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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 1-50

DEFENDANTS.

CASE NO. 24STCV05553

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 40

Judge: Anne Richardson

Complaint filed: March 5, 2024

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Consumer Protection Group, LLC (“CPG” or “Plaintiff”) acting on behalf of itself and in the interest of the public, and Defendant Illinois Tool Works Inc (“ITW” or “Defendant”), with each referred to as a “Party” and collectively referred to as “Parties.”

1.2 ITW and Products

ITW is a Delaware corporation that is doing business at all times in California and employs ten (10) or more persons. CPG alleges that ITW manufactured, caused to be manufactured, sold, or distributed a consumer product—Fix A Flat (referred to hereinafter as “Covered Products”). For purposes of this Consent Judgment, ITW is deemed a person in the course of doing business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of

1 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”). The Covered Products
2 are limited only to those sold or supplied by Defendant.

3 **1.3 Listed Chemicals.**

4 Di(2-ethylhexyl) phthalate (“DEHP”) has been listed by the State of California as a chemical
5 known to cause cancer, developmental toxicity, and male reproductive toxicity.

6 **1.4 Notice of Violation.**

7 On or about May 19, 2023, Plaintiff gave notice of alleged violations of Health and Safety
8 Code section 25249.6, concerning consumer product exposures, subject to a private action to ITW,
9 Autozone Inc., (“Autozone”), and to the California Attorney General, County District Attorneys, and
10 City Attorneys for each County containing a population of at least 750,000 people in whose
11 jurisdiction the violations allegedly occurred, concerning the Covered Product
12 containing DEHP.

13 **1.5 Complaint.**

14 On March 12, 2024, CPG filed a Complaint for civil penalties and injunctive relief
15 (“Complaint”) in the above-captioned action. In the First Cause of Action, CPG alleges, among other
16 things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of
17 exposure to DEHP arising from the Covered Product.

18 **1.6 Consent to Jurisdiction.**

19 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction
20 over the allegations of violations contained in the Notice and Complaint and personal jurisdiction
21 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los
22 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full and final
23 settlement and resolution of the allegations contained in the Complaint and of all claims that were or
24 could have been raised by any person or entity based in whole or in part, directly or indirectly, on the
25 facts alleged therein or arising therefrom or related thereto.

26 **1.7 No Admission.**

27 This Consent Judgment resolves claims that are denied and disputed by ITW. The Parties
28 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between

1 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall
2 be construed as an admission by the Parties of any material allegation of the Notice or the Complaint,
3 any fact, conclusion of law, issue of law or violation of law, including without limitation, any
4 admission concerning any alleged violation of Proposition 65 or any other statutory, regulatory,
5 common law, or equitable doctrine. Nothing in this Consent Judgment, nor compliance with its terms,
6 shall constitute or be construed as an admission by the Parties, or give rise to any inference, of any
7 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
8 Defendant, their officers, directors, employees, or parent, subsidiary or affiliated corporations, or be
9 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court,
10 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair
11 any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
12 except as expressly provided in this Consent Judgment.

13 **1.8** The "Effective Date" is the date that this Consent Judgment is approved and entered
14 by the Court.

15 **2. INJUNCTIVE RELIEF**

16 **2.1** As of the Effective Date, Defendant shall cease selling, offering for sale in California,
17 or distributing for sale in California, unless the Covered Product contains no more than 1000 parts
18 per million (ppm) of DEHP or contains a warning as described in Section 2.3.

19 **2.2** Covered Products manufactured on or prior to the Effective Date irrespective of their
20 sale date shall be exempted from the requirements in section 2.1.

21 **2.3** For any Covered Product requiring a warning as of the Effective Date, Defendant must
22 place a Proposition 65 compliant warning on the packaging. Any warning provided pursuant to this
23 section shall be affixed to the packaging of, or directly on, the Covered Product, and be prominently
24 placed with such conspicuousness as compared with other words, statements, designs, or devices as
25 to render it likely to be read and understood by an ordinary individual under customary conditions
26 before purchase or use. The pictogram shall be in yellow with a black exclamation mark; provided
27 the pictogram may be in white instead of yellow if the Covered Product label does not contain the
28 color yellow. The following warning is deemed to comply with Proposition 65:

⚠ [CALIFORNIA PROP. 65] WARNING: This product can expose you to chemicals including Di (2-ethylhexyl) phthalate (DEHP), which is [are] known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

⚠ CALIFORNIA WARNING: Can expose you to chemicals including Di (2-ethylhexyl) phthalate (DEHP) a carcinogen and reproductive toxicant www.P65Warnings.ca.gov

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a black outline. Where the label, labeling, package, shelf tag or sign for the Products is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “**WARNING.**” The warning shall be provided directly on each Product or its label, labeling, package, shelf tag or sign with such conspicuousness as compared with other words, statements or designs as to render it likely to be seen, read and understood by an ordinary individual under customary conditions of purchase. However, if Defendant opts to use the Short-Form Warning, said warning must be provided on each Product or its label or package.

If Defendant sells the Covered Product that required a warning pursuant to Section 2.1 via an internet website to customers located in California, the warning requirements of this section shall be satisfied as provided for in 27 CCR sections 25601 and 25602, and as they may be subsequently amended. If consumer information is provided on the Covered Product in a foreign language, Harvey shall provide the warning in the foreign language.

3. SETTLEMENT PAYMENTS

3.1 Payment and Due Date.

Within twenty one days (21) of the Effective Date, Defendant shall pay a total of eighty thousand dollar (\$80,000.00) in full and complete settlement of all monetary claims by CPG related to the Notice and Complaint as to Defendant, as follows:

1 **3.1.1 Civil Penalty:** Defendant agrees to pay six thousand dollars (\$6,000.00) as
2 penalties pursuant to Health & Safety Code § 25249.12:

3 Counsel for CPG shall be responsible to issue a check made payable to the State of
4 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four
5 thousand five hundred dollars (\$4,500.00) representing 75% of the total penalty and another check to
6 CPG in the amount of one thousand five hundred dollars (\$1,500.00) representing 25% of the total
7 penalty; and

8 **3.1.2 Reimbursement of Attorneys' Fees and Costs:** Defendant shall pay seventy-
9 four thousand dollars (\$74,000.00) to Blackstone Law, APC as complete reimbursement for any and
10 all reasonable investigation fees and costs, attorneys' fees, expert fees, report costs, and any and all
11 other costs and expenses incurred as a result of investigating, bringing this matter to the Defendant's
12 attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining court
13 approval of this Consent Judgment.

14 **3.2** All payments referenced in paragraphs 3.1.1, and 3.1.2 above, shall be made payable
15 to Plaintiff's counsel, Blackstone Law APC in a single lump sum payments of \$80,000.00 (eighty
16 thousand dollars and zero cents). Plaintiff's counsel will provide Defendant's counsel with wire
17 instructions.

18 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

19 **4.1** This Consent Judgment is a full, final, and binding resolution between CPG, on behalf
20 of itself and in the public interest, on the one hand, and (i) Defendant and its officers, directors,
21 attorneys, agents, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,
22 partners, affiliates, sister companies, and their successors and assigns (collectively referred to as
23 "Defendant Releasees"); (ii) all entities to which Defendant Releasees directly or indirectly has
24 distributed or sold the Covered Product, including, but not limited to, Autozone's downstream
25 distributors, suppliers, wholesalers, customers, retailers (iii) and the successors and assigns of any of
26 them (the released entities listed in (i) through (iv) of this Section 4.1 are collectively referred to as
27 "Released Parties") for all claims for violations of Proposition 65 for alleged exposures to DEHP
28 from the Covered Product manufactured, distributed, or sold by Defendant on or before the Effective

1 Date. Defendant's compliance with this Consent Judgment shall constitute compliance by any
2 Released Parties with Proposition 65 with respect to DEHP in the Covered Product manufactured,
3 distributed, or sold after the Effective Date. Nothing in this Section affects CPG's right to commence
4 or prosecute an action under Proposition 65 against any person other than the Released Parties.

5 **4.2** CPG on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and/or assignees (collectively, the "CPG Releasers"), hereby waives all rights to institute
7 or participate in, directly or indirectly, any form of legal action and releases all claims, including,
8 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
9 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
10 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
11 unknown, fixed or contingent (collectively "Claims"), against the Released Parties arising from any
12 violation of Proposition 65 or any other statutory or common law regarding alleged exposures to, or
13 the failure to warn about alleged exposures to DEHP from the Covered Product. It is possible that
14 Claims not known to the Parties arising out of the facts alleged in the Notice or the Complaint and
15 relating to the Covered Product will develop or be discovered. CPG, on behalf of itself and the CPG
16 Releasers, acknowledges that this Consent Judgment is expressly intended to cover and include all
17 such Claims. CPG has full knowledge of the contents of California Civil Code §1542. CPG, on
18 behalf of itself and the CPG Releasers, acknowledges that the Claims released in this Section 4 may
19 include unknown Claims, and nevertheless waives California Civil Code §1542 as to any such
20 unknown Claims. California Civil Code §1542 reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
22 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
24 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
25 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

26
27 CPG understands and acknowledges that the significance and consequence of this waiver of
28 California Civil Code §1542.

1 **4.3** Similarly, ITW waives any and all claims against CPG, its attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been taken
3 or made) by CPG and its attorneys and other representatives, whether in the course of investigating
4 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
5 respect to the Subject Product. ITW represents that its signatory to this Settlement Agreement has full
6 authority to enter into and legally bind ITW to this Settlement Agreement.

7 **5. ENFORCEMENT OF JUDGMENT**

8 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
9 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
10 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
11 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
12 10 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent
13 Judgment, and attempts to resolve such Party's failure to comply in an open and good faith manner.

14 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
15 proceeding to enforce the terms of this Consent Judgment, CPG shall provide a Notice of Violation
16 ("NOV") to the Defendant. The NOV shall include for each of the Covered Product: the date(s) the
17 alleged violation(s) was observed and the location at which the Covered Product were offered for
18 sale, and shall be accompanied by all test data obtained by CPG regarding the Covered Product,
19 including an identification of the component(s) of the Covered Product that were tested.

20 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind regarding
21 the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a Notice of
22 Election ("NOE") not to contest the NOV that meets one of the following conditions:

23 (a) A statement that the Covered Product was manufactured and shipped
24 by the Defendant for sale in California before the Effective Date; or

25 (b) A statement that since receiving the NOV the Defendant has taken
26 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
27 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores
28 in California, as applicable, remove the Covered Product identified in the NOV from sale in California

1 and destroy or return the Covered Product to the Defendant or vendor, as applicable; or (iii) refute the
2 information provided in the NOV.

3 **5.2.2 Contested NOV.** Defendant may serve a Notice of Election ("NOE")
4 informing CPG of its election to contest the NOV within 60 days of receiving the NOV.

5 (a) In its election, the Defendant may request that the sample(s) of Covered
6 Product tested by CPG be subject to confirmatory testing at an EPA-accredited laboratory.

7 (b) If the confirmatory testing establishes that the Covered Product does
8 not contain DEHP in excess of the level allowed in Section 2.1, above, CPG shall take no further
9 action regarding the alleged violation. If the testing does not establish compliance with Section 2.1,
10 above, the Defendant may withdraw its NOE to contest the violation and may serve a new NOE
11 pursuant to Section 5.2.1.

12 (c) If the Defendant does not withdraw a NOE to contest the NOV, the
13 Parties shall meet and confer for a period of no less than 30 days before CPG may seek an order
14 enforcing the terms of this Consent Judgment.

15 **5.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
16 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

17 **6. ENTRY OF CONSENT JUDGMENT**

18 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code § 25249.7(f).

20 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
21 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
22 become null and void, and the actions shall revert to the status that existed prior to the execution date
23 of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
24 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
25 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
26 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
27 the terms of the Consent Judgment and to resubmit it for approval.

1 **7. MODIFICATION OF JUDGMENT**

2 **7.1** This Consent Judgment may be modified only upon written agreement of the Parties
3 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party
4 as provided by law and upon entry of a modified Consent Judgment by the Court.

5 **7.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
6 and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **7.3** Within thirty (30) days of receiving payments as outlined in Section 3, CPG shall
8 file a request for dismissal without prejudice of Defendant with respect to the Complaint.

9 **8. RETENTION OF JURISDICTION**

10 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
11 of this Consent Judgment under Code of Civil Procedure § 664.6.

12 **9. SERVICE ON THE ATTORNEY GENERAL**

13 **9.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
14 California Attorney General so that the Attorney General may review this Consent Judgment prior to
15 its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney General
16 has received the aforementioned copy of this Consent Judgment, and in the absence of any written
17 objection by the Attorney General to the terms of this Consent Judgment, the Parties may then submit
18 it to the Court for approval.

19 **10. ATTORNEY FEES**

20 **10.1** Except as specifically provided in Section 3.1.3, each Party shall bear its own costs
21 and attorney fees in connection with this action.

22 **11. ENTIRE AGREEMENT**

23 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
25 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
26 express or implied, other than those contained herein have been made by any Party hereto. No other
27 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
28 any of the Parties.

1 **12. GOVERNING LAW**

2 **12.1** The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law provisions
4 of California law.

5 **12.2** The terms of this Consent Judgment shall be governed by the laws of the State of
6 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
9 rendered inapplicable by reason of law generally as to the Covered Product, then the Defendant
10 subject to this Consent Judgment may provide written notice to CPG of any asserted change in the
11 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to
12 the extent that, the Covered Product are so affected, without any shall have no recourse to claw back
13 payments already made in accordance to Section 3 of this Consent Judgment. Nothing in this Consent
14 Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent
15 state or federal law or regulation.

16 **12.3** The Parties, including their counsel, have participated in the preparation of this
17 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
18 Consent Judgment was subject to revision and modification by the Parties and has been accepted and
19 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
20 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
21 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
22 that any statute or rule of construction providing that ambiguities are to be resolved against the
23 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
24 regard, the Parties hereby waive California Civil Code §1654.

25 **13. EXECUTION AND COUNTERPARTS**

26 **13.1** This Consent Judgment may be executed in counterparts and by means of facsimile or
27 portable document format (pdf), which taken together shall be deemed to constitute one document
28 and have the same force and effect as original signatures.

1 **14. NOTICES**

2 **14.1** Any notices under this Consent Judgment shall be by personal delivery
3 or email.

4 If to CPG:

5 Jonathan Genish, Esq.
6 Blackstone Law, APC
7 8383 Wilshire Blvd., Suite 745
8 Beverly Hills, CA 90211
9 jgenish@blackstonepc.com

10 If to ITW:

11 Joshua G. Simon, Esq.
12 Call & Jensen LLC
13 610 Newport Center Drive, Suite 700
14 Newport Beach, CA 92660
15 jsimon@calljensen.com

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1 **15. AUTHORITY TO STIPULATE**


2 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
3 the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
4 Party represented and legally to bind that Party.


5 **AGREED TO:**

AGREED TO:

6
7 Date: March 11, 2025

Date: *March 11, 2025*

8
9 By: 
10 Consumer Protection Group, LLC

By: 
Illinois Tool Works Inc.

11
12 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

13
14
15 Dated: _____

16
17 _____
Judge of the Superior Court
Hon.