

FILED
NORTH COUNTY DIVISION
2010 JAN 27 PM 3:29
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12 NORTH COUNTY DIVISION

13 SAN DIEGUITO PUBLISHERS, INC. dba
14 SAN DIEGUITO PRINTERS,
15
16 Plaintiff,
17
18 v.
19 JAMES E. HOLMAN, an individual; and
20 JAMES E. HOLMAN, dba SAN DIEGO
21 READER, a sole proprietorship, and DOES i
22 through 50 inclusive,
23 Defendants.

Case No. 37-2010-00050711-CU-BC-NC
COMPLAINT FOR:
1) **Breach of Contract;**
2) **Negligent Misrepresentation;**
3) **Violation of California Business and Professions Code § 17200, et seq.;**
4) **Alter ego.**
(UNLIMITED CIVIL CASE)
Dept:
Judge:
Complaint Filed:
Trial Date: Not Assigned

24 Plaintiff San Dieguito Publishers, Inc., dba San Dieguito Printers (“SDP”) alleges as follows:

GENERAL ALLEGATIONS

- 25 1. Plaintiff San Dieguito Publishers, Inc., dba San Dieguito Printers, is a California
26 corporation with its principal place of business in San Marcos, California.
27 2. On information and belief, defendant San Diego Reader (“the Reader”) is a sole
28 proprietorship owned by James E. Holman with its principal place of business in San Diego,
California at 1703 India Street, San Diego, CA 92101-5803.

1 3. Defendant James E. Holman is an individual who resides in San Diego County,
2 California.

3 4. Defendants DOES 1 to 50, inclusive, are sued under fictitious names. Their true
4 names and capacities are unknown to Plaintiff. When the DOE defendants' true names and
5 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
6 capacities herein. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously
7 named Defendants is responsible in some manner for the occurrences alleged in this Complaint, and
8 knew or had reason to know, that they were benefitting from the improper conduct of the named
9 Defendants, or were otherwise responsible for the acts and omissions that caused Plaintiff's
10 damages.

11 5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned in
12 this Complaint, each of the Defendants was acting as the agent of each of the DOE Defendants, and
13 in doing the things herein alleged, acted within the course and scope of such agency, with the
14 permission and consent of the co-Defendants, and as co-conspirators or alter-egos of the other co-
15 Defendants.

16 **FACTS COMMON TO ALL CAUSES OF ACTION**

17 6. For approximately 35 years, to its knowledge, SDP has been the exclusive printer for
18 all editions of the Reader, pursuant to then-existing contracts.

19 7. In 2005, the Reader expressed an interest to SDP in dramatically increasing the color
20 usage in their publication.

21 8. SDP determined that in order to specifically increase the color usage as the Reader
22 desired, SDP would have to expend significant sums of money (in the millions of dollars), including
23 to purchase additional necessary equipment. SDP advised the Reader that before it made this
24 financial commitment to purchase such equipment, SDP would require the Reader to make financial
25 commitments to justify this risk of additional required purchases, capital outlays, and business
26 adjustments in a 10-year contract with SDP.

27 9. The Reader agreed and the parties entered into the 10-year contract attached hereto as
28 Exhibit 1 (the "Contract"). In reliance thereon, SDP purchased the equipment and made the other

1 commitments necessary to increase the color usage of the Reader's publications as the Reader
2 desired. The Contract also incorporated prior contractual commitments by the Reader of a similar
3 nature made to encourage SDP to previously acquire equipment, make financial outlays and business
4 adjustments to handle the requirements and requests of the Reader.

5 10. In 2008 and 2009, the Reader threatened to breach the Contract unless SDP would
6 accepted payment amounts less than those provided by the Contract, and modify the agreed-upon
7 printing schedule.

8 11. Having made such large expenditures on the equipment, as well as other financial and
9 business adjustments required by the Reader, and the Reader then representing a large share of
10 SDP's revenues, losing the Reader as a client was not an economically feasible option for SDP.
11 Therefore, with the understanding it would preserve the contract and the Reader as a client, SDP
12 granted the Reader a number of price concessions, improved the printing schedule at a cost to SDP,
13 and other sacrifices.

14 12. Despite the existing Contract, and despite the efforts and concessions made by SDP,
15 on approximately January 1, 2010, the Reader breached the Contract with SDP and began using a
16 third party for its printing needs.

17 **First Cause of Action**

18 **BREACH OF CONTRACT**

19 **(Against San Diego Reader, and Does 1 to 25)**

20 13. Plaintiff incorporates the allegations contained in Paragraphs 1 through 12 of this
21 Complaint as if set forth herein.

22 14. Plaintiff performed all conditions, covenants, and promises required on its part to be
23 performed in accordance with the terms and conditions of the Contract.

24 15. Defendants breached the Construction Contract by, among other things:

- 25 • On January 1, 2010, refusing to honor its contractual commitment to maintain its
- 26 relationship pursuant to the Contract with SDP until April 15, 2015 instead doing
- 27 business with another printer;
- 28 • Refusing to pay the full price of the Contract and forcing concessions from SDP
- while SDP was in economic duress;

- Breaching the covenant of good faith and fair dealing by placing SDP in economic duress and then exacting concessions from SDP; and
- Breaching the covenant of good faith and fair dealing by negotiating a contract with a third party while the Contract was still in effect and using the threat of contracting with a third party as leverage to exact concessions from SDP to which the Reader was not otherwise entitled.

16. As a direct and proximate result of Defendant's breaches of the Contract, SDP has sustained damages in an amount to be determined according to proof.

Second Cause of Action

NEGLIGENT MISREPRESENTATION

(Against San Diego Reader and Does 1 to 25)

17. Plaintiff incorporates the allegations contained in Paragraphs 1 through 16 of this Complaint as if set forth herein.

18. The Reader and/or Holman made the following statements when they had no reasonable grounds to believe the statements were true: (1) SDP would have the exclusive right to print for the Reader under the terms of the Contract; (2) and if SDP granted the Reader concessions and permitted it to pay less than its full obligation to SDP under the Contract, the Reader would continue its relationship with SDP until April 15, 2015.

19. The defendants' misrepresentations induced SDP to purchase expensive equipment to print the publications in color as desired by the Reader, to later give the Reader concessions, and to permit the Reader to pay SDP something less than the full amount of its obligations under the Contract.

20. The defendants intended for SDP to rely on their misrepresentations, give the Reader concessions, and permit it to pay SDP something less than the full amount of its obligations under the Contract.

21. SDP actually relied on the defendants' misrepresentations, purchased additional equipment to enable it to meet the Reader's output requirements, gave it concessions, and permitted it to pay SDP something less than the full amount of its obligations under the Contract.

1 and/or Holman in that defendant Holman commingled and manipulated defendants' funds, the other
2 entities are a mere conduit for the Reader and/or Holman's business, Holman exercises complete
3 control and dominance of such business to such an extent that any individuality or separateness of
4 defendants does not, and at all times herein mentioned did not, exist, and Holman's conduct and
5 representations led the public to believe the Reader and/or Holman and the other entities were one in
6 the same, among others.

7 30. Adherence to the fiction of the separate existence of the defendant as an entity distinct
8 from the other defendants would permit an abuse of the corporate privilege and would promote
9 injustice in that the Holman would be able to hide assets and retain them for himself.

10 31. As a result the other entities are jointly and severally liable for the liabilities of the
11 Reader and/or Holman for the foregoing causes of action brought by Plaintiff.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
14 follows:

15 **First Cause of Action: Breach of Contract**

- 16 1. For compensatory damages according to proof;
- 17 2. For interest;
- 18 3. For costs of suit herein incurred; and
- 19 4. For such other and further relief as the court may deem proper.

20 **Second Cause of Action: Negligent Misrepresentation**

- 21 1. For compensatory damages according to proof;
- 22 2. For costs of suit herein incurred; and
- 23 3. For such other and further relief as the court may deem proper.

24 **Third Cause of Action: Violation of California Business and Professions Code § 17200**

- 25 1. For restitution and unjust enrichment according to proof;
- 26 2. For costs of suit herein incurred; and
- 27 3. For such other and further relief as the court may deem proper.

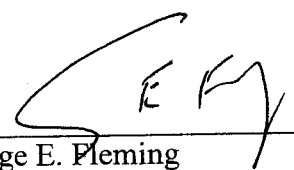
28 ///

1 **Fourth Cause of Action: Alter Ego**

2 1. For any judgment in this action to be entered jointly and severally among all
3 defendants.

4 Dated: January 27, 2010

FLEMING PC

5
6 By: 
7 George E. Fleming
8 Attorneys for SAN DIEGUITO
9 PUBLISHERS, INC.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 325 S. Melrose	
MAILING ADDRESS: 325 S. Melrose	
CITY AND ZIP CODE: Vista, CA 92081	
BRANCH NAME: North County	
TELEPHONE NUMBER: (760) 201-8029	
PLAINTIFF(S) / PETITIONER(S): San Dieguito Publishers, Inc.	
DEFENDANT(S) / RESPONDENT(S): James E. Holman et.al.	
SAN DIEGUITO PUBLISHERS, INC. VS. HOLMAN	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2010-00050711-CU-BC-NC

Judge: Robert P Dahlquist

Department: N-29

COMPLAINT/PETITION FILED: 01/27/2010

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JAMES E. HOLMAN, an individual; and JAMES E. HOLMAN, dba SAN DIEGO READER, a sole proprietorship, and DOES 1 through 50 inclusive
YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
SAN DIEGUITO PUBLISHERS, INC. dba SAN DIEGUITO PRINTERS,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
NORTH COUNTY DISTRICT
SUM-100
JAN 27 PM 3:29

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court

CASE NUMBER:
(Número de caso) 37-2010-00050711-CU-BC-NC

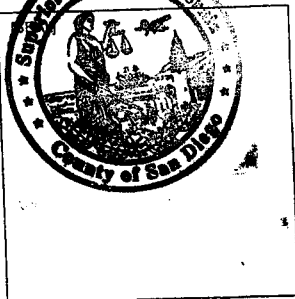
325 South Melrose
San Diego, CA 92081

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
George E. Fleming, 4330 La Jolla Village Drive, Suite 310, San Diego, CA 92122 (858) 554-0700

DATE: **JAN 27 2010**
(Fecha)

Clerk, by **C. Terriquez**, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para probar el cumplimiento de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): FLEMING PC (G. Fleming #065804, B. Fell #234194 C. Patton #244580) 4330 La Jolla Village Drive Suite 310 San Diego, California 92122 TELEPHONE NO: (858) 554-0500 FAX NO: (858) 554-0673 ATTORNEY FOR (Name): San Dieguito Publishers, Inc.		FOR COURT USE ONLY FILED NORTH COUNTY DISTRICT 2010 JAN 27 PM 3:29 CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 325 South Melrose MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92081 BRANCH NAME: North County Regional Center		
CASE NAME: San Dieguito Publishers, Inc., et al. v. James E. Holman, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2010-00050711-CU-BC-NC JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 4
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 27, 2010

George E. Fleming

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CIVIL CASE COVER SHEET