

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

NOV - 3 2017 M-10
CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNIE
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 SOURPUSS CLOTHING, LLC,
15 Defendant.

Case No.: **RG 17881249**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code §25249.5
et seq.)**

16 BY FAX

17 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
18 alleges the following cause of action in the public interest of the citizens of the State of
19 California.

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff brings this representative action on behalf of all California citizens to
22 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
23 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,
24 "[n]o person in the course of doing business shall knowingly and intentionally expose any
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
26 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.
27
28

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in Good For
4 Nothin wallets that are manufactured, sold and/or distributed in California by defendant
5 SourPuss Clothing, LLC (“SourPuss” or “Defendant”) in California.

6 3. DINP is a hazardous chemical listed on the Proposition 65 list of chemicals
7 known to be hazardous to human health. On December 20, 2013, the State of California listed
8 DINP as a chemical known to the State to cause cancer and DINP has come under the purview of
9 Proposition 65 regulations since its listing. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
10 Code §§ 25249.8 & 25249.10(b).

11 4. Proposition 65 requires all businesses with ten (10) or more employees that
12 operate within California or sell products therein to comply with Proposition 65 regulations.
13 Included in such regulations is the requirement that businesses must label any product containing
14 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
15 intentionally” exposing any person to it.

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
18 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
19 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &
20 Safety Code § 25249.7.

21 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
22 and/or offers for sale in California Good For Nothin wallets (“Product” or “Products”), without
23 requisite Proposition 65 exposure warning labels that the Products contain DINP.

24 7. Defendant’s failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to DINP in conjunction with the sale, manufacture,
26 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
27 enjoinder and civil penalties described herein.

28

1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendant to provide purchasers or users of the Product with the required warnings related to the
5 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety
6 Code § 25249.7(a).

7 **PARTIES**

8 10. Plaintiff is a citizen of the State of California acting in the interest of the general
9 public to promote awareness of exposures to toxic chemicals in products sold in California and
10 to improve human health by reducing hazardous substances contained in such items. She brings
11 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

12 11. Defendant SourPuss, through its business, effectively manufactures, imports,
13 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
14 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
15 or use in the State of California.

16 12. Defendant SourPuss is a “person” in the course of doing business within the
17 meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
21 conducted, and continues to conduct, business in the County of Alameda with respect to the
22 Product.

23 14. This Court has jurisdiction over this action pursuant to California Constitution
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
25 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
26 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
27 this Court has jurisdiction over this lawsuit.

28

1 15. This Court has jurisdiction over Defendant because it is either a citizen of the
2 State of California, has sufficient minimum contacts with the State of California, is registered
3 with the California Secretary of State as foreign corporations authorized to do business in the
4 State of California, and/or has otherwise purposefully availed itself of the California market.
5 Such purposeful availment has rendered the exercise of jurisdiction by California courts
6 consistent and permissible with traditional notions of fair play and substantial justice.

7 **SATISFACTION OF NOTICE REQUIREMNTS**

8 16. On July 17, 2017, Plaintiff gave notice of alleged violation of Health and Safety
9 Code § 25249.6 (the "Notice") to SourPuss concerning the exposure of California citizens to
10 DINP contained in the Products without proper warning, subject to a private action to SourPuss
11 and to the California Attorney General's office and the offices of the County District attorneys
12 and City Attorneys for each city with a population greater than 750,000 persons wherein the
13 herein violations allegedly occurred.

14 17. The Notice complied with all procedural requirements of Proposition 65 including
15 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
16 least one person with relevant and appropriate expertise who reviewed relevant data regarding
17 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a
18 private action.

19 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
21 a cause of action against SourPuss under Proposition 65 to enforce the alleged violations which
22 are the subject of Plaintiff's notice of violation.

23 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
24 Notice to SourPuss, as required by law.

25 **FIRST CAUSE OF ACTION**

26 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

27 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
28 this complaint as though fully set forth herein.

1 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
2 and/or retailer of the Products.

3 22. The Products contain DINP, hazardous chemicals found on the Proposition 65 list
4 of chemicals known to be hazardous to human health.

5 23. The Products do not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since June 13, 2017, continuing until the present, that SourPuss has continued
8 to knowingly and intentionally expose California users and consumers of the Products to DINP
9 without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
13 DINP by dermal absorption through direct handling of the clear plastic during placement and
14 removal of an item from the clear pocket. The product can be expected to emit gas phase DINP
15 into the air over and accumulate DINP at the surface of the item over the lifetime of the product.
16 DINP that leaches from the plastic can contaminate items in the wallet that are subsequently
17 handled. DINP may also be absorbed by the user's clothes when the wallet is placed in the
18 user's pockets. These contaminated clothes will subsequently be a source of DINP dermal
19 exposure. If the wallet is stored or transported in a carrier, DINP that leaches from the clear
20 plastic may contaminate other articles contained within the storage area or carrier that are
21 subsequently handled, worn, mouthed, or ingested by the user. Finally, some amount of
22 exposure through ingestion can occur by handling the product with subsequent touching of the
23 user's hand to mouth.

24 26. Plaintiff, based on his best information and belief, avers that such exposures will
25 continue every day until clear and reasonable warnings are provided to Products' purchasers and
26 users or until these known toxic chemicals are removed from the Product.

27 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Products exposes individuals to DINP, and Defendant intends that exposures to DINP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Products to consumers in California

3 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

5 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
11 following relief:

- 12 A. That the court assess civil penalties against Defendant in the amount of
13 \$2,500 per day for each violation in accordance with Health and Safety
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating
16 Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19 Dated: November 3, 2017

BRODSKY & SMITH, LLC

21 By:  _____

22 Evan J. Smith (SBN242352)
23 Ryan P. Cardona (SBN302113)
24 9595 Wilshire Boulevard, Suite 900
25 Beverly Hills, CA 90212
26 Telephone: (877) 534-2590
27 Facsimile: (310) 247-0160

28 *Attorneys for Plaintiff*