

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & YEROUSHALMI**  
5 An Association of Independent Law Corporations  
6 9100 Wilshire Boulevard, Suite 240W  
7 Beverly Hills, California 90212  
8 Telephone: 310.623.1926  
9 Facsimile: 310.623.1930

10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 **CONSUMER ADVOCACY GROUP, INC.,**  
15 in the public interest,

16 Plaintiff,

17 v.

18 **TUESDAY MORNING, INC.,** a Texas  
19 Corporation; **TUESDAY MORNING**  
20 **PARTNERS, LTD,** a Texas Limited  
21 Partnership; **TUESDAY MORNING**  
22 **CORPORATION,** a Delaware Corporation;  
23 and **DOES 1-20;**

24 Defendants.

CASE NO.

**BC 5 8 4 9 7 8**

COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

25 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
26 Defendants TUESDAY MORNING, INC., a Texas Corporation; TUESDAY MORNING  
27 PARTNERS, LTD, a Texas Limited Partnership; TUESDAY MORNING CORPORATION, a  
28 Delaware Corporation; and DOES 1-20 as follows:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUN 12 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
2 as a private attorney general, brings this action in the public interest as defined under  
3 Health and Safety Code section 25249.7, subdivision (d).

4 2. Defendant TUESDAY MORNING, INC. ("TUESDAY, INC.") is a Texas Corporation  
5 doing business in the State of California at all relevant times herein.

6 3. Defendant TUESDAY MORNING PARTNERS, LTD, ("TUESDAY, LTD") is a Texas  
7 Limited Partnership doing business in the State of California at all relevant times herein.

8 4. Defendant TUESDAY MORNING CORPORATION ("TUESDAY CORP") is a  
9 Delaware Corporation doing business in the State of California at all relevant times  
10 herein.

11 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.

17 6. At all times mentioned herein, the term "Defendants" includes TUESDAY, INC.,  
18 TUESDAY, LTD, TUESDAY CORP and DOES 1-20.

19 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.

21 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
22 including DOES 1-20, was an agent, servant, or employee of each of the other  
23 Defendants. In conducting the activities alleged in this Complaint, each of the  
24 Defendants was acting within the course and scope of this agency, service, or  
25 employment, and was acting with the consent, permission, and authorization of each of  
26 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
27 were ratified and approved by every other Defendant or their officers or managing agents.  
28

1 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Health and Safety Code  
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
4 employees at all relevant times.

5  
6 **JURISDICTION**

7 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
8 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
9 those given by statute to other trial courts. This Court has jurisdiction over this action  
10 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
11 violations of Proposition 65 in any Court of competent jurisdiction.

12 11. This Court has jurisdiction over Defendants named herein because Defendants either  
13 reside or are located in this State or are foreign corporations authorized to do business in  
14 California, are registered with the California Secretary of State, or who do sufficient  
15 business in California, have sufficient minimum contacts with California, or otherwise  
16 intentionally avail themselves of the markets within California through their manufacture,  
17 distribution, promotion, marketing, or sale of their products within California to render  
18 the exercise of jurisdiction by the California courts permissible under traditional notions  
19 of fair play and substantial justice.

20 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
21 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
22 because Defendants conducted, and continue to conduct, business in the County of Los  
23 Angeles with respect to the consumer product that is the subject of this action.

24 **BACKGROUND AND PRELIMINARY FACTS**

25 13. In 1986, California voters approved an initiative to address growing concerns about  
26 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
27 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
28 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking

1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
3 from contamination, to allow consumers to make informed choices about the products  
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
5 fit.

6 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
9 chemicals and chemical families. Proposition 65 imposes warning requirements and  
10 other controls that apply to Proposition 65-listed chemicals.

11 15. All businesses with ten (10) or more employees that operate or sell products in California  
12 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
13 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
14 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
15 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
16 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

17 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
19 "Threaten to violate" means "to create a condition in which there is a substantial  
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 17. Plaintiff identified certain practices of manufacturers and distributors of Diethyl Hexyl  
24 Phthalate ("DEHP") and Di-*n*-butyl Phthalate ("DBP")-bearing products of exposing,  
25 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
26 of such products without first providing clear and reasonable warnings of such to the  
27 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
28 engaged in such practice.

1 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
2 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
3 to the list of chemicals known to the State to cause developmental male reproductive  
4 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
5 months after addition of DEHP to the list of chemicals known to the State to cause cancer  
6 and reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
7 requirements and discharge prohibitions.

8 19. On December 2, 2005, the Governor of California added DBP to the list of chemicals  
9 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
10 DBP is known to the State to cause developmental, female, and male reproductive  
11 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty  
12 (20) months after addition DBP to the list of chemicals known to the State to cause  
13 reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements  
14 and discharge prohibitions.

15 **SATISFACTION OF PRIOR NOTICE**

16 20. On or about September 29, 2014, Plaintiff gave notice of alleged violations of Health and  
17 Safety Code section 25249.6, concerning consumer products exposures and occupational  
18 exposures, subject to a private action to TUESDAY, INC., TUESDAY, LTD, TUESDAY  
19 CORP and to the California Attorney General, County District Attorneys, and City  
20 Attorneys for each city containing a population of at least 750,000 people in whose  
21 jurisdictions the violations allegedly occurred, concerning the product Sunglasses  
22 containing DEHP and DBP.

23 21. On or about November 3, 2014, Plaintiff gave notice of alleged violations of Health and  
24 Safety Code section 25249.6, concerning consumer products exposures and occupational  
25 exposures, subject to a private action to TUESDAY, INC., TUESDAY, LTD, TUESDAY  
26 CORP and to the California Attorney General, County District Attorneys, and City  
27 Attorneys for each city containing a population of at least 750,000 people in whose  
28

1 jurisdictions the violations allegedly occurred, concerning the product Sunglasses  
2 containing DEHP and DBP.

3 22. Before sending the notices of alleged violations, Plaintiff investigated the consumer  
4 products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to DEHP and DBP, and the corporate structure of each of the  
6 Defendants.

7 23. Plaintiff's notices of alleged violation included a Certificate of Merit executed by the  
8 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
9 Plaintiff who executed the certificate had consulted with at least one person with relevant  
10 and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP,  
11 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
12 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
13 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
14 to the Certificate of Merit served on the Attorney General the confidential factual  
15 information sufficient to establish the basis of the Certificate of Merit.

16 24. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
17 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
18 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

19 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
20 gave notices of the alleged violation to TUESDAY, INC., TUESDAY, LTD, TUESDAY  
21 CORP and the public prosecutors referenced in Paragraph 20 and 21.

22 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
23 any applicable district attorney or city attorney has commenced and is diligently  
24 prosecuting an action against the Defendants.

25 //

26 //

27 //

28 //

1 FIRST CAUSE OF ACTION

2 (By CONSUMER ADVOCACY GROUP, INC. and against TUESDAY, INC., TUESDAY,  
3 LTD, TUESDAY CORP and DOES 1-20 for Violations of Proposition 65, The Safe  
4 Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et*  
5 *seq.*))

6 **Sunglasses**

7 27. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
8 reference paragraphs 1 through 26 of this complaint as though fully set forth herein. Each  
9 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
10 promoter, or retailer of sunglasses, which includes but is not limited to, 1) "Madison  
11 Avenue" Red framed sunglasses with white outline and white end ear-pieces 'China  
12 (printed on the left inner temple piece), PL907 105 (printed on the right inner temple  
13 piece)' "7270 A0653 EYWR 0614 SUNGLSS LUSH ASTD" Compare at \$14.00, Our  
14 Price \$4.99 SKU#1390633" and 2) "Cenia New York® 100% UV Protection Sunglasses"  
15 DISTRIBUTED BY GLANCE EYEWEAR NY NY 10016" Small Rectangle White  
16 Tag: "1389002" "0314 81606 eywr sunglass Cenia astd" ("SUNGLASSES").

17 28. SUNGLASSES contain DEHP and DBP.

18 29. Defendants knew or should have known that DEHP has been identified by the State of  
19 California as a chemical known to cause cancer and reproductive toxicity, and  
20 Defendants knew or should have known that DBP has been identified by the State if  
21 California as a chemical known to cause developmental and reproductive toxicity and  
22 therefore was subject to Proposition 65 warning requirements. Defendants were also  
23 informed of the presence of DEHP and DBP in SUNGLASSES within Plaintiff's notices  
24 of alleged violations further discussed above at Paragraph 20 and 21.

25 30. Plaintiff's allegations regarding SUNGLASSES concerns "[c]onsumer products  
26 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
28 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

1 25602(b). SUNGLASSES are consumer products, and, as mentioned herein, exposures  
2 to DEHP and DBP took place as a result of such normal and foreseeable use.

3 31. Plaintiff's allegations regarding SUNGLASSES also concern Occupational Exposures,  
4 which "means an exposure to any employee in his or her employer's workplace." *Cal.*  
5 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP and DBP to Defendants' employees  
6 occurred through the course of their employment in their employers' workplaces.

7 32. Plaintiff is informed, believes, and thereon alleges that between September 29, 2011 and  
8 the present, each of the Defendants knowingly and intentionally exposed their employees  
9 and California consumers and users of SUNGLASSES, which Defendants manufactured,  
10 distributed, or sold as mentioned above, to DEHP and DBP, without first providing any  
11 type of clear and reasonable warning of such to the exposed persons before the time of  
12 exposure. Defendants have distributed and sold SUNGLASSES in California.  
13 Defendants know and intend that California consumers will use SUNGLASSES, thereby  
14 exposing them to DEHP and DBP. Defendants thereby violated Proposition 65.

15 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
16 Persons sustain exposures by handling SUNGLASSES without wearing gloves or any  
17 other personal protective equipment, or by touching bare skin or mucous membranes with  
18 gloves after handling SUNGLASSES, as well as through direct and indirect hand to  
19 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
20 from SUNGLASSES. And as to Defendants' employees, employees may be exposed to  
21 DEHP and DBP in the course of their employment by handling, distributing, and selling  
22 SUNGLASSES.

23 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
24 Proposition 65 as to SUNGLASSES have been ongoing and continuous to the date of the  
25 signing of this complaint, as Defendants engaged and continue to engage in conduct  
26 which violates Health and Safety Code section 25249.6, including the manufacture,  
27 distribution, promotion, and sale of SUNGLASSES, so that a separate and distinct  
28



1 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
2 and DBP by SUNGLASSES as mentioned herein.

3 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
5 violations alleged herein will continue to occur into the future.

6 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
7 \$2,500.00 per day per individual exposure to DEHP and DBP from SUNGLASSES,  
8 pursuant to Health and Safety Code section 25249.7(b).

9 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

11  
12  
13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

- 15 1. A permanent injunction mandating Proposition 65-compliant warnings;  
16 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
17 3. Costs of suit;  
18 4. Reasonable attorney fees and costs; and  
19 5. Any further relief that the court may deem just and equitable.

20  
21  
22 Dated: June 12, 2015

YEROUSHALMI & YEROUSHLAMI

23  
24  
25 BY: 

26 Reuben Yeroushalmi  
27 Attorneys for Plaintiff,  
28 Consumer Advocacy Group, Inc.