

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER
Lead Corporations Counsel
4 MARY ANN CLARK (SBN 230943)
Senior Corporations Counsel
5 CALIFORNIA DEPARTMENT OF CORPORATIONS
1515 K Street, Suite 200
6 Sacramento, California 94814
Telephone: (916) 322-6067

7 Attorneys for the People of the State of California
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO

11 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
12 CALIFORNIA CORPORATIONS
COMMISSIONER,

13 Plaintiff,

14 vs.
15

16 FILMMATES ENTERTAINMENT, INC., a
California corporation; FILMMATES
CORPORATION, a California corporation;
17 FILMMATES PARTNERS, LLC, a California
limited liability company, SWIM COOL
18 SYSTEMS, a California corporation, SWIM
COOL SYSTEMS, LLC, a California limited
19 liability company, JAY MALLA
MALDONADO, as an individual; BILL
20 NANCE, as an individual; ALAN GODA, as an
individual, and Does 1 through 10, inclusive,

21 Defendants.
22

Case No.:

COMPLAINT FOR INJUNCTIVE RELIEF;
CIVIL PENALTIES; AND ANCILLARY
RELIEF (CORPORATIONS CODE
SECTIONS 25530 & 25535)

VIOLATION OF DESIST AND REFRAIN
ORDER ISSUED BY THE COMMISSIONER

UNQUALIFIED OFFER & SALE OF
SECURITIES (VIOLATIONS OF
CORPORATIONS CODE SECTION 25110)

FRAUD IN THE OFFER AND SALE OF
SECURITIES (VIOLATIONS OF
CORPORATIONS CODE SECTION 25401)

23
24 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Preston DuFauchard,
25 California Corporations Commissioner, acting to protect the public from unlawful and fraudulent
26 sales of securities, bring this action in the public interest. The People of the State of California
27 allege:
28

1 VENUE AND JURISDICTION

2 1. The California Corporations Commissioner (“Commissioner”) brings this action to
3 enjoin the defendants from violating the California Corporations Code of 1968 (“California
4 Corporations Code”) (California Corporations Code section 25000, et seq.) and to request
5 necessary civil penalties and ancillary relief. The Commissioner is authorized to administer and
6 enforce the provisions of the California Corporations Code.

7 2. The Commissioner brings this action pursuant to California Corporations Code
8 sections 25530 and Government Code section 11180 et seq., in his capacity as head of the
9 California Department of Corporations (“Department”).

10 3. The Defendants have transacted and continue to transact business within
11 Sacramento County and throughout the State of California. Defendants offered securities to at
12 least 18 residents of California, at least one of which was a resident of Sacramento County. The
13 violations of law described herein have occurred and will continue to occur within Sacramento
14 County and throughout the State of California unless enjoined.

15 DEFENDANTS

16 4. Defendant FilmMates Entertainment, Inc. (“FilmMates Entertainment”) is a
17 California corporation, formed on October 25, 2004 and maintains a business address at 11965
18 Venice Boulevard, Suite 305, Los Angeles, California 90066, Alan Goda as Secretary. FilmMates
19 Entertainment is also a Nevada corporation, formed on May 3, 2005 and maintains a business
20 address at 11965 Venice Boulevard, Suite 301, Los Angeles, California 90066, listing Jay Malla
21 Maldonado, and Bill Nance as officers.

22 5. Defendant FilmMates Corporation (“FilmMates Corp.”) is a suspended California
23 corporation, formed on November 6, 2001 and maintains a business address at 11965 Venice
24 Boulevard, Suite 305, Los Angeles, California 90066. On September 8, 2003, FilmMates
25 Corporation filed a statement of information with the California Secretary of State listing Alan
26 Goda as the officer and director with an address of 7510 Sunset Boulevard, Suite 211, Los
27 Angeles, California 90046. On November 24, 2004 FilmMates Corporation filed a statement of
28 information with the Secretary of State that indicates the company’s new address is 11965 Venice

1 Boulevard, Suite 305, Los Angeles, California 90066, and Alan Goda is the officer and director.

2 6. Defendant FilmMates Partners, LLC (“FilmMates LLC”), is a California limited
3 liability company formed on November 1, 2002 and maintains a business address at 7510 Sunset
4 Boulevard, Suite 211, Los Angeles, California 90046. The California Secretary of State filing lists
5 Alan Goda as the agent for service of process.

6 7. Defendant Swim Cool Systems (“Swim Cool”) is a California corporation formed
7 on November 2, 2006 and maintains a business address at 77971 Wildcat Drive, Palm Desert,
8 California 92211. The California Secretary of State filing lists Alan Goda as the President.

9 8. Defendant Swim Cool Systems, LLC (“Swim Cool LLC”) is a California limited
10 liability company formed on November 15, 2006 and maintains a business address at 77971
11 Wildcat Drive, Palm Desert, California 92211. The California Secretary of State filing lists Alan
12 Goda as an officer.

13 9. Defendant Jay Malla Maldonado, also known as J.A. Malla, Jay Malla, Joseph A.
14 Maldonado, Joe A. Maldonado, Jay Malla-Maldonado, and Joe Malla, (“Malla”) is an individual
15 whose last known residence was at 51240 Avenida Carranza, La Quinta, California 92253 and
16 whose last known business address was at 11965 Venice Boulevard, Suite 301, Los Angeles, CA
17 90066. Malla is a principal of FilmMates Entertainment, and FilmMates Corp.

18 10. Defendant Bill Nance (“Nance”) is an individual whose last known residence was
19 at 4005 Ocean Front Walk, Marina Del Rey, California 90292 and whose last known business
20 address was at 2025 Avenue of the Stars, Los Angeles, CA 90067. Nance is a principal of
21 FilmMates Entertainment, Inc.

22 11. Defendant Alan Goda (“Goda”) is an individual whose last known residence is
23 79065 Big Horn Trail, La Quinta, California 92253 and whose last known business address is
24 11965 Venice Boulevard, Suite 301, Los Angeles, California 90066. Goda is a principal in
25 FilmMates Entertainment, FilmMates Corporation and FilmMates Partners LLC, Swim Cool
26 Systems, and Swim Cool Systems, LLC.

27
28

1 FilmMates LLC and Goda, through the officers, directors, partners, agents, employees and/or
2 servants of FilmMates Corp., and FilmMates LLC were offering and selling unqualified, non-
3 exempt securities, in violation of California Corporations Code section 25110. The Order
4 prohibits those defendants from the further offer or sale of unqualified, non-exempt securities, in
5 the State of California. The Order was personally signed by Alan Goda, as the founder of both
6 FilmMates Corporation and FilmMates Partners, LLC on October 6, 2005.

7 19. FilmMates Corp., FilmMates LLC and Goda consented to the entry of the Order
8 and waived their right to a hearing on this matter and to all judicial review of this matter pursuant
9 to California Code of Civil Procedure Section 1094.5 as indicated by Goda's signature on the
10 Order dated October 6, 2005.

11 20. At the time FilmMates Corp., FilmMates LLC and Goda consented to the issuance
12 of the desist and refrain order, Malla was the Senior Vice President of Development for
13 FilmMates Corp.

14 21. In or about May 2005 FilmMates Entertainment registered with the Nevada
15 Secretary of State naming Malla and Nance as officers.

16 22. In or about July 2005 FilmMates Corp. and FilmMates LLC transferred all interests
17 into FilmMates Entertainment with the same corporate office location and website
18 (www.filmmates.net) as FilmMates Corp. FilmMates Entertainment continues to list FilmMates
19 Corp. located at 11965 Venice Boulevard, Suite 305, Los Angeles, California 90066 as its
20 headquarters on its website.

21 23. Notwithstanding the Order, Defendants, FilmMates Corp., FilmMates LLC, Goda,
22 Nance, and Malla continued to offer securities by way of general solicitations in the form of
23 advertisements in the Los Angeles Times newspaper, online edition.

24 24. These securities were offered or sold in the form of shares of common stock in
25 FilmMates Entertainment.

26 25. Notwithstanding the Order, Alan F. Goda, Swim Cool and Swim Cool LLC
27 continue to offer unqualified non-exempt securities by way of general solicitations in the form of
28 advertisements in the Los Angeles Times newspaper, online edition.

1 transaction . . . whether or not by or through underwriters . . . unless such sale has
2 been qualified under Section 25111, 25112 or 25113 . . . or unless such security or
3 transaction is exempted or not subject to qualification under Chapter 1
4 [commencing with Section 25100] of this part.”

5 29. Beginning in at least May 2002 and continuing thereafter until in or about
6 April 2005, Defendants, FilmMates Corp., FilmMates LLC, Goda and Malla, offered and sold
7 securities to California investors, through the use of general solicitations specifically, “cold
8 calls.”

9 30. The securities include, but are not necessarily limited to membership units
10 and/or common stock in FilmMates Corporation and/or FilmMates Partners, LLC. The
11 investments offered by Defendants, FilmMates Corp., FilmMates LLC, Goda and Malla and
12 each of them, are “securities” within the meaning of the California Corporations Code section
13 25019.

14 31. Beginning in at least August 2007 and continuing thereafter to the present,
15 Defendants, FilmMates Corp., FilmMates Entertainment, Goda, Malla, and Nance offered
16 and/or sold securities to California investors, through the use of general solicitations
17 specifically, placing an advertisement in the Los Angeles Times newspaper, online edition.

18 32. The securities include, but are not necessarily limited to membership units
19 and/or common stock in FilmMates Entertainment, Inc. The investments offered by
20 Defendants, FilmMates Corp., FilmMates Entertainment, Goda, Malla, and Nance and each of
21 them, are “securities” within the meaning of the California Corporations Code section 25019.

22 33. Beginning in at least October 2007, Alan F. Goda, Swim Cool and Swim Cool LLC
23 offered unqualified non-exempt securities by way of general solicitations in the form of
24 advertisements in the Los Angeles Times newspaper, online edition.

25 34. The sales of securities in each offering were “issuer transactions” within the
26 meaning of California Corporations Code section 25010 and 25011.

27 35. Defendants, and each of them, “offered and/or sold” the securities “within the
28 state” of California within the meaning of California Corporations Code section 25008 and

1 25017.

2 36. The Commissioner has not issued a permit or other form of qualification
3 authorizing the offer and/or sale of the securities referred to herein in the State of California.

4 37. The offer and/or sale of securities referred to herein were not exempt from the
5 requirement of qualification under California Corporations Code section 25110.

6 38. Unless enjoined by this Court, Defendants will continue to violate California
7 Corporations Code section 25110.

8 SECOND CAUSE OF ACTION
9 MISREPRESENTATION OR OMISSION OF MATERIAL FACTS
10 IN VIOLATION OF CORPORATIONS CODE SECTION 25401
11 (AGAINST ALL DEFENDANTS)

12 39. Plaintiff incorporates by reference paragraphs 1 through 33 of this Complaint as
13 though fully set forth herein.

14 40. California Corporations Code section 25401 states:

15 “It is unlawful for any person to offer or sell a security in this state or buy or offer
16 to buy a security in this state by means of any written or oral communication which
17 includes an untrue statement of a material fact or omits to state a material fact
18 necessary in order to make the statements made, in the light of the circumstances
19 under which they were made, not misleading.”

20 (Cal. Corp. Code, § 25401.)

21 41. In offering and/or selling the securities referred to herein, Defendants, and each of
22 them, made untrue statements of material fact and/or omitted to state material facts to some or all
23 of the investors. The untrue statements and/or omissions include but are not necessarily limited
24 to:

25 a) Failing to disclose, to investors and potential investors, that FilmMates Corp.,
26 FilmMates Partners and Goda were the subjects of a Desist and Refrain Order and Consent issued
27 by the Commissioner on October 25, 2005, ordering those defendants to desist and refrain from
28 the further offer or sale of unqualified, non-exempt securities in the State of California.

1 (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to
2 qualification under this law and it is being or has been offered or sold without first
3 being qualified, the commissioner may order the issuer or offeror of the security to
4 desist and refrain from the further offer or sale of the security until qualification has
5 been made under this law

6 48. On October 25, 2005, the Commissioner issued a Desist and Refrain Order
7 (“Order”) against defendants FilmMates Corp., FilmMates LLC and Goda, for offering and selling
8 unqualified, non-exempt securities, in violation of California Corporations Code section 25110.

9 49. FilmMates Corp., FilmMates LLC, and Goda consented to the entry of the Order
10 and waived their right to a hearing on this matter and to all judicial review of this matter pursuant
11 to California Code of Civil Procedure Section 1094.5. The Order is final.

12 50. On or about August 2007, the Commissioner learned that despite the issuance of
13 the Order, the Defendants continued to offer securities by way of general solicitations in the form
14 of advertisements in the Los Angeles Times newspaper, online edition for both FilmMates
15 Entertainment and Swim Cool Systems.

16 51. Unless enjoined, Defendants will continue to violate the Order issued by the
17 Commissioner.

18 PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff prays for a judgment to be entered against Defendants, FilmMates
20 Entertainment, FilmMates Corp., FilmMates LLC, Swim Cool, Swim Cool LLC, Malla, Nance,
21 and Goda and Does 1 through 10, inclusively as follows:

22 I. INJUNCTIVE RELIEF FOR THE VIOLATIONS

23 For a Temporary Restraining Order, an Order of Preliminary Injunction and, ultimately, a
24 Permanent Injunction, pursuant to California Corporations Code section 25530, restraining and
25 enjoining Defendants from, directly or indirectly:

26 1. Violating California Corporations Code section 25110, by offering to sell, selling,
27 arranging for the sale of, issuing, engaging in the business of selling, negotiating for the sale of
28 any security of any kind, unless such security or transaction is qualified or exempt;

2. Violating California Corporations Code section 25401, by offering to sell or selling

1 any security of any kind, including but not limited to, the securities described in this Complaint,
2 by means of any written or oral communication which includes any untrue statement of material
3 fact or omits or fails to state any material fact necessary in order to make the statements made, in
4 the light of the circumstances under which they are made, not misleading;

5 3. Violating the Desist and Refrain Order issued by the California Corporations
6 Commissioner on October 25, 2005, by offering and selling unqualified, non-exempt securities in
7 violation of California Corporations Code section 25110;

8 4. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
9 disposing of, in any manner, any books, records, computer programs, computer files, computer
10 printouts, correspondence, brochures, manuals, or any other "writing" or "document" of any kind
11 as defined under California Evidence Code section 250, relating to the transactions and course of
12 conduct as alleged in the complaint of this action, unless authorized by this Court; and

13 5. Withdrawing from any bank account or disposing of any real or personal property
14 in their possession, custody or control, without leave of the Court.

15 6. Transferring, changing, disbursing, selling, dissipating, converting, pledging,
16 assigning, foreclosing, or otherwise disposing of any real property or personal property in their
17 possession or under their control, or in the possession of, or under the control of, any of the
18 defendants, which property or other assets were derived or emanated from directly, or indirectly,
19 the sale and issuance of securities as alleged in this Complaint, without leave of this Court; and

20 7. Withdrawing, transferring, changing, disbursing, dissipating, converting, pledging,
21 or assigning any funds or other assets which were derived or emanated, directly or indirectly, from
22 the offer or sale of securities as alleged in this Complaint, from any accounts at any bank, savings
23 and loan association, broker-dealer or any other financial institution in the name of any of the
24 defendants, or controlled by any of the defendants, without leave of this Court.

25
26 II. RESCISSION AND RESTITUTION

27 1. For a Final Judgment requiring Defendants to rescind each and all of the unlawful
28 transactions alleged in this Complaint, pursuant to California Corporations Code section 25530,

1 subdivision (b), as shall be determined by this Court to have occurred, and further requiring
2 Defendants to pay full restitution to each person determined to have been subject to the
3 Defendant's acts or practices which constitute violations of the California Corporations Code of
4 1968, according to proof. In addition, to pay either the contracted rate of interest or the legal rate
5 of interest in the amount invested by the investors from the date of their investments to the date of
6 judgment herein.

7 2. For a Final Judgment requiring Defendants to disgorge, pursuant to California
8 Corporations Code section 25530, subdivision (b), to all known investors all benefits received,
9 including but not limited to, salaries, commission, fees, profits and any other remuneration,
10 derived directly or indirectly, from the actions or practices which constitute violations of the
11 California Corporations Code of 1968.

12 III. CIVIL PENALTIES

13 For a Final Judgment requiring Defendants to pay the Department of Corporations
14 \$25,000.00 as a civil penalty for each act in violation of the California Corporations Code of 1968,
15 pursuant to California Corporations Code section 25535, for a total amount of \$525,000.00 or
16 according to proof.

17 IV. OTHER RELIEF

18 For such other and further relief as this Court may deem necessary and proper.

19
20 Dated: November 5, 2007

21
22 PRESTON DuFAUCHARD
California Corporations Commissioner

23
24 By: _____
25 MARY ANN CLARK
26 Senior Corporations Counsel
27 Attorney for the People of California
28