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

**04/11/2023**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-23-605768**

12 PRECILA BALABBO,

13 Plaintiff,

14 vs.

15 TUESDAY MORNING  
16 CORPORATION, TUESDAY  
17 MORNING, INC.,

18 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

19 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following  
20 cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

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

28 2. This complaint is a representative action brought by Plaintiff in the public interest  
of the citizens of the State of California to enforce the People’s right to be informed of the health  
hazards caused by exposure to lead, a toxic chemical found in Simple Pleasures pumpkin soap  
dispensers, Item # 2601403, sold and/or distributed by defendant Tuesday Morning Corporation

1 and/or defendant Tuesday Morning, Inc. (collectively, “Tuesday Morning” or “Defendants”) in  
2 California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and  
4 adverse developmental and reproductive effects in both males and females. On October 1, 1992,  
5 the state of California listed lead as a chemical known to cause cancer and it has come under the  
6 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health  
7 & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State of California listed  
8 lead as a chemical known to cause adverse developmental and reproductive effects in both males  
9 and females.

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

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
17 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
18 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
19 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
20 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
21 25249.7.

22 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
23 without a requisite exposure warning, Simple Pleasures pumpkin soap dispensers, Item # 2601403,  
24 (the “Products”) that expose persons to lead when used for their intended purpose.

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



1 Defendants conducted, and continues to conduct, business in the County of San Francisco with  
2 respect to the Products.

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

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

14 **STATUTORY BACKGROUND**

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

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

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

24 19. An exposure to a chemical in a consumer product is one “which results from a  
25 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
26 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
27 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
28

1 shall provide a warning to any person to whom the product is sold or transferred unless the product  
2 is packaged or labeled with a clear and reasonable warning.”

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

5 a. A warning that appears on a product’s label or other labeling.

6 b. Identification of the product at the retail outlet in a manner which provides  
7 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
8 thereof.

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

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

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

22 **FACTUAL BACKGROUND**

23 22. On October 1, 1992, the state of California listed lead as a chemical known to cause  
24 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
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 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
2 1987, the State of California listed lead as a chemical known to cause adverse developmental and  
3 reproductive effects in both males and females. In summary, lead was listed under Proposition 65  
4 as a chemical known to the State to cause cancer and adverse developmental and reproductive  
5 effects in both males and females.

6 23. The exposures that are the subject of the Notice result from the purchase,  
7 acquisition, handling, and recommended use of the Products. Consequently, the primary route of  
8 exposure to these chemicals is through dermal contact. Increased duration of contact, increased  
9 acidity, and increased temperatures in contact with the surface will result in increased levels of  
10 lead transferred from the Products. When the surface of the Product is held with bare hands, dermal  
11 absorption of lead will occur. Ingestion of lead will occur during subsequent hand-to-mouth  
12 contact following handling of the Products.

13 24. Defendants have processed, marketed, distributed, offered to sell and/or sold the  
14 Products in California since at least October 28, 2022. The Products continue to be distributed and  
15 sold in California without the requisite warning information.

16 25. At all times relevant to this action, Defendants have knowingly and intentionally  
17 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable  
18 exposure warning to such individuals.

19 26. As a proximate result of acts by Defendants, as a person in the course of doing  
20 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
21 California, including in San Francisco County, have been exposed to lead without a clear and  
22 reasonable warning on the Products. The individuals subject to the violative exposures include  
23 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
24 the Products.

25 **SATISFACTION OF NOTICE REQUIREMENTS**

26 27. On September 19, 2022, Plaintiff purchased the Product from Tuesday Morning.  
27 At the time of purchase, Tuesday Morning did not provide a Proposition 65 exposure warning for  
28

1 lead or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1  
2 as described *supra*.

3 28. The Product was sent to a testing laboratory to determine the concentration of lead  
4 present on the surface of the Product.

5 29. On October 25, 2022, the laboratory provided the results of its analysis. Results of  
6 this test determined the Product exposes users to lead (the “Chemical Test Report”).

7 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
8 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
9 foreseeable use of the Product, exposure to lead will occur at levels that require Proposition 65  
10 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
11 Code of Regulations.

12 31. On October 28, 2022, Plaintiff received from the analytical chemist an exposure  
13 assessment report which concluded that persons in California who use the Products will be exposed  
14 to levels of lead that require a Proposition 65 exposure warning.

15 32. On October 28, 2022, Plaintiff gave notice of alleged violation of Health and Safety  
16 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
17 lead contained in the Products without proper warning, subject to a private action to Defendants  
18 and to the California Attorney General’s office and the offices of the County District attorneys and  
19 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
20 violations allegedly occurred.

21 33. The Notice complied with all procedural requirements of Proposition 65 including  
22 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
23 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
24 exposure, and that counsel believed there was meritorious and reasonable cause for a private  
25 action.

26 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
27 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
28

1 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
2 are the subject of the Notice.

3 35. Plaintiff is commencing this action more than sixty (60) days from the date of the  
4 Notice to Defendants, as required by law.

5 **FIRST CAUSE OF ACTION**

6 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

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

9 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
10 of the Product.

11 38. Use of the Products will expose users to lead, a hazardous chemical found on the  
12 Proposition 65 list of chemicals known to be hazardous to human health.

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

14 40. Plaintiff, based on her best information and belief, avers that at all relevant times  
15 herein, and at least since October 28, 2022, continuing until the present, that Defendants have  
16 continued to knowingly and intentionally expose California users and consumers of the Product to  
17 lead without providing required warnings under Proposition 65.

18 41. The exposures that are the subject of the Notice result from the purchase,  
19 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
20 exposure to these chemicals is through dermal contact. Increased duration of contact, increased  
21 acidity, and increased temperatures in contact with the surface will result in increased levels of  
22 lead transferred from the Products. When the surface of the Product is held with bare hands, dermal  
23 absorption of lead will occur. Ingestion of lead will occur during subsequent hand-to-mouth  
24 contact following handling of the Products.

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



1 43. Defendants have knowledge that the normal and reasonably foreseeable use of the  
2 Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by  
3 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
4 Products to consumers in California

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

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
13 relief:

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

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

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

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

22 Dated: April 11, 2023

BRODSKY & SMITH

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