

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT COVINGTON**

CASE NO. _____

JOHN FOPPE,
on behalf of himself
and all others similarly situated,

PLAINTIFFS

v.

DOLLAR GENERAL CORPORATION,
a Tennessee corporation;
Serve Registered Agent:
Corporation Service Company
2908 Poston Avenue
Nashville, TN 37203

DEFENDANTS

and

Dolgencorp, L.L.C.,
a Kentucky Limited Liability Company
Serve Registered Agent:
Corporation Service Company
421 West Main Street
Frankfort, KY 40601
Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff John Foppe (“Plaintiff”), on behalf of himself and all others similarly situated, makes the following allegations based on his personal knowledge of his own acts and, otherwise, upon information and belief based on investigation of counsel.

NATURE AND SUMMARY OF THE ACTION

1. Plaintiff, by and through undersigned counsel, brings this action both on his own behalf and on behalf of the class defined below, comprised of all individuals similarly situated within the State of Kentucky, to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation (individually referred to as “Dollar Corp.”) doing business in Kentucky and Dolgencorp, LLC, a Kentucky limited liability company (individually referred to as “Dolgencorp”) doing business in Kentucky (collectively referred to as “Defendants”) in connection with its marketing and sale of its company-branded motor oil sold in its stores.

2. Defendants own or operate retail stores in the State of Kentucky and throughout the United States under the name Dollar General.

3. 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 and misleading tactics including the positioning of its line of obsolete motor oils immediately adjacent to the more expensive standard quality and premium quality motor oils manufactured by its competitors and failing to adequately warn its customers that its DG motor oil is unsuitable for use by the vast majority, if any, of its customers.

4. Defendants’ unlawful and deceptive business practices violate the Kentucky Consumer Protection Act (KRS Chapter 367, *et seq.*).

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), because members of the proposed Class are citizens of States different from

Defendants' home states of Tennessee and Kentucky, there are more than 100 Class Members, and the amount-in-controversy exceeds \$5,000,000 exclusive of interest and costs.

6. This Court has jurisdiction over Defendant Dollar Corp because it is a foreign corporation authorized to do business in Kentucky, do sufficient business in Kentucky, and have sufficient minimum contacts with Kentucky or otherwise intentionally avail themselves of the laws and markets of Kentucky, through the promotion, sale, marketing and distribution of its merchandise in Kentucky, to render the exercise of jurisdiction by the Kentucky courts permissible. This Court also has jurisdiction over Defendant Dolgencorp because it is a Limited Liability Company organized under the laws of Kentucky.

7. Venue is proper in this District under 28 U.S.C. §1391(b) and (c) because Defendants' improper conduct alleged in this complaint occurred in this judicial district, because Defendants have caused harm to Class Members residing in this district, and/or because the Defendants are subject to personal jurisdiction in this district.

8. Defendants operate numerous stores in Kentucky and have received substantial compensation from Kentucky consumers who purchase goods from Defendants.

PARTIES

9. Plaintiff John Foppe is an individual adult resident citizen of Alexandria, Campbell County, Kentucky and is a member of the Class alleged herein.

10. Plaintiff purchased Dollar General's DG SAE 10W-30 motor oil from Dollar General's store at 9809 US 27, Alexandria, Kentucky 41001, on February 5, 2016.

11. Defendant Dollar Corp. is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant Dollar Corp. can be served through its registered agent for service: Corporation

Service Company, 2908 Poston Ave., Nashville, Tennessee, 37203.

12. Defendant Dolgencorp, LLC is a Kentucky limited liability company with its principal office located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant Dolgencorp, LLC can be served through its registered agent for service: Corporation Service Company, 421 West Main Street, Frankfort, Kentucky 40601.

13. At all relevant times, Defendants produced, marketed, distributed and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of Kentucky, utilizing deceptive and misleading marketing and sales practices to induce Plaintiff and Class Members into purchasing its obsolete motor oil for use in their modern-day vehicles knowing that its motor oil is obsolete and likely to cause damage to any such vehicle.

FACTUAL ALLEGATIONS

14. Defendants operate a chain of retail variety stores under the name “Dollar General Stores” that are headquartered in Goodlettsville, Tennessee.

15. 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.

16. Dollar General offers basic every day 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.

17. In addition to offering name brand and generic merchandise, Dollar General manufactures 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.”

18. 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 that fail to protect and can actively damage, modern-day automobiles.

19. Motor oils are intended to lubricate the engines of the automobiles. The main function of motor oil is to reduce wear on an engine’s moving parts. Motor oils also inhibit corrosion, improve sealing, and keep engines properly cooled.

20. 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.

21. 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.

22. Dollar General engages in the unfair, unlawful, deceptive and fraudulent practice of marketing, selling and causing to be manufactured, obsolete motor oil without adequately 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).

23. Dollar General misleads customers using product placement tactics and misleading product labels, which obscure a critical fact from Dollar General’s customers: Dollar

General's motor oil is unfit for, and can harm, the vehicles driven by the vast majority, if not all, of its customers.

24. Dollar General's in-house motor oils 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 and beside which Dollar General places its DG brand motor oil on its shelves.

25. Additionally, the front label of DG's SAE 10W-30 and SAE 10W-40 motor oils says "Lubricates and protects your engine."

26. However, among the small print on the back label of Dollar General's motor oils 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."

27. Dollar General conceals this language by rendering it in small font and confining it to the product's back label.

28. Dollar General further conceals this language by placing it below a message that presents a misleading impression of 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, anti-wear 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.”

29. 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.

30. 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.

31. Dollar General places its in-house brand motor oils on the same shelves, in the same or similar quantities, as PEAK, Pennzoil, Castrol, and 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.

32. Defendants’ product display conceals the fact that its DG-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines of most of their customer’s cars. Defendants’ product positioning and the deceptive label on the motor oil are likely to deceive reasonable consumers.

33. Dollar General also fails to warn its customers adequately of the obsolete nature of DG-branded motor oils or of the dangers DG-branded motor oils pose to the very automobiles its customers are trying to protect by purchasing Dollar General’s motor oil. An adequate

warning for Dollar General's obsolete motor oils 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 products in small type where customers are unlikely to encounter them.

34. DG SAE 30's back label – in fine print – 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. DG SAE 10W-30 and DG SAE 10W-40's back labels – in fine print – 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.”

36. Dollar General's entire line of low-cost motor oil is unsuitable for the modern-day vehicles driven by its customers and has 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.

37. Dollar General knew or should have known that its customers are being, or will, in reasonable probability, be 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.

38. The Kentucky Consumer Protection Act is designed to protect consumers from this type of false, deceptive, misleading, and predatory unconscionable conduct.

39. Defendants' unfair and deceptive course of conduct victimized all purchasers of Dollar General's motor oil from Dollar General, throughout the country and in the State of Kentucky.

40. As a direct and proximate result of Dollar General's deceptive and fraudulent practices, Named Plaintiff and the Class Members purchased a product they would not have otherwise purchased and have suffered and will continue to suffer economic damages.

41. In addition, many Class Members have sustained damage to their automobiles as a result of the use of Dollar General's DG-branded motor oil and have suffered and will continue to suffer economic damage as a result.

42. Named Plaintiff therefore brings the statutory and common law claims alleged herein to halt Dollar General's deceptive practices and to obtain compensation for the losses suffered by Named Plaintiff and all Class Members.

CLASS ACTION ALLEGATIONS

43. Named Plaintiff brings 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 persons in the State of Kentucky who purchased Defendants' DG-branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE 30, for personal use and not for re-sale, since February 15, 2014.

44. 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.

45. Specifically excluded from the proposed Class are Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with defendants and/or their 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

46. 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 Defendants' records. Plaintiff reasonably estimates that there are hundreds or thousands of persons in the Class.

47. Adequacy of Representation. Named Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Named Plaintiff has retained counsel highly experienced in complex consumer class action litigation and intends to prosecute this action vigorously. Plaintiff is a member of the Class described herein and does not have interests antagonistic to, or in conflict with, the other members of the Class.

48. Typicality. Named Plaintiff's claims are typical of the claims of the members of the Class and any Sub-Class. Plaintiff and all members of the Class and any Sub-Class purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General and were subjected to Defendants' common course of conduct.

49. 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 Defendants' in-house brand motor oil it sold relative to the other brands of oil on its shelves;
- b) The amount of Defendants' in-house brand motor oil it sold relative to the limited number of automobiles for which these motor oils are appropriate;
- c) Whether Defendants studied the effect of its product placement on their shelves;
- d) Whether Defendants studied or tested their labeling and the effect of their labeling on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell the DG-branded motor oil compared to the revenue it received from its sales;
- g) Whether Defendants misrepresented the safety and suitability of the DG branded motor oil sold at stores nationwide;
- h) Whether Defendants' conduct of placing the obsolete Dollar General motor oil next to legitimate, useful motor oil is likely to deceive reasonable consumers;
- i) Whether the warnings provided on the labels of DG-branded motor oil were adequate;
- j) Whether Defendants' conduct of hiding the warnings on the back label is likely to deceive reasonable consumers;
- k) Whether Defendants deliberately misrepresented or failed to disclose material facts to Plaintiff and Class Members regarding the obsolete and harmful nature of DG-branded motor oil;

- l) Whether Defendants' conduct, as alleged herein, constitutes a deceptive, misleading or unconscionable act or practice actionable under the Kentucky Consumer Protection Act;
- m) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
- n) Whether Plaintiff and members of the Class are entitled to restitution;
- o) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
- p) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;
- q) The proper method for calculating damages and restitution classwide; and
- r) Whether Plaintiff and Class Members are entitled to declaratory and/or other equitable relief.

FRCP 23(b)(2)

50. Defendants have acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class 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 members of the Class that would establish incompatible standards of conduct for Defendant.

51. 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)

52. Common Issues Predominate: As set forth in detail herein above, common issues of fact and law predominate because all of named Plaintiff's Kentucky Consumer Protection Act claims are based on a deceptive common course of conduct. Whether Defendants' conduct is likely to deceive reasonable consumers is common to all members of the Class and are the predominate issues, and Plaintiff can prove the elements of his 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.

53. 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 Defendants, 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, Defendants' violations of law will proceed without remedy, and Defendants will continue to reap and retain the substantial proceeds derived from

their wrongful and unlawful conduct. Plaintiff and Class Members have suffered damages as a result of Defendants' unlawful and unfair conduct. This action presents no difficulties that will impede its management by the Court as a class action

54. Notice to the Class: Notice can be accomplished by publication for most Class Members and direct notice may be possible through Defendants' sales records and for those class members who are enrolled in Dollar General's rewards program or for whom Dollar General has specific information. Further, publication notice can be easily targeted to Dollar General customers because Defendant only sells the subject motor oil in its own stores.

55. The Class members have been monetarily damaged and suffered injury in fact as a result of Dollar General's misconduct, in that each member purchased Dollar General's useless and harmful motor oil.

CLAIMS FOR RELIEF

56. Based on the foregoing allegations, Plaintiff's claims for relief include the following:

FIRST CAUSE OF ACTION **VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT** **(KRS § 367, *et seq.*)**

57. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

58. Defendants are designers, manufacturers, promoters, marketers, developers, sellers, and/or distributors of the obsolete and potentially harmful DG-branded motor oil.

59. Defendants sold the obsolete and potentially harmful DG-branded motor oil in Kentucky and throughout the United States during the Class Period.

60. Defendants knew or should have known that the DG-branded motor oil at issue caused their customers, in reasonable probability, to be deceived by their 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.

61. Defendants have violated the Kentucky Consumer Protection Act, KRS § 367.170 which prohibits “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.”

62. In selling the DG-branded oil at issue to Plaintiff, Defendants have used deception unfair, false, misleading or deceptive acts or practices, either expressly or by implication, by representing that: (i) Dollar General’s DG-branded motor oil was suitable for use in its customers’ automobiles; (ii) that Dollar General’s DG-branded motor oil was safe to use in its customers’ automobiles; and (iii) that Dollar General’s DG-branded motor oil was of similar quality as the other motor oils beside which Dollar General’s DG-branded motor oils were positioned on the shelves in Defendants’ stores.

63. Defendants intentionally and knowingly used deception, false pretense, false promise, misrepresentation and/or concealment of material facts regarding the obsolete and potentially harmful DG-branded motor oil with intent to mislead Plaintiff and the Class Plaintiffs.

64. As a result of Defendants’ unlawful business practices, Plaintiff and Class Plaintiffs are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten gains and to restore to Plaintiff and any Class member any money paid for the obsolete and potentially harmful DG-branded motor oil.

65. As alleged hereinabove, Plaintiff has standing to pursue this claim under the authority granted by KRS § 367.220 as Plaintiff has suffered actual economic damages as a proximate result of Defendants' actions as set forth herein.

SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY –
KRS § 355.2-101 *ET SEQ.*

66. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

67. Plaintiff and Class Plaintiffs are “buyer[s]” as defined by KRS § 355.2-103(1)(a).

68. Defendants are “seller[s]” as defined by KRS § 355.2-103(1)(d).

69. Defendants are “merchant[s]” as defined by KRS § 355.2-104.

70. Defendants' DG-branded oil falls within the definition of “goods” under KRS § 355.2-105.

71. Defendants sold the obsolete and potentially harmful DG-branded motor oil in Kentucky and throughout the United States during the Class Period.

72. Pursuant to KRS § 355.2-314, “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.”

73. The DG-branded oil at issue was not merchantable for one or more of the following reasons:

- a. the DG-branded oil does not pass without objection in the trade under the contract description;
- b. are not of fair average quality within the description; and/or
- c. are not fit for the ordinary purpose for which such goods are used.

74. In selling the DG-branded oil at issue to Plaintiff, Defendants have breached the implied warranty of merchantability under § 355.2-314.

75. Defendant intentionally and knowingly used deception, false pretense, false promise, misrepresentation and/or concealment of material facts regarding the obsolete and potentially harmful DG-branded motor oil with intent to mislead Plaintiff and the Class Plaintiffs.

DEMAND/PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and members of the Class defined herein, prays for judgment and relief as follows:

- A. An order certifying that this action may be maintained as a class action;
- B. An award to Named Plaintiff and Class Members of full restitution;
- C. An order providing for declaratory and/or injunctive relief:
 - 1. Declaring that Defendants must provide accurate representations of the quality of the motor oil sold at its stores;
 - 2. Enjoining Defendants from continuing the deceptive practices alleged herein; and
 - 3. Granting other extraordinary equitable and/or injunctive relief as permitted by law, including specific performance, reformation and imposition of a constructive trust;
- D. Compensatory economic damages;
- E. Punitive damages and/or additional damages for violations of the KRS § 367.170 as set forth above which were committed knowingly;
- F. Restitution and equitable disgorgement of the unlawful profits collected by the Defendant;
- G. Prejudgment and post-judgment interest at the prevailing legal rate;

- H. Plaintiff's attorneys' fees and costs of suit; and
- I. Such other and further relief as the Court may deem necessary and appropriate.

DESIGNATION OF PLACE OF TRIAL

Named Plaintiff and Class Members designate Covington, Kentucky as the place of trial for this matter.

JURY DEMAND

Named Plaintiff and Class Members, pursuant to Fed. R. Civ. P. 38(b), hereby demand trial by jury on all issues so triable.

Dated: February 10, 2016

Respectfully submitted,

/s/ David A. Futscher

David A. Futscher #82093
Futscher Law PLLC
913 N. Oak Drive
Villa Hills, KY 41017
Telephone: (859)912-2394
and
Kenneth B. McClain (Pro Hac Vice)
Kevin D. Stanley (Pro Hac Vice)
Colin W. McClain (Pro Hac Vice)
Humphrey Farrington & McClain, P.C.
221 West Lexington, Suite 400
Independence, MO 64050
Telephone: (816) 836-5050
Facsimile: (816) 836-8966

Attorneys for Plaintiffs

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.)

I. (a) PLAINTIFFS

John Foppe

(b) County of Residence of First Listed Plaintiff Campbell, KY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David Futscher
Futscher Law PLLC
913 N. Oak Drive, Villa Hills, KY 41017 (859) 912-2394

DEFENDANTS

Dollar General Corporation
Dolgenercorp, L.L.C.

County of Residence of First Listed Defendant Davidson, TN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 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)

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

- Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 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 Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 and injunctive relief
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/10/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ David Futscher

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

JOHN FOPPE,
on behalf of himself
and all others similarly situated

Plaintiff(s)

v.

DOLLAR GENERAL CORPORATION
and
DOLGENCORP, L.L.C.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DOLLAR GENERAL CORPORATION
Serve Registered Agent:
Corporation Service Company
2908 Poston Avenue
Nashville, TN 37203

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: David Futscher
Futscher Law PLLC
913 N Oak Dr
Villa Hills, KY 41017

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:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

JOHN FOPPE,
on behalf of himself
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Plaintiff(s)

v.

DOLLAR GENERAL CORPORATION
and
DOLGENCORP, L.L.C.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DOLGENCORP, L.L.C.
Serve Registered Agent:
Corporation Service Company
421 West Main Street
Frankfort, KY 40601

A lawsuit has been filed against you.

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Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: