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OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 20 2007

John A. Ch...  
by \_\_\_\_\_ Julia Rojas

John H. Reid, Judge

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES,  
11 WEST DISTRICT (SANTA MONICA COURTHOUSE)

11 ROBYN MCCOOL-LORD,  
12 Plaintiff,  
13 v.  
14 SMALL WORLD KIDS, INC. and DOES 1-100,  
15 Defendants.

Case No.: SC094609  
COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES  
INITIAL CASE MANAGEMENT REVIEW  
AND CONFERENCE

NOV 07 2007

18 Plaintiff, ROBYN MCCOOL-LORD alleges as follows.

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19 I.

20 INTRODUCTION

21 1. Defendants manufacture, distribute, and/or market plastic toys that contain phthalates.  
22 This Complaint seeks civil penalties and an injunction to remedy Defendants' continuing violations  
23 of Proposition 65 (Health & Safety Code §25249.6 *et seq.*) for failing to give clear and reasonable  
24 warnings to California consumers, who purchase and use their plastic toys which contain phthalates,  
25 that handling and use of these plastic toys exposes individuals to phthalates, such as Di (2-  
26 ethylhexyl) phthalate ("DEHP") and Di-n-butyl phthalate ("DBP") (collectively, "phthalates"), both  
27 of which are known to the State of California to cause cancer and/or reproductive toxicity.

28 ¶¶

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II.

PARTIES

2. Plaintiff ROBYN MCCOOL-LORD ("Lord") is a California citizen and mother and who has an interest in protecting the public, especially children, from health hazards posed by toxic chemicals. Lord resides in Santa Cruz, California and brings this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

3. Defendant SMALL WORLD KIDS, INC. is a domestic corporation which, at all material times hereto, was doing business throughout the State of California.

4. The true names and/or capacities of Defendants sued herein under the fictitious names DOES 1 through 100, inclusive, are unknown and are therefore sued herein pursuant to Code of Civil Procedure §474. Plaintiff will amend this complaint to state the true names and capacities of said fictitious defendants when they have been ascertained.

5. Plaintiff is informed and believes and alleges, that at all material times, Defendants were acting in an individual, corporate, partnership, associate, conspiratorial or other capacity or as the agent, employee, co-conspirator, or alter ego of their co-defendants, and in doing the acts herein alleged, were acting within the course and scope of their authority as such partner, associate, agent, employee, co-conspirator, or alter ego, and with the permission, consent, knowledge, authorization, ratification and direction of their co-defendants.

III.

JURISDICTION & VENUE

6. The Court has jurisdiction over this action pursuant to California Health & Safety Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts." Chapter 6.6 of the Health & Safety Code does not grant jurisdiction to any other trial court

7. Plaintiff has satisfied all the jurisdictional conditions precedent to maintaining this action by mailing notices of the violations to the persons entitled to receive them, as required by Health and Safety Code § 25249.7, along with Certificates of Merit and the Summary of Proposition 65, all in accordance with 22 C.C.R. § 12903. Attached hereto and incorporated by reference is a

1 copy of the notice letter, dated May 16, 2007, which Plaintiff sent to California's Attorney General.

2 8. All said notices of violation were mailed at least 65 days prior the date on which this  
3 action was filed (60 days for the notice required by Health and Safety Code § 25249.7(d), plus 5  
4 days for mailing the notice as required by Code of Civil Procedure § 1013).

5 9. Sixty-five days have passed since copies of the notices were mailed to all the above-  
6 referenced public enforcers and neither the Attorney General, any district attorney, nor any city  
7 attorney has filed a complaint against defendants for the violations alleged in the notice.

8 10. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 and Health  
9 and Safety Code § 25249.7 because Defendant SMALL WORLD KIDS, INC.'s corporate  
10 headquarters are located in Culver City, California and Defendants market their products in and  
11 around Los Angeles and thus cause people to be exposed to phthalates while those people are  
12 physically present in Los Angeles. Liability for Plaintiffs causes of action, or some parts thereof,  
13 has accordingly arisen in Los Angeles during the times relevant to this Complaint.

14 **IV.**

15 **SUMMARY OF PROPOSITION 65**

16 11. In November 1986, California voters overwhelmingly approved an initiative to  
17 address growing concerns about exposure to toxic chemicals. That initiative is now officially known  
18 as the Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code §25249.5 *et seq.*),  
19 but is commonly referred to by its original name, "Proposition 65."

20 12. Proposition 65 requires the Governor to publish a list of chemicals that are known to  
21 the State of California to cause cancer, birth defects or other reproductive harm. Agents that cause  
22 cancer are called carcinogens; those that cause birth defects or other reproductive harm are called  
23 reproductive toxicants. The list, which must by law be updated at least once a year, contained more  
24 than 550 chemicals as of May 15, 1998.

25 13. Any company with ten or more employees that operates within the State or sells  
26 products in California must comply with the requirements of Proposition 65. Under Proposition 65,  
27 businesses are prohibited from knowingly and intentionally exposing persons to a listed chemical  
28 without first providing them with a clear and reasonable warning communicating the risk.





1 25. Defendants are each a person doing business within the meaning of Health & Safety  
2 Code §25249.11. Defendants are all businesses that employ more than ten people.

3 26. Defendants knew the plastic toys they manufactured, distributed and/or marketed  
4 were causing individuals to be exposed to phthalates, which are known to the State of California to  
5 cause cancer and/or reproductive toxicity.

6 27. Defendants intended individuals to handle and use their plastic toys in such ways as  
7 would lead to significant exposures to phthalates.

8 28. Defendants have not provided clear and reasonable warnings within the meaning of  
9 Health & Safety Code §§25249.6 and 25249.11.

10 29. By the above described acts, Defendants have violated Health & Safety Code  
11 §25249.6 and are therefore subject to an injunction (a) ordering them to stop violating Proposition 65  
12 and (b) requiring them to provide warnings to their past customers who purchased their products  
13 without receiving a clear and reasonable warning.

14 **SECOND CAUSE OF ACTION**

15 Health & Safety Code §25249.7(b)

16 (Against All Defendants for Civil Penalties)

17 30. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as if  
18 specifically set forth herein, paragraphs 1 through 29, inclusive.

19 31. By the above described acts, Defendants are liable for a civil penalty of \$2,500.00 per  
20 day for each and every violation of Proposition 65.

21 **VIII.**

22 **PRAYER FOR JUDGMENT AND RELIEF**

23 Wherefore, Plaintiff prays for judgment against Defendants as follows:

24 1. Pursuant to the First Cause of Action, that all Defendants be enjoined, restrained, and  
25 ordered to (a) stop violating Health & Safety Code §25249.6 and (b) requiring them to provide  
26 warnings to their past customers who purchased their products without first receiving a clear and  
27 reasonable warning;

28 \\\

1           2.       Pursuant to the Second Cause of Action, that all Defendants be assessed civil  
2 penalties in an amount equal to \$2,500.00 per day per violation of Section 25249.6;

3           3.       For all causes of action, Plaintiff's costs and reasonable attorney's fees pursuant to  
4 Code of Civil Procedure § 1021.5; and

5           4.       For all causes of action, such other relief as this court deems just and proper.  
6

7 DATED: July 20, 2007

LAW OFFICE OF THOMAS GLENN MARTIN

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9  
10 By: \_\_\_\_\_

  
Thomas G. Martin  
Attorney for Plaintiff,  
ROBYN MCCOOL-LORD

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