 East Esplanade Drive, Suite 1670
Oxnard, CA 93036

23 And

24 For Bell:

25 Evan Smith
26 Brodsky & Smith
27 9595 Wilshire Blvd., Ste. 900
28 Beverly Hills, CA 90212

Any party, from time to time, may specify in writing to the other party a change of address to

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood and agree to all of the terms and conditions of this
7 document and certify that he or she is fully authorized by the Party he or she represents to execute
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear her or its own fees and costs.

10 **AGREED TO:**

11

12 Date: 3/14/22

13 By: [Signature]

14 EMMA BELL

11 **AGREED TO:**

12 Date: 01/24/2022

13 By: [Signature]

14 BANGKIT (U.S.A.), Inc.

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17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18 Dated: 5-5-22

19 [Signature]
20 Judge of Superior Court

21 **JULIA A. SPAIN**

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 05/05/2022
PLAINTIFF/PETITIONER: Ema Bell	Clad Finke, Executive Officer / Clerk of the Court By: <u><i>Daniel Labrecque</i></u> Deputy D. Labrecque
DEFENDANT/RESPONDENT: Bangkit (U.S.A.), INC.	
CERTIFICATE OF MAILING	CASE NUMBER: RG21099107

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Bangkit (U.S.A.), INC.
300 East Esplanade Drive, Suite 1670
Oxnard, CA 93036

Evan J. Smith
Brodsky & Smith, LLC
9595 Wilshire Boulevard
Suite 900
Beverly Hills, CA 90212-

Dated: 05/05/2022

Chad Finke, Executive Officer / Clerk of the Court

By:

Daniel Labrecque

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING