

1 Clifford A. Chanler, State Bar No. 135534  
2 Christopher Martin, State Bar No. 186021  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 ANTHONY E. HELD, Ph.D., P.E.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SACRAMENTO  
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, Ph.D., P.E.,

16 Plaintiff,

17 v.

18 TUESDAY MORNING CORPORATION;  
19 and DOES 1 through 150, inclusive,

20 Defendants.

Case No. 34-2008-00020367

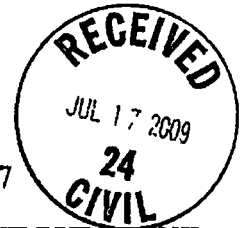
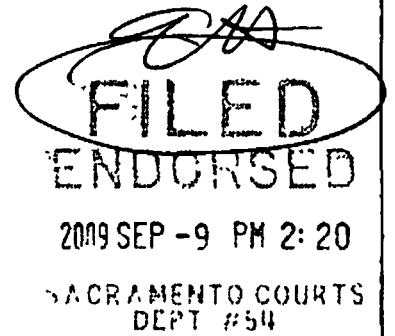
**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF STIPULATION AND  
ORDER RE: CONSENT JUDGMENT**

Date: September 4, 2009

Time: 9:00 A.M.

Dept.: 54

Judge: Hon. Shelleyanne W.L. Chang



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[PROPOSED] JUDGMENT

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant  
2 TUESDAY MORNING CORPORATION, having agreed through their respective counsel that  
3 judgment be entered pursuant to the terms of the Stipulation and Order Re: Consent Judgment  
4 ("Consent Judgment") entered into by the parties, and after issuing an order approving this  
5 Proposition 65 settlement agreement and entering the Consent Judgment on September 4, 2009.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil  
7 Procedure §664.6, judgment is entered in accordance with the terms of the Consent Judgment  
8 attached hereto as **Exhibit 1**.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: SEP -9 2009

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14 JUDGE OF THE SUPERIOR COURT  
15 SHELLEYANNE W.L. CHANG  
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# **Exhibit 1**

1 Christopher M. Martin, State Bar No. 186021  
HIRST & CHANLER LLP  
2 566 W. Adams, Suite 214  
Chicago, IL 60661  
3 Telephone: (312) 376-1801  
Facsimile: (312) 376-1804

4 Attorneys for Plaintiff  
5 ANTHONY E. HELD, Ph.D., P.E.

6 Paul W. Smigliani, State Bar No. 174404  
7 MUNRO SMIGLIANI & JORDAN LLP  
655 W. Broadway, Suite 840  
8 San Diego, CA 92101  
Telephone: (619) 237-5400  
9 Facsimile: (619) 238-5597

10 Attorneys for Defendant  
TUESDAY MORNING CORPORATION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,  
Plaintiff,  
v.  
TUESDAY MORNING CORPORATION; and  
DOES 1 through 150, inclusive,  
Defendants.

Case No. 2008-00020367  
**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Tuesday Morning Corporation**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4 P.E. ("Dr. Held" or "Plaintiff") and defendant Tuesday Morning Corporation ("Tuesday Morning"  
5 or "Defendant"), with Plaintiff and Defendant collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Dr. Held is an individual residing in the State of California who seeks to promote  
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating  
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Tuesday Morning employs ten or more persons and is a person in the course of doing  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13 Health & Safety Code §25249.6 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that Tuesday Morning has manufactured, distributed and/or sold sporting  
16 toys/children's items and bibs containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the  
17 State of California without the requisite health hazard warnings. DEHP is known to cause birth  
18 defects and other reproductive harm and is listed by its chemical nomenclature pursuant to  
19 Proposition 65. DEHP listed by the State of California under Proposition 65 shall be referred to  
20 hereinafter as the "Listed Chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: baby bibs,  
23 children's vinyl tote bags, and sporting toys containing the plasticizer phthalate DEHP, such as  
24 *Piece Soft Sport Set* (#6 78565 20692 4); *PuppeTotes Little Quack* (#0 37755 61210 3); and  
25 *Kinderware Travel Kit bibs* (#8 35422 00765 4) which Tuesday Morning manufactured,  
26 distributed, and/or sold in the State of California. All such baby bibs, children's vinyl tote bags,  
27 and sporting toys containing DEHP are referred to hereinafter as the "Products".

28 ///

1           **1.6 Notice of Violation**

2           On May 23, 2008, Dr. Held served Tuesday Morning and various public enforcement  
3 agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Tuesday  
4 Morning and public enforcers with notice of alleged violations of California Health & Safety Code  
5 §25249.6 for failing to warn consumers that the Products, including but not limited to sporting  
6 toys/children's items, exposed users in California to DEHP.

7           **1.7 Supplemental Notice of Violation**

8           On June 5, 2008 and January 26, 2009, Dr. Held served Tuesday Morning and various  
9 enforcement agencies with a supplemental 60-Day Notices of Violation that provided Tuesday  
10 Morning and public enforcers with notice of additional alleged violations of California Health &  
11 Safety Code §25249.6 for failing to warn consumers that the Products including, but not limited  
12 to, baby bibs, children's vinyl tote bags, and sporting toys, exposed users in California to DEHP.

13           **1.8 Complaint**

14           On August 26, 2008, Dr. Held, who was and is acting in the interest of the general public  
15 in California, filed a Complaint ("Complaint" or "Action") in the Superior Court in and for the  
16 County of Sacramento against Tuesday Morning alleging violations of California Health & Safety  
17 Code §25249.6 based on the alleged exposures to DEHP contained in the Products.

18           **1.9 No Admission**

19           Tuesday Morning denies the material factual and legal allegations contained in Dr. Held's  
20 Notices and Complaint, and maintains that all Products sold and distributed in California have  
21 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as  
22 an admission by Tuesday Morning of any fact, finding, issue of law, or violation of law, nor shall  
23 compliance with this Consent Judgment constitute or be construed as an admission by Tuesday  
24 Morning of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
25 denied by Tuesday Morning. In order to avoid further litigation costs and attorneys' fees, Tuesday  
26 Morning chooses to resolve this matter with Dr. Held through settlement as set forth herein.  
27 However, this Section shall not diminish or otherwise affect Tuesday Morning's obligations,  
28 responsibilities, and duties under this Consent Judgment.

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**1.10 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Tuesday Morning as to the allegations contained in the Complaint, that venue is proper in the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

**1.11 Effective Date**

For purposes of this Consent Judgment, the term "Effective Date" shall mean June 30, 2009.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

**2.1 Product Warnings**

Commencing on the Effective Date, Tuesday Morning shall not sell, ship, or offer to be shipped for sale in California any Product unless such Product is sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a), or comply with the reformulation standards set forth in Section 2.2.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

**(a) Retail Store Sales.**

**(i) Product Labeling.** Tuesday Morning may comply with its warning requirements by affixing a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Tuesday Morning or its agents, that states:

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

**(ii) Point-of-Sale Warnings.** Alternatively, Tuesday Morning may

1 provide warning signs in the form below to its customers in California with instructions to post the  
2 warnings in close proximity to the point of display of the Products.

3                   **WARNING:** This product contains DEHP, a phthalate  
4                   chemical known to the State of California to  
5                   cause birth defects and other reproductive  
6                   harm.

7                   Where more than one Product is sold in proximity to other like items or to those that do not  
8                   require a warning (e.g., Reformulated Products as defined in Section 2.2), the following statement  
9                   must be used:<sup>1</sup>

10                   **WARNING:** This product contains DEHP, a phthalate  
11                   chemical known to the State of California to  
12                   cause birth defects and other reproductive  
13                   harm.

14                   *[list products for which warning is required]*

15                   **2.2    Reformulation**

16                   As of the Effective Date, Tuesday Morning will no longer be involved in the chain of  
17                   distribution for the *5 Piece Soft Sport Set* (#6 78565 20692 4), *PuppeTotes Little Quack* (#0  
18                   37755 61210 3), and *Kinderware Travel Kit bibs* (#8 35422 00765 4) products in the State of  
19                   California, and may agree to not sell, ship, offer to be shipped for sale in California any Products  
20                   containing any amount of the Listed Chemical. Tuesday Morning also represents that, as a direct  
21                   result of the Notices issued on May 23, 2008, June 5, 2008, and January 26, 2009, the company  
22                   began to immediately implement a process for the reformulation of the exemplar products at issue  
23                   by removing *5 Piece Soft Sport Set* (#6 78565 20692 4), *PuppeTotes Little Quack* (#0 37755  
24                   61210 3), and *Kinderware Travel Kit bibs* (#8 35422 00765 4) from its stores. As a direct result  
25                   of the Notices, the company also provided warnings consistent with Section 2.1 above for other  
26                   products prior to the Effective Date.

27                   <sup>1</sup> For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are  
28                   offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not  
                    reasonably determine which of the two products is subject to the warning sign.



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**3. MONETARY PAYMENTS**

**3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

In settlement of all the claims referred to in this Consent Judgment, Tuesday Morning shall pay \$7,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Tuesday Morning shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of \$5,250, representing 75% of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$1,750, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Dr. Held's counsel on or before July 10, 2009 at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

**4.1 Attorney Fees and Costs.**

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Tuesday Morning then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his counsel under general contract principles and the private

1 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all  
2 work performed through the mutual execution of this agreement. Tuesday Morning shall  
3 reimburse Dr. Held and his counsel for fees and costs incurred as a result of investigating,  
4 bringing this matter to Tuesday Morning's attention, and litigating and negotiating a settlement in  
5 the public interest. Tuesday Morning shall pay Dr. Held and his counsel \$39,000 for all attorneys'  
6 fees and costs. Tuesday Morning shall issue a separate 1099 for fees and costs (EIN: 20-3929984)  
7 and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before July  
8 10, 2009, to the following address:

9           HIRST & CHANLER LLP  
10           Attn: Proposition 65 Controller  
11           2560 Ninth Street, Suite 214  
12           Berkeley, CA 94710

11           **4.2    Additional Attorney Fees and Costs in Seeking Judicial Approval.**

12           Pursuant to CCP §§1021 and 1021.5, the Parties agree that Tuesday Morning will  
13 reimburse Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial  
14 approval of this settlement agreement in the trial court and performing other necessary tasks after  
15 the execution of this agreement, in an amount not to exceed \$4,000. Such additional fees and  
16 costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are  
17 not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting  
18 requirements referenced in Health & Safety Code §25249.7(f), corresponding with opposing  
19 counsel responding to any third party objections, filing a notice of entry of approval, and  
20 appearing before the Court related to the approval process.

21           Reimbursement of such additional fees and costs shall be due within ten days after receipt  
22 of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee  
23 Claim shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the  
24 following address:

25           HIRST & CHANLER LLP  
26           Attn: Proposition 65 Controller  
27           2560 Ninth Street  
28           Berkeley, CA 94710

28           Tuesday Morning has the right to object to such reimbursement and may submit the

1 resolution of this issue to the American Arbitration Association (AAA) in Northern California to  
2 determine the reasonableness of the additional fees and costs sought, provided that a notice of  
3 objection or decision to arbitrate is received by Dr. Held by the end of the ten calendar days of  
4 receipt of invoice. If an arbitration notice is not filed with AAA in a timely manner, Dr. Held may  
5 file a motion with the Court pursuant to both CCP §1021.5 and this settlement agreement to  
6 recover additional attorney fees and costs incurred as set forth in this paragraph.

7 **5. RELEASE OF ALL CLAIMS**

8 **5.1 Dr. Held's Release of Tuesday Morning**

9 In further consideration of the promises and agreements herein contained, and for the  
10 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of  
11 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in  
12 the interest of the general public, hereby waives all rights to institute or participate in, directly or  
13 indirectly, any form of legal action and releases all claims, including, without limitation, all  
14 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
15 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
16 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
17 contingent (collectively "claims"), against Tuesday Morning and each of its downstream  
18 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,  
19 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers,  
20 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent  
21 entities (collectively "releasees"). This release is limited to those claims that arise under  
22 Proposition 65 as such claims relate to Tuesday Morning's alleged failure to warn about exposures  
23 to the Listed Chemicals contained in the Products.

24 The Parties further understand and agree that this release shall not extend upstream to any  
25 entities, other than Tuesday Morning, that manufactured the Products or any component parts  
26 thereof or to any distributors or suppliers who sold the Products or any component parts thereof to  
27 Tuesday Morning.

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**5.2 Tuesday Morning's Release of Dr. Held**

Tuesday Morning waives any and all claims against Dr. Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

**6. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the court and shall be null and void if, for any reason, it is not approved and entered by the court within one year after it has been fully executed by all Parties, in which event any monies that have been provided to Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Tuesday Morning that the one-year period has expired.

**7. SEVERABILITY**

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**8. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tuesday Morning shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

1 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the  
2 other Party at the following addresses:

3 To Tuesday Morning:

4 Paul W. Smigliani  
5 MUNRO SMIGLIANI & JORDAN LLP  
6 655 W. Broadway, Suite 840  
7 San Diego, CA 92101

7 To Dr. Held:

8 Proposition 65 Coordinator  
9 HIRST & CHANLER LLP  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710-2565

12 Any Party, from time to time, may specify in writing to the other party a change of address to  
13 which all notices and other communications shall be sent.

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
16 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
17 same document.

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

19 Dr. Held agrees to comply with the reporting form requirements referenced in California  
20 Health & Safety Code §25249.7(f).

21 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to  
23 Approve the Agreement (“noticed motion”) is required to obtain judicial approval of this Consent  
24 Judgment. In furtherance of obtaining such approval, Dr. Held, Tuesday Morning and their  
25 respective counsel agree to mutually employ their best efforts to support the entry of this  
26 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
27 timely manner. For purposes of this paragraph, best efforts shall include, at a minimum,  
28 cooperating on the drafting and filing any papers, asserting any oral argument in support of the

1 required motion for judicial approval, and defending any appellate review of the Court's approval.  
2 This provision is a material component of the Consent Judgment and shall be treated as such in the  
3 event of a breach. Within two business days of the Court's approval, Dr. Held shall dismiss  
4 Tuesday Morning from the case entitled, *Held v. Princess Soft Toys, et al.*, San Francisco Superior  
5 Court Case No. CGC-09-487820, without prejudice.

6 13. **MODIFICATION**

7 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
8 upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion  
9 of any party and entry of a modified Consent Judgment by the court. The Attorney General shall  
10 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
11 days in advance of its consideration by the court. Dr. Held shall be entitled to his reasonable fees  
12 and costs incurred in the modification process under CCP §1021.5 if Tuesday Morning seeks to  
13 modify the terms of this Consent Judgment.

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14. **AUTHORIZATION**

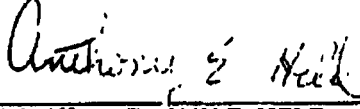
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

Date: 06/23/2009

Date: \_\_\_\_\_

By:   
Plaintiff, ANTHONY E. HELD,  
Ph.D., P.E.


By: \_\_\_\_\_  
Defendant, TUESDAY MORNING  
CORPORATION

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

Date: 6/24/09  
HIRST & CHANLER LLP

Date: \_\_\_\_\_  
MUNRO SMIGLIANI & JORDAN LLP

By:   
Christopher M. Martin  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

By: \_\_\_\_\_  
Paul W. Smigliani  
Attorneys for Defendant  
TUESDAY MORNING CORPORATION

14. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff, ANTHONY E. HELD,  
Ph.D., P.E.

**AGREED TO:**

Date: 6/23/2009

By: [Signature]  
Defendant, TUESDAY MORNING  
CORPORATION

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_  
HIRST & CHANLER LLP

By: \_\_\_\_\_  
Christopher M. Martin  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

**APPROVED AS TO FORM:**

Date: 6/25/09  
MUNRO SMIGLIANI & JORDAN LLP

By: [Signature]  
Paul W. Smighiani  
Attorneys for Defendant  
TUESDAY MORNING CORPORATION

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