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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

02/07/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 DESIGN POOL, LTD., NORDSTROM,
15 INC.

16 Defendants.

Case No.:

CGC-22-598052

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to Bisphenol A (BPA), a toxic chemical found in Maison Kitsune
airpod cases (UPC# 846654037289) sold and/or distributed by defendant Design Pool, Ltd.

1 (“Design Pool”) and/or defendant Nordstrom, Inc. (“Nordstrom”) (collectively, “Defendants”) in
2 California.

3 3. BPA is a harmful chemical known to the State of California to cause female
4 reproductive toxicity. On May 11, 2015, the State of California listed BPA as a chemical known
5 to the State to cause reproductive toxicity and BPA has come under the purview of Proposition 65
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
7 & 25249.10(b).

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
21 without a requisite exposure warning, Maison Kitsune airpod cases (UPC# 846654037289) (the
22 “Products”) that expose persons to BPA when used as intended and/or for their intended purpose.

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

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

10 17. The people of the State of California declared in Proposition 65 their right “[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a
14 “clear and reasonable warning” before being exposed to substances listed by the State of California
15 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

16 No person in the course of doing business shall knowingly and intentionally expose any
17 individual to a chemical known to the state to cause cancer or reproductive toxicity without
18 first giving clear and reasonable warning to such individual...

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
2 this Complaint as though fully set forth herein.

3 37. Defendants have, at all times mentioned herein, acted as distributors, and/or
4 retailers of the Products.

5 38. Use of the Products will expose persons to BPA, a hazardous chemical found on
6 the Proposition 65 list of chemicals known to be hazardous to human health.

7 39. The Product does not comply with the Proposition 65 warning requirements.

8 40. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since March 1, 2021, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product to
11 BPA without providing required warnings under Proposition 65.

12 41. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the Products. The primary route of exposure to
14 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the
15 user handles the Products, or the Products are placed in contact with exposed areas of the user's
16 skin. Additionally, exposure through ingestion will occur by touching the Products with
17 subsequent touching of the user's hand to mouth.

18 42. Plaintiff, based on her best information and belief, avers that such exposures will
19 continue every day until clear and reasonable warnings are provided to purchasers and users or
20 until this known toxic chemical is removed from the Products.

21 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
22 Product exposes individuals to BPA, and Defendant intends that exposures to BPA will occur by
23 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
24 Products to consumers in California.

25 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
26 Complaint.

27 45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
28 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

1 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
2 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
5 relief:

6 A. That the court assess civil penalties against each defendant in the amount of \$2,500
7 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
8 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

9 B. That the court preliminarily and permanently enjoin Defendants mandating
10 Proposition 65 compliant warnings on the Products;

11 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
12 amount of \$50,000.00.

13 D. That the court grant any further relief as may be just and proper.

14 Dated: February 7, 2022

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