

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

1 **DYKEMA GOSSETT LLP**
LAURA WORSINGER, SBN: 51859
2 S. CHRISTOPHER ("KIT") WINTER, SBN: 190474
DAWN WILLIAMS, SBN: 267925
3 333 South Grand Avenue
Suite 2100
4 Los Angeles, California 90071
Telephone: (213) 457-1800
5 Facsimile: (213) 457-1850
6 Attorneys for Plaintiff
DANIEL MONTALVO

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 04 2011

John A. Clarke, Executive Officer/Clerk
By RUGENA LOPEZ, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

11 DANIEL MONTALVO, an individual;
12 Plaintiff,
13 v.
14 BRIDGE PUBLICATIONS, INC., a California
corporation; DOES 1-10, inclusive;
15 Defendants.
16

Case No.: **BC456610**
COMPLAINT
UNLIMITED CIVIL CASE
(AMOUNT DEMANDED EXCEEDS
\$25,000)
JURY TRIAL DEMANDED

17
18
19
20 Plaintiff Daniel Montalvo files this Complaint against defendant Bridge Publications, Inc.
21 and DOES 1-10, inclusive, and alleges as follows:

22 **I. NATURE OF THE CASE**

23
24 1. While employed by Bridge Publications, Inc. at age sixteen, plaintiff Daniel
25 Montalvo was required to operate a machine that cuts index notches into the sides of soft-cover
26 books. The machine did not have necessary or appropriate safety features, and Daniel severed his
27 right index finger while operating the notching machine. By this Complaint, Daniel seeks to
28 recover damages for Defendant's negligence, which resulted in the traumatic amputation of his
finger.

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

II. THE PARTIES

1
2 2. Plaintiff Daniel Montalvo is an individual residing in the County of Los Angeles,
3 California.

4 3. Defendant Bridge Publications, Inc. ("Bridge") is a California corporation with a
5 principal place of business in Los Angeles, California. Daniel was employed by Bridge from
6 approximately November 2007, when he was sixteen, until September 2010.

7 4. Plaintiff does not know the true names and capacities of defendants DOES 1-10,
8 inclusive, and sues these defendants by such fictitious names. Plaintiff is informed and believes and
9 on that basis alleges that each of the defendants fictitiously named as DOES 1-10 is responsible in
10 some manner for and caused the damages herein alleged. When Plaintiff ascertains the true names
11 and capacities of DOES 1-10, he will amend this complaint accordingly

12 5. On information and belief, each defendant aided and abetted the actions of one or
13 more of the other defendants as set forth below, in that each defendant had knowledge of the actions
14 or omissions of the other defendants and encouraged, assisted or facilitated those acts or omissions.
15 Each of the defendants was the agent of each of the remaining defendants, and in doing the things
16 hereinafter alleged, was acting within the course and scope of such agency and with the permission
17 and consent of the other defendants.

III. JURISDICTION AND VENUE

18
19
20 6. This Court has original subject matter jurisdiction over this action pursuant to
21 California Constitution Article VI, § 10.

22 7. The Court has personal jurisdiction over the defendant pursuant to Code of Civil
23 Procedure § 410.10 because defendant is a resident of Los Angeles County.

24 8. This Court is the proper venue for this action pursuant to Code of Civil Procedure §
25 395(a) because the Defendant is a resident of this county at the time of commencement of this
26 action.

27
28

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

FIRST CAUSE OF ACTION
(Negligence)
(Against Bridge Publications, Inc.)

9. Plaintiff incorporates by reference the allegations in paragraphs 1-8 as though fully set forth herein.

10. In fall 2007, Daniel was assigned to work for Bridge Publications, Inc., in City of Commerce, CA.

11. Bridge, as an employer, owed Daniel a general duty of care to insure his safety in the workplace. *See* Cal. Labor Code §§ 6401, 6402, 6406.

12. At Bridge, Daniel was ordered to operate a powered machine that cut notches into soft-bound books (“notches” are rounded indentations cut into the pages of a book on the edge opposite the spine). Daniel specifically told his department head that he did not want to operate the notching machine but was ordered to do so.

13. On Sunday, January 20, 2008 at about 7:00 p.m., Daniel tried to clear a paper jam in the machine and accidentally pushed the foot pedal, which brought the blade down and cut off his right index finger between the top and middle knuckle. On information and belief, Bridge’s notching machine did not have reasonable safety features, and at least two other employees had been injured while using the machine.

14. Two days after the amputation of his finger, Daniel returned to work. Bridge did not provide Daniel with any information regarding Worker’s Compensation, did not have required notices posted in the workplace, and, on information and belief, never filed any report concerning the accident as required by California Labor Code §6409.1.

15. Bridge did not provide Daniel any compensation for the loss of his finger.

16. On information and belief, Bridge’s notching machine has a “guillotine blade” as defined in 29 CFR 570.63 (H.O. 14).

17. Federal child labor provisions prohibit employers from allowing minors under eighteen years of age to operate paper-products machines and machines with guillotine blades. *See* 29 CFR 570.63 (H.O. 12, 14).

18. Daniel was sixteen years old at the time of the injury.

1 19. Daniel incurred medical expenses as a result of his medical care.

2 20. On information and belief, Bridge refused to pay Daniel's medical bills and did not
3 pay those bills.

4 21. Generally, an employee's remedies for work place injuries are limited to Worker's
5 Compensation and employees are restricted from suing their employers for those injuries. *See Cal.*
6 *Labor Code § 3602.* However, where an employer fails to secure Workers Compensation coverage
7 and/or fails to pay Worker's Compensation benefits to an injured employee, as required under the
8 California Labor Code, the employee is not limited to Worker's Compensation and may bring an
9 action at common for his injuries sustained. *See Cal. Labor Code § 3706.*

10 22. On information and belief Bridge failed to secure Worker's Compensation insurance
11 coverage for its employees or alternatively, did secure such coverage but failed and refused to file a
12 report with its insurance carrier of the work injury suffered by Daniel on January 20, 2008.

13 23. Bridge never informed Daniel of his right to Worker's Compensation for his injury
14 sustained as required by California Labor Code § 5401, and did not pay Daniel such compensation.
15 Accordingly, Daniel may bring an action at common law for negligence.

16 24. Bridge breached its duty of care by requiring and permitting Daniel to operate the
17 notching machine at sixteen years of age.

18 25. On information and belief, Bridge also breached its duty of care by requiring Daniel
19 to operate the notching machine when Bridge knew, or reasonably should have known, that the
20 machine lacked proper safety features, was dangerous, and had injured at least two other employees.

21 26. But for Bridge's breach of its duty of care, Daniel would not have severed his right
22 index finger. Daniel is right hand dominant, and the injury to his hand has forever impacted his
23 quality of life and diminished his ability to work.

24 27. As a direct and proximate result of Bridge's breach, Daniel has been damaged in an
25 amount to be determined at trial but believed to be in excess of \$25,000.

26 28. The running of any otherwise applicable statutes of limitation was tolled while
27 Daniel remained a minor, and this Complaint is filed within two years of Daniel attaining the age of
28 majority.

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

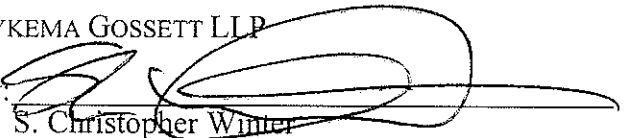
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For economic and noneconomic compensatory damages in an amount to be proven at time of trial;
2. For prejudgment interest on all compensatory damages according to the legal rate;
3. For Plaintiff's costs incurred; and
4. For any other and further relief as the court may deem proper.

Dated: March 4, 2011

DYKEMA GOSSETT LLP
By: 
S. Christopher Winter
Attorneys for Plaintiff
DANIEL MONTALVO

PAS01\187956.1
ID\SCW - 107252/0001

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

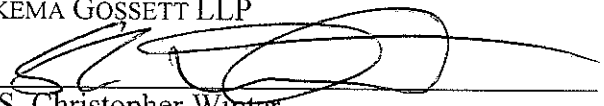
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Dated: March 4, 2011

DYKEMA GOSSETT LLP

By: 

S. Christopher Winter
Attorneys for Plaintiff
DANIEL MONTALVO

PAS01\187956.1
ID\SCW - 107252/0001