

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 03 2017

CLERK OF THE SUPERIOR COURT  
By Classie Collins Deputy

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9 UNLIMITED CIVIL JURISDICTION

11 WHITNEY R. LEEMAN, PH.D., ) Case No. **RG17851631**  
12 )  
13 Plaintiff, ) **COMPLAINT FOR CIVIL PENALTIES**  
14 v. ) **AND INJUNCTIVE RELIEF**  
15 PERSEUS BOOKS, INC.; PERSEUS ) (Health & Safety Code § 25249.5 *et seq.*)  
16 BOOKS, L.L.C.; and DOES 1-150, inclusive, )  
17 Defendants. )

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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 lead, a toxic  
5 chemical found in shot glasses with exterior decorations sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens and other individuals about the risks of exposure to lead present in and  
8 on shot glasses with exterior decorations manufactured, distributed, and offered for sale or use  
9 to consumers and other individuals throughout the State of California.

10 3. Detectable levels of lead are found in and on the shot glasses with exterior  
11 decorations that defendants manufacture, distribute, and offer for sale to consumers and other  
12 individuals throughout the State of California.

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

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

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
24 hazard warnings in California, shot glasses with exterior decorations containing lead.

25 7. Defendants also manufacture, distribute, import, sell and/or offer for sale without  
26 health hazard warnings in California, *The Big Bang Theory Kit (Shot Glass)*, 50995, ISBN 978-  
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1 0-7624-5837-0. All shot glasses with exterior decorations containing lead are referred to  
2 collectively hereinafter as "PRODUCTS."

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

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

12 10. 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 11. Plaintiff Whitney R. Leeman, Ph.D. is a citizen of the State of California who is  
16 dedicated to protecting the health of California citizens through the elimination or reduction of  
17 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 12. Defendants PERSEUS BOOKS, INC., and PERSEUS BOOKS, L.L.C.,  
20 (collectively, "PERSEUS") are persons in the course of doing business within the meaning of  
21 Health and Safety Code sections 25249.6 and 25249.11.

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

25 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
26 person in the course of doing business within the meaning of Health and Safety Code sections  
27 25249.6 and 25249.11.

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1 wrongful conduct occurred, and continue to occur, in this county, and/or because  
2 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect  
3 to the PRODUCTS.

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

8 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
9 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
10 association that is a citizen of the State of California, has sufficient minimum contacts in the  
11 State of California, and/or otherwise purposefully avails itself of the California market.  
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 24, inclusive.

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

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

26 28. On August 8, 2016, plaintiff served a sixty-day notice of violation, together with  
27 the requisite certificate of merit, on PERSEUS BOOKS, INC., PERSEUS BOOKS, L.L.C.,  
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1 LIBRARY PUBLICATIONS, INC., RUNNING PRESS BOOK PUBLISHERS and certain  
2 public enforcement agencies alleging that, as a result of DEFENDANTS' sales of the  
3 PRODUCTS containing lead, purchasers and users in the State of California were being  
4 exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the  
5 individual purchasers and users first having been provided with a "clear and reasonable  
6 warning" regarding the harms associated with such exposures, as required by Proposition 65.

7 29. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
8 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'  
9 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.  
10 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in  
11 the future.

12 30. After receiving plaintiff's sixty-day notice of violation, none of the appropriate  
13 public enforcement agencies have commenced and diligently prosecuted a cause of action  
14 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
15 subject of plaintiff's notice of violation.

16 31. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
17 offer for sale or use in California cause exposures to lead as a result of the reasonably  
18 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
19 consumers and other individuals in California are not exempt from the "clear and reasonable"  
20 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

21 32. DEFENDANTS knew or should have known that the PRODUCTS they  
22 manufactured, imported, distributed, sold, and offered for sale or use in California contained  
23 lead.

24 33. Lead is present in or on the PRODUCTS in such a way as to expose individuals to  
25 lead through dermal contact and/or ingestion during reasonably foreseeable use.

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

4           35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
5 the PRODUCTS exposed individuals to lead through dermal contact and/or ingestion.

6           36. DEFENDANTS intended that exposures to lead from the reasonably foreseeable  
7 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the  
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
9 consumers and other individuals in California.

10          37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
11 consumers and other individuals in California who were or who would become exposed to lead  
12 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

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