

Jonathan M. Genish (SBN 259031)

[jgenish@blackstonepc.com](mailto:jgenish@blackstonepc.com)

Michael N. Jones (SBN 244320)

[mjones@blackstonepc.com](mailto:mjones@blackstonepc.com)

**BLACKSTONE LAW, APC.**

8383 Wilshire Blvd., Suite 745

Beverly Hills, California 90211

Telephone: 310.622.4278

Facsimile: 855.786.6356

Attorneys for Plaintiff,  
Consumer Protection Group, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

CONSUMER PROTECTION GROUP,  
LLC, in the public interest,

Plaintiff,

v.

TUESDAY MORNING, INC., a Texas  
Corporation;  
And DOES 1 – 20

Defendants.

CASE NO. **21STCV08414**

**PLAINTIFF CONSUMER  
PROTECTION GROUP, LLC’S  
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.*)

UNLIMITED CIVIL  
(Demand exceeds \$25,000)

Plaintiff CONSUMER PROTECTION GROUP, LLC alleges a cause of action against  
Defendant TUESDAY MORNING, INC.

**THE PARTIES**

1. Plaintiff, CONSUMER PROTECTION GROUP LLC (“Plaintiff” or “CPG”), is  
an organization qualified to do business in the State of California. CPG is a person within the  
meaning of Health and Safety Code section 25249.11, subdivision (a). CPG, acting as a private

1 attorney general, brings this action in the public interest as defined under Health and Safety  
2 Code section 25249.7, subdivision (d).

3 2. Defendant, TUESDAY MORNING, INC. (“Tuesday Morning”) is a Texas  
4 corporation, doing business in the State of California at all relative times herein. Plaintiff will  
5 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is  
6 informed, believes, and thereon alleges that each fictitiously named Defendants is responsible  
7 in some manner for the occurrences herein alleged and the damages caused thereby.

8 3. Plaintiff is presently unaware of the true names and capacities of Defendants  
9 DOES 1 – 20, and therefore sues these Defendants by such fictitious names.

10 4. At all times mentioned herein, the term “Defendants” shall include Tuesday  
11 Morning and DOES 1 – 20.

12 5. Plaintiff is informed and believes, and thereon alleges that Defendants at all  
13 times mentioned herein has conducted business within the State of California.

14 6. Upon information and belief, at all times relevant to this action, Defendants was  
15 an agent, servant, or employee of the Defendants. In conducting the activities alleged in this  
16 Complaint, Defendants was acting within the course and scope of this agency, service, or  
17 employment, and was acting with the consent, permission, and authorization of the Defendants.

18 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times the  
19 Defendants was a person doing business within the meaning of Health and Safety Code section  
20 25249.11, subdivision (b), and that the Defendants had ten (10) or more employees at all  
21 relevant times.

22 **JURISDICTION**

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

1           9.       This Court has jurisdiction over Defendants named herein because Defendants  
2 either resides or is located in this State or are foreign corporations authorized to do business in  
3 California, are registered with the California Secretary of State, or who do sufficient business  
4 in California, have sufficient minimum contacts with California, or otherwise intentionally avail  
5 themselves of the markets within California through their manufacture, distribution, promotion,  
6 marketing, or sale of their products within California to render the exercise of jurisdiction by  
7 the California courts permissible under traditional notions of fair play and substantial justice.

8           10.      Venue is proper in the County of Los Angeles because one or more of the  
9 instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles  
10 and/or because Defendants conducted, and continues to conduct, business in the County of Los  
11 Angeles with respect to the consumer product that is the subject of this action.

12                                   **BACKGROUND AND PRELIMINARY FACTS**

13           11.      In 1986, California voters approved an initiative to address growing concerns  
14 about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
15 chemicals that cause cancer, birth defects, or other reproductive harm.” *Ballot Pamp.*, Proposed  
16 Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic  
17 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*  
18 (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to  
19 allow consumers to make informed choices about the products they buy, and to enable persons  
20 to protect themselves from toxic chemicals as they see fit.

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

26           13.      All businesses with ten (10) or more employees that operate or sell products in  
27 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
28 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking

1 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”  
2 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed  
3 chemical (*Health & Safety Code* § 25249.6).

4 14. Proposition 65 provides that any person "violating or threatening to violate" the  
5 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
6 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial  
7 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants is  
8 also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil  
9 action. *Health & Safety Code* § 25249.7(b).

10 15. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)  
11 phthalate (“DEHP”) to the list of chemicals known to the state to cause cancer. Thereafter, on  
12 October 24, 2003, the Governor of California added DEHP to the list of chemicals known to  
13 the state to cause developmental toxicity and male reproductive toxicity.

14 16. Plaintiff identified certain practices of manufacturers and distributors of  
15 products bearing DEHP, exposing, knowingly, and intentionally, persons in California to said  
16 Proposition 65-listed chemical without first providing clear and reasonable warnings to the  
17 exposed persons prior to the time of exposure. Plaintiff later learned that Defendants has  
18 engaged in such practice.

19 **SATISFACTION OF PRIOR NOTICE**

20 17. On or about March 27, 2020, Plaintiff gave notice of alleged violations of Health  
21 and Safety Code section 25249.6, concerning consumer product exposures, subject to a private  
22 action to Tuesday Morning and to the California Attorney General, County District Attorneys,  
23 and City Attorneys for each County containing a population of at least 750,000 people in whose  
24 jurisdiction the violations allegedly occurred, concerning an Artist Brush Set – reusable storage  
25 pouch containing DEHP.

26 18. Before sending the notice of alleged violations, Plaintiff investigated the  
27 consumer products involved, the likelihood that such products would cause users to suffer  
28 significant exposures to DEHP, and the corporate structure of the Defendants.

1           19.     Plaintiff's notices of alleged violations included a Certificate of Merit executed  
2 by the attorney for the noticing party, CPG. The Certificate of Merit stated that the attorney for  
3 Plaintiff who executed the certificate had consulted with at least one person with relevant and  
4 appropriate expertise who reviewed data regarding the exposures to DEHP, the subject  
5 Proposition 65-listed chemicals of this action. Based on that information, the attorney for  
6 Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious  
7 case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served  
8 on the Attorney General the confidential factual information sufficient to establish the basis of  
9 the Certificate of Merit.

10           20.     Plaintiff's notice of alleged violation also included a Certificate of Service and a  
11 document titled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65)  
12 A Summary." *Health & Safety Code* § 25249.7(d).

13           21.     Plaintiff is commencing this action more than sixty (60) days from the dates that  
14 Plaintiff gave notices of the alleged violation to Tuesday Morning and the public prosecutors  
15 referenced in Paragraphs 17.

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

19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //

1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against TUESDAY MORNING  
3 INC. AND DOES 1 – 20 for Violations of Proposition 65, The Safe Drinking Water and  
4 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 ARTIST BRUSH SET – REUSABLE STORAGE POUCH (“Pouch”)

6 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this  
7 complaint as though fully set forth herein. The Defendants is, and at all times mentioned herein  
8 was a manufacturer/distributor of the Pouch.

9 24. Plaintiff is informed, believes, and thereon alleges that the Pouch contains  
10 DEHP.

11 25. Defendants knew or should have known that DEHP has been identified by the  
12 State of California as a chemical known to cause Cancer, developmental toxicity, female  
13 reproductive toxicity, and male reproductive toxicity and therefore was subject to Proposition  
14 65 warning requirements. Defendants was also informed of the presence of DEHP in the  
15 Pouch within Plaintiff’s notice of alleged violations further discussed above at paragraph 17.

16 26. Plaintiff’s allegations regarding the Pouch concerns “[c]onsumer products  
17 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage,  
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
19 results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). The Pouch is  
20 a consumer product, and, as mentioned herein, exposures to DEHP took place as a result of  
21 such normal and foreseeable consumption and use.

22 27. Plaintiff is informed, believes, and thereon alleges that between March 3, 2018,  
23 and the present, Defendants knowingly and intentionally exposed California consumers and  
24 users of the Pouch, which Defendants manufactured, distributed, or sold as mentioned above,  
25 to DEHP, without first providing any type of clear and reasonable warning of such to the  
26 exposed persons before the time of exposure. Defendants has distributed and sold the Pouch in  
27 California. Defendants knows and intend that California consumers will use and consume the  
28 Pouch, thereby exposing them to DEHP and violated Proposition 65 law.

1           28.     Defendant have knowingly introduced DEHP into the Pouch, caused DEHP to  
2 be introduced into the Pouch, or have covered, obscured, altered warning label on product.  
3 Defendants thereby violated Proposition 65 law.

4           29.     The principal routes of exposure with regard to the Pouch is and were through  
5 dermal contact and ingestion. Persons sustain exposures by handling or otherwise using the  
6 Pouch with bare skin, without wearing gloves, or by touching bare skin or mucous membranes  
7 with the Pouch after handling the Pouch as well as through direct and indirect hand to mouth  
8 contact, hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane,  
9 or breathing in particulate matter dispersed from the Pouch.

10          30.     Plaintiff is informed, believes, and thereon alleges that Defendants' violations  
11 of Proposition 65 as to the Pouch have been ongoing and continuous to the date of the signing  
12 of this complaint, as Defendants engaged and continue to engage in conduct which violates  
13 Health and Safety Code section 25249.6, including the manufacture, distribution, promotion,  
14 and sale of the Pouch, so that a separate and distinct violation of Proposition 65 occurred each  
15 and every time a person was exposed to DEHP by the Pouch as mentioned herein.

16          31.     Plaintiff is informed, believes, and thereon alleges that each violation of  
17 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that  
18 the violations alleged herein will continue to occur into the future.

19          32.     Based on the allegations herein, Defendants is liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to DEHP from the Pouch pursuant to Health and  
21 Safety Code section 25249.7(b).

22          33.     In the absence of equitable relief, the general public will continue to be  
23 involuntarily exposed to Pouch that is contained in the Pouch, creating a substantial risk of  
24 irreparable harm. Thus, by committing the acts alleged herein, Defendants has caused  
25 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

26          34.     Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
27 prior to filing this Complaint.  
28

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings for any  
4 future sales of the Pouch;
- 5 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 6 3. Costs of suit;
- 7 4. Reasonable attorney fees and costs; and
- 8 5. Any further relief that the court may deem just and equitable.

9  
10 Dated: March 3, 2021

**BLACKSTONE LAW, APC**

11 

12  
13 By: \_\_\_\_\_  
14 Jonathan M. Genish  
15 Attorneys for Plaintiff,  
16 Consumer Protection Group, LLC  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28