

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

BRADFORD BARFOOT and LEONARD)
KARPEICHIK, on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
DOLGENCORP, LLC (d/b/a DOLLAR,)
GENERAL), a Kentucky corporation,)
)
Defendant.)
_____)

Case No:

Class Action

CLASS ACTION COMPLAINT

Plaintiffs, Bradford Barfoot and Leonard Karpeichik (“Plaintiffs”), individually and on behalf of all others similarly situated, make the following allegations based on their personal knowledge of their own acts and, otherwise, upon information and belief based on investigation of counsel:

NATURE AND SUMMARY OF THE ACTION

1. Plaintiffs, by and through undersigned counsel, bring this action both on their own behalf and on behalf of the class defined below, comprised of all individuals similarly situated within the State of Florida, to redress the deceptive and/or unfair trade practices, acts, and/or omissions employed by Defendant, DOLGENCORP, LLC (hereinafter “Dollar General” or “Defendant”), in connection with its marketing and sale of its company-branded motor oil sold in its stores.

2. Dollar General sells an entire line of company-branded motor oils (labeled “DG”) that are obsolete and potentially harmful to its customers’ automobiles by using deceptive, misleading and/or unfair sales and marketing tactics including: (a) representations and/or

omissions made on the product; (b) the positioning of its DG line of obsolete motor oils immediately adjacent to the more expensive standard- and premium-quality motor oils manufactured by its competitors; and (c) failing to adequately warn its customers that its DG motor oil is unsuitable for use by the vast majority, if not all, of its customers.

3. Dollar General deceptive and/or unfair business practices violate Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.* ("FDUTPA"); Florida's Misleading Advertising Law, Fla. § Stat. 817.41); and (forthcoming) constitute a breach of the Implied Warranty of Merchantability, Fla. Stat. § 672.317.

PARTIES

4. Plaintiff Bradford Barfoot is a Florida citizen residing in Miami-Dade County, Florida in the Southern District of Florida. During the class period, Plaintiff Barfoot purchased Dollar General's DG 10w-30 motor oil from Dollar General's store in Miami, Florida on or around the Spring or Summer of 2015.

5. Plaintiff Leonard Karpeichik is a Florida citizen residing in Palm Beach County, Florida in the Southern District of Florida. During the class period, Plaintiff Karpeichik purchased Dollar General's DG 10w-40 motor oil from Dollar General's store in West Palm Beach, Florida on or around the Summer of 2015.

6. Defendant DOLGENCORP, LLC, d/b/a Dollar General Corporation, is incorporated under the laws of the State of Kentucky, with its headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee.

7. At all relevant times, Defendant has advertised, marketed, provided, offered, distributed, and/or sold its obsolete DG-branded motor oil in its stores throughout the United States, including to individuals in Florida such as Plaintiffs and the Class.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendant since at all relevant times Defendant has regularly and systematically transacted business within the State of Florida through the marketing, providing, offering, distributing, and selling of the obsolete DG-branded motor oil. Defendant maintains over five-hundred (500) stores throughout the State of Florida and derives substantial revenue from Florida residents.

9. This Court has subject matter jurisdiction over this class action under the Class Action Fairness Act (“CAFA”) because there are more than one-hundred class members, all of the members of the class are citizens of a state (Florida) different from that of Defendant (Tennessee), and the aggregate of class members’ claims is more than \$5 million. 28 U.S.C. § 1332(d). Notably, in addition to FDUTPA claims (which in and of themselves likely reach the \$5 million threshold), Plaintiffs seek punitive damages for violations of Florida’s Misleading Advertising Law.

10. Venue is proper in this Court under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district and a substantial part of property that is the subject of the action is situated in this district. Plaintiffs are resident of this district; the sales of the motor oil products occurred in this district; and Defendant has received substantial compensation from sales in this district.

FACTUAL ALLEGATIONS

11. Dollar General operates a chain of variety stores headquartered in Goodlettsville, Tennessee. As of January 2015, Dollar General operated over 12,198 stores in 43 states, with close to five-hundred (500) stores located in the State of Florida.

12. Dollar General is a discount retailer focused on low and fixed income consumers in small markets. Dollar General's business model includes locating its stores in rural, suburban communities, and in its more densely populated markets, Dollar General's customers are generally from the neighborhoods surrounding the stores. Dollar General's stores are located with the needs of its core customers (low and fixed income households) in mind.

13. Dollar General offers basic everyday and household goods, along with a variety of general merchandise at low prices to provide its customers with one-stop shopping opportunities generally in their own neighborhoods.

14. In addition to offering name brand and generic merchandise, Dollar General distributes and markets its own lines of inexpensive household products, which bear the designation "DG." DG lines include "DG Auto," "DG Hardware" "DG Health" and "DG Office."

15. Dollar General's DG Auto line consists of three types of obsolete motor oil: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 (hereafter, "Motor Oil Products") that fail to protect and can actively damage, modern-day automobiles.

16. Motor oils lubricate the engines of the automobiles driven by individuals. Their main function is to reduce wear on an engine's moving parts. Motor oils also inhibit corrosion, improve sealing and keep engines properly cooled.

17. Motor oils have evolved in parallel with the automobiles they are meant to protect. Institutions like the Society of Automotive Engineers ("SAE") employ rigorous tests to ensure that motor oils meet evolving standards relating to, among other criteria, sludge buildup, temperature volatility, resistance to rust, resistance to foaming, resistance to oil consumption, homogeneity and miscibility.

18. Motor oils designed to protect engines from earlier eras do not protect, and can harm, modern-day engines. Thus, motor oil that would be suitable to use in an engine manufactured in the 1980's or earlier is not suitable for use in modern-day engines.

19. Dollar General engages in the deceptive and/or unfair trade practices, acts, and/or omissions relating to the marketing, selling and causing to be manufactured obsolete Motor Oil Products without adequate warning that its product is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General's customers (and the public at large)

20. Dollar General also engages in the unfair, unlawful, deceptive and fraudulent practices of concealing the obsolete and harmful nature of its Motor Oil Products from its customers through deceitful product placement tactics and misleading product labels which obscure a critical fact from Dollar General's customers: Dollar General's Motor Oil Products are unfit for, and can harm, the vehicles driven by the vast majority, if not all, of its customers.

21. Dollar General's in-house Motor Oil Products use the same or similar SAE nomenclature on the front of its labels (*e.g.*, 10W-30, 10W-40, SAE 30) as do the other mainstream, non-harmful, and actually useful brands of motor oil sold by Dollar General.

22. Dollar General places its DG brand Motor Oil Products next to these useful brand motor oil products on its shelves.

23. Additionally, the front label of DG's SAE 10w-30 and 10w-40 motor oil says, "Lubricates and protects your engine."

24. However, among the small print on the back label of Dollar General's Motor Oil Products is the statement that DG SAE 10W-30 and DG SAE 10W-40 are admittedly "not suitable for use in most gasoline powered automotive engines built after 1988" and "may not provide adequate protection against the build-up of engine sludge" and that DG SAE 30 is

admittedly “not suitable for use in most gasoline powered automotive engines built after 1930,” and its “use in modern engines may cause unsatisfactory engine performance or equipment harm.”

25. Dollar General conceals this language by rendering it in small font and confining it to the Motor Oil Products’ back label, which is not visible when the products are on the store shelves.

26. Dollar General further conceals this language by placing it below a misleading and contradictory message regarding the product. For the DG SAE 10W-30 and DG SAE 10W-40 products, that message reads, “SAE 10W-30 motor oil is an all-season, multi-viscosity, heavy duty detergent motor oil recommended for gasoline engines in older model cars and trucks. This oil provides oxidation stability, antiwear performance, and protection against deposits, rust and corrosion.” For the DG SAE 30 product, that message reads: “DG Quality SAE 30 is a non-detergent motor oil designed for use in older engines where consumption may be high and economical lubricants are preferred.”

27. Few, if any, Dollar General customers drive vehicles for which these products are safe, and the use of the term “older” is a relative term that does not inform a reasonable consumer that these motor oils are not safe for cars manufactured within the past *27 years*, or in the case of Dollar General’s DG SAE 30, the past *85 years*.

28. Dollar General further disguises the obsolete and harmful nature of its motor oils with its positioning of these motor oils on its shelves in a misleading manner. Specifically, Dollar General places similar quantities of its in-house brand motor oils, DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30, none of which are suitable for modern-day automobiles, adjacent

to an array of other motor oils which are suitable for modern-day vehicles. The photograph below illustrates how Dollar General effects this deception:



29. Dollar General places its in-house brand motor oils on the same shelves, in the same or similar quantities, as PEAK, Pennzoil, Castrol and/or other legitimate motor oils that are suitable for modern-day automobiles. Each type of motor oil uses the SAE nomenclature on the front, *e.g.*, 10W-40. The only apparent difference is the price, as Dollar General's motor oils are less expensive than the others.

30. Defendant's product display conceals the fact that the Motor Oil Products have an extremely obscure and limited use and are likely to cause damage to the engines of most of its

customers' cars. Defendant's product positioning and the deceptive label on the Motor Oil Products are likely to deceive reasonable customers.

31. Dollar General also fails to warn its customers adequately of the obsolete nature and dangers the Motor Oil Products pose to the very automobiles its customers are trying to protect by purchasing the Motor Oil Products. An adequate warning for Dollar General's obsolete Motor Oil Products would be displayed conspicuously and would inform Dollar General's customers of the appropriate uses, if any, of the various types of Dollar General motor oils. But Dollar General provides its customers with no such conspicuous warnings. Instead, the company buries the aforementioned statements on the back of its Motor Oil Products in small type where customers are unlikely to encounter them.

32. DG SAE 10W-30 bears the following labels on its front (left) and back (right):



The photograph below is a close-up of DG SAE 10W-30's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



33. DG SAE 10W-40 bears the following labels on its front (left) and back (right):



The following photograph is a close-up of DG SAE 10W-40's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



34. DG SAE 30 bears the following the labels on its front (left) and back (right):



The photograph below is a close-up of DG SAE 30's back label which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1930" and "USE IN MODERN ENGINES MAY CAUSE UNSATISFACTORY ENGINE PERFORMANCE OR EQUIPMENT HARM":



35. Dollar General's Motor Oil Products are unsuitable for the modern-day vehicles driven by its customers and have no business being sold, except that Dollar General is successfully deceiving a sufficient number of customers to make this fraudulent practice worthwhile. It is unfair, unlawful, deceptive and fraudulent for Dollar General to distribute, market, and sell an entire line of motor oil that is unfit for, and presents concrete dangers to, the automobiles driven by the vast majority of its customers.

36. Dollar General knew or should have known that its customers are being deceived by its marketing strategy based on the quantity of its obsolete DG motor oil sold compared to the limited number of automobiles for which these oils are appropriate.

37. Florida's consumer protection laws are designed to protect consumers from this type of false advertising and unfair and deceptive conduct.

38. Defendant's unfair and deceptive course of conduct victimized purchasers of Dollar General's motor oil from Dollar General, throughout the country.

39. As a direct and proximate result of Dollar General's deceptive and fraudulent practices, Plaintiffs and the Class Members suffered a loss of money and suffered actual

damages in the amount of the purchase price (if not damage to their automobiles). Indeed, the Motor Oil Products are worthless.

40. Plaintiffs therefore bring the statutory and common law claims alleged herein to halt Dollar General's unfair and deceptive practices and to obtain compensation for the losses suffered by Plaintiffs and all Class Members.

CLASS ACTION ALLEGATIONS

41. Plaintiffs bring this class action pursuant to Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and all members of the following Class:

All natural persons residing in the State of Florida who after December 18, 2011, purchased Defendant's DG-branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE 30 ("Motor Oil Products") for personal use and not for re-sale.

42. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

43. Specifically excluded from the proposed Class are Dollar General, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with Dollar General and/or its officers and/or directors, or any of them. Also excluded from the proposed Class are the Court, the Court's immediate family, and Court staff.

FRCP 23(a) Factors

44. **Numerosity:** Membership in the Class is so numerous that separate joinder of each member is impracticable. The precise number of Class Members is unknown at this time but can be readily determined from Defendant's records. Plaintiffs reasonably estimate that there are thousands if not tens of thousands of persons in the Class.

45. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel highly experienced in complex consumer class action litigation and intend to prosecute this action vigorously. Plaintiffs are members of the Class described herein and do not have interests antagonistic to, or in conflict with, the other members of the Class.

46. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class purchased obsolete, harmful, deceptively labeled and deceptively marketed Motor Oil Products from Dollar General and were subjected to Defendant's common course of conduct. Defendant engages in a pervasive advertising scheme, including most importantly the use of common and uniform product packaging, resulting in substantially uniform misrepresentation and/or omissions regarding the suitability of Defendant's DG-branded Motor Oil Products (misrepresentation), and the failure to adequately disclose the true nature and purpose of Defendant's DG-branded Motor Oil Products (omission).

47. **Existence and Predominance of Common Questions of Law and Fact:** There are numerous and substantial questions of law and fact common to all Class Members sufficient to satisfy Rule 23(a), and that control this litigation and predominate over any individual issues for purposes of Rule 23(b)(3). Included within the common questions are:

- a) The amount of Defendant's in-house brand motor oil it sold relative to the other brands of motor oil on its shelves;
- b) The amount of Defendant's in-house brand motor oil it sold relative to the limited number of automobiles for which these motor oils are appropriate;
- c) Whether Defendant studied the effect of its product placement of the Motor Oil Products on its shelves;

- d) Whether Defendant studied or tested its label and the effect of its labels on consumers' perceptions;
- e) Whether Defendant studied the susceptibility of consumers;
- f) The cost to Defendant to manufacture, distribute, market and sell its DG-branded motor oil compared to the revenue it received from its sales;
- g) Whether Defendant's representations regarding the safety and suitability of its DG-branded motor oils are true;
- h) Whether the shelf placement of DG's obsolete motor oil is unfair and/or deceptive in violation of FDUTPA;
- i) Whether the warnings provided on the labels of Dollar General's motor oil were adequate;
- j) Whether Defendant's deceptive conduct regarding its DG-branded motor oils would deceive an objective consumer acting reasonably in the circumstances;
- k) Whether Defendant's uniform representations and omissions constituted deceptive acts in violation of FDUTPA;
- l) Whether Defendant's sale and marketing of its DG-branded motor oils constituted an unfair practice in violation of FDUTPA;
- m) Whether Defendant's uniform advertisements (*i.e.*, product packaging) violated Florida's Misleading Advertising Law, Fla. Stat. 817.41;
- n) Whether Defendant's purported violation of Florida's Misleading Advertising Law constitutes a *per se* violation of FDUTPA;
- o) Whether Defendant's products are worthless;

- p) Whether Plaintiffs and the Class Members are entitled to damages, and what is the proper measure of Plaintiffs' and the Class Members' loss;
- q) Whether Plaintiffs and the Class Members are entitled to an award of punitive damages;
- r) Whether Plaintiffs and Class Members are entitled to attorneys' fees and expenses, and in what amount; and
- s) Whether Plaintiffs and the Class Members are entitled to declaratory, injunctive, and/or other equitable relief.

FRCP 23(b)(2) Factors

48. Defendant has acted on grounds generally applicable to the entire Class and Sub-Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Classes as a whole. The prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications with respect to individual member of the Classes that would establish incompatible standards of conduct for Defendant.

49. Injunctive relief is necessary to prevent further fraudulent and unfair business practices by Defendant. Money damages alone will not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its deceptive, fraudulent and unfair policies.

FRCP 23(b)(3) Factors

50. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Plaintiffs' FDUTPA, Misleading Advertising, and forthcoming warranty claim are based on a deceptive and/or unfair common course of conduct. Whether Dollar General's conduct is likely to deceive an objective consumer acting

reasonably in the circumstances and breaches the implied warranty of merchantability is common to all members of the Classes and are the predominate issues, and Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

51. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a) Given the size of the claims of individual Class Members, as well as the resources of Dollar General, few Class Members, if any, could afford to seek legal redress individually for the wrongs alleged herein;
- b) This action will permit an orderly and expeditious administration of the claims of Class Members, will foster economies of time, effort and expense and will ensure uniformity of decisions;
- c) Any interest of Class Members in individually controlling the prosecution of separate actions is not practical, creates the potential for inconsistent or contradictory judgments and would create a burden on the court system;
- d) Without a class action, Class Members will continue to suffer damages, Defendant's violations of law will proceed without remedy, and Defendant will continue to reap and retain the substantial proceeds derived from its wrongful and unlawful conduct. Plaintiffs and Class Members have suffered damages as a result of Defendant's unlawful and unfair conduct. This action presents no difficulties that will impede its management by the Court as a class action.

52. **Notice to the Class:** Notice can be accomplished by publication for most Class Members, and direct notice may be possible for those who are members of Dollar General's rewards program (if any). Further, publication notice can be easily targeted to Dollar General's customers because Defendant only sells the subject Motor Oil Products in its own stores.

53. The claims asserted herein are applicable to all individuals throughout the State of Florida who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General.

CLAIMS FOR RELIEF

54. Based on the foregoing allegations, Plaintiffs' claims for relief include the following:

COUNT I **Violations of the Florida Deceptive and Unfair Trade Practices Act** **Fla. Stat. § 501.201, *et seq.*** **(deceptive acts or practices)**

55. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as though fully set forth herein.

56. Plaintiffs and the Class are "consumers" within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA").

57. Defendant is a "person" or "entity" as used in FDUTPA.

58. Pursuant to FDUTPA, unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

59. Within four years prior to the filing of this complaint and continuing to the present, Defendant, in the course of trade and commerce, engaged in unconscionable, unfair, and/or deceptive acts or practices harming Plaintiffs and the Class, as described herein.

60. Plaintiffs and the Class Members purchased Defendant's DG-branded Motor Oil Products as part of a consumer transaction.

61. Defendant engaged in deceptive conduct in violation of FDUTPA when it made representations and/or omissions regarding the usability of the DG-branded Motor Oil Products that it markets and sells that are likely to mislead consumers acting reasonably under the circumstances, to the consumer's detriment.

62. Defendant further engaged in deceptive conduct by placing the unsuitable motor oil products next to suitable motor oil products on its store shelves.

63. Dollar General had a duty to disclose the material characteristics of its motor oil because it (i) knew about these characteristics at the time that Plaintiffs and other Sub-Class Members purchased Dollar General's motor oil; (ii) had exclusive knowledge of material facts that were not known to Plaintiffs; and (iii) made representations regarding the quality its motor oil without adequately disclosing that its motor oil was not suitable for the vehicles driven by most of its customers.

64. Clearly, reasonable consumers would, as a result of Defendant's misrepresentations and omissions, be misled and believe that the DG-branded motor oils were suitable for use in their automobiles.

65. It is highly probably that these representations and omissions are likely to cause injury to a reasonable consumer, and Defendant's misrepresentations and omissions are likely to mislead consumers.

66. As a direct and proximate result of Defendant's deceptive conduct, Plaintiffs and the Class Members have suffered damages.

67. Plaintiffs and the Class Members have been injured in their property by reason of Defendant's deceptive acts alleged herein. The injury consists of purchasing a worthless product that they would not have paid for in the absence of these deceptive acts. This injury is of the type Fla. Stat. § 501.201, *et seq.*, was designed to prevent and directly results from Defendant's deceptive and unlawful conduct.

68. In addition to actual damages, Plaintiffs and the Class are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

COUNT II
Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(unfair acts or practices)

69. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as though fully set forth herein.

70. Defendant further violated FDUTPA by engaging in unfair practices against Plaintiffs and the Class.

71. Given the unsuitability of Defendant's DG-branded Motor Oil Products for use in automobiles manufactured after 1988, Defendant's sale of the product, especially accompanied by the misrepresentations, omissions, and misleading shelf placement described herein, is a practice that is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers. Defendant has been preying upon individuals with limited income, deceiving them into paying for an unsuitable product.

72. The practices described herein also offend established public policy regarding the protection of consumers against companies, like Defendant, who engage in unfair methods of competition.

73. Defendant's conduct, which caused substantial injury to Plaintiffs and the Class could have been avoided, and is not outweighed by countervailing benefits to any consumers or competition.

74. Dollar General's business acts and practices are also unfair because they have caused harm and injury-in-fact to Plaintiffs and Class Members and for which Dollar General has no justification other than to increase, beyond what Dollar General would have otherwise realized, its market share and revenue from sale of the motor oil.

75. Dollar General's conduct lacks reasonable and legitimate justification. Dollar General has benefited from such conduct and practices while Plaintiffs and Class Members have been misled as to the nature and integrity of the motor oil and have lost money, including the purchase price of the motor oil.

76. In addition, Dollar General's *modus operandi* constitutes an unfair practice in that Dollar General knew and should have known that consumers care about maintaining their vehicles and the performance of the vehicles, but are unlikely to be aware of and/or able to detect the means by which Dollar General was conducting itself in a manner adverse to its commitments and its customers' interests.

77. While Dollar General conveyed the impression to reasonable consumers that its Motor Oil Products were safe to use in their automobiles, in actuality, its motor oil is not suitable for use in the vehicles driven by the vast majority of its customers.

78. The practices complained of herein are not limited to a single instance but is rather done pervasively and uniformly at all times as against Plaintiffs and the Class.

79. As a direct and proximate result of Defendant's unfair conduct, Plaintiffs and the Class Members have suffered damages.

80. Plaintiffs and the Class Members have been injured in their property by reason of Defendant's unfair acts alleged herein. The injury consists of purchasing a worthless product that they would not have paid for in the absence of these unfair acts. This injury is of the type Fla. Stat. § 501.201, *et seq.*, was designed to prevent and directly results from Defendant's unfair and unlawful conduct.

81. In addition to actual damages, Plaintiffs and the Class are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

COUNT III
Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(misleading advertising)

82. Plaintiffs hereby incorporate by reference each of the proceeding allegations as if fully set forth herein.

83. Defendant further violated FDUTPA by violating a "statute...which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices." Fla. Stat. 501.203(3)(c). Here, Defendant violated Florida's Misleading Advertising Law (Fla. Stat. 817.41), as described in Count IV of this Complaint.

84. Defendant's misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, as described herein as violating FDUTPA, would deceive an objectively reasonable consumer.

85. As a result of Defendant's misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, Plaintiffs and the Class Members suffered actual damages by losing money. Defendant's product was worthless and thus the Plaintiffs and Class Members' damages are the purchase price of the product.

86. As a result of these FDUTPA violations, Plaintiffs and the Class Members are entitled to actual damages, attorney's fees, costs, declaratory relief, and injunctive relief.

COUNT IV
Violations of the Florida Misleading Advertising Law
Fla. Stat. § 817.41, et seq.

87. Plaintiffs hereby incorporate by reference each of the proceeding allegations as if fully set forth herein.

88. Through the misrepresentations and omissions made in Defendant's product regarding the suitability of DG-branded motor oils for use in automobiles, Defendant unlawfully disseminated or caused to be made misleading advertisements in Florida, in violation of Fla. Stat. 817.41.

89. Though described above, Plaintiffs reiterate the specific circumstances surrounding Defendant's misleading advertising:

- a. **Who.** Defendant made (or caused to be made) the material misrepresentations and omissions described herein. Plaintiffs are unaware, and therefore unable to identify, the true names and identities of those individuals at Dollar General who are responsible for drafting the language comprising the false and/or misleading advertisements.
- b. **What.** Defendant's product packaging made material misrepresentations, such as:

- i. the front of the packaging, which represents that the Motor Oil Product “[l]ubricates and protects your engine”;
 - ii. the back of the packaging, which represents that the Motor Oil Product “is an all-season, multi-viscosity, heavy duty detergent motor oil recommended for gasoline engines in older model cars and trucks”; and
 - iii. the back of the 10w-30 and/or 10w-40 packaging, which represents that the Motor Oil Product “provides oxidation stability, antiwear performance, and protection against deposits, rust and corrosion”;
 - iv. the back of the SAE 20 packaging, which represents that “DG Quality SAE 30 is a non-detergent motor oil designed for use in older engines where consumption may be high and economical lubricants are preferred”; and
 - v. the placement of the Motor Oil Products next to products that are actually suitable for use in Plaintiffs’ and the Class Members’ automobiles.
- c. **Where.** The false advertising occurred on Defendant’s product packaging and/or product placement which were transmitted, displayed, and/or occurred throughout the State of Florida.
- d. **When.** Upon information and belief, Defendant engaged in the false advertising detailed herein continuously during the Class Period.
- e. **Why.** Defendant made the false advertisements with the intent to induce Plaintiffs to rely upon them and purchase the product.

90. The misrepresentations and omissions as to the suitability of the Motor Oil Products for use in automobiles are material to Plaintiffs, the Class Members, and the average consumers.

91. Defendant knew or should have known (through the exercise of reasonable care or investigation) that the advertisements were false, untrue, or misleading.

92. Defendant's misrepresentations and omissions were designed and intended, either directly or indirectly, for obtaining money from Plaintiffs and the Class Members under false pretenses by inducing them to purchase Defendant's product. Defendant intended that the representations would induce Plaintiffs and the Class Members to rely upon it and purchase Defendant's product.

93. Plaintiffs and the Class Members relied to their detriment on Defendant's false advertising, by purchasing a motor oil product that they would not otherwise have purchased.

94. Plaintiffs and the Class Members suffered injury in justifiable reliance on Defendant's false advertising; namely they lost money by purchasing a product that they would not otherwise (but for the false advertising) have purchased.

95. Pursuant to Fla. Stat. 817.41, Plaintiffs and the Class Members are entitled to costs, reasonable attorney's fees, actual damages, and punitive damages

96. Punitive damages are appropriate here, given that Defendant knowingly misled consumers including Plaintiffs and the Class and engaged in the willful, wanton, and/or reckless conduct described herein. Here, Defendant engaged in intentional misconduct (or alternatively, gross negligence) as to the misrepresentations and omissions concerning the suitability the Motor Oil Products for use in automobiles that form the heart of Plaintiffs' claims.

NOTICE OF BRACH OF IMPLIED WARRANTY OF MERCHANTABILITY

Breach of Implied Warranty of Merchantability

Fla. Stat. § 672.317

97. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

98. Given Defendants' concealment, Plaintiffs were unaware of any potential claims against Defendant for breaches of the implied warranty of merchantability.

99. Plaintiffs have only recently become aware of the legal situation.

100. This filing and service of this lawsuit serves as notice complying with notice provisions of Florida's Uniform Commercial Code, and Plaintiffs will amend their complaint accordingly to add this cause of action.

DEMAND/PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and Members of the Class defined herein, pray for judgment and relief as follows:

- A. An order certifying that this action may be maintained as a class action;
- B. The acts and/or omissions alleged herein be adjudged and decreed to be an unfair, deceptive, and/or fraudulent business practice violating FDUTPA;
- C. That judgment be entered against Defendant and in favor of Plaintiffs and the Class on the Plaintiffs' FDUTPA and (forthcoming) implied warranty claim, for actual and consequential damages and equitable relief (including restitution and/or restitutionary disgorgement);
- D. That judgment be entered against Defendant and in favor of Plaintiffs and the Class on Plaintiffs' Misleading Advertising claim, for actual and punitive damages;

- E. An order enjoining Defendant from engaging in the unfair and/or deceptive acts or practices, as set forth in this Complaint;
- F. Compensatory damages;
- G. Punitive Damages;
- H. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- I. Prejudgment and post-judgment interest at the prevailing legal rate;
- J. Plaintiffs' attorneys' fees and costs of suit; and
- K. Such other and further relief as the Court may deem necessary and appropriate.

JURY TRIAL DEMANDED

December 18, 2015

Respectfully submitted,

KU & MUSSMAN, PA

By: /s/ Brian T. Ku

Brian T. Ku, Esq. (Fla. # 610461)
brian@kumusman.com
Louis Mussman, Esq. (Fla # 597155)
louis@kumusman.com
6001 NW 153rd Street, Suite 100
Miami Lakes, Florida 33014
Tel: (305) 891-1322
Fax: (305) 891-4512

and

KANNER & WHITELEY, LLC
Allan Kanner, Esq. (*PHV forthcoming*)
a.kanner@kanner-law.com
701 Camp Street
New Orleans, Louisiana 70130
Tel: (504) 524-5777
Fax: (504) 524-5763

Attorneys for Plaintiffs and the Class

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS BRADFORD BARFOOT & LEONARD KARPEICHIK DEFENDANTS DOLGENCORP, LLC (d/b/a/ DOLLAR GENERAL)

(b) County of Residence of First Listed Plaintiff MIAMI-DADE (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number) Ku & Mussman, P.A.- Brian T. Ku, Esq.- 6001 NW 153 St., Ste. 100 Miami Lakes, FL 33014- Tel:(305)891-1322 Fax:(305)891-4512

(d) Check County Where Action Arose: [x] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III) PTF DEF 1 Citizen of This State [x] 1 Incorporated or Principal Place of Business In This State 2 Citizen of Another State [] 2 Incorporated and Principal Place of Business In Another State 3 Citizen or Subject of a Foreign Country [] 3 Foreign Nation 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only) [x] 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [x] NO b) Related Cases [] YES [x] NO JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION 28 USC s 1332(d) LENGTH OF TRIAL via days estimated (for both sides to try entire case) Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

VIII. REQUESTED IN COMPLAINT: [x] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000+ CHECK YES only if demanded in complaint: JURY DEMAND: [x] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE SIGNATURE OF ATTORNEY OF RECORD

December 18, 2015 /s/ Brian T. Ku

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

BRADFORD BARFOOT and LEONARD
KARPEICHUK, on behalf of themselves and all others
similarly situated,

Plaintiff(s)

v.

DOLGENCORP, LLC
(d/b/a DOLLAR GENERAL),
a Kentucky Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DOLGENCORP, LLC
By Serving Registered Agent:
Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301-2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Brian T. Ku, Esq.
Ku & Mussman, P.A.
6001 NW 153 Street, Suite 100
Miami Lakes, FL 33014
Tel: (305) 891-1322
Fax: (305) 891-4512

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: