

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHELLE HAINLEY, an individual, on behalf of herself and others similarly situated,

Plaintiff,

vs.

BARNES AND NOBLE, INC., a New York corporation; and DOES 1-50, inclusive,

Defendants.

Case No.:

COMPLAINT – CLASS ACTION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1. Plaintiff Michelle Hainley (“Plaintiff” or “Hainley”), individually and on behalf of all others similarly situated, brings this class action complaint against Defendant Barnes and Noble, Inc. (“Defendant” or “B&N”). Plaintiff makes the following allegations based upon information and belief, except as to those allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

NATURE OF THE ACTION

2. This class action arises out of defectively designed chargers for Defendant Barnes and Noble, Inc.’s tablet reading devices, or “e-Readers,” branded as the Nook Color and Nook Simple Touch. The Nook Color and Nook Simple Touch series contain defectively designed and implemented wall chargers, replacement chargers, and car chargers that dangerously fray and cause the adapters to fail after a few months of use.

3. Purchasers of the Nook Color and Nook Simple Touch series have been damaged by purchasing these specific e-Readers and receiving a product that fails to function as reasonably expected. These e-Readers are often rendered completely useless due to the defect.

4. Plaintiff seeks to represent the putative class defined as follows (“the Class”):

All persons in the Commonwealth of Pennsylvania who purchased a Nook Color e-Reader, Nook Simple Touch e-Reader, and/or accompanying charging accessories for consumer or household purposes herein during the Class Period.

5. Plaintiff and the putative class of Pennsylvania consumers seek damages and restitutionary relief as a result of purchasing the defective products.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of a different state than Defendant. The amount in controversy in this action exceeds \$5,000,000, and there are more than 100 members in the proposed class.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff’s claims occurred in this District.

PARTIES

8. Plaintiff Michelle Hainley is, and at all times relevant hereto was, a resident of Lancaster County in the Commonwealth of Pennsylvania. Hainley purchased a Nook Color model e-Reader with a defective charging cable in or around December 2011 (the “Nook”). Hainley’s Nook suffered cable malfunctions less than a year after purchase.

9. Defendant Barnes and Noble, Inc. is, and at all times relevant hereto was, a New York corporation. Defendant regularly and systematically conducts business throughout the State of Pennsylvania.

10. Defendant sells its products directly to customers through its website, www.barnesandnoble.com, as well as through its brick and mortar locations throughout the United States. Among other lines of business, Defendant is engaged in the business of selling Nook branded e-Readers, including but not limited to Nook 1st Edition, Nook Wi-Fi 1st Edition, Nook Color, Nook Simple Touch, Nook Tablet, Nook Simple Touch with GlowLight, Nook HD,

Nook HD+, Nook Glowlight, eBooks and other digital content, and Nook related accessories to consumers.

GENERAL ALLEGATIONS

11. In late 2009, Defendant Barnes and Noble, Inc. released a handheld e-reading device branded the “Nook.” There have been several subsequent versions of the e-Reader released since its initial launch.

12. From the first release and onward, all versions of the Nook have been equipped with a Nook-specific USB cable and an accompanying power adapter for charging and transferring data. The charging setup allows the product to charge through a standard 110-volt electrical outlet, utilizing both the cable and adapter, or through a USB port using the USB cable only. The accompanying charging cable and adapter are not universal varieties but are unique to the Nook line of products.

13. Upon information and belief, the peripherals that suffer from the defects identified herein affect the Nook Color and Nook Simple Touch e-Readers. These peripherals include the accompanying wall charging cable and adapter and the car charging cable.

14. Due to flawed and defective design, the charging cable to these e-Readers dangerously frays, exposing the wires inside, and stops working. After the defect manifests itself, the cable and adapter will not charge or transfer data to the Nook e-Reader after a few months of normal use. Consumers have complained of the cord fraying and exposing the wires.

15. There have been hundreds of complaints registered with Defendant Barnes and Noble, Inc.’s own Nook webpages, as well as hundreds more on other retailers’ sites that sell the Nook e-Readers. The company is well aware of the problem, as evidenced by commentary on Defendant’s own webpages containing Nook customer reviews, and yet, Defendant has not taken any steps to remedy the situation by updating the design, recalling the defective items, or compensating its customers who have purchased these items. Instead, in the instances in which

Defendant replaced the cable, the replacement cable suffered the same defect, and it too would fail within a short period of time.

16. The failure of the company-issued charging cord can render the product essentially useless as many consumers have reported that after-market charging units do not work properly with the Nook. Additionally, many consumers have complained that Defendant Barnes and Noble, Inc. had inventory outages for months for the replacement cables.

17. Each of the Nook branded e-Readers comes with a one year limited warranty that states that each “NOOK will be free from defects in materials and workmanship under normal consumer use for a period of one (1) year from the date of original retail purchase.” This warranty covers the Nook e-Reader device as well as the “peripherals included in the packaging with [the] NOOK device.” The charging cable and wall adapter are included as such peripherals with the Nook device. Prior versions of the warranty under the applicable statute of limitations provide substantially similar, if not identical, warranties.

18. Defendant Barnes and Noble, Inc. is further aware of the defect by way of numerous claims made under the warranty regarding this defect, including those made by Plaintiff and putative class members. Defendant Barnes and Noble, Inc. responds to these claims by replacing the defective cable with an identical cable, with knowledge that the cable, by design, suffers from the same defect and would again fail prior to its reasonably expected life. By this knowledge and conduct, Defendant fails to honor the terms of its express warranty.

19. The applicable statutes of limitation have been tolled in light of Defendant Barnes and Noble, Inc.’s actively concealing its defective Nook wall chargers, car chargers, and their respective replacements. Defendant knew or should have reasonably known that Plaintiff and Class members were unaware of the defects present in the wall chargers and car chargers. Plaintiff and Class members were also unaware that the replacements carried the same defects as the originally purchased chargers. There were no other compatible chargers on the market for the Nook, and therefore, Plaintiff and Class members were forced to purchase chargers exclusive

to Barnes and Noble. There was no lack of due diligence in discovering the defect on the part of the Plaintiff or the Class.

20. This fraudulent concealment by Defendant is common to the Plaintiff and all Class members.

PLAINTIFF'S ALLEGATIONS

21. Plaintiff Michelle Hainley purchased a Nook Color e-Reader in or around December 2011, which included the charging cable and adapter, from a Barnes & Noble store located in Lancaster, Pennsylvania. She subjected the unit to normal use over a period of months until the charging cable stopped working. After contacting Defendant about the defect, in October 2012, Defendant provided Plaintiff with a replacement cable and adapter.

22. The replacement cable similarly malfunctioned within a short time of use. Plaintiff attempted to obtain a replacement for the second cable under the warranty; however, Defendant responded that the replacement request was outside of the warranty period. As the Nook Color would be rendered useless without a functional charging cable, Plaintiff had to purchase a third cable from a retailer to continue using the Nook as intended.

23. Plaintiff and the similarly situated putative class members have been damaged by the defective nature of the Nook e-Readers and its accompanying charging cable.

CLASS ALLEGATIONS

24. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of herself and the following class (collectively the "Class") defined as follows:

All persons in the Commonwealth of Pennsylvania who have purchased a Nook Color e-Reader, Nook Simple Touch e-Reader, and/or accompanying charging accessories for consumer or household purposes herein during the Class Period.

25. **Numerosity:** The Class is composed of hundreds or thousands of persons geographically dispersed throughout the Commonwealth of Pennsylvania, so numerous that joinder in one action is impractical. While the exact number and the identities of Class members

are unknown at this time, they can be ascertained through investigation and discovery in this action through Defendant's records or subpoena.

26. **Commonality:** Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include, but are not limited to, the following:

- a. Whether the Nook Color and Nook charging cables are defectively manufactured, built, designed, and sold;
- b. Whether the Nook Color and Nook charging cables have not performed or will not perform in accordance with the reasonable expectations of ordinary customers;
- c. Whether Plaintiff and the Class members suffered damages as a result of the defects mentioned herein;
- d. Whether B&N breached its warranties, both express and implied;
- e. Whether B&N breached the implied warranty of merchantability by failing to disclose the defect in the Nook Color and Nook charging cables and by continuing to sell the defective e-Readers even after it knew of the defect in the Nook Color and Nook charging cables;
- f. Whether the Class is entitled to payment of equitable monetary relief, actual, exemplary and/or statutory damages, plus interest and/or is entitled to injunctive relief; and
- g. Whether B&N concealed from consumers and/or failed to disclose to consumers the defect

27. **Typicality:** Plaintiff's claims are typical of the claims of the other Class members, in that they arise out of the same product defect, the same practices by Defendant, and the same warranties. The claims of the representative Plaintiff are typical of the claims of the

Class in that the representative Plaintiff, like all Class members, is the owner of a defective Nook Color or Nook Simple Touch e-Reader that suffers from a defective charging cable.

28. **Adequacy:** Plaintiff will fairly and adequately protect the legitimate interests of the members of the Class because: (1) Plaintiff has no interests antagonistic to the interests of the other Class members; (2) Plaintiff's interests are aligned with the interests of the Class; and (3) Plaintiff understands the nature of these allegations and her responsibilities as class representative to represent the interests of those persons who have been injured. Plaintiff is committed to the vigorous prosecution of this action and has retained attorneys who are experienced in the prosecution of complex class actions, including consumer class actions involving product liability and product design defects.

29. **Predominance and Superiority:** This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members. Further, a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members would have no other suitable method of redress for the injuries they suffered and continue to suffer. Additionally, even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would significantly increase the delay and expense to all parties and to the Court, while additionally creating the risk of inconsistent holdings and contrary judgments. In contrast to proceeding on an individual case basis, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

30. Excluded from the Class is Defendant Barnes and Noble, Inc., its parents, subsidiaries, affiliates, officers and directors, any entity in which Barnes and Noble, Inc. has a

controlling interest, all customers who make a timely election to be excluded, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

31. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

FIRST CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability)

32. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully stated herein.

33. The Nook Color and Nook Simple Touch charging cables were defectively made, having left Defendant's facilities with the defect.

34. At all times relevant hereto, there was duty imposed by law which requires that a seller's product be reasonably fit for the purposes for which such products are used and that product be acceptable in trade for the product description.

35. Notwithstanding the aforementioned duty, at the time of sale, Defendant's Nook Color and Nook Simple Touch units sold to Plaintiff and the Class were not merchantable.

36. As documented on its own website and elsewhere, Defendant was notified that its Nook Color and Nook Simple Touch units were not merchantable within a reasonable time after the defect manifested itself to the Plaintiff and Class members.

37. As a result of the non-merchantability of the Nook Color and Nook Simple Touch charging cable setup described herein, Plaintiff and Class members were injured.

SECOND CAUSE OF ACTION

(Breach of Implied Warranty of Fitness for a Particular Purpose)

38. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully stated herein.

39. By placing its Nook Color and Nook Simple Touch in the stream of commerce, Defendant impliedly warranted that the Nook's accompanying charging cable and adapter setup

and the complementary car charger were reasonably dependable for their intended use, which is to withstand usual wear as a Nook e-Reader charger and to charge the Nook e-Reader without premature failure.

40. Defendant's charging cable setup and car charger is not fit for its particular purpose, making the e-Readers themselves not fit for their particular purpose. In breach of the implied warranty of fitness for a particular purpose, Defendant's e-Readers fail to charge properly.

41. Defendant's Nook Color and Nook Simple Touch units were not reasonably fit for their intended use when the products left Defendant's control and entered the market.

42. The Nook Color's and Nook Simple Touch's defects were not open and/or obvious to consumers.

43. Any purported limitation of the duration and scope of the implied warranty of fitness for a particular purpose given by Defendant is unreasonable, unconscionable and void, due to the fact that Defendant knew, should have known, or recklessly disregarded the fact that the defect in the charging cables for these products existed and might not be discovered until the warranty expired. Further, Defendant willfully withheld information about the defective cables from purchasers of the Nook units and complementary cables and car chargers.

44. As a result, Plaintiff and proposed class members have been damaged in, inter alia, the amount they paid to purchase defective replacement charging cable setups, and if no reliable replacement exists for the charging cable setups, in the amount they paid for the Nook e-reader units.

THIRD CAUSE OF ACTION

(Breach of Express Warranty)

45. Plaintiff repeats and realleges each and every allegation contained above as if set forth fully herein.

46. Defendant distributed, marketed, and sold the Nook Color and Nook Simple Touch units with defective charger cables and replacement cables alleged herein for use by consumers for the purposes associated with portable e-reading. Defendant knew the uses for which the product was intended and expressly warranted these Nook devices and the complementary cables to be of reasonable quality and fit for use.

47. Plaintiff and Class members reasonably relied on the skill and judgment of Defendant and on the express warranty when purchasing and using the Nook Color and Nook Simple Touch units.

48. Contrary to the express warranty, the Nook wall charger cables included with each unit, and the replacement cables, were not of reasonable quality, nor were they fit for their intended use. The cables contained defects and unreasonably failed to perform as advertised, marketed, and expected based upon ordinary use.

49. Defendant was aware of the inherent defects of the cable, where the cable would fray and subsequently fail to perform as expected within the warranty period, and was aware that claims of the defect were made under the warranty.

50. Defendant did not adequately honor warranty claims made in relation to the defects described herein, by refusing to replace or repair the defective product or product component and/or refusing the remedy the defect.

51. As a direct and proximate result of Defendant's conduct and the product defects, Plaintiff and Class members were injured.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Barnes and Noble as follows:

- a. Granting certification of the Class of consumers described herein, designating Plaintiff as the Class representative, and appointing Plaintiff's counsel as counsel for the Class identified herein;

- b. Preliminary and permanent injunctive relief enjoining Defendant from continuing to sell, distribute and market the defective products described herein and from engaging in the acts of unfair competition alleged herein;
- c. Requiring Defendant to pay damages, plus interest, sustained by Plaintiff and the Class by reason of the acts and transgressions alleged herein;
- d. Requiring Defendant to pay restitution for the unjust benefits it received from the sale, distribution and marketing of the products described herein;
- e. Awarding Plaintiff her costs, expenses, disbursements and reasonable attorneys' fees in an amount to be determined at trial; and
- f. Awarding Plaintiff such other relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

DATED: October 7, 2015

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