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1 2 3	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY & SMITH, LLC 9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590	ENDORSED FILED ALAMEDA COUNTY AUG 1 5 2019			
4	Facsimile: (310) 247-0160		CERRE		
5 6	Attorneys for Plaintiff		JAME THOMAS, Deputy		
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
9	COUNTY OF ALAMEDA				
10	EMA BELL.	Case No.: RG	19031366		
11	Plaintiff,	COMPLAINT INJUNCTIVI	FOR CIVIL PENALTIES AND RELEIF		
12	vs.		Health & Safety Code § 25249.5 et		
13	ROSS STORES, INC.,	seq.)			
14	Defendant.				
15	Plaintiff Ema Bell ("Plaintiff"), by an	torneys, alleges the following cause			
16	of action in the public interest of the citizens				
17	BACKGROU				
18	Plaintiff brings this representative action on behalf of all California citizens to				
19	enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified				
20	at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,				
21	"[n]o person in the course of doing business shall knowingly and intentionally expose any				
22	individual to a chemical known to the state to cause cancer or reproductive toxicity without first				
23	giving clear and reasonable warning to such individual". Health & Safety Code § 25249.6.				
24					
25	2. This complaint is a representative action brought by Plaintiff in the public interest				
26	of the citizens of the State of California to enforce the People's right to be informed of the health				
	hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Min				
27	Accessories purses sold and/or distributed by defendant Ross Stores, Inc. d/b/a dd's Discounts				
28	("dd's Discounts" or "Defendant") in California.				
	COMPLAINT FOR CIVIL PENALTIES A HEALTH & SA				

- 3. DINP is a harmful chemical known to the State of California to cause cancer. On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.
- 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code § 25249.7.
- 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California, without a requisite exposure warning, Minky Accessories purses (the "Products") that expose persons to DINP.
- 7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposure to DINP in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinment and civil penalties described herein.
- 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
- 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code § 25249.7(a).

PARTIES

- 10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).
- 11. Defendant dd's Discounts, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
- 12. Plaintiff alleges that defendant dd's Discounts is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

- 13. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continues to conduct, business in the County of Alameda with respect to the Products.
- 14. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has jurisdiction over this lawsuit.
- of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

SATISFACTION OF NOTICE REQUIREMNTS

16. On August 27, 2018, Plaintiff gave notice of alleged violation of Health and					
Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California					
citizens to DINP contained in the Products without proper warning, subject to a private action to					
Defendant and to the California Attorney General's office and the offices of the County District					
attorneys and City Attorneys for each city with a population greater than 750,000 persons					
wherein the herein violations allegedly occurred.					

- 17. The Notice complied with all procedural requirements of Proposition 65 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.
- 18. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged violations which are the subject of the Notice.
- 19. Plaintiff is commencing this action more than sixty (60) days from the date of the Notice to Defendant, as required by law.

FIRST CAUSE OF ACTION

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

- 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of this complaint as though fully set forth herein.
- 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributer, and/or retailer of the Product.
- 22. The Products contain DINP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.
 - 23. The Product does not comply with the Proposition 65 warning requirements.
- 24. Plaintiff, based on her best information and belief, avers that at all relevant times herein, and at least since August 27, 2018, continuing until the present, that Defendant has

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continued to knowingly and intentionally expose California users and consumers of the Product to DINP without providing required warnings under Proposition 65.

- 25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users may be exposed to DINP by dermal absorption through direct skin contact with the Product during routine use when the Product is manipulated with bare hands. Concentrations of DINP can be expected to build within the enclosed interior of the Product. This DINP can potentially be absorbed to the surface of the interior contents that can be subsequently handled, worn, mouthed, or ingested by the user. If the Product is stored or transported in a carrier, DINP that leaches form the purse may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the Product does not seem likely, some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth.
- 26. Plaintiff, based on her best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the Product.
- 27. Defendant has knowledge that the normal and reasonably foreseeable use of the Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products to consumers in California.
- 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this Complaint.
- 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.
- 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

PRAYER FOR RELIEF

1	WHEREFORE, Plaintiff demands judgment against Defendant and requests the		
2	following relief:		
3	A.	That the court assess civil penalties against Defendant in the amount of	
4		\$2,500 per day for each violation in accordance with Health and Safety	
5		Code § 25249.7(b);	
6	В.	That the court preliminarily and permanently enjoin Defendant mandating	
7		Proposition 65 compliant warnings on the Product;	
8	C.	That the court grant Plaintiff reasonable attorney's fees and costs of suit.	
9	D.	That the court grant any further relief as may be just and proper.	
10	Dated: August 15, 20	BRODSKY & SMITH, LLC	
11		By:	
12		Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113)	
13		9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212	
14		Telephone: (877) 534-2590 Facsimile: (310) 247-0160	
15		Attorneys for Plaintiff	
16		Attorneys for 1 tainity	
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