

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

JOHN J. McCORMICK, III,  
Individually and on behalf of all  
others similarly situated,  
28 Windemere Parkway  
Phoenix, Maryland 21131

Plaintiff,

vs.

CIVIL ACTION NO. \_\_\_\_\_

DOLGENCORP, LLC,  
d/b/a DOLLAR GENERAL, CORPORATION,  
a Kentucky limited liability company  
100 Mission Ridge  
Goodlettsville, TN 37072

SERVE ON: RESIDENT AGENT  
CSC-Lawyers Incorporating Service Co.  
7 St. Paul Street, Suite 820  
Baltimore, Maryland 21202

Defendant.

\* \* \* \* \*

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff John J. McCormick, III ("Plaintiff"), individually and on behalf of 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 Maryland, to redress the unlawful and deceptive practices employed by Defendant, DOLGENCORP, LLC, (d/b/a Dollar General, Corporation), (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 and misleading tactics including the positioning of its line of obsolete motor oils immediately adjacent to the more expensive standard- 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.

3. Dollar General’s unlawful and deceptive business practices violate the Maryland Consumer Protection Act, Md. Code Ann., Commercial Law Article §13-101, *et seq.* (sometimes “MCPA”); and the contractual rights of consumers.

#### **JURISDICTION AND VENUE**

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

5. This Court has jurisdiction over Defendant because Defendant is a foreign corporation or association authorized to do business in Maryland and registered with the Maryland Secretary of State, does sufficient business in Maryland, and has sufficient minimum contacts with Maryland or otherwise intentionally avails itself of the laws and markets of Maryland, through the promotion, sale, marketing and distribution of its merchandise in Maryland, to render the exercise of jurisdiction by the Maryland courts permissible.

6. Venue is proper in this District under 28 U.S.C. §1391(b) and (c) because Defendant’s improper conduct alleged in this complaint occurred in, was directed from, and/or emanated

from this judicial district, because Defendant has caused harm to Class Members residing in this district, and/or because the Defendant is subject to personal jurisdiction in this district.

7. In addition, Defendant operates over 12 stores in Maryland and has received substantial compensation from Maryland consumers who purchase goods from Defendant.

### **PARTIES**

8. Plaintiff John J. McCormick, III is an individual adult resident citizen of Baltimore County, Maryland and is a member of the Class alleged herein.

9. Plaintiff purchased Dollar General's DG SAE 10W-40 motor oil from Dollar General's store in Cockeysville, Maryland, in 2015 for his 2008 Ford 150 truck.

10. 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. Dollar General maintains over 12 stores throughout the state of Maryland.

11. At all relevant times, Defendant produced, marketed, distributed and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of Maryland, 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**

12. 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 over 12 stores located in the State of Maryland.



13. 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.

14. 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.

15. 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."

16. 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.

17. 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.

18. 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.

19. 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.

20. 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).

21. 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.

22. 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.

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

24. 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."

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

26. 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, 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 was taken at Dollar General's Cockeysville, Maryland store and illustrates how Dollar General effects this deception:







29. As the photograph above illustrates, 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.

30. Defendant's 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. Defendant's product positioning and the deceptive label on the motor oil are likely to deceive reasonable consumers.

31. 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.

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 entire line of low-cost motor oil is unsuitable for the modern-day vehicles driven by its customers and has no business being sold by, 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. Maryland's consumer protection laws are designed to protect consumers from this type of false advertising and predatory conduct.

38. Defendant's unfair and deceptive course of conduct victimized all 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, Plaintiff and the Class Members purchased a product they would not have otherwise purchased and have suffered and will continue to suffer economic damages.

40. 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.

41. 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 Plaintiff and all Class Members.

#### **CLASS ACTION ALLEGATIONS**

42. 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 Maryland who purchased Defendant's 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 December 2011.**



43. 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.

44. 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**

45. **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. Plaintiff reasonably estimates that there are thousands of persons in the Class.

46. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. 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.

47. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General and were subjected to Defendant's common course of conduct.

48. **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 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 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 misrepresented the safety and suitability of its DG-branded motor oil sold at its stores nationwide;
- h) Whether Defendant's 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 Dollar General's motor oil were adequate;
- j) Whether Defendant's conduct of hiding the warnings on the back label is likely to deceive reasonable consumers;



- k) Whether Defendant deliberately misrepresented or failed to disclose material facts to Plaintiff and Class Members regarding the obsolete and harmful nature of its DG-branded motor oil;
- l) Whether Dollar General's conduct, as alleged herein, is unlawful, unfair, or fraudulent under the provisions of the Maryland's Consumer Protection Act, Md. Code Ann., §13-101, *et seq.*;
- 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 and consequential 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)**

49. Defendant has 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 member of the Class that would establish incompatible standards of conduct for Defendant.

50. 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)**

51. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Plaintiff's MCPA and warranty claims are based on a deceptive common course of conduct. Whether Dollar General's conduct is likely to deceive reasonable consumers and breaches the implied warranties of merchantability and fitness for a particular purpose 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

52. **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. Plaintiff 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.

53. **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 customers because Defendant only sells the subject motor oil in its own stores.

54. 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**

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

#### **FIRST CAUSE OF ACTION** **VIOLATION OF MARYLAND CONSUMER PROTECTION ACT** **Md. Code Ann., Commercial Law Article §13-101, *et seq.***

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

57. Plaintiff brings this claim under Md. Code Ann., Commercial Law Article §13-101, *et seq.*, the MCPA, on behalf of himself and members of the Class, who were subject to Defendant's above-described unfair and deceptive conduct.

58. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's actions as set forth herein.

59. Plaintiff and members of the Class are buyers as defined by Md. Code Ann., Commercial Law Article §2-103(1)(a), *et seq.* The DG-branded motor oils are consumer goods within the meaning of Md. Code Ann., Commercial Law Article §9-102(a)(23).

60. This cause of action is asserted on behalf of a subclass of the putative Class, comprised of those members who purchased DG-branded motor oil within four (4) years of the commencement of this action.

61. Specifically, as described herein, Dollar General made the following representations, expressly or by implication to Plaintiff and Class Members about the deceptively labeled motor oil: (i) that 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 Defendant's stores.

62. These representations were materially misleading.

63. Defendant violated and continues to violate the MCPA by engaging in the following practices proscribed by §13-301 of the Commercial Law Article in transactions with Plaintiff and members of the Class, which were intended to result in, and did result in, the sale of DG-branded motor oils:

- a. By representing that DG branded motor oils "lubricate[] and protect[] your engine," placing the DG-branded motor oils on shelves next to legitimate



motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG-branded motor oils have characteristics and uses which do they not have;

- b. By representing that DG branded motor oils “lubricate[] and protect[] your engine,” and placing the DG-branded motor oils on shelves next to legitimate motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG-branded motor oils are of a particular standard, quality, or grade, when they are of another;
- c. By representing that DG branded motor oils “lubricate[] and protect[] your engine,” and placing the DG-branded motor oils on shelves next to legitimate motor oils intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is “[a]dvertising goods... with intent not to sell them as advertised;”
- d. By engaging in false and misleading advertising for its sale of the obsolete DG-branded motor oil. Defendant makes false and misleading statements the product will “lubricate and protect your engine,” deceptively places the products next to legitimate motor oils, and fails to conspicuously or adequately warn consumers that the DG-branded motor oil is not suitable for most vehicles and can harm vehicles manufactured after 1988 (or 1930); and
- e. By engaging in the deceptive conduct alleged hereinabove, Defendant made deceptive and untrue representations regarding DG-branded motor oil for the

purpose of inducing the public to purchase the products.

- f. By engaging in the deceptive conduct alleged hereinabove, Defendant's untrue and misleading advertising presents a continuing threat to members of the public because their advertisements induce consumers to purchase its motor oil, which are unsafe and not suitable for use in their automobiles, instead of other motor oils.

64. Defendant violated the MPCA by failing to adequately warn Plaintiff and members of the Class that DG-branded motor oils are not suitable for, and can harm, most vehicles on the road.

65. Defendant's actions as described herein were done with conscious disregard of Plaintiff's rights, and Defendant was wanton and malicious in its concealment of the same.

66. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the MPCA because Defendant continues to sell the obsolete oil without adequate warnings and represent the DG-branded motor oils have characteristics and abilities which the products do not have, and has thus injured and continues to injure Plaintiff and the Class.

67. Plaintiff and other members of the putative Class have suffered injury in fact and have lost money as a result of Defendant's deceptive conduct. Plaintiff would not have purchased the DG-branded motor oil if he had known it was obsolete and not suitable for his vehicle, was not capable of protecting or lubricating his vehicle's engine, and could harm his vehicle.

68. As a result of the violations of Maryland law described above, Defendant has been, and will be, unjustly enriched by receipt of millions of dollars in monies received from customers who have purchased and will continue to purchase obsolete and harmful motor oil from its stores



which advertise and/or otherwise market in this State and this Country, and which materially misrepresent the quality of its motor oils.

69. Plaintiff and other members of the putative Class have suffered injury in fact and have lost money as a result of Defendant's deceptive conduct. Plaintiff would not have purchased the DG-branded motor oil if he had known it was obsolete and not suitable for his vehicle, was not capable of protecting or lubricating his vehicle's engine, and could harm his vehicle.

70. Defendant's business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the information because Defendant intentionally mislead the consuming public by means of the claims, inadequate warnings and conduct with respect to DG-branded motor oil as set forth herein.

71. Defendant's business practices as alleged herein are fraudulent because they are likely to deceive customers into believing that DG-branded motor oil is actually useful for the purpose for which it is sold (to protect and lubricate vehicle engines), and it knows the warnings in small print on the back of products underneath misleading information about the product characteristics will deceive consumers into purchasing oil that has no use to them, is worthless, and which can actually harm their vehicles.

72. In addition, Defendant's use of various forms of advertising media to advertise, call attention to or give publicity to the sale of goods or merchandise which are not as represented constitutes unfair, deceptive, untrue or misleading advertising, and an unlawful trade practice within the meaning of the MPCA.

73. Plaintiff and the putative class members were misled into purchasing DG-motor oil by Defendant's deceptive and fraudulent conduct as alleged hereinabove.

74. Plaintiff and other members of the putative Class have suffered injury in fact and have lost money as a result of Defendant's deceptive conduct. Plaintiff would not have purchased the DG-branded motor oil if he had known it was obsolete and not suitable for his vehicle, was not capable of protecting or lubricating his vehicle's engine, and could harm his vehicle.

75. Plaintiff requests an order awarding Plaintiff and the Class restitution of the money wrongfully acquired by Defendant by means of the unfair and deceptive trade practices alleged herein.

**SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability, § 2-314**  
**of the Maryland Uniform Commercial Code**

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

77. Plaintiff and members of the Class are each a "buyer" within the meaning of §2-103(1)(a) of the Commercial Law Article, Md. Ann. Code.

78. DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 are each a "consumer good" within the meaning of §13-101(d) of the Commercial Law Article.

79. Dollar General is a "seller" of DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 within the meaning of §2-103(1)(d) and a "merchant" within the meaning of §2-104 of the Commercial Law Article.

80. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the filing date of this action, and as set forth above, Defendant represented to consumers, including Plaintiff and Class Members, by labeling/packaging and other means, that DG SAE 10W-30, DG SAE 10W-40, and DG SAE 30 are safe and suitable for use in the automobiles driven by Dollar General's customers. Plaintiff and Class Members bought those goods from the Defendant.



81. Defendant was a merchant with respect to goods of the kind which were sold to Plaintiff and Class Members, and there was in the sale to Plaintiff and Class Members an implied warranty that those goods were merchantable.

82. However, Defendant breached that warranty implied in the contract for the sale of goods in that Dollar General's DG-branded motor oil is in fact not suitable for use in the vehicles driven by the vast majority, if any, of Dollar General's customers, as set forth in greater detail above.

83. As a result thereof Plaintiff and Class Members did not receive goods as impliedly warranted by Defendant to be merchantable.

84. As a proximate result of this breach of warranty by Defendant, Plaintiff and Class Members have been damaged in an amount to be determined at trial.

85. Pursuant to §§ 2-714 and 2-715 of the Commercial Law Article, Plaintiff and the members of the Class are entitled to damages, and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

86. As required by § 2-607 of the Commercial Law Article, Plaintiff gave written notice to Dollar General of its breach of its implied warranty of merchantability relating to the goods he purchased.

**THIRD CAUSE OF ACTION**  
**Breach of Implied Warranty of Fitness for a Particular Purpose, § 2-315**  
**of the Maryland Uniform Commercial Code**

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

88. Beginning at an exact date unknown to Plaintiff, but at least since four years prior to the filing date of this action, and as set forth above, Defendant sold its DG-branded motor oils to

Plaintiff and Class Members, who bought those goods from Defendant in reliance on Defendant's skill and judgment.

89. At the time of sale, Defendant had reason to know the particular purpose for which the goods were required, and that Plaintiff and Class Members were relying on Defendant's skill and judgment to select and furnish suitable goods so that there was an implied warranty that the goods were fit for this purpose.

90. However, Defendant breached the warranty implied at the time of sale in that Plaintiff and Class Members did not receive suitable goods, and the goods were not fit for the particular purpose for which they were required in that Dollar General's DG-branded motor oils are not safe or suitable for use in the vast majority, if any, of vehicles driven by Dollar General's customers, as set forth in detail above.

91. As a proximate result of this breach of warranty by Defendant, Plaintiff and Class Members have been damaged in an amount to be determined at trial.

92. As required by § 2-607 of the Commercial Law Article, Plaintiff gave written notice to Dollar General of its breach of its implied warranty of fitness for a particular purpose with regard to the goods he purchased.

**FOURTH CAUSE OF ACTION**  
**Unjust Enrichment**

93. Plaintiff and Class Members have conferred substantial benefits on the Defendant by purchasing its useless and harmful motor oil, and Dollar General has consciously and willingly accepted and enjoyed these benefits.

94. Defendant knew or should have known that consumers' payments for its obsolete and harmful motor oil were given and received with the expectation that the motor oil would lubricate and protect consumers' engines and would not be harmful to their vehicles.

95. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendant has been unjustly enriched by its wrongful receipt of Plaintiff's and Class Members' monies.

96. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and Class Members have suffered damages in an amount to be determined at trial.

97. Defendant should be required to account for and disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of consumers.

**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 Plaintiff and Class Members of full restitution;
- C. An order enjoining Defendant from engaging in the unfair and/or deceptive acts or practices, as set forth in this Complaint and requiring Defendant to disseminate corrective advertising;
- D. Compensatory damages;
- E. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- F. An order providing for declaratory and/or injunctive relief:
  - 1. Declaring that Defendant must provide accurate representations of the quality of the motor oil sold at its stores;
  - 2. Enjoining Defendant 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;
- 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.

**JURY DEMAND**

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

December 23, 2015



**STEPHEN J. NOLAN, CHARTERED**  
Stephen J. Nolan, Esquire Bar No. 0578  
Courthouse Commons, Suite A-1  
222 Bosley Avenue  
Baltimore, Maryland 21204  
Telephone: (410) 821-8600  
Facsimile: (410) 821-8613  
steve@sjnolan.com

Motions for Admission Will be filed on  
Behalf of  
**KANNER & WHITELEY, L.L.C.**  
Allan Kanner, Esquire  
Conlee Whiteley, Esquire  
Cynthia St. Amant, Esquire  
701 Camp Street  
New Orleans, Louisiana 70130  
Telephone (504) 524-5777  
Facsimile: (504) 524-5763

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**

McCormick, III, John J.  
individually and on behalf of all others similarly situated,  
28 Windemere Parkway, Phoenix, Maryland 21131

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

**DEFENDANTS**

DOLGENCORP, LLC, d/b/a DOLLAR GENERAL, CORPORATION  
100 Mission Ridge, Goodlettsville, TN 37072

County of Residence of First Listed Defendant Davidson County, TN  
(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)  
Stephen J. Nolan, Esq., Stephen J. Nolan, Chtd.  
Courthouse Commons, 222 Bosley Ave, Ste. A-1  
Baltimore, MD 21204 (410) 821-8600

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 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)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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):

Brief description of cause:

Violation of Md. Consumer Protection Act & Breach of Implied Warranty Claims

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,100.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/23/2015

SIGNATURE OF ATTORNEY OF RECORD

*Stephen J. Nolan*

# 0578

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.



UNITED STATES DISTRICT COURT

for the  
District of Maryland

John J. McCormick, III

*Plaintiff*

v.

DOLGENCORP, LLC, d/b/a Dollar General, Corp.

*Defendant*

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: Stephen J. Nolan

*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of the attorney or unrepresented party*

\_\_\_\_\_  
*Printed name of party waiving service of summons*

\_\_\_\_\_  
*Printed name*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*E-mail address*

\_\_\_\_\_  
*Telephone number*

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.