

**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)

**DECLARATION OF MITCHELL S. BERNARD  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Mitchell S. Bernard, declare as follows:

1. I am an attorney in the office of plaintiff Natural Resources Defense Council, and am counsel to plaintiffs in the above-captioned case. I make this declaration based on my own knowledge.

2. Attached as Exhibit A is a true and correct copy of Letter from Georgia C. Ravitz & Scott A. Cohn, Arent Fox LLP, to Nancy Nord & Cheryl A. Falvey, Consumer Product Safety Commission (Nov. 13, 2008).

3. Attached as Exhibit B is a true and correct copy of Letter from Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission, to Georgia C. Ravitz & Scott A. Cohn, Arent Fox LLP (Nov. 17, 2008).

4. Attached as Exhibit C is a true and correct copy of *Phthalate Provision Not To Be Applied Retroactively*, THE MONITOR, Nov. 18, 2008, <http://ws.strlab.com/news/alert/?op=n&n=0000000042>.

5. Attached as Exhibit D is a true and correct copy of Consumer Product Safety Commission, *Consumer Product Safety Improvement Act Section 108: Products Containing Certain Phthalates*, <http://www.cpsc.gov/ABOUT/Cpsia/faq/108faq.html> (last visited Dec. 10, 2008).

6. Attached as Exhibit E is a true and correct copy of Letter from Senator Barbara Boxer to Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission (Nov. 21, 2008).

7. Attached as Exhibit F is a true and correct copy of Letter from Senator Dianne Feinstein, Representative Henry Waxman, & Representative Janice D. Schakowsky, to Nancy Nord & Thomas Hill, Consumer Product Safety Commission (Nov. 24, 2008).

8. Attached as Exhibit G is a true and correct copy of Letter from Richard Blumenthal, Connecticut Attorney General, to Nancy A. Nord, Acting Chair, Consumer Product Safety Commission (Nov. 28, 2008).

9. Attached as Exhibit H is a true and correct copy of Letter from Aaron Colangelo, Natural Resources Defense Council, to Nancy Nord & Thomas Hill Moore, Consumer Product Safety Commission (Dec. 2, 2008).

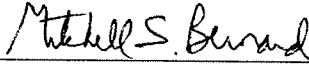
10. Attached as Exhibit I is a true and correct copy of Letter from Todd Stevenson, Secretary, Consumer Product Safety Commission, to Aaron Colangelo, Natural Resources Defense Council (Dec. 8, 2008).

11. Attached as Exhibit J is a true and correct copy of Memorandum from Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission, to Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission (Sept. 12, 2008).

12. To date the Consumer Product Safety Commission has not provided a substantive response to the letters of Senator Feinstein (Exh. F), Attorney General Blumenthal (Exh. G), or the Natural Resources Defense Council (Exh. H).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 17, 2008  
New York, New York

  
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Mitchell S. Bernard