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ALAMEDA COUNTY

MAY 03 2018

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,
v.
SOURPUSS CLOTHING, LLC,
Defendant.

Case No.: RGI7881249
~~PROPOSED~~ CONSENT
JUDGMENT
Judge: Frank Roesch
Dept.: 24
Hearing Date: May 3, 2018
Hearing Time: 3:45 PM
Reservation #: R-1940749

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Plaintiff
3 Anthony Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Defendant
4 Sourpuss Clothing, LLC ("Sourpuss" or "Defendant") with Ferreiro and Defendant collectively
5 referred to as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Sourpuss
8 is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant's products,
11 including wallets, have exposed individuals to Diisononyl phthalate (DINP) without providing
12 clear and reasonable warnings under Proposition 65. On December 20, 2013, the State of
13 California's Office of Environmental Health Hazard Assessment ("OEHHA") listed DINP as a
14 chemical known to the State of California to cause cancer.

15 **1.3 Notice of Violation/Complaint.** On or about July 17, 2017, Ferreiro served
16 Sourpuss, Merch2Rock, Inc., Wal-Mart Stores, Inc., and various public enforcement agencies with
17 a document entitled "Notice of Violation of California Health & Safety Code §25249, *et seq.*" (the
18 "Notice"), alleging violations of Proposition 65 for failing to warn consumers that Sourpuss wallets
19 exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice. On November 3, 2017, Ferreiro filed a complaint in the matter
21 captioned above (the "Complaint") naming Sourpuss as defendant for alleged violations of Health
22 and Safety Code section 25249.6 that are the subject of the Notice.

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
26 and oversee the enforcement of this Consent Judgment pursuant to Proposition 65 and California
27 Code of Civil Procedure section 664.6.
28

1 1.5 Defendant denies the material, factual, and legal allegations contained in the Notice
2 and Complaint and maintains that, to the best of its knowledge, based on testing in the normal
3 course of business, its products that are or have been sold and distributed in California, including
4 the Covered Products, have been and are in compliance with all laws. Nothing in this Consent
5 Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion of law,
6 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
7 construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or
8 violation of law, such being specifically denied by Defendant. However, this section shall not
9 diminish or otherwise affect the obligations, responsibilities, and duties under this Consent
10 Judgment. Notwithstanding the allegations in the Notice, Defendant maintains that it has not
11 knowingly manufactured, or caused to be manufactured, sold or distributed the Covered Products
12 for sale in California in violation of Proposition 65.

13 **2. DEFINITIONS**

14 2.1 **Covered Products.** The term "Covered Products" means wallets, including but not
15 limited to Sourpuss Good For Nothin Bi-Fold Wallets, that are manufactured, imported, distributed,
16 sold, or offered for sale in California by Sourpuss.

17 2.2 **Effective Date.** For purposes of this Consent Judgment, the term "Effective Date"
18 shall be five (5) days after Ferreiro's counsel provides written notice to Defendant's counsel that
19 the Motion to Approve the Consent Judgment has been granted and entered by the Court.

20 **3. INJUNCTIVE RELIEF: WARNINGS**

21 3.1 **Reformulation of Covered Products.** Commencing one hundred eighty (180) days
22 after the Effective Date, and continuing thereafter, Covered Products that Sourpuss directly
23 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
24 Reformulated Products pursuant to section 3.2 below; or (b) have a clear and reasonable warning
25 pursuant to sections 3.3 and 3.4. For purposes of this Consent Judgment, a "Reformulated Product"
26 is a Covered Product that is in compliance with the standard set forth in section 3.2. The warning
27 requirement set forth in sections 3.3 and 3.4 shall not apply to any Reformulated Product.
28

1 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
2 that contain less than or equal to 1,000 parts per million (ppm) of DINP when analyzed pursuant to
3 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
4 methodology utilized by federal or state government agencies for the purpose of determining DINP
5 content in a solid substance.

6 3.3 **Clear and Reasonable Warning.** Commencing one hundred eighty (180) days
7 after the Effective Date, a clear and reasonable warning as set forth in this section 3.3 and section
8 3.4 must be provided for all Covered Products that Sourpuss manufactures, imports, distributes,
9 sells, or offers for sale in California and that is not a Reformulated Product. There shall be no
10 obligation for Sourpuss to provide a warning for Covered Products that enter the stream of
11 commerce prior to one hundred eighty (180) days after the Effective Date. The warning shall
12 consist of either the Warning or Alternative Warning described in subsection 3.3(a) or (b),
13 respectively:

14 (a) **Warning.** The “Warning” shall consist of the statement:

15 △ **WARNING:** This product can expose you to [name of one or more chemicals,
16 including] diisononyl phthalate, which is[are] known to the State of California to
17 cause cancer [and birth defects or other reproductive harm]. For more information
18 go to www.P65Warnings.ca.gov.

19 Any language that appears within the brackets [...] may, but is not required to, be included
20 in the warning.

21 (b) **Alternative Warning.** Sourpuss may, but is not required to, use the alternative
22 short-form warning as set forth in this subsection 3.3(b) (“Alternative Warning”), as
23 follows:

24 △ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

25 3.4 A Warning or Alternative Warning provided pursuant to section 3.3 must print the
26 word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning
27 symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
28 equilateral triangle with a bold black outline, except that if the sign or label does not use the color

1 yellow the symbol may be in black and white. The symbol must be in a size no smaller than the
2 height of the word "WARNING:". The Warning must contain the web address of the OEHHA's
3 Proposition 65 information page: www.P65Warnings.ca.gov. If the Covered Product's consumer
4 information is in a language other than English, then the warning must also be provided in that
5 language. The warning shall be affixed to or printed on the Covered Product's packaging or
6 labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that
7 the warning is displayed with such conspicuousness, as compared with other words, statements, or
8 designs as to render it likely to be read and understood by an ordinary individual under customary
9 conditions of purchase or use. A warning may be contained in the same section of the packaging,
10 labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the
11 product and shall be at least the same size as those other safety warnings.

12 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to sections 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by OEHHA after the Effective Date.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** Sourpuss shall pay a Civil Penalty of \$1,000.00 pursuant to Health
17 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
18 Safety Code § 25192, with 75 percent of the total Civil Penalty remitted to the OEHHA and the
19 remaining 25 percent of the Civil Penalty remitted to Ferreiro, as provided by California Health &
20 Safety Code § 25249.12(d).

21 4.1.1 Within fourteen (14) business days of the Effective Date, Sourpuss shall
22 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
23 \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00.
24 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
25 address:

26 Evan J. Smith, Esquire
27 Brodsky & Smith, LLC
28 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

1 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
2 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the
16 address set forth above as proof of payment to OEHHA.

17 4.2 **Attorney Fees.** Sourpuss agrees to pay and will not oppose an application made by
18 Ferreiro's counsel for an award of attorneys' fees and costs incurred as a result of investigating,
19 bringing this matter to Sourpuss's attention, litigating and negotiating and obtaining judicial
20 approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5,
21 in an amount not to exceed \$15,000.00. Other than the payment required hereunder, each Party is
22 to bear its own attorneys' fees and costs.

23 4.2.1 Sourpuss shall pay the Attorney Fees identified in Section 4.2 in two (2)
24 equal installment payments. Sourpuss shall issue a check for the first installment payment
25 of \$7,500.00 within fourteen (14) days of the Effective Date. Sourpuss shall issue a check
26 for the second and final installment payment of \$7,500.00 within 45 days of the Effective
27 Date.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro acting on his own behalf, and on behalf of the public interest, and Sourpuss, and its parents, shareholders, members, directors, officers, agents, managers, employees, representatives, agents,

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
5 retailers, franchisees, and cooperative members, including without limitation Merch2Rock, Inc. and
6 Wal-Mart Stores, Inc. and their respective parents, affiliates and subsidiaries, shareholders,
7 directors, officers, agents, employees, attorneys, successors and assignees, franchisees, cooperative
8 members and licensees (all collectively referred to as "Downstream Releasees"), of all claims for
9 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
10 Notice, with respect to any Covered Products manufactured, distributed, or sold prior to one
11 hundred eighty (180) days after the Effective Date. Compliance with the terms of this consent
12 judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

13 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
14 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
15 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
16 legal action against and releases Sourpuss, Defendant Releasees, and Downstream Releasees from
17 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
18 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
19 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
20 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
21 from Covered Products. With respect to the foregoing waivers and releases in this paragraph,
22 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
23 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
27 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
28 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
THE DEBTOR.

1 5.3 Sourpuss waives any and all claims against Ferreiro, his attorneys and other
2 representatives, for any and all actions taken or statements made (or those that could have been
3 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter or
5 with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
14 reason of law generally or as to Covered Products, then Defendant shall have no further obligations
15 pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so
16 affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; (ii) valid email; or (iii) overnight
21 courier on any Party by the other Party at the following addresses:

22 For Defendant:

23 Malcolm C. Weiss (mweiss@hunton.com) and
24 Shannon K. Oldenburg (soldenburg@hunton.com)
25 Hunton & Williams LLP
26 550 South Hope Street
27 Suite 2000
28 Los Angeles, CA 90071

And

For Ferreiro:

1 Evan-Smith (esmith@brodskysmith.com)
2 Brodsky & Smith, LLC
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212

5 Any party, from time to time, may specify in writing to the other party a change of address to
6 which all notices and other communications shall be sent.

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and
10 the same document.

11 **10. POST-EXECUTION ACTIVITIES**

12 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
13 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
14 Defendant agrees it shall not object to such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
17 within one (1) year after it is fully executed by the Parties. In such case, the Parties agree to meet
18 and confer on how to proceed.

19 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
20 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
22 its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by: (a) a written agreement of the
25 Parties and entry of a modified consent judgment by the Court; or (b) a successful motion or
26 application of any Party and the entry of a modified consent judgment by the Court.

27 **12. ATTORNEY'S FEES**

28 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs, unless

1 the unsuccessful Party has acted with substantial justification. For purposes of this Consent
2 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
3 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

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19 **15. SEVERABILITY**

20 15.1 If, subsequent to the Court's approval and entry of this Consent Judgment as a
21 judgment, any provision of this Consent Judgment is deemed by a court to be unenforceable, the
22 Parties shall give full meaning to the intent of the Parties to resolve and settle this matter in its
23 entirety, and the validity of the enforceable provisions remaining shall not be adversely affected.

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AGREED TO:

AGREED TO:

Date: _____

Date: 3/1/08

By: _____
ANTHONY FERREIRO

By: _____
SOURPUSS CLOTHING, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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15. SEVERABILITY

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AGREED TO:

AGREED TO:

Date: 3/5/2018

Date: _____

By: *Anthony Ferreiro*
ANTHONY FERREIRO

By: _____
SOURPUSS CLOTHING, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 5/3/18

Frank Ponce
Judge of Superior Court