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RICHARD W. WIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 EDMUND G. BROWN JR.  
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**CHAMBERS COPY**

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

JCS

13 **CV 09 2134**  
Case No. CIV - \_\_\_\_\_ ( )

14 **THE STATE OF CALIFORNIA,**  
15  
16 **Plaintiff,**  
17  
18 **v.**  
19 **EDUCATION MEDIA & PUBLISHING**  
**GROUP LIMITED, a Cayman Islands**  
**Corporation, and HOUGHTON MIFFLIN**  
**HARCOURT PUBLISHING COMPANY, a**  
**Massachusetts Corporation,**  
20  
21 **Defendants**

**PROPOSED CONSENT DECREE AND FINAL JUDGMENT**

22 Plaintiff the State of California by and through its Attorney General, Edmund G. Brown Jr.,  
23 has filed a Complaint, alleging violations of Section 7 of the Clayton Act as amended, (15 U.S.C.  
24 §18), and California Business and Professions Code §17200 et seq. Defendants Education Media  
25 Publishing Group Limited ("EMPG") and Houghton Mifflin Harcourt Publishing Company  
26 ("HMHC") by and through their attorneys, have reviewed the Complaint and consented to the  
27 entry of this Consent Decree and Final Judgment without trial or adjudication of any issue of fact  
28

1 or law herein and have waived notice of presentation of this Consent Decree, Complaint and  
2 service of summons. This Consent Decree does not constitute any evidence against or an  
3 admission by any party with respect to any issue of law or fact herein.

4 WHEREAS, defendants EMPG and HMHC have agreed to be bound by the provisions of  
5 this Consent Decree and there is no just reason for delay in its entry; and

6 WHEREAS, a price increase cap of no more than 4.25% per annum, compounded annually,  
7 on post-adoption price increases on sales of State-adopted, California-specific consumable  
8 workbooks and pupil editions sold two years or more after the initial date of adoption for K-8  
9 basic level programs in Mathematics, Reading/Language Arts, Social Studies and Science in the  
10 State of California, beginning and ending on the dates specified herein is the essence of this  
11 Consent Decree; and

12 WHEREAS, defendants EMPG and HMHC have represented to plaintiff that they can  
13 comply with the obligations set forth in this Consent Decree and full relief as provided in this  
14 Consent Decree can be accomplished;

15 NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication  
16 of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED,  
17 ADJUDGED AND DECREED that:

18 **I.**

19 **JURISDICTION**

20 This Court has jurisdiction over the subject matter of this action and over each of the parties  
21 hereto. The Complaint states a claim upon which relief may be granted against the Defendants  
22 under section 7 of the Clayton Act, as amended (15. U.S.C. §18), and California Business and  
23 Professions Code §§17200 et seq. The Attorney General for the State of California, Edmund G.  
24 Brown Jr., has authority to bring this action on behalf of the State of California in its sovereign  
25 capacity pursuant to Section 16 of the Clayton Act (15 U.S.C. §26) and California Business and  
26 Professions Code §§17204 and 17206.

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1 II.

2 DEFINITIONS

3 As used in this Consent Decree and Final Judgment:

4 A. "Adoption" means the California State Board of Education ("SBE") process for  
5 approving instructional materials for use in California elementary and middle school public  
6 schools (Kindergarten through Grade Eight, or "K-8") in accordance with Cal.Ed.Code § 60200.

7 B. "Adopted," with respect to instructional materials, means those materials that are  
8 approved by the California SBE for use in Grades K-8 in accordance with Cal.Ed.Code § 60200.

9 C. "Attorney General" means the Attorney General of the State of California.

10 D. "Basic," with respect to Reading/Language Arts, Mathematics, Science or Social  
11 Studies Programs, means any Program for grades K-8 that is adopted by the California SBE in a  
12 category that is designated as "Basic" by the California SBE.

13 E. "California-Specific," with respect to instructional materials, means those materials  
14 that are specifically marked "California" or "California edition."

15 F. "Consumable" means instructional materials that are intended to be permanently  
16 marked, annotated, written on or otherwise used by students in such a manner as makes them  
17 suitable for use by a single student only, and as makes them unsuitable for reuse by other  
18 students.

19 G. "Covered Materials" means California-Specific Pupil Editions and California-  
20 Specific Workbooks for any adopted K-8 Core Program.

21 H. "Defendants" means EMPG and HMHC, individually and collectively.

22 I. "Education Media and Publishing Group" ("EMPG") means Education Media and  
23 Publishing Group Limited, a Cayman Islands corporation with its headquarters in Dublin, Ireland  
24 and includes its directors, officers, employees, agents and representatives, predecessors,  
25 successors and assigns; its joint ventures, partnerships, subsidiaries, divisions, groups and  
26 affiliates controlled by EMPG, and the respective directors, officers, managers, employees,  
27 agents, representatives, successors, and assigns of each.

28 J. "Houghton Mifflin Harcourt Publishing Company" ("HMHC"), a Massachusetts

1 corporation with its headquarters in Boston, Massachusetts, an indirect wholly-owned subsidiary  
2 of Education Media and Publishing Group Limited, including its directors, officers, employees,  
3 agents and representatives, predecessors, successors and assigns; its joint ventures, partnerships,  
4 subsidiaries, divisions, groups and affiliates controlled by HMHC, and the respective directors,  
5 officers, managers, employees, agents, representatives, successors, and assigns of each.

6 K. "Initial Price," with respect to a Program or any component of a Program, including  
7 Covered Materials, means the initial selling price as listed on the publisher's Price Quotation on  
8 Instructional Materials following the California SBE's adoption of that Program.

9 L. "K-8 Core Program" means any Program adopted by the California SBE as a "Basic"  
10 program in Reading/Language Arts, Mathematics, Science or Social Studies for use in grades  
11 K-8.

12 M. "Post-Adoption Price" means any new price that is permitted to be implemented for  
13 an adopted Program on a biennial basis in accordance with Cal.Ed.Code §§ 60201 and 60223  
14 after the Initial Price is implemented following adoption of the Program by the California SBE.

15 N. "Price Increase Cap" means a price increase of no more than 4.25% per annum,  
16 compounded annually calculated as of June 30 of each year, and applied biennially in accordance  
17 with Cal.Ed.Code §§ 60201 and 60223.

18 O. "Price Quotation on Instructional Materials" means the formal pricing submission for  
19 a Program provided to the California SBE by publishers.

20 P. "Program" means the set of components, materials and other products offered with  
21 respect to a designated subject and grade level or levels as a single package of materials for a  
22 specific adoption. For the avoidance of doubt, a set of components, materials and other products  
23 may constitute a new Program, notwithstanding that some components thereof were constituent  
24 parts of a Program offered in a prior adoption.

25 Q. "Pupil Edition" means the Textbook or Textbooks designed to be used by students as  
26 the principal manual of instruction in a subject area. Absent evidence to the contrary, it will be  
27 presumed for purposes of this decree that the "Pupil Editions" in each K-8 Core Program are  
28 those Textbooks identified as a "Pupil Edition" or "Student Edition" on the publisher's Price

1 Quotation on Instructional Materials for the relevant K-8 Core Program submitted to the  
2 California SBE.

3 R. "SBE" means the "State Board" or "State Board of Education" as those terms are  
4 used and defined in Cal.Ed.Code § 60010.

5 S. "Textbook" means a printed, hard cover or soft cover book designed to be used by  
6 students as a manual of instruction in a subject area. For the avoidance of doubt, "Textbook" or  
7 "Textbooks" do not include, without limitation, assessment materials; Teacher Editions, teacher  
8 guides, teacher resource books or other teacher materials; leveled readers; intervention materials  
9 and intervention kits; workmats; manipulatives; charts, flash cards or picture cards; lesson plans;  
10 study guides; transparencies; glossaries; science or equipment kits; digital, online or software  
11 materials; CD, CD-ROM, video or DVD materials; or puppets, games or toys.

12 T. "Workbook" means a consumable Textbook or lab manual. Absent evidence to the  
13 contrary, it will be presumed for purposes of this decree that the "Workbooks" in each K-8 Core  
14 Program are those Textbooks identified as a "Workbook" or "Practice Book" or "Lab Manual" on  
15 the publisher's Price Quotation on Instructional Materials for the relevant K-8 Core Program  
16 submitted to the California SBE.

17 **III.**

18 **TERM**

19 The term of the decree is six (6) years, beginning July 2, 2008 and ending on July 1, 2014.

20 **IV.**

21 **APPLICABILITY**

22 A. The provisions of this Consent Decree and Final Judgment apply to EMPG and  
23 HMHC respectively as defined above, their successors and assigns, their subsidiaries, affiliates,  
24 directors, officers, managers, agents, and employees, and all other persons in active concert or  
25 participation with any of them.

26 B. Entry of this Consent Decree and Final Judgment does not constitute a trial and/or  
27 adjudication of any issue of fact or law, any evidence against, or any admission by, the State of  
28 California, EMPG or HMHC regarding any such issue of fact or law.

1 C. Nothing herein shall suggest that any portion of this Consent Decree and Final  
2 Judgment is or has been created for the benefit of any third party and nothing herein shall be  
3 construed to provide any rights to third parties.

4 **V.**

5 **EMPG'S AND HMHC'S OBLIGATIONS**

6 For a period of six (6) years beginning on July 2, 2008 and terminating on July 1, 2014,  
7 EMPG and HMHC shall not exceed the Price Increase Cap with respect to any Post Adoption  
8 Price increase for Covered Materials. The Price Increase Cap shall apply to any sales made by  
9 EMPG and HMHC to any public school, school district, private or parochial school in California.  
10 Thus, the Price Increase Cap does not apply to the Initial Prices of Covered Materials and other  
11 components of any EMPG and/or HMHC Program. EMPG and HMHC retain an absolute  
12 discretion to set the Initial Prices for any Program or component thereof.

13 **VI.**

14 **ATTORNEYS' FEES AND COSTS**

15 In full and final settlement of this action, EMPG and HMHC shall pay to the Attorney  
16 General, within fifteen (15) days of the date of entry of the Consent Decree by the Court or on  
17 April 1, 2009, whichever is later, the sum of \$300,000 for reasonable attorneys' fees and costs.

18 **VII.**

19 **TERMINATION**

20 Unless specified by other provisions herein, this Consent Decree and Final Judgment will  
21 expire and terminate on July 1, 2014.

22 **VIII.**

23 **COMPLIANCE**

24 A. Within thirty (30) days of notifying the California SBE of any Post-Adoption Price  
25 Increase on Covered Materials, EMPG and HMHC shall provide the Attorney General with a  
26 copy of the proposed new prices as well as the previous year's prices of such Covered Materials.

27 B. In addition, and within thirty (30) days of notifying the California SBE of any Post-  
28 Adoption Price Increase on Covered Materials, EMPG and HMHC shall also provide the

1 Attorney General with copies of all correspondence between the California SBE and EMPG  
2 and/or HMHC with respect to the establishment of the current price list.

3 C. Upon thirty (30) days notice and written request of the Attorney General, EMPG or  
4 HMHC shall respond to a reasonable request for information confirming that the Post-Adoption  
5 Price of any Covered Materials is in compliance with this Decree.

6 D. No information nor any documents obtained by the means provided in this Section  
7 VIII. shall be divulged by any representative of Plaintiff to any person other than a duly  
8 authorized representative of the California Attorney General, except in the course of legal  
9 proceedings to which the Plaintiff is a party or for the purpose of securing compliance with this  
10 Consent Decree and Final Judgment, or as otherwise required by law.

11 IX.

12 NOTICES

13 Any notice required to be given from/to the parties hereto shall be in writing and shall be  
14 deemed duly given and received upon delivery, addresses as set forth below, by any form of  
15 receipted mail or receipted commercial delivery service:

16  
17 To EMPG: Gregory D. Hull, Esq.  
18 Weil, Gotshal and Manges LLP  
19 201 Redwood Shores Parkway  
20 Redwood Shores, CA 94065

21 To HMHC: William F. Bayers, Esq.  
22 Executive Vice President and General Counsel  
23 Houghton Mifflin Harcourt Company  
24 222 Berkeley Street  
25 Boston, MA 02116

26 To Attorney General: Margaret E. Spencer, Esq.  
27 DAG IV, Antitrust Section  
28 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3664

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**X.**

**RETENTION OF JURISDICTION**

Jurisdiction is retained by this Court following entry of this Consent Decree and Final Judgment until December 31, 2014, or upon final disposition of any pending action to enforce the terms of this Consent Decree, whichever is later, for the purpose of enabling any of the parties to this Consent Decree and Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of violations hereof.

**XI.**

**PUBLIC INTEREST**

The Court finds that entry of this Consent Decree and Final Judgment is in the public interest.

Dated: \_\_\_\_\_, 2009

UNITED STATES DISTRICT COURT JUDGE

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Presented By:

STATE OF CALIFORNIA, BY:  
EDMUND G. BROWN JR.  
Attorney General of the State of California  
JAMES M. HUMES  
Chief Deputy Attorney General  
J. MATTHEW RODRIQUEZ  
Assistant Chief Attorney General  
KATHLEEN E. FOOTE  
Senior Assistant Attorney General  
MARGARET E. SPENCER  
Deputy Attorney General

*Margaret Spencer with permission  
by Nicol Dub...*  
MARGARET E. SPENCER  
Deputy Attorney General  
*Attorneys for Plaintiff State of California*

1 EDUCATION MEDIA & PUBLISHING GROUP, LTD. BY:  
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JEREMY W. DICKENS  
President  
Education Media & Publishing Group, Ltd.  
1350 Avenue of the Americas, Suite 815  
New York, NY 10019

  
GREGORY D. HULL, ESQ.  
WEIL, GOTSHAL AND MANGES LLP  
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Redwood Shores, CA 94065  
*Attorney for Defendant Education Media & Publishing Group, Ltd.*

1 HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY

2

3

4

5



WILLIAM F. BAYERS

6

Executive Vice President and General Counsel  
Houghton Mifflin Harcourt Publishing Company

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222 Berkeley Street  
Boston, MA 02116

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: The State of California v. Education Media & Publishing Group Limited, a Cayman Islands Corporation, and Houghton Mifflin Harcourt Publishing Company, a Massachusetts Corporation  
United States District Court for the Northern District of California  
San Francisco Division

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 15, 2009, I served the attached **PROPOSED CONSENT DECREE AND FINAL JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Jeremy W. Dickens  
President  
Education Media & Publishing Group, Ltd.  
1350 Avenue of the Americas, Suite 815  
New York NY 10019

Helen D. Jaffe, Esq.  
Weil, Gotshal and Manges LLP  
767 Fifth Avenue  
New York NY 10153  
*Attorney for Defendant Education Media & Publishing Group. Ltd.*

William F. Bayers  
Executive Vice President and General Counsel  
Houghton Mifflin Harcourt Publishing Company  
222 Berkeley Street  
Boston MA 02116

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2009, at San Francisco, California.

Charlene Bava  
Declarant

  
Signature