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Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
10/02/2024 4:34 PM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By Y. Ayala, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

CONSUMER PROTECTION GROUP,  
LLC, in the public interest,

PLAINTIFF,

v.

HARVEY PERFORMANCE COMPANY,  
LLC; AMAZON.COM SERVICES LLC;  
AND DOES 1 TO 50

DEFENDANTS.

CASE NO. **24STCV25649**

**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 ("Plaintiff") alleges a cause of  
action against HARVEY PERFORMANCE COMPANY, LLC; AMAZON.COM SERVICES  
LLC; AND DOES 1 TO 50 ("Defendants").

**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, HARVEY PERFORMANCE COMPANY, LLC (“Defendant” or  
4 “Harvey”), is a Delaware Corporation, doing business in the State of California at all relevant  
5 times herein.

6 3. Defendant, AMAZON.COM SERVICES LLC, (“Defendant” or “Amazon”) is  
7 a Delaware Corporation, doing business in the State of California at all relevant times herein.

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

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

14 6. Upon information and belief, at all times relevant to this action, Defendant was  
15 an agent, servant, or employee of the Defendant. In conducting the activities alleged in this  
16 Complaint, Defendant 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 Defendant.

18 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times the  
19 Defendant was a person doing business within the meaning of Health and Safety Code section  
20 25249.11, subdivision (b), and that the Defendant 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 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)  
28

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 December 20, 2013, the Governor of California added Diisononyl phthalate  
12 (“DINP”) to the list of chemicals known to the state to cause cancer.

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

#### 18 **SATISFACTION OF PRIOR NOTICE**

19 17. On or about October 2, 2023, Plaintiff gave notice of alleged violations of Health  
20 and Safety Code section 25249.6, concerning consumer product exposures, subject to a private  
21 action to Harvey, Amazon, and to the California Attorney General, County District Attorneys,  
22 and City Attorneys for each County containing a population of at least 750,000 people in whose  
23 jurisdiction the violations allegedly occurred, concerning a Knife Sharpener containing high  
24 amounts of DINP.

25 18. Before sending the notices of alleged violations, Plaintiff investigated the  
26 consumer products involved, the likelihood that such products would cause users to suffer  
27 significant exposures to DINP, and the corporate structure of the Defendant.

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against HARVEY PERFORMANCE  
3 COMPANY AND AMAZON.COM SERVICES LLC.; and DOES 1-50 for

4 Violations of Proposition 65,

5 The Safe Drinking Water and Toxic Enforcement Act of 1986

6 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

7 **KNIFE SHARPENER**

8 23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this  
9 complaint as though fully set forth herein. The Defendants are and at all times mentioned  
10 herein was a manufacturer and/or supplier of the Knife Sharpener (“Sharpener”).

11 24. Plaintiff is informed, believes, and thereon alleges that the Sharpener  
12 contains DINP.

13 25. Defendant knew or should have known that Sharpener has been identified by the  
14 State of California as a chemical known to cause Cancer, developmental toxicity, female  
15 reproductive toxicity, and male reproductive toxicity and therefore was subject to Proposition  
16 65 warning requirements. Defendant was also informed of the presence of DINP in the  
17 Sharpener within Plaintiff’s notice of alleged violations further discussed above at Paragraph  
18 16.

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

25 27. Plaintiff is informed, believes, and thereon alleges that between May 8, 2020,  
26 and the present, Defendant knowingly and intentionally exposed California consumers and  
27 users of the Sharpener, which Defendant manufactured, distributed, or sold as mentioned above,  
28 to DINP, without first providing any type of clear and reasonable warning of such to the exposed

persons before the time of exposure. Defendant has distributed and sold the Sharpener in California. Defendant knows and intends that California consumers will use and consume the Sharpener, thereby exposing them to DINP. Defendant thereby violated Proposition 65.

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

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

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

31. Based on the allegations herein, Defendant is liable for civil penalties of up to \$2,500.00 per day per individual exposure to DINP from the Sharpener pursuant to Health and Safety Code section 25249.7(b).

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

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

**PRAYER FOR RELIEF**

Plaintiff demands against the Defendant as follows:

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

Dated: October 2, 2024

**BLACKSTONE LAW, APC**



By: \_\_\_\_\_  
Jonathan M. Genish  
Attorneys for Plaintiff,  
Consumer Protection Group, LLC