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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](http://www.P65Warnings.ca.gov).

Or

**⚠ CALIFORNIA WARNING:** Can expose you to Di (2-ethylhexyl) phthalate (DEHP), a carcinogen and reproductive toxicant [www.P65Warnings.ca.gov](http://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 dollars (\$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.  
28



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. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any  
7 obligation to comply with any pertinent state or federal law or regulation.

8             **12.3**    The Parties, including their counsel, have participated in the preparation of this  
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted and  
11 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of  
13 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees  
14 that any statute or rule of construction providing that ambiguities are to be resolved against the  
15 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this  
16 regard, the Parties hereby waive California Civil Code §1654.

17     **13.     EXECUTION AND COUNTERPARTS**

18             **13.1**    This Consent Judgment may be executed in counterparts and by means of facsimile or  
19 portable document format (pdf), which taken together shall be deemed to constitute one document  
20 and have the same force and effect as original signatures.

21     **14.     NOTICES**

22             **14.1**    Any notices under this Consent Judgment shall be by personal delivery  
23 or email.

24                     If to CPG:

25                             Jonathan Genish, Esq.  
26                             Blackstone Law, APC  
27                             8383 Wilshire Blvd., Suite 745  
28                             Beverly Hills, CA 90211  
                              [jgenish@blackstonepc.com](mailto:jgenish@blackstonepc.com)



If to ITW:

Joshua G. Simon, Esq.

Call & Jensen LLC

610 Newport Center Drive, Suite 700

Newport Beach, CA 92660

[jsimon@calljensen.com](mailto:jsimon@calljensen.com)


**15. AUTHORITY TO STIPULATE**

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

**AGREED TO:**

Date: March 20, 2025

By:

  
Consumer Protection Group, LLC

**AGREED TO:**

Date:

*March 14, 2025*

By:

  
Illinois Tool Works Inc.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court  
Hon.