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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 BANGKIT U.S.A., INC.; and DOES 1 through  
16 150, inclusive,

17 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 30<sup>th</sup> 2013. Bangkit shall issue two separate checks to: (a) "OEHHA" in the amount of \$750; and (b)  
17 "The Chanler Group in Trust for Russell Brimer" in the amount of \$250. All penalty payments  
18 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  
10 Parker Plaza, Suite 214  
11 Berkeley, CA 94710

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

15 For United States Postal Service Delivery:

16 Mike Gyrics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 P.O. Box 4010  
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyrics  
23 Fiscal Operations Branch Chief  
24 Office of Environmental Health Hazard Assessment  
25 1001 I Street  
26 Sacramento, CA 95814

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

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

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 <sup>H.H.</sup>30, 2013; and (b) six payments of \$3,000 each on or before April<sup>H.H.</sup>30, 2013, May<sup>H.H.</sup>30, 2013, June<sup>H.H.</sup>30,  
15 2013, July<sup>H.H.</sup>30, 2013, August<sup>H.H.</sup>30, 2013, and September<sup>H.H.</sup>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.

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.