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ENDORSED
FILED
ALAMEDA COUNTY

JUN 28 2016

CLERK OF THE SUPERIOR COURT
By *James Thomas*
JAMIE THOMAS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

PERSEUS BOOKS, INC.; PERSEUS
BOOKS, L.L.C.; LIBRARY
PUBLICATIONS, INC.; RUNNING PRESS
BOOK PUBLISHERS; and DOES 1-150,
inclusive,

Defendants.

Case No. **RG16821244**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff Whitney R.
3 Leeman, Ph.D. in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the health hazards caused by exposures to the toxic chemical
5 lead found in mugs with exterior decorations.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failure to
7 warn individuals not covered by California's Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle Defendants' products, about the risks of
9 exposure to lead found in mugs with exterior decorations manufactured, distributed, and offered
10 for sale or use throughout the State of California. Individuals not covered by California's
11 Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle
12 Defendants' products, are referred to hereinafter as "CONSUMERS."

13 3. Detectable levels of lead are found in and on the mugs with exterior decorations
14 that Defendants manufacture, distribute, and offer for sale to CONSUMERS throughout the
15 State of California.

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

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
22 lead as a chemical known to cause birth defects (and reproductive harm). Lead became subject
23 to the "clear and reasonable warning" requirements of the act one year later on February 27,
24 1988 Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, mugs with exterior decorations that contain lead including, but
27 not limited to *The Big Lebowski Kit (Mug)*, #52000, ISBN-13: 978-0-7624-3900-3. All such
28

1 mugs with exterior decorations 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 WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of toxic exposures from consumer products. She brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant PERSEUS BOOKS, INC. is a person in the course of doing business
20 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendant PERSEUS BOOKS, L.L.C. is a person in the course of doing business
26 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

27 14. PERSEUS BOOKS, L.L.C. manufactures, imports, distributes, sells, and/or offers
28 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California

3 15. Defendant LIBRARY PUBLICATIONS, INC. is a person in the course of doing
4 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

5 16. LIBRARY PUBLICATIONS, INC. manufactures, imports, distributes, sells,
6 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct
7 that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
8 the State of California

9 17. Defendant RUNNING PRESS BOOK PUBLISHERS is a person in the course of
10 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

11 18. RUNNING PRESS BOOK PUBLISHERS manufactures, imports, distributes,
12 sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its
13 conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or
14 use in the State of California

15 19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
16 person in the course of doing business within the meaning of Health and Safety Code sections
17 25249.6 and 25249.11.

18 20. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
19 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
20 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
21 sale or use in California.

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

25 22. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
26 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
27 retailers for sale or use in the State of California, or each implies by its conduct that it
28 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to

1 individuals, businesses, or retailers for sale or use in the State of California.

2 23. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
3 the course of doing business within the meaning of Health and Safety Code sections 25249.6
4 and 25249.11.

5 24. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
6 individuals in the State of California.

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

12 26. PERSEUS, PERSEUS BOOKS, L.L.C., LIBRARY PUBLICATIONS, INC.,
13 RUNNING PRESS BOOK PUBLISHERS, MANUFACTURER DEFENDANTS,
14 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
15 appropriate, be referred to collectively as the “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

17 27. Venue is proper in the Superior Court for the County of Alameda pursuant to
18 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
19 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because
20 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
21 and/or because DEFENDANTS conducted, and continue to conduct, business in Alameda with
22 respect to the PRODUCTS.

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

27 29. The California Superior Court has jurisdiction over DEFENDANTS based on
28 Plaintiff’s information and good-faith belief that DEFENDANTS are each a person, firm,

1 corporation or association that is a citizen of the State of California, has sufficient minimum
2 contacts in the State of California, and/or otherwise purposefully avails itself of the California
3 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 29, inclusive.

9 31. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
10 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm."

13 32. Proposition 65 states, "[n]o person in the course of doing business shall
14 knowingly and intentionally expose any individual to a chemical known to the state to cause
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such
16 individual" Health & Safety Code § 25249.6.

17 33. On August 20, 2015, Plaintiff served a sixty-day notice of violation, together with
18 the accompanying certificate of merit, on PERSEUS BOOKS, INC., PERSEUS BOOKS,
19 L.L.C., LIBRARY PUBLICATIONS, INC., RUNNING PRESS BOOK PUBLISHERS, the
20 California Attorney General, and all other requisite public enforcers alleging that, as a result of
21 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are being
22 exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the
23 consumers first receiving a "clear and reasonable warning" regarding the harms associated with
24 exposures to lead, as required by Proposition 65.

25 34. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
26 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
27 violations have continued beyond their receipt of Plaintiff's sixty-day notice of violation. As
28 such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined

1 will continue in the future.

2 35. After receiving Plaintiff's sixty-day notice of violation, no public enforcement
3 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
4 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of
5 violation.

6 36. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
7 offer for sale or use in California cause exposures to lead as a result of the reasonably
8 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
9 consumers in California are not exempt from the "clear and reasonable" warning requirements
10 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS' violations of
11 Proposition 65 as a result of their failure to provide warnings to consumers exposed to lead from
12 the PRODUCTS, have continued since as far back as August 20, 2013.

13 37. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufacture, import, distribute, sell, and offer for sale in California contain lead.

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

17 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
18 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of
19 Regulations, section 25602(b).

20 40. DEFENDANTS know that the normal and reasonably foreseeable use of the
21 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

22 41. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
23 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
24 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
25 consumers in California.

26 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers in California who have been, or who will be, exposed to lead through dermal contact
28 and/or ingestion resulting from their use of the PRODUCTS.

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

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

45. As a consequence of the above-described acts, Health and Safety Code section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to lead;

3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

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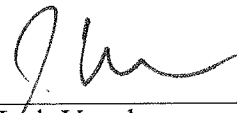
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4. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: June 24, 2016

Respectfully submitted,
THE CHANLER GROUP

By: 

Josh Voorhees
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.