

SIXTY DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: October 4, 2017
To: Tuesday Morning; Fifth Avenue Manufacturers, Inc.;
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City Attorney's Office for Los Angeles, San Diego, San Jose, and San Francisco.

From: SHEFA LMV, INC.

I. INTRODUCTION

We are a nonprofit public benefit corporation of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

| | |
|----------------------------|--|
| Product Exposure: | See Section VII |
| Listed Chemical: | DEHP (Di[2-Ethylhexyl] Phthalate) |
| Routes of Exposure: | Touch, Oral, Dermal absorption |
| Types of Harm: | Carcinogen, Birth Defects and Reproductive Toxicity |

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Section VII below. All products *within the type* covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as August 30, 2017 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without the clear and responsible warnings required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizenry lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes and elsewhere throughout California where these products are used. Exposure to consumers includes, but is not limited to, when handling the product the listed chemical comes into

contact with the hands and is then absorbed through the skin, hand to mouth contact, hand to food to mouth contact, or through hand to cigarette to mouth. Exposure may continue to occur for a significant period after the initial contact. These violations and threatened violations pertain to a chemical listed as a carcinogen.

III. CONTACT INFORMATION

Please direct all questions concerning this Notice to our counsel's offices at the following address:

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Main: (818) 809-2196
Fax: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900, or to visit their website at <http://oehha.ca.gov/proposition-65>.

For the alleged Violator(s), please see the attached copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) reformulate such products to eliminate exposures to the listed chemicals; or, at a minimum, (3) provide clear and reasonable warnings for products sold in the future.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact the counsel identified above. It should be noted that we cannot: (A) finalize any settlement until after the 60-day Notice period elapses; or (B) speak for the Attorney General or any public agency who received this Notice. Therefore, although we may ultimately reach an agreement that will resolve our claims, such an agreement may not satisfy the public prosecutors.

VI. PRODUCT INFORMATION

| <u>Product</u> | <u>Retailer(s)</u> | <u>Manufacturer(s)/Distributor(s)</u> |
|----------------------------|--------------------|---------------------------------------|
| "My Bag" Green Luggage Tag | Tuesday Morning | Fifth Avenue Manufacturers, Inc. |

Identified are specific examples of products recently purchased and witnessed as being available for purchase or use in California that is within the **category or type of product** covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of this exemplar product within the **category or type of product** are also provided below. We allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s), as well as other distributors and retailers of the product(s).

VII. EXEMPLAR PRODUCT

| <u>Product Category</u> | <u>Specific Product</u> | <u>Manufacturer</u> |
|-------------------------|---|-------------------------------------|
| Plastic luggage tag | "My Bag" Green Luggage Tag; UPC: 788604499535; #: 1709672 7650 – 1157 – 3316 | Fifth Avenue Manufacturers, Inc. |

The specific exemplar product identified above is within **the category or type of product** which is the subject of this Notice. We identify it herein for all recipients' benefit in order to assist the investigation of the magnitude of potential exposure to the listed chemical from other items **within the product category or type** listed in Section VII. It is important to note that this exemplar product does *not* represent an exhaustive or comprehensive identification of any or all specific products of the type listed under "Product Category/Type" in Section VII.

Furthermore, it is our position that the alleged Violator(s) are the best situated to identify **any and all** products within the product category or type listed in Section VII. Therefore, as such, the Violator(s) are obligated to conduct (in good faith) an investigation into **any and all** other products **within the product type or category** described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violator(s)' custody or control) during the relevant period in order to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

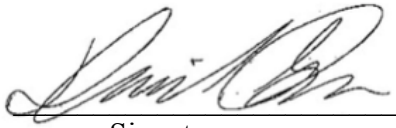
CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

October 4, 2017
Date

Daniel N. Greenbaum
Name


Signature

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is:
7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406

A True and Correct copy of the documents entitled: **SIXTY DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** will be served or was served in the manner stated below:

I. Interested Parties (Served via US Mail): On October 4, 2017, I caused to be served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the US Mail, postage prepaid, and addressed as follows:

| | | | | | |
|---------------------------------------|---------------------------------|------------------------|----------|----|------------|
| Attn: CEO or President | Tuesday Morning, Inc. | 6250 LBJ Frwy. | Dallas | TX | 75240-6321 |
| Tuesday Morning, Inc. | c/o CT Corp System | 1999 Bryan Street #900 | Dallas | TX | 75201 |
| Attn: Kenneth Bookbinder or President | Fifth Avenue Manufacturers Inc. | 62 Water Street | Ossining | NY | 10562 |


- II. California Attorney General (via website Portal): On October 4, 2017, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General’s website.
- III. District and City Attorneys (via U.S. Mail): On October 4, 2017, I caused to be served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows: SEE ATTACHMENT A.
- IV. District and City Attorneys (via email): On October 4, 2017 I served the following persons and/or entities at the last known electronic addresses via email. The transmission was reported as sent without error.

cfepd@yolocounty.org; sgrassini@contracosta.org; Prop65DA@co.monterey.ca.us; epu@da.sccgov.org;
CEPD@countyofnapa.org; jbarnes@sonoma-county.org; Prop65@co.tulare.ca.us;

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

October 4, 2017
Date

Nate Ford
Name


Signature

| Title | Address Line 1 | Address Line 2 | City | State | Zip Code |
|-------------------|------------------------|---|-----------------|--------------|-----------------|
| District Attorney | ALAMEDA COUNTY | 1225 Fallon Street, Room 900 | Oakland | CA | 94612 |
| District Attorney | ALPINE COUNTY | PO Box 248 | Markleeville | CA | 96120 |
| District Attorney | AMADOR COUNTY | 708 Court Street #202 | Jackson | CA | 95642 |
| District Attorney | BUTTE COUNTY | 25 County Center Drive Administration Building | Oroville | CA | 95965 |
| District Attorney | CALAVERAS COUNTY | 891 Mountain Ranch Road | San Andreas | CA | 95249 |
| District Attorney | COLUSA COUNTY | 346 5th Street, Suite 101 | Colusa | CA | 95932 |
| District Attorney | DEL NORTE COUNTY | 450 H Street Room 171 | Crescent City | CA | 95531 |
| District Attorney | EL DORADO COUNTY | 515 Main Street | Placerville | CA | 95667 |
| District Attorney | FRESNO COUNTY | 2220 Tulare Street, Suite. 1000 | Fresno | CA | 93721 |
| District Attorney | GLENN COUNTY | PO Box 430 | Willows | CA | 95988 |
| District Attorney | HUMBOLDT COUNTY | 825 5th Street | Eureka | CA | 95501 |
| District Attorney | IMPERIAL COUNTY | 940 West Main Street, Suite. 102 | El Centro | CA | 92243 |
| District Attorney | INYO COUNTY | 168 North Edwards | Independence | CA | 93526 |
| District Attorney | KERN COUNTY | 1215 Truxtun Avenue | Bakersfield | CA | 93301 |
| District Attorney | KINGS COUNTY | 1400 West Lacey Blvd. | Hanford | CA | 93230 |
| District Attorney | LAKE COUNTY | 255 N. Forbes Street | Lakeport | CA | 95453 |
| District Attorney | LASSEN COUNTY | 220 S. Lassen Street, Suite. 8 | Susanville | CA | 96130 |
| District Attorney | LOS ANGELES COUNTY | 210 W. Temple Street | Los Angeles | CA | 90012 |
| District Attorney | MADERA COUNTY | 209 West Yosemite Avenue | Madera | CA | 93637 |
| District Attorney | MARIN COUNTY | 3501 Civic Center Drive, Room 130 | San Rafael | CA | 94903 |
| District Attorney | MARIPOSA COUNTY | PO BOX 730 | Mariposa | CA | 95338 |
| District Attorney | MENDOCINO COUNTY | PO BOX 1000 | Ukiah | CA | 95482 |
| District Attorney | MERCED COUNTY | 550 West Main Street | Merced | CA | 95340 |
| District Attorney | MODOC COUNTY | 204 S. Court Street, Room 202 | Alturas | CA | 96101 |
| District Attorney | MONO COUNTY | PO BOX 2053 | Mammoth Lakes | CA | 93546 |
| District Attorney | NEVADA COUNTY | 201 Commercial Street | Nevada City | CA | 95959 |
| District Attorney | ORANGE COUNTY | 401 Civic Center Drive West | Santa Ana | CA | 92701 |
| District Attorney | PLACER COUNTY | 10810 Justice Center Drive | Roseville | CA | 95678 |
| District Attorney | PLUMAS COUNTY | 520 Main Street, Room 404 | Quincy | CA | 95971 |
| District Attorney | RIVERSIDE COUNTY | 3960 Orange Street | Riverside | CA | 92501 |
| District Attorney | SACRAMENTO COUNTY | 901 G Street | Sacramento | CA | 95812 |
| District Attorney | SAN BENITO COUNTY | 419 4th Street | Hollister | CA | 95023 |
| District Attorney | SAN BERNARDINO COUNTY | 303 W. Third Street | San Bernardino | CA | 92415 |
| District Attorney | SAN DIEGO COUNTY | 330 W. Broadway, Suite 1300 | San Diego | CA | 92101 |
| District Attorney | SAN FRANCISCO COUNTY | 880 Bryant Street, Third Floor | San Francisco | CA | 94103 |
| District Attorney | SAN JOAQUIN COUNTY | PO BOX 990 | Stockton | CA | 95202 |
| District Attorney | SAN LUIS OBISPO COUNTY | County Government Center, 4th Floor | San Luis Obispo | CA | 93408 |
| District Attorney | SAN MATEO COUNTY | 400 County Center, Third Floor | Redwood City | CA | 94063 |
| District Attorney | SANTA BARBARA COUNTY | 1112 Santa Barbara Street | Santa Barbara | CA | 93101 |
| District Attorney | SANTA CLARA COUNTY | 70 West Hedding Street, West Wing | San Jose | CA | 95110 |
| District Attorney | SHASTA COUNTY | 1355 West Street | Redding | CA | 96001 |

| Title | Address Line 1 | Address Line 2 | City | State | Zip Code |
|----------------------------------|-----------------------|--|---------------|--------------|-----------------|
| District Attorney | SIERRA COUNTY | 100 Courthouse Square | Downieville | CA | 95936 |
| District Attorney | SISKIYOU COUNTY | PO BOX 986 | Yreka | CA | 96097 |
| District Attorney | SOLANO COUNTY | 675 Texas Street, Suite. 4500 | Fairfield | CA | 94533 |
| District Attorney | STANISLAUS COUNTY | 832 12th Street, Suite. 300 | Modesto | CA | 95353 |
| District Attorney | SUTTER COUNTY | 446 Second Street, Suite 102 | Yuba City | CA | 95991 |
| District Attorney | TEHAMA COUNTY | PO BOX 519 | Red Bluff | CA | 96080 |
| District Attorney | TRINITY COUNTY | PO BOX 310 | Weaverville | CA | 96093 |
| District Attorney | TUOLUMNE COUNTY | 423 No. Washington Street | Sonora | CA | 95370 |
| District Attorney | VENTURA COUNTY | 800 South Victoria Avenue | Ventura | CA | 93009 |
| District Attorney | YUBA COUNTY | 215 Fifth Street, Suite. 152 | Marysville | CA | 95901 |
| Mike Feuer, City Attorney | CITY OF LOS ANGELES | 800 City Hall East, 200 N. Main Street | Los Angeles | CA | 90012 |
| Mara Elliott, City Attorney | CITY OF SAN DIEGO | 1200 Third Avenue, Suite 1620 | San Diego | CA | 92101 |
| Richard Doyle, City Attorney | CITY OF SAN JOSE | 200 East Santa Clara St., 16th Flr. | San Jose | CA | 95113 |
| Dennis J. Herrera, City Attorney | CITY OF SAN FRANCISCO | City Hall, Room 234 1 Dr. Carlton B. Goodlett Place | San Francisco | CA | 94102 |