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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 13 2009

Adylin, Exec. Off./Clerk

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7 PEOPLE OF THE STATE OF CALIFORNIA EX
8 REL. EDMUND G. BROWN JR., ATTORNEY
9 GENERAL OF THE STATE OF CALIFORNIA

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19 Attorneys for Defendant
20 DEX PRODUCTS, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF ALAMEDA

23 UNLIMITED CIVIL JURISDICTION

24 PEOPLE OF THE STATE OF CALIFORNIA *ex*
25 *rel.* EDMUND G. BROWN JR., ATTORNEY
26 GENERAL OF THE STATE OF CALIFORNIA,

27 Plaintiff,

28 v.

29 GERBER CHILDRENSWEAR, INC.; GERBER
30 PRODUCTS COMPANY; BARACAH
31 APPAREL GROUP LLC; BENTEX GROUP,
32 INC.; CROCODILE CREEK KIDS, LLC; CUTIE
33 PIE BABY, INC.; DEX PRODUCTS, INC.;
34 KOLE IMPORTS, INC.; SMITH NOVELTY
35 COMPANY; and DOES 1 through 100,

36 Defendants.

Case No. RG 08377849

**[PROPOSED] CONSENT JUDGMENT
REGARDING CLAIMS AGAINST
DEX PRODUCTS, INC.**

Judge: Hon. Robert B. Freedman
Department: 20

ASSIGNED FOR ALL PURPOSES TO:

JUDGE ROBERTS B. FREEDMAN
DEPARTMENT 20

1 **1. INTRODUCTION**

2 **1.1 Introduction**

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

8 **1.2 Plaintiff**

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

16 **1.3 Defendant**

17 Defendant is Dex Products, Inc. For purposes of this Consent Judgment, Dex acknowledges
18 that it is a corporation with ten or more employees, and that it is therefore a “person in the course of
19 doing business” within the meaning of Proposition 65.

20 **1.4 General Allegation:**

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

25 **1.5 Covered Products**

26 The products covered by this Consent Judgment are children’s bibs with vinyl or plastic
27 components containing DEHP, individually and collectively referred to hereinafter as the “Covered
28 Products.”

1 **1.6 Complaint**

2 On March 20, 2008, the People filed a complaint (“Complaint” or “Action”) in the Superior
3 Court in and for the County of Alameda against Dex and certain other vinyl bib manufacturers and/or
4 distributors, alleging violations of Proposition 65 based on the alleged exposures to DEHP contained
5 in the Covered Products. Dex timely filed an answer to the Complaint on July 7, 2008.

6 **1.7 No Admission**

7 Dex denies the material, factual and legal allegations contained in Plaintiff’s Complaint and
8 maintains that all Covered Products that it sold and distributed in California have been and are in
9 compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be
10 construed as an admission by Dex of any fact, finding, issue of law, or violation of law; nor shall
11 compliance with this Consent Judgment constitute or be construed as an admission by Defendant of
12 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dex.

13 **1.8 Consent to Jurisdiction**

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

18 **1.9 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
20 Consent Judgment is entered by the Court.

21 **2. INJUNCTIVE RELIEF/ PERMANENT INJUNCTION**

22 Dex shall be and hereby is permanently enjoined from manufacturing, distributing, and
23 offering for sale or selling in California, Covered Products with a concentration of DEHP in excess of
24 1000 parts per million (“ppm”).

25 **3. SETTLEMENT PAYMENTS**

26 **3.1 Settlement Amount and Allocation**

27 The total settlement amount shall be \$7,500, allocated more specifically as follows:

- 28 (1) \$6,500 of the total settlement amount shall be paid as a civil penalty pursuant to California

1 Health & Safety Code section § 25249.7, subdivision (b)(1), and (2) \$1,000 of the total settlement
2 amount shall reimburse the Office of the Attorney General for the attorney's fees and costs incurred
3 by it in investigating, bringing, and resolving this Action against Dex.

4 **3.2 Payment Schedule and Instructions**

5 Dex shall pay the entire fee and cost reimbursement amount of \$1,000 and also make an
6 initial payment of civil penalties of \$1,500 (i.e., for an initial total payment of \$2,500) within thirty
7 (30) days following the Effective Date. Dex shall thereafter pay the remaining civil penalty amount
8 due through five (5) monthly progress payments of \$1,000 each, such that full payment shall be
9 effectuated within one hundred eighty (180) days following the Effective Date. Payments shall be
10 made by check payable to "Office of the California Attorney General," and sent by certified or
11 express mail to:

12 Robert Thomas
13 Legal Analyst
14 Office of the Attorney General
15 1515 Clay St., 20th Floor
16 Post Office Box 70559
17 Oakland, California 94612

16 **3.3 Default and Acceleration.**

17 If any payment is not actually received in the Office of the Attorney General as of close of
18 business following five (5) days of the date on which it is due (based on the Effective Date), then all
19 payments then outstanding under this Consent Judgment shall be accelerated and immediately
20 become due and owing within ten (10) additional days. If full payment of the accelerated amount is
21 not received within this additional ten (10) day period, the Attorney General may at any time
22 thereafter apply to the Court for a modification of this Consent Judgment, or such other orders as are
23 necessary to enable the Attorney General to execute on the Consent Judgment and collect all funds
24 owed, without further notice to Dex.

25 **4. COVERED CLAIMS**

26 This Consent Judgment is a full, final, and binding resolution between the People and Dex, its
27 parents, shareholders, divisions, subdivision, subsidiaries, sister companies, affiliates, cooperative
28 members, licensors, licensees, retailers, distributors, agents and representatives, and the officers,

1 directors, employees, attorneys, agents, representatives, predecessors, successors, and assigns of any
2 of them, of any violation of Proposition 65 or its implementing regulations, Business & Professions
3 Code sections 17200 *et seq.*, or any other statutory or common law claims that have been or could
4 have been asserted in the Complaint 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 on
6 the facts or conduct alleged in the Complaint as to such Covered Products.

7 **5. COURT APPROVAL**

8 The Office of the Attorney General shall submit this Consent Judgment to the Court for its
9 approval and entry in the Action.

10 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW**

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

17 **8. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
20 registered or certified mail, return receipt requests; or (ii) overnight courier on any party at the
21 following addresses:

22 To Dex:

23 L. Jason Clute
24 President,
25 Dex Products, Inc.
2375 Round Hill Drive
Alamo, CA 94507

26 with a copy to:

27 Robert Falk, Esq.
28 Morrison & Foerster LLP
425 Market Street, 35th Floor
San Francisco, CA 94105

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To the Office of the Attorney General:

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

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

9. 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.

10. 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:

Dated: January 28, 2009

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

By: 
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

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Dated: January 13, 2009

DEX PRODUCTS, INC.

By: 
L. Jason Clute

President,
DEX PRODUCTS, INC.

IT IS SO ORDERED:

Dated: March 13, 2009


JUDGE OF THE SUPERIOR COURT

Robert B. Freedman