

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants.

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

Plaintiff-Intervenor,

v.

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

Defendants.

1 **1. INTRODUCTION**

2 **1.1 Consent Judgment Between the People of the State of California and Bentex**
3 **Group, Inc.**

4 This Consent Judgment is entered into by and between Plaintiff People of the State of
5 California, by and through the Attorney General of California, Edmund G. Brown Jr. ("Attorney
6 General" or "Plaintiff") and Defendant Bentex Group, Inc. ("Bentex"). Plaintiff and Defendant
7 are collectively referred to as the "parties," and individually as a "party," in this Consent
8 Judgment.

9 **1.2 Plaintiff**

10 Plaintiff is the People of the State of California, by and through the Attorney General of
11 California, Edmund G. Brown Jr. The Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), at section 25249.7,
13 subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney
14 General in the name of the People of the State of California. Government Code section 12607
15 authorizes the Attorney General to bring an action for equitable relief in the name of the People of
16 the State of California against any person to protect the natural resources of the State from
17 pollution, impairment, or destruction. Business and Professions Code section 17200 provides that
18 actions to prohibit unfair and unlawful business practices may be brought by the Attorney
19 General in the name of the People of the State of California.

20 **1.3 Defendant**

21 Defendant is Bentex Group, Inc. Defendant acknowledges that it is a corporation with ten
22 or more employees, and that it is a "person in the course of doing business" within the meaning of
23 Proposition 65.

24 **1.4 General Allegations**

25 Plaintiff alleges that Defendant has manufactured, distributed and/or sold Covered
26 Products, as defined below, containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the
27 State of California without the requisite Proposition 65 warnings. DEHP is listed pursuant to
28 Proposition 65 as known to the State of California to cause cancer, birth defects and/or other

1 reproductive harm. DEHP shall be referred to hereinafter as the "Listed Chemical."

2 **1.5 Product Description**

3 The products covered by this Consent Judgment are children's vinyl bibs containing
4 DEHP, individually and collectively referred to hereinafter as the "Covered Products." By way
5 of example, the Covered Products manufactured by Bentex include, but are not limited to, Disney
6 and Spider-Man & Friends vinyl bibs.

7 **1.6 Complaints**

8 On March 20, 2008, Plaintiff filed a complaint ("Complaint" or "Action") in the Superior
9 Court in and for the County of Alameda against Bentex and other bib manufacturers and/or
10 distributors, alleging violations of Proposition 65 based on the alleged exposures to the Listed
11 Chemical contained in the Covered Products manufactured, distributed, and/or sold by Bentex.
12 Bentex timely filed an answer to the Complaint on May 30, 2008.

13 The case number for the action is RG08377849. This Action was subsequently
14 consolidated with the lead case herein, case number RG07350981.

15 **1.7 No Admission**

16 Defendant denies the material, factual and legal allegations contained in Plaintiff's
17 Complaint and maintains that all Covered Products that it has sold and distributed in California
18 have been and are in compliance with all laws, including without limitation Proposition 65.
19 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
20 finding, issue of law, or violation of law, nor shall compliance with this consent judgment
21 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
22 law, or violation of law, such being specifically denied by Defendant.

23 **1.8 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Amended Complaint, that venue
26 is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
27 provisions of this Consent Judgment.

28

1 **1.9 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
3 Consent Judgment is entered by the Court.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 Prior to the filing of this action and entry of this Consent Judgment, Bentex ceased
6 manufacture of the Covered Products. Bentex discontinued marketing vinyl bibs from its product
7 line during the last quarter of 2006. After February 2007, Bentex did not manufacture, purchase,
8 acquire or take delivery of any vinyl bibs. As of July 2007, Bentex no longer manufactured, sold,
9 or distributed any vinyl bibs. Bentex's last shipment of vinyl bibs to any purchaser or distributor
10 left Bentex in July 2007, several months before Bentex received any notification about phthalates
11 in its products. Bentex represents that prior to discontinuing sale of the Covered Products, it had
12 no knowledge that DEHP was present in the Covered Products.

13 Defendant represents that it has no plans to re-introduce Covered Products for sale into
14 California. Therefore, no limitations on sale of the Covered Products are necessary at this time.
15 At least ninety days before manufacturing or distributing any products similar to the Covered
16 Products for sale in California, Defendant shall give notice to the Attorney General of such intent,
17 and shall meet and confer in order to determine the scope of any necessary injunctive relief,
18 which may be entered upon joint application to the Court. If the parties do not agree on
19 appropriate injunctive relief, if any, the People may apply by motion pursuant to this Consent
20 Judgment for such relief, which shall be entered by the Court upon a showing that such relief is
21 appropriate based on the law and facts submitted in the motion and any opposing materials
22 submitted by the Defendant.

23 **3. RELEASE OF ALL CLAIMS**

24 **3.1 Plaintiff's Release of Defendant**

25 This consent judgment is a full, final, and binding resolution between the People and
26 Settling Defendant, its parents, shareholders, divisions, subdivisions, subsidiaries, sister
27 companies, affiliates, cooperative members, licensees, retailers, distributors, agents and
28 representatives, and the officers, directors, employees, attorneys, agents, representatives,

1 predecessors, successors, and assigns of any of them, of any violation of Proposition 65 or its
2 implementing regulations, Business & Professions Code sections 17200 et seq., or any other
3 statutory or common law claims that have been or could have been asserted in the Complaint
4 against Settling Defendant for failure to provide clear and reasonable warnings required by
5 Proposition 65 of exposure to DEHP from use of the Covered Products, or any other claim based
6 on the facts or conduct alleged in the Complaint as to such Products. Provided, however, that this
7 Consent Judgment does not resolve any claim for attorney fees and costs of the plaintiff in Held
8 v. Bentex Group, et al., Alameda County Superior Ct. No. RG 08370699.

9 **3.2 Defendant's Release of Plaintiff**

10 Defendant waives any and all claims against Plaintiff, Plaintiff's attorneys and deputies,
11 and other representatives for any and all actions taken or statements made by Plaintiff and
12 Plaintiff's attorneys and other representatives, whether in the course of investigating claims or
13 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
14 the Covered Products. Defendant further agrees not to seek any costs with respect to this Action.

15 **4. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one
18 year after it has been fully executed by the parties.

19 **5. SEVERABILITY**

20 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
21 Consent Judgment are held by a Court to be unenforceable, the validity of the enforceable
22 provisions remaining shall not be adversely affected.

23 **6. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California.

26 **7. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant
28 to this consent judgment shall be in writing and personally delivered or sent by: (i) first-class,

1 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the
2 other party at the following addresses:

3 To Bentex:

4 Malcolm C. Weiss, Esq.
5 Catherine Allen, Esq.
6 HUNTON & WILLIAMS LLP
7 550 S. Hope St., Suite 2000
8 Los Angeles, CA 90071

9 To the Attorney General:

10 Edward G. Weil, Esq.
11 Laura J. Zuckerman, Esq.
12 Megan Acevedo, Esq.
13 California Department of Justice/Attorney General's Office
14 1515 Clay Street, Suite 2000
15 Oakland, CA 94612

16 Any party, from time to time, may specify in writing to the other party a change of
17 address to which all notices and other communications shall be sent.

18 **8. ADDITIONAL POST EXECUTION ACTIVITIES**

19 Plaintiff agrees to seek any necessary judicial approval of this Consent Judgment,
20 including filing any motions necessary to obtain final approval of the Consent Judgment.

21 **9. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the parties
23 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
24 motion of any party and entry of a modified Consent Judgment by the Court.

25 **10. ENFORCEMENT**

26 In any action brought by the Attorney General alleging subsequent violations of
27 Proposition 65 or other laws, Bentex may assert any and all defenses that are available.

28 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile, each of which
shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Dated: October 16, 2008

EDMUND G. BROWN JR.
Attorney General of the State of California
EDWARD G. WEIL
Supervising Deputy Attorney General
LAURA J. ZUCKERMAN
Deputy Attorney General
MEGAN H. ACEVEDO
Deputy Attorney General

By: Edward G. Weil
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

Dated: October 13, 2008

BENTEX GROUP, INC.

By: Morris Dweck
Morris Dweck
President

IT IS SO ORDERED.

Date: Jan 9, 2009

[Signature]
JUDGE OF THE SUPERIOR COURT