

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE )  
COUNCIL, INC., and PUBLIC CITIZEN, )  
INC., )  
 )  
Plaintiffs, )  
v. )  
 )  
U.S. CONSUMER PRODUCT )  
SAFETY COMMISSION, )  
 )  
Defendant. )  
\_\_\_\_\_ )

08 Civ. 10507 (PGG)

**NOTICE OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiffs Natural Resources Defense Council and Public Citizen hereby move for summary judgment on the basis that there is no genuine issue of material fact and plaintiffs are entitled to judgment as a matter of law. The Consumer Product Safety Improvement Act (“CPSIA”) bans, beginning February 10, 2009, the sale of toys and other child care products containing more than a minimal percentage of one of six chemicals called phthalates, which are known to harm human health. Defendant U.S. Consumer Product Safety Commission has violated the CPSIA and the Administrative Procedure Act by authorizing the sale of such products after February 10, 2009, so long as the products were manufactured before that date.

In support of this motion, plaintiffs rely on the accompanying (1) Memorandum of Law in Support; (2) Statement of Undisputed Material Facts, pursuant to Local Rule 56.1; (3) Declaration of Mitchell S. Bernard and attached Exhibits A through J; (4) Declaration of Dr. Sarah Janssen and attached Exhibit A; (5) Declaration of Berit Block; (6) Declaration of Jasanna

Britton; (7) Declaration of Sean Harrington; (8) Declaration of Karen Kraut; (9) Declaration of Anna Lonergan; (10) Declaration of Linda Lopez; (11) Declaration of Francesca Olivieri; (12) Declaration of Julia Pershan; (13) Declaration of Joseph Stoshak; (14) Declaration of T. Kathryn Tucker; (15) Declaration of Daniel R. Vice; and (16) Proposed Order. All documents are being separately filed electronically, with the exception of the proposed order, consistent with the Court's e-filing procedures.

Respectfully submitted,

/s/ Mitchell S. Bernard  
Mitchell S. Bernard (MB 5823)  
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Dated: December 17, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of Plaintiffs' Notice of Motion for Summary Judgment on the following counsel for defendant, by email and FedEx, on December 17, 2008.

James Cott, Chief, Civil Division  
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/s/ Mitchell S. Bernard  
Mitchell S. Bernard