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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

12/27/2021  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

CPF-21-517648

10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 SYLVERMAX, INC,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

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  
27 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Aimee  
28 Kestenberg lanyards sold and/or distributed by defendant Sylvermax, Inc. (“Sylvermax” or  
“Defendant”) in California.

1           3.       DINP is a harmful chemical known to the State of California to cause cancer. On  
2 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause  
3 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
4 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

17          6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
18 without a requisite exposure warning, Aimee Kestenberg lanyards (the “Products”) that expose  
19 persons to DINP when used for their intended purpose.

20          7.       Defendant’s failure to warn consumers and other individuals in California of the  
21 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution  
22 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
23 penalties described herein.

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

26          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
27 Defendant to provide purchasers or users of the Products with required warnings related to the  
28

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

9 12. Defendant Sylvermax, through its business, effectively imports, distributes, sells,  
10 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
11 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12 13. Plaintiff alleges that defendant Sylvermax is a "person" in the course of doing  
13 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 14. Venue is proper in the County of San Francisco because one or more of the instances  
16 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
17 conducted, and continues to conduct, business in the County of San Francisco with respect to the  
18 Products.

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

24 16. This Court has jurisdiction over Defendant because defendant is either a citizen of  
25 the State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the State  
27 of California, and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

### 3 STATUTORY BACKGROUND

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

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

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

13 19. An exposure to a chemical in a consumer product is one “which results from a  
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
17 shall provide a warning to any person to whom the product is sold or transferred unless the product  
18 is packaged or labeled with a clear and reasonable warning.”

19 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
20 more of the following methods individually or in combination:<sup>1</sup>

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides  
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
24 thereof.

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25  
26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
3 with such conspicuousness, as compared with other words, statements, designs, or devices  
4 in the label, labeling or display as to render it likely to be read and understood by an  
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free  
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

#### 14 **FACTUAL BACKGROUND**

15 22. On December 20, 2013, the State of California listed DINP as a chemical known to  
16 the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
17 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
18 In summary, the DINP was listed under Proposition 65 as a chemical known to the State to cause  
19 cancer.

20 23. The consumer exposures that are the subject of this Complaint result from dermal  
21 absorption. Users may potentially be exposed to DINP by dermal absorption through direct skin  
22 contact with the Products during routine use when handled with bare hands. Finally, while  
23 mouthing of the Products does not seem likely, some amount of exposure through ingestion can  
24 occur by touching the Products with subsequent touching of the user's hand to mouth.

25 24. Defendant has manufactured, processed, marketed, distributed, offered to sell  
26 and/or sold the Products in California since at least March 23, 2021. The Products continue to be  
27 distributed and sold in California without the requisite warning information.



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

2           31.     Plaintiff purchased the Product from Nordstrom, Inc. At the time of purchase,  
3 Nordstrom, Inc. and Sylvermax did not provide a Proposition 65 exposure warning for DINP or  
4 any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as  
5 described *supra*.

6           32.     The Product was sent to a testing laboratory to determine the concentration of DINP  
7 present on the surface of the Product.

8           33.     The laboratory provided the results of its analysis. Surface DINP was collected  
9 using a phthalate test. Results of this test concluded the presence of DINP at the surface of the  
10 product (the “Chemical Test Report”).

11          34.     Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
12 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
13 foreseeable use of the Product, exposure to DINP will occur at levels that require Proposition 65  
14 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
15 Code of Regulations.

16          35.     Plaintiff received from the analytical chemist an exposure assessment report which  
17 concluded that persons in California who use the Products will be exposed to levels of DINP that  
18 require a Proposition 65 exposure warning.

19          36.     Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
20 this Complaint as though fully set forth herein.

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

23          38.     The Products contain DINP, a hazardous chemical found on the Proposition 65 list  
24 of chemicals known to be hazardous to human health.

25          39.     The Products do not comply with the Proposition 65 warning requirements.

26          40.     Plaintiff, based on her best information and belief, avers that at all relevant times  
27 herein, and at least since March 23, 2021, continuing until the present, that Defendant has  
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1 continued to knowingly and intentionally expose California users and consumers of the Products  
2 to DINP without providing required warnings under Proposition 65.

3 41. The exposures that are the subject of the Notice result from the purchase,  
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
5 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to  
6 DINP by dermal absorption through direct skin contact with the Products during routine use when  
7 handled with bare hands. Finally, while mouthing of the Products does not seem likely, some  
8 amount of exposure through ingestion can occur by touching the Products with subsequent  
9 touching of the user's hand to mouth.

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

13 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
14 Products exposes individuals to DINP, and Defendant intends that exposures to DINP will occur  
15 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
16 the Products to consumers in California

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

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

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



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

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

7 B. That the court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

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

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

12 Dated: December 27, 2021

BRODSKY & SMITH

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