

COPY

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Attorney General of California
2 EDWARD G. WEIL
Supervising Deputy Attorney General
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ENDORSED
FILED
ALAMEDA COUNTY
2009 AUG -4 PM 3:40
CLERK OF THE SUPERIOR COURT
BY ALPHONSINE OATES

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 OAKLAND DIVISION

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

16 Plaintiff,

17 v.

18 **GERBER CHILDRENSWEAR, INC., et al.,**
19 **Defendants.**
20

RG08377849

**NOTICE OF ENTRY OF CONSENT
JUDGMENT**

Trial Date:
Action Filed: March 20, 2009

ASSIGNED FOR ALL PURPOSES TO:

JUDGE ROBERT B. FREEDMAN
DEPARTMENT 20

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on July 10, 2009, the Court entered the Consent
23 Judgment attached as Exhibit A hereto.

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Dated: August 3, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
EDWARD G. WEIL
Supervising Deputy Attorney General



LAURA J. ZUCKERMAN
Deputy Attorney General
*Attorneys for People of the State of
California*

OK2008900125

DECLARATION OF SERVICE BY REGULAR MAIL

Case Name: *People v. Gerber Childrenswear, Inc.*
Case No. RG08377849

I declare:

I am employed in the Office of the Attorney General, the address of which is 1515 Clay Street, 20th Floor, Oakland, CA. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **August 4, 2009**, I served the attached:

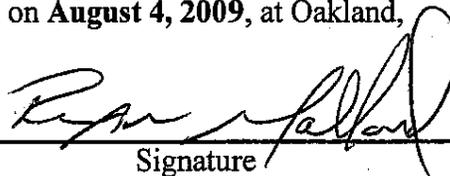
NOTICE OF ENTRY OF CONSENT JUDGMENT

by placing a true copy thereof enclosed in a sealed envelope with the U.S. Postal Service, addressed as follows:

Please see attached service list.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 4, 2009**, at Oakland, California.

RYAN MALLARD
Declarant



Signature

SERVICE LIST

Jeffrey B. Margulies, Esq.
Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
Attorneys for Nationwide Trading Corp.

Warren R. Webster, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Attorneys for Schools Specialty, Inc.

Khaled Taqi-Eddin, Esq.
Foley Mansfield PLLP
1111 Broadway, 10th Floor
Oakland, CA 94607
Attorneys for Peerless Plastics, Inc.

Laurence D. Haveson, Esq.
David Lavine, Esq.
Hirst & Chanler LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
**Attorneys for Anthony E. Held, Ph.D.,
PE.**

Thomas W. Pahl, Esq.
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250 Marquette Avenue, Suite 1200
Minneapolis, MN 55401
Attorneys for Peerless Plastics, Inc.

Jeffrey M. Cassuto, Esq.
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111 Third Avenue, Suite 8C
New York, NY 10003
Attorneys for Sykel Enterprises, Inc.

Michael Dwyer, Esq.
JAKKS Pacific, Inc.
22619 Pacific Coast Highway
Malibu, CA 90265
Attorneys for Disguise, Inc.

Malcolm C. Weiss, Esq.
Catherine Allen, Esq.
Hunton & Williams LLP
550 S. Hope Street, Suite 2000
Los Angeles, California 90071
Gerber Childrenswear, Inc.

EXHIBIT A

1 Company (collectively referred to as "Defendants," and individually referred to as "Defendant")
2 in full and final settlement of all claims between Defendants and Plaintiff with respect to the
3 allegations in Plaintiff's Complaint filed March 20, 2008. Plaintiff and Defendants are
4 collectively referred to as the "parties," and individually as a "party," in this Consent Judgment.

5 **1.2 Plaintiffs**

6 Plaintiff is the People of the State of California, acting by and through the Attorney General
7 of California, Edmund G. Brown Jr. The Safe Drinking Water and Toxic Enforcement Act of
8 1986, California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), at section 25249.7,
9 subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney
10 General in the name of the People of the State of California. Business and Professions Code
11 sections 17200 *et seq.* also provides that actions to prohibit unfair and unlawful business practices
12 may be brought by the Attorney General in the name of the People of the State of California.

13 **1.3 Defendants**

14 Defendants are Gerber Childrenswear LLC and Gerber Products Company. Defendants
15 represent that Gerber Childrenswear, LLC and Gerber Products Company are unrelated
16 companies and that neither entity is a parent or a subsidiary of the other. For purposes of this
17 Consent Judgment, Gerber Childrenswear LLC and Gerber Products Company acknowledge that
18 each entity is a corporation with ten or more employees, and that each is therefore a "person in
19 the course of doing business" within the meaning of Proposition 65.

20 **1.4 General Allegation**

21 The People alleged that Defendants manufactured, distributed and/or sold Covered
22 Products, as defined below, containing di(2-ethylhexyl)phthalate ("DEHP") in the State of
23 California without the requisite Proposition 65 warnings. DEHP is listed pursuant to
24 Proposition 65 as known to the State of California to cause cancer, birth defects, and/or other
25 reproductive harm.

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1.5 Covered Products

The products covered by this Consent Judgment are children's bibs with vinyl or plastic components containing DEHP, individually and collectively referred to hereinafter as the "Covered Products."

1.6 Complaint

Subsequent to a 60-Day Notice of Violation issued by Anthony E. Held, Ph.D., P.E., dated January 11, 2008 ("Notice"), on March 20, 2008, the People filed a complaint in the Superior Court in and for the County of Alameda, assigned Case No. RG08377849 ("Complaint"), against Defendants and certain other vinyl bib manufacturers, sellers, and/or distributors, alleging violations of Proposition 65 based on the alleged exposures to DEHP contained in the Covered Products (the "Action"). Gerber Childrenswear LLC and Gerber Products Company timely filed answers to the Complaint on June 30, 2008 and July 29, 2008, respectively.

1.7 No Admission

Defendants each deny the material, factual and legal allegations contained in the Complaint and maintain that all Covered Products that they sold and distributed in California have been and are in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment is or shall be construed as an admission by either Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by either Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants. Defendants, wishing to avoid the continued cost and expense of litigation, have elected to fully and finally resolve the Action by settlement on the terms set forth herein.

1.8 Consent to Jurisdiction

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

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1.9 Effective Date

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

2. INJUNCTIVE RELIEF/ PERMANENT INJUNCTION

Defendants shall be and hereby are permanently enjoined from manufacturing, distributing, and offering for sale or selling in California, Covered Products with a concentration of DEHP in excess of 1000 parts per million ("ppm").

3. SETTLEMENT PAYMENTS

3.1 Settlement Amount and Allocation

The total settlement amount shall be \$70,000, allocated more specifically as follows: (1) \$45,000 of the total settlement amount shall be paid as a civil penalty pursuant to California Health & Safety Code section 25249.7, subdivision (b)(1); (2) \$20,000 of the total settlement amount shall reimburse Anthony E. Held, Ph.D., P.E., pursuant to California Health & Safety Code section 25249.7, subdivision (j), for costs and attorney's fees associated with his issuance of the Notice; and (3) \$5,000 of the total settlement amount shall reimburse the Office of the Attorney General for the costs and expenses incurred in investigating, bringing, and resolving this action against Gerber.

3.2 Payment Instructions

Gerber shall pay the entire settlement amount within thirty (30) days following the Effective Date. Payment shall be made as follows:

(a) By a check in the amount of \$50,000, made payable to "Office of the California Attorney General" and sent by certified or express mail to:

Robert Thomas
Legal Analyst
Office of the Attorney General
1515 Clay St., 20th Floor
Post Office Box 70559
Oakland, California 94612.

1 (b) By a check in the amount of \$20,000, made payable to "Anthony E. Held, Ph.D.,
2 P.E." and sent by certified or express mail to:

3 Anthony E. Held, Ph.D., P.E.
4 c/o David Lavine, Esq.
5 Larry Haveson, Esq.
6 Hirst and Chanler LLP
7 Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710

8 **4. COVERED CLAIMS**

9 This Consent Judgment is a full, final, and binding resolution between the Plaintiff and
10 Defendants, and Defendants' respective parents, shareholders, divisions, subdivisions,
11 subsidiaries, sister companies, affiliates, cooperative members, licensors, licensees, retailers,
12 distributors, agents and representatives, and the officers, directors, employees, attorneys, agents,
13 representatives, predecessors, successors, and assigns of any of them, of any violation of
14 Proposition 65 or its implementing regulations, Business & Professions Code sections 17200 *et*
15 *seq.*, or any other statutory or common law claims that have been or could have been asserted in
16 the Complaint for failure to provide clear and reasonable warnings required by Proposition 65 of
17 exposure to DEHP from use of the Covered Products, or any other claim based on the facts or
18 conduct alleged in the Complaint as to such Covered Products.

19 **5. COURT APPROVAL**

20 No later than thirty (30) days after the execution of the Consent Judgment, the Office of the
21 Attorney General shall submit this Consent Judgment to the Court for its approval and entry in
22 the Action. If the Consent Judgment is not entered by the Court within one year after it is
23 executed, it shall be of no force or effect and shall not be introduced into evidence or otherwise
24 used in any proceedings for any purpose.

25 **6. SEVERABILITY**

26 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
27 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
28 provisions remaining shall not be adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **8. NOTICES**

5 Unless specified herein, all correspondence and notices required to be provided pursuant to
6 this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class,
7 registered, or certified mail, return receipt requested, or (iii) sent by overnight courier, to any
8 party at the following addresses:

9 To Defendants:

10 Malcolm C. Weiss, Esq.
11 Catherine Allen, Esq.
12 Hunton & Williams LLP
13 550 South Hope Street, Suite 2000
14 Los Angeles, CA 90071

15 with a copy to:

16 Gerber Childrenswear, LLC:

17 Gary Simmons
18 President and CEO
19 Gerber Childrenswear, LLC
20 1333 Broadway, Suite 700
21 New York, NY 10018

22 Gerber Products Company:

23 Kevin Goldberg, Esq.
24 Vice President and General Counsel
25 Gerber Products Company
26 12 Vreeland Road
27 Florham Park, NJ 07932

28 To the Office of the Attorney General:

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

1 Any party, from time to time, may specify in writing to the other parties any change of address to
2 which all notices and other communications shall be sent.

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

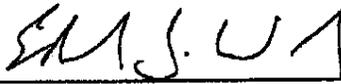
7 **10. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and have read,
9 understood, and agree to all of the terms and conditions of this Consent Judgment.

10 **AGREED TO:**

11 Dated: June 4, 2009

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

16 By: 
Edward G. Weil
Supervising Deputy Attorney General

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

22 Dated: June __, 2009

GERBER CHILDRENSWEAR LLC

24 By: _____
25 Gary Simmons
26 President and CEO

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11 Dated: June 4, 2009

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

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16 By: Edward G. Weil
17 Edward G. Weil
Supervising Deputy Attorney General

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

21
22 Dated: June 8, 2009

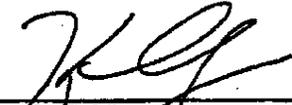
GERBER CHILDRENSWEAR LLC

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24 By: Gary Simmons
25 Gary Simmons
26 President and CEO

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Dated: June 8, 2009

GERBER PRODUCTS COMPANY

By: 
Kevin Goldberg, Esq.
Vice President and General Counsel

IT IS SO ORDERED:

Dated: July 10, 2009


JUDGE OF THE SUPERIOR COURT