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DR. WHITNEY R. LEEMAN

ENDORSED
FILED
San Francisco County Superior Court

AUG 13 2015

CLERK OF THE COURT

BY: DENNIS TOYAMA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

DR. WHITNEY R. LEEMAN,

Plaintiff,

v.

HOUGHTON MIFFLIN HARCOURT
COMPANY; BARNES & NOBLE, INC.; and
DOES 1 - 150, inclusive,

Defendants.

) Case No. CGC-15-547346
) COMPLAINT FOR CIVIL PENALTIES
) AND INJUNCTIVE RELIEF
) (Health & Safety Code § 25249.5 *et seq.*)

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff DR. WHITNEY R. LEEMAN in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to Lead, a toxic chemical found in books with vinyl/PVC covers sold by defendants in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, about the risks of exposure to Lead present in and on books with vinyl/PVC covers manufactured, distributed, and offered for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of Lead are found in and on the books with vinyl/PVC covers that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Health & Safety Code § 25249.6.

5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed Lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to the "clear and reasonable warning" requirements of the act one year later on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, books with vinyl/PVC covers containing Lead including, but not limited to, Webster's New World Pocket Dictionary Fourth Edition, ISBN 978-0-7645-6147-4.

1 All such books with vinyl/PVC covers containing Lead are referred to collectively hereinafter as
2 "PRODUCTS."

3 7. Defendants' failure to warn consumers in the State of California of the health
4 hazards associated with exposures to Lead in conjunction with defendants' sales of the
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
7 § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
10 the required warning regarding the health hazards associated with exposures to Lead. Health &
11 Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff DR. WHITNEY R. LEEMAN is a citizen of the State of California who
16 is dedicated to protecting the health of California citizens through the elimination or reduction
17 of toxic exposures from consumer products; and he brings this action in the public interest
18 pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant HOUGHTON MIFFLIN HARCOURT COMPANY ("HOUGHTON")
20 is a person in the course of doing business within the meaning of Health and Safety Code
21 sections 25249.6 and 25249.11.

22 12. HOUGHTON manufactures, imports, distributes, sells, and/or offers the
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
25 State of California.

1 13. Defendant BARNES & NOBLE, INC. ("BARNES & NOBLE") is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

4 14. BARNES & NOBLE manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale to consumers in the State of
14 California.

15 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
16 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

18 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
20 in the State of California.

21 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

26 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
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1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. HOUGHTON, BARNES & NOBLE, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
6 collectively be referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the Superior Court for the County of San Francisco, pursuant
9 to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
10 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
11 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
12 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco
13 with respect to the PRODUCTS.

14 24. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, section 10, which grants the Superior Court "original
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 25. The California Superior Court has jurisdiction over DEFENDANTS based on
19 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
20 corporation or association that is a citizen of the State of California, has sufficient minimum
21 contacts in the State of California, and/or otherwise purposefully avails itself of the California
22 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
23 California courts consistent with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Proposition 65 - Against All Defendants)**

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 25, inclusive.

1 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

5 28. Proposition 65 states, “[n]o person in the course of doing business shall
6 knowingly and intentionally expose any individual to a chemical known to the state to cause
7 cancer or reproductive toxicity without first giving clear and reasonable warning to such
8 individual” Health & Safety Code § 25249.6.

9 29. On February 27, 2015, plaintiff served a sixty-day notice of violation, together
10 with the accompanying certificate of merit, on HOUGHTON, BARNES & NOBLE, the
11 California Attorney General’s Office, and the requisite public enforcement agencies alleging
12 that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
13 California are being exposed to Lead resulting from their reasonably foreseeable use of the
14 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
15 the harms associated with exposures to Lead, as required by Proposition 65.

16 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
18 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
19 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
20 will continue in the future.

21 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
22 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
23 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
24 violation.

25 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
26 offer for sale or use in California cause exposures to Lead as a result of the reasonably
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements
2 of Proposition 65, yet DEFENDANTS provide no warning.

3 33. DEFENDANTS knew or should have known that the PRODUCTS they
4 manufacture, import, distribute, sell, and offer for sale in California contain Lead.

5 34. Lead is present in or on the PRODUCTS in such a way as to expose consumers
6 through dermal contact and/or ingestion during reasonably foreseeable use.

7 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
8 continues to cause, consumer exposures to Lead, as defined by title 27 of the California Code of
9 Regulations, section 25602(b).

10 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
11 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

12 37. DEFENDANTS intend that exposures to Lead from the reasonably foreseeable
13 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
14 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
15 consumers in California.

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers in California who have been, or who will be, exposed to Lead through dermal
18 contact and/or ingestion resulting from their use of the PRODUCTS.

19 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
20 directly by California voters, consumers exposed to Lead through dermal contact and/or
21 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
22 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
23 for which they have no plain, speedy, or adequate remedy at law.

24 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
25 above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty
26 of \$2,500 per day for each violation.

