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*ex rel.* Edmund G. Brown Jr., Attorney General of the  
 State of California

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 11 SUPERIOR COURT OF CALIFORNIA  
 12 COUNTY OF ALAMEDA

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 14 PEOPLE OF THE STATE OF CALIFORNIA *ex*  
*rel.* EDMUND G. BROWN JR., ATTORNEY  
 15 GENERAL OF THE STATE OF CALIFORNIA,

16 Plaintiff,

17 v.

18 GERBER CHILDRENSWEAR, INC., GERBER  
 PRODUCTS COMPANY, BARACAH APPAREL  
 19 GROUP LLC, BENTEX GROUP, INC.,  
 CHILDREN'S APPAREL NETWORK, LTD.,  
 20 CROCODILE CREEK KIDS, LLC, CUTIE PIE  
 BABY, INC., DEX PRODUCTS, INC., KOLE  
 21 IMPORTS, LUV N' CARE, LTD., SMITH NEWS  
 COMPANY, INC., SMITH NOVELTY COMPANY,  
 22 and DOES 1-100,

23 Defendants.  
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**ENDORSED  
 FILED  
 ALAMEDA COUNTY**

MAR 20 2008

CLERK OF THE SUPERIOR COURT  
 By BAKER Deputy

RG 08377849

COMPLAINT FOR  
 INJUNCTIVE RELIEF AND  
 CIVIL PENALTIES

1 **I. INTRODUCTION**

2 1. This complaint seeks an injunction and civil penalties to remedy defendants' failure to  
3 warn consumers that certain baby bibs they manufacture contain di(2-ethylhexyl)phthalate  
4 ("DEHP"), a chemical known to the State of California to cause birth defects or other  
5 reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
6 and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide  
7 persons with a "clear and reasonable warning" before exposing them to such chemicals.

8 **II. PARTIES**

9 2. Plaintiff is the People of the State of California, by and through the Attorney General  
10 of California, Edmund G. Brown Jr. Health and Safety Code section 25249.7, subdivision (c),  
11 provides that actions to enforce Proposition 65 may be brought by the Attorney General in the  
12 name of the People of the State of California. Government Code section 12607 authorizes the  
13 Attorney General to bring an action for equitable relief in the name of the People of the State of  
14 California against any person to protect the natural resources of the State from pollution,  
15 impairment, or destruction. Business and Professions Code section 17200 provides that actions  
16 to prohibit unfair and unlawful business practices may be brought by the Attorney General in the  
17 name of the People of the State of California.

18 3. Defendants GERBER CHILDRENSWEAR, INC. and GERBER PRODUCTS  
19 COMPANY are business entities that have manufactured, distributed, and/or sold baby bibs  
20 containing DEHP ("Baby Bibs"), including but not limited to the Gerber Toddler Snap On Bib,  
21 to consumers within the State of California.

22 4. Defendant BARACAH APPAREL GROUP LLC is a business entity that has  
23 manufactured, distributed, and/or sold Baby Bibs, including but not limited to the Baby Looney  
24 Tunes Bib, to consumers within the State of California.

25 5. Defendant BENTEX GROUP, INC. is a business entity that has manufactured,  
26 distributed, and/or sold Baby Bibs, including but not limited to the Disney Baby Vinyl Bib, to  
27 consumers within the State of California.

28 6. Defendant CHILDREN'S APPAREL NETWORK, LTD. is a business entity that has

1 manufactured, distributed, and/or sold Baby Bibs, including but not limited to the Sesame Street  
2 Bib, to consumers within the State of California.

3 7. Defendant CROCODILE CREEK KIDS, LLC, which also does business as  
4 CROCODILE CREEK, is a business entity that has manufactured, distributed, and/or sold Baby  
5 Bibs, including but not limited to the Crocodile Creek Kid Bib, to consumers within the State of  
6 California.

7 8. Defendant CUTIE PIE BABY, INC. is a business entity that has manufactured,  
8 distributed, and/or sold Baby Bibs, including but not limited to the Cutie Pie Baby Terry Bib, to  
9 consumers within the State of California.

10 9. Defendant DEX PRODUCTS, INC. is a business entity that has manufactured,  
11 distributed, and/or sold Baby Bibs, including but not limited to the Dura-Bib Stage 1, to  
12 consumers within the State of California.

13 10. Defendant KOLE IMPORTS is a business entity that has manufactured, distributed,  
14 and/or sold Baby Bibs, including but not limited to Daddy's Little Boy Baby Bib, to consumers  
15 within the State of California.

16 11. Defendant LUV N' CARE, LTD. is a business entity that has manufactured,  
17 distributed, and/or sold Baby Bibs, including but not limited to the Classic Baby Collection Easy  
18 Clean Bib, to consumers within the State of California.

19 12. Defendants SMITH NEWS COMPANY, INC. and SMITH NOVELTY COMPANY  
20 are business entities that have manufactured, distributed, and/or sold Baby Bibs, including but  
21 not limited to the Children P.V.C. Apron, to consumers within the State of California.

22 13. The true names and capacities of the defendants sued herein as Does 1 through 100 are  
23 unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend this  
24 complaint to allege the true names and capacities of these defendants when they have been  
25 determined. Each of the fictitiously named defendants is responsible in some manner for the  
26 conduct alleged herein.

27 14. Whenever reference is made in this complaint to "defendants," unless otherwise  
28 specified, such reference includes the defendants named in Paragraphs 3 to 12, and Does 1

1 through 100.

### 2 III. JURISDICTION AND VENUE

3 15. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,  
4 because this case is a cause not given by statute to other trial courts.

5 16. This Court has jurisdiction over the defendants named above because they do sufficient  
6 business in California, or otherwise have sufficient minimum contacts in California, to render the  
7 exercise of jurisdiction over them by the California courts consistent with traditional notions of  
8 fair play and substantial justice.

9 17. Venue is proper in this Court because the cause arises in the County of Alameda,  
10 where some of the violations of law have occurred.

### 11 IV. STATUTORY BACKGROUND

#### 12 A. Proposition 65

13 18. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
14 passed as "Proposition 65" by a vote of the People in November of 1986.

15 19. The warning requirement of Proposition 65 is contained in Health and Safety Code  
16 section 25249.6, which provides:

17 No person in the course of doing business shall knowingly and intentionally  
18 expose any individual to a chemical known to the state to cause cancer or  
19 reproductive toxicity without first giving clear and reasonable warning to such  
20 individual, except as provided in Section 25249.10.

21 20. An exposure to a chemical in a consumer product is one "which results from a person's  
22 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
23 good . . . ." (Cal. Code Regs., tit. 22, § 12601, subd. (b).)

24 21. Proposition 65 establishes a procedure by which the state is to develop a list of  
25 chemicals "known to the State to cause cancer or reproductive toxicity . . . ." (Health & Saf.  
26 Code, § 25249.8.) No warning need be given concerning a listed chemical until one year after  
27 the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

28 22. Implementing regulations originally promulgated by the Health and Welfare Agency  
provide that the warning method "must be reasonably calculated, considering the alternative  
methods available under the circumstances, to make the warning message available to the

1 individual prior to exposure.” (Cal. Code Regs., tit. 22, § 12601, subd. (a).)

2 23. The regulations prescribe certain types of warnings that are considered valid, including  
3 (A) warnings on labels, (B) identification at the retail outlet through “shelf labeling, signs,  
4 menus, or a combination thereof,” and (C) “[a] system of signs, public advertising identifying  
5 the system and toll-free information services, or any other system, that provides clear and  
6 reasonable warnings.” (Cal. Code Regs., tit. 22, §§ 12601(b)(1)(A)-(C).)

7 24. Proposition 65 provides that any person “that violates or threatens to violate” the  
8 statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7,  
9 subd. (a).) To “threaten to violate” is defined to mean “to create a condition in which there is a  
10 substantial probability that a violation will occur.” (*Id.*, § 25249.11, subd. (e).) In addition,  
11 violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a  
12 civil action. (*Id.*, § 25249.7, subd. (b).) Actions to enforce the law may be brought by the  
13 Attorney General in the name of the People of the State of California. (*Id.*, § 25249.7, subd. (c).)

14 **B. The Unfair Competition Act**

15 25. California Business and Professions Code section 17200 provides that  
16 “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or  
17 practice . . . .” Section 17203 of the Business and Professions Code provides that “[a]ny person  
18 who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any  
19 court of competent jurisdiction.”

20 26. Unlawful acts under the statute include any act that is unlawful that is conducted as  
21 part of business activity, and therefore include violations of Proposition 65.

22 27. Section 17206, subdivision (a), provides that any person violating Section 17200 “shall  
23 be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each  
24 violation, which shall be assessed and recovered in a civil action brought in the name of the  
25 people of the State of California by the Attorney General . . . .” Under section 17205, these  
26 penalties are “cumulative to each other and to the remedies or penalties available under all other  
27 laws of this state.”

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## V. FACTS

28. DEHP was listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity, under the sub-category "developmental toxicity," which means that the chemical harms the developing fetus, on October 24, 2003. (Cal. Code Regs., tit. 22, § 12000, subd. (c).) DEHP, like other phthalates, is a chemical commonly contained in many plastic products, including a wide range of children's products.

29. Each defendant has manufactured, distributed, and/or sold Baby Bibs for sale or use within the State of California.

30. Persons who handle or use the Baby Bibs are exposed to DEHP through absorption of DEHP through the skin and/or through ingestion. Persons who handle or use the Baby Bibs can and do ingest DEHP either by placing the Baby Bibs or portions of the Baby Bibs into the mouth, through transfer of DEHP from the skin to the mouth, and/or through transfer of DEHP from the skin to objects that are put in the mouth, such as food. Adults, infants, and children handle and/or use the Baby Bibs and are exposed to the DEHP that is released from them in the course of their intended and reasonably foreseeable use.

31. The following allegation is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery: Each defendant employs at least 10 or more persons.

32. The following allegation is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery: Since at least October 24, 2004, each defendant has knowingly and intentionally exposed individuals to DEHP. The exposure is knowing and intentional because it is the result of the defendants' deliberate act of manufacturing, distributing, and/or selling baby bibs made with material that contains DEHP, with the knowledge that the intended use of the Baby Bibs will result in exposure to DEHP.

33. Each defendant has failed to provide purchasers of the Baby Bibs with a clear and reasonable warning, in compliance with Proposition 65 and its implementing regulations, that the users of the Baby Bibs are being exposed to a chemical known to the State of California to cause reproductive toxicity.

1 **VI. FIRST CAUSE OF ACTION**

2 (For Violation of Proposition 65)

3 34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

4 35. Each defendant employs ten or more persons.

5 36. By committing the acts alleged above, each defendant has, in the course of doing  
6 business, knowingly and intentionally exposed adults, infants, and/or children to DEHP, a  
7 chemical known to the state of California to cause reproductive toxicity, without first giving clear  
8 and reasonable warning to such individuals within the meaning of Health and Safety Code  
9 section 25249.6.

10 37. Said violations render each defendant liable to plaintiff for civil penalties of up to  
11 \$2,500 per day for each violation.

12 **VII. SECOND CAUSE OF ACTION**

13 (For Unlawful Business Practices)

14 38. Paragraphs 1 through 37 are realleged as if fully set forth herein.

15 39. By committing the acts alleged above, each defendant has engaged in unlawful  
16 business practices that constitute unfair competition within the meaning of Business and  
17 Professions Code section 17200.

18 40. Said violations render each defendant liable to plaintiff for civil penalties of up to  
19 \$2,500 for each violation.

20 **VIII. PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff prays that the Court:

22 1. Pursuant to the First and Second Causes of Action, grant civil penalties according to  
23 proof;

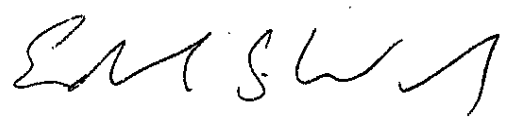
24 2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions  
25 Code section 17203, enter such preliminary injunctions, permanent injunctions, or other orders  
26 prohibiting each defendant from exposing persons within the State of California to DEHP  
27 without providing clear and reasonable warnings, as plaintiff shall specify in further application  
28 to the Court;

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- 3. Award plaintiff its costs of suit;
- 4. Grant such other and further relief as the Court deems just and proper.

Dated: March 20, 2008

Respectfully submitted,



EDWARD G. WEIL  
Supervising Deputy Attorney General

Attorneys for Plaintiff People of the State of  
California *ex rel.* Edmund G. Brown Jr.,  
Attorney General of the State of California