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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Ruiz, Deputy Clerk

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.

ILLINOIS TOOL WORKS INC;
AUTOZONE, INC.; AND DOES 1 TO 50

DEFENDANTS.

CASE NO. **24STCV05553**

**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
ILLINOIS TOOL WORKS INC., and AUTOZONE, INC (“DEFENDANT”).

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, ILLINOIS TOOL WORKS INC., (“ITW”) is an Illinois Corporation,
4 doing business in the State of California at all relevant times herein.

5 3. Defendant, AUTOZONE, INC., (“Autozone”) is a Tennessee Corporation doing
6 business in the State of California at all relevant times herein.

7 4. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
8 under the fictitious names DOES 1 through 50 but will seek leave of this Court to amend the
9 complaint and serve such fictitiously named Defendants once their names and capacities
10 become known.

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

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

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

21 **JURISDICTION**

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

1 9. This Court has jurisdiction over Defendant named herein because Defendant
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 Defendant 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)
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1 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking
2 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”
3 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed
4 chemical (*Health & Safety Code* § 25249.6).

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

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

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

20 **SATISFACTION OF PRIOR NOTICE**

21 17. On or about May 19, 2023, Plaintiff gave notice of alleged violations of Health
22 and Safety Code section 25249.6, concerning consumer product exposures, subject to a private
23 action to Amazon, and to the California Attorney General, County District Attorneys, and City
24 Attorneys for each County containing a population of at least 750,000 people in whose
25 jurisdiction the violations allegedly occurred, concerning a Fix a Flat containing extreme
26 amounts of DEHP.

1 18. Before sending the notices of alleged violations, Plaintiff investigated the
2 consumer products involved, the likelihood that such products would cause users to suffer
3 significant exposures to DEHP, and the corporate structure of the Defendant.

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

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

16 21. Plaintiff is commencing this action more than sixty (60) days from the dates that
17 Plaintiff gave notices of the alleged violation to the Defendants and the public prosecutors
18 referenced in Paragraphs 17.

19 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney
20 General, nor any applicable district attorney or city attorney has commenced and is diligently
21 prosecuting an action against the Defendant.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against ILLINOIS TOOL WORKS INC,
3 AUTOZONE, INC., and DOES 1-50 for Violations of Proposition 65,
4 The Safe Drinking Water and Toxic Enforcement Act of 1986
(*Health & Safety Code, §§ 25249.5, et seq.*)

5 FIX A FLAT

6 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this
7 complaint as though fully set forth herein. The Defendants are and at all times mentioned herein
8 was a manufacturer and/or supplier of the Fix A Flat.

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

11 25. Defendant knew or should have known that Fix A Flat has been identified by
12 the 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. Defendant was also informed of the presence of DEHP in the Fix A
15 Flat within Plaintiff's notice of alleged violations further discussed above at
16 Paragraph 17.

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

23 27. Plaintiff is informed, believes, and thereon alleges that between September 11,
24 2020, and the present, Defendant knowingly and intentionally exposed California consumers
25 and users of the Fix A Flat, which Defendant manufactured, distributed, or sold as mentioned
26 above, to DEHP, without first providing any type of clear and reasonable warning of such to
27 the exposed persons before the time of exposure. Defendant has distributed and sold the Fix A
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1 Flat in California. Defendant knows and intends that California consumers will use and
2 consume the Fix A Flat, thereby exposing them to DEHP. Defendant thereby violated
3 Proposition 65.

4 28. The principal routes of exposure with regard to the Fix A Flat are and were
5 through dermal contact and ingestion. Persons sustain exposures by handling or otherwise
6 using the Fix A Flat with bare skin, without wearing gloves, or by touching bare skin or mucous
7 membranes with the Fix A Flat, as well as through direct and indirect hand to mouth contact,
8 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane.

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

16 30. 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 31. Based on the allegations herein, Defendant is liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to DEHP from the Fix A Flat pursuant to Health and
21 Safety Code section 25249.7(b).

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

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

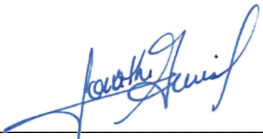
1 **PRAYER FOR RELIEF**

2 Plaintiff demands against the Defendant as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings for any
4 future sales of the Fix A Flat;
- 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.

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10 Dated: March 5, 2024

BLACKSTONE LAW, APC

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13 By: 
14 Jonathan M. Genish
15 Attorneys for Plaintiff,
16 Consumer Protection Group, LLC
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