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Evan Smith (Bar No. SBN 242352)
BRODSKY SMITH
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212
Tel: (877) 534-2590
Fax: (310) 247-0160

Attorneys for Plaintiff

FILED
San Francisco County Superior Court

OCT 29 2024

CLERK OF THE COURT
BY: *Richard B. Ulmer*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PRECILA BALABBO,
Plaintiff,

v.

BARNES & NOBLE BOOKSELLERS, INC.,
Defendant.

Case No.: CGC-24-615538

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: October 29, 2024
Hearing Time: 9:30 AM
Complaint Filed: June 18, 2024

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Barnes & Noble Booksellers,
4 Inc. (“Barnes & Noble” or “Defendant”) with Balabbo and Defendant collectively referred to as
5 the “Parties” and each of them as a “Party.” Balabbo is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Barnes & Noble is alleged to
8 be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to lead from its sales of The Ginger Fox Book Lover’s mugs, UPC # 5060132078280
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is
13 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and
14 birth defects or other reproductive harm.

15 **1.3 Notice of Violation/Action.** On or about October 9, 2023, Balabbo served Hacche
16 USA Retail Ltd. and Ginger Fox Games Ltd. (collectively “Ginger Fox”), Barnes & Noble and
17 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
18 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Ginger Fox and
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of The
20 Ginger Fox Book Lover’s mugs, UPC # 5060132078280 exposes users in California to lead. No
21 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On June
22 18, 2024, Balabbo filed a complaint (the “Complaint”).

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27 of all claims which were or could have been raised in the Action based on the facts alleged therein
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1 and in the Notice.

2 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means The Ginger Fox Book
11 Lover's mugs, UPC # 5060132078280 that are manufactured, distributed, shipped into California
12 and offered for sale in California by Ginger Fox and, as applicable, Barnes & Noble.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Clear and Reasonable Warning.** Commencing within (ninety) 90 days after the
17 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
18 this §§ 3.1 and 3.2 must be provided for all Covered Products that Barnes & Noble manufacturers,
19 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Barnes &
20 Noble to provide an exposure warning for Products that entered the stream of commerce within 90
21 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative**
22 **Warning** described in §§ 3.1(a) or (b), respectively:

23 (a) **Warning.** The "Warning" shall consist of the statement:

24 **⚠ WARNING:** This product can expose you to chemicals including lead, which
25 is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

26 (b) **Alternative Warning:** Barnes & Noble may, but is not required to, use the
27 alternative short-form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

28 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

1 **3.2** A **Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
2 **“WARNING:”** in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word **“WARNING:”** must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Products does not use the color
5 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
6 height of the word **“WARNING:”**. The **Warning or Alternative Warning** shall be affixed to or
7 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
8 or automatic process, provided that the **Warning or Alternative Warning** is displayed with such
9 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
10 read and understood by an ordinary individual under customary conditions of purchase or use. The
11 **Warning or Alternative Warning** may be contained in the same section of the packaging, labeling,
12 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
13 and shall be at least the same size as those other safety warnings. If “consumer information,” as
14 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
15 amended from time to time, is provided in a foreign language, Barnes & Noble shall provide the
16 **Warning or Alternative Warning** in the foreign language in accordance with applicable warning
17 regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment
18 (“OEHHA”).

19 In addition to affixing the **Warning or Alternative Warning** to the Product’s packaging or
20 labeling, the **Warning or Alternative Warning** shall be posted on websites where Barnes & Noble
21 offers Products for sale to consumers in California. The requirements of this Section shall be
22 satisfied if the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
23 **“WARNING,”** appears on the product display page, or by otherwise prominently displaying the
24 warning to the purchaser prior to completing the purchase. To comply with this Section, Barnes &
25 Noble shall (a) post the **Warning or Alternative Warning** on its own website and, if it has the
26 ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
27 ability to post the **Warning or Alternative Warning** on the websites of its third-party internet
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1 sellers, provide such sellers with written notice in accordance with Title 27, California Code of
2 Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided
3 with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2
4 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this
5 Section.

6 **3.3 Compliance with Warning Regulations.** The Parties agree that Barnes & Noble
7 shall be deemed to be in compliance with this Settlement Agreement by either (x) adhering to § 3
8 of this Settlement Agreement or (z) by complying with warning regulations adopted by the State
9 of California's OEHHA applicable to the Product and the exposure at issue or (z) ceasing sales of
10 all Covered Products in California.

11 **4. MONETARY TERMS**

12 **4.1 Civil Penalty.** Barnes & Noble shall pay \$1,000.00 as a Civil Penalty pursuant to
13 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
14 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
15 the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
16 § 25249.12(d).

17 **4.1.1** Within ten (10) days of the Effective Date, Barnes & Noble shall issue two
18 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to
19 (b) "Brodsky Smith in Trust for Balabbo" in the amount of \$250.00. Payment owed to Balabbo
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky Smith
23 Two Bala Plaza, Suite 805
24 Bala Cynwyd, PA 19004

25 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
26 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

27 For United States Postal Service Delivery:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

9 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
10 above as proof of payment to OEHHA.

11 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Barnes & Noble shall
12 pay \$16,500.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and
13 costs incurred as a result of investigating, bringing this matter to the attention of Barnes & Noble,
14 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
15 pursuant to Code of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
18 acting on her own behalf, and on behalf of the public interest, and Barnes & Noble, and its parents,
19 shareholders, members, directors, officers, managers, employees, representatives, agents,
20 attorneys, divisions, subdivisions, subsidiaries, and affiliated entities under common ownership,
21 partners, sister companies, and affiliates, and their predecessors, successors and assigns
22 ("Defendant Releasees"), of all claims for violations of Proposition 65 based on exposure to lead
23 from use of the Covered Products manufactured, distributed, or sold by Barnes & Noble prior to
24 and within 90 days after the Effective Date, as set forth in the Notice. It is the Parties' intention that
25 this Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
26 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
27 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
28 lead from use of the Covered Products that was alleged in the Complaint, or that could have been
brought pursuant to the Notice against Barnes & Noble and the Defendant Releasees ("Proposition
65 Claims"). Barnes & Noble's compliance with the terms of this Consent Judgment constitutes

1 compliance with Proposition 65 by Barnes & Noble with regard to exposure to lead from use of the
2 Covered Products.

3 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
4 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
5 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
6 legal action and releases Barnes & Noble and Defendant Releasees from any and all manner of
7 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
8 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
9 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
10 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
11 manufactured, distributed, or sold by Barnes & Noble or Defendant Releasees. With respect to the
12 foregoing waivers and releases in this paragraph, Balabbo hereby specifically waives any and all
13 rights and benefits which she now has, or in the future may have, conferred by virtue of the
14 provisions of § 1542 of the California Civil Code, which provides as follows:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
18 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

19 5.3 Barnes & Noble waives any and all claims against Balabbo, her attorneys and other
20 representatives, for any and all actions taken, or statements made (or those that could have been
21 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and with respect to Covered Products.

24 **6. INTEGRATION**

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
26 any and all prior negotiations and understandings related hereto shall be deemed to have been
27 merged within it. No representations or terms of agreement other than those contained herein exist
28 or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California.

4 **8. NOTICES**

5 8.1 Unless specified herein, all correspondence and notices required to be provided
6 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
7 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
8 by the other party at the following addresses:

9 For Defendant:

10 Mark A. Love
11 Hawkins Parnell & Young, LLP
12 33 New Montgomery St., Ste. 800
San Francisco, CA 94105

13 And

14 For Balabbo:

15 Evan Smith
16 Brodsky Smith
17 9465 Wilshire Blvd., Ste. 300
18 Beverly Hills, CA 90212

19 Any party, from time to time, may specify in writing to the other party a change of address to
20 which all notices and other communications shall be sent.

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

22 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and
24 the same document.

25 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
26 **APPROVAL**

27 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
28 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
Defendant agrees it shall support approval of such Motion.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

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1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: _____

Date: 9 | 5 | 24

10 By: _____

By: *Sheldon*

11 **PRECILA BALABBO**

**BARNES & NOBLE BOOKSELLERS,
INC.**

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13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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15 Dated: _____

Judge of Superior Court

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14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 9/10/24

Date: _____

By: *Precila Balabbo*
PRECILA BALABBO

By: _____
BARNES & NOBLE BOOKSELLERS,
INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 10/29/24

CLJ
Judge of Superior Court

RICHARD B. ULMER