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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 30 2008

By *Lataise Newton*

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

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

15 Plaintiff,

16 v.

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

25 Defendants.

26 ANTHONY E. HELD, Ph.D., P.E.,

27 Plaintiff-Intervenor,

28 v.

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

Defendants.

Case No. RG08377849

**COMPLAINT IN INTERVENTION**

Health & Safety Code §25249.6 *et seq.*

1 By leave of Court, Plaintiff-Intervenor ANTHONY E. HELD, Ph.D., P.E.(hereafter “DR.  
2 HELD”), by and through his counsel, hereby intervenes in this action, and with the limitation  
3 placed on the Plaintiff-Intervenor’s role in the prosecution of the causes of action set forth in the  
4 complaint filed by People of the State of California, as directed by the Court in its Order dated  
5 May 23, 2008.

6 As shown by the facts alleged below, and pursuant to the Court’s Order dated May 23,  
7 2008, DR. HELD has a right to intervene in this action because he claims an interest in the  
8 property that is the subject of this action, and adjudication of the parties' claims in his absence  
9 will impair or impede his ability to protect that interest.

10 Moreover, as shown by the facts alleged below, DR. HELD he has a direct interest in the  
11 subject matter of the litigation that is likely to be directly affected by the outcome of the  
12 litigation. Adjudication of DR. HELD’s interests will not delay or unduly expand the trial of this  
13 action.

#### 14 INTRODUCTION

15 1. This action was first commenced by Plaintiff PEOPLE OF THE STATE OF  
16 CALIFORNIA (hereafter “the People”), by and through EDMUND G. BROWN JR.,  
17 ATTORNEY GENERAL OF THE STATE OF CALIFORNIA (hereafter “Attorney General”),  
18 against Defendants GERBER CHILDRENSWEAR, INC., GERBER PRODUCTS COMPANY,  
19 BARACAH APPAREL GROUP LLC, BENTEX GROUP, INC., CHILDREN’S APPAREL  
20 NETWORK, LTD., CUTIE PIE BABY, INC., DEX PRODUCTS, INC., KOLE IMPORTS,  
21 LUV N’ CARE, LTD., SMITH NEWS COMPANY, INC., SMITH NOVELTY COMPANY;  
22 and DOES 1 through 100 (hereafter collectively referred to as “Defendants”), on March 20,  
23 2008, and seeks, among other causes of action, civil penalties and injunctive relief under Health  
24 & Safety Code section 25249.7.

25 2. DR. HELD has the right to intervene in this action under Code of Civil Procedure  
26 section 387(b), as well as an interest in the matter in litigation by reason of which intervention is  
27 proper under Code of Civil Procedure section 387(a).

28 3. DR. HELD invested substantial time and resources into investigation and research

1 of the factual allegations underlying the complaint, and provided confidential information  
2 substantiating his investigation to the California Attorney General, thereby giving him a direct  
3 financial interest in the recovery of his reasonable fees and costs under Health & Safety Code  
4 section 24259.7 and Code of Civil Procedure section 1021.5.

5 4. This direct financial interest gives rise to a right to intervene under Code of Civil  
6 Procedure section 387(b), as that interest constitutes an interest in the successful resolution of the  
7 case and the interest may not be adequately protected by the existing parties, should the existing  
8 parties choose to exclude or limit DR. HELD's involvement in resolving this matter.

9 5. DR. HELD also has an interest in intervention sufficient to support permissive  
10 intervention under Code of Civil Procedure section 387(a). DR. HELD has a direct and  
11 immediate interest in the recovery of his reasonable fees and costs, and this intervention does not  
12 enlarge the issues in the litigation as it is based upon the same facts as the People's complaint  
13 filed on March 20, 2008.

14 **NATURE OF THE ACTION**

15 6. This complaint in intervention, brought by DR. HELD, directly relates to his  
16 investigation and financial commitment intended to enforce each citizen's right to be informed of  
17 the reproductive hazards in or on certain baby bibs manufactured, distributed, or sold by  
18 Defendants in California.

19 7. DR. HELD initiated the investigation which provided notice to the Attorney  
20 General about Defendants' continuing failure to warn California citizens about the exposure to  
21 di(2-ethylhexyl)phthalate (hereafter "DEHP") contained in or on certain baby bibs that  
22 Defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
23 California. DEHP is a chemical known to the State of California to cause cancer and  
24 reproductive toxicity.

25 8. On November 20, 2007, DR. HELD served the Attorney General with the  
26 requisite 60-Day Notice of Violation regarding the alleged violations of Proposition 65 by  
27 Defendant BENTEX GROUP, INC. DR. HELD's 60-Day Notice apprised the Attorney General  
28 of the initial set of facts regarding the actions of Defendant Bentex Group, Inc. in knowingly and

1 intentionally failing to warn individuals of exposures to DEHP in baby bib products that it  
2 manufactures and/or sells.

3 9. On January 11, 2008, DR. HELD served the Attorney General with the requisite  
4 60-Day Notice of Violation regarding the alleged violations of Proposition 65 by the other 10  
5 Defendants named in this action: GERBER CHILDRENSWEAR, INC., GERBER PRODUCTS  
6 COMPANY, BARACAH APPAREL GROUP LLC, CHILDREN'S APPAREL NETWORK,  
7 LTD., CUTIE PIE BABY, INC., DEX PRODUCTS, INC., KOLE IMPORTS, LUV N' CARE,  
8 LTD., SMITH NEWS COMPANY, INC., AND SMITH NOVELTY COMPANY. DR. HELD's  
9 60-Day Notice apprised the Attorney General of the initial set of facts regarding the actions of  
10 these other 10 Defendants in knowingly and intentionally failing to warn individuals of  
11 exposures to DEHP in baby bib products that they manufacture and/or sell.

12 10. On March 20, 2008, the Attorney General filed the People's Complaint seeking to  
13 remedy Defendants' continuing failure to warn California citizens about the exposure to DEHP  
14 contained in or on certain baby bibs that Defendants manufacture, distribute and/or offer for sale  
15 to consumers throughout the State of California.

16 11. High levels of DEHP are commonly found in or on the bibs that Defendants  
17 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

18 12. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
19 California Health & Safety Code section 25249.6 *et seq.* ("Proposition 65"), "No person in the  
20 course of doing business shall knowingly and intentionally expose any individual to a chemical  
21 known to the state to cause cancer or reproductive toxicity without first giving clear and  
22 reasonable warning to such individual . . . ." (Cal. Health & Safety Code § 25249.6.)

23 13. On October 24, 2003, California identified and listed DEHP as a chemical known  
24 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
25 requirement one year later and was therefore subject to the "clear and reasonable warning"  
26 requirements of Proposition 65, beginning on October 24, 2004. (22 Cal. Code Regs. § 12000(c);  
27 Cal. Health & Safety Code § 25249.8.)

28 14. DEHP is listed pursuant 22 California Code of Regulations section 12000 as a

1 chemical known to cause birth defects and other reproductive harm. DEHP shall hereafter be  
2 referred to as the "LISTED CHEMICAL."

3 15. Defendants manufacture, distribute and/or sell baby bibs containing the LISTED  
4 CHEMICAL, including, but not limited to:

- 5 a. The Gerber Toddler Snap On Bib, manufactured, distributed, and/or sold  
6 by Defendants Gerber Childrenswear, Inc., and Gerber Products Co.;
- 7 b. The Baby Looney Tunes Bib, manufactured, distributed, and/or sold by  
8 Defendant Baracah Apparel Group LLC;
- 9 c. The Disney Baby Vinyl Bib, distributed, and/or sold by Defendant Bentex  
10 Group, Inc.;
- 11 d. The Sesame Street Bib, manufactured, distributed, and/or sold by  
12 Defendant Children's Apparel Network, Ltd.;
- 13 e. The Cutie Pie Baby Terry Bib, manufactured, distributed, and/or sold by  
14 Defendant Cuite Pie Baby, Inc.;
- 15 f. The Dura-Bib Stage 1, manufactured, distributed, and/or sold by  
16 Defendant Dex Products, Inc.;
- 17 g. The Daddy's Little Boy Baby Bib, manufactured, distributed, and/or sold  
18 by Defendant Kole Imports;
- 19 h. The Classic Baby Collection Easy Clean Bib, manufactured, distributed,  
20 and/or sold by Defendant Luv N' Care, Ltd.; and
- 21 i. The Children P.V.C. Apron, manufactured, distributed, and/or sold by  
22 Defendants Smith News Company, Inc., and Smith Novelty Company.

23 All such bibs containing the LISTED CHEMICAL shall hereinafter be referred to as the  
24 "PRODUCTS."

25 16. Defendants' failure to warn consumers and/or other individuals in the State of  
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale  
27 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of  
28 such conduct as well as civil penalties for each such violation.

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**PARTIES**

17. The People of the State of California, as represented by and through the Attorney General, is the Plaintiff.

18. Plaintiff-Intervenor DR. HELD is a citizen of the State of California who is dedicated to protecting the health of California citizens, including the elimination or reduction of toxic exposures. DR. HELD intervenes in this action for the sole purpose of seeking his reasonable investigative costs and attorney fees, and to comment on any proposed consent judgments as to the issue of costs and attorney fees.

19. Defendants GERBER CHILDRENSWEAR, INC., and GERBER PRODUCTS COMPANY are persons doing business within the meaning of Health & Safety Code section 25249.11.

20. Defendant BARACAH APPAREL GROUP LLC is a person doing business within the meaning of Health & Safety Code section 25249.11.

21. Defendant BENTEX GROUP, INC. is a person doing business within the meaning of Health & Safety Code section 25249.11.

22. Defendant CHILDREN'S APPAREL NETWORK, LTD. is a person doing business within the meaning of Health & Safety Code section 25249.11.

23. Defendant CUTIE PIE BABY, INC. is a person doing business within the meaning of Health & Safety Code section 25249.11.

24. Defendant DEX PRODUCTS, INC. is a person doing business within the meaning of Health & Safety Code section 25249.11.

25. Defendant KOLE IMPORTS is a person doing business within the meaning of Health & Safety Code section 25249.11.

26. Defendant LUV N' CARE, LTD. is a person doing business within the meaning of Health & Safety Code section 25249.11.

27. Defendants SMITH NEWS COMPANY, INC., SMITH NOVELTY COMPANY  
28 are persons doing business within the meaning of Health & Safety Code section 25249.11.

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28. Defendants, and each of them, manufacture, distribute and/or offer the PRODUCTS for sale or use in the State of California or imply by their conduct that they manufacture, distribute and/or offer the PRODUCTS for sale or use in the State of California.

29. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons in the course of doing business within the meaning of California Health & Safety Code section 25249.11.

30. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

31. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons in the course of doing business within the meaning of California Health & Safety Code section 25249.11.

32. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

33. At this time, the true names of Defendants DOES 1 through 100, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure section 474. DR. HELD is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. If and once ascertained, their true names shall be reflected in a further amended complaint in intervention.

**VENUE AND JURISDICTION**

34. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil Procedure sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the

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1 County of Alameda, and/or because defendants conducted, and continue to conduct, business in  
2 this County.

3 35. The California Superior Court has jurisdiction over this action pursuant to  
4 California Constitution Article VI, Section 10, which grants the Superior Court “original  
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
6 which this action is brought does not specify any other basis of jurisdiction.

7 36. The California Superior Court has jurisdiction over defendants based on DR.  
8 HELD’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that either is a citizen of the State of California, has sufficient minimum contacts in  
10 the State of California, or otherwise purposefully avails itself of the California market.  
11 Defendants’ purposeful availment renders the exercise of jurisdiction by California courts  
12 consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65)**

15 37. DR. HELD realleges and incorporates by reference, as if specifically set forth  
16 herein, Paragraphs 1 through 36, inclusive.

17 38. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.5, *et*  
19 *seq.* (Proposition 65) that they must be informed “about exposures to chemicals that cause  
20 cancer, birth defects and other reproductive harm.” (Cal. Health & Safety Code §25249.6.)

21 39. Proposition 65 states, “No person in the course of doing business shall knowingly  
22 and intentionally expose any individual to a chemical known to the state to cause cancer or  
23 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”

24 (*Id.*)

25 40. On November 20, 2007, a sixty-day notice of violation, together with the requisite  
26 certificate of merit, was provided to Defendant BENTEX GROUP, INC. and various public  
27 enforcement agencies, stating that as a result of Defendant’s sale of PRODUCTS, purchasers and  
28 users in the State of California were being exposed to DEHP resulting from the reasonably

1 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
2 been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 41. On January 11, 2008, a sixty-day notice of violation, together with the requisite  
4 certificate of merit, was provided to:

5 a. Defendants GERBER CHILDRENSWEAR, INC., and GERBER  
6 PRODUCTS COMPANY and various public enforcement agencies, stating that  
7 as a result of these Defendants’ sale of PRODUCTS, purchasers and users in the  
8 State of California were being exposed to DEHP resulting from the reasonably  
9 foreseeable uses of the PRODUCTS, without the individual purchasers and users  
10 first having been provided with a “clear and reasonable warning” regarding such  
11 toxic exposures.

12 b. Defendant BARACAH APPAREL GROUP LLC and various public  
13 enforcement agencies, stating that as a result of this Defendant’s sale of  
14 PRODUCTS, purchasers and users in the State of California were being exposed  
15 to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS,  
16 without the individual purchasers and users first having been provided with a  
17 “clear and reasonable warning” regarding such toxic exposures.

18 c. Defendant CHILDREN’S APPAREL NETWORK, LTD. and various  
19 public enforcement agencies, stating that as a result of this Defendant’s sale of  
20 PRODUCTS, purchasers and users in the State of California were being exposed  
21 to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS,  
22 without the individual purchasers and users first having been provided with a  
23 “clear and reasonable warning” regarding such toxic exposures.

24 d. Defendant CUTIE PIE BABY, INC. and various public enforcement  
25 agencies, stating that as a result of this Defendant’s sale of PRODUCTS,  
26 purchasers and users in the State of California were being exposed to DEHP  
27 resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
28 individual purchasers and users first having been provided with a “clear and

1 reasonable warning” regarding such toxic exposures.

2 e. Defendant DEX PRODUCTS, INC. and various public enforcement  
3 agencies, stating that as a result of this Defendant’s sale of PRODUCTS,  
4 purchasers and users in the State of California were being exposed to DEHP  
5 resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
6 individual purchasers and users first having been provided with a “clear and  
7 reasonable warning” regarding such toxic exposures.

8 f. Defendant KOLE IMPORTS and various public enforcement agencies,  
9 stating that as a result of this Defendant’s sale of PRODUCTS, purchasers and  
10 users in the State of California were being exposed to DEHP resulting from the  
11 reasonably foreseeable uses of the PRODUCTS, without the individual  
12 purchasers and users first having been provided with a “clear and reasonable  
13 warning” regarding such toxic exposures.

14 g. Defendant LUV N’ CARE, LTD. and various public enforcement  
15 agencies, stating that as a result of this Defendant’s sale of PRODUCTS,  
16 purchasers and users in the State of California were being exposed to DEHP  
17 resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
18 individual purchasers and users first having been provided with a “clear and  
19 reasonable warning” regarding such toxic exposures.

20 h. Defendants SMITH NEWS COMPANY, INC., and SMITH NOVELTY  
21 COMPANY, and various public enforcement agencies, stating that as a result of  
22 these Defendants’ sale of PRODUCTS, purchasers and users in the State of  
23 California were being exposed to DEHP resulting from the reasonably foreseeable  
24 uses of the PRODUCTS, without the individual purchasers and users first having  
25 been provided with a “clear and reasonable warning” regarding such toxic  
26 exposures.

27 42. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
28 the PRODUCTS for sale or use in violation of California Health & Safety Code section 25249.6,

1 and DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or  
2 use in violation of California Health & Safety Code section 25249.6 has continued to occur  
3 beyond DEFENDANTS' receipt of DR. HELD's sixty-day notices of violation. DR. HELD  
4 further alleges and believes that such violations will continue to occur into the future.

5 43. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
6 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
7 limits.

8 44. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
9 distributed, and/or offered for sale or use in California contained the LISTED CHEMICAL.

10 45. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
11 to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during  
12 the reasonably foreseeable use of the PRODUCTS.

13 46. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
15 by 22 California Code of Regulations ~~§section~~ 12601(b).

16 47. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
18 and ingestion.

19 48. DEFENDANTS, and each of them, intended that such exposures to the LISTED  
20 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
21 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or  
22 use of PRODUCTS to individuals in the State of California.

23 49. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers and/or other individuals in the State of California who were or who could become  
25 exposed to the LISTED CHEMICAL through dermal contact and ingestion during the  
26 reasonably foreseeable use of the PRODUCTS.

27 50. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANTS without "clear and reasonable warning," have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

4 51. As a consequence of the above-described acts, DEFENDANTS, and each of them,  
5 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California  
6 Health & Safety Code section 25249.7(b).

7 52. As a consequence of the above-described acts, California Health & Safety Code  
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

11 Wherefore, DR. HELD prays judgment against DEFENDANTS, and each of them, in the  
12 manner previously authorized and prescribed by this Court, as follows:

13 1. That the Court grant DR. HELD his reasonable investigative costs, attorney fees  
14 and costs of suit;

15 2. That, in the event that this matter is concluded by settlement between the People  
16 and any Defendant, the Court grant DR. HELD the opportunity to comment on and/or object to  
17 any settlement provisions that address reimbursement of his fees and costs;

18 3. That, in the event that this matter is concluded by settlement between the People  
19 and any Defendant, the Court grant DR. HELD the opportunity to comment on and/or object to  
20 other aspects of a settlement; and

21 4. That the Court grant such other and further relief as may be just and proper.

22  
23 Dated: May 30, 2008

HIRST & CHANLER LLP

24  
25 By:   
26 Laurence D. Haveson  
27 Attorneys for Plaintiff-Intervenor  
28 ANTHONY E. HELD, PH.D., P.E.