

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**In re Dollar General Corp. Motor Oil Litigation**

**MDL Docket No. \_\_\_\_\_**

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**DEFENDANTS DOLLAR GENERAL CORPORATION, DOLGENCORP, LLC, AND  
DG RETAIL, LLC’S MOTION TO TRANSFER RELATED ACTIONS FOR  
CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

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Pursuant to 28 U.S.C. § 1407, Defendants Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC (hereinafter collectively referred to as “Dollar General”)<sup>1</sup> respectfully moves the Panel for an order transferring the actions identified in the Schedule of Actions served and filed herewith, to the United States District Court for the Eastern District of Michigan, or in the alternative, to the Western District of Missouri or the Southern District of Florida, for coordinated and consolidated pretrial proceedings.

In support of this Motion, and as fully explained in the accompanying Memorandum, Dollar General states as follows:

1. In recent weeks, a number of putative class actions have been filed against Dollar General relating to its sale of three of its motor oil products: DG SAE 10W-30, DG SAE 10W-

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<sup>1</sup> Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC are the three Dollar General entities that have been named as defendants in the actions identified in the attached Schedule of Actions. Dolgencorp, LLC is a defendant in thirteen of these cases; its parent corporation is Dollar General Corporation. Dollar General Corporation is a defendant in ten of these cases. DG Retail, LLC is a defendant in four of these suits; its parent corporation is DG Promotions, Inc., and the parent corporation of DG Promotions, Inc. is Dollar General Corporation.

40, and DG SAE 30 (the “Motor Oil Products”). DG SAE 10W-30 and DG SAE 10W-40 are primarily intended for use with engines built before 1988. DG SAE 30 is primarily intended for use with engines built before 1930. Statements conveying this information are found on the back label of each product, where the entirety of the product’s information is found, placed in a separate paragraph second from the top of the back label, in white font on a black background, in a size no smaller than the other informative text, in all-caps to set it apart from the surrounding paragraphs, and preceded by the eye-catching language “CAUTION.” Alongside these cautionary statements are additional, truthful representations regarding each product’s primary intended use with either pre-1930 or pre-1988 engines.

2. To date, eighteen actions have been filed in eighteen different federal courts.<sup>2</sup> Each of these actions is based upon the same factual allegation that a reasonable consumer would be misled into thinking that DG SAE 30 is suitable to be used with post-1930 engines and that DG SAE 10W-30 and DG SAE 10W-40 are suitable to be used with post-1988 engines.

3. In addition to the common factual basis, these actions allege violations of their respective state consumer protection statutes, breach of warranty claims, and claims of unjust enrichment. Based upon these claims, plaintiffs seek injunctive relief and monetary damages on behalf of putative statewide classes and at least one overlapping and competing nationwide putative class.

4. Transfer for consolidation is appropriate here because: (1) the actions involve one or more questions of alleged facts that are common among the cases, (2) the transfer will serve the convenience of the parties and witnesses; and (3) it will promote the just and efficient conduct of the actions by eliminating duplicative discovery, preventing duplicative motion

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<sup>2</sup> The *Hill* case was originally filed in Vermont state court but was subsequently removed to the federal district court on February 1, 2016.



practice, avoiding conflicting pretrial rulings (particularly as to class certification), conserving judicial resources, and reducing the costs of litigation.

5. Dollar General seeks transfer of the actions to the United States District Court for the Eastern District of Michigan in Detroit, or in the alternative the Western District of Missouri in Kansas City or the Southern District of Florida in Miami. The Eastern District of Michigan has favorable docket conditions and has the capacity and experience to handle this multidistrict litigation. Additionally, it is easily accessible from locations throughout the country, including Nashville Tennessee where a number of witnesses and documents are located. Moreover, the Honorable Sean F. Cox is already presiding over one of these actions, is an experienced judge with MDL experience, and would therefore be an ideal transferee judge. In the alternative, the Honorable Gary A. Fenner in the Western District of Missouri should also be considered given Judge Fenner's experience, the centralized location of Kansas City, Missouri, and the district's favorable docket conditions. Likewise, the Honorable Cecilia M. Altonaga in the Southern District of Florida may also be an appropriate transferee court given the district's noteworthy docket efficiency, Judge Altonaga's MDL experience, and the fact that the case pending in that district is the furthest along of all the pending cases.

6. This Motion is based on the foregoing, the Memorandum filed concurrently herewith, the pleadings and papers on file herein, and such other matters as may be presented to the Panel at the time of the hearing.

Dated: March 07, 2016

Respectfully submitted,

/s/ Jontille D. Ray

R. Trent Taylor  
[rtaylor@mcguirewoods.com](mailto:rtaylor@mcguirewoods.com)  
Perry W. Miles, IV

[pmiles@mcguirewoods.com](mailto:pmiles@mcguirewoods.com)

Jontille D. Ray

[jray@mcguirewoods.com](mailto:jray@mcguirewoods.com)

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

Richmond, VA 23219

Tel: 804.775.1000

Fax: 804. 775.1061

*Attorneys for Defendant Dollar General  
Corporation, Dolgencorp, LLC and DG  
Retail, LLC*

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**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

<b>In re Dollar General Corp. Motor Oil Litigation</b>	)	<b>MDL Docket No. _____</b>
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**DEFENDANTS DOLLAR GENERAL CORPORATION, DOLGENCORP, LLC, AND  
DG RETAIL, LLC’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO  
TRANSFER RELATED ACTIONS FOR CONSOLIDATED PRE-TRIAL  
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

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Pursuant to 28 U.S.C. § 1407, Defendants Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC (hereinafter collectively referred to as “Dollar General”)<sup>1</sup> respectfully submit this Memorandum of Law in support of its Motion to Transfer all of the currently filed federal cases in this litigation, and any subsequent “tag along” cases involving similar claims, to the United States District Court for the Eastern District of Michigan, or in the alternative, to the Western District of Missouri or Southern District of Florida, for coordinated and consolidated pretrial proceedings.

**I. PRELIMINARY STATEMENT**

Eighteen putative class actions are currently pending against Dollar General in federal courts across the country. The central factual allegation in all of these actions is the same: Dollar

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<sup>1</sup> Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC are the three Dollar General entities that have been named as defendants in the actions identified in the attached Schedule of Actions. Dolgencorp, LLC is a defendant in thirteen of these cases; its parent corporation is Dollar General Corporation. Dollar General Corporation is a defendant in ten of these cases. DG Retail, LLC is a defendant in four of these suits; its parent corporation is DG Promotions, Inc., and the parent corporation of DG Promotions, Inc. is Dollar General Corporation.

General's marketing and product placement of its DG SAE 10W-30, DG SAE 10W-40, and DG SAE 30 motor oil products mislead the reasonable consumer into thinking that DG SAE 30 is suitable to be used with post-1930 engines and that DG SAE 10W-30 and DG SAE 10W-40 are suitable to be used with post-1988 engines. They also assert nearly identical causes of action including claims under state consumer protection statutes, breach of warranty claims, and claims of unjust enrichment. Based upon this central allegation and these causes of actions, plaintiffs seek to establish statewide classes in eighteen different states with the action pending in California also seeking the establishment of an overlapping nationwide class. Because of the common factual issues and overlapping nature of these class action lawsuits, Defendant Dollar General moves for the transfer of these actions to the Eastern District of Michigan for consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

“The multidistrict litigation statute, 28 U.S.C. § 1407, was enacted as a means of conserving judicial resources in situations where multiple cases involving common questions of fact were filed in different districts.” *Royster v. Food Lion (In re Food Lion)*, 73 F.3d 528, 531-32 (4th Cir. 1996). Two of the critical goals of this statute are to promote efficiency and consistency. *Illinois Municipal Retirement Fund v. Citigroup, Inc.*, 391 F.3d 844, 852 (7th Cir. 2004). Granting the instant motion will advance these goals in three primary ways. First, transfer and consolidation will serve the convenience of the parties and the witnesses by avoiding duplicative discovery and reducing litigation costs. Second, judicial economy will be maintained by preventing the various courts from having to address the same arguments and issues multiple times. Finally, transfer and consolidation will result in the just and efficient resolution of this litigation by avoiding conflicting rulings on the common issues in dispute and on class

certification. Moreover, none of the cases has advanced significantly such that transfer to the Eastern District of Michigan would be inefficient.

The Eastern District of Michigan is the superior forum because it has favorable docket conditions and has the capacity and experience to handle this multidistrict litigation.

Additionally, it is easily accessible from locations throughout the country, including Nashville Tennessee where a number of witnesses and documents are located. Moreover, the Honorable Sean F. Cox is already presiding over one of these actions, is an experienced judge with MDL experience, and would therefore be an ideal transferee judge.

For all of these reasons as discussed in more detail below, Dollar General requests that the Panel transfer the actions to the Eastern District of Michigan for consolidated pretrial proceedings.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

In recent weeks, a number of putative class actions have been filed against Dollar General relating to its sale of three of its motor oil products: DG SAE 10W-30, DG SAE 10W-40, and DG SAE 30 (the “Motor Oil Products”). DG SAE 10W-30 and DG SAE 10W-40 are primarily intended for use with engines built before 1988. DG SAE 30 is primarily intended for use with engines built before 1930. Statements conveying this information are found on the back label of each product, where the entirety of the product’s information is found, placed in a separate paragraph second from the top of the back label, in white font on a black background, in a size no smaller than the other informative text, in all-caps to set it apart from the surrounding paragraphs, and preceded by the eye-catching language “CAUTION.” Alongside these cautionary statements are additional, truthful representations regarding each product’s primary intended use with either pre-1930 or pre-1988 engines.

To date, eighteen actions have been filed in eighteen different federal courts. Each of these actions is based upon the same factual allegation that a reasonable consumer would be misled into thinking that DG SAE 30 is suitable to be used with post-1930 engines and that DG SAE 10W-30 and DG SAE 10W-40 are suitable to be used with post-1988 engines. In addition to the common factual basis, these actions allege violations of their respective state consumer protection statutes, breach of warranty claims, and claims of unjust enrichment. Based upon these claims, plaintiffs seek injunctive relief and monetary damages on behalf of putative statewide classes and at least one overlapping and competing nationwide putative class.

All of the actions are in the preliminary stages of litigation. In fact, Dollar General has only been served in thirteen of the cases and has responded to the complaints by filing motions to dismiss, in four of the eighteen cases. Dollar General has also filed motions to strike class allegations in these four cases which are still pending in three of the four cases.<sup>2</sup> The briefing on these motions has only been completed in the Southern District of Florida though no decision has been issued as of yet. Dollar General has waived (or will waive) service in two cases and the deadlines to respond to these cases are March 21, 2016 and April 15, 2016. The deadlines to respond to the remaining complaints have not yet occurred. Nevertheless, Dollar General plans to file motions to stay proceedings in any active cases pending the Panel's decision on this Motion.

### **III. ARGUMENT**

Transfer for coordinated or consolidated pretrial proceedings is appropriate where federal civil actions present "common questions of fact," and transfer will serve "the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C.

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<sup>2</sup> Dollar General filed a motion to strike class allegations in the case pending in the Southern District of Florida but it was immediately denied on procedural grounds.

§ 1407. The actions currently pending against Dollar General satisfy each of these requirements. Likewise, under the applicable factors, the Eastern District of Michigan is the most appropriate forum for transfer and consolidation and on balance will maximize convenience for all involved.

**A. The Cases Involve Questions of Fact That Are Common Among the Cases**

The first element of the Section 1407 transfer analysis is whether there are one or more common questions of fact. Where the pending cases are based on the same core factual allegations, the Panel has determined that the “common questions of fact” prong is satisfied. *See, e.g., In re Ford Motor Co. Crown Victoria Police Interceptor Prods. Liab. Litig.*, 229 F. Supp. 2d 1377, 1378 (J.P.M.L. 2002)(concluding that there were common questions of fact where all actions focus on common allegations); *In re Baldwin-United Corp. Litig.*, 229 F. Supp. 2d 1377, 1378 (finding that common questions of fact exist where actions share same core allegations). “Indeed, when two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events, common factual questions are presumed.” *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974); *see also In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975)(concluding that transfer was appropriate because the presence of the same defendant in each action “certainly gives rise to common factual issues”).

Here, the core factual allegations asserted against Dollar General (for all intents and purposes, the only defendant) in each action are practically identical. In particular, plaintiffs’ core allegation is that DG motor oils’ labeling statements and placement on the store shelves give the false impression that DG SAE 10W-30 and DG SAE 10W-40 are intended for use with post-1988 engines, and that DG SAE 30 is intended for use with post-1930 engines. (*See, e.g.,* Compl. ¶¶ 19-20, 35-36, *Barfoot*, Case No. 1:15-cv-24662 (S.D. Fla.); Compl. ¶¶ 18-19, 31-32, *Hill*, Case No. 2:16-cv-00026 (D. Vt.); First Am. Compl. ¶¶ 20-21, 35-36, *Cooke*, No. 4:15-cv-

03680 (S.D. Tex.)) In other words, all of the plaintiffs allege that the marketing and sale of DG motor oils are misleading and deceptive in that the motor oils should not be used in cars manufactured after 1988 and that their retail placement next to more costly standard and premium motor oils suggests otherwise to consumers. Therefore, the actions, collectively, present factual issues that are common among them indicating that these cases are proper for transfer under Section 1407(a).<sup>3, 4</sup>

**B. Transfer and Consolidation Will Serve the Convenience of the Parties, Witnesses, and Courts**

Transfer is warranted if it will conserve the resources of the parties, their counsel, and the judiciary. Here, transfer and coordination of these nearly identical cases against one common defendant would inevitably serve the interests of the parties and witnesses. These actions allege similar legal violations based on the same factual allegations. Consequently, discovery in each case will require similar information from Dollar General. Absent transfer and consolidation, there will be substantial duplicative discovery because of the significant overlap in issues of facts and law. Multiple cases proceeding separately could result in repetitive depositions of the same company representatives, employees, and expert witnesses along with duplicative or overlapping document productions and written discovery responses, not to mention conflicting scheduling obligations. The Panel has previously granted motions to transfer under these circumstances.

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<sup>3</sup> Additionally, all these actions assert similar legal claims and theories of recovery, including violations of state consumer protection statutes, breach of warranty claims, and claims of unjust enrichment. Although not every cause of action is asserted in every case, the lawsuits all share related underlying legal theories of liability. Even if this were not the case, the Panel has previously stated, “the presence of additional or differing legal theories is not significant when the actions still arise from a common factual core . . . .” *In re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359, 1360 (J.P.M.L. 2008).

<sup>4</sup> Dollar General does not concede commonality, typicality, or the other elements of Federal Rule of Civil Procedure 23. For the purposes of this Motion, Dollar General is only stating that the pretrial proceedings can be more efficiently and fairly litigated in a single forum.



*See, e.g., In re Pilot Flying J Fuel Rebate Contract Litigation (No. II)*, 11 F. Supp. 3d 1351, 1352 (J.P.M.L. 2014)(granting the motion to transfer in part because “[c]entralization will avoid repetitive depositions of Pilot’s officers and employees and duplicative document discovery regarding the alleged scheme”); *In re Zurn Pex Plumbing Products Litigation*, 572 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (granting transfer and consolidation because of the “overlapping and...nearly identical factual allegations that will likely require duplicative discovery and motion practice”). Transfer is necessary to mitigate these burdens. If discovery is coordinated, witnesses can be deposed once for all actions minimizing any travel for lay and expert witnesses.

Additionally, the Panel has frequently acknowledged the benefits of a single judge administering pretrial procedures and schedules under these circumstances. *See, e.g., In re Uranium Indus. Antitrust Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978)(“[Plaintiffs] will have to depose many of the same witnesses, examine many of the same documents, and make many similar pretrial motions in order to prove their...allegations. The benefits of having a single judge supervise this pretrial activity are obvious.”); *In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981)(consolidation and transfer would “effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities”); *In re Maytag Corp. Neptune Washer Prods. Liab. Litig.*, 333 F. Supp. 2d 1382, 1383 (J.P.M.L. 2004)(“Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to...class certification matters), and conserve the resources of the parties, their counsel and the judiciary.”). With transfer and consolidation, any discovery disputes can be resolved in one forum instead of multiple times in different courts. “Centralizing these actions under Section 1407 will ensure streamlined resolution of this litigation to the overall benefit of the parties and

the judiciary.” See *In re Zurn Pex Plumbing Products Litigation*, 572 F. Supp. 2d at 1381; see also *In re Union Pac. R.R. Co. Empl. Practices Litig.*, 314 F. Supp. 2d 1338, 1384 (J.P.M.L. 2004)(finding that centralization is necessary to “conserve the resources of the...judiciary”).

Moreover, “it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of costs and a minimum of inconvenience to all concerned.” *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 173 F. Supp. 2d 1377, 1379 (2001). Indeed, centralization can reduce burdens on the parties and their counsel by allowing the division of the workload amongst several attorneys. In particular, it can conserve the resources of counsel because discovery requests and depositions can be coordinated reducing litigation expenses and attorney fees.

In sum, without centralization, witnesses may face multiple depositions, and the parties and various courts may be required to address the same arguments and issues multiple times. Moreover, having one set of deadlines instead of multiple and potentially conflicting deadlines and pretrial proceedings will be more convenient for all involved. Therefore, transfer and consolidation of these actions would serve the convenience of the parties and witnesses, avoid duplicative discovery, and save the parties and the courts significant time, effort, and resources.

### **C. Transfer and Consolidation Will Promote the Just and Efficient Conduct of These Actions**

For many of the same reasons that transfer and consolidation will serve the convenience of the parties, witnesses, and courts, it will also promote the just and efficient conduct of these actions. Indeed, as detailed above, these actions are based on nearly identical factual allegations and assert substantially similar causes of action. When “an analysis of the complaints reveals a

commonality of factual issues,” transfer and consolidation “is necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings.” *In re A.H. Robins Co. “Dalkon Shield” IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975). In fact, when determining whether consolidation and transfer will promote just and efficient litigation, the Panel assesses similar factors including judicial economy, prevention of duplicative discovery on common issues, and avoidance of conflicting or inconsistent rulings. *In re Endangered Species Act Section 4 Deadline Litig.*, 716 F. Supp. 2d 1369, 1369 (J.P.M.L. 2010). Here, all of these factors weigh in favor of transfer.

**1. Not only is judicial economy advanced by consolidation, but transfer and consolidation would also avoid duplicative discovery.**

Absent transfer and consolidation, at least eighteen different federal district courts will be ruling on many common factual and legal issues in these cases. Litigation of these similar actions separately offers no benefit and will inevitably result in duplicative efforts and inconsistent rulings. In contrast, having a single district court judge coordinate pretrial discovery and rule on all pretrial motions in these actions at once will maximize the convenience of the parties, reduce the cumulative burden on the courts, reduce litigation costs, and minimize the risk of conflicting rulings. *See, e.g., In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 65 F. Supp. 3d 1402, 1405 (J.P.M.L. 2014)( “Issues concerning the development, manufacture, regulatory approval, labeling, and marketing of Xarelto thus are common to all actions. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary.”).

Where there are common facts regarding issues of liability, transfer also minimizes if not eliminates the likelihood of repetitive discovery. *See, e.g., In re Air Crash Disaster Near Pellston, MI, on May 9, 1970*, 357 F. Supp. 1286, 1287 (J.P.M.L. 1973) (cases consolidated for

pretrial proceedings where facts bearing on the issues of liability are common to each action and transfer would avoid the possibility of duplication of discovery); *In re McCormick & Co.*, 2015 U.S. Dist. LEXIS 165388, at \*4 (J.P.M.L. Dec. 9, 2015)(“Centralization will eliminate duplicative discovery; avoid inconsistent pretrial rulings, particularly on class certification; and conserve the resources of the parties, their counsel and the judiciary.”). That is precisely the case here as both discovery and motion practice in these actions will overlap considerably because of the similarity in the factual allegations and legal claims. Without transfer and consolidation, the parties would be required to address the same arguments and issues multiple times and engage in duplicative discovery. The Panel has previously found consolidation necessary in such cases and should reach the same conclusion here. *See, e.g., In re GNC Corp. Triflex Prods. Mktg. & Sales Practices Litig. (No. II)*, 988 F. Supp. 2d 1369, 1370 (J.P.M.L. 2013)(consolidating cases alleging false and misleading advertising claims); *In re Ford Fusion & C-Max Fuel Econ. Litigation*, 949 F. Supp. 2d 1368, 1369 (J.P.M.L. 2013)(consolidating cases regarding the advertised mileage estimates of vehicles).

Moreover, discovery has only recently commenced in the action pending in the Southern District of Florida and has not commenced in any of the other actions. As a matter of fact, Dollar General has not yet been served in three of the pending cases, and has only filed responsive pleadings in four of the eighteen cases. Because the actions are still in the nascent stage, it is less likely that a transferee court will need to reconcile any rulings or proceedings that have already occurred, neither will there be any duplication of effort by the transferee court. Therefore, none of the pending cases have progressed to the point where any efficiencies will be lost as a result of transfer, making it an ideal time for transfer and consolidation.

2. **Consolidation is necessary to avoid inconsistent rulings especially with respect to class certification.**

Second, transfer and consolidation will also avoid inconsistent rulings. Certainly, the involvement of numerous attorneys, plaintiffs, and courts in various states is likely to result in conflicting rulings and inconsistent discovery obligations on the parties. Each of these cases asserts putative class actions with similar claims under state consumer protection statutes along with breach of warranty claims. Although the majority of the pending actions seek to establish statewide classes, the *Vega* matter pending in the Central District of California also seeks to establish a nationwide class in addition to a California statewide class. Therefore, there are overlapping class definitions. The Panel has regularly ordered transfer of class actions involving potential overlapping class definitions. The “potential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts.” *In re Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970); *see also In re Zappos, Inc. Consumer Data Sec. Breach Litig.*, 867 F. Supp. 2d 1357, 1358 (J.P.M.L. 2012)(“We agree with the parties that centralization will...prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.”); *In re Canon U.S.A., Inc., Digital Cameras Prods. Liab. Litig.*, 416 F. Supp. 2d 1369, 1370 (J.P.M.L. 2006)(centralization and transfer are necessary to prevent inconsistent pretrial rulings, “especially with respect to questions of class certification.”); *In re Niaspan Antitrust Litigation*, 971 F.Supp.2d 1346, 1347 (J.P.M.L. 2013) (“Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.”); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273

(J.P.M.L. 1975)(“We have consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists.”).

The Panel has also frequently noted the significance of avoiding inconsistent class certification rulings. Even where only statewide classes are involved and there is not necessarily overlap in the proposed classes, centralization is still appropriate to ensure consistent application of Federal Rule of Civil Procedure 23. See *In re Lawnmower Engine Horsepower Marketing and Sales Practices Litigation (No.II)*, 588 F. Supp. 2d 1379 (J.P.M.L. 2008)(transfer ordered in docket of 39 statewide class actions); *In re Charlotte Russe, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 505 F. Supp. 2d 1377, 1378 (J.P.M.L. 2007)(“Centralization will...prevent inconsistent trial rulings, especially with respect to class certification....”); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 293 F. Supp. 2d 1378, 1379 (J.P.M.L. 2003) (consolidating putative class actions challenging the same conduct on behalf of similarly defined but geographically separate classes). Without consolidation of these cases, there is a great risk of inconsistent rulings on questions of law and fact relating to class certification. Transfer will therefore ensure consistent application of Rule 23 and avoid the risk of conflicting class certification rulings.

Accordingly, transfer and consolidation is appropriate for the just and efficient resolution of these cases.

#### **D. The Eastern District of Michigan Is the Most Appropriate Transferee Court**

In selecting the transferee court, the Panel considers a number of factors including the location where the greatest number of cases are pending, where discovery has already proceeded, where the first case was filed or where the cases have progressed the furthest, where the cost and inconvenience will be minimized, the experience, skill, and caseloads of available

judges, and docket conditions. David F. Herr, Multidistrict Litigation Manual, Practice Before the Judicial Panel on Multidistrict Litigation §§ 6:1- 6:23 at 199-246 (2015). On balance, these factors favor transfer to the Eastern District of Michigan.

Each district court only has one case pending there. So, the first factor regarding where the greatest number of cases are pending is inapposite. Likewise, the next two factors should not be entitled to too much weight, because all of these cases are in the infancy stage of litigation. In particular, Dollar General has only been served in thirteen of the cases and has only filed responsive pleadings, motions to dismiss, in four of the eighteen cases. Dollar General has also filed motions to strike class allegations in these cases which are still pending in two of the three cases. While there are pending motions to dismiss in Southern District of Florida, the District of Vermont, and the Southern District of Texas, the briefing has only been completed in the Southern District of Florida, and Dollar General expects to file motions to stay these matters pending the Panel's decision on this Motion. Moreover, discovery has just begun in the *Barfoot* case in the Southern District of Florida, with written discovery being served on March 2, 2016. No discovery has taken place in any of the other seventeen cases.

Therefore, the most critical of these factors—where cost and inconvenience will be minimized and the experience, skill, and caseloads of available judges, and docket conditions—make transfer to the Eastern District of Michigan appropriate. When assessing the cost and convenience in selecting a transferee court, the Panel examines where the parties and their attorneys are located as well as the location of key documents and witnesses. The Panel also considers whether the transferee court is in a central location and the ease of travel to and from that location. All of these factors indicate that the Eastern District of Michigan is an appropriate transferee court.

The attorneys reside in the various states where the actions are pending and in Louisiana and Virginia. The members of the nationwide and state putative classes reside throughout the United States. However, any inconvenience to these individual (and primarily unnamed) class members do not outweigh the significant economies that transfer to the Eastern District of Michigan would accomplish as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001)(noting that “transfer is often necessary to further the expeditious resolution of the litigation taken as a whole.”) In contrast, Dollar General is the sole named defendant in all of these cases with its headquarters located in Goodlettsville, Tennessee (near Nashville, Tennessee), where many of the documents are housed and witnesses are located. The Panel routinely selects a transferee court based on the location of witnesses, documents, and defendant’s corporate headquarters. *See In re Xybernaut Corp. Sec. Litig.*, 403 F. Supp. 2d 1354, 1355 (J.P.M.L. 2005) (transferring actions to the Eastern District of Virginia in part because it was a “likely source of relevant documents and witnesses in as Xybernaut’s headquarters are located there”); *In re Supervalu, Inc. Customer Data Sec. Breach Litigation*, MDL No. 2586, 2014 WL 7263354, at \*1 (J.P.M.L. Dec. 16, 2014) (transfer to district where company was headquartered and thus where relevant documents and witnesses were located); *In re GAF ELK Cross Timbers Decking Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 2577, 2014 WL 7006714, at \*1 (J.P.M.L. Dec. 12, 2014)(same). However, because there are no pending actions in Tennessee, it would make sense to choose a district that would be easily accessible from Nashville. There are four to seven nonstop flights per day from Nashville, Tennessee to Detroit, Michigan. These nonstop flights are only an hour and a half one way.<sup>5</sup>

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<sup>5</sup> <https://www.google.com/maps/dir/Goodlettsville,+TN/Detroit,+MI/@39.242101,-89.3735039,6z/data=!4m14!4m13!1m5!1m1!1s0x88644491639cfb9f:0x485b7895dc6d93fd!2m2!1d->



Moreover, the Eastern District of Michigan is geographically accessible to counsel and the parties involved in this litigation. It is centrally located and its location will facilitate any needed discovery as expert witnesses and counsel will find it to be a convenient location to reach for hearings as Detroit Metropolitan Wayne County Airport (DTW) is “one of the world’s leading air transportation hubs.”<sup>6</sup> In fact, the Panel has frequently found the Eastern District of Michigan to be a “relatively geographically central district with favorable caseload conditions” and to be “centrally located and easily accessible for parties and witnesses in... nationwide litigation.” *See In re Packaged Ice Antitrust Litig.*, 560 F. Supp. 2d 1359, 1361 (J.P.M.L. 2008); *In re Cardizem CD Antitrust Litig.*, 1999 U.S. Dist. LEXIS 9285 (J.P.M.L. Jun. 11, 1999); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 904 F. Supp. 1407, 1408 (J.P.M.L. 1995)(“the Eastern District of Michigan provides a geographically central location for this nationwide litigation.”).

The Eastern District of Michigan also has favorable docket conditions and the capacity and experience to handle this multidistrict litigation. The most recent data available from the Administrative Office of the United States Courts shows that the median time from filing to disposition for civil cases is 8.6 months.<sup>7</sup> Additionally, the Eastern District of Michigan has significant experience managing multidistrict litigation. *See* United States Judicial Panel on Multidistrict Litigation, Multidistrict Litigation Terminated through Sept. 30, 2015 at 24, <http://www.jpml.uscourts.gov/statistics-info> (last visited Mar. 3, 2016)(showing that the district has previously terminated 17 MDLs). Currently, the Eastern District of Michigan has the capacity to absorb this litigation as it currently only has 3 pending MDLs, and is therefore not

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<sup>6</sup> <http://wcaa.us/About/LeadershipStaff/CEO.aspx> (last visited Mar. 3, 2016).

<sup>7</sup> U.S. District Courts- Federal Court Management Statistics- Profiles, <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables> (last visited Mar. 3, 2016).

presently overtaxed with multidistrict litigation. *See In re Inter-op Hip Prosthesis Products Liability Litigation*, 149 F. Supp. 2d 931, 933 (J.P.M.L. 2001)(noting that the Ohio district is not currently taxed with other multidistrict dockets.)

The Honorable Judge Sean F. Cox is the ideal transferee judge. One of the cases at issue in this litigation, the *Gooel* action has been assigned to Judge Cox who is well-qualified to preside over this MDL. He is an experienced and capable jurist, also having served as a Wayne County Circuit Court judge for ten years before becoming a federal district court judge in 2006.<sup>8</sup> Judge Cox has experience presiding over MDLs, at least one of which involved a class action. *See, e.g., In re Refrigerant Compressors Antitrust Litigation*, MDL-2402; *In re OnStar Contract Litig.*, MDL-01867.<sup>9</sup> He also has experience generally overseeing class actions. *See, e.g., APB Assocs. v. Bronco's Saloon, Inc.*, 297 F.R.D. 302, 305 (E.D. Mich. 2013); *Machesney v. Lar-Bev of Howell, Inc.*, 292 F.R.D. 412, 415 (E.D. Mich. 2013); *Compressor Eng'g Corp. v. Mfrs. Fin. Corp.*, 292 F.R.D. 433 (E.D. Mich. 2013); *Waskowski v. State Farm Mut. Auto. Ins. Co.*, 970 F. Supp. 2d 714 (E.D. Mich. 2013). Prior to becoming a judge, Judge Cox was a private practice attorney in Michigan from 1983 to 1996.<sup>10</sup>

For all of these reasons, these actions should be transferred to the Eastern District of Michigan and assigned to the Honorable Sean F. Cox for coordinated or consolidated pretrial proceedings with the action pending there and the actions listed on the Schedule of Actions.

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<sup>8</sup> <https://www.mied.uscourts.gov/index.cfm?pageFunction=chambers&judgeid=22> (last visited Mar. 3, 2016).

<sup>9</sup> Although Judge Cox is currently assigned a pending MDL, there is only 1 case remaining in that MDL out of the 52 cases.

<sup>10</sup> <https://www.mied.uscourts.gov/index.cfm?pageFunction=chambers&judgeid=22> (last visited Mar. 3, 2016).

**E. In the Alternative, the Western District of Missouri or the Southern District of Florida Are Worthy of Consideration**

Although there is not more than one action pending in any district, there is a cluster of cases that are geographically close in proximity—the W.D. Missouri (Kansas City, MO), the District of Kansas (Kansas City, KS), the District of Nebraska (Omaha) and the Northern District of Oklahoma (Tulsa). Kansas City, Missouri is a short flight from Nashville Tennessee and as the Panel has previously acknowledged is centrally located where cases are pending both in California and Florida. *See Yee v. Simply Orange Juice Co. (In re Simply Orange Juice Mktg. & Sales Practices Litig.)*, 867 F. Supp. 2d 1344, 1345-1346 (J.P.M.L. 2012)(“The Western District of Missouri is located in a geographically central location accessible to the parties ranging from California to Florida.”); *In re H&R Block IRS Form 8863 Litig.*, 977 F. Supp. 2d 1364, 1365 (J.P.M.L. 2013)(“The [Western District of Missouri] is a geographically central forum for this nationwide litigation and has the resources available to efficiently adjudicate this multidistrict litigation.”). The Western District of Missouri docket conditions are relatively favorable with a median time from filing to disposition for civil cases of 9.9 months, and the district has no MDLs currently pending.<sup>11</sup> Moreover, the *Oren* action is assigned to Judge Gary A. Fenner, an experienced jurist who has MDL experience. *See e.g., In re Fleming Cos. Contract Litigation*, 2000 U.S. Dist. LEXIS 11649 (J.P.M.L. Aug. 8, 2000); *In re Pre-Filled Propane Tank Mktg. & Sales Practices Litig.*, 655 F. Supp. 2d 1354, 1355 (J.P.M.L. 2009) (noting that “Judge Gary A.

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<sup>11</sup> U.S. District Courts- Federal Court Management Statistics- Profiles, <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables> (last visited Mar. 3, 2016).

Fenner, who is already presiding over one of the constituent actions, has the time and experience to steer this litigation on a prudent course.”<sup>12</sup>

Judge Cecilia M. Altonaga in the Southern District of Florida should be considered as well. Although not necessarily centrally located, this district is a reasonable distance from Dollar General’s headquarters and most of the attorneys. The overall docket conditions are also favorable with a median time of 4.7 months from filing to disposition and only 5 pending MDLs. Judge Altonaga also has MDL experience and has been recognized by the Panel as an experienced judge capable of overseeing an MDL. *In re Denture Cream Prods. Liab. Litig.*, 624 F. Supp. 2d 1379, 1381 (J.P.M.L. 2009)(“Judge Cecilia M. Altonaga has the time and experience to steer this litigation on a prudent course.”). Additionally, of the pending cases, the *Barfoot* case pending in this district and assigned to Judge Altonaga is the furthest along with briefing completed on Dollar General’s motion to dismiss and an established scheduling order providing for the close of all discovery on May 23, 2016 and a trial date in September 2016. Moreover, written discovery has recently commenced in this case. Finally, travel to and from the Miami area can be accomplished with relative ease. Therefore, if these actions are not transferred to the Eastern District of Michigan, they should be transferred to the Western District of Missouri or the Southern District of Florida.

#### IV. CONCLUSION

For the foregoing reasons, Dollar General respectfully requests that the Panel transfer these actions to the Eastern District of Michigan (or in the alternative to the Western District of Missouri or the Southern District of Florida) for coordinated and consolidated pretrial

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<sup>12</sup> Dollar General recognizes that Judge Fenner is on senior status but believes that if his docket can accommodate an MDL, he should be considered as a transferee judge.

proceedings. Transfer to the Eastern District of Michigan would best serve the purposes of 28 U.S.C. § 1407 and the convenience of parties.

Dated: March 07, 2016

Respectfully submitted,

/s/ Jontille D. Ray\_\_\_\_\_

R. Trent Taylor  
[rtaylor@mcguirewoods.com](mailto:rtaylor@mcguirewoods.com)  
Perry W. Miles, IV  
[pmiles@mcguirewoods.com](mailto:pmiles@mcguirewoods.com)  
Jontille D. Ray  
[jray@mcguirewoods.com](mailto:jray@mcguirewoods.com)  
McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219  
Tel: 804.775.1000  
Fax: 804. 775.1061

*Attorneys for Defendant Dollar General Corporation, Dolgencorp, LLC and DG Retail, LLC*

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**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**MDL-\_\_\_\_\_ -In re Dollar General Corp. Motor Oil Litigation**

**SCHEDULE OF ACTIONS**

<b>Exhibit No.</b>	<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
<b>1</b>	<b>Plaintiffs:</b> Bradford Barfoot and Leonard Karpeichik, on behalf of themselves and all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General)	S.D. Florida (Miami)	1:15-cv-24662-CMA	Hon. Cecilia M. Altonaga
<b>2</b>	<b>Plaintiffs:</b> Allen Brown, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation; DG Retail, LLC	D. Colorado (Denver)	1:16-cv-00310	Hon. Mag. Judge Nina Y. Wang
<b>3</b>	<b>Plaintiffs:</b> Milton M. Cooke, Jr., individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dollar General Corporation (d/b/a Dolgencorp of Texas, Inc.)	S.D. Texas (Houston)	4:15-cv-03680	Hon. Ewing Werlein, Jr.
<b>4</b>	<b>Plaintiffs:</b> Kevin Gadson, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a	S.D. New York (Manhattan)	1:16-cv-00952	Hon. Analisa Torres

Exhibit No.	Case Captions	Court	Civil Action No.	Judge
	Dollar General, Corporation)			
5	<b>Plaintiffs:</b> William Flinn, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General, Corporation)	D. New Jersey (Camden)	1:15-cv-08713-RMB-AMD	Hon. Renée M. Bumb
6	<b>Plaintiffs:</b> Bruce Gooel, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General Corporation)	E.D. Michigan, (Detroit)	2:16-cv-10439-SFC-MKM	Hon. Sean F. Cox
7	<b>Plaintiffs:</b> John Foppe, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation and Dolgencorp, LLC	E.D. Kentucky (Covington)	2:16-cv-00026-WOB-JGW	Hon. William O. Bertelsman
8	<b>Plaintiffs:</b> Miriam Fruhling, on behalf of herself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation (d/b/a Dolgencorp of Texas, Inc.) and Dolgencorp, LLC	S.D. Ohio (Cincinnati)	1:16-cv-00300-SSB-SKB	Hon. Sandra S. Beckwith

<b>Exhibit No.</b>	<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
<b>9</b>	<b>Plaintiffs:</b> Janine Harvey, on behalf of herself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation and Dolgencorp, LLC	D. Nebraska (Omaha)	8:16-cv-00072-JFB-TDT	Hon. Joseph F. Bataillon
<b>10</b>	<b>Plaintiffs:</b> Chuck Hill, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General, Corporation)	D. Vermont (Burlington)	2:16-cv-00026-wks	Hon. William K. Sessions, III
<b>11</b>	<b>Plaintiffs:</b> John J. McCormick, III, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General, Corporation)	D. Maryland (Baltimore)	1:15-cv-03939-GLR	Hon. George L. Russell, III
<b>12</b>	<b>Plaintiffs:</b> Nicholas Meyer, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation and DG Retail, LLC	D. Kansas (Kansas City)	2:16-cv-02091-CM-JPO	Hon. Carlos Murguia



<b>Exhibit No.</b>	<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
<b>13</b>	<b>Plaintiffs:</b> Robert Oren, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation (d/b/a Dolgencorp LLC) and Dolgencorp, LLC	W.D. Missouri (Kansas City)	4:16-cv-00105-GAF	Hon. Gary A. Fenner
<b>14</b>	<b>Plaintiffs:</b> Scott Sheehy, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation and DG Retail, LLC	D. Minnesota (Minneapolis)	0:16-cv-00319-PJS-FLN	Hon. Patrick J. Schiltz
<b>15</b>	<b>Plaintiffs:</b> Will Sisemore, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General, Corporation)	N.D. Oklahoma (Tulsa)	4:15-cv-00724-GKF-TLW	Hon. Gregory K. Frizzell
<b>16</b>	<b>Plaintiffs:</b> Gerardo Solis, on behalf of himself and all others similarly situated <b>v.</b>  <b>Defendants:</b> Dollar General Corporation, DG Retail, LLC	N.D. Illinois (Chicago)	1:16-cv-02196	Hon. Andrea R. Wood

Exhibit No.	Case Captions	Court	Civil Action No.	Judge
17	<b>Plaintiffs:</b> Roberto Vega, individually and on behalf of all others similarly situated, <b>v.</b>  <b>Defendant:</b> Dolgencorp, LLC (d/b/a Dollar General, Corporation)	C.D. California (Riverside.)	5:16-cv-00242	Hon. Fernando M. Olguin
18	<b>Plaintiffs:</b> Matthew Wait, on behalf of himself and all others similarly situated, <b>v.</b>  <b>Defendants:</b> Dollar General Corporation and Dolgencorp, LLC	W.D. Arkansas (Fayetteville)	5:16-cv-005036-TLB	Hon. Timothy L. Brooks

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**In re Dollar General Corp. Motor Oil Litigation**

**MDL Docket No. \_\_\_\_\_**

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**DEFENDANTS DOLLAR GENERAL CORPORATION, DOLGENCORP, LLC, AND  
DG RETAIL, LLC’S REASONS WHY ORAL ARGUMENT SHOULD BE HEARD**

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Pursuant to Rule 11.1(b) of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, Defendants Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC (hereinafter collectively referred to as “Dollar General”),<sup>1</sup> by and through undersigned counsel, respectfully request oral argument before the United States Judicial Panel on Multidistrict Litigation on their Motion to Transfer Related Actions for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 to the Eastern District of Michigan, or in the alternative, to the Western District of Missouri or the Southern District of Florida, being filed concurrently with this request.

Oral argument will assist the Panel in understanding the issues involved in this litigation, the positions of the interested parties, and the reasons why this motion for a multidistrict litigation should be granted. In particular, the Panel will be further informed as to how

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<sup>1</sup> Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC are the three Dollar General entities that have been named as defendants in the actions identified in the attached Schedule of Actions. Dolgencorp, LLC is a defendant in thirteen of these cases; its parent corporation is Dollar General Corporation. Dollar General Corporation is a defendant in ten of these cases. DG Retail, LLC is a defendant in four of these suits; its parent corporation is DG Promotions, Inc., and the parent corporation of DG Promotions, Inc. is Dollar General Corporation.

transferring, coordinating and consolidating these actions will serve the convenience of the parties and witnesses as well as promote the just and efficient resolution of this litigation by eliminating duplicative discovery, preventing duplicative motion practice, avoiding conflicting pretrial rulings (particularly as to class certification), conserving judicial resources, and reducing litigation costs and efforts. Moreover, oral argument will allow for discussion of the reasons why the Eastern District of Michigan is the most appropriate forum for an MDL in this litigation and permit further dialogue regarding the advantages and disadvantages of the alternative proposed forums. Finally, oral argument will also facilitate discussion as to why the Honorable Sean F. Cox is the ideal transferee judge and aid in the substantial consideration of the Honorable Gary A. Fenner and the Honorable Cecilia M. Altonaga as potential transferee judges.

Therefore, Dollar General respectfully requests that the Panel grant this request for oral argument.

Dated: March 07, 2016

Respectfully submitted,

/s/ Jontille D. Ray

R. Trent Taylor  
[rtaylor@mcguirewoods.com](mailto:rtaylor@mcguirewoods.com)  
Perry W. Miles, IV  
[pmiles@mcguirewoods.com](mailto:pmiles@mcguirewoods.com)  
Jontille D. Ray  
[jray@mcguirewoods.com](mailto:jray@mcguirewoods.com)  
McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219  
Tel: 804.775.1000  
Fax: 804. 775.1061

*Attorneys for Defendant Dollar General Corporation, Dolgencorp, LLC and DG Retail, LLC*

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**In re Dollar General Corp. Motor Oil Litigation**

**MDL Docket No. \_\_\_\_\_**

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**PROOF OF SERVICE**

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I hereby certify that on March 7, 2016, a copy of the foregoing Motion, Memorandum, Schedule of Actions, Oral Argument Statement, and this Certificate/Proof of Service was served via First Class Mail (unless otherwise indicated) on the following:

Steven M. Larimore  
Clerk of Court, Southern District of Florida  
Wilkie D. Ferguson, Jr.  
U.S. Courthouse  
400 North Miami Avenue  
Miami, FL 33128

Jeffrey P. Colwell, Esq.  
Clerk of Court, District of Colorado  
Alfred A. Arraj United States Courthouse, Room A 105  
901 19<sup>th</sup> Street  
Denver, CO 80294-3589

David J. Bradley  
Clerk of Court, Southern District of Texas  
P. O. Box 61010  
Houston, TX 77208

Ruby J. Krajick  
Clerk of Court, Southern District of New York  
Daniel Patrick Moynihan  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007

William T. Walsh  
Clerk of Court, District of New Jersey  
Mitchell H. Cohen Building  
& U.S. Courthouse  
4th & Cooper Streets  
Room 1050  
Camden, NJ 08101

David J. Weaver  
Clerk of Court, Eastern District of Michigan  
Theodore Levin U.S. Courthouse  
231 W. Lafayette Blvd., Room 564  
Detroit, MI 48226

Robert R. Carr  
Clerk of Court, Eastern District of Kentucky  
35 W. 5th Street  
Covington, KY 41011-1401

Richard W. Nagel  
Clerk of Court, Southern District of Ohio  
Potter Stewart U.S. Courthouse  
Room 103  
100 East Fifth Street  
Cincinnati, Ohio 45202

Denise Lucks  
Clerk of Court, District of Nebraska  
111 South 18th Plaza  
Suite 1152  
Omaha, NE 68102

Jeffrey S. Eaton  
Clerk of Court, District of Vermont  
US District Court  
P.O. Box 945  
Burlington, VT 05402-0945

Felicia C. Cannon  
Clerk of Court, District of Maryland  
101 W. Lombard Street  
Baltimore, MD 21201

Timothy M. O'Brien  
Clerk of Court, District of Kansas  
Robert J. Dole United States Courthouse  
500 State Avenue, Suite 259  
Kansas City, KS 66101

Paige Wymore-Wynn  
Acting Clerk of Court, Western District of Missouri  
Charles Evans Whittaker Courthouse  
400 East 9th Street  
Kansas City, Missouri 64106

Rich Sletten  
Clerk of Court, District of Minnesota  
300 South Fourth Street  
202 U.S. Courthouse  
Minneapolis, MN 55415

Phil Lombardi  
Clerk of Court, Northern District of Oklahoma  
333 W. 4th Street,  
Room 411  
Tulsa, OK 74103

Thomas G. Bruton  
Clerk of Court, Northern District of Illinois  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604

Kiry K. Gray  
Clerk of Court, Central District of California  
George E. Brown, Jr. Federal Building and United States Courthouse  
3470 Twelfth Street  
Riverside, CA 92501-3801

Doug Young  
Clerk of Court, Western District of Arkansas  
John Paul Hammerschmidt Federal Building  
35 East Mountain Street  
Room 510  
Fayetteville, Arkansas 72701-5354

**S.D. Florida, No. 1:15-cv-24662-CMA**

Brian T. Ku, Esq.  
Louis Mussman, Esq.  
Ku & Mussman  
6001 NW 153<sup>rd</sup> Street, Suite 100  
Miami Lakes, FL 33014  
[brian@kumussman.com](mailto:brian@kumussman.com)  
[louis@kumussman.com](mailto:louis@kumussman.com)

Allan Kanner, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

**Counsel for Plaintiffs Bradford Barfoot and Leonard Karpeichik**

Emily Y. Rottman, Esq. (*service via email*)  
McGuireWoods LLP  
Bank of America Tower  
50 North Laura Street, Suite 3300  
Jacksonville, FL 32202-3661  
[erottmann@mcguirewoods.com](mailto:erottmann@mcguirewoods.com)

**Counsel for Defendant Dolgencorp, LLC**

**D. Colorado, No. 1:16-cv-00310-**

Andrew K. Smith, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[aks@hfmlegal.com](mailto:aks@hfmlegal.com)

**Counsel for Plaintiff Allen Brown**

**S.D. Texas, No. 4:15-cv-03680**

David W. Pace, Esq.  
707 Omar Street  
Houston, TX 77009  
[dpace63@gmail.com](mailto:dpace63@gmail.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)



[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Milton M. Cooke, Jr.**

Thomas M. Farrell, Esq. (*service via e-mail*)

McGuireWoods LLP

JPMorgan Chase Tower

600 Travis Street

Suite 7500 Houston, TX 77002-2906

[tfarrell@mcguirewoods.com](mailto:tfarrell@mcguirewoods.com)

**Counsel for Defendant Dollar General Corporation**

**S.D. New York, No. 1:16-cv-00952**

Gerald H. Clark, Esq.

William S. Peck, Esq.

Mark W. Morris, Esq.

Clark Law Firm, PC

811 Sixteenth Avenue

Belmar, NJ 07719

[gclark@clarklawnj.com](mailto:gclark@clarklawnj.com)

Allan Kanner, Esq.

Cynthia St. Amant, Esq.

Kanner & Whiteley, LLC

701 Camp Street

New Orleans, LA 70130

[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Kevin Gadson**

Michael Van Riper, Esq. (*service via email*)

McGuireWoods LLP

1345 Avenue of the Americas

7th Floor

New York, NY 10105-0106

[mvanriper@mcguirewoods.com](mailto:mvanriper@mcguirewoods.com)

**Counsel for Dolgencorp, LLC**

**D. New Jersey, No. 1:15-cv-08713-RMB-AMD**

Gerald H. Clark, Esq.

William S. Peck, Esq.

Mark W. Morris, Esq.

Clark Law Firm, PC

811 Sixteenth Avenue

Belmar, NJ 07719

[gclark@clarklawnj.com](mailto:gclark@clarklawnj.com)

Allan Kanner, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
**Counsel for Plaintiff William Flinn**

Michael Van Riper, Esq. (*service via email*)  
McGuireWoods LLP  
1345 Avenue of the Americas  
7th Floor  
New York, NY 10105-0106  
[mvanriper@mcguirewoods.com](mailto:mvanriper@mcguirewoods.com)  
**Counsel for Dolgencorp, LLC**

**E.D. Michigan, No. 2:16-cv-10439-SFC-MKM**

John P. Zuccarini, Esq.  
Law Offices of John P. Zuccarini  
30249 Cedar Hollow  
Beverly Hills, MI 48025  
[zuccarinis@aol.com](mailto:zuccarinis@aol.com)

Sarah E. Steslicki, Esq.  
30445 Northwestern Highway  
Suite 230  
Farmington Hills, MI 48334  
[ssteslicki@gmail.com](mailto:ssteslicki@gmail.com)

Allan Kanner, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
**Counsel for Bruce Goel**

**E.D. Kentucky, No. 2:16-cv-00026-WOB-JGW**

David A. Futscher, Esq.  
Futscher Law PLLC  
913 N. Oak Drive  
Villa Hills, KY 41017  
[david@futscherlaw.com](mailto:david@futscherlaw.com)

Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)  
**Counsel for Plaintiff John Foppe**

Heather M. Hawkins, Esq. (*service via email*)  
Jesse Jenike-Godshalk, Esq.  
Thompson Hines  
312 Walnut Street, 14th Floor  
Cincinnati, OH 45202-4089  
[heather.hawkins@thompsonhine.com](mailto:heather.hawkins@thompsonhine.com)  
[jesse.jenike-godshalk@thompsonhine.com](mailto:jesse.jenike-godshalk@thompsonhine.com)  
**Counsel for Defendants Dollar General Corporation and Dolgencorp, LLC**

**S.D. Ohio, No. 1:16-cv-00300-SSB-SKB**

David A. Futscher, Esq.  
Futscher Law PLLC  
913 N. Oak Drive  
Villa Hills, KY 41017  
[david@futscherlaw.com](mailto:david@futscherlaw.com)

Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Miriam Fruhling**

Heather M. Hawkins, Esq. (*service via email*)

Jesse Jenike-Godshalk, Esq.

Thompson Hines

312 Walnut Street, 14th Floor

Cincinnati, OH 45202-4089

[heather.hawkins@thompsonhine.com](mailto:heather.hawkins@thompsonhine.com)

[jesse.jenike-godshalk@thompsonhine.com](mailto:jesse.jenike-godshalk@thompsonhine.com)

**Counsel for Defendants Dollar General Corporation and Dolgencorp, LLC**

**D. Nebraska, No. 8:16-cv-00072-JFB-TDT**

Andrew K. Smith, Esq.

Kenneth B. McClain, Esq.

Kevin D. Stanley, Esq.

Colin W. McClain, Esq.

Humphrey Farrington & McClain, P.C.

221 West Lexington, Suite 400

Independence, MO 64050

[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)

[kds@hfmlegal.com](mailto:kds@hfmlegal.com)

[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.

Conlee Whiteley, Esq.

Cynthia St. Amant, Esq.

Kanner & Whiteley, LLC

701 Camp Street

New Orleans, LA 70130

[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)

[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Janine Harvey**

Kadee J. Anderson, Esq. (*service via email*)

Stinson Leonard Street

150 South Fifth Street, Suite 2300

Minneapolis, MN 55402

[kadee.anderson@stinson.com](mailto:kadee.anderson@stinson.com)

**Counsel for Defendants Dollar General Corporation and Dolgencorp, LLC**

**D. Vermont, No. 2:16-cv-00026-wks**

Wilfred K. Wright, Jr.

Wright Law PC

P.O. Box 982

Claremore, OK 74018

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
**Counsel for Plaintiff Chuck Hill**

Matthew S. Borick, Esq. (*service via email*)  
DOWNS RACHLIN MARTIN PLLC  
199 Main Street, P.O. Box 190  
Burlington, VT 05402  
[mborick@drm.com](mailto:mborick@drm.com)  
**Counsel for Defendant Dolgencorp, LLC**

**D. Maryland, No. 1:15-cv-03939-GLR**

Stephen J. Nolan, Esq.  
Stephen J. Nolan, Chartered  
Courthouse Commons, Suite A-1  
222 Boseley Avenue  
Baltimore, MD 21204  
[steve@sjnolan.com](mailto:steve@sjnolan.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
**Counsel for Plaintiff John J. McCormick, III**

Adam T. Simons, Esq. (*service via email*)  
McGuireWoods LLP  
7 Saint Paul Street  
Suite 1000  
Baltimore, MD 21202-1671  
[asimons@mcguirewoods.com](mailto:asimons@mcguirewoods.com)  
**Counsel for Defendant Dolgencorp, LLC**

**D. Kansas, No. 2:16-cv-02091-CM-JPO**

J'Nan C. Kimak, Esq.  
Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Nicholas Meyer**

Kadee J. Anderson, Esq. (*service via email*)  
Stinson Leonard Street  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
[kadee.anderson@stinson.com](mailto:kadee.anderson@stinson.com)

**Counsel for Defendants Dollar General Corporation and Dolgencorp, LLC**

**W.D. Missouri, No. 4:16-cv-00105-GAF**

Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.

Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Robert Oren**

Kadee J. Anderson, Esq. (*service via email*)  
Stinson Leonard Street  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
[kadee.anderson@stinson.com](mailto:kadee.anderson@stinson.com)

**Counsel for Defendants Dollar General Corporation and Dolgencorp, LLC**

**D. Minnesota, No. 0:16-cv-00319-PJS-FLN**

George “Jed” Chronic  
Nicholas J. Maxwell  
Maschka, Riedy & Ries  
Union Square Business Center  
201 North Broad Street, Suite 200  
P.O. Box 7  
Mankato, MN 56003-0007  
[jed\\_chronic@mrr-law.com](mailto:jed_chronic@mrr-law.com)  
[nick\\_maxwell@mrr-law.com](mailto:nick_maxwell@mrr-law.com)

Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Scott Sheehy**

Kadee J. Anderson, Esq. *(service via email)*

Stinson Leonard Street  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

[kadee.anderson@stinson.com](mailto:kadee.anderson@stinson.com)

**Counsel for Defendants Dollar General Corporation and DG Retail, LLC**

**N.D. Oklahoma, No. 4:15-cv-00724-GKF-TLW**

Wilfred K. Wright, Jr.

Wright Law PC

P.O. Box 982

Claremore, OK 74018

Allan Kanner, Esq.

Conlee Whiteley, Esq.

Cynthia St. Amant, Esq.

Kanner & Whiteley, LLC

701 Camp Street

New Orleans, LA 70130

[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)

[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Will Sisemore**

Joel S. Allen, Esq. *(service via email)*

McGuireWoods LLP

2000 McKinney Avenue

Suite 1400

Dallas, TX 75201

[jallen@mcguirewoods.com](mailto:jallen@mcguirewoods.com)

**Counsel for Defendant Dolgencorp, LLC**

**N.D. Illinois, No. 1:16-cv-02196**

Jason H. Rubens, Esq.

Toby P. Muholland, Esq.

Rubens and Kress

134 N. LaSalle Street, Suite 444

Chicago, IL 60602

[rubens.kress@gmail.com](mailto:rubens.kress@gmail.com)

Kenneth B. McClain, Esq.

Steven E. Crick, Esq.

Kevin D. Stanley, Esq.

Colin W. McClain, Esq.



Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050

[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)

[kds@hfmlegal.com](mailto:kds@hfmlegal.com)

[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

**Counsel for Plaintiff Gerardo Solis**

Helen D. Arnold, Esq. (*service via email*)

McGuireWoods LLP

77 West Wacker Drive

Suite 4100

Chicago, IL 60601-1818

[harnold@mcguirewoods.com](mailto:harnold@mcguirewoods.com)

**Counsel for Defendants Dollar General Corporation and DG Retail, LLC**

**C.D. California, No. 5:16-cv-00242**

Gillian L. Wade, Esq.

Sara D. Avila, Esq.

Marc Castaneda, Esq.

Milstein Adelman LLP

10250 Constellation Boulevard

Suite 1400

Los Angeles, CA 90067

[gwade@milsteinadelman.com](mailto:gwade@milsteinadelman.com)

[savila@milsteinadelman.com](mailto:savila@milsteinadelman.com)

[mcastaneda@milsteinadelman.com](mailto:mcastaneda@milsteinadelman.com)

Allan Kanner, Esq.

Conlee Whiteley, Esq.

Cynthia St. Amant, Esq.

Kanner & Whiteley, LLC

701 Camp Street

New Orleans, LA 70130

[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)

[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)

[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Roberto Vega**

A. Brooks Gresham, Esq. (*service via email*)

McGuireWoods LLP

1800 Century Park East

8th Floor

Los Angeles, CA 90067-1501

[bgresham@mcguirewoods.com](mailto:bgresham@mcguirewoods.com)

**Counsel for Defendant Dolgencorp, LLC**

**W.D. Arkansas, No. 5:16-cv-05036-TLB**

J. Timothy Smith, Esq.  
Elliott & Smith Law Firm  
4302 N. Waterside Court  
Fayetteville, AR 72703  
[tsmith@elliottsmithlaw.com](mailto:tsmith@elliottsmithlaw.com)

Kenneth B. McClain, Esq.  
Kevin D. Stanley, Esq.  
Colin W. McClain, Esq.  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
[jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans, LA 70130  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)

**Counsel for Plaintiff Matthew Wait**

/s/ Jontille D. Ray  
\_\_\_\_\_  
Jontille D. Ray  
[jray@mcguirewoods.com](mailto:jray@mcguirewoods.com)  
McGuireWoods LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219  
Tel: 804.775.1000  
Fax: 804. 775.1061

# Exhibit 1

**U.S. District Court  
Southern District of Florida (Miami)  
CIVIL DOCKET FOR CASE #: 1:15-cv-24662-CMA**

Barfoot et al v. Dolgencorp, LLC  
Assigned to: Judge Cecilia M. Altonaga  
Referred to: Magistrate Judge John J. O'Sullivan  
Cause: 28:1332 Diversity-Fraud

Date Filed: 12/18/2015  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Plaintiff**

**Bradford Barfoot**

represented by **Allan Kanner**  
Kanner & Whiteley LLC  
701 Camp Street  
New Orleans, LA 70130  
504-524-5777  
Fax: 504-524-5763  
Email: a.kanner@kanner-law.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Louis I. Mussman**  
Ku & Mussman PA  
6001 NW 153 STREET  
Suite 100  
Miami Lakes, FL 33014  
United Sta  
305-891-1322  
Fax: 891-4512  
Email: louis@kumussman.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian Tse-Hua Ku**  
Ku & Mussman PA  
6001 NW 153 STREET  
Suite 100  
Miami Lakes, FL 33014  
305-891-1322  
Fax: 305-891-4512  
Email: brian@kumussman.com  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Leonard Karpeichik**  
*on behalf of themselves and all others*  
*similarly situated*

represented by **Allan Kanner**  
(See above for address)  
*LEAD ATTORNEY*

*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Louis I. Mussman**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian Tse-Hua Ku**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dolgencorp, LLC**  
*a Kentucky corporation*

represented by **Emily Yandle Rottmann**  
McGuireWoods LLP  
50 N. Laura Street  
Suite 3300  
Jacksonville, FL 32202  
904-798-3224  
Fax: 904-798-3263  
Email: erottmann@mcguirewoods.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Richard Trent Taylor**  
McGuire Woods, LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VI 23219  
804-775-1182  
Email: rtaylor@mcguirewoods.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Daniel M Mahfood**  
McGuireWoods  
Bank of America Tower  
50 N. Laura Street  
Suite 3300  
Jacksonville, FL 32202-3661  
(904) 798-2637  
Fax: (904) 360-6321  
Email: dmahfood@mcguirewoods.com  
*ATTORNEY TO BE NOTICED*

**Robert Eric Bilik**  
McGuire Woods  
50 N Laura Street

Suite 3300 PO Box 4099  
 Jacksonville, FL 32201-4099  
 904-798-3200  
 Fax: 798-3207  
 Email: ebilik@mcguirewoods.com  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
12/18/2015	<a href="#"><u>1</u></a>	COMPLAINT against Dolgencorp, LLC. Filing fees \$ 400.00 receipt number 113C-8338142, filed by Bradford Barfoot, Leonard Karpeichik. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet, # <a href="#"><u>2</u></a> Summon(s))(Ku, Brian) (Entered: 12/18/2015)
12/18/2015	<a href="#"><u>2</u></a>	Judge Assignment to Judge Cecilia M. Altonaga (ail) (Entered: 12/18/2015)
12/18/2015	<a href="#"><u>3</u></a>	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge John J. O'Sullivan is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (ail) (Entered: 12/18/2015)
12/18/2015	<a href="#"><u>4</u></a>	Summons Issued as to Dolgencorp, LLC. (ail) (Entered: 12/18/2015)
01/05/2016	<a href="#"><u>5</u></a>	ORDER requiring service to be perfected by 3/17/2016. Signed by Judge Cecilia M. Altonaga on 1/5/2016. (ps1) (Entered: 01/05/2016)
01/07/2016	<a href="#"><u>6</u></a>	SUMMONS (Affidavit) Returned Executed on <a href="#"><u>1</u></a> Complaint with a 21 day response/answer filing deadline by Bradford Barfoot, Leonard Karpeichik. Dolgencorp, LLC served on 12/22/2015, answer due 1/12/2016. (Ku, Brian) (Entered: 01/07/2016)
01/08/2016	<a href="#"><u>7</u></a>	Order Requiring Joint Scheduling Report and Certificates of Interested Parties. Joint Scheduling Report and Certificates of Interested Parties due by 1/21/2016. Signed by Judge Cecilia M. Altonaga on 1/8/2016. (wc) (Entered: 01/08/2016)
01/08/2016	<a href="#"><u>8</u></a>	NOTICE of Attorney Appearance by Daniel M Mahfood on behalf of Dolgencorp, LLC. Attorney Daniel M Mahfood added to party Dolgencorp, LLC(pty:dft). (Mahfood, Daniel) (Entered: 01/08/2016)
01/08/2016	<a href="#"><u>9</u></a>	Joint MOTION for Extension of Time to File Response/Reply/Answer as to <a href="#"><u>1</u></a> Complaint by Dolgencorp, LLC. (Attachments: # <a href="#"><u>1</u></a> Text of Proposed Order)(Mahfood, Daniel) (Entered: 01/08/2016)
01/08/2016	<a href="#"><u>10</u></a>	NOTICE of Attorney Appearance by Robert Eric Bilik on behalf of Dolgencorp, LLC. Attorney Robert Eric Bilik added to party Dolgencorp, LLC(pty:dft). (Bilik, Robert) (Entered: 01/08/2016)
01/08/2016	<a href="#"><u>11</u></a>	NOTICE of Attorney Appearance by Emily Yandle Rottmann on behalf of Dolgencorp, LLC. Attorney Emily Yandle Rottmann added to party Dolgencorp, LLC(pty:dft). (Rottmann, Emily) (Entered: 01/08/2016)
01/11/2016	<a href="#"><u>12</u></a>	ORDER granting in part <a href="#"><u>9</u></a> Motion for Extension of Time to File Response to the Complaint. Dolgencorp, LLC's Answer due 2/5/2016. Re: <a href="#"><u>1</u></a> Complaint filed by Leonard Karpeichik, Bradford Barfoot. Signed by Judge Cecilia M. Altonaga on 1/11/2016. (ps1) (Entered: 01/11/2016)
01/21/2016	<a href="#"><u>13</u></a>	Certificate of Interested Parties/Corporate Disclosure Statement by Bradford Barfoot, Leonard Karpeichik (Ku, Brian) (Entered: 01/21/2016)

01/21/2016	<a href="#">14</a>	Certificate of Interested Parties by Dolgencorp, LLC identifying Corporate Parent Dollar General Corporation for Dolgencorp, LLC (Rottmann, Emily) (Entered: 01/21/2016)
01/21/2016	<a href="#">15</a>	Corporate Disclosure Statement by Dolgencorp, LLC identifying Corporate Parent Dollar General Corporation for Dolgencorp, LLC (Rottmann, Emily) (Entered: 01/21/2016)
01/21/2016	<a href="#">16</a>	SCHEDULING REPORT - <b>Rule 16.1</b> by Dolgencorp, LLC (Attachments: # <a href="#">1</a> Exhibit A)(Rottmann, Emily) (Entered: 01/21/2016)
01/22/2016	<a href="#">17</a>	ORDER Setting Trial and Pretrial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge John J. O'Sullivan: Jury Trial set for trial period beginning 9/19/2016 in Miami Division before Judge Cecilia M. Altonaga. Calendar Call set for 9/13/2016 09:00 AM in Miami Division before Judge Cecilia M. Altonaga. Motions to amend pleadings or join parties due by 3/4/2016. All discovery due by 5/23/2016. Proposed order scheduling mediation due by 2/12/2016. Mediation Deadline 6/6/2016. In Limine Motions due by 7/12/2016. All pretrial motions due by 6/14/2016. Pretrial Stipulation due by 7/12/2016. Signed by Judge Cecilia M. Altonaga on 1/22/2016. (ps1) (Entered: 01/22/2016)
02/05/2016	<a href="#">18</a>	Defendant's MOTION TO DISMISS <a href="#">1</a> Complaint FOR FAILURE TO STATE A CLAIM <i>with Incorporated Memorandum of Law</i> by Dolgencorp, LLC. Responses due by 2/22/2016 (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit, # <a href="#">4</a> Exhibit, # <a href="#">5</a> Exhibit, # <a href="#">6</a> Exhibit)(Mahfood, Daniel) (Entered: 02/05/2016)
02/05/2016	<a href="#">19</a>	Defendant's MOTION to Strike <a href="#">1</a> Complaint <i>Class Allegations</i> by Dolgencorp, LLC. Responses due by 2/22/2016 (Mahfood, Daniel) (Entered: 02/05/2016)
02/05/2016	<a href="#">20</a>	ORDER denying <a href="#">19</a> Motion to Strike. Signed by Judge Cecilia M. Altonaga on 2/5/2016. (ps1) (Entered: 02/05/2016)
02/12/2016	<a href="#">21</a>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Allan Kanner. Filing Fee \$ 75.00 Receipt # 113C-8481475 by Bradford Barfoot. Responses due by 2/29/2016 (Attachments: # <a href="#">1</a> Certification of Allan Kanner, # <a href="#">2</a> Service List, # <a href="#">3</a> Text of Proposed Order)(Ku, Brian) (Entered: 02/12/2016)
02/12/2016	<a href="#">22</a>	NOTICE by Dolgencorp, LLC re <a href="#">17</a> Scheduling Order, Order Referring Case to Judge, Order Referring Case to Mediation,,,,, ( <i>Joint Notice of Selection of Mediator</i> ) (Attachments: # <a href="#">1</a> Text of Proposed Order) (Rottmann, Emily) (Entered: 02/12/2016)
02/16/2016	<a href="#">23</a>	ORDER granting <a href="#">21</a> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Cecilia M. Altonaga (CMA) (Entered: 02/16/2016)
02/16/2016	<a href="#">24</a>	ORDER Scheduling Mediation before John S. Freud; Mediation report due by 6/6/2016. Mediation Hearing set for 6/2/2016 09:00 AM. Signed by Judge Cecilia M. Altonaga on 2/16/2016. (ps1) (Entered: 02/16/2016)
02/22/2016	<a href="#">25</a>	RESPONSE in Opposition re <a href="#">18</a> Defendant's MOTION TO DISMISS <a href="#">1</a> Complaint FOR FAILURE TO STATE A CLAIM <i>with Incorporated Memorandum of Law</i> filed by Bradford Barfoot, Leonard Karpeichik. Replies due by 3/3/2016. (Mussman, Louis) (Entered: 02/22/2016)
02/26/2016	<a href="#">26</a>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Richard Trent Taylor. Filing Fee

		\$ 75.00 Receipt # 113C-8520525 by Dolgencorp, LLC. Responses due by 3/14/2016 (Attachments: # <a href="#">1</a> Certification, # <a href="#">2</a> Certification, # <a href="#">3</a> Text of Proposed Order) (Mahfood, Daniel) (Entered: 02/26/2016)
02/29/2016	<a href="#">27</a>	ORDER granting <a href="#">26</a> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. Signed by Judge Cecilia M. Altonaga (CMA) (Entered: 02/29/2016)
03/03/2016	<a href="#">28</a>	REPLY to Response to Motion re <a href="#">18</a> Defendant's MOTION TO DISMISS <a href="#">1</a> Complaint FOR FAILURE TO STATE A CLAIM <i>with Incorporated Memorandum of Law</i> filed by Dolgencorp, LLC. (Mahfood, Daniel) (Entered: 03/03/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 09:01:15			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	1:15-cv-24662-CMA
Billable Pages:	4	Cost:	0.40



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

BRADFORD BARFOOT and LEONARD )		
KARPEICHUK, on behalf of themselves )		
and all others similarly situated, )		
)		Case No:
Plaintiffs, )		
)		Class Action
vs. )		
)		
DOLGENCORP, LLC (d/b/a DOLLAR, )		
GENERAL), a Kentucky corporation, )		
)		
Defendant. )		
_____ )		

**CLASS ACTION COMPLAINT**

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

**NATURE AND SUMMARY OF THE ACTION**

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

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

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

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

### **PARTIES**

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

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

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

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

### **JURISDICTION AND VENUE**

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

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

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

### **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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



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

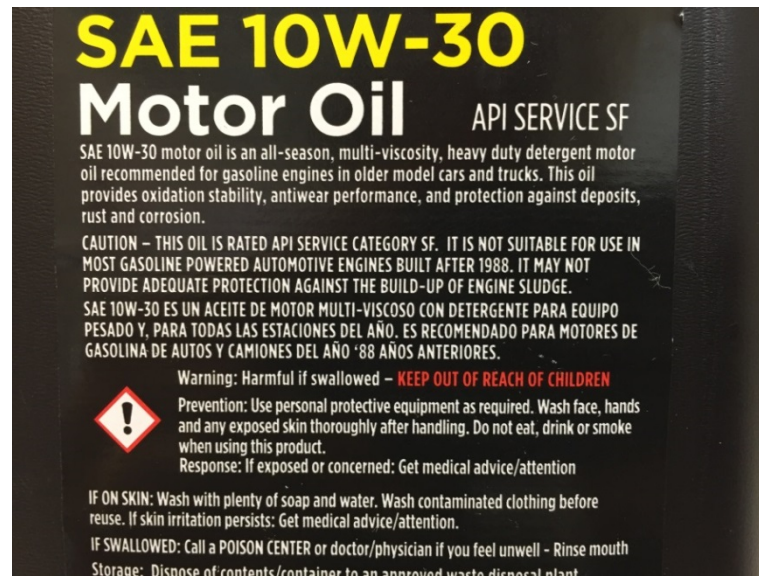
31. Dollar General also fails to warn its customers adequately of the obsolete nature and dangers the Motor Oil Products pose to the very automobiles its customers are trying to protect by purchasing the Motor Oil Products. An adequate warning for Dollar General's obsolete Motor Oil Products would be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

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



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





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



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



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



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



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

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

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

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

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

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

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

### **CLASS ACTION ALLEGATIONS**

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

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

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

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

### ***FRCP 23(a) Factors***

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

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

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

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

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

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



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

***FRCP 23(b)(2) Factors***

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

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

***FRCP 23(b)(3) Factors***

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

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

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

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



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

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

### **CLAIMS FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**NOTICE OF BRACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

**Breach of Implied Warranty of Merchantability**

**Fla. Stat. § 672.317**

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

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

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

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

**DEMAND/PRAAYER FOR RELIEF**

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

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

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

**JURY TRIAL DEMANDED**

December 18, 2015

Respectfully submitted,

**KU & MUSSMAN, PA**

By: /s/ Brian T. Ku

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

*and*

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

*Attorneys for Plaintiffs and the Class*

## CIVIL COVER SHEET

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

**I. (a) PLAINTIFFS** BRADFORD BARFOOT &  
LEONARD KARPEICHUK

**DEFENDANTS** DOLGENCORP, LLC  
(d/b/a/ DOLLAR GENERAL)

**(b)** County of Residence of First Listed Plaintiff MIAMI-DADE  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

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

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

Attorneys (If Known)

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

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

**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                                   |
|---|---------------------------------------|---------------------------------------|
| Citizen of This State   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            |
| Citizen of Another State                                      | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            |
| Citizen or Subject of a Foreign Country                       | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            |
| Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4            |
| Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| 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 (Excl. 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 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 - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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
<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 <b>Other:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Empl. Ret. Inc. Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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))	<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>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

**VI. RELATED/ RE-FILED CASE(S)**

(See instructions):

a) Re-filed Case ☐ YES ☒ NO

b) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

28 USC s 1332(d)

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
\$5,000,000+

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

December 18, 2015

/s/ Brian T. Ku

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

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

# UNITED STATES DISTRICT COURT

for the

Southern District of Florida

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

\_\_\_\_\_  
*Plaintiff(s)*

v.

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

\_\_\_\_\_  
*Defendant(s)*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

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

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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

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

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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

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

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

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

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

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# Exhibit 2

**U.S. District Court  
District of Colorado (Denver)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00310-NYW**

Brown v. Dollar General Corporation et al  
Assigned to: Magistrate Judge Nina Y. Wang  
Cause: 28:1332 Diversity - Deceptive Trade Practices

Date Filed: 02/09/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Allen Brown**  
*on behalf of himself and all others  
similarly situated*

represented by **Andrew Kelley Smith**  
Humphrey, Farrington & McClain, PC  
P.O. Box 900  
221 West Lexington  
#400  
Independence, MO 64051  
816-836-5050  
Fax: 816-836-8966  
Email: aks@hfmlegal.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Dollar General Corporation**  
*a Tennessee corporation*

**Defendant**

**DG Retail, LLC**  
*a Tennessee Limited Liability Company*

Date Filed	#	Docket Text
02/10/2016	<a href="#"><u>1</u></a>	COMPLAINT <i>and Demand for Trial by Jury</i> against DG Retail, LLC, Dollar General Corporation (Filing fee \$ 400,Receipt Number 1082-4822544)Attorney Andrew Kelley Smith added to party Allen Brown(pty:pla), filed by Allen Brown.(Smith, Andrew) (Entered: 02/10/2016)
02/10/2016	2	Case assigned to Magistrate Judge Nina Y. Wang. Text Only Entry (dbera, ) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>3</u></a>	Magistrate Judge consent form issued pursuant to D.C.COLO.LCivR 40.1, direct assignment of civil actions to full time magistrate judges. (dbera, ) (Entered: 02/10/2016)
02/29/2016	<a href="#"><u>4</u></a>	

ORDER SETTING STATUS CONFERENCE for 3/17/2016 09:00 AM in Courtroom C204 before Magistrate Judge Nina Y. Wang. Consent Form due by 3/10/2016. By Magistrate Judge Nina Y. Wang on 2/29/16. (nywlc1) (Entered: 02/29/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 07:04:07			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	1:16-cv-00310-NYW
Billable Pages:	1	Cost:	0.10



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

Civil Action No. \_\_\_\_\_

**ALLEN BROWN, 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 Ave.  
Nashville, TN 37203**

**and**

**DG RETAIL, L.L.C.,  
a Tennessee Limited Liability Company  
Serve Registered Agent:  
Corporation Service Company,  
1560 Broadway Ste 2090  
Denver, CO 80202**

**Defendants.**

---

**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

---

Plaintiff Allen Brown ("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 Colorado, 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 Colorado and DG Retail, LLC, a Tennessee limited liability company corporation (individually referred to as “DG Retail”) doing business in Colorado (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 Colorado 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 Colorado Deceptive Trade Practices Act (Colo. Rev. Stat. Sec. 6-1-105).

### **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 state of Tennessee, 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 Defendants because Defendants are foreign corporations or associations authorized to do business in Colorado, do sufficient business in

Colorado, and have sufficient minimum contacts with Colorado or otherwise intentionally avail themselves of the laws and markets of Colorado, through the promotion, sale, marketing and distribution of its merchandise in Colorado, to render the exercise of jurisdiction by the Colorado courts permissible.

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 Colorado and have received substantial compensation from Colorado consumers who purchase goods from Defendants.

### **PARTIES**

9. Plaintiff Allen Brown is an individual adult resident citizen of Golden, Jefferson County, Colorado 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 5300 Sheridan Boulevard, Arvada, Colorado, on February 8, 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 DG Retail, LLC is a Tennessee limited liability company with its principal office located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant DG Retail, LLC can be served through its registered agent for service: Corporation Service Company, 1560 Broadway, Ste. 2090, Denver, CO 80202.

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 Colorado, 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. Dollar General operates a chain of retail variety stores 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. Defendants knew or should have known that 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 Colorado Deceptive Trade Practices 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 Colorado.



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 Colorado 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, 2013.**

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 Colorado Deceptive Trade Practices 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 Colorado Deceptive Trade

Practices 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 COLORADO DECEPTIVE TRADE PRACTICES ACT** **(Colo. Rev. Stat. Sec. 6-1-105)**

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 Colorado 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 Colorado Deceptive Trade Practice Act, Sec. 6-1-105. In selling the DG-branded oil at issue to Plaintiff, Dollar General has used deception fraud, false pretense, misrepresentation or the concealment, suppression or omission of material facts, 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.

62. 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.

63. 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.

64. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered actual economic damages as a proximate result of Defendants' actions as set forth herein.

#### **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 ICFDBPA 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 Denver, Colorado 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 9, 2016

Respectfully submitted,

/s/ Andrew K. Smith  
Andrew K. Smith  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
Telephone: (816) 836-5050  
Facsimile: (816) 836-8966  
Attorneys for Plaintiff

# Exhibit 3

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CIVIL DOCKET FOR CASE #: 4:15-cv-03680**

Deck v. Dollar General Corporation  
Assigned to: Judge Ewing Werlein, Jr  
Demand: \$5,000,000,000  
Cause: 28:1332 Diversity-Fraud

Date Filed: 12/21/2015  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Plaintiff**

**Michael Deck**

represented by **David Wilson Pace**  
Attorney at Law  
707 Omar  
Houston, TX 77009  
832-582-5078  
Email: dpacc63@gmail.com  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Milton M. Cooke Jr.**

represented by **Allan Kanner**  
Kanner and Whiteley LLC  
701 Camp St  
New Orleans, LA 70130  
504-524-5777  
Fax: 504-524-5763 fax  
*ATTORNEY TO BE NOTICED*

**Conlee Schell Whiteley**  
Kanner Whiteley LLC  
701 Camp Street  
New Orleans, LA 70130  
504-524-5777  
Email: c.whiteley@kanner-law.com  
*ATTORNEY TO BE NOTICED*

**Cynthia St. Amant**  
Kanner & Whiteley, L.L.C.  
701 Camp St.  
New Orleans, LA 70130  
504-524-5777  
Email: c.stamant@kanner-law.com  
*ATTORNEY TO BE NOTICED*

**David Wilson Pace**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dollar General Corporation**  
*doing business as*  
Dolgencorp of Texas, Inc.

represented by **Thomas M Farrell**  
McGuirewoods LLP  
600 Travis  
Ste 7500  
Houston, TX 77002  
713-353-6677  
Email: tfarrell@mcguirewoods.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
12/21/2015	<a href="#"><u>1</u></a>	COMPLAINT against Dollar General Corporation d/b/a Dollar General (Filing fee \$ 400 receipt number 0541-15909922) filed by Michael Deck.(Pace, David) (Entered: 12/21/2015)
12/21/2015	<a href="#"><u>2</u></a>	Request for Issuance of Summons as to Dollar General Corporation d/b/a Dollar General, filed.(Pace, David) (Entered: 12/21/2015)
12/21/2015	<a href="#"><u>3</u></a>	<i>Civil Cover Sheet</i> by Michael Deck, filed.(Pace, David) (Entered: 12/21/2015)
12/22/2015		Summons Issued as to Dollar General Corporation. Issued summons returned to plaintiff by: First-class mail, filed.(hler, 4) (Entered: 12/22/2015)
12/22/2015	<a href="#"><u>4</u></a>	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 5/13/2016 at 02:15 PM in Room 11521 before Judge Ewing Werlein, Jr(Signed by Judge Ewing Werlein, Jr) Parties notified.(mmiller, 4) (Entered: 12/22/2015)
12/23/2015	<a href="#"><u>5</u></a>	First AMENDED COMPLAINT with Jury Demand against All Defendants filed by Milton M. Cooke.(Pace, David) (Entered: 12/23/2015)
12/23/2015	<a href="#"><u>6</u></a>	Request for Issuance of Summons as to All Defendants, filed.(Pace, David) (Entered: 12/23/2015)
12/24/2015		Summons Issued as to Dollar General Corporation. Issued summons returned to plaintiff by: First-class mail, filed.(gkelner, 4) (Entered: 12/24/2015)
01/11/2016	<a href="#"><u>7</u></a>	CERTIFICATE OF INTERESTED PARTIES by Milton M. Cooke Jr., filed.(Pace, David) (Entered: 01/11/2016)
01/11/2016	<a href="#"><u>8</u></a>	CERTIFICATE OF INTERESTED PARTIES by Milton M. Cooke Jr., filed.(Pace, David) (Entered: 01/11/2016)
01/12/2016	<a href="#"><u>9</u></a>	RETURN of Service of SUMMONS Executed as to Dollar General Corporation served on 1/4/2016, answer due 1/25/2016, filed.(Pace, David) (Entered: 01/12/2016)
01/15/2016	<a href="#"><u>10</u></a>	STIPULATION re: Extension of Time by Dollar General Corporation, filed. (Attachments: # <a href="#"><u>1</u></a> Proposed Order Granting Joint Stipulation for Extension of Time) (Farrell, Thomas) (Entered: 01/15/2016)
01/19/2016	<a href="#"><u>11</u></a>	MOTION for Allan Kanner to Appear Pro Hac Vice by Milton M. Cooke Jr., filed. Motion Docket Date 2/9/2016. (Pace, David) (Entered: 01/19/2016)
01/19/2016	<a href="#"><u>12</u></a>	

		MOTION for Conlee Whiteley to Appear Pro Hac Vice by Milton M. Cooke Jr., filed. Motion Docket Date 2/9/2016. (Pace, David) (Entered: 01/19/2016)
01/19/2016	<a href="#">13</a>	MOTION for Cynthia St. Amant to Appear Pro Hac Vice by Milton M. Cooke Jr., filed. Motion Docket Date 2/9/2016. (Pace, David) (Entered: 01/19/2016)
01/19/2016	<a href="#">14</a>	ORDER granting <a href="#">10</a> Joint Stipulation for Extension of Time. ( Answer due by 2/24/2016 )(Signed by Judge Ewing Werlein, Jr) Parties notified.(olindor, 4) (Entered: 01/20/2016)
01/21/2016	<a href="#">16</a>	ORDER Granting Cynthia St. Amant <a href="#">13</a> Motion to Appear Pro Hac Vice.(Signed by Judge Ewing Werlein, Jr) Parties notified.(jguajardo, 4) (Entered: 01/22/2016)
01/21/2016	<a href="#">17</a>	ORDER Granting Allan Kanner <a href="#">11</a> Motion to Appear Pro Hac Vice.(Signed by Judge Ewing Werlein, Jr) Parties notified.(jguajardo, 4) (Entered: 01/22/2016)
01/22/2016	<a href="#">15</a>	ORDER Granting Conlee Whiteley <a href="#">12</a> Motion to Appear Pro Hac Vice.(Signed by Judge Ewing Werlein, Jr) Parties notified.(jguajardo, 4) (Entered: 01/22/2016)
01/28/2016	<a href="#">18</a>	CERTIFICATE OF INTERESTED PARTIES by Dollar General Corporation, filed. (Farrell, Thomas) (Entered: 01/28/2016)
02/24/2016	<a href="#">19</a>	MOTION to Dismiss <a href="#">5</a> Amended Complaint/Counterclaim/Crossclaim etc. by Dollar General Corporation, filed. Motion Docket Date 3/16/2016. (Attachments: # <a href="#">1</a> Appendix of Exhibits, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Exhibit D) (Farrell, Thomas) (Entered: 02/24/2016)
02/24/2016	<a href="#">20</a>	MOTION to Strike <a href="#">5</a> Amended Complaint/Counterclaim/Crossclaim etc. by Dollar General Corporation, filed. Motion Docket Date 3/16/2016. (Farrell, Thomas) (Entered: 02/24/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 08:06:21			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	4:15-cv-03680
Billable Pages:	2	Cost:	0.20

**DAVID W. PACE** (State Bar No. 15393000)  
dppace63@gmail.com  
707 Omar Street  
Houston, TX 77009  
Telephone: (832) 582-5078  
Facsimile: (832) 582-5078

Allan Kanner, Esq. (State Bar No. 109152)  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
Conlee Whiteley, Esq. (*Pro Hac Vice*)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
Cynthia St. Amant, Esq. (State Bar No. 24002176) (*Pro Hac Vice*)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
**KANNER & WHITELEY, L.L.C.**  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

MILTON M. COOKE, JR.,  
individually and on behalf of all others  
similarly situated,

Plaintiff,

V.

DOLLAR GENERAL  
CORPORATION (d/b/a Dolgencorp of  
Texas, Inc.), a Tennessee corporation,

Defendant.

CASE NO. 15-CV-03680

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

1. Deceptive Trade Practices, *Texas Business and Commerce Code Sec. 17.41, et seq.*
2. Breach of Warranty and Unconscionable Conduct, *Texas Business and Commerce Code Sec. 17.41, et seq.*
3. Breach of Implied Warranty of Merchantability
4. Breach of Implied Warranty of Fitness for a Particular Purpose
5. Unjust Enrichment

Plaintiff Milton M. Cooke, Jr. ("Plaintiff"), individually and on behalf of all others similarly situated, makes the following allegations based on his personal

1 knowledge of his own acts and, otherwise, upon information and belief based on  
2 investigation of counsel.

3  
4 **NATURE AND SUMMARY OF THE ACTION**

5 1. Plaintiff, by and through undersigned counsel, brings this action both on his  
6 own behalf and on behalf of the class defined below, comprised of all individuals  
7 similarly situated within the State of Texas, to redress the unlawful and deceptive  
8 practices employed by Defendant Dollar General Corporation, a Tennessee  
9 corporation doing business in Texas as Dolgencorp of Texas, Inc. (hereinafter  
10 “Dollar General” or “Defendant”) in connection with its marketing and sale of its  
11 company-branded motor oil sold in its stores.  
12

13  
14 2. Dollar General sells an entire line of company-branded motor oils (labeled  
15 “DG”) that are obsolete and potentially harmful to its customers’ automobiles by  
16 using deceptive and misleading tactics including the positioning of its line of  
17 obsolete motor oils immediately adjacent to the more expensive standard- and  
18 premium-quality motor oils manufactured by its competitors and failing to  
19 adequately warn its customers that its DG motor oil is unsuitable for use by the vast  
20 majority, if any, of its customers.  
21

22  
23 3. Dollar General’s unlawful and deceptive business practices violate the  
24 Deceptive Trade Practices – Consumer Protection Act, *Texas Business and*  
25 *Commerce Code Sec. 17.41, et seq.* (“DTPA”) and the contractual rights of  
26 consumers.  
27  
28

## **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 state of 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 Texas through its wholly owned subsidiary Dolgencorp of Texas, Inc. which is registered with the Texas Secretary of State, does sufficient business in Texas, and has sufficient minimum contacts with Texas or otherwise intentionally avails itself of the laws and markets of Texas, through the promotion, sale, marketing and distribution of its merchandise in Texas, to render the exercise of jurisdiction by the Texas 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 numerous stores in Texas and has received substantial compensation from Texas consumers who purchase goods from Defendant.



**PARTIES**

8. Plaintiff Milton M. Cooke, Jr. is an individual adult resident citizen of Houston, Harris County, Texas and is a member of the Class alleged herein.

9. Plaintiff purchased Dollar General's DG-branded motor oil from a Dollar General store in Houston, Texas in December 2015.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee.

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 Texas, 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. Dollar General does business in Texas through 1246 retail stores located throughout the State of Texas.

1       13. Dollar General is a discount retailer focused on low and fixed income  
2 consumers in small markets. Dollar General’s business model includes locating its  
3 stores in rural, suburban communities, and in its more densely populated markets,  
4 Dollar General’s customers are generally from the neighborhoods surrounding the  
5 stores. Dollar General’s stores are located with the needs of its core customers (low  
6 and fixed income households) in mind.  
7

8  
9       14. Dollar General offers basic every day and household goods, along with a  
10 variety of general merchandise at low prices to provide its customers with one-stop  
11 shopping opportunities generally in their own neighborhoods.  
12

13       15. In addition to offering name brand and generic merchandise, Dollar General  
14 manufactures and markets its own lines of inexpensive household products, which  
15 bear the designation “DG.” DG lines include “DG Auto,” “DG Hardware” “DG  
16 Health” and “DG Office.”  
17

18       16. Dollar General’s DG Auto line consists of three types of obsolete motor oil:  
19 DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 that fail to protect and can  
20 actively damage, modern-day automobiles.  
21

22       17. Motor oils lubricate the engines of the automobiles driven by individuals.  
23 Their main function is to reduce wear on an engine’s moving parts. Motor oils also  
24 inhibit corrosion, improve sealing and keep engines properly cooled.  
25

26       18. Motor oils have evolved in parallel with the automobiles they are meant to  
27 protect. Institutions like the Society of Automotive Engineers (“SAE”) employ  
28

1 rigorous tests to ensure that motor oils meet evolving standards relating to, among  
2 other criteria, sludge buildup, temperature volatility, resistance to rust, resistance to  
3 foaming, resistance to oil consumption, homogeneity and miscibility.

4  
5 19. Motor oils designed to protect engines from earlier eras do not protect, and  
6 can harm, modern-day engines. Thus, motor oil that would be suitable to use in an  
7 engine manufactured in the 1980's or earlier is not suitable for use in modern-day  
8 engines.

9  
10 20. Dollar General engages in the unfair, unlawful, deceptive and fraudulent  
11 practice of marketing, selling and causing to be manufactured, obsolete motor oil  
12 without adequately warning that its product is unsuitable for, and can harm, the  
13 vehicles driven by the overwhelming majority of Dollar General's customers (and  
14 the public at large)

15  
16 21. Dollar General misleads customers using product placement tactics and  
17 misleading product labels which obscure a critical fact from Dollar General's  
18 customers: Dollar General's motor oil is unfit for, and can harm, the vehicles driven  
19 by the vast majority, if not all, of its customers.

20  
21 22. Dollar General's in-house motor oils use the same or similar SAE  
22 nomenclature on the front of its labels (*e.g.*, 10W-30, 10W-40, SAE 30) as do the  
23 other mainstream, non-harmful, and actually useful brands of motor oil sold by  
24 Dollar General and beside which Dollar General places its DG brand motor oil on  
25 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."

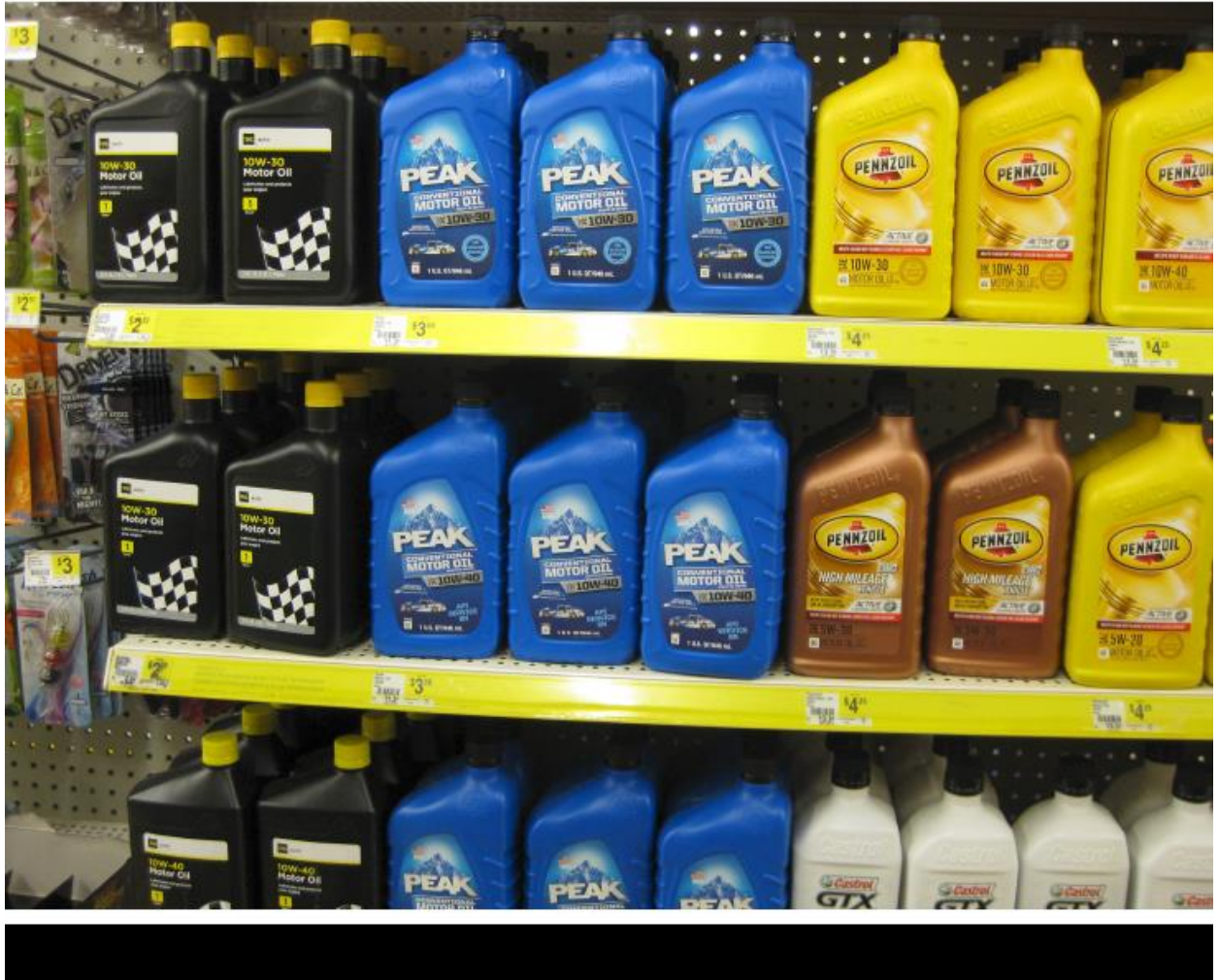
24. However, among the small print on the back label of Dollar General's motor oils is the statement that DG SAE 10W-30 and DG SAE 10W-40 are admittedly "not suitable for use in most gasoline powered automotive engines built after 1988" and "may not provide adequate protection against the build-up of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

1        27. Few, if any, Dollar General customers drive vehicles for which these  
2 products are safe, and the use of the term “older” is a relative term that does not  
3 inform a reasonable consumer that these motor oils are not safe for cars  
4 manufactured within the past 27 *years*, or in the case of Dollar General’s DG SAE  
5 30, the past 85 *years*.  
6

7  
8        28. Dollar General further disguises the obsolete and harmful nature of its motor  
9 oils with its positioning of these motor oils on its shelves in a misleading manner.  
10 Specifically, Dollar General places similar quantities of its in-house brand motor  
11 oils, DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30, none of which are  
12 suitable for modern-day automobiles, adjacent to an array of other motor oils which  
13 are suitable for modern-day vehicles. The photograph below illustrates how Dollar  
14 General effects this deception:  
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28



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.

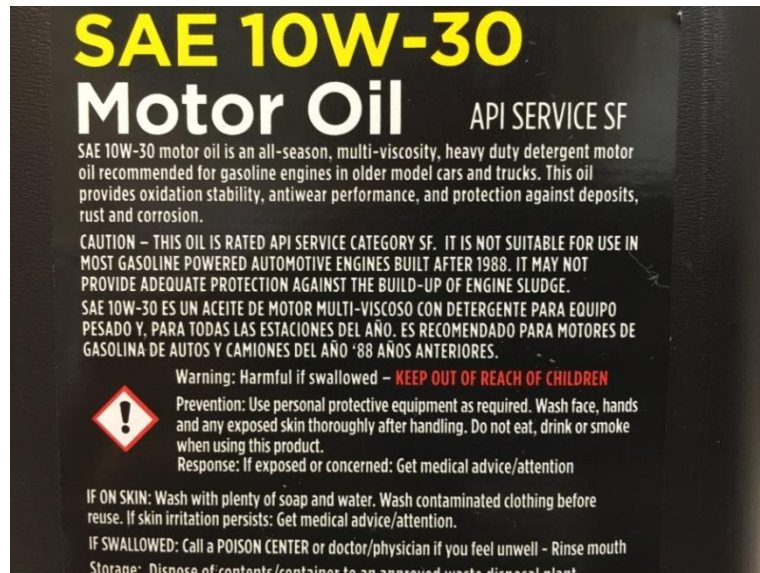
31. Dollar General also fails to warn its customers adequately of the obsolete nature of DG-branded motor oils or of the dangers DG-branded motor oils pose to the very automobiles its customers are trying to protect by purchasing Dollar General's motor oil. An adequate warning for Dollar General's obsolete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

37. The Texas DTPA is designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

1       38. Defendant's unfair and deceptive course of conduct victimized all  
2 purchasers of Dollar General's motor oil from Dollar General, throughout the  
3 country and in the State of Texas.

4  
5       39. As a direct and proximate result of Dollar General's deceptive and  
6 fraudulent practices, Plaintiff and the Class Members purchased a product they  
7 would not have otherwise purchased and have suffered and will continue to suffer  
8 economic damages.

9  
10       40. In addition, many Class Members have sustained damage to their  
11 automobiles as a result of the use of Dollar General's DG-branded motor oil and  
12 have suffered and will continue to suffer economic damage as a result.

13  
14       41. Plaintiff therefore brings the statutory and common law claims alleged  
15 herein to halt Dollar General's deceptive practices and to obtain compensation for  
16 the losses suffered by Plaintiff and all Class Members.

17  
18                   **Unjust Enrichment**

19  
20       42. Plaintiff and Class Members have conferred substantial benefits on the  
21 Defendant by purchasing its useless and harmful motor oil, and Dollar General has  
22 consciously and willingly accepted and enjoyed these benefits.

23  
24       43. Defendant knew or should have known that consumers' payments for its  
25 obsolete and harmful motor oil were given and received with the expectation that  
26 the motor oil would lubricate and protect consumers' engines and would not be  
27 harmful to their vehicles.  
28

1 44. Because of the fraudulent misrepresentations, concealments, and other  
2 wrongful activities described herein, Defendant has been unjustly enriched by its  
3 wrongful receipt of Plaintiff's and Class Members' monies.  
4

5 45. As a direct and proximate result of Defendant's wrongful conduct and  
6 unjust enrichment, Plaintiff and Class Members have suffered damages in an  
7 amount to be determined at trial.  
8

9 46. Defendant should be required to account for and disgorge all monies,  
10 profits and gains which they have obtained or will unjustly obtain in the future at  
11 the expense of consumers.  
12

13 **CLASS ACTION ALLEGATIONS**

14 47. Plaintiff brings this class action pursuant to Rule 23(b)(2) and 23(b)(3) of  
15 the Federal Rules of Civil Procedure on behalf of himself and all members of the  
16 following Class:  
17

18 **All persons in the State of Texas who purchased Defendant's DG-**  
19 **branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE**  
20 **30, for personal use and not for re-sale, since December 2011.**

21 48. Subject to additional information obtained through further investigation  
22 and discovery, the foregoing definition of the Class may be expanded or narrowed  
23 by amendment or amended complaint.  
24

25 49. Specifically excluded from the proposed Class are Dollar General, its  
26 officers, directors, agents, trustees, parents, children, corporations, trusts,  
27 representatives, employees, successors, assigns, or other persons or entities related  
28

1 to or affiliated with Dollar General and/or its officers and/or directors, or any of  
2 them. Also excluded from the proposed Class are the Court, the Court's immediate  
3 family and Court staff.  
4

5 **FRCP 23(a) Factors**

6 50. **Numerosity.** Membership in the Class is so numerous that separate joinder  
7 of each member is impracticable. The precise number of Class Members is unknown  
8 at this time but can be readily determined from Defendant's records. Plaintiff  
9 reasonably estimates that there are tens of thousands of persons in the Class.  
10

11 51. **Adequacy of Representation.** Plaintiff will fairly and adequately represent  
12 and protect the interests of the members of the Class. Plaintiff has retained counsel  
13 highly experienced in complex consumer class action litigation and intends to  
14 prosecute this action vigorously. Plaintiff is a member of the Class described herein  
15 and does not have interests antagonistic to, or in conflict with, the other members of  
16 the Class.  
17

18 52. **Typicality.** Plaintiff's claims are typical of the claims of the members of the  
19 Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class  
20 purchased obsolete, harmful, deceptively labeled and deceptively marketed motor  
21 oil from Dollar General and were subjected to Defendant's common course of  
22 conduct.  
23

24 53. **Existence and Predominance of Common Questions of Law and Fact.**  
25 There are numerous and substantial questions of law and fact common to all Class  
26  
27  
28

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, constitutes a false, misleading or deceptive act or practice in the conduct of any trade or commerce under the Texas Deceptive Trade Practices – Consumer Protection Act, Texas Business and Commerce Code §17.41, *et seq.*;
- m) Whether Dollar General’s conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the Texas Deceptive Trade Practices – Consumer Protection Act, Texas Business and Commerce Code §17.50(a)(3), *et seq.*;
- n) Whether Dollar General’s conduct, as alleged herein, constitutes a breach of an express or implied warranty actionable under the Texas Deceptive Trade Practices – Consumer Protection Act, Texas Business and Commerce Code §17.50(a)(2), *et seq.*;



- 1 o) Whether the Class is entitled to injunctive relief prohibiting the  
2 wrongful practices alleged herein and enjoining such practices in the  
3 future;  
4  
5 p) Whether Plaintiff and members of the Class are entitled to restitution;  
6  
7 q) Whether compensatory, consequential and punitive damages ought  
8 to be awarded to Plaintiff and Class Members;  
9  
10 r) Whether Plaintiff and Class Members are entitled to attorneys' fees and  
11 expenses, and in what amount;  
12  
13 s) The proper method for calculating damages and restitution classwide;  
14 and  
15  
16 t) Whether Plaintiff and Class Members are entitled to declaratory and/or  
17 other equitable relief.

18 **FRCP 23(b)(2)**

19 54. Defendant has acted on grounds generally applicable to the entire Class,  
20 thereby making final injunctive relief and/or corresponding declaratory relief  
21 appropriate with respect to the Class as a whole. The prosecution of separate  
22 actions by individual Class Members would create the risk of inconsistent or  
23 varying adjudications with respect to individual member of the Class that would  
24 establish incompatible standards of conduct for Defendant.  
25  
26

27 55. Injunctive relief is necessary to prevent further fraudulent and unfair  
28



1 business practices by Defendant. Money damages alone will not afford adequate  
2 and complete relief, and injunctive relief is necessary to restrain Defendant from  
3 continuing to commit its deceptive, fraudulent and unfair policies.  
4

5  
6 **FRCP 23(b)(3)**

7  
8 **56. Common Issues Predominate:** As set forth in detail herein above, common  
9 issues of fact and law predominate because all of Plaintiff's DTPA and warranty  
10 claims are based on a deceptive common course of conduct. Whether Dollar  
11 General's conduct is likely to deceive reasonable consumers and breaches the  
12 implied warranties of merchantability and fitness for a particular purpose is common  
13 to all members of the Class and are the predominate issues, and Plaintiff can prove  
14 the elements of his claims on a class-wide basis using the same evidence as would  
15 be used to prove those elements in individual actions alleging the same claims  
16  
17

18 **57. Superiority.** A class action is superior to other available methods for the fair  
19 and efficient adjudication of this controversy for at least the following reasons:  
20

- 21 a) Given the size of the claims of individual Class Members, as well as  
22 the resources of Dollar General, few Class Members, if any, could  
23 afford to seek legal redress individually for the wrongs alleged herein;  
24  
25 b) This action will permit an orderly and expeditious administration of the  
26 claims of Class Members, will foster economies of time, effort and  
27 expense and will ensure uniformity of decisions;  
28

1 c) Any interest of Class Members in individually controlling the  
2 prosecution of separate actions is not practical, creates the potential for  
3 inconsistent or contradictory judgments and would create a burden on  
4 the court system;

5  
6 d) Without a class action, Class Members will continue to suffer damages,  
7 Defendant's violations of law will proceed without remedy, and  
8 Defendant will continue to reap and retain the substantial proceeds  
9 derived from its wrongful and unlawful conduct. Plaintiff and Class  
10 Members have suffered damages as a result of Defendant's unlawful  
11 and unfair conduct. This action presents no difficulties that will impede  
12 its management by the Court as a class action.  
13  
14  
15

16 58. **Notice to the Class:** Notice can be accomplished by publication for most  
17 Class Members, and direct notice may be possible for those who are members of a  
18 Dollar General's rewards program or for whom Dollar General has specific  
19 information. Further, publication notice can be easily targeted to Dollar General  
20 customers because Defendant only sells the subject motor oil in its own stores.  
21

22 59. The Class members have been monetarily damaged and suffered injury in  
23 fact as a result of Dollar General's misconduct, in that each member purchased  
24 Dollar General's useless and harmful motor oil.  
25  
26  
27  
28

**CLAIMS FOR RELIEF**

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

**FIRST CAUSE OF ACTION**  
**VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES –**  
**CONSUMER PROTECTION ACT SEC'S 17.46(b)(5), 17.46(b)(7) and**  
**17.46(b)(9)**

***Texas Business and Commerce Code* §17.46(b)(5), 17.46(b)(7) and 17.46(b)(9)**

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

62. Plaintiff brings this claim under DTPA Sec.'s 17.46(b)(5), 17.46(b)(7) and 17.46(b)(9) on behalf of himself and the Class, who were subject to Defendant's above-described false, deceptive or misleading conduct.

63. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered actual economic damages as a proximate result of Defendant's actions as set forth herein.

64. Plaintiff and members of the Class are consumers as defined by DTPA Sec. 17.45(4). The DG-branded motor oils are goods within the meaning of DTPA Sec. 17.45(1).

65. 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 three (3) years of the commencement of this action.

1       66. Specifically, as described herein, Dollar General made the following  
2 representations, expressly or by implication to Plaintiff and Class Members about  
3 the deceptively labeled motor oil: (i) that Dollar General's DG-branded motor oil  
4 was suitable for use in its customers' automobiles; (ii) that Dollar General's DG-  
5 branded motor oil was safe to use in its customers' automobiles; and (iii) that Dollar  
6 General's DG-branded motor oil was of similar quality as the other motor oils beside  
7 which Dollar General's DG-branded motor oils were positioned on the shelves in  
8 Defendant's stores.  
9

10  
11  
12       67. These representations were materially misleading and deceptive, and were a  
13 producing cause of economic damages to consumers.  
14

15       68. Defendant violated and continues to violate the DTPA by engaging in the  
16 following practices proscribed by DTPA Sec's. 17.46(b)(5), 17.46(b)(7) and  
17 17.46(b)(9) in transactions with Plaintiff and members of the Sub-Class, which  
18 were intended to result in, and did result in, the sale of DG-branded motor oils:  
19

- 20       a. By representing that DG branded motor oil "Lubricates and protects  
21 your engine," placing the DG-branded motor oils on shelves next to  
22 legitimate motor oils intended for use in modern day vehicles, and  
23 failing to adequately warn consumers of the harm their products can  
24 cause, Defendant is representing that DG-branded motor oils have  
25 characteristics, uses and benefits which they do not have, in  
26 violation of DTPA Sec. 17.46(b)(5);  
27  
28

b. By representing that DG branded motor oil “Lubricates and protects 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, in violation of DTPA Sec. 17.46(b)(7);

c. By representing that DG branded motor oil “Lubricates and protects 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 advertising goods with intent not to sell them as advertised in violation of DTPA Sec. 17.46(b)(9).

69. Defendant violated the DTPA 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.

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

71. Defendant’s false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the DTPA because

1 Defendant continues to sell the obsolete oil without adequate warnings and  
2 represent that the DG-branded motor oils have characteristics, uses and benefits  
3 which the products do not have, and has thus caused economic damage and  
4 continues to cause economic damage to Plaintiff and the Class.  
5

6 72. Neither Plaintiff nor any reasonable consumer would have purchased the  
7 DG-branded motor oil if they were informed it was obsolete and not suitable for  
8 their vehicles, was not capable of protecting or lubricating their vehicles' engines,  
9 and could harm their vehicles.  
10

11 73. Plaintiff seeks injunctive relief pursuant to DTPA Sec. 17.50(b)(2) in the  
12 form of enjoining Defendant from (1) selling obsolete oil; (2) expressly or impliedly  
13 representing to current and potential purchasers of the DG-branded motor oils that  
14 the product is suitable for use in modern day vehicles manufactured after 1988, or  
15 in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm  
16 the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective  
17 advertising requiring Defendant to disseminate truthful, adequate disclosures and  
18 warnings about the actual uses (to the extent there are any) of the DG-branded motor  
19 oils.  
20

21 74. Plaintiff and members of the Class shall be irreparably harmed if such an  
22 order is not granted.  
23  
24  
25  
26  
27  
28

**SECOND CAUSE OF ACTION**  
**VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES –**  
**CONSUMER PROTECTION ACT SEC’S 17.50(a)(2) and 17.50(a)(3)**  
***Texas Business and Commerce Code Sec.’s 17.50(a)(2) and 17.50(a)(3)***

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

76. Plaintiff brings this claim under DTPA Sec.’s 17.50(a)(2) and 17.50(a)(3) on behalf of himself and the Class, who were subject to Defendant’s above-described unconscionable, unfair and deceptive conduct.

77. The actions of Defendant set forth above constitute breach of an express or implied warranty which was the producing cause of economic damages to Plaintiff and Class Members which is actionable under DTPA Sec. 17.50 (a)(2).

78. The actions of Defendant set forth above constitute an unconscionable action or course of action which was committed knowingly, and which was the producing cause of economic damages to Plaintiff and Class Members actionable under DTPA Sec. 17.50(a)(3).

**THIRD CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability**

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

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

1 to consumers, including Plaintiff and Class Members, by labeling/packaging and  
2 other means, that DG SAE 10W-30, DG SAE 10W-40, and DG SAE 30 are safe and  
3 suitable for use in the automobiles driven by Dollar General's customers. Plaintiff  
4 and Class Members bought those goods from the Defendant.

5  
6 81. Defendant was a merchant with respect to goods of the kind which were sold  
7 to Plaintiff and Class Members, and there was in the sale to Plaintiff and Class  
8 Members an implied warranty that those goods were merchantable.

9  
10 82. However, Defendant breached that warranty implied in the contract for the  
11 sale of goods in that Dollar General's DG-branded motor oil is in fact not suitable  
12 for use in the vehicles driven by the vast majority, if any, of Dollar General's  
13 customers, as set forth in greater detail above.

14  
15 83. As a result thereof Plaintiff and Class Members did not receive goods as  
16 impliedly warranted by Defendant to be merchantable.

17  
18 84. As a proximate result of this breach of warranty by Defendant, Plaintiff and  
19 Class Members have been damaged in an amount to be determined at trial.

20  
21 **FOURTH CAUSE OF ACTION**  
22 **Breach of Implied Warranty of Fitness for a Particular Purpose**

23  
24 85. Plaintiff incorporates by this reference the allegations contained in the  
25 preceding paragraphs as if fully set forth herein.

26  
27 86. Beginning at an exact date unknown to Plaintiff, but at least since four  
28 years prior to the filing date of this action, and as set forth above, Defendant sold its



1 DG-branded motor oils to Plaintiff and Class Members, who bought those goods  
2 from Defendant in reliance on Defendant's skill and judgment.

3  
4 87. At the time of sale, Defendant had reason to know the particular purpose for  
5 which the goods were required, and that Plaintiff and Class Members were relying  
6 on Defendant's skill and judgment to select and furnish suitable goods so that there  
7 was an implied warranty that the goods were fit for this purpose.

8  
9 88. However, Defendant breached the warranty implied at the time of sale in that  
10 Plaintiff and Class Members did not receive suitable goods, and the goods were not  
11 fit for the particular purpose for which they were required in that Dollar General's  
12 DG-branded motor oils are not safe or suitable for use in the vast majority, if any, of  
13 vehicles driven by Dollar General's customers, as set forth in detail above.

14  
15 89. This breach of warranty by Defendant has been the producing cause of  
16 economic damages to Plaintiff and Class Members in an amount to be determined at  
17 trial.  
18

19  
20 **FIFTH CAUSE OF ACTION**  
21 **Unjust Enrichment**

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

25  
26 91. Defendant knew or should have known that consumers' payments for its  
27 obsolete and harmful motor oil were given and received with the expectation that  
28

1 the motor oil would lubricate and protect consumers' engines and would not be  
2 harmful to their vehicles.

3  
4 92. Because of the fraudulent misrepresentations, concealments, and other  
5 wrongful activities described herein, Defendant has been unjustly enriched by its  
6 wrongful receipt of Plaintiff's and Class Members' monies.

7  
8 93. As a direct and proximate result of Defendant's wrongful conduct and unjust  
9 enrichment, Plaintiff and Class Members have suffered damages in an amount to be  
10 determined at trial.

11  
12 94. Defendant should be required to account for and disgorge all monies, profits  
13 and gains which they have obtained or will unjustly obtain in the future at the  
14 expense of consumers.

15  
16 **DEMAND/PRAYER FOR RELIEF**

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

- 19  
20 A. An order certifying that this action may be maintained as a class action;  
21 B. An award to Plaintiff and Class Members of full restitution;  
22 C. An order pursuant to DTPA Sec. 17.50(b)(2) enjoining Defendant from  
23 engaging in the unfair and/or deceptive acts or practices, as set forth in this  
24 Complaint, and requiring Defendant to disseminate corrective advertising;  
25 D. Compensatory economic damages;  
26  
27  
28

1 E. Punitive Damages and/or additional damages provided in DTPA Sec.  
2 17.50(b)(1) for violations of the DTPA set forth above which were  
3 committed knowingly;  
4

5 F. Restitution and equitable disgorgement of the unlawful profits collected by  
6 the Defendant;  
7

8 G. An order providing for declaratory and/or injunctive relief:

9 1. Declaring that Defendant must provide accurate representations of  
10 the quality of the motor oil sold at its stores;  
11

12 2. Enjoining Defendant from continuing the deceptive practices  
13 alleged herein; and  
14

15 3. Granting other extraordinary equitable and/or injunctive relief as  
16 permitted by law, including specific performance, reformation and  
17 imposition of a constructive trust;  
18

19 H. Prejudgment and post-judgment interest at the prevailing legal rate;

20 I. Plaintiff's attorneys' fees and costs of suit; and

21 J. Such other and further relief as the Court may deem necessary and  
22 appropriate.  
23

24 **JURY DEMAND**

25 Plaintiff and Class Members, pursuant to Fed. R. Civ. P. 38(b), hereby demand  
26 trial by jury on all issues so triable.  
27  
28

1 DATED: December 23, 2015

2 s/ David W. Pace

3 **DAVID W. PACE**  
4 Attorney in Charge  
5 Texas Bar # 15393000  
6 Southern District of Texas Bar #43  
7 707 Omar Street  
Houston, TX 77009  
Telephone: (832) 582-5078  
Facsimile: (832) 582-5078

8 **KANNER & WHITELEY, L.L.C.**

9 Allan Kanner, Esq.  
10 Conlee Whiteley, Esq.  
11 Cynthia St. Amant, Esq.  
12 701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

13 *Attorneys for Plaintiff*

# Exhibit 4

**U.S. District Court  
Southern District of New York (Foley Square)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00952-AT**

Gadson v. DOLGENCORP, LLC  
Assigned to: Judge Analisa Torres  
Demand: \$5,000,000  
Cause: 28:1332pi Diversity-Personal Injury

Date Filed: 02/08/2016  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Plaintiff****Kevin Gadson**

represented by **Gerald H Clark**  
Clark Law Firm, PC  
811 Sixteenth Avenue  
Belmar, NJ 07719  
(732)224-9400  
Email: gclark@clarklawnj.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****DOLGENCORP, LLC**

*agent of*  
Dollar General Corporation

Date Filed	#	Docket Text
02/08/2016	<u><a href="#">1</a></u>	<b>FILING ERROR - DEFICIENT PLEADING</b> COMPLAINT against DOLGENCORP, LLC. (Filing Fee \$ 400.00, Receipt Number 0208-11931531) Document filed by Kevin Gadson. (Attachments: # <u><a href="#">1</a></u> Complaint)(Clark, Gerald) Modified on 2/9/2016 (sj). (Entered: 02/08/2016)
02/08/2016	<u><a href="#">2</a></u>	CIVIL COVER SHEET filed. (Clark, Gerald) (Entered: 02/08/2016)
02/08/2016		<b>***NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney Gerald H Clark to RE-FILE Document No. <u><a href="#">1</a></u> Complaint. The filing is deficient for the following reason(s): PDF should only consist of Complaint. Re-file the pleading using the event type Complaint found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. (sj)</b> (Entered: 02/09/2016)
02/08/2016		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Cathy Seibel. Please download and review the Individual Practices of the assigned District Judge, located at <a href="http://nysd.uscourts.gov/judges/District">http://nysd.uscourts.gov/judges/District</a> . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at <a href="http://nysd.uscourts.gov/ecf_filing.php">http://nysd.uscourts.gov/ecf_filing.php</a> . (sj) (Entered: 02/10/2016)

02/08/2016		Magistrate Judge Lisa M. Smith is so designated. (sj) (Entered: 02/10/2016)
02/08/2016		Case Designated ECF. (sj) (Entered: 02/10/2016)
02/09/2016	<a href="#"><u>3</u></a>	COMPLAINT against DOLGENCORP, LLC. Document filed by Kevin Gadson.(Clark, Gerald) (Entered: 02/09/2016)
02/19/2016		NOTICE OF CASE REASSIGNMENT to Judge Analisa Torres. Judge Cathy Seibel is no longer assigned to the case. (wb) (Entered: 02/19/2016)
02/19/2016		Magistrate Judge Barbara C. Moses is so redesignated. (wb) (Entered: 02/19/2016)
02/19/2016	<a href="#"><u>4</u></a>	LETTER addressed to Judge Cathy Seibel from Gerald H. Clark dated 2/19/16 re: request that this matter be transferred to the Manhattan Courthouse in the Southern District of New York. Document filed by Kevin Gadson.(yv) (Entered: 02/19/2016)
02/23/2016	<a href="#"><u>5</u></a>	INITIAL PRETRIAL CONFERENCE ORDER: Initial Conference set for 4/26/2016 at 04:30 PM in Courtroom 15D, 500 Pearl Street, New York, NY 10007 before Judge Analisa Torres. (As further set forth in this Order.) (Signed by Judge Analisa Torres on 2/23/2016) (kko) (Entered: 02/23/2016)
02/25/2016	<a href="#"><u>6</u></a>	REQUEST FOR ISSUANCE OF SUMMONS as to Dolgencorp, LLC (d/b/a Dollar General Corporation), re: <a href="#"><u>3</u></a> Complaint. Document filed by Kevin Gadson. (Clark, Gerald) (Entered: 02/25/2016)
02/29/2016	<a href="#"><u>7</u></a>	ELECTRONIC SUMMONS ISSUED as to DOLGENCORP, LLC. (moh) (Entered: 02/29/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 09:15:35			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	1:16-cv-00952-AT
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**KEVIN GADSON, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC, (d/b/a DOLLAR  
GENERAL, CORPORATION)**

**Defendant.**

Case No. \_\_\_\_\_

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

Plaintiff Kevin Gadson (“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 including 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 New York, to redress the unlawful commercial practices employed by Defendant, DOLGENCORP, LLC, (d/b/a Dollar General, Corporation), (hereinafter “Dollar General” and/or “Defendant”) at its stores whereby Dollar General: a) sells an entire line of company-branded motor oils (labeled “DG”) that are obsolete and potentially harmful to its customers’ automobiles; b) positions this line of obsolete motor oils immediately adjacent to the standard- and premium-quality motor oils sold by its competitors; and c) fails to adequately warn its customers that DG motor oil is unsuitable for the vast majority, if not all, of its customers to use in their modern day automobiles.



2. Dollar General engaged in these unlawful, materially misleading and/or materially deceptive business practices in connection with the sale and/or advertisement of this merchandise to consumers in violation of New York General Business Law (“N.Y. Gen Bus. L.”) § 349 *et seq.*, N.Y. Gen Bus. L. § 350 *et seq.*, the Uniform Commercial Code and certain common law standards.

### **PARTIES**

3. Plaintiff Kevin Gadson is an individual adult resident citizen of the City of Rochester, County of Monroe, State of New York and is a member of the Class alleged herein.

4. Plaintiff purchased Dollar General’s 10W-30 store brand motor oil from Dollar General’s store in Rochester, New York, on or about February 5, 2016 for his 2007 Chevy Impala.

5. 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.

6. At all relevant times, Defendant produced, marketed, advertised and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of New York, utilizing materially deceptive and/or materially misleading sales practices in connection with the sale, marketing, and/or advertising of this merchandise to consumers. These practices were consumer oriented and employed with the intent to deceive Plaintiff and Class Members into purchasing obsolete motor oil for use in their modern-day vehicles. Defendant’s engaged and continue to engage in these materially misleading and/or materially deceptive practices in spite of knowledge that their motor oil is obsolete and likely to cause damage to most all modern day vehicles.

7. As such, purchasers of DG-branded motor oil have suffered injuries as a result of Defendant’s unconscionable, deceptive, fraudulent, and misrepresentative acts.

8. Defendant maintains approximately 298 stores throughout the State of New York. As such, New York courts maintain a significant interest in regulating Defendant's conduct which emanates from New York, yet deceives consumers nationwide.

### **JURISDICTION AND VENUE**

9. 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 state, there are more than 100 Class Members, and the amount-in-controversy exceeds \$5,000,000 exclusive of interest and costs.

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

11. Venue is proper in this District under 28 U.S.C. §1391(b) 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

12. In addition, Defendant operates approximately 298 stores in New York and has received substantial compensation from New York consumers who purchase goods from Defendant.

### **FACTUAL ALLEGATIONS**

13. Dollar General operates a chain of variety stores headquartered in Goodlettsville, Tennessee. As of October 2015, Dollar General operated more than 12,300 stores in 43 states, including 298 stores in the State of New York.

14. 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.

15. 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.

16. 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."

17. Dollar General's DG Auto line consists of three types of obsolete motor oils: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 that fail to protect and can actively damage, modern day automobiles.

18. Motor oils are supposed to properly 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.

19. 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.

20. 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.<sup>1</sup>

21. Defendant engaged in and continues to engage in materially deceptive and/or materially misleading acts and/or omissions in connection with the sale of less expensive obsolete motor oil to consumers, said oil being unsuitable for, and at times harmful, to the vehicles driven by the overwhelming majority of Dollar General's customers.

22. Dollar General also engages in the materially deceptive and/or materially misleading sales practice of concealing the obsolete and harmful nature of its motor oil from its consumers through deceitful product placement tactics and misleading labels which obscure a critical fact from Dollar General's customers: Dollar General's motor oil is unfit for and wholly obsolete in the vehicles driven by the vast majority, if not all, of its customers.

23. 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. Dollar General places its DG brand motor oil next to these brand motor oil products on its shelves.

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

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<sup>1</sup> See, e.g. The Petroleum Quality Institute of America, *Some Engine Oils Currently on the Shelves Can Harm Your Engine*, <http://www.pqiamerica.com/apiserviceclass.htm>.

25. The labels of all “DG” brand motor oils also contain a prominent checkered flag on the front, suggestive of auto racing and winning.

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, which is not visible when the products are on the store shelves.

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

29. Few, if any, Dollar General customers drive vehicles for which these products are safe or suitable 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 materially deceives consumers by concealing 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 is suitable for modern-day automobiles, adjacent to an array of other motor oils which are suitable for modern-day vehicles. The photograph below illustrates how Dollar General effects this deception:



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 and checkered flag on the front, *e.g.*, 10W-40. The bottle also contains the same kind of shape to allow an easy pour into a car engine. The only apparent difference being the price, as Dollar General's motor oils are less expensive than the others.

31. Defendant's product display and packaging conceals the fact that these DG-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines of most of the consumers purchasing motor oil. Instead, by using this materially deceptive method of product placement, Dollar General materially misleads consumers into thinking that the quality of the Dollar General-brand motor oils is the same or similar to that of the other motors oils sold by Dollar General.

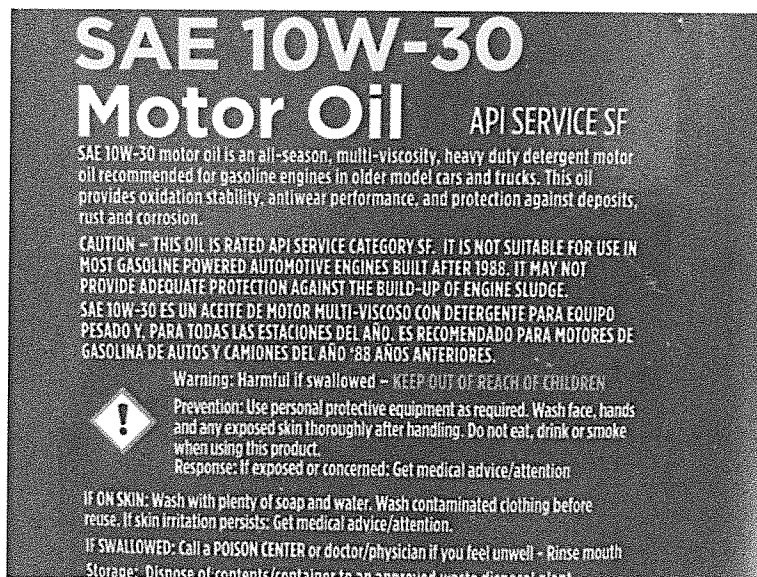
32. Dollar General also fails to warn its customers adequately of the obsolete nature of DG-branded motor oils or of the dangers DG-branded motor oils pose to the very automobiles its customers are trying to protect by purchasing Dollar General's motor oil. An adequate warning for Dollar General's obsolete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

33. 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":

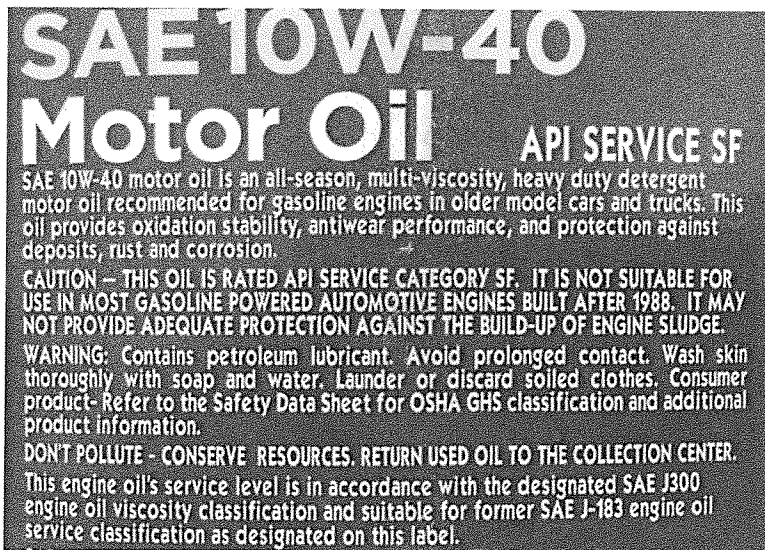


34. DG SAE 10W-40 bears the following labels on its front (left) and back (right):





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":



35. 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 MOTORED ENGINES BUILT AFTER 1930" and "USE IN MODERN ENGINES MAY CAUSE UNSATISFACTORY ENGINE PERFORMANCE OR EQUIPMENT HARM":



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 by Dollar General in this materially deceptive manner, except that Dollar General is successfully deceiving a sufficient number of consumers to make this fraudulent practice worthwhile. It is materially deceptive and/or materially misleading for Dollar General to distribute, market, and sell an entire line of motor oil in this manner 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 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. New York consumer protection laws are designed to protect consumers from this type of deceptive advertising and predatory conduct.

39. Defendant's unfair, unlawful, unconscionable, misleading 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 New York.

40. Defendant's scheme to materially deceive and defraud consumers violates N.Y. Gen Bus. L. § 349 *et seq.*, N.Y. Gen Bus. L. § 350 *et seq.*, the Uniform Commercial Code and consumers' contractual rights.

41. As a direct and proximate result of Dollar General's materially deceptive, unlawful, materially misleading, fraudulent and unconscionable 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. Indeed, the products are useless in all but the most outdated automotive engines. Had Plaintiff and Class Members not been deceived by Defendant they would not have purchased this virtually obsolete oil.

42. 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.

43. Plaintiff therefore brings the statutory and common law claims alleged herein to halt Dollar General's materially deceptive, unconscionable, unlawful, and materially misleading practices and to obtain compensation for the losses suffered by Plaintiff and all Class Members.

### **CLASS ACTION ALLEGATIONS**

44. 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 New York 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 2009.**

45. 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.

46. 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**

47. **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 tens of thousands of persons in the Class.

48. **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.

49. **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.

50. **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 that control this litigation and predominate over any individual issues. 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 materially 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 acting reasonably under the circumstances;
- 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 materially deceive reasonable consumers acting reasonable under the circumstances;
- 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 Defendant knowingly concealed, suppressed, omitted or failed to disclose material facts relating to the harmful and obsolete nature of its company-branded motor oil with the intent Plaintiff and Class Members rely on this concealment, suppression or omission in connection with their purchase of the "DG" brand motor oil;
- m) Whether Defendant's conduct and scheme to defraud Plaintiff and Class Members materially misleading and/or deceitful;
- n) Whether the acts of Defendant violated, inter alia, the N.Y. Gen Bus. L. § 349 *et seq.*, and/or N.Y. Gen Bus. L. § 350 *et seq.*, and/or any other applicable state, common and statutory law;
- o) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;

- p) Whether Plaintiff and members of the Class are entitled to restitution;
- q) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
- r) Whether Plaintiff and Class Members are entitled to treble damages;
- s) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;
- t) The proper method for calculating damages and restitution classwide; and
- u) Whether Plaintiff and Class Members are entitled to declaratory and/or other equitable relief.

**FRCP 23(b)(2)**

51. 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 members of the Class that would establish incompatible standards of conduct for Defendant.

52. 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)**

53. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Plaintiff's N.Y. Gen. Buss. L. § 349, 350 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

54. **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, 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 the Classes 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.

55. Certification is also warranted under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby



making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

56. The claims asserted herein are applicable to all individuals and entities throughout New York who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General. The State of New York has sufficient state interest through a significant contact or aggregation of contacts to the claims asserted by each member of the Class so that the choice of New York law is not arbitrary or unfair.

### **CLAIMS FOR RELIEF**

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

#### **COUNT I**

#### **Violations of New York General Business Law § 349, *et seq.* Affirmative Acts**

57. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

58. N.Y. Gen. Bus. L. § 349 makes unlawful any “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state[.]” N.Y. Gen. Bus. L. § 349(a).

59. Defendant has violated the N.Y. Gen Bus. L. § 349, *inter alia*:

- a) Engaging in unlawful, materially deceptive and/or materially misleading commercial practices as in connection with the sale and marketing of its store brand “DG” motor oil to consumers by, among other things, placing their obsolete product on the same shelf as legitimate motor oils; and
- b) Engaging in unlawful, materially deceptive and/or materially misleading acts in connection with the sale and marketing of its store brand “DG” motor oil to

consumers by inadequately, inconspicuously and deceptively failing to sufficiently warn consumers of the dangers of their “DG” brand motor oil; and

- c) Engaging in unlawful, materially deceptive and/or materially misleading acts in connection with the sale and marketing of its store brand “DG” motor oil to consumers by materially deceptively and/or materially misleadingly packaging their product in the same manner as legitimate motor oils, including an SAE label comparable to legitimate motor oils, using misleading and/or deceptive language, including but not limited to “[l]ubricates and protects your engine” on their packaging as well as including a checkered flag on their product, likely to mislead and/or deceive an average consumer into believing the product was safe and effective in their modern day automobile; and
- d) Knowingly concealing, hiding/suppressing, keeping from consumers, omitting, materially deceiving and/or materially misrepresenting or leaving out the material fact that “DG” motor oil is virtually obsolete and/or harmful to consumers’ engines, with the purpose and/or intent that others would rely on this concealment, suppression and/or omission in connection with the purchase of “DG” brand motor oil.

60. Defendants are, and at all relevant times herein were, engaged in consumer-related activities when they offered for sale and in fact sold to Plaintiff and Class Members the “DG” store brand oil.

61. By placing this obsolete oil on the shelf next to legitimate motor oils suitable for modern day automobiles, Defendants materially misrepresented the suitability of their product and/or materially deceived consumers into purchasing this obsolete product.

62. As a result of Defendant's materially false and/or materially misrepresentative practices, Plaintiff and Class Members were caused to suffer injury in that they were caused to purchase obsolete and potentially harmful motor oil they otherwise would not have purchased but for Defendant's unlawful, materially misrepresentative and/or materially deceptive actions.

63. Pursuant to N.Y. Gen. Bus. L. § 349(h) Plaintiff and the Class are entitled to (a) actual damages; (b) treble damages; (c) declaratory and injunctive relief, including but not limited to an Order requiring Defendant to cease the acts of unfair competition alleged herein; (d) an Order enjoining Defendant from continuing to utilize its deceptive scheme; (e) full restitution and disgorgement by Defendant of all profits received by Defendant as a result of its wrongful practices; (d) interest at the highest rate allowable by law; (e) costs; and (f) the payment of their attorneys' fees.

64. Dollar General's business acts and practices are unlawful, in part, because they violate N.Y. Gen. Bus. L. § 349, *et seq.*, which prohibits, among other things, deceptive conduct that is misleading to an average consumer. Here, Defendant violated N.Y. Gen. Bus. L. § 349 by engaging in materially deceptive and/or materially deceptive conduct in connection with the sale and/or marketing of "DG" brand motor oil which was capable of misleading and likely to mislead a reasonable consumer into purchasing motor oil they believe to be useful and safe in their automobile.

65. By placing obsolete "DG" store brand motor oil on the shelf next to and in similar packaging as legitimate motor oils that are suitable for modern-day automobiles, and/or providing only an inconspicuous and unlikely to be noticed/read warning that its product was obsolete, Defendant engaged in unlawful, materially deceptive and/or materially misleading conduct capable of misleading the average consumer into purchasing their "DG" brand oil. As a result of

this unlawful conduct, Plaintiff and Class Members suffered injuries in purchasing this materially deceptively marketed and obsolete product.

66. Defendant's actions are unjust, unfair, materially depart from the standards of good faith, honesty in fact and fair dealing in the public marketplace and materially deceive and/or materially mislead consumers. By placing obsolete brand oils, with little more than a fine print and inconspicuous warning, on their shelves next to and in the same kind of packaging as legitimate oils, Defendant engaged in unfair and bad faith tactics of advertising and selling their "DG" brand oil as if it were a legitimate and useful oil for modern day engines. This conduct in connection with the sale and/or advertisement of "DG" brand motor oil constitutes a material deception and caused Plaintiff and Class Members to suffer injuries.

67. Plaintiff reserves the right to identify additional provisions of the law violated by Dollar General as further investigation and discovery warrants.

68. Dollar General's business acts and practices are also unlawful under N.Y. Gen. Bus. L. § 349, *et seq.*, because the unlawful, materially misrepresentative and/or materially deceptive acts perpetuated by Defendant in connection with the sale of their "DG" brand motor oil had the capacity to mislead and/or deceive and in fact, did mislead and/or deceive Plaintiff and Class Members. Defendant's unlawful acts caused Plaintiff and Class Members to suffer injuries including but not limited to the loss of monies spent on the purchase price of "DG" brand motor oils, monies which would have been spent on legitimate oils, and monies spent to repair and/or replace engine and/or automotive damage. Dollar General has no justification for its unlawful acts other than to increase, beyond what Dollar General would have otherwise realized, its market share and revenue from sale of the motor oil.

69. Dollar General's conduct lacks reasonable and legitimate justification. Dollar General has benefited from such conduct and practices while Plaintiff and Class Members have been materially misled as to the nature and integrity of the motor oil and have suffered injuries, namely, the purchase price of this deceptively marketed and sold obsolete motor oil as well as damage to property affected by this obsolete oil.

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

71. While Dollar General's materially misleading acts conveyed the impression to reasonable consumers that its motor oil was safe to use in their automobiles, in actuality, its motor oil is not suitable for use in the vehicles driven by the vast majority of its customers.

72. By engaging in the above-described materially deceptive and/or materially misleading and/or misrepresentative acts and practices, Dollar General has committed one or more unlawful acts within the meaning of N.Y. Gen. Bus. L. § 349. Plaintiff and Class Members have suffered injuries and have lost money and property, including, but not limited to, the expected utility and performance of their vehicle and/or the difference between the price Class Members paid and the actual worth of the product had Dollar General disclosed the true nature of its motor oil.

73. Plaintiff and Class Members have suffered injuries as a direct and proximate result of Dollar General's unlawful acts regarding the sale and advertisement of Defendant's "DG" brand motor oil.

**Count II**  
**Violations of the N.Y. Gen. Bus. L. § 349**  
**Acts of Omission**

74. Plaintiff hereby incorporates by reference each of the proceeding allegations as if fully set forth herein.

75. Plaintiff and Class Members have suffered injury and have lost money or property as a result of Dollar General's violation of N.Y. Gen. Bus. L. § 349, *et seq.*

76. By placing nothing more than an inconspicuous, fine print warning obscured by other text on the back of their "DG" brand motor oil, packaged in containers similar to legitimate and useful motor oils, Defendant omitted, concealed, hid/suppressed, kept from being known/omitted, left out, or did not mention the material fact that their motor oil was obsolete and not suitable for modern day engines. This consumer-oriented act of material omission was committed purposely and/or with the intent that consumers would rely on that material concealment/suppression and/or omission in connection with the sale and/or advertisement of the "DG" brand motor oil.

77. Dollar General knowingly omitted material knowledge from consumers that their product was obsolete by placing their product on the same shelf as legitimate motor oils and including only a fine print, inconspicuous warning on the back of their product that the product was in fact obsolete. Defendant had a duty to reveal the material fact that their motor oil was obsolete to consumers in a conspicuous and fair manner. The omitting, concealing, secreting, hiding from observation, covering from sight and preventing discovery of this material fact kept Plaintiff and Class Members in ignorance of the true nature of Defendant's "DG" brand motor oil.

78. Defendant had a duty to disclose the material characteristics of its motor oil because it (i) knew about these characteristics at the time that Plaintiff and other Class Members purchased Dollar General's motor oil; (ii) had exclusive knowledge of material facts that were not known to

Plaintiff; and (iii) made representations regarding the quality of its motor oil without disclosing that its motor oil was not suitable for the vehicles driven by most of its customers.

79. Defendant's knowing concealment of the obsolete nature of "DG" brand motor oils was perpetuated with the intent that Plaintiff and Class Members rely on the facts as communicated to them, *i.e.*, that the product was on the same shelf as legitimate motor oils and not conspicuously advertised as obsolete in modern engines, without having the opportunity to also consider the materially concealed fact that the "DG" brand motor oil was not suitable in most all modern day engines.

80. As a result of Defendant's concealment and/or acts of omission of this material fact, Plaintiff and Class Members were caused to suffer injury when they purchased "DG" brand motor oil.

81. Defendant further hid/suppressed and/or omitted the material facts concerning the obsolete nature of "DG" brand motor oil from consumers by placing the product on the same shelf as legitimate motor oils in similarly dressed up containers and failing to conspicuously or meaningfully warn Plaintiff and the Class Members of the true nature of their store brand motor oil.

82. By placing the "DG" brand motor oil on the shelf as legitimate motor oils and failing to meaningfully warn of the material facts concerning the product's true nature, Defendant prevented and/or subdued Plaintiff and Class Members from ascertaining the true obsolete nature of "DG" brand motor oil.

83. This suppression and/or omission was accomplished knowingly and with the intent that Plaintiff and Class Members rely on the facts as communicated to them, *i.e.*, that the product was on the same shelf as legitimate motor oils and not conspicuously advertised as obsolete in modern

engines, and be prevented from considering the hid/suppressed fact that the “DG” brand motor oil was not suitable in most all modern day engines.

84. The acts of omission complained of herein caused Plaintiff and Class Members to suffer injuries in connection with the sale and advertisement of “DG” brand motor oil.

**Count III**  
**Violations of N.Y. Gen. Bus. L. § 350**  
**False Advertising**

85. Plaintiff hereby incorporates by reference each of the proceeding allegations as if fully set forth herein.

86. By placing their obsolete oil on the shelf next to legitimate motor oils suitable for modern-day automobiles, Defendant attempted to directly and/or indirectly induce consumers to purchase “DG” brand oil. This act of product placement was materially misleading and/or materially deceiving and/or likely to be materially misleading and/or materially deceiving to reasonable consumers at large acting reasonably under the circumstances and caused injury in violation of N.Y. Gen. Bus. L. § 350.

87. This act was done with the purpose of misleadingly marketing the “DG” obsolete oil as comparable to same shelf legitimate motor oils. This act was designed to attract public attention and directly and or indirectly was an attempt by publication, dissemination, solicitation, endorsement, circulation or in any other way to induce Plaintiff and Class Members to purchase “DG” brand motor oil.

88. Defendant’s act of materially deceptive and/or materially misrepresentative advertising and/or marketing presents a continuing threat to members of the public and consumers at large because their advertisements induces and has the potential to induce reasonable consumers acting reasonably under the circumstances to purchase its motor oil, which is unsafe and not suitable for use in their automobiles, instead of other legitimate motor oils.



89. By its actions, Dollar General is engaging in materially deceptive and/or materially misleading acts in connection with the advertisement and/or marketing of their “DG” brand motor oil within the meaning of the NJCFA. Such advertisements are likely to mislead and/or deceive, have the potential to mislead and/or deceive and continue to mislead and/or deceive, the consuming public at large for the reasons detailed above.

90. The above-described false, misleading and deceptive advertising Dollar General disseminated continues to have a likelihood to deceive reasonable consumers acting reasonably under the circumstances in that Dollar General has failed to disclose that its motor oil is not suitable for use in the vehicles driven by the overwhelming majority of its customers.

91. In making and disseminating the statements alleged herein, Dollar General should have known its practices were materially deceptive and/or materially misleading in violation of N.Y. Gen. Bus. L. § 350. Plaintiff and Class Members based their decisions to purchase the obsolete motor oil in substantial part on Dollar General’s advertisement, product placement, material misrepresentations and omitted material facts. The revenues to Dollar General attributable to products sold in those false and misleading advertisements amount to millions of dollars. Plaintiff and Class Members were injured in fact and lost money or property as a result of Defendant’s actions in relation to the false advertisement of “DG” brand motor oil.

**COUNT IV**  
**Violations of N.Y. U.C.C. § 2-314**  
**Breach of Implied Warranty of Merchantability**

92. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

93. Plaintiff and Class Members who purchased “DG” brand motor oils were and are purchasers of goods.

94. Dollar General is and was a “merchant” with respect to “DG” brand motor oils which were sold to Plaintiff and Class Members.

95. “DG” brand motor oil is a good as set forth in N.Y. U.C.C. § 2-105.

96. Encompassed in the sale to Plaintiff and other consumers of this merchandise was an implied warranty that the “DG” brand motor oil was merchantable within the meaning of N.Y. U.C.C. Law § 2-314, *et al.*

97. Dollar General breached the implied warranty of merchantability to Plaintiff and Class Members because DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 (i) are not fit for the ordinary purpose for which they are used; (ii) are not adequately contained, packaged and labeled (*i.e.*, it lacked a sufficiently conspicuous caution label about the risk posed by the motor oil when used according to the directions on the product packaging); and (iii) do not conform to the promises or affirmations of fact made on the container or label (*i.e.*, that it was at all suitable to use).

98. Dollar General’s failure to warn Plaintiff and Class Members adequately about the defective and unsafe quality of the product was willful.

99. As a proximate result of Dollar General’s breach of the implied warranty of merchantability, Plaintiff and Class Members sustained damages including but not limited to the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

100. Pursuant to N.Y. U.C.C. § § 2-714 and 2-715, Plaintiff and Class Members are entitled to damages, civil penalties and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys’ fees.

**Count V**  
**Violations of N.Y. U.C.C. § 2-315 for Breach of Implied Warranty  
of Fitness For a Particular Purpose**

101. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

102. Plaintiff and Members of the Class purchased “DG” brand motor oils based on representations, lack thereof, product placement and other means.

103. Dollar General is and was a seller with respect to “DG” brand motor oils which were sold to Plaintiff and Class Members.

104. Defendant specifically marketed DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oils that could be used in its customer’s automobiles. At the time of the sale of the product, Defendant knew or should have known that Plaintiff and Class Members would use DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oil in their modern day motor vehicles and be exposed to these products’ potentially harmful qualities. Defendant also knew, or should have known, Plaintiff and the Class would reasonably rely on Dollar General’s skill or judgment to select or furnish suitable goods.

105. Plaintiff and Class Members did in fact purchase DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 with the particular purpose of using them as motor oil for their automobiles.

106. Plaintiff and Class Members did in fact reasonably rely on Dollar General’s skill or judgment to furnish suitable goods.

107. By manufacturing, marketing, and distributing such products without an adequate warning and by deceptively placing on the shelf next to legitimate motor oils, Dollar General breached its implied warranty of fitness for a particular purpose and is liable to Plaintiff and the Class.

108. Dollar General's failure to warn Plaintiff and Class Members adequately about the defective and unsafe quality of the product was willful.

109. As a proximate result of Dollar General's breach of the implied warranty of fitness for a particular purpose, Plaintiff and Class Members sustained damages, including but not limited to the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

110. Pursuant to N.Y. U.C.C. § § 2-714 and 2-715, Plaintiff and Class Members are entitled to damages, civil penalties and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

**COUNT VI**  
**Violations of New York Common Law**  
**Unjust Enrichment**

111. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

112. A benefit has been conferred upon Dollar General by Plaintiff and Class Members in their purchase of Defendant's DG-branded motor oil.

113. If consumers were aware that Dollar General's DG-branded motor oil was not suitable for use in their vehicles, they would not have purchased the product.

114. Under principles of equity and good conscience, Dollar General should not be permitted to retain revenue that it acquired by virtue of its unlawful, materially deceptive and/or materially misleading conduct. All funds, revenue, and benefits received by Dollar General rightfully belong to Plaintiff and Class Members, which Dollar General has unjustly received as a result of its actions.

**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. Award to Plaintiff and Class Members full restitution;
- C. Treble Damages;
- D. An order enjoining Defendant from engaging in the unlawful, unconscionable, fraudulent, deceptive, misleading, misrepresentative acts or practices, as set forth in this Complaint;
- E. Compensatory damages;
- F. Punitive Damages;
- G. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- H. 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;
- I. Prejudgment and post-judgment interest at the prevailing legal rate;
- J. Plaintiff's attorneys' fees and costs of suit; and
- K. 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.

Respectfully submitted,  
**CLARK LAW FIRM, PC**

By:

  
**GERALD H. CLARK, ESQ.**

Gerald H. Clark, Esq.  
GC9475; SDNY Attorney ID#2923936  
William S. Peck, Esq.  
Mark W. Morris, Esq.  
811 Sixteenth Avenue  
Belmar, New Jersey 07719  
Phone: (732) 443-0333  
Fax (732) 894-9647

**KANNER & WHITELEY, LLC**

Allan Kanner, Esq.  
Cynthia St. Amant, Esq.  
701 Camp Street  
New Orleans, LA 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Plaintiff*

Dated: February 8, 2016

# Exhibit 5

**U.S. District Court**  
**District of New Jersey [LIVE] (Camden)**  
**CIVIL DOCKET FOR CASE #: 1:15-cv-08713-RMB-AMD**

FLINN v. DOLGENCORP, LLC  
Assigned to: Judge Renee Marie Bumb  
Referred to: Magistrate Judge Ann Marie Donio  
Cause: 28:1332 Diversity-Fraud

Date Filed: 12/17/2015  
Jury Demand: Plaintiff  
Nature of Suit: 360 P.I.: Other  
Jurisdiction: Diversity

**Plaintiff**

**WILLIAM FLINN**

*Individually and on behalf of all others  
similarly situated*

represented by **GERALD H. CLARK**

Clark Law Firm, PC  
811 Sixteenth Avenue  
Belmar, NJ 07719  
(732) 443-0333  
Fax: (732) 894-9647  
Email: gclark@clarklawnj.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**DOLGENCORP, LLC**

*doing business as*  
DOLLAR GENERAL, CORPORATION

represented by **MICHAEL JAMES VAN RIPER**

MCGUIRE WOODS LLP  
1345 AVENUE OF THE AMERICAS  
SEVENTH FLOOR  
NEW YORK, NY 10105  
212-548-2100  
Email: mvanriper@mcguirewoods.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
12/17/2015	<a href="#"><u>1</u></a>	COMPLAINT against DOLGENCORP, LLC ( Filing and Admin fee \$ 400 receipt number 0312-6819852) with JURY DEMAND, filed by WILLIAM FLINN. (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Civil Cover Sheet)(jbk, ) (Entered: 12/18/2015)
12/17/2015	<a href="#"><u>2</u></a>	SUMMONS ISSUED as to DOLGENCORP, LLC Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. Issued By *JAIME KASSELMAN* (jbk, ) (Entered: 12/18/2015)
12/17/2015		Notice of Judicial Preferences. <a href="#">Click here</a> for the Judge's Individual Procedure Requirements. (jbk, ) (Entered: 12/18/2015)
01/29/2016	<a href="#"><u>3</u></a>	Letter from Philip A. Goldstein re: Parties' Stipulated Extension of Time for Defendant to Respond to Complaint. (Attachments: # <a href="#"><u>1</u></a> Stipulation and [Proposed] Order) (GOLDSTEIN, PHILIP) (Entered: 01/29/2016)



02/01/2016	<a href="#">4</a>	STIPULATION AND ORDER EXTENDING TIME FOR DEFT TO RESPOND TO COMPLAINT. Response due by 3/10/2016. Signed by Magistrate Judge Ann Marie Donio on 2/1/2016. (drw) (Entered: 02/01/2016)
02/02/2016	<a href="#">5</a>	STIPULATION AND ORDER EXTENDING TIME FOR DEFT TO RESPOND TO THE COMPLAINT. Response due by 3/10/2016. Signed by Judge Renee Marie Bumb on 2/1/2016. (drw) (Entered: 02/02/2016)
02/02/2016	<a href="#">6</a>	NOTICE of Appearance by MICHAEL JAMES VAN RIPER on behalf of DOLGENCORP, LLC (VAN RIPER, MICHAEL) (Entered: 02/02/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 09:17:06			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:15-cv-08713-RMB-AMD Start date: 1/1/1970 End date: 3/7/2016
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

UNITED STATES DISTRICT COURT  
NEW JERSEY DISTRICT COURT

**WILLIAM FLINN, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC, (d/b/a DOLLAR  
GENERAL, CORPORATION)**

**Defendant.**

**Case No. \_\_\_\_\_**

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

Plaintiff William Flinn ("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 including 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 New Jersey, to redress the unlawful commercial practices employed by Defendant, DOLGENCORP, LLC, (d/b/a Dollar General, Corporation), (hereinafter "Dollar General" and/or "Defendant") at its stores whereby Dollar General: a) sells an entire line of company-branded motor oils (labeled "DG") that are obsolete and potentially harmful to its customers' automobiles; b) positions this line of obsolete motor oils immediately adjacent to the standard- and premium-quality motor oils sold by its competitors; and c) fails to adequately warn its customers that DG motor oil is unsuitable for the vast majority, if not all, of its customers to use in their modern day automobiles.

2. Dollar General engaged in these unlawful, unconscionable, misrepresentative, fraudulent and/or deceptive business practices in connection with the sale and/or advertisement of this merchandise in violation of New Jersey's Consumer Fraud Act ("CFA"), *N.J.S.A. 56:8-1 et seq.*, the Uniform Commercial Code and certain common law standards.

### **PARTIES**

3. Plaintiff William Flinn is an individual adult resident citizen of the City of Woodbury, County of Gloucester, State of New Jersey and is a member of the Class alleged herein.

4. Plaintiff purchased Dollar General's 10W-30 store brand motor oil from Dollar General's store in Woodbury, New Jersey, on approximately three occasions over the course of 2014 and 2015 for his 2003 Dodge Ram 2500.

5. 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.

6. At all relevant times, Defendant produced, marketed, advertised and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of New Jersey, utilizing unconscionable, deceptive, fraudulent, false and/or misrepresentative sales practices in connection with the sale, marketing and/or deceptive placement of this merchandise. These practices were employed with the intent to deceive 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.

7. As such, purchasers of DG-branded motor oil have suffered ascertainable losses as a result of Defendant's unconscionable, deceptive, fraudulent, and misrepresentative acts.

8. Defendant maintains approximately 76 stores throughout the State of New Jersey. As such, New Jersey courts maintain a significant interest in regulating Defendant's conduct which emanates from New Jersey, yet deceives consumers nationwide.

### **JURISDICTION AND VENUE**

9. 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 state, there are more than 100 Class Members, and the amount-in-controversy exceeds \$5,000,000 exclusive of interest and costs.

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

11. Venue is proper in this District under 28 U.S.C. §1391(b) 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

12. In addition, Defendant operates approximately 76 stores in New Jersey and has received substantial compensation from New Jersey consumers who purchase goods from Defendant.



### **FACTUAL ALLEGATIONS**

13. 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, including 76 stores in the State of New Jersey.

14. 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.

15. 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.

16. 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."

17. Dollar General's DG Auto line consists of three types of obsolete motor oils: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 that fail to protect and can actively damage, modern day automobiles.

18. Motor oils are supposed to properly 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.

19. 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.

20. 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.<sup>1</sup>

21. Defendant engaged in unconscionable, unlawful, deceptive, sharp and/or fraudulent acts and/or omissions in connection with the sale of less expensive obsolete motor oil that is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General’s customers.

22. Dollar General also engages in the unfair, unlawful, deceptive, sharp and/or fraudulent sales practice of concealing the obsolete and harmful nature of its motor oil from its customers through deceitful product placement tactics and misleading labels which obscure a critical fact from Dollar General’s customers: Dollar General’s motor oil is unfit for and wholly obsolete in the vehicles driven by the vast majority, if not all, of its customers.

23. 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. Dollar General places its DG brand motor oil next to these brand motor oil products on its shelves.

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<sup>1</sup> See, e.g. The Petroleum Quality Institute of America, *Some Engine Oils Currently on the Shelves Can Harm Your Engine*, <http://www.pqiamerica.com/apiserviceclass.htm>.

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

25. The labels of all "DG" brand motor oils also contain a prominent checkered flag on the front, suggestive of auto racing and winning.

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, which is not visible when the products are on the store shelves.

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

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





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 and checkered flag on the front, *e.g.*, 10W-40. The bottle also contains the same kind of shape to allow an easy pour into a car engine. The only apparent difference being the price, as Dollar General's motor oils are less expensive than the others.

31. Defendant's product display and packaging conceals the fact that these DG-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines of most of the consumers purchasing motor oil. Instead, by using this deceptive method of product placement, Dollar General misleads consumers into thinking that the quality of the Dollar General-brand motor oils is the same or similar to that of the other motors oils sold by Dollar General.

32. 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.

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



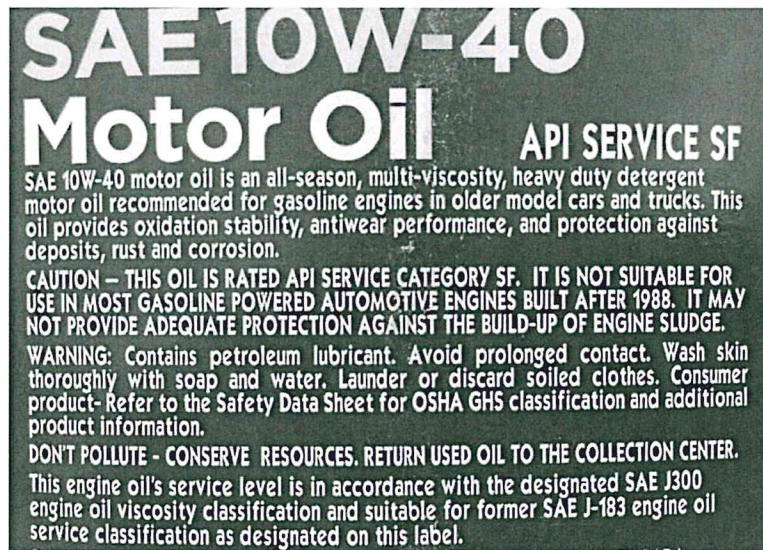
The photograph below is a close-up of DG SAE 10W-30's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



34. 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":



35. 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 MOTORED ENGINES BUILT AFTER 1930" and "USE IN MODERN ENGINES MAY CAUSE UNSATISFACTORY ENGINE PERFORMANCE OR EQUIPMENT HARM":



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 by Dollar General in this deceptive manner, except that Dollar General is successfully deceiving a sufficient number of customers to make this fraudulent practice worthwhile. It is unfair, unlawful, deceptive, sharp and/or fraudulent for Dollar General to distribute, market, and sell an entire line of motor oil in this manner 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 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. New Jersey consumer protection laws are designed to protect consumers from this type of deceptive advertising and predatory conduct.

39. Defendant's unfair, unlawful, unconscionable, misleading 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 New Jersey.

40. Defendant's scheme to deceive and defraud consumers violates the New Jersey's Consumer Fraud Act ("CFA"), *N.J.S.A.* 56:8-1, *et seq.*, and consumers' contractual rights.

41. As a direct and proximate result of Dollar General's deceptive, unlawful, misleading, fraudulent and unconscionable 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. Indeed, the products are useless in all but the most outdated automotive engines. Had Plaintiff and Class Members not been deceived by Defendant they would not have purchased this virtually obsolete oil.

42. 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.

43. Plaintiff therefore brings the statutory and common law claims alleged herein to halt Dollar General's deceptive, unconscionable, unlawful, fraudulent, sharp and misleading practices and to obtain compensation for the losses suffered by Plaintiff and all Class Members.

### **CLASS ACTION ALLEGATIONS**

44. 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 New Jersey 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 2009.**

45. 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.

46. 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**

47. **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 tens of thousands of persons in the Class.

48. **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.



49. **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.

50. **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 that control this litigation and predominate over any individual issues. 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 Defendant knowingly concealed, suppressed, omitted or failed to disclose the harmful and obsolete nature of its company-branded motor oil with the intent Plaintiff and Class Members rely on this concealment, suppression or omission in connection with their purchase of the "DG" brand motor oil;
- m) Whether Defendant's conduct and scheme to defraud Plaintiff and Class Members is unlawful, unfair, fraudulent, misleading and/or deceitful;
- n) Whether the acts of Defendant violated, inter alia, the *New Jersey Consumer Fraud Act*, N.J.S.A. 56:8-1, *et seq.* and/or any other applicable state, common and statutory law;
- o) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
- p) Whether Plaintiff and members of the Class are entitled to restitution;
- q) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
- r) Whether Plaintiff and Class Members are entitled to treble damages;



- s) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;
- t) The proper method for calculating damages and restitution classwide; and
- u) Whether Plaintiff and Class Members are entitled to declaratory and/or other equitable relief.

**FRCP 23(b)(2)**

51. 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 members of the Class that would establish incompatible standards of conduct for Defendant.

52. 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)**

53. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Plaintiff's NJCFA 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

54. **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, 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 the Classes 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.

55. Certification is also warranted under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

56. The claims asserted herein are applicable to all individuals and entities throughout New Jersey who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil

from Dollar General. The State of New Jersey has sufficient state interest through a significant contact or aggregation of contacts to the claims asserted by each member of the Class so that the choice of New Jersey law is not arbitrary or unfair.

### **CLAIMS FOR RELIEF**

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

#### **COUNT I**

#### **Violations of the New Jersey Consumer Fraud Act ("NJCFA")**

*N.J.S.A. 56:8-1, et seq.*

57. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

58. The NJCFA declares unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby[.]" *N.J.S.A. 56:8-2*.

59. Defendant has violated the New Jersey Consumer Fraud Act, *inter alia*:

- a) Engaging in unconscionable commercial practices as well as deceptive, fraudulent, false and misrepresentatives acts in connection with the sale and marketing of its store brand "DG" motor oil to consumers by, among other things, placing their obsolete product on the same shelf as legitimate motor oils; and
- b) Engaging in unconscionable commercial practices as well as deceptive, fraudulent, false and misrepresentatives acts in connection with the sale and

marketing of its store brand “DG” motor oil to consumers by inadequately, inconspicuously and deceptively failing to sufficiently warn consumers of the dangers of their “DG” brand motor oil; and

- c) Engaging in unconscionable commercial practices as well as deceptive, fraudulent, false and misrepresentatives acts in connection with the sale and marketing of its store brand “DG” motor oil to consumers by deceptively and/or misleadingly packaging their product in the same manner as legitimate motor oils, including an SAE label comparable to legitimate motor oils, using misleading and/or deceptive language, including but not limited to “[l]ubricates and protects your engine” on their packaging as well as including a checkered flag on their product, likely to mislead and/or deceive an average consumer into believing the product was safe and effective in their modern day automobile; and
- d) Knowingly concealing, hiding/suppressing, keeping from consumers, omitting or leaving out the material fact that “DG” motor oil is virtually obsolete and/or harmful to consumers’ engines, with the purpose and/or intent that others would rely on this concealment, suppression and/or omission in connection with the purchase of “DG” brand motor oil.

60. Plaintiff and Class Members are “persons” as defined by *N.J.S.A.* 56:8-1(d).

61. Defendant engaged in the “sale” of “merchandise” when they offered for sale and in fact sold to Plaintiff and Class Members the “DG” store brand oil. *N.J.S.A.* 56:8-1(c)&(e).

62. By placing this obsolete oil on the shelf next to legitimate motor oils that are



suitable for modern-day automobiles, Defendant attempted to directly and/or indirectly induce consumers to purchase “DG” brand oil through “advertisement” of this product as defined by *N.J.S.A. 56:8-1(a)*.

63. As a result of Defendant’s unconscionable, deceptive, fraudulent, false and/or misrepresentatives practices, Plaintiff and Class Members were caused to suffer an ascertainable loss in that they were caused to purchase obsolete and potentially harmful motor oil they otherwise would not have purchased but for Defendant’s unlawful actions.

64. Pursuant to *N.J.S.A. 56:8-8*, *N.J.S.A. 56:8-13* and *N.J.S.A. 56:8-19* Plaintiff and the Class are entitled to (a) actual damages; (b) treble damages; (c) declaratory and injunctive relief, including but not limited to an Order requiring Defendant to cease the acts of unfair competition alleged herein; (d) an Order enjoining Defendant from continuing to utilize its deceptive scheme; (e) full restitution and disgorgement by Defendant of all profits received by Defendant as a result of its wrongful practices; (d) interest at the highest rate allowable by law; (e) costs; and (f) the payment of their attorneys’ fees.

65. Dollar General’s business acts and practices are unlawful, in part, because they violate *N.J.S.A. 56:8-1*, *et seq.*, which prohibits, among other things, deceptive conduct that is misleading to an average consumer. Here, Defendant violated the NJCFA by engaging in conduct in connection with the sale and/or marketing of “DG” brand motor oil which was capable of misleading and likely to mislead an average consumer into purchasing motor oil they believe to be useful and safe in their automobile.

66. By placing obsolete “DG” store brand motor oil on the shelf next to and in similar packaging as legitimate motor oils that are suitable for modern-day automobiles, and/or providing only an inconspicuous and unlikely to be noticed/read warning that its product was

obsolete, Defendant engaged in unlawful conduct capable of misleading the average consumer into purchasing their “DG” brand oil. As a result of this unlawful conduct, Plaintiff and Class Members suffered an ascertainable loss in purchasing this deceptively marketed and obsolete product.

67. Defendant’s actions are unjust, unfair, materially depart from the standards of good faith, honesty in fact and fair dealing in the public marketplace and are thereby unconscionable under the NJCFA. By placing obsolete brand oils, with little more than a fine print and inconspicuous warning, on their shelves next to and in the same kind of packaging as legitimate oils, Defendant engaged in unfair and bad faith tactics of advertising and selling their “DG” brand oil as if it were a legitimate and useful oil for modern day engines. This conduct in connection with the sale and/or advertisement of “DG” brand motor oil caused Plaintiff and Class Members to suffer an ascertainable loss.

68. Plaintiff reserves the right to identify additional provisions of the law violated by Dollar General as further investigation and discovery warrants.

69. Dollar General’s business acts and practices are also unlawful under *N.J.S.A.56:8-1, et seq.*, because the unconscionable, fraudulent, misrepresentative, deceptive acts perpetrated by Defendant in connection with the sale of their “DG” brand motor oil had the capacity to mislead and/or deceive and in fact, did mislead and/or deceive Plaintiff and Class Members. Defendant’s unlawful acts caused Plaintiff and Class Members to suffer an ascertainable loss including but not limited to the loss of monies spent on the purchase price of “DG” brand motor oils, monies which would have been spent on legitimate oils, and monies spent to repair and/or replace engine and/or automotive damage. Dollar General has no justification for its unlawful acts other than to

increase, beyond what Dollar General would have otherwise realized, its market share and revenue from sale of the motor oil.

70. Dollar General's conduct lacks reasonable and legitimate justification. Dollar General has benefited from such conduct and practices while Plaintiff and Class Members have been misled as to the nature and integrity of the motor oil and have suffered ascertainable losses, namely, the purchase price of this deceptively marketed and sold obsolete motor oil as well as ascertainable losses in the damage to property affected by this obsolete oil.

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

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

73. By engaging in the above-described unconscionable, fraudulent, unfair, deceptive misleading and misrepresentative acts and practices, Dollar General has committed one or more unlawful acts within the meaning of the NJCFA. Plaintiff and Class Members have suffered an ascertainable loss and have lost money and property, including, but not limited to, the expected utility and performance of their vehicle and/or the difference between the price Class Members paid and the actual worth of the product had Dollar General disclosed the true nature of its motor oil.



74. Plaintiff and Class Members have suffered injuries as a direct and proximate result of Dollar General's unlawful acts regarding the sale and advertisement of Defendant's "DG" brand motor oil.

**Count II**  
**Violations of the New Jersey Consumer Fraud Act (NJCFA)**  
**Acts of Omission**  
***N.J.S.A. 56:8-1, et seq.***

75. Plaintiff hereby incorporates by reference each of the proceeding allegations as if fully set forth herein.

76. Plaintiff and Class Members have suffered an ascertainable loss and have lost money or property as a result of Dollar General's violation of *N.J.S.A. 56:8-1, et seq.*

77. By placing nothing more than an inconspicuous, fine print warning obscured by other text on the back of their "DG" brand motor oil, packaged in containers similar to legitimate and useful motor oils, Defendant knowingly concealed, hid/suppressed, kept from being known/omitted, left out, or did not mention the fact that their motor oil was obsolete and not suitable for modern day engines. This act of omission was committed purposely and/or with the intent that consumers would rely on that concealment/suppression and/or omission in connection with the sale and/or advertisement of the "DG" brand motor oil.

78. Dollar General knowingly concealed knowledge from consumers that their product was obsolete by placing their product on the same shelf as legitimate motor oils and including only a fine print, inconspicuous warning on the back of their product that the product was in fact obsolete. Defendant had a duty to reveal the fact that their motor oil was obsolete to consumers in a conspicuous and fair manner. This concealing, secreting, hiding from observation, covering

from sight and preventing discovery of kept Plaintiff and Class Members in ignorance of the true nature of Defendant's "DG" brand motor oil.

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

80. Defendant's knowing concealment of the obsolete nature of "DG" brand motor oils was perpetuated with the intent that Plaintiff and Class Members rely on the facts as communicated to them, *i.e.*, that the product was on the same shelf as legitimate motor oils and not conspicuously advertised as obsolete in modern engines, without having the opportunity to also consider the concealed fact that the "DG" brand motor oil was not suitable in most all modern day engines.

81. As a result of Defendant's concealment and/or acts of omission, Plaintiff and Class Members were caused to suffer an ascertainable loss when they purchased "DG" brand motor oil.

82. Defendant further hid/suppressed the obsolete nature of "DG" brand motor oil from consumers by placing the product on the same shelf as legitimate motor oils in similarly dressed up containers and failing to conspicuously or meaningfully warn Plaintiff and the Class Members of the true nature of their store brand motor oil.

83. By placing the "DG" brand motor oil on the shelf as legitimate motor oils and failing to meaningfully warn of the product's true nature, Defendant prevented and/or subdued Plaintiff and Class Members from ascertaining the true obsolete nature of "DG" brand motor oil.

84. This suppression was accomplished knowingly and with the intent that Plaintiff and Class Members rely on the facts as communicated to them, *i.e.*, that the product was on the same shelf as legitimate motor oils and not conspicuously advertised as obsolete in modern engines, and be prevented from considering the hid/suppressed fact that the “DG” brand motor oil was not suitable in most all modern day engines.

85. The acts of omission complained of herein caused Plaintiff and Class Members to suffer ascertainable losses in connection with the sale and advertisement of “DG” brand motor oil.

**Count III**  
**Violations of the New Jersey Consumer Fraud Act (NJCFA)**  
**False Advertising**  
***N.J.S.A. 56:8-1, et seq.***

86. Plaintiff hereby incorporates by reference each of the proceeding allegations as if fully set forth herein.

87. By placing their obsolete oil on the shelf next to legitimate motor oils suitable for modern-day automobiles, Defendant attempted to directly and/or indirectly induce consumers to purchase “DG” brand oil. This act was unconscionable, deceptive, fraudulent, false and misrepresentative and was thereby unlawful under the NJCFA.

88. This act was done with the purpose of misleadingly marketing the “DG” obsolete oil as comparable to same shelf legitimate motor oils. This act was designed to attract public attention and directly and or indirectly was an attempt by publication, dissemination, solicitation, endorsement, circulation or in any other way to induce Plaintiff and Class Members to purchase “DG” brand motor oil.

89. Defendant’s act of unconscionable, deceptive, fraudulent, false and/or misrepresentative advertising and/or marketing presents a continuing threat to members of the public because their advertisements induces and has the potential to induce consumers to purchase its motor oil,



which is unsafe and not suitable for use in their automobiles, instead of other legitimate motor oils.

90. By its actions, Dollar General is engaging in unfair, deceptive, untrue, or misleading acts in connection with the advertisement and/or marketing of their “DG” brand motor oil within the meaning of the NJCFA. Such advertisements are likely to mislead and/or deceive, have the potential to mislead and/or deceive and continue to mislead and/or deceive, the consuming public for the reasons detailed above.

91. The above-described false, misleading and deceptive advertising Dollar General disseminated continues to have a likelihood to deceive in that Dollar General has failed to disclose that its motor oil is not suitable for use in the vehicles driven by the overwhelming majority of its customers.

92. In making and disseminating the statements alleged herein, Dollar General should have known its practices were deceptive and/or misleading in violation of *N.J.S.A. 56:8-1, et seq.* Plaintiff and Class Members based their decisions to purchase the obsolete motor oil in substantial part on Dollar General’s advertisement, product placement, misrepresentations and omitted material facts. The revenues to Dollar General attributable to products sold in those false and misleading advertisements amount to millions of dollars. Plaintiff and Class Members were injured in fact, suffered an ascertainable loss and lost money or property as a result of Defendant’s actions in relation to the advertisement of “DG” brand motor oil.

**COUNT IV**  
**Violation of *N.J.S.A.* 12A:2A-212 for**  
**Breach of Implied Warranty of Merchantability,**

93. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

94. Plaintiff and Class Members who purchased “DG” brand motor oils were and are purchasers of goods.

95. Dollar General is and was a “merchant” with respect to “DG” brand motor oils which were sold to Plaintiff and Class Members. Encompassed in the sale to Plaintiff and other consumers of this merchandise was an implied warranty that the “DG” brand motor oil was merchantable within the meaning of *N.J.S.A.* 12A:2-314.

96. Dollar General breached the implied warranty of merchantability to Plaintiff and Class Members because DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 (i) are not fit for the ordinary purpose for which they are used; (ii) are not adequately contained, packaged and labeled (*i.e.*, it lacked a sufficiently conspicuous caution label about the risk posed by the motor oil when used according to the directions on the product packaging); and (iii) do not conform to the promises or affirmations of fact made on the container or label (*i.e.*, that it was at all suitable to use).

97. Dollar General’s failure to warn Plaintiff and Class Members adequately about the defective and unsafe quality of the product was willful.

98. As a proximate result of Dollar General’s breach of the implied warranty of merchantability, Plaintiff and Class Members sustained damages including but not limited to the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

99. Pursuant to *N.J.S.A.* 12A:2-714 and 2-715, Plaintiff and Class Members are entitled to damages, civil penalties and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

**Count V**  
**Violations of *N.J.S.A.* 12A:2-315 for Breach of Implied Warranty  
of Fitness For a Particular Purpose**

100. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

101. Plaintiff and Members of the Class purchased "DG" brand motor oils based on representations, lack thereof, product placement and other means.

102. Dollar General is and was a seller with respect to "DG" brand motor oils which were sold to Plaintiff and Class Members.

103. Defendant specifically marketed DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oils that could be used in its customer's automobiles. At the time of the sale of the product, Defendant knew or should have known that Plaintiff and Class Members would use DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oil in their modern day motor vehicles and be exposed to these products' potentially harmful qualities. Defendant also knew, or should have known, Plaintiff and the Class would reasonably rely on Dollar General's skill or judgment to select or furnish suitable goods.

104. Plaintiff and Class Members did in fact purchase DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 with the particular purpose of using them as motor oil for their automobiles.

105. Plaintiff and Class Members did in fact reasonably rely on Dollar General's skill or judgment to furnish suitable goods.

106. By manufacturing, marketing, and distributing such products without an adequate warning and by deceptively placing on the shelf next to legitimate motor oils, Dollar General breached its implied warranty of fitness for a particular purpose and is liable to Plaintiff and the Class.

107. Dollar General's failure to warn Plaintiff and Class Members adequately about the defective and unsafe quality of the product was willful.

108. As a proximate result of Dollar General's breach of the implied warranty of fitness for a particular purpose, Plaintiff and Class Members sustained damages, including but not limited to the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

109. Pursuant to *N.J.S.A.* 12A:2-714 and 2-715 of the New Jersey Civil Code, Plaintiff and Class Members are entitled to damages, civil penalties and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

**COUNT VI**  
**Unjust Enrichment**

110. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

111. A benefit has been conferred upon Dollar General by Plaintiff and Class Members in their purchase of Defendant's DG-branded motor oil.

112. If consumers were aware that Dollar General's DG-branded motor oil was not suitable for use in their vehicles, they would not have purchased the product.

113. Under principles of equity and good conscience, Dollar General should not be permitted to retain revenue that it acquired by virtue of its unlawful conduct. All funds, revenue, and benefits received by Dollar General rightfully belong to Plaintiff and Class Members, which Dollar General has unjustly received as a result of its actions.



**DEMAND/PRAAYER 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. Award to Plaintiff and Class Members full restitution;
- C. Treble Damages;
- D. An order enjoining Defendant from engaging in the unlawful, unconscionable, fraudulent, deceptive, misleading, misrepresentative acts or practices, as set forth in this Complaint;
- E. Compensatory damages;
- F. Punitive Damages;
- G. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- H. 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;
- I. Prejudgment and post-judgment interest at the prevailing legal rate;
- J. Plaintiff's attorneys' fees and costs of suit; and
- K. 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.

Respectfully submitted,  
**CLARK LAW FIRM, PC**

By:

  
**GERALD H. CLARK, ESQ.**

Gerald H. Clark, Esq. NJ Bar No.048281997  
William S. Peck, Esq. NJ Bar No. 020821999  
Mark W. Morris, Esq. NJ Bar No. 118292015  
811 Sixteenth Avenue  
Belmar, New Jersey 07719  
Phone: (732) 443-0333  
Fax (732) 894-9647

**KANNER & WHITELEY, LLC**

Allan Kanner, Esq. NJ Bar No. 033981980  
Cynthia St. Amant, Esq. (*Pro Hac Vice*)  
701 Camp Street  
New Orleans, LA 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Plaintiff*

Dated: December 17, 2015

## 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**

William Flinn, Individually and on Behalf of All Others Similarly Situated,

**DEFENDANTS**

Dolgencorp, LLC (d/b/a Dollar General Corporation)

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

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

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number)  
Clark Law Firm  
811 Sixteenth Avenue, Belmar, NJ 07719  
info@clarklawnj.com; 732-443-0333

Attorneys (If Known)

**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)

- |   | 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 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 checked="" 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):  
28 U.S.C 1391(a)

Brief description of cause:

Defendant Dollar General misleading and/or deceiving consumers in purchasing obsolete store brand motor oil

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 12-17-15 SIGNATURE OF ATTORNEY OF RECORD

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.

# Exhibit 6

**U.S. District Court**  
**Eastern District of Michigan (Detroit)**  
**CIVIL DOCKET FOR CASE #: 2:16-cv-10439-SFC-MKM**

Gooel v. Dolgencorp, LLC d/b/a Dollar General Store  
Assigned to: District Judge Sean F. Cox  
Referred to: Magistrate Judge Mona K. Majzoub  
Cause: 28:1332 Diversity-Other Contract

Date Filed: 02/08/2016  
Jury Demand: Plaintiff  
Nature of Suit: 190 Contract: Other  
Jurisdiction: Diversity

**Plaintiff**

**Bruce Goel**

represented by **John P. Zuccarini**  
21 E. Long Lake Road  
Suite 250  
Bloomfield Hills, MI 48304  
248-646-9730  
Fax: 248-258-2335  
Email: zuccarinis@aol.com  
*ATTORNEY TO BE NOTICED*

**Sarah E. Steslicki**  
30445 Northwestern Highway  
Suite 230  
Farmington Hills, MI 48334  
313-964-6815  
Email: ssteslicki@gmail.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dolgencorp, LLC d/b/a Dollar General Store**

Date Filed	#	Docket Text
02/08/2016	<a href="#"><u>1</u></a>	COMPLAINT filed by All Plaintiffs against Dolgencorp, LLC d/b/a Dollar General Store with Jury Demand. <a href="#">Plaintiff requests summons issued</a> . Receipt No: 0645-5543634 - Fee: \$ 400. <a href="#">County of 1st Plaintiff: Oakland - County Where Action Arose: Oakland - County of 1st Defendant: Out of State. [Previously dismissed case: No] [Possible companion case(s): None]</a> (Steslicki, Sarah) (Entered: 02/08/2016)
02/08/2016	<a href="#"><u>2</u></a>	SUMMONS Issued for *Dolgencorp, LLC d/b/a Dollar General Store* (SOso) (Entered: 02/08/2016)
02/09/2016		<a href="#">REQUEST for SUMMONS for Dolgencorp, LLC d/b/a Dollar General Store</a> . (Steslicki, Sarah) (Entered: 02/09/2016)
02/09/2016	<a href="#"><u>3</u></a>	SUMMONS Issued for *Dolgencorp, LLC d/b/a Dollar General Store* (SOso) (Entered: 02/09/2016)

02/12/2016

[4](#)

NOTICE of Appearance by John P. Zuccarini on behalf of All Plaintiffs. (Zuccarini, John) (Entered: 02/12/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 09:19:19			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:16-cv-10439-SFC-MKM
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

**BRUCE GOOEL, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC (d/b/a DOLLAR  
GENERAL CORPORATION)**

**Defendant.**

Case No. \_\_\_\_\_

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

Plaintiff Bruce Gooel (“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 Michigan, to redress the unlawful commercial practices employed by Defendant, DOLGENCORP, LLC (d/b/a Dollar General Corporation) (hereinafter “Dollar General” and/or “Defendant”), at its stores whereby Dollar General: (a) sells an entire line of company-branded motor oils (labeled “DG”) that are obsolete and potentially harmful to its customers’ automobiles; (b) positions this line of obsolete motor oils immediately adjacent to the standard- and premium-quality motor oils sold by its competitors; and (c) fails to adequately warn its customers that DG motor oil is unsuitable for the vast majority, if not all, of its customers to use in their modern day automobiles.

2. Dollar General engaged in these unlawful, unconscionable, misrepresentative, fraudulent and/or deceptive business practices in connection with the sale and/or advertisement of this merchandise in violation of Michigan common law and the Michigan Consumer Protection Act, MCL 445.901 *et seq.*

### **PARTIES**

3. Plaintiff Bruce Gooel is an individual adult resident citizen of the City of West Bloomfield, County of Oakland, State of Michigan, and is a member of the class alleged herein.

4. During the relevant period, Plaintiff purchased Dollar General's DG SAE 30 store brand motor oil from Dollar General's store in Walled Lake, Michigan for his 2009 Dodge Journey.

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

6. At all relevant times, Defendant produced, marketed, advertised and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of Michigan, utilizing unconscionable, deceptive, fraudulent, false and/or misrepresentative sales practices in connection with the sale, marketing and/or deceptive placement of this merchandise. These practices were employed with the intent to deceive 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.

7. As such, purchasers of DG-branded motor oil have suffered ascertainable losses as a result of Defendant's unconscionable, deceptive, fraudulent, and misrepresentative acts.

8. Defendant maintains approximately 345 stores throughout the State of Michigan. As such, Michigan courts maintain a significant interest in regulating Defendant's conduct that takes place within Michigan.

### **JURISDICTION AND VENUE**

9. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d), because Plaintiff and all members of the proposed class are citizens of a state different from Defendant's home state, there are more than 100 class members, and the amount-in-controversy exceeds \$5,000,000, exclusive of interest and costs.

10. This Court has jurisdiction over the Defendant named herein because Defendant is a foreign corporation authorized to do business in Michigan; does sufficient business in Michigan; and has sufficient minimum contacts with Michigan and/or otherwise intentionally avails itself of the laws and markets of Michigan through the promotion, sale, marketing and distribution of its merchandise in Michigan, to render the exercise of jurisdiction by Michigan courts permissible.

11. Venue is proper in this District under 28 U.S.C. §1391(b) 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 Plaintiff and class members residing in this district, and/or because Defendant is subject to personal jurisdiction in this district

12. In addition, Defendant operates approximately 345 stores in Michigan and has received substantial compensation from Michigan consumers who purchase goods from Defendant.

### **FACTUAL ALLEGATIONS**

13. Dollar General operates a chain of variety stores headquartered in Goodlettsville, Tennessee. According to its website, as of October 30, 2015, Dollar General operated 12,396 stores in 43 states, including 345 stores in the State of Michigan.

14. 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 and 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.

15. 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.

16. 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."

17. Dollar General's DG Auto line consists of three types of obsolete automotive oils: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30. Each of these products fail to protect and can actively damage, the engines in modern day automobiles.

18. Motor oils are supposed to properly 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.

19. 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.

20. 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.<sup>1</sup>

21. Defendant engaged in unconscionable, unlawful, deceptive and/or fraudulent acts and/or omissions in connection with the sale of less expensive, obsolete motor oil that is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General's customers.

22. Dollar General also engages in the unfair, unlawful, deceptive and/or fraudulent sales practice of concealing the obsolete and harmful nature of its motor oil from its customers through deceitful product placement tactics and misleading labels which obscure a critical fact from Dollar General's customers: Dollar General's motor oil is unfit for and wholly obsolete in the vehicles driven by the vast majority, if not all, of its customers.

23. 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. Defendant places its DG brand motor oil next to these name brand motor oil products on its shelves.

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

25. The labels of all "DG" brand motor oils also contain a prominent checkered flag on the front, suggestive of auto racing and winning.

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

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<sup>1</sup> See, e.g. The Petroleum Quality Institute of America, *Some Engine Oils Currently on the Shelves Can Harm Your Engine*, <http://www.pqiamerica.com/apiserviceclass.htm>.

engine performance or equipment harm,” and 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.”

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

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

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 28 years, or in the case of Dollar General’s DG SAE 30, the past 86 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, Defendant 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 is suitable for modern-day automobiles, adjacent to an array of other motor oils which are suitable for modern-day vehicles. The photograph below illustrates how Dollar General effects this deception:





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 and checkered flag on the front, *e.g.*, 10W-40. The bottle also contains the same



kind of shape to allow an easy pour into a car engine. The only apparent difference being the price, as Dollar General's motor oils are less expensive than the others.

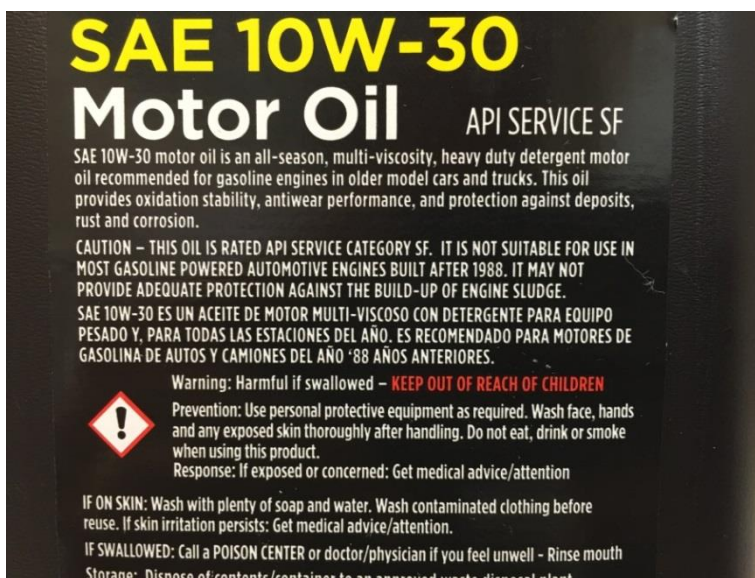
31. Defendant's product display and packaging conceals the fact that these DG-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines in most of the automobiles used by the consumers purchasing motor oil. Instead, by using this deceptive method of product placement, Dollar General misleads consumers into thinking that the quality of the Dollar General-brand motor oils is the same or similar to that of the other brand name motors oils sold by Dollar General.

32. 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, Defendant buries the aforementioned statements on the back of its products in small type where customers are unlikely to encounter them.

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



The photograph below is a close-up of DG SAE 10W-30's back label, which includes the following warnings in small print: "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 10W-40 bears the following labels on its front (left label) and back (right label):



The following photograph is a close-up of DG SAE 10W-40's back label, which includes the following warnings in small print: "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":



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



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



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 by Dollar General in this deceptive manner, except that Dollar General is successfully deceiving a sufficient number of customers to make this fraudulent practice worthwhile. It is unfair, unlawful, deceptive, sharp and/or fraudulent for Dollar General to distribute, market, and sell an entire line of motor oil in

this manner 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 were and 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.

38. Michigan laws are designed to protect consumers from this type of deceptive advertising and predatory conduct.

39. Defendant's unfair, unlawful, unconscionable, misleading 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 Michigan.

40. Defendant's scheme to deceive and defraud consumers violates Michigan common law, the Michigan Consumer Protection, MCL 445.901, *et seq.*, and consumers' contractual rights.

41. As a direct and proximate result of Dollar General's deceptive, unlawful, misleading, fraudulent and unconscionable 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. Indeed, the products are useless in all but the most outdated automotive engines. Had Plaintiff and class members not been deceived by Defendant they would not have purchased this virtually obsolete oil.

42. 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.

43. Plaintiff therefore brings the common law and statutory claims alleged herein to halt Dollar General's deceptive, unconscionable, unlawful, fraudulent, sharp and misleading practices and to obtain compensation for the losses suffered by Plaintiff and all class members.

### **CLASS ACTION ALLEGATIONS**

44. 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 (the "Class"):

**All persons in the State of Michigan who purchased Dollar General'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 February 2010.**

45. 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.

46. Specifically excluded from the proposed Class are Dollar General, its officers, directors, agents, trustees, parents, 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.

### **Fed.R.Civ.P. 23(a) Factors**

47. **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 tens of thousands of persons in the Class.



48. **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.

49. **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.

50. **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 that control this litigation and predominate over any individual issues. 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 purported to be appropriate;
- c) Whether Defendant studied the effect of its product placement on its shelves;
- d) Whether Defendant studied or tested its labeling 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 in Michigan;
- 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 Defendant knowingly concealed, suppressed, omitted or failed to disclose the harmful and obsolete nature of its company-branded motor oil with the intent Plaintiff and Class members rely on this concealment, suppression or omission in connection with their purchase of the "DG" brand motor oil;
- m) Whether the acts of Defendant violated, *inter alia*, the Michigan Consumer Protection Act and/or any other applicable state, common and statutory law;
- n) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
- o) Whether Defendant has been unjustly enriched;
- p) Whether Plaintiff and members of the Class are entitled to restitution;
- q) Whether compensatory and/or consequential damages ought to be awarded to Plaintiff and Class members;

- r) Whether Plaintiff and Class members are entitled to attorneys' fees and expenses, and in what amount;
- s) The proper method for calculating damages and restitution classwide; and
- t) Whether Plaintiff and Class members are entitled to declaratory and/or other equitable relief.

**Fed.R.Civ.P. 23(b)(2)**

51. 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 members of the Class that would establish incompatible standards of conduct for Defendant.

52. Injunctive relief is necessary to prevent further fraudulent and unfair business practices by Defendant and further ongoing damages to Plaintiff and the Class. 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.

**Fed.R.Civ.P. 23(b)(3)**

53. **Common Issues Predominate:** As set forth in detail herein, common issues of fact and law predominate over individual issues because all of Plaintiff's claims are based on the same deceptive common course of conduct. Whether Dollar General's conduct is likely to deceive reasonable consumers, breaches implied warranties, and/or causes Defendant to be unjustly enriched, are the predominate issues in this matter and are common to all members of the Class. Moreover, 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

54. **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 Michigan consumers, 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 unjustly reap and retain the substantial proceeds derived from its wrongful and unlawful conduct. Plaintiff and the Class 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.

55. Certification is also warranted under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

56. The claims asserted herein are applicable to all individuals and entities throughout Michigan who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General. The State of Michigan has sufficient state interest through a significant contact or aggregation of contacts to the claims asserted by each member of the Class so that the choice of Michigan law is not arbitrary or unfair.

## **CLAIMS FOR RELIEF**

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

### **COUNT I** **Breach of Implied Warranty of Merchantability**

57. Plaintiff realleges and incorporates by reference all of the prior paragraphs, as if fully set forth herein.

58. Plaintiff and Class members who purchased "DG" brand motor oils were and are purchasers of goods.

59. Encompassed in the sale to Plaintiff and other consumers of "DG" brand motor oils by Dollar General was an implied warranty that the "DG" brand motor oil was merchantable.

60. Dollar General breached the implied warranty of merchantability to Plaintiff and Class members because DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30: (a) are not fit for the ordinary purpose for which they are used; (b) are not adequately contained, packaged and labeled (*i.e.*, they lacked a sufficiently conspicuous caution label about the risk posed by the motor oil when used according to the directions on the product packaging); and (c) do not conform to the promises or affirmations of fact made on the container or label (*i.e.*, that it was at all suitable to use).

61. Dollar General's failure to warn Plaintiff and Class members adequately about the defective and unsafe quality of the product was willful and/or reckless.

62. As a proximate result of Dollar General's breach of the implied warranty of merchantability, Plaintiff and Class members sustained damages, including, but not limited to, the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

63. Plaintiff and Class members are entitled to damages and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

**COUNT II**  
**Breach of Implied Warranty of Fitness for a Particular Purpose**

64. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

65. Plaintiff and members of the Class purchased "DG" brand motor oils from Dollar General based on representations, lack thereof, product placement and other means.

66. Defendant specifically marketed DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oils that could be used in its customers' automobiles. At the time of the sale of the product, Defendant knew or should have known that Plaintiff and Class members would use DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 as motor oil in their modern day motor vehicles and be exposed to these products' potentially harmful qualities. Defendant also knew, or should have known, Plaintiff and the Class would reasonably rely on Dollar General's skill or judgment to select or furnish suitable goods.

67. Plaintiff and Class members did in fact purchase DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 with the particular purpose of using them as motor oil for their automobiles.

68. Plaintiff and Class members did in fact reasonably rely on Dollar General's skill or judgment to furnish suitable goods.

69. By manufacturing, marketing, and distributing such products without an adequate warning and by deceptively placing on the shelf next to legitimate motor oils, Dollar General breached its implied warranty of fitness for a particular purpose and is liable to Plaintiff and the Class.

70. Dollar General's failure to warn Plaintiff and Class members adequately about the defective and unsafe quality of the product was willful and/or reckless.

71. As a proximate result of Dollar General's breach of the implied warranty of fitness for a particular purpose, Plaintiff and Class members sustained damages, including, but not limited to, the receipt of goods they would not have otherwise purchased and which are likely to cause damage to their automobiles if used in the manner intended.

72. Plaintiff and Class members are entitled to damages and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

### **COUNT III** **Unjust Enrichment**

73. Plaintiff realleges and incorporates by reference all of the prior paragraphs, as if fully set forth herein.

74. As an intended and expected result of its conscious wrongdoing, Defendant has profited and benefitted from the distribution, marketing and/or sale of its "DG" brand motor oil to Plaintiff and the Class.

75. Defendant has voluntarily accepted and retained these profits and benefits, derived from Plaintiff and the Class, with full knowledge and awareness that, as a result of Defendant's misconduct, Plaintiff and the Class were not receiving products of the quality, nature, fitness, or value that had been represented by Defendant, and/or that Plaintiff and the Class reasonably expected.

76. By virtue of the wrongdoing alleged in this Complaint, Defendant has been unjustly enriched at the expense of Plaintiff and the Class. Plaintiff and the members of the Class each seeks restitution for the wrongful profits, revenue and benefits that Defendant obtained from



each of them, to the extent, and in the amount deemed appropriate by the Court, and such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.

**COUNT VI**  
**Violation of the Michigan Consumer Protection Act**

77. Plaintiff realleges and incorporates by reference all of the prior paragraphs, as if fully set forth herein.

78. As alleged herein, Defendant's conduct in connection with the distribution, marketing and sale of "DG" brand motor oil to Plaintiff and the Class constitutes unfair, unconscionable and deceptive acts or practices in the conduct of trade and commerce in violation of the provisions of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, as follows:

- (a) Defendant's conduct violates MCL 445.903(1)(c), by representing that "DG" brand motor oil has characteristics and benefits that it does not have;
- (b) Defendant's conduct violates MCL 445.903(1)(e), by representing that "DG" brand motor oil is of a particular standard, quality or grade, when it is of another;
- (c) Defendant's conduct violates MCL 445.903(1)(s), by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- (d) Defendant's conduct violates MCL 445.903(bb), by representing material facts such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;
- (e) Defendant's conduct violates MCL 445.903(cc), by failing to reveal facts that are material to the transaction in light of representations of fact made in positive manner; and/or
- (f) Defendant's conduct violates MCL 445.903(n) by causing confusion or misunderstanding as to the legal rights, obligations or remedies of a party to a transaction.

79. As a result of such unfair, unconscionable and deceptive conduct, Plaintiff and the members of the Class have suffered, and will continue to suffer, damages.

80. This Court has the power to enjoin the continuation of the unfair, unconscionable and deceptive conduct alleged herein pursuant to MCL 445.911(1). Unless enjoined by this Court, Defendant will continue the unfair, unconscionable and deceptive conduct alleged herein.

81. Plaintiff and members of the Class are therefore entitled to damages in an amount to be determined at trial, and to equitable relief in the form of appropriate injunctive relief, as a result of the unfair business conduct alleged herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, requests that this Court award the following relief:

(A) An Order declaring this action to be maintainable as a class action and appointing Plaintiff and his counsel to represent the Class;

(B) An award of compensatory damages to Plaintiff and the other Class members;

(C) An order enjoining Defendant from continuing its unfair, unconscionable and deceptive practices, as alleged herein;

(D) Restitution and disgorgement of the unlawful profits collected by the Defendant;

(E) 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;

(F) An award to Plaintiff and the Class for their costs and disbursements of this action, including reasonable fees for attorneys and experts;

(G) An award of pre-judgment and post-judgment interest to Plaintiff and the other Class members on their damages; and

(H) Such other, further, and different relief as may be just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury for all issues so triable.

DATED: February 8, 2016

Respectfully submitted,

### **LAW OFFICES OF JOHN P. ZUCCARINI**

s/ with consent of John P. Zuccarini  
John P. Zuccarini (P41646)  
zuccarinis@aol.com  
30249 Cedar Hollow  
Beverly Hills, MI 48025  
(248) 672-3325

### **LAW OFFICES OF SARAH STESLICKI**

s/ Sarah E. Steslicki  
Sarah E. Steslicki (P66057)  
ssteslicki@gmail.com  
30445 Northwestern Highway  
Suite 230  
Farmington Hills, MI 48334  
(313) 964-6815

### **KANNER & WHITELEY, LLC**

Allan Kanner, Esq.  
a.kanner@kanner-law.com  
Cynthia St. Amant, Esq.  
c.stamant@kanner-law.com  
701 Camp Street

New Orleans, LA 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Plaintiff*

# Exhibit 7

REFERA

**U.S. District Court  
Eastern District of Kentucky (Covington)  
CIVIL DOCKET FOR CASE #: 2:16-cv-00026-WOB-JGW**

Foppe v. Dollar General Corporation et al  
Assigned to: Judge William O. Bertelsman  
Referred to: Magistrate Judge J. Gregory Wehrman  
Demand: \$5,000,000  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/10/2016  
Jury Demand: None  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**John Foppe**

*on behalf of himself and all others  
similarly situated*

represented by **Colin W. McClain**  
Humphrey Farrington & McClain  
221 W. Lexington  
Suite 400  
Independence, MO 64050  
816-836-5050  
Fax: 816-836-8966  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**David A. Futscher**

Parry Deering Futscher & Sparks PSC  
913 N. Oak Drive  
P.O. Box 2618  
Covington, KY 41012  
859-912-2394  
Email: david@futscherlaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Kenneth B. McClain**

Humphrey Farrington & McClain  
221 W. Lexington  
Suite 400  
Independence, MO 64050  
816-836-5050  
Fax: 816-836-8966  
Email: kbm@hfmlegal.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Kevin D. Stanley**

Humphrey Farrington & McClain  
221 W. Lexington  
Suite 400

Independence, MO 64050  
 816-836-5050  
 Fax: 816-836-8966  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Dollar General Corporation**

**Defendant**

**Dolgencorp, L.L.C.,**  
*Kentucky Limited Liability Company*

Date Filed	#	Docket Text
02/10/2016	<a href="#">1</a>	COMPLAINT ( Filing fee \$400; receipt number 0643-3413256), filed by John Foppe. (Attachments: # <a href="#">1</a> Civil Cover Sheet, # <a href="#">2</a> Summons Dollar General Corporation, # <a href="#">3</a> Summons Dolgencorp, L.L.C.)(KRB) (Entered: 02/10/2016)
02/10/2016	<a href="#">3</a>	STANDING REFERRAL ORDER; 1)Case referred to Mag. Judge to supervise discovery and pretrial proceedings. Case to revert back to undersigned to hold final pretrial conference and trial; 2)Mag. Judge to conduct all pretrial/status conferences and rule on non-dispositive motions. Dispositive motions and motions in limine to be referred by the Clerk of this Court to the undersigned. Final pretrial conference and trial also to be before the undersigned. Signed by Judge William O. Bertelsman on 06/18/2010.(KRB) cc: COR (Entered: 02/10/2016)
02/10/2016		Conflict Check run. (KRB) (Entered: 02/10/2016)
02/10/2016	<a href="#">4</a>	Summons Issued as to Dolgencorp, L.L.C., Dollar General Corporation; Summons issued and returned to counsel electronically (KRB) (Entered: 02/10/2016)
02/11/2016		Clerk's Note: Docket entry 5 was docketed in this case in error; entry was deleted. No further action is needed. (KRB) (Entered: 02/11/2016)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/07/2016 09:22:47			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:16-cv-00026-WOB-JGW
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20



**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  
Dolgencorp, 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)

- |   | 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 checked="" 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 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 checked="" 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):  
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

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
02/10/2016SIGNATURE 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.

*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:

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:

# Exhibit 8

JURY

**U.S. District Court  
Southern District of Ohio (Cincinnati)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00300-SSB-SKB**

Fruhling v. Dollar General Corporation et al  
Assigned to: Judge Sandra S Beckwith  
Referred to: Magistrate Judge Stephanie K. Bowman  
Demand: \$5,000,000  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/10/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff****Miriam Fruhling**

represented by **David A Futscher**  
Futscher Law PLLC  
913 N Oak Dr  
Villa Hills, KY 41017  
859-912-2394  
Email: david@futscherlaw.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dollar General Corporation**  
*doing business as*  
Dolgencorp of Texas, Inc.

**Defendant****Dolgencorp, LLC**

Date Filed	#	Docket Text
02/10/2016	<a href="#"><u>1</u></a>	COMPLAINT with JURY DEMAND against All Defendants ( Filing fee \$ 400 paid - receipt number: 0648-5381166), filed by Miriam Fruhling. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet, # <a href="#"><u>2</u></a> Summons Form, # <a href="#"><u>3</u></a> Summons Form) (Futscher, David) (Entered: 02/10/2016)
02/11/2016		This case is referred to Magistrate Judge Stephanie K. Bowman. (eh) (Entered: 02/11/2016)
02/11/2016	<a href="#"><u>2</u></a>	Summons Issued as to Dolgencorp, LLC, Dollar General Corporation. (eh) (Entered: 02/11/2016)

**PACER Service Center**

**Transaction Receipt**

03/07/2016 09:24:28

mp1188:2810168:3994037

5049303-0133

<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:16-cv-00300- SSB-SKB
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
AT CINCINNATI**

MIRIAM FRUHLING, on behalf of	)	
herself and all others similarly situated	)	
	)	
Plaintiffs,	)	
	)	Case No. 1:16-cv-300
	)	
V.	)	JURY TRIAL DEMANDED
	)	
DOLLAR GENERAL	)	
CORPORATION (d/b/a Dolgencorp of	)	
Texas, Inc.), a Tennessee corporation;	)	
	)	
and	)	
	)	
DOLGENCORP, L.L.C., a Kentucky	)	
Limited Liability Company.	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Miriam Fruhling (“Plaintiff”), on behalf of herself and all others similarly situated, makes the following allegations based on her personal knowledge of her 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 her own behalf and on behalf of the class defined below, comprised of all individuals similarly situated within the State of Ohio to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation doing business in Ohio as Dolgencorp, LLC, a (hereinafter “Defendants”) in connection with their marketing and sale of their company-branded motor oil sold in their stores.



2. Defendants own and/or operate retail stores 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- 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 Ohio Consumer Sales Practices Act (“OCSA”), R.C. 1345.01 *et seq.*, and the contractual rights of consumers.

#### **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 Defendants because Defendants are foreign corporations or associations authorized to do business in Ohio, do sufficient business in Ohio, and have sufficient minimum contacts with Ohio or otherwise intentionally avail themselves of the laws and markets of Ohio, through the promotion, sale, marketing and distribution of their merchandise in Ohio, to render the exercise of jurisdiction by the Ohio courts permissible.

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, was directed from, and/or emanated from 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.

### **PARTIES**

8. Plaintiff Miriam Fruhling is an individual adult resident citizen of Cincinnati, Hamilton County, Ohio 45239, 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 at 5795 Chevoit Road, Cincinnati Ohio 45247, on February 4, 2016.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Defendant Dollar General Corporation can be served through its registered agent, Corporation Service Company, located at 2908 Poston Avenue, Nashville, Tennessee 37203.

11. Defendant Dolgencorp, LLC is a Kentucky limited liability company. Defendant Dolgencorp can be served through its registered agent, Corporation Service Company, located at 50 W. Broad Street, Suite 1800, Columbus, Ohio 43215.

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

### **FACTUAL ALLEGATIONS**

13. Dollar General operates a chain of variety stores headquartered in Goodlettsville, Tennessee.

14. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. 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.

20. 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.

21. Defendants engage 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)

22. Defendants mislead 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 their customers.

23. 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.

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

25. 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."

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

27. 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.”

28. 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.

29. Dollar General further disguises the obsolete and harmful nature of their motor oils with their positioning of these motor oils on their shelves in a misleading manner. Specifically, Dollar General places similar quantities of their 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.

30. 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 are.

31. 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.

32. 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. However, 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.

33. 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"

34. 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":

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, 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. Defendants knew or should have known that their customers are being or will, in reasonable probability, be deceived by their marketing strategy based on the quantity of their obsolete DG motor oil sold compared to the limited number of automobiles for which these oils are appropriate.

37. The OCSA is designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

38. 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 Ohio.

39. As a direct and proximate result of Defendants' 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.

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. 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.

### **Unjust Enrichment**

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



43. Defendants knew or should have known that consumers' payments for their 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.

44. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by their wrongful receipt of Plaintiff's and Class Members' monies.

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

46. Defendants 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.

#### **CLASS ACTION ALLEGATIONS**

47. 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 herself and all members of the following Class:

**All persons in the State of Ohio 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 2011.**

48. 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.

49. 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**

50. **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 tens of thousands of persons in the Class.

51. **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.

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

53. **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 their 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 their product placement on their shelves;
- d) Whether Defendants studied or tested their label and the effect of their labels on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell their DG-branded motor oil compared to the revenue it received from their sales;
- g) Whether Defendants misrepresented the safety and suitability of their DG branded motor oil sold at their 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 Dollar General's 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 their DG-branded motor oil;

- l) Whether Defendants' conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the Ohio Consumer Sales Practices Act, R.C. 1345.01 *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, 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)**

54. 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 member of the Class that would establish incompatible standards of conduct for Defendants.

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

**FRCP 23(b)(3)**

56. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Named Plaintiff's OCSA 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 warranty of merchantability 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.

57. **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, 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.

58. **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 a 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 Defendants only sells the subject motor oil in their own stores.

59. 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 Defendants' useless and harmful motor oil.

#### **CLAIMS FOR RELIEF**

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

#### **FIRST CAUSE OF ACTION** **VIOLATION OF THE OHIO CONSUMER SALES PRACTICES ACT (OCSPA) –** **R.C. 1345.01 *ET SEQ.***

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

62. Plaintiff, Class Plaintiffs and Dollar General are all "person[s]" for purposes of the OCSPA, R.C. 1345.01 *et seq.*

63. Plaintiff and Class Plaintiffs are all "consumer[s]" for purposes of the OCSPA, R.C. 1345.01 *et seq.*

64. Defendants are all "supplier[s]" for purposes of the OCSPA, R.C. 1345.01 *et seq.*

65. Dollar General's sale of DG-branded oil constitutes "Consumer transaction" for

purposes of the OCSA, R.C. 1345.01 *et seq.*

66. Pursuant to the OCSA, “no supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction.” R.C. 1345.02.

67. Under the OCSA, the act or practice of a supplier in representing that the subject of a consumer transaction has performance characteristics, uses or benefits that it does not have is deceptive. R.C. 1345.2(B)(1).

68. Under the OCSA, the act or practice of a supplier in representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription or model that it is not, is deceptive. R.C. 1345.2(B)(2).

69. Pursuant to the OCSA, “no supplier shall commit an unconscionable act or practice in connection with a consumer transaction.” R.C. 1345.03.

70. Under the OCSA, an unconscionable act occurs where a supplier knew at the time the consumer transaction was entered into that the consumer was unable to receive a substantial benefit from the subject of the consumer transaction. R.C. 1345.03(B)(3).

71. Under the OCSA, an unconscionable act occurs where a supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer’s detriment R.C. 1345.03(B)(6).

72. In selling the DG-branded oil at issue to Plaintiff, Defendants have engaged in deceptive and/or unconscionable acts or practices by misrepresented material facts, 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.

73. Pursuant to OCSPA, Plaintiff has standing to pursue this claim as Plaintiff is a "consumer" has suffered actual economic damages as a proximate result of Defendants' actions as set forth herein. R.C. 1345.09(A).

74. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers.

75. Defendants violated the OCSPA 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.

76. Defendants' actions as described herein were done knowingly with conscious disregard of Plaintiff's rights, and Defendants was wanton and malicious in their concealment of the same.

77. Defendants' false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the OCSPA because Defendants continues to sell the obsolete oil without adequate warnings and represent that the DG-branded motor oils have characteristics, uses and benefits which the products do not have, and has thus caused economic damage and continues to cause economic damage to Plaintiff and the Class.

78. Neither Plaintiff nor any reasonable consumer would have purchased the DG-branded motor oil if they were informed it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engines, and could harm their vehicles.

79. Plaintiff seeks injunctive relief pursuant to R.C. 1345.09(D) in the form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern

day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils.

80. Plaintiff and members of the Class shall be irreparably harmed if such an order is not granted.

**SECOND CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY –**  
**R.C. 1302 *ET SEQ.***

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

82. Beginning at an exact date unknown to Plaintiff, but since at least five years prior to the filing date of this action, and as set forth above, Defendants represented to consumers, including Named 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. Named Plaintiff and Class Members bought those goods from the Defendants.

83. Defendants were merchants with respect to goods of the kind which were sold to Named Plaintiff and Class Members, and there was in the sale to Named Plaintiff and Class Members an implied warranty that those goods were merchantable.

84. However, Defendants 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.

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

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

### **THIRD CAUSE OF ACTION** **UNJUST ENRICHMENT**

87. Named Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing their useless and harmful motor oil, and Defendants have consciously and willingly accepted and enjoyed these benefits.

88. Defendants knew or should have known that consumers' payments for their 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.

89. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by their wrongful receipt of Named Plaintiff and Class Members' monies.

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

91. Defendants 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/PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of herself 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 pursuant to R.C. 1345.09(D) enjoining Defendants from engaging in the unfair and/or deceptive acts or practices, as set forth in this Complaint, and requiring Defendants to disseminate corrective advertising;
- D. Compensatory economic damages;
- E. Any non-economic damages including but not limited to punitive damages;
- E. Restitution and equitable disgorgement of the unlawful profits collected by the Defendants;
- F. 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 their 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;
- 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 Cincinnati, Ohio 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 #0039653  
Futscher Law PLLC  
913 N. Oak Drive  
Villa Hills, KY 41017  
Telephone: (859) 912-2394  
david@futscherlaw.com

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 Ave., Ste. 400  
Independence, MO 64051  
(816) 836-5050  
(816) 836-8966 –fax  
kbm@hfmlegal.com  
kds@hfmlegal.com  
cwm@hfmlegal.com

and

Allan Kanner, Esq. (Pro Hac Vice)  
Conlee Whiteley, Esq. (Pro Hac Vice)  
Cynthia St. Amant, Esq. (Pro Hac Vice)  
KANNER & WHITELEY, L.L.C.  
a.kanner@kanner-law.com  
c.whiteley@kanner-law.com  
c.stamant@kanner-law.com  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

**ATTORNEYS for Plaintiff**

## 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**  
 MIRIAM FRUHLING

(b) County of Residence of First Listed Plaintiff Hamilton, OH  
 (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  
 Dolgencorp, LLC

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)

**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)

- |   | 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 checked="" 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 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 checked="" 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):  
28 USC § 1332

Brief description of cause:

Ohio Consumer Sales Practices Act, Breach of Implied Warranty of Merchantability, Unjust Enrichment

**VII. REQUESTED IN COMPLAINT:**

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

**DEMAND \$**  
5,000,000.00

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.

for the

MIRIAM FRUHLING,  
on behalf of herself  
and all others similarly situated

Plaintiff(s)

 $\mathbf{V}_s$ 

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

Defendant(s)

Civil Action No. 1:16-cv-300

## DOLLAR GENERAL CORPORATION

To: *(Defendant's name and address)* d/b/a Dolgencorp of Texas, Inc.  
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. 1:16-cv-300

**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 \_\_\_\_\_.

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:

for the

MIRIAM FRUHLING,  
on behalf of herself  
and all others similarly situated

Plaintiff(s)

 $\mathbf{V}_i$ 

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

Defendant(s)

Civil Action No. 1:16-cv-300

DOLGENCORP, L.L.C.

To: *(Defendant's name and address)*

Serve Registered Agent:  
Corporation Service Company  
50 West Broad Street  
Suite 1800  
Columbus, OH 43215

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**

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. 1:16-cv-300

**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 \_\_\_\_\_.

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:

# Exhibit 9

**U.S. District Court  
District of Nebraska (8 Omaha)  
CIVIL DOCKET FOR CASE #: 8:16-cv-00072-JFB-TDT**

Harvey v. Dollar General Corporation et al  
Assigned to: Senior Judge Joseph F. Bataillon  
Referred to: Magistrate Judge Thomas D. Thalken  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/10/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Janine Harvey**  
*on behalf of herself and all others similarly  
situated*

represented by **Allan Kanner**  
KANNER, WHITELEY LAW FIRM  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
Fax: (504) 524-5763  
*ATTORNEY TO BE NOTICED*

**Andrew K. Smith**  
HUMPHREY, FARRINGTON LAW  
FIRM  
P.O. Box 900  
221 West Lexington  
Suite 400  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: aks@hfmlegal.com  
*ATTORNEY TO BE NOTICED*

**Colin W. McClain**  
HUMPHREY, FARRINGTON LAW  
FIRM  
P.O. Box 900  
221 West Lexington  
Suite 400  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: cwm@hfmlegal.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Conlee Whiteley**  
KANNER, WHITELEY LAW FIRM  
701 Camp Street



New Orleans, LA 70130  
(504) 524-577  
Fax: (504) 524-5763  
*ATTORNEY TO BE NOTICED*

**Cynthia St. Amant**  
KANNER, WHITELEY LAW FIRM  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
Fax: (504) 524-5763  
*ATTORNEY TO BE NOTICED*

**Kenneth B. McClain**  
HUMPHREY, FARRINGTON LAW  
FIRM  
P.O. Box 900  
221 West Lexington  
Suite 400  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: kbm@hfmlegal.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Kevin D. Stanley**  
HUMPHREY, FARRINGTON LAW  
FIRM  
P.O. Box 900  
221 West Lexington  
Suite 400  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: kds@hfmlegal.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dollar General Corporation**  
*a Tennessee corporation*

**Defendant**

**Dolgencorp, L.L.C.**  
*a Kentucky Limited Liability Company*

Date Filed	#	Docket Text
02/10/2016	<a href="#"><u>1</u></a>	COMPLAINT with jury demand against All Defendants ( Filing fee \$ 400, receipt number 0867-3140563), by Attorney Andrew K. Smith on behalf of Janine Harvey (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet Civil Cover Sheet)(Smith, Andrew) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>2</u></a>	TEXT NOTICE OF JUDGES ASSIGNED: Senior Judge Joseph F. Bataillon and Magistrate Judge Thomas D. Thalken assigned. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>3</u></a>	ATTORNEY LETTER by Clerk that Attorney Andrew K. Smith has not paid the biennial assessment. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>4</u></a>	ATTORNEY LETTER by Clerk that Attorney Kenneth B. McClain has not registered for admittance to practice. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>5</u></a>	ATTORNEY LETTER by Clerk that Attorney Kevin D. Stanley has not registered for admittance to practice or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>6</u></a>	ATTORNEY LETTER by Clerk that Attorney Colin W. McClain has not registered for admittance to practice or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>7</u></a>	ATTORNEY LETTER by Clerk that Attorney Allan Kanner has not registered for admittance to practice or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>8</u></a>	ATTORNEY LETTER by Clerk that Attorney Conlee Whiteley has not registered for admittance to practice or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/10/2016	<a href="#"><u>9</u></a>	ATTORNEY LETTER by Clerk that Attorney Cynthia St. Amant has not registered for admittance to practice or registered for the system. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LAC) (Entered: 02/10/2016)
02/12/2016	<a href="#"><u>10</u></a>	APPLICATION/ORDER admitting pro hac vice Attorney Colin W. McClain for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>11</u></a>	APPLICATION/ORDER admitting pro hac vice Attorney Kenneth B. McClain for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>12</u></a>	

		APPLICATION/ORDER admitting pro hac vice Attorney Kevin D. Stanley for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/12/2016)
02/26/2016	<a href="#">13</a>	APPLICATION/ORDER admitting pro hac vice Attorney Cynthia St. Amant for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/26/2016)
02/26/2016	<a href="#">14</a>	APPLICATION/ORDER admitting pro hac vice Attorney Allan Kanner for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/26/2016)
02/26/2016	<a href="#">15</a>	APPLICATION/ORDER admitting pro hac vice Attorney Conlee Whiteley for Plaintiff Janine Harvey. Ordered by Deputy Clerk. (KLF) (Entered: 02/26/2016)
02/29/2016	<a href="#">16</a>	Summons Requested as to Dollar General Corporation regarding Complaint <a href="#">1</a> . (Smith, Andrew) (Entered: 02/29/2016)
02/29/2016	<a href="#">17</a>	Summons Requested as to DOLGENCORP, LLC regarding Complaint <a href="#">1</a> . (Smith, Andrew) (Entered: 02/29/2016)
02/29/2016	<a href="#">18</a>	Summons Issued as to defendant Dolgencorp, L.L.C. and Dollar General Corporation. YOU MUST PRINT YOUR ISSUED SUMMONS, WHICH ARE ATTACHED TO THIS DOCUMENT. PAPER COPIES WILL NOT BE MAILED. (LAC) (Entered: 02/29/2016)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/07/2016 08:26:46			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	8:16-cv-00072-JFB-TDT
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA  
AT OMAHA**

JANINE HARVEY, on behalf of herself	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No. _____
	)	
V.	)	JURY TRIAL DEMANDED
	)	
DOLLAR GENERAL	)	
CORPORATION, a Tennessee	)	
corporation;	)	
	)	
and	)	
	)	
DOLGENCORP, L.L.C., a Kentucky	)	
Limited Liability Company.	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Janine Harvey (“Plaintiff”), on behalf of herself and all others similarly situated, makes the following allegations based on her personal knowledge of her 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 her own behalf and on behalf of the class defined below, comprised of all individuals similarly situated within the State of Nebraska to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation doing business in Nebraska as

Dolgencorp LLC, (hereinafter “Defendants”) in connection with their marketing and sale of their company-branded motor oil sold in their 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. Defendants’ unlawful and deceptive business practices violate the Nebraska Consumer Protection Act, Neb. Rev. St. §§ 59-1601 *et seq.* (“NCPA”), the Uniform Deceptive Trade Practices Act, Neb. Rev. St. §§ 87-301 *et seq.* (“DTPA”), 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 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.

5. This Court has jurisdiction over Defendants because Defendants are foreign corporations or associations authorized to do business in Nebraska, do sufficient business in Nebraska, and have sufficient minimum contacts with Nebraska or otherwise intentionally avail themselves of the laws and markets of Nebraska, through the promotion, sale, marketing and distribution of their merchandise in Nebraska, to render the exercise of jurisdiction by the Nebraska courts permissible.

6. 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, was directed from, and/or emanated from 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.

7. In addition, Defendants operate numerous stores in Nebraska and have received substantial compensation from Nebraska consumers who purchase goods from Defendants.

### **PARTIES**

8. Plaintiff Janine Harvey is an individual adult resident citizen of Syracuse, Otoe County, Nebraska and is a member of the Class alleged herein.

9. Plaintiff purchased Dollar General's DG SAE 10W-30 motor oil from Dollar General's store at 1820 Elm Street, Syracuse, Nebraska 68446, February, 4, 2016.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Defendant Dollar General Corporation can be served through its registered agent, Corporation Service Company, located at 2908 Poston Avenue, Nashville Tennessee 37203.

11. Defendant Dolgencorp, LLC is a Kentucky limited liability company. Defendant Dolgencorp can be served though its registered agent, CSC-Lawyers Incorporating Service Company, located at 233 S. 13<sup>th</sup> Street, Suite 1900, Lincoln, Nebraska 68508.

12. At all relevant times, Defendants produced, marketed, distributed and sold their obsolete DG-branded motor oil in their stores throughout the United States, including in the State of Nebraska, utilizing deceptive and misleading marketing and sales practices to induce Plaintiff and Class Members into purchasing their obsolete motor oil for use in their modern-day vehicles

knowing that their motor oil is obsolete and likely to cause damage to any such vehicle.

### **FACTUAL ALLEGATIONS**

13. Defendants operate a chain of variety stores under the name “Dollar General Store” headquartered in Goodlettsville, Tennessee.

14. Dollar General Stores is a discount retailer focused on low and fixed income consumers in small markets. Dollar General Store’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.

15. Dollar General Store 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.

16. In addition to offering name brand and generic merchandise, Defendants manufacture and market their own lines of inexpensive household products, which bear the designation “DG.” DG lines include “DG Auto,” “DG Hardware” “DG Health” and “DG Office.”

17. Dollar General Store’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.

18. 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.

19. 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.

20. 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.

21. Defendants engage in the unfair, unlawful, deceptive and fraudulent practice of marketing, selling and causing to be manufactured, obsolete motor oil without adequately warning that their product is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General Store’s customers (and the public at large)

22. Defendants mislead customers using product placement tactics and misleading product labels which obscure a critical fact from Dollar General Store’s customers: Dollar General Store’s motor oil is unfit for, and can harm, the vehicles driven by the vast majority, if not all, of their customers.

23. Dollar General Store’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 Store and beside which Dollar General Store places its DG brand motor oil on its shelves.

24. Additionally, the front label of DG’s SAE 10W-30 and SAE 10W-40 motor oils says, “Lubricates and protects your engine.”

25. However, among the small print on the back label of Dollar General Store’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.”

26. Defendants conceal this language by rendering it in small font and confining it to the product’s back label.

27. Defendants 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.”

28. Few, if any, Dollar General Store 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 Store’s DG SAE 30, the past 85 years.

29. Defendants further disguise the obsolete and harmful nature of their motor oils with their positioning of these motor oils on their shelves in a misleading manner. Specifically, Dollar General Store places similar quantities of their 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.

30. Dollar General Store 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 are.

31. Defendants' product display conceals the fact that their 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.

32. Defendants also fail to warn their customers adequately of the obsolete nature of DG-branded motor oils or of the dangers DG-branded motor oils pose to the very automobiles their customers are trying to protect by purchasing Dollar General Store's motor oil. An adequate warning for Dollar General Store's obsolete motor oils would be displayed conspicuously and would inform Dollar General Store's customers of the appropriate uses, if any, of the various types of Dollar General Store motor oils. However, Defendants provide their customers with no such conspicuous warnings. Instead, the company buries the aforementioned statements on the back of their products in small type where customers are unlikely to encounter them.

33. 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"

34. 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”:

35. Dollar General Store’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 Defendants are successfully deceiving a sufficient number of customers to make this fraudulent practice worthwhile. It is unfair, unlawful, deceptive and fraudulent for Defendants 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 their customers.

36. Defendants knew or should have known that their customers are being or will, in reasonable probability, be deceived by their marketing strategy based on the quantity of their obsolete DG motor oil sold compared to the limited number of automobiles for which these oils are appropriate.

37. The NCPA and DTPA are designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

38. Defendants’ unfair and deceptive course of conduct victimized all purchasers of Dollar General Store’s motor oil from Dollar General Store, throughout the country and in the State of Nebraska.

39. As a direct and proximate result of Defendants’ 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.

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

41. 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.

### **Unjust Enrichment**

42. Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing their useless and harmful motor oil, and Defendants have consciously and willingly accepted and enjoyed these benefits.

43. Defendants knew or should have known that consumers' payments for their 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.

44. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by their wrongful receipt of Plaintiff's and Class Members' monies.

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

46. Defendants 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.

### **CLASS ACTION ALLEGATIONS**

47. 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 herself and all members of the following Class:

**All persons in the State of Nebraska 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 2012.**

48. 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.

49. 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 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**

50. **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 tens of thousands of persons in the Class.

51. **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.

52. **Typicality.** Named Plaintiff's claims are typical of the claims of the members of the Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class purchased

obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General and were subjected to Defendants' common course of conduct.

53. **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 their 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 their product placement on their shelves;
- d) Whether Defendants studied or tested their label and the effect of their labels on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell their DG-branded motor oil compared to the revenue it received from their sales;
- g) Whether Defendants misrepresented the safety and suitability of their DG-branded motor oil sold at their stores nationwide;
- h) Whether Defendants' conduct of placing the obsolete Dollar General Store 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 Store's 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 their DG-branded motor oil;
- l) Whether Defendants' conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the NCPA and/or DTPA.
- 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)**

54. 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 member of the Class that would establish incompatible standards of conduct for Defendants.

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

**FRCP 23(b)(3)**

56. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Named Plaintiff's NCPA and DTPA 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 warranty of merchantability is common to all members of the Class and are the predominate issues, and Plaintiff can prove the elements of her 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.

57. **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, 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.

58. **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 a 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 Defendants only sells the subject motor oil in their own stores.

59. 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**

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

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT (NCPA) –**  
**NEB. REV. ST. §§ 59-1601 *ET SEQ.***

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

62. Plaintiff, Class Plaintiffs and Defendants are all “person[s]” for purposes of the NCPA. Neb. Rev. St. §§ 59-1601 *et seq.*

63. Defendants’ sale of DG-branded oil constitutes “Trade or Commerce” as contemplated in the NCPA, Neb. Rev. St. § 59-1601.

64. Pursuant to the NCPA, “unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful.” Neb. Rev. St. § 59-1602.

65. In selling the DG-branded oil at issue to Plaintiff, Defendants have engaged in unfair and/or deceptive acts or practices by misrepresented material facts, either expressly or by implication by representing that: (i) Dollar General Store’s DG-branded motor oil was suitable for use in its customers’ automobiles; (ii) that Dollar General Store’s DG-branded motor oil was safe to use in its customers’ automobiles; and (iii) that Dollar General Store’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.

66. Pursuant to NCPA, Plaintiff has standing to pursue this claim as Plaintiff has suffered actual economic damages as a proximate result of Defendants’ actions as set forth herein. Neb. Rev. Rev. St. § 59-1609

67. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers.

69. Defendants violated the NCPA 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.

70. Defendants' actions as described herein were done knowingly with conscious disregard of Plaintiff's rights, and Defendants was wanton and malicious in their concealment of the same.

71. Defendants' false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the NCPA because Defendants continues to sell the obsolete oil without adequate warnings and represent that the DG-branded motor oils have characteristics, uses and benefits which the products do not have, and has thus caused economic damage and continues to cause economic damage to Plaintiff and the Class.

72. Neither Plaintiff nor any reasonable consumer would have purchased the DG-branded motor oil if they were informed it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engines, and could harm their vehicles.

73. Plaintiff seeks injunctive relief pursuant to Neb. Rev. St. § 59-1609 in the form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils.

74. Plaintiff and members of the Class shall be irreparably harmed if such an order is not

granted.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF THE UNIFORM DECEPTIVE TRADE PRACTICES ACT (DTPA) –**  
**NEB. REV. ST. §§ 87-301 *ET SEQ.***

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

76. Plaintiff brings this claim under Neb. Rev. St. §§ 87-301 *et seq.*, on behalf of herself and the Class, who were subject to Defendants’ above-described deceptive trade practices.

77. The actions of Defendants set forth above constitute a deceptive trade practice in that Defendants represented DG-branded oil as having characteristics, ingredients, uses, or benefits that it does not have which is actionable under Neb. Rev. St. § 87-302(a)(5).

78. The actions of Defendants set forth above constitute a deceptive trade practice in that Defendants represented DG-branded oil as a particular standard, quality, or grade that it is not, which is actionable under Neb. Rev. St. § 87-302(a)(7).

78. The actions of Defendants set forth above constitute an unconscionable action or course of action which was committed knowingly, and which was the producing cause of economic damages to Plaintiff and Class Members actionable under Neb. Rev. St. § 87-302.

79. Plaintiff seeks injunctive relief pursuant to Neb. Rev. St. § 87-303 in the form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendants to disseminate

truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils.

### **THIRD CAUSE OF ACTION** **Breach of Implied Warranty of Merchantability**

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

78. Beginning at an exact date unknown to Plaintiff, but since at least four years prior to the filing date of this action, and as set forth above, Defendants represented to consumers, including Named 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. Named Plaintiff and Class Members bought those goods from the Defendants.

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

80. However, Defendants breached that warranty implied in the contract for the sale of goods in that Dollar General Store'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 Store's customers, as set forth in greater detail above.

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

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



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

88. Named Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing their useless and harmful motor oil, and Defendants have consciously and willingly accepted and enjoyed these benefits.

89. Defendants knew or should have known that consumers' payments for their 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.

90. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants has been unjustly enriched by their wrongful receipt of Named Plaintiff and Class Members' monies.

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

92. Defendants 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 herself 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 pursuant to Neb. Rev. Stat. § 59-1609 and/or § 87-303(a) enjoining Defendants from engaging in the unfair and/or deceptive acts or practices, as set forth in this Complaint, and requiring Defendants to disseminate corrective advertising;
- D. Compensatory economic damages;
- E. Restitution and equitable disgorgement of the unlawful profits collected by the Defendants;
- F. 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 their 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;
- 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 Omaha, Nebraska 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/ Andrew K. Smith

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Andrew K. Smith      #60485  
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 Ave., Ste. 400  
Independence, MO 64051  
(816) 836-5050  
(816) 836-8966 –fax  
kbm@hfmlegal.com  
kds@hfmlegal.com  
cwm@hfmlegal.com

AND

Allan Kanner, Esq. (Pro Hac Vice)  
Conlee Whiteley, Esq. (Pro Hac Vice)  
Cynthia St. Amant, Esq. (Pro Hac Vice)  
KANNER & WHITELEY, L.L.C.  
a.kanner@kanner-law.com  
c.whiteley@kanner-law.com  
c.stamant@kanner-law.com  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

**ATTORNEYS for Plaintiff**

**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.)

<b>I. (a) PLAINTIFFS</b>  (b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>  (c) Attorneys (Firm Name, Address, and Telephone Number) _____	<b>DEFENDANTS</b>  County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys (If Known) _____
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<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
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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																				

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)				
<b>CONTRACT</b> <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 type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <div style="display: flex;"> <div style="width: 48%;"> <b>PERSONAL INJURY</b>  <input type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel &amp; 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           </div> <div style="width: 48%;"> <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           </div> </div>	<b>FORFEITURE/PENALTY</b> <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	<b>BANKRUPTCY</b> <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	<b>OTHER STATUTES</b> <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		

<b>V. ORIGIN</b> (Place an "X" in One Box Only)						
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ):  Brief description of cause:
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	<b>DEMAND \$</b> _____	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE	SIGNATURE OF ATTORNEY OF RECORD
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**FOR OFFICE USE ONLY**

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE
			MAG. JUDGE

# Exhibit 10

**U.S. District Court  
District of Vermont (Burlington)  
CIVIL DOCKET FOR CASE #: 2:16-cv-00026-wks**

Hill v. DOLGENCORP, LLC

Assigned to: Judge William K. Sessions III

Case in other court: Vermont Superior Court, Orleans Unit, Civil  
Div, 335-12-00015-Oscv

Cause: 28:1441 Notice of Removal-Breach of Contract

Date Filed: 02/01/2016

Jury Demand: None

Nature of Suit: 190 Contract: Other

Jurisdiction: Diversity

**Plaintiff**

**Chuck Hill**

*individually and on behalf of all others  
similarly situated*

represented by **Wilfred K. Wright, Jr. , Esq.**

Wright Law PLC

P.O. Box 982

Claremore, OK 74018

(918) 341-1923

Fax: (918) 341-1923

**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**DOLGENCORP, LLC**

*doing business as*

Dollar General, Corporation

represented by **Matthew S. Borick , Esq.**

Downs Rachlin Martin PLLC

199 Main Street

P.O. Box 190

Burlington, VT 05402-0190

(802) 863-2375

Fax: (802) 862-7512

Email: mborick@drm.com

**ATTORNEY TO BE NOTICED**

**R. Trent Taylor , Esq.**

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

Richmond, VA 23219-3916

(804) 775-1182

Fax: (804) 225-5409

**PRO HAC VICE**

**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
02/01/2016	<a href="#"><u>1</u></a>	NOTICE OF REMOVAL by DOLGENCORP, LLC from Vermont Superior Court, Orleans Unit, Civil Division, case number 335-12-15-OSCV. ( Filing fee \$ 400)

		(Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Civil Cover Sheet)(law) (Entered: 02/01/2016)
02/01/2016	<a href="#">2</a>	LETTER to Vermont Superior Court, Orleans Unit, Civil Division requesting original case and certified docket sheet. (law) Unit clarified on 2/2/2016 (law). ( (Main Document 2 replaced on 2/2/2016) (law). (Entered: 02/01/2016)
02/02/2016	<a href="#">3</a>	NOTICE OF DOCKET ENTRY CORRECTION re: <a href="#">2</a> Letter. The document has been replaced to correct the unit listed in the address. The corrected document is now attached to <a href="#">2</a> and this entry. (law) (Entered: 02/02/2016)
02/04/2016	<a href="#">4</a>	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by DOLGENCORP, LLC (Borick, Matthew) (Entered: 02/04/2016)
02/04/2016	<a href="#">5</a>	SUPPLEMENTAL DOCUMENT(S) re: <a href="#">1</a> Notice of Removal by DOLGENCORP, LLC. (Borick, Matthew) (Entered: 02/04/2016)
02/08/2016	<a href="#">6</a>	MOTION to Dismiss for Failure to State a Claim filed by DOLGENCORP, LLC. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E) (Borick, Matthew) (Entered: 02/08/2016)
02/08/2016	<a href="#">7</a>	MOTION to Strike <i>Class Allegations</i> filed by DOLGENCORP, LLC.(Borick, Matthew) (Entered: 02/08/2016)
02/22/2016	<a href="#">8</a>	RECEIVED FILE and certified copy of docket sheet from State Court. (law) (Entered: 02/22/2016)
02/22/2016	<a href="#">9</a>	CLASS ACTION COMPLAINT against DOLGENCORP, LLC filed by Chuck Hill. ( <i>originally filed 12/22/2015 in state court</i> )(law) (Entered: 02/22/2016)
02/22/2016	<a href="#">10</a>	NOTICE of Assigned Docket Number. ( <i>originally filed 12/30/2015 in state court</i> )(law) (Entered: 02/22/2016)
02/22/2016	<a href="#">11</a>	STIPULATED MOTION for Extension of Time to File Answer re <a href="#">9</a> Complaint filed by DOLGENCORP, LLC, Chuck Hill. (Attachments: # <a href="#">1</a> Certificate of Service) ( <i>originally filed 1/27/2016 in state court</i> )(law) (Entered: 02/22/2016)
02/22/2016	<a href="#">12</a>	NOTICE of Filing by DOLGENCORP, LLC re <a href="#">1</a> Notice of Removal. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Certificate of Service) ( <i>originally filed 2/6/2016 in state court</i> )(law) (Entered: 02/22/2016)
02/22/2016	<a href="#">13</a>	ORDER granting <a href="#">11</a> Motion for Extension of Time to Answer re <a href="#">9</a> Complaint. DOLGENCORP, LLC answer due 3/2/2016. Signed by Judge Robert R. Bent on 2/2016. ( <i>originally filed 2/2/2016 in state court</i> ) (law) (Entered: 02/22/2016)
02/24/2016	<a href="#">14</a>	MOTION for Appearance Pro Hac Vice of R. Trent Taylor filed by DOLGENCORP, LLC. (Attachments: # <a href="#">1</a> Affidavit of R. Trent Taylor, # <a href="#">2</a> Certificate of Good Standing) (jlh) (Entered: 02/24/2016)
02/24/2016	<a href="#">15</a>	UNOPPOSED MOTION for Extension of Time to File Response as to <a href="#">7</a> MOTION to Strike <i>Class Allegations</i> filed by Chuck Hill. (Attachments: # <a href="#">1</a> Text of Proposed Order)(jam) (Entered: 02/25/2016)
02/25/2016	<a href="#">16</a>	ORDER granting <a href="#">14</a> Motion for Admission of R. Trent Taylor Pro Hac Vice. Signed by Judge William K. Sessions III on 2/25/2016. (This is a text-only Order.) (eae) (Entered: 02/25/2016)
02/25/2016	<a href="#">17</a>	



ORDER granting [15](#) Motion for Extension of Time to File Response/Reply re [7](#) MOTION to Strike *Class Allegations*. Signed by Judge William K. Sessions III on 2/25/2016. (jam) (Entered: 02/25/2016)

PACER Service Center			
Transaction Receipt			
03/04/2016 16:04:34			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	0006005-0500
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:16-cv-00026-wks
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

**SUPERIOR COURT FOR ORLEANS COUNTY  
STATE OF VERMONT**

**CHUCK HILL, Individually and on Behalf of  
All Others Similarly Situated,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC, (d/b/a DOLLAR  
GENERAL, CORPORATION)**

**Defendant.**

**Case No. 335-12-15-OSCV**

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

**SUMMONS**

**THIS SUMMONS IS DIRECTED TO: Dolgencorp, LLC d/b/a Dollar General Corporation  
c/o Corporation Service Company, Registered Agent  
100 North Main Street, Suite 2  
Barre, VT 05641**

**1. YOU ARE BEING SUED.** The plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.

**2. YOU MUST REPLY WITHIN 20\* DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a written response called an Answer within 20\* days of the date on which you received this Summons. You must send a copy of your Answer to the [Plaintiff][Plaintiff's attorney] located at: Wright Law, PLC, P.O. Box 982, Claremore, OK 74018.

You must also give or mail your Answer to the Court located at:  
Superior Court, Orleans County, Newport Vermont  
247 Main Street  
Newport, VT 05855

**3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

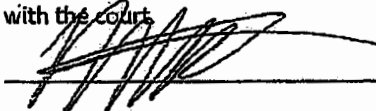
**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 20\* days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.

**5. YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to

bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.

**6. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.

**7. NOTICE OF APPEARANCE FORM. THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE.** If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this summons, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

 1-7-16  
\_\_\_\_\_  
Plaintiff's Attorney/Court Clerk Dated

Served on \_\_\_\_\_  
Date

\* Use 20 days, except that in the exceptional situations where a different time is allowed by the court in which to answer, the different time should be inserted.

**SUPERIOR COURT FOR ORLEANS COUNTY  
STATE OF VERMONT**

**CHUCK HILL, Individually and on Behalf  
of All Others Similarly Situated,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC, (d/b/a DOLLAR  
GENERAL, CORPORATION)**

**Defendant.**

Case No. 335-12-15-05CV

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

FILED  
DEC 22 2015  
VERMONT SUPERIOR  
COURT  
ORLEANS COUNTY

**CLASS ACTION COMPLAINT**

Plaintiff, Chuck Hill ("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 Vermont 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 visual representations 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. Plaintiff alleges that Dollar General engaged in these unlawful and deceptive business practices in violation Vermont law.

#### PARTIES

1. Plaintiff, Chuck Hill, is an individual adult resident citizen of Orleans County, Vermont and is a member of the Class alleged herein.

2. Plaintiff purchased Dollar General’s motor oil from Dollar General’s store in North Troy, Vermont around October or November 2015.

3. 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.

4. 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 Vermont, utilizing deceptive and misleading marketing and sales practices intended to deceive 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.

5. Defendant maintains stores throughout the State of Vermont. As such, Vermont courts maintain a significant interest in regulating Defendant's conduct which emanates from Vermont, yet deceives consumers nationwide.

#### **JURISDICTION AND VENUE**

6. Jurisdiction is proper in this Court.

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

8. Venue is proper in this Court 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 judicial district.

9. In addition, Defendant operates its stores in Vermont and has received substantial compensation from Vermont consumers who purchase goods from Defendant.

#### **FACTUAL ALLEGATIONS**

10. 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 stores located in the State of Vermont.

11. 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 generally located with the needs of its core customers (low and fixed income households) in mind.

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

13. 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."

14. 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 either fail to protect, or can actively damage, modern-day automobiles.

15. 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.

16. 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.



17. 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.

18. Plaintiff asserts that Dollar General engages in the unfair, unlawful, deceptive and fraudulent practice of marketing, selling and causing to be manufactured less expensive, obsolete motor oil that is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General's customers. Dollar General also engages in the unfair, unlawful, deceptive and fraudulent practices of concealing the obsolete and harmful nature of its motor oil from its customers through deceitful product placement tactics and misleading 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 any, of its customers.

19. 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 brands of motor oil sold by Dollar General and beside which Dollar General places its DG brand motor oil on its shelves.

20. 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."

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

22. Dollar General further conceals this language by placing it below a message that presents a misleading impression of the product and is likely the only message customers encounter, if they examine the back label at all. 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."

23. 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.

24. Dollar General further disguises the obsolete and harmful nature of its motor oils with its positioning of these motor oils on its shelves in a misleading manner. Specifically, Dollar General places similar quantities of its in-house brand motor oils, DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30, none of which are suitable for modern-day automobiles, adjacent to an array of other motor oils which are suitable for modern-day vehicles. The photograph below illustrates how Dollar General effects this deception:



25. 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; thus, enticing consumers to purchase DG brand oil based on a low price point.

26. Defendant's product display conceals the fact that these Dollar General-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines of most of the consumers purchasing motor oil. Instead, by using this deceptive method of product positioning, along with its deceptive label, Dollar General misleads consumers into thinking that the quality of the Dollar General-brand motor oils are the same type of oil and are comparable to that of the other motors oils sold by Dollar General. This impression is false and

misleading. Dollar General's motor oils are of a much lower quality than non-Dollar General motor oils, and they are only fit for a negligible fraction of the vehicles on the road today. Arguably, Dollar General's motor oils do not belong anywhere on Dollar General's shelves, let alone adjacent to standard- or premium-quality motor oils.

27. 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 backs of its products in small type where customers are unlikely to encounter them.

28. 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":

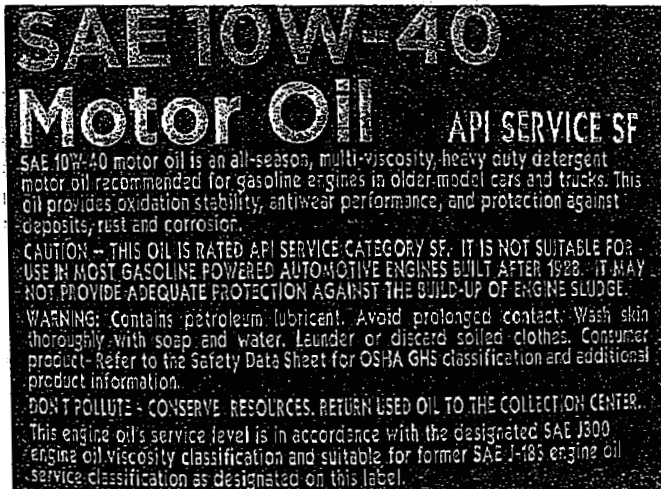


29. DG SAE 10W-40 bears the following labels on its front (left) and back (right):

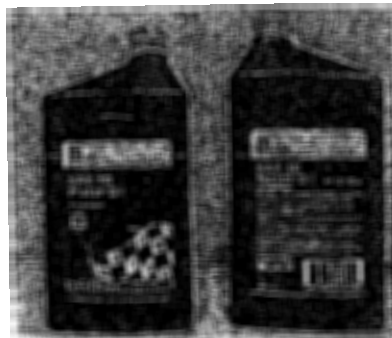


The following photograph is a close-up of DG SAE 10W-40's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":





30. 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".



31. 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 Dollar General, except that it 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 manufacture, 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.

32. 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.

33. Vermont's consumer protection laws are designed to protect consumers from this type of false advertising and predatory conduct.

34. Defendant's unfair and deceptive course of conduct victimized all purchasers of Dollar General's motor oil from Dollar General, throughout the State of Vermont.

35. 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.



36. In addition, many Class Members may 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.

37. 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**

38. Plaintiff brings this class action pursuant to Rule 23(b)(2) and 23(b)(3) of the Vermont Rules of Civil Procedure on behalf of himself and all members of the following Class:

**All persons in the State of Vermont who purchased Defendant's DG-branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE 30, from 2009 to present.**

39. 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.

40. 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.

41. **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 hundreds of thousands of persons in the Class and tens of thousands of persons in the Class.

42. **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.

43. **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.

44. **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 that control this litigation and predominate over any individual issues. 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 maintained a corporate policy of producing and selling obsolete, harmful, deceptively labeled and deceptively marketed motor oil;
- i) Whether the placement of the obsolete Dollar General motor oil was unfair or deceptive;
- j) Whether the warnings provided on the labels of Dollar General's motor oil were conspicuous;
- 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 Defendant's conduct and scheme to defraud Plaintiff and Class Members is unfair, misleading, deceitful, and/or unlawful;
- m) Whether the acts of Defendant violated, *inter alia*, applicable state, common and statutory law;
- n) Whether Plaintiff and the Class have been damaged;
- o) The proper method for calculating the damages suffered by Plaintiff and Class Members nationwide; and
- p) Whether Plaintiff and Class Members are entitled to declaratory, injunctive and/or other equitable relief.

45. **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.

46. Certification is also warranted under Rule 23(b)(2) of the because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Class as a whole.

47. The claims asserted herein are applicable to all individuals throughout the United States who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General.

**CLAIMS FOR RELIEF**

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

**COUNT I**  
**VIOLATIONS OF THE VERMONT CONSUMER FRAUD ACT**  
**(VT. STAT. ANN. § 2451, et seq.)**

49. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

50. The Vermont Consumer Fraud Act ("VCPA") makes unlawful to commit "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." VT. STAT. ANN. § 2453(a). The VCPA provides a private right of action for "[a]ny consumer who contracts for goods or services in reliance upon false or fraudulent representations or practices ... or who sustains damages or injury as a result of any false or fraudulent representations or practices" prohibited by the VCPA. VT. STAT. ANN. § 2461(b).

51. Plaintiff is a "consumer" as defined by VT. STAT. ANN. § 2451a(a). The Defendants' products are "goods" under VT. STAT. ANN. § 2451a(b).

52. In the course of the Defendants' business, Defendant willfully failed to disclose and actively concealed the true facts about the actual product that they were marketing. Defendants engaged in conduct which created and continues to create, a likelihood of confusion or of misunderstanding for the Plaintiffs, the Class Members and the consuming public.

53. The Defendants' actions as set forth above occurred in the conduct of trade or commerce, and constitute unfair or deceptive trade practices under the VCPA.

54. Plaintiff and the Class relied upon and were deceived by the Defendants' unfair and deceptive misrepresentations of material fact in deciding whether to purchase the Defendants' products.

55. Plaintiff and the Class were injured as a result of the Defendants' conduct, and suffered ascertainable monetary loss. Plaintiffs overpaid for the products they purchased from Defendants and did not receive the benefit of their bargain.

56. Plaintiff seeks an award of actual damages, treble damages, attorney's fees and costs as permitted by the VCPA. VT. STAT. ANN. § 2461(b).

## COUNT II

### **Breach of Implied Warranty of Merchantability**

57. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

58. 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.

59. 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.

60. 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.

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

62. 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.

### **COUNT III**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose**

63. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

64. 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.

65. 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.

66. 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.



67. 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.

#### **COUNT IV**

##### **Unjust Enrichment**

68. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

69. A benefit has been conferred upon Dollar General by Plaintiff and Class Members in their purchase of Defendant's DG-branded motor oil.

70. If Plaintiff and Class Members had been aware that Dollar General's DG-branded motor oil was not suitable for use in their vehicles, they would not have purchased the product.

71. Under principles of equity and good conscience, Dollar General should not be permitted to retain revenue that they acquired by virtue of their unlawful conduct. All funds, revenue, and benefits received by Dollar General rightfully belong to Plaintiff and Class Members, which Dollar General has unjustly received as a result of its actions.

#### **DEMAND/PRAAYER 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;

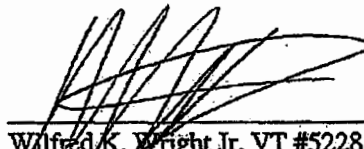
- D. Compensatory damages;
- E. Punitive Damages;
- F. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- G. An order providing for declaratory and/or injunctive relief:
  - 1. Declaring that Defendant must provide accurate representations of the quality of the motor oil 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;
- H. Prejudgment and post-judgment interest at the prevailing legal rate;
- I. Plaintiff's attorneys' fees and costs of suit; and
- J. Such other and further relief as the Court may deem necessary and appropriate.

**JURY DEMAND**

Plaintiff and Class Members hereby demand trial by jury.

Dated: December 21, 2015

Respectfully submitted,

  
\_\_\_\_\_  
Wilfred K. Wright Jr. VT #5228  
WRIGHT LAW PLC  
P.O. BOX 982  
Claremore Oklahoma 74018  
(918) 341-1923 tele/facsimile

Allan Kanner, Esq.  
Conlee Whiteley Esq.

Cindy St. Amant, Esq.  
**KANNER & WHITELEY, LLC**  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
(504) 524-5763 - Facsimile

*Attorneys for Plaintiff and those similarly situated*



January 25, 2016

Matthew S. Borick  
mborick@drm.com

Ms. Tina de la Bruere, Superior Court Clerk  
Vermont Superior Court  
Orleans Civil Unit  
247 Main St.  
Newport VT 05855

Re: Chuck Hill v. Dolgencorp, LLC  
Docket No. 335-12-15 Oscv

Dear Ms. de la Bruere:

Enclosed for filing with the Court is a Stipulated Motion for Extension of Time for Defendant to Respond to the Complaint, along with a Proposed Order and a Certificate of Service.

Thank you for your assistance.

Sincerely,

A handwritten signature of Matthew S. Borick, consisting of a stylized "M" followed by a long, sweeping horizontal line that extends to the right.

Matthew S. Borick

Enclosures

cc: Wilfred K. Wright Jr., Esq. (w/ encls.)  
Allan Kanner, Esq. (w/ encls.)  
Conlee Whiteley, Esq. (w/ encls.)  
Cindy St. Amant, Esq. (w/encls.)  
R. Trent Taylor, Esq. (w/encls.)

STATE OF VERMONT

SUPERIOR COURT  
Orleans County

CIVIL DIVISION  
Docket No. 335-12-15-OSCV

CHUCK HILL, Individually and on Behalf )  
of All Others Similarly Situated, )

Plaintiff, )

v. )

DOLGENCORP, LLC (d/b/a DOLLAR )  
GENERAL, CORPORATION), )

Defendant. )

Case No. 335-12-15-OSCV

---

**CERTIFICATE OF SERVICE**

I certify that on January 25, 2016, I have delivered the Stipulated Motion for Extension of Time for Defendant to Respond to the Complaint, and Proposed Order, to all other parties to this case by first-class mail to counsel of record as follows:

Wilfred K. Wright Jr. VT #5228  
**WRIGHT LAW PLC**  
P.O. BOX 982  
Claremore Oklahoma 74018  
Tel: (918) 341-1923  
Fax: (918) 341-1923

*and*

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cindy St. Amant, Esq.  
**KANNER & WHITELEY, LLC**  
701 Camp Street  
New Orleans, Louisiana 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Plaintiff and those similarly situated*

/s/ Matthew S. Borick

Matthew S. Borick

STATE OF VERMONT

SUPERIOR COURT  
Orleans County

CIVIL DIVISION  
Docket No. 335-12-15-OSCV

CHUCK HILL, Individually and on Behalf )  
of All Others Similarly Situated, )

Plaintiff, )

v. )

DOLGENCORP, LLC (d/b/a DOLLAR )  
GENERAL, CORPORATION), )

Defendant. )

Case No. 335-12-15-OSCV

---

**STIPULATED MOTION FOR EXTENSION OF TIME FOR  
DEFENDANT TO RESPOND TO THE COMPLAINT**

In accordance with V.R.C.P. 6(b), Plaintiff Chuck Hill and Defendant Dolgencorp, LLC, by and through their respective counsel, jointly move for a stipulated extension of time for Defendant to file a response to Plaintiff's Class Action Complaint and Demand for Jury Trial and in support state as follows:

1. Plaintiff filed the Complaint on December 22, 2015.
2. Defendant was served on January 12, 2016. The deadline for Defendant's responsive pleadings to the Complaint is currently February 1, 2016.
3. The undersigned counsel for Defendant was recently retained in this matter, and has not yet had an opportunity to adequately investigate the claims and allegations raised in the Complaint and to draft a response.
4. The parties' respective counsel have met and conferred about an appropriate extension of time to allow Defendant to file a response to the Complaint. The parties agree that a



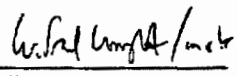
30-day extension is appropriate upon consideration of the facts of the case, the legal issues presented, and the timing of Defendant's counsel being retained.

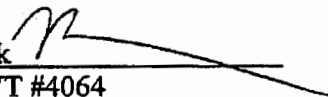
5. Additionally, the parties have agreed upon a 30-day extension in light of related litigation before other courts, whereby Defendant's responses to similar claims made in initial Complaints will be due within a similar timeframe.

6. This request for extension is not sought for the purpose of delay and will not prejudice any party. Neither party objects to the requested relief.

WHEREFORE, Plaintiff and Defendant respectfully request this Court enter an Order granting a 30-day extension of time for Defendant to respond to the Complaint up through and including March 2, 2016, and such other and further relief as this Court deems just and proper. A proposed order granting such relief has been filed alongside this Stipulated Motion.

**Dated: January 25, 2016**

/s/ Wilfred K. Wright, Jr.   
Wilfred K. Wright Jr. VT #5228  
**WRIGHT LAW PLC**  
P.O. BOX 982  
Claremore, Oklahoma 74018  
Tel: (918) 341-1923  
Fax: (918) 341-1923

/s/ Matthew S. Borick   
Matthew S. Borick VT #4064  
**DOWNS RACHLIN MARTIN PLLC**  
199 Main Street  
Burlington, Vermont 05401  
Tel: (802) 863-2375  
Fax: (802) 862-7512

*and*

*Attorney for Defendant Dolgencorp, LLC*

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cindy St. Amant, Esq.  
**KANNER & WHITELEY, LLC**  
701 Camp Street  
New Orleans, Louisiana 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

*Attorneys for Plaintiff and those similarly  
situated*

STATE OF VERMONT

SUPERIOR COURT  
Orleans County

CIVIL DIVISION  
Docket No. 335-12-15-OSCV

CHUCK HILL, Individually and on Behalf )  
of All Others Similarly Situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
DOLGENCORP, LLC (d/b/a DOLLAR )  
GENERAL, CORPORATION) )  
 )  
Defendant. )

---

**ORDER**

Based upon the parties' Stipulated Motion for the Extension of Time for Defendant to Respond to the Complaint under V.R.C.P. 6(b), signed by the parties of record and filed with this Court on January \_\_, 2016, it is hereby ORDERED that

1. the parties' Stipulated Motion for the Extension of Time is GRANTED; and
2. the date for Defendant Dolgencorp, LLC to file a response to Plaintiff's Class Action Complaint and Demand for Jury Trial is March 2, 2016.

SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Judge

# Exhibit 11

**U.S. District Court  
District of Maryland (Baltimore)  
CIVIL DOCKET FOR CASE #: 1:15-cv-03939-GLR**

McCormick v. Dolgencorp, LLC  
Assigned to: Judge George Levi Russell, III  
Demand: \$5,000,000  
Cause: 28:1332 Diversity-Product Liability

Date Filed: 12/23/2015  
Jury Demand: Plaintiff  
Nature of Suit: 195 Contract Product  
Liability  
Jurisdiction: Diversity

**Plaintiff**

**John J. McCormick, III**  
*Individually and on behalf of all others  
similarly situated*

represented by **Stephen J Nolan**  
Stephen J Nolan Chartered  
222 Bosley Ave Ste A 1  
Baltimore, MD 21204  
14108218600  
Fax: 14108218613  
Email: steve@sjnolan.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Allan Kanner**  
Kanner and Whiteley LLC  
701 Camp St  
New Orleans, LA 70130  
5045245777  
Fax: 5045245763  
Email: a.kanner@kanner-law.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Conlee Whiteley**  
Kanner and Whiteley LLC  
701 Camp St  
New Orleans, LA 70130  
5045245777  
Fax: 5045245763  
Email: c.whiteley@kanner-law.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Cynthia St. Amant**  
Kanner and Whiteley LLC  
701 Camp St  
New Orleans, LA 70130  
5045245777  
Fax: 5045245763  
Email: c.stamant@kanner-law.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Dolgencorp, LLC***doing business as*Dollar General, Corporation, a Kentucky  
limited liability company

Date Filed	#	Docket Text
12/23/2015	<a href="#"><u>1</u></a>	COMPLAINT against Dolgencorp, LLC ( Filing fee \$ 400 receipt number 14637086246.), filed by John J. McCormick, III. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet, # <a href="#"><u>2</u></a> Proposed Waiver of the Service of Summons)(krs, Deputy Clerk) (Entered: 12/24/2015)
12/23/2015	<a href="#"><u>2</u></a>	REQUEST FOR WAIVER of Service sent to Dolgencorp, LLC on 12/23/2015 by John J. McCormick, III. (krs, Deputy Clerk) (Entered: 12/24/2015)
12/23/2015	<a href="#"><u>3</u></a>	Local Rule 103.3 Disclosure Statement by John J. McCormick, III. (krs, Deputy Clerk) (Entered: 12/24/2015)
01/21/2016	<a href="#"><u>4</u></a>	MOTION to Appear Pro Hac Vice for Allan Kanner by John J. McCormick, III. The fee has already been paid.(decs, Deputy Clerk) (Entered: 01/21/2016)
01/21/2016	<a href="#"><u>5</u></a>	MOTION to Appear Pro Hac Vice for Conlee S. Whiteley by John J. McCormick, III. The fee has already been paid.(decs, Deputy Clerk) (Entered: 01/21/2016)
01/21/2016	<a href="#"><u>6</u></a>	MOTION to Appear Pro Hac Vice for Cynthia St. Amant by John J. McCormick, III. The fee has already been paid.(decs, Deputy Clerk) (Entered: 01/21/2016)
01/29/2016	7	PAPERLESS ORDER granting <a href="#"><u>4</u></a> Corrected Motion to Appear Pro Hac Vice on behalf of Allan Kanner. Directing attorney Allan Kanner to register online for CM/ECF at <a href="https://www.mdd.uscourts.gov/attyregB/inputProHac.asp">https://www.mdd.uscourts.gov/attyregB/inputProHac.asp</a> . Signed by Clerk on 1/29/2016. (srd, Deputy Clerk) (Entered: 01/29/2016)
01/29/2016	8	PAPERLESS ORDER granting <a href="#"><u>5</u></a> Corrected Motion to Appear Pro Hac Vice on behalf of Conlee Whiteley. Directing attorney Conlee Whiteley to register online for CM/ECF at <a href="https://www.mdd.uscourts.gov/attyregB/inputProHac.asp">https://www.mdd.uscourts.gov/attyregB/inputProHac.asp</a> . Signed by Clerk on 1/29/2016. (srd, Deputy Clerk) (Entered: 01/29/2016)
01/29/2016	9	PAPERLESS ORDER granting <a href="#"><u>6</u></a> Corrected Motion to Appear Pro Hac Vice on behalf of Cynthia St. Amant. Directing attorney Cynthia St. Amant to register online for CM/ECF at <a href="https://www.mdd.uscourts.gov/attyregB/inputProHac.asp">https://www.mdd.uscourts.gov/attyregB/inputProHac.asp</a> . Signed by Clerk on 1/29/2016. (srd, Deputy Clerk) (Entered: 01/29/2016)
02/16/2016	<a href="#"><u>10</u></a>	WAIVER OF SERVICE Returned Executed by John J. McCormick, III. Dolgencorp, LLC waiver sent on 1/21/2016, answer due 3/21/2016. (Nolan, Stephen) (Entered: 02/16/2016)

**PACER Service Center****Transaction Receipt**

03/07/2016 09:28:53			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:15-cv-03939-GLR
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

**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
- ☐ 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)

- |   | 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.

AO 399 (01/09) Waiver of the Service of Summons

# 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.



# Exhibit 12

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

**U.S. District Court**  
**DISTRICT OF KANSAS (Kansas City)**  
**CIVIL DOCKET FOR CASE #: 2:16-cv-02091-CM-JPO**

Meyer v. Dollar General Corporation et al  
Assigned to: District Judge Carlos Murguia  
Referred to: Magistrate Judge James P. O'Hara  
Demand: \$5,000,000,000  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/09/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Nicholas Meyer**  
*on behalf of himself and all others*  
*similarly situated*

represented by **J'Nan C. Kimak**  
Humphrey, Farrington & McClain  
221 West Lexington, Suite 400  
Independence, MO 64050  
Email: [jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Kevin D. Stanley**  
Humphrey, Farrington & McClain  
221 West Lexington, Suite 400  
Independence, MO 64050  
816-836-5050   
Fax: 816-836-8966   
Email: [kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
**LEAD ATTORNEY**  
**PRO HAC VICE**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Dollar General Corporation**  
*a Tennessee corporation*

**Defendant**

**DG Retail, LLC**  
*a Tennessee Limited Liability Company*

Date Filed	#	Docket Text
02/09/2016	<a href="#"><u>1</u></a>	COMPLAINT with trial location of Kansas City (Filing fee \$400, Internet Payment Receipt Number AKSDC-3681600.), filed by Nicholas Meyer.(Kimak, J'Nan) (Entered: 02/09/2016)

02/09/2016	<u>2</u>	CIVIL COVER SHEET by Plaintiff Nicholas Meyer. (Kimak, J'Nan) (Entered: 02/09/2016)
02/09/2016		NOTICE OF JUDGE ASSIGNMENT: Case assigned to District Judge Carlos Murguia and Magistrate Judge James P. O'Hara for all proceedings. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (ydm) (Entered: 02/09/2016)
02/25/2016		SUMMONS ISSUED as to DG Retail, LLC, Dollar General Corporation. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (ydm) (Entered: 02/25/2016)
02/26/2016	<u>3</u>	MOTION for attorney Kevin Daniel Stanley to appear pro hac vice (Pro hac vice fee \$50, Internet Payment Receipt Number AKSDC-3697409.) by Plaintiff Nicholas Meyer. (Referred to Magistrate Judge James P. O'Hara.) (Attachments: # <u>1</u> ECF Registration Form)(Kimak, J'Nan) (Entered: 02/26/2016)
02/29/2016	4	ORDER granting <u>3</u> Motion to Appear Pro Hac Vice of Kevin D. Stanley for Nicholas Meyer pursuant to D. Kan. Rule 83.5.4 for purposes of this case only. Unless already registered, pro hac vice counsel should register for electronic notification pursuant to the court's Administrative Procedures by completing a CM/ECF Electronic Filing Registration Form at <a href="http://www.ksd.uscourts.gov/">http://www.ksd.uscourts.gov/</a> . Signed by Magistrate Judge James P. O'Hara on 2/29/2016. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (mg) (Entered: 02/29/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 08:30:56			
PACER Login:	mp1188	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	2:16-cv-02091-CM-JPO
Billable Pages:	2	Cost:	0.20

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS  
AT KANSAS CITY**

NICHOLAS MEYER, on behalf of	)	
himself and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No. _____
	)	
v.	)	JURY TRIAL DEMANDED
	)	
DOLLAR GENERAL	)	COMPLAINT – CLASS ACTION
CORPORATION, a Tennessee	)	
corporation;	)	
	)	
and	)	
	)	
DG RETAIL, L.L.C., a Tennessee	)	
Limited Liability Company.	)	
	)	
Defendants.	)	

**COMPLAINT – CLASS ACTION**

Plaintiff Nicholas Meyer (“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 Kansas to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation, and DG Retail, LLC, a Tennessee limited liability company doing business in Kansas (hereinafter “Defendants”) in connection with its marketing and sale of its company-branded motor oil sold in its stores.

2. Defendants sell 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. Defendants’ unlawful and deceptive business practices violate the Kansas Consumer Act, K.S.A. § 50-623 *et seq.* (“KCPA”), 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 Defendants’ home state of 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 Defendants because Defendants are foreign corporations or associations authorized to do business in Kansas, do sufficient business in Kansas, and have sufficient minimum contacts with Kansas or otherwise intentionally avail themselves of the laws and markets of Kansas, through the promotion, sale, marketing and distribution of its merchandise in Kansas, to render the exercise of jurisdiction by the Kansas courts permissible.

6. 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, was directed from, and/or emanated from 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.

7. In addition, Defendants operate numerous stores in Kansas and have received substantial compensation from Kansas consumers who purchase goods from Defendants.

### **PARTIES**

8. Plaintiff Nicholas Meyer is an individual adult resident citizen of Overland Park, Johnson County, Kansas 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 at 7444 Nieman Road, Shawnee, Kansas 66203, on January 28, 2016.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Defendant Dollar General Corporation can be served through its registered Agent, Corporation Service Company, 2908 Poston Ave., Nashville, Tennessee 37203.

11. Defendant DG Retail, LLC is a Tennessee limited liability company with its registered Agent, Corporation Service Company, located at 2900 SW Wanamaker Drive, Suite 204, Topeka, Kansas 66614.

12. 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 Kansas, 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**

13. Defendants operate a chain of variety stores under the name "Dollar General Stores" that are headquartered in Goodlettsville, Tennessee.



14. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. 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.

20. 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.

21. Defendants engage 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)

22. Defendants mislead 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.

23. 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.

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

25. 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."

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

27. 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."

28. 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.

29. 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.

30. 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 are.

31. 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.

32. Defendants also fail 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. However, 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.

33. 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"

34. 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":

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, 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. Defendants knew or should have known that their 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.

37. The KCPA is designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

38. 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 Kansas.

39. As a direct and proximate result of Defendants' 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.

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. 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.

### **Unjust Enrichment**

42. 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.

43. Defendants 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.

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

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

46. Defendants 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.

### **CLASS ACTION ALLEGATIONS**

47. 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 Kansas 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 2013.**

48. 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.

49. 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 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**

50. **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 tens of thousands of persons in the Class.

51. **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.

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

53. **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 its label and the effect of their labels on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell its DG-branded motor oil compared to the revenue it received from their sales;
- g) Whether Defendants misrepresented the safety and suitability of their DG-branded motor oil sold at its 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 Dollar General's 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 their DG-branded motor oil;
- l) Whether Defendants' conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the Kansas Consumer Protection Act, K.S.A. § 50-623 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, 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)**

54. 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 member of the Class that would establish incompatible standards of conduct for Defendants.

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

**FRCP 23(b)(3)**

56. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Named Plaintiff's KCPA and warranty claims are based on a deceptive common course of conduct. Whether Defendants' conduct is likely to deceive reasonable consumers and breaches the implied warranty of 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.

57. **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, Defendants' violations of law will proceed without remedy, and Defendants 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 Defendants' unlawful and unfair conduct. This action presents no difficulties that will impede its management by the Court as a class action.

58. **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 a Dollar General's rewards program or for whom Dollar General has specific information. Further, publication

notice can be easily targeted to Dollar General's customers because Defendants only sell the subject motor oil in its own stores.

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

### **CLAIMS FOR RELIEF**

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

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT – K.S.A. § 50-623 *ET SEQ.***

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

62. Plaintiff, Class Plaintiffs and Dollar General are all "person[s]" for purposes of the KCPA. K.S.A. § 50-624(i).

63. Plaintiff and all other similarly situated Class Members are "consumer[s]" within the meaning of the KCPA. K.S.A. § 50-624(b).

64. Defendants' sale of DG-branded motor oil is a "consumer transaction" within the meaning of the KCPA. K.S.A. § 50-624(c).

65. Under the KCPA, K.S.A. § 50-623, *et seq.*, Defendants have a statutory duty to refrain from both deceptive acts and practices" and "unconscionable acts and practices."

66. Dollar General engaged in deceptive, unconscionable, and unlawful acts and practices including, but not limited to, the use of deception, false pretense, false promise, misrepresentation, unfair practice and/or the concealment, suppression, and omission of material

facts in connection with advertisement, representation, supply, and/or sale of DG-branded motor oil in the State of Kansas, in violation of the KCPA, K.S.A. § 50-623, *et seq.*

67. In selling the DG-branded oil at issue to Plaintiff, Defendants have misrepresented material facts, 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.

68. Plaintiff and other similarly situated Class Members purchased DG-branded motor oil for personal purposes, and have suffered and continue to suffer an ascertainable loss as a direct and proximate result of Defendants' unconscionable, unlawful and deceptive practices

69. As a direct and proximate result of Defendants' violations of the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*, Plaintiff and other similarly situated Class Members have sustained economic losses and other damages for which they are entitled to statutory relief, compensatory damages, and declaratory relief according to proof.

70. Defendants violated and continue to violate the KCPA by engaging in the following practices proscribed by K.S.A. § 50-623, *et seq.*, in transactions with Plaintiff and members of the Sub-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 oil "Lubricates and protects 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,

Defendants are representing that DG-branded motor oils sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have in violation of K.S.A. § 50-626(a)(1)(A);

- b. By representing that DG branded motor oil “Lubricates and protects 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, Defendants are advertising goods with intent not to sell them as advertised in violation of K.S.A. § 50-626(a)(1)(B);
- c. By representing that DG-branded motor oil “Lubricates and protects 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, Defendants are representing that DG-branded motor oils are of a particular standard, quality, or grade, when they are of another, in violation of K.S.A. § 50-626(a)(1)(D);

71. Defendants violated the KCPA 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.

72. Defendants’ actions as described herein were done knowingly with conscious disregard of Plaintiff’s rights, and Defendants were wanton and malicious in its concealment of the same.

73. Defendants’ false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the KCPA because Defendants continue

to sell the obsolete oil without adequate warnings and represent that the DG-branded motor oils have characteristics, uses and benefits which the products do not have, and has thus caused economic damage and continues to cause economic damage to Plaintiff and the Class.

74. Neither Plaintiff nor any reasonable consumer would have purchased the DG-branded motor oil if they were informed it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engines, and could harm their vehicles.

75. Plaintiff seeks injunctive relief pursuant to K.S.A. § 50-634(a)(1) in the form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendant to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils.

76. Plaintiff and members of the Class shall be irreparably harmed if such an order is not granted.



## **SECOND CAUSE OF ACTION**

### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY – K.S.A. § 84-2-314 *ET SEQ.***

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

78. Beginning at an exact date unknown to Plaintiff, but since at least three years prior to the filing date of this action, and as set forth above, Defendants represented to consumers, including Named 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. Named Plaintiff and Class Members bought those goods from the Defendants.

79. Defendants were merchants with respect to goods of the kind, which were sold to Named Plaintiff and Class Members, and there was in the sale to Named Plaintiff and Class Members an implied warranty that those goods were merchantable.

80. However, Defendants 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.

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

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

**THIRD CAUSE OF ACTION**  
**Unjust Enrichment**

83. Named Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing their useless and harmful motor oil, and Dollar General has consciously and willingly accepted and enjoyed these benefits.

84. Defendants 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.

85. Because of the misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by its wrongful receipt of Named Plaintiff and Class Members' monies.

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

87. Defendants 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 Named Plaintiff and Class Members of full restitution;
- C. An order pursuant to K.S.A. § 50-634(a)(1) enjoining Defendants from engaging in the unfair and/or deceptive acts or practices, as set forth in this Complaint, and requiring Defendants to disseminate corrective advertising;

- D. Compensatory economic damages;
- E. Punitive Damages and/or additional damages allowed under the laws of Kansas;
- F. Restitution and equitable disgorgement of the unlawful profits collected by the Defendants;
- G. 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;
- H. Prejudgment and post-judgment interest at the prevailing legal rate;
- I. Plaintiff's attorneys' fees and costs of suit; and
- J. Such other and further relief as the Court may deem necessary and appropriate.

### **DESIGNATION OF PLACE OF TRIAL**

Named Plaintiff and Class Members designate Kansas City, Kansas 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 9, 2016

Respectfully submitted,

/s/ J'Nan C. Kimak

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J'Nan C. Kimak #21927  
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 Ave., Ste. 400  
Independence, MO 64051  
(816) 836-5050  
(816) 836-8966 –fax  
[jck@hfmlegal.com](mailto:jck@hfmlegal.com)  
[kbm@hfmlegal.com](mailto:kbm@hfmlegal.com)  
[kds@hfmlegal.com](mailto:kds@hfmlegal.com)  
[cwm@hfmlegal.com](mailto:cwm@hfmlegal.com)

and

Allan Kanner, Esq. (Pro Hac Vice)  
Conlee Whiteley, Esq. (Pro Hac Vice)  
Cynthia St. Amant, Esq. (Pro Hac Vice)  
KANNER & WHITELEY, L.L.C.  
[a.kanner@kanner-law.com](mailto:a.kanner@kanner-law.com)  
[c.whiteley@kanner-law.com](mailto:c.whiteley@kanner-law.com)  
[c.stamant@kanner-law.com](mailto:c.stamant@kanner-law.com)  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

**ATTORNEYS FOR PLAINTIFF**

# Exhibit 13

**U.S. District Court  
Western District of Missouri (Kansas City)  
CIVIL DOCKET FOR CASE #: 4:16-cv-00105-GAF**

Oren v. Dollar General Corporation et al  
Assigned to: District Judge Gary A. Fenner  
Demand: \$5,000,000,000  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/08/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Robert Oren**

*on behalf of himself and all others  
similarly situated*

represented by **Kenneth B. McClain**  
Humphrey, Farrington, & McClain, PC  
221 West Lexington  
Suite 400  
P. O. Box 900  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: kbm@hfmlegal.com  
**ATTORNEY TO BE NOTICED**

**Kevin Daniel Stanley**

Humphrey, Farrington, & McClain, PC  
221 West Lexington  
Suite 400  
P. O. Box 900  
Independence, MO 64051  
(816) 836-5050  
Fax: (816) 836-8966  
Email: kds@hfmlegal.com  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Dollar General Corporation**

*doing business as*  
Dolgencorp, LLC

**Defendant**

**DOLGENCORP, L.L.C.**

Date Filed	#	Docket Text
02/08/2016	<a href="#"><u>1</u></a>	

		COMPLAINT against All Defendants filed by Kevin Daniel Stanley on behalf of All Plaintiffs. Filing fee \$400, receipt number 0866-4701602. Service due by 5/12/2016. (Attachments: # <a href="#">1</a> Civil Cover Sheet Civil Cover Sheet)(Stanley, Kevin) (Entered: 02/08/2016)
02/09/2016	<a href="#">2</a>	<b>NOTICE OF INCLUSION FOR MEDIATION AND ASSESSMENT PROGRAM (MAP). REVIEW NOTICE AND MAP GENERAL ORDER CAREFULLY FOR IMPORTANT CHANGES, DEADLINES AND REQUIREMENTS.</b>  <b>Notice of MAP assignment to United States Magistrate Judge John T. Maughmer.</b> (Attachments: # <a href="#">1</a> MAP General Order)(Martin, Jan) (Entered: 02/09/2016)
02/09/2016	3	DOCUMENT DELETED; DUPLICATE <b>NOTICE OF INCLUSION FOR MEDIATION AND ASSESSMENT PROGRAM (MAP). REVIEW NOTICE AND MAP GENERAL ORDER CAREFULLY FOR IMPORTANT CHANGES, DEADLINES AND REQUIREMENTS.</b>  <b>Notice of MAP assignment to Program Director.</b> (Attachments: # 1 MAP General Order)(Carr, Lori) Modified on 2/9/2016 (Carr, Lori). (Entered: 02/09/2016)
02/09/2016		<b>NOTICE OF DOCKET MODIFICATION.</b> A modification has been made to the document filed on 2/9/16 as Document No. 3. The document has been deleted as it was incorrectly filed and duplicative. This is a text entry only - no document is attached. (Carr, Lori) (Entered: 02/09/2016)
02/26/2016		SUMMONS ISSUED as to DOLGENCORP, L.L.C., Dollar General Corporation. (Martin, Jan) (Entered: 02/26/2016)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/07/2016 08:32:27			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:16-cv-00105-GAF
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20



**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
AT KANSAS CITY**

ROBERT OREN, on behalf of himself	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	Case No. _____
	)	
V.	)	JURY TRIAL DEMANDED
	)	
DOLLAR GENERAL	)	
CORPORATION (d/b/a Dolgencorp	)	
L.L.C.), a Tennessee corporation;	)	
	)	
and	)	
	)	
DOLGENCORP, L.L.C., a Kentucky	)	
Limited Liability Company.	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Robert Oren ("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 Missouri, to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation doing business in Missouri as

Dolgencorp, LLC, (hereinafter “Defendants”) 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 Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.* (“MMPA”) 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 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.

5. This Court has jurisdiction over Defendants because Defendants are foreign corporations or associations authorized to do business in Missouri, do sufficient business in Missouri, and have sufficient minimum contacts with Missouri or otherwise intentionally avail themselves of the laws and markets of Missouri, through the promotion, sale, marketing and distribution of its merchandise in Missouri, to render the exercise of jurisdiction by the Missouri courts permissible.

6. 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, was directed from, and/or emanated from 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.

7. In addition, Defendants operate numerous stores in Missouri and have received substantial compensation from Missouri consumers who purchase goods from Defendants

### **PARTIES**

8. Plaintiff Robert Oren is an individual adult resident citizen of Kansas City, Jackson County, Missouri and is a member of the Class alleged herein.

9. Plaintiff purchased Dollar General's DG SAE 10W-30 motor oil from Dollar General's store at 7525 Wornall Rd, Kansas City, Missouri 64114, on January 28, 2016.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Defendant Dollar General Corporation can be served through its registered agent Corporation Service Company located at 2908 Poston Ave, Nashville, Tennessee 37203 ("DolgenCorp").

11. Defendant Dolgencorp, LLC is a Kentucky limited liability company. Defendant Dolgencorp can be served through its registered agent, CSC – Lawyers Incorporating Service Company, located at 221 Bolivar Street, Jefferson City, Missouri 65101.

12. 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 Missouri, 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**

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

14. 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. 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.

20. 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.

21. Defendants engaged 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)

22. Defendants mislead 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.

23. 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.

24. Additionally, the front label of DG’s SAE 10W-30 and SAE 10W-40 motor oils says, “Lubricates and protects your engine.”

25. 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.”

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

27. 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.”

28. 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.

29. 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.

30. 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 are.

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

32. 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.

33. 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"

34. 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”:

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, 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. Defendants knew or should have known that their 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.

37. The MMPA is designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

38. 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 Missouri.

39. 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.

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. 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.

### **Unjust Enrichment**

42. 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.

43. Defendants 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.

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

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

46. Defendants 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.

### **CLASS ACTION ALLEGATIONS**

47. 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 Missouri 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 February 15, 2011.**

48. 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.

49. 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 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**

50. **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 tens of thousands of persons in the Class.

51. **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.

52. **Typicality.** Named Plaintiff's claims are typical of the claims of the members of the Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class purchased

obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General and were subjected to Defendants' common course of conduct.

53. 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 its label and the effect of their labels on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell their DG-branded motor oil compared to the revenue it received from its sales;
- g) Whether Defendants misrepresented the safety and suitability of their DG-branded motor oil sold at its 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 Dollar General's motor oil were adequate;
- j) Whether Defendants' 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 Defendants' conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *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, 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)**

54. 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.

55. 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)**

56. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Named Plaintiff's MMPA 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.

57. **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

58. 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 a 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.

59. 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**

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

### **FIRST CAUSE OF ACTION** **VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT (MMPA) –** **MO. REV. STAT. § 407.010 *ET SEQ.***

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

62. Plaintiff, Class Plaintiffs and Dollar General are all "person[s]" for purposes of the MMPA. Mo. Rev. Stat. § 407.010, *et seq.*

63. The DG-branded oil at issue meets the definition of "merchandise" for purposes of the MMPA. See Mo. Rev. Stat. Mo. Rev. Stat. § 407.010, *et seq.*

64. Pursuant to the MMPA, an unlawful practice is the use of "any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. . .in or from the state of Missouri." Mo. Rev. Stat. § 407.020.

65. In selling the DG-branded oil at issue to Plaintiff, Defendants have misrepresented material facts, 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 Defendant's stores.

66. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered actual economic damages as a proximate result of Defendant's actions as set forth

herein.

67. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers.

68. Defendants violated and continue to violate the MMPA by engaging in the following practices proscribed by Mo. Rev. Stat. Mo. Rev. Stat. § 407.010, *et seq.*, in transactions with Plaintiff and members of the Sub-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 oil “Lubricates and protects 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, uses and benefits which they do not have, in violation of Mo. Rev. Stat. Mo. Rev. Stat. § 407.020;
- b. By representing that DG branded motor oil “Lubricates and protects 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, in violation of Mo. Rev. Stat. Mo. Rev. Stat. § 407.020;
- c. By representing that DG branded motor oil “Lubricates and protects 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 advertising goods with intent not to sell them as advertised in violation of Mo. Rev. Stat. § 407.020;

69. Defendants violated the MMPA 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.

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

71. Defendants' false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the MMPA because Defendant continues to sell the obsolete oil without adequate warnings and represent that the DG-branded motor oils have characteristics, uses and benefits which the products do not have, and has thus caused economic damage and continues to cause economic damage to Plaintiff and the Class.

72. Neither Plaintiff nor any reasonable consumer would have purchased the DG-branded motor oil if they were informed it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engines, and could harm their vehicles.

73. Plaintiff seeks injunctive relief pursuant to Mo. Rev. Stat. § 407.025.2 in the form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive

relief in the form of corrective advertising requiring Defendant to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils.

74. Plaintiff and members of the Class shall be irreparably harmed if such an order is not granted.

**SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability**

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

76. Beginning at an exact date unknown to Plaintiff, but since at least five years prior to the filing date of this action, and as set forth above, Defendants represented to consumers, including Named 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. Named Plaintiff and Class Members bought those goods from the Defendant.

77. Defendants were a merchants with respect to goods of the kind which were sold to Named Plaintiff and Class Members, and there was in the sale to Named Plaintiff and Class Members an implied warranty that those goods were merchantable.

78. However, Defendants 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.

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

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

### **THIRD CAUSE OF ACTION**

#### **Unjust Enrichment**

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

82. 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.

83. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by its wrongful receipt of Named Plaintiff's and Class Members' monies.

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

85. Defendants 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 Named Plaintiff and Class Members of full restitution;
- C. An order pursuant to Mo. Rev. Stat. § 407.025.2 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 economic damages;
- E. Punitive Damages and/or additional damages provided in Mo. Rev. Stat. § 407.025.1 for violations of the MMPA set forth above which were committed knowingly;
- F. Restitution and equitable disgorgement of the unlawful profits collected by the Defendant;
- G. 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;
- H. Prejudgment and post-judgment interest at the prevailing legal rate;
- I. Plaintiff's attorneys' fees and costs of suit; and
- J. Such other and further relief as the Court may deem necessary and appropriate.

**DESIGNATION OF PLACE OF TRIAL**

Named Plaintiff and Class Members designate Kansas City, Missouri 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 8, 2016



Respectfully submitted,

/s./ Kevin D. Stanley

Kenneth B. McClain #32430

Kevin D. Stanley #48008

Colin W. McClain #64012

HUMPHREY, FARRINGTON & MCCLAIN, P.C.

221 West Lexington Ave., Ste. 400

Independence, MO 64051

(816) 836-5050

(816) 836-8966 –fax

kbm@hfmlegal.com

kds@hfmlegal.com

cwm@hfmlegal.com

AND

Allan Kanner, Esq. (Pro Hac Vice)

Conlee Whiteley, Esq. (Pro Hac Vice)

Cynthia St. Amant, Esq. (Pro Hac Vice)

KANNER & WHITELEY, L.L.C.

a.kanner@kanner-law.com

c.whiteley@kanner-law.com

c.stamant@kanner-law.com

701 Camp Street

New Orleans, LA 70130

Telephone: (504) 524-5777

Facsimile: (504) 524-5763

**ATTORNEYS for Plaintiff**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

**CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

**The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):**

First Listed Plaintiff:

Robert Oren ;

1 Citizen of This State;

**County of Residence:** Jackson County

**Defendant(s):**

First Listed Defendant:

Dollar General Corporation ;

2 Citizen of Another State; Tennessee

**County of Residence:** Outside This District

Additional Defendants(s):

Dolgencorp, LLC ;

2 Citizen of Another State; Kentucky

**County Where Claim For Relief Arose:** Jackson County

**Plaintiff's Attorney(s):**

Kenneth B. McClain (Robert Oren)  
Humphrey, Farrington & McClain, PC  
221 W Lexington  
Independence, Missouri 64050  
**Phone:** 816-836-5050  
**Fax:** 816-836-8966  
**Email:** kbm@hfmlegal.com

**Defendant's Attorney(s):**

Kevin D. Stanley (Robert Oren)  
Humphrey, Farrington & McClain, PC  
221 W Lexington  
Independence, Missouri 64050  
**Phone:** 816-836-5050  
**Fax:** 816-836-8966  
**Email:** kds@hfmlegal.com

Colin W. McClain (Robert Oren)  
Humphrey, Farrington & McClain, PC  
221 W Lexington  
Independence, Missouri 64050  
**Phone:** 816-836-5050  
**Fax:** 816-836-8966  
**Email:** cwm@hfmlegal.com

**Basis of Jurisdiction:** 4. Diversity of Citizenship

**Citizenship of Principal Parties (Diversity Cases Only)**

**Plaintiff:** 1 Citizen of This State

**Defendant:** 2 Citizen of Another State

**Origin:** 1. Original Proceeding

**Nature of Suit:** 380 Personal Property Damage

**Cause of Action:** Missouri Merchandising Practices Act, Breach of Implied Warranty, Unjust Enrichment, 28 USC 1332 (Class Action Fairness Act)

**Requested in Complaint**

**Class Action:** Class Action Under FRCP23

**Monetary Demand (in Thousands):** 5,000,000

**Jury Demand:** Yes

**Related Cases:** Is NOT a refiling of a previously dismissed action

---

**Signature:** /s/ Kevin D. Stanley

**Date:** 02-08-2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

# Exhibit 14

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CV

**U.S. District Court**  
**U.S. District of Minnesota (DMN)**  
**CIVIL DOCKET FOR CASE #: 0:16-cv-00319-PJS-FLN**

Sheehy v. Dollar General Corporation et al  
Assigned to: Judge Patrick J. Schiltz  
Referred to: Magistrate Judge Franklin L. Noel  
Demand: \$5,000,000  
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/09/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff****Scott Sheehy**

represented by **Allan Kanner**  
Kanner & Whiteley, LLC  
701 Camp Street  
New Orleans  
New Orleans, LA 70130  
504-524-5777  
Email: a.kanner@kanner-law.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Conlee Whiteley**  
Kanner & Whiteley, L.L.C.  
701 Camp Street  
New Orleans, LA 70130  
504-524-5777  
Fax: 504-524-5763  
Email: c.whiteley@kanner-law.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Cynthia St. Amant**  
Kanner & Whiteley, L.L.C.  
701 Camp Street  
New Orleans, LA 70130  
504-524-5777  
Fax: 504-524-5763  
Email: c.stamant@kanner-law.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Kenneth B McClain**

Humphrey Farrington & McClain PC  
221 Lexington W Ste 400  
Independence, MO 64050  
816-836-5050  
Fax: 816-836-8966  
Email: kbm@hfmlegal.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Kevin Daniel Stanley**  
Humphrey, Farrington & McClain, PC  
221 W. Lexington  
Suite 400  
Independence, MO 64050  
816-836-5050  
Email: kds@hfmlegal.com  
*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Nicholas J Maxwell**  
Maschka, Riedy & Ries  
PO Box 7  
Mankato, MN 56002-0007  
507-625-6600  
Fax: 507-625-4002  
Email: nick\_maxwell@mrr-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**George Chronic**  
Maschka, Riedy & Ries  
201 North Broad Street Suite 200  
PO Box 7  
Mankato, MN 56001  
507-625-6600  
Fax: 507-625-4002  
Email: jed\_chronic@mrr-law.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dollar General Corporation**  
*a Tennessee corporation*

represented by **Kadee Jo Anderson**  
Stinson Leonard Street LLP  
150 S 5th St Ste 2300  
Mpls, MN 55402  
612-335-1728  
Fax: 612-335-1657

Email:  
 kadee.anderson@stinsonleonard.com  
**ATTORNEY TO BE NOTICED**

**Defendant**

**DG Retail, L.L.C.**  
*a Tennessee Limited Liability Company*

represented by **Kadee Jo Anderson**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
02/09/2016	<a href="#"><u>1</u></a>	COMPLAINT against All Defendants. ( Filing fee \$ 400 receipt number AMNDC-4769397.) Filed by Scott Sheehy. <b>Filer requests summons issued.</b> (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet) (Chronic, George) (Entered: 02/09/2016)
02/09/2016	2	TEXT ONLY ENTRY: CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Judge Patrick J. Schiltz per Civil Master List and referred to Magistrate Judge Franklin L. Noel. Please use case number 16-cv-319 PJS/FLN. (JAM) (Entered: 02/09/2016)
02/09/2016	<a href="#"><u>3</u></a>	Summons Issued as to DG Retail, L.L.C., Dollar General Corporation. (JAM) (Entered: 02/09/2016)
02/09/2016	4	TEXT ONLY ENTRY: Notice re: Non-Admitted Attorney  We have received documents listing <b>Kenneth B. McClain, Steven E. Crick, Kevin D. Stanley, Colin W. McClain, Allan Kanner, Conlee Whiteley, Cynthia St. Amant</b> as counsel of record. If he or she wishes to be listed as an attorney of record in this case, he or she must be admitted to the bar of the U.S. District Court of Minnesota in accordance with <a href="#"><u>Local Rule 83.5 (a), (b) and (c)</u></a> or temporarily admitted pro hac vice in accordance with <a href="#"><u>Local Rule 83.5 (d) or (e)</u></a> .  For more admissions information and forms, please see the Attorney Forms Section of the courts website at <a href="http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#attorneyforms">http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#attorneyforms</a> . (JAM) (Entered: 02/09/2016)
02/18/2016	<a href="#"><u>5</u></a>	MOTION for Admission Pro Hac Vice for Attorney Allan Kanner. Filing fee \$ 100, receipt number AMNDC-4783754 by Scott Sheehy. (Chronic, George) (Entered: 02/18/2016)
02/18/2016	<a href="#"><u>6</u></a>	MOTION for Admission Pro Hac Vice for Attorney Cynthia St. Amant. Filing fee \$ 100, receipt number AMNDC-4783857 by Scott Sheehy. (Chronic, George) (Entered: 02/18/2016)
02/18/2016	<a href="#"><u>7</u></a>	MOTION for Admission Pro Hac Vice for Attorney Conlee Whiteley. Filing fee \$ 100, receipt number AMNDC-4783907 by Scott Sheehy. (Chronic, George) (Entered: 02/18/2016)
02/24/2016	8	TEXT ONLY ENTRY: ORDER granting <a href="#"><u>6</u></a> Motion for Admission Pro Hac Vice of Attorney Cynthia St. Amant for Scott Sheehy. Approved by Magistrate Judge Franklin L. Noel on 2/24/16. (MAM) (Entered: 02/24/2016)
02/24/2016	9	



		TEXT ONLY ENTRY: ORDER granting <a href="#">5</a> Motion for Admission Pro Hac Vice of Attorney Allan Kanner for Scott Sheehy. Approved by Magistrate Judge Franklin L. Noel on 2/24/16. (MAM) (Entered: 02/24/2016)
02/24/2016	<a href="#">10</a>	TEXT ONLY ENTRY: ORDER granting <a href="#">7</a> Motion for Admission Pro Hac Vice of Attorney Conlee Whiteley for Scott Sheehy. Approved by Magistrate Judge Franklin L. Noel on 2/24/16. (MAM) (Entered: 02/24/2016)
02/29/2016	<a href="#">11</a>	STIPULATION <i>Joint Stipulation to Extend the Time for Defendants to Respond to the Complaint</i> by DG Retail, L.L.C., Dollar General Corporation. Jointly Signed by Dollar General Corporation, DG Retail, L.L.C., and Scott Sheehy. (Anderson, Kadee) (Entered: 02/29/2016)
02/29/2016	<a href="#">12</a>	CERTIFICATE OF SERVICE ON PROPOSED ORDER by DG Retail, L.L.C., Dollar General Corporation re <a href="#">11</a> Stipulation, (Anderson, Kadee) (Entered: 02/29/2016)
02/29/2016	<a href="#">13</a>	RULE 7.1 DISCLOSURE STATEMENT. DG Promotions, Inc. is a corporate parent of Defendants DG Retail, L.L.C., Dollar General Corporation. (Anderson, Kadee) (Entered: 02/29/2016)
02/29/2016	<a href="#">14</a>	MOTION for Admission Pro Hac Vice for Attorney Kenneth B. McClain. Filing fee \$ 100, receipt number AMNDC-4800034 by Scott Sheehy. (Chronic, George) (Entered: 02/29/2016)
02/29/2016	<a href="#">15</a>	DOCUMENT FILED IN ERROR-MOTION for Admission Pro Hac Vice for Attorney Colin W. McClain. Filing fee \$ 100, receipt number AMNDC-4800123 by Scott Sheehy. (Chronic, George) Modified on 3/1/2016 (AKL). (Entered: 02/29/2016)
02/29/2016	<a href="#">16</a>	MOTION for Admission Pro Hac Vice for Attorney Kevin D. Stanley. Filing fee \$ 100, receipt number AMNDC-4800134 by Scott Sheehy. (Chronic, George) (Entered: 02/29/2016)
03/01/2016	<a href="#">17</a>	TEXT ONLY ENTRY: ORDER granting <a href="#">14</a> Motion for Admission Pro Hac Vice of Attorney Kenneth B McClain; granting <a href="#">16</a> Motion for Admission Pro Hac Vice of Attorney Kevin Daniel Stanley for Scott Sheehy. Approved by Magistrate Judge Franklin L. Noel on 3/1/16. (AKL) (Entered: 03/01/2016)
03/03/2016	<a href="#">18</a>	ORDER that the parties' request is GRANTED and that Defendants shall file an Answer or otherwise respond to Plaintiff's Complaint on or before April 7, 2016. Signed by Magistrate Judge Franklin L. Noel on 3/2/16. (kt) (Entered: 03/03/2016)

PACER Service Center			
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Billable Pages:	3	Cost:	0.30

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

SCOTT SHEEHY, on behalf of himself )  
and all others similarly situated, )

and all others similarly situated, )

Plaintiffs, )

Case No. \_\_\_\_\_

V.

## JURY TRIAL DEMANDED

DOLLAR GENERAL )

CORPORATION, )

a Tennessee corporation;

Serve Registered Agent: \_\_\_\_\_)

Corporation Service Company )

2908 Poston Ave. )

Nashville, TN 37203 )

and

DG RETAIL, L.L.C., )

a Tennessee Limited Liability Company )

Serve Registered Agent: \_\_\_\_\_)

United States Corporation )

Company, \_\_\_\_\_)

2345 Rice Street, Suite 230 )

Roseville, MN 55113

Defendants. )

## COMPLAINT

Plaintiff Scott Sheehy (“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 Minnesota, 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 Minnesota and DG Retail, LLC, a Kentucky corporation (individually referred to as “DG Retail”) doing business in Minnesota (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 Minnesota 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 Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, et seq., Minnesota Prevention of Consumer Fraud Act, Minn. St. § 325F.68 et seq., and breaches the implied warranty of merchantability under Minn. Stat. § 336.2-314.

### **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 Defendants because Defendants are foreign corporations or associations authorized to do business in Minnesota, do sufficient business in Minnesota, and have sufficient minimum contacts with Minnesota or otherwise intentionally avail themselves of the laws and markets of Minnesota, through the promotion, sale, marketing and distribution of its merchandise in Minnesota, to render the exercise of jurisdiction by the Minnesota courts permissible.

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 Minnesota and have received substantial compensation from Minnesota consumers who purchase goods from Defendants

### **PARTIES**

9. Plaintiff Scott Sheehy is an individual adult resident citizen of Plymouth, Hennepin County, Minnesota, 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 865 45<sup>th</sup> Avenue NE, Minneapolis, Minnesota, 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 DG Retail, LLC is a Kentucky limited liability company with its principal office located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant DG

Retail, LLC can be served through its registered agent for service: United States Corporation Company, 2345 Rice Street, Suite 230, Roseville, Minnesota 55113.

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 Minnesota, 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. Dollar General is a chain of retail variety stores 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/or 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. Defendants engage in the unfair, unlawful, and deceptive practice of marketing, selling and/or 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. Defendants mislead 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. DG-branded 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. Defendants conceal this language by rendering it in small font and confining it to the product's back label.

28. Defendants further conceal 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. Defendants further disguise the obsolete and harmful nature of their motor oils with the positioning of these motor oils on its shelves in a misleading manner. Specifically, Defendants place 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. Defendants place their 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. 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.

33. Defendants also fail to warn their 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 Defendants provide their customers with no such conspicuous warnings. Instead, they bury the aforementioned statements on the back of its products in small type where customers are unlikely to encounter them.

34. DG SAE 10W-30 and 10W-40 bears the following labels on the back: “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.”

35. DG SAE 30 bears the following labels on the back: “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.”

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 Defendants successfully deceive a sufficient number of customers to make this practice worthwhile. It is unfair, unlawful, and deceptive for Defendants 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 customers.

37. Defendants knew or should have known that their customers are being or will, in reasonable probability, 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.

38. The Minnesota Prevention of Consumer Frauds Act, Minn. Stat. §325F.68 et seq. 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 DG-branded motor oil from Dollar General, throughout the country and in the State of

Minnesota.

40. As a direct and proximate result of Defendants' deceptive 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 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 Defendants' 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 Minnesota 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 February 15, 2010.**

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 Defendant's 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 violation of the Minnesota Uniform Deceptive Trade Practices Act;

- m) Whether Defendants' conduct, as alleged herein, constitutes a deceptive, misleading or unconscionable act or practice actionable under the Minnesota Prevention of Consumer Fraud Act;
- n) Whether Defendants' conduct, as alleged herein, constitutes a breach of the implied warranty of merchantability;
- o) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
- p) Whether Plaintiff and members of the Class are entitled to restitution;
- q) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
- r) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;
- s) The proper method for calculating damages and restitution classwide; and
- t) 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 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 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 Minnesota Consumer Fraud and Deceptive Business Practices 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 MINNESOTA UNIFORM DECEPTIVE TRADE PRACTICES ACT (MDTPA) – MINN. ST. § 325D.43 *ET SEQ.***

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

58. Plaintiff, Class Plaintiffs and Defendants are all "person[s]" for purposes of the

MDTPA. Minn. St. § 325D.44.

59. The MDTPA, provides, in part, that a person engages in a deceptive trade practice when, in the course of business, the person represents that goods have characteristics, ingredients, uses or benefits that they do not have. Minn. St. § 325D.44 subd. 1(5).

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

61. Pursuant to Minn. St. § 325D.44 subd. 2, in order to prevail under the MDTPA, “a complainant need not prove competition between the parties or actual confusion or misunderstanding.”

62. In selling the DG-branded oil at issue to Plaintiff, Defendants have represented that the DG-branded oil has characteristics, uses or benefits that it does not have in 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 Defendant’s stores.

63. As a result of Defendants’ unlawful business practices, Plaintiff and Class Plaintiffs, pursuant to Minn. Stat. § 325D.45, are entitled to an order enjoining such future conduct and such other orders and judgments which the court considers necessary including disgorgement of 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.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD**  
**ACT (MPCFA) – MINN. ST. § 325F.68 *ET SEQ.***

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

65. Plaintiff, Class Plaintiffs and Defendants are all “person[s]” for purposes of the MPCFA. Minn. St. § 325F.68 subd. 3.

66. The MPCFA provides in pertinent part:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

Minn. St. § 325F.69

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

68. Defendants’ sales of the obsolete and potentially harmful DG-branded motor oil meet the definition of “sale” within the meaning of the MPCFA. Minn. St. § 325F.68 subd. 4.

69. The DG-branded oil at issue meets the definition of “merchandise” for purposes of the MPCFA. Minn. St. § 325F.68 subd. 2.

70. In selling the DG-branded oil at issue to Plaintiff, Dollar General has used deception, false pretense, misrepresentation or deceptive practice, 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 Defendant’s stores.

71. 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.

72. As a result of Defendants' unlawful business practices, Plaintiff and Class Plaintiffs, pursuant to Minn. Stat. § 325F.70, 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.

**THIRD CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY –**  
**MINN. STAT. § 336.2-314 *ET SEQ.***

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

74. Plaintiff and Class Plaintiffs are “buyer[s]” as defined by Minn. Stat. § 336.2-103(1)(a).

75. Defendants are “seller[s]” as defined by Minn. Stat. § 336.2-103(1)(d).

76. Defendants are “merchant[s]” as defined by Minn. Stat. § 336.2-104(1).

77. Defendants' DG-branded oil falls within the definition of “goods” under Minn. Stat. § 336.2-105(1).

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

79. Pursuant to Minn. Stat. § 336.2-314, “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.”

80. 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.

81. In selling the DG-branded oil at issue to Plaintiff, Defendants have breached the implied warranty of merchantability under Minn. Stat. § 336.2-314.

82. 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/PRAAYER 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 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;
- D. Compensatory economic damages;
- E. Punitive damages and/or additional damages as provided under Minn. Stat. §549.20 as Defendants acted with deliberate disregard for the rights of Plaintiff and Class Members;
- 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 Minneapolis, Minnesota 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 9, 2016

Respectfully submitted,

s/ George Chronic

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George “Jed” Chronic #0388688  
Nicholas J. Maxwell #388026  
MASCHKA, RIEDY & RIES  
Union Square Business Center  
201 North Broad Street, Suite 200  
PO Box 7  
Mankato, MN 56002-0007  
Telephone: (507) 625-6600  
Facsimile: (507) 625-4002  
jed\_chronic@mrr-law.com  
nick\_maxwell@mrr-law.com

and

Kenneth B. McClain (*pro hac vice*)  
Steven E. Crick (*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

AND

Allan Kanner, Esq. (State Bar No. 109152)  
Conlee Whiteley, Esq. (Pro Hac Vice)  
Cynthia St. Amant, Esq. (State Bar No. 24002176)  
(Pro Hac Vice)  
KANNER & WHITELEY, L.L.C.  
a.kanner@kanner-law.com  
c.whiteley@kanner-law.com  
c.stamant@kanner-law.com  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

**Attorneys for Plaintiff**



## 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**

Scott Sheehy

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
George "Jed" Chronic  
Maschka, Reidy & Reis  
201 North Broad Street, Suite 200  
Mankato, MN 56002-0007  
507-625-6600

**DEFENDANTS**Dollar General Corporation  
DG Retail, LLC

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)

- |   | 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 checked="" 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 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 checked="" 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):

28 USC §1332

Brief description of cause:

Uniform Deceptive Trade Practices Act, Minnesota Prevention of Consumer Fraud Act, Breach of Implied Warranty of Merchantability

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$ 5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/09/2016

SIGNATURE OF ATTORNEY OF RECORD

/s George Chronic

**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.

# Exhibit 15

DISCREP

**U.S. District Court**  
**U.S. District Court for the Northern District of Oklahoma (Tulsa)**  
**CIVIL DOCKET FOR CASE #: 4:15-cv-00724-GKF-TLW**

Sisemore v. Dolgencorp, LLC  
Assigned to: Chief Judge Gregory K Frizzell  
Referred to: Magistrate Judge T Lane Wilson  
Cause: 28:1332 Diversity-Product Liability

Date Filed: 12/21/2015  
Jury Demand: Plaintiff  
Nature of Suit: 355 Motor Vehicle Prod.  
Liability  
Jurisdiction: Diversity

**Plaintiff****Will Sisemore**

*Individually and on Behalf of All Others  
Similarly Situated*

represented by **Allan Kanner**

Kanner & Whiteley LLC  
701 CAMP ST  
NEW ORLEANS, LA 70130  
504-524-5777  
Fax: 504-524-5763  
Email: a.kanner@kanner-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Conlee Schell Whiteley**  
Kanner & Whiteley LLC  
701 CAMP ST  
NEW ORLEANS, LA 70130  
504-524-5777  
Fax: 504-524-5763  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Cynthia St Amant**  
Kanner & Whiteley LLC  
701 CAMP ST  
NEW ORLEANS, LA 70130  
504-524-5777  
Fax: 504-524-5763  
Email: c.stamant@kanner-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Wilfred K Wright , Jr**  
Wright Law  
PO BOX 982  
CLAREMORE, OK 74017  
918-341-1923  
Fax: 918-341-1923  
Email: re.9001@yahoo.com

LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

V.

**Defendant**

**Dolgencorp, LLC**  
doing business as  
Dollar General, Corporation

represented by **Joel Steven Allen**  
McGuireWoods LLP (Dallas)  
2000 MCKINNEY AVE STE 1400  
DALLAS, TX 75201  
214-932-6400  
Fax: 214-932-6499  
Email: jallen@mcguirewoods.com  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/21/2015	<a href="#">1</a>	CIVIL COVER SHEET by Will Sisemore (Wright, Wilfred) (Entered: 12/21/2015)
12/21/2015	<a href="#">2</a>	COMPLAINT with Jury Demand against Dolgencorp, LLC (paid \$400 filing fee; receipt number 1085-1535742) by Will Sisemore (Wright, Wilfred) (Entered: 12/21/2015)
12/21/2015	<a href="#">3</a>	SUMMONS Issued by Court Clerk as to Dolgencorp, LLC (jln, Dpty Clk) (Entered: 12/21/2015)
12/22/2015	4	ORDER by Court Clerk , directing Conlee Schell Whiteley and Cynthia St Amant to file by January 12, 2016 a Motion for Admission Pro Hac Vice per Local Civil Rule 83.2. Additionally, if you intend to practice in this district in the future and want to become a member of this district, please submit an application for attorney admission. (lal, Dpty Clk) (Entered: 12/22/2015)
01/12/2016	<a href="#">5</a>	MOTION for Attorney(s) Conlee Whiteley and Cynthia St. Amant to be Admitted Pro Hac Vice (paid \$150 PHV fee; receipt number 1085-1542323) by Will Sisemore (Wright, Wilfred) (Entered: 01/12/2016)
01/13/2016	6	MINUTE ORDER by Chief Judge Gregory K Frizzell ; granting <a href="#">5</a> Motion for Admission Pro Hac Vice (This entry is the Official Order of the Court. No document is attached.) (hbo, Dpty Clk) (Entered: 01/13/2016)
01/22/2016	<a href="#">7</a>	Joint MOTION for Extension of Time to Answer (Re: <a href="#">2</a> Complaint ) by Dolgencorp, LLC, Will Sisemore (Allen, Joel) (Entered: 01/22/2016)
01/25/2016	8	MINUTE ORDER by Chief Judge Gregory K Frizzell ; granting <a href="#">7</a> Motion for Extension of Time to Answer (Re: <a href="#">2</a> Complaint ) (This entry is the Official Order of the Court. No document is attached.) (hbo, Dpty Clk) (Entered: 01/25/2016)
01/26/2016	9	MINUTE ORDER by Court Clerk , directing Dolgencorp, LLC to file a Corporate Disclosure Statement pursuant to FRCvP 7.1 within seven (7) days of this order, if they have not already done so. The parties shall use the form entitled Corporate Disclosure Statement available on the Courts website (please do not refile if already filed on non-court form unless directed to do so). If you have already filed your Corporate Disclosure Statement in this case, you are reminded to file a Supplemental Corporate

		Disclosure Statement within a reasonable time of any change in the information that the statement requires. <b>(This entry is the Official Order of the Court. No document is attached.)</b> (sdc, Dpty Clk) (Entered: 01/26/2016)
01/28/2016	<a href="#">10</a>	CORPORATE DISCLOSURE STATEMENT (identifying: Corporate Parent Dollar General Corporation for Dolgencorp, LLC) by Dolgencorp, LLC (Allen, Joel) (Entered: 01/28/2016)
02/29/2016	<a href="#">11</a>	NOTICE of Change of Address by Joel Steven Allen by on behalf of Dolgencorp, LLC (Allen, Joel) (Entered: 02/29/2016)
03/04/2016	<a href="#">12</a>	MOTION to Dismiss for Failure to State a Claim <i>and Brief in Support</i> by Dolgencorp, LLC (With attachments) (Allen, Joel) (Entered: 03/04/2016)
03/04/2016	<a href="#">13</a>	MOTION to Strike Class Allegations Contained in Plaintiff's Complaint by Dolgencorp, LLC (Allen, Joel) (Entered: 03/04/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 08:36:12			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:15-cv-00724-GKF-TLW
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

**WILL SISEMORE, Individually and on  
Behalf of All Others Similarly Situated,**

**Plaintiff,**

**v.**

**DOLGENCORP, LLC, (d/b/a DOLLAR  
GENERAL, CORPORATION)**

**Defendant.**

**Case No. 15-cv-724-GKF-TLW**

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

**CLASS ACTION COMPLAINT**

Plaintiff, Will Sisemore (“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 brings this action both on his own behalf and on behalf of the class comprised of all individuals similarly situated within the State of Oklahoma, 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 Oklahoma 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 visual representations 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. Plaintiff alleges that Dollar General engaged in these unlawful and deceptive business practices in violation the consumer protection and unfair trade practices statutes of Oklahoma, the common law theories of fraud, concealment, implied warranties and the contractual rights of consumers.

### **PARTIES**

4. Plaintiff, Will Sisemore, is an individual adult resident citizen of Mayes County, Oklahoma and is a member of the Oklahoma Class.

5. Plaintiff purchased Dollar General’s motor oil from Dollar General’s store in Langley, Oklahoma.

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

7. At all relevant times, Defendant produced, marketed, distributed and sold its obsolete DG-branded motor oil in its stores throughout the United States, including in the State of Oklahoma, utilizing deceptive and misleading marketing and sales practices intended to

deceive Plaintiff and Oklahoma consumers 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.

8. Defendant maintains over 50 stores throughout the State of Oklahoma. As such, Oklahoma courts maintain a significant interest in regulating Defendant's conduct within Oklahoma.

### **JURISDICTION AND VENUE**

9. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), because the Oklahoma Class is made up of Oklahoma consumers and citizens of Oklahoma not from Defendant's home State, there are more than 100 Class Members, and the amount-in-controversy exceeds \$5,000,000 exclusive of interest and costs.

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

11. Venue is proper in this District under 28 U.S.C. §1391(b) 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.

12. In addition, Defendant operates over 50 stores in Oklahoma and has received substantial compensation from Oklahoma consumers who purchase goods from Defendant.

### **FACTUAL ALLEGATIONS**

13. 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 50 stores located in the State of Oklahoma.

14. 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 generally located with the needs of its core customers (low and fixed income households) in mind.

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

16. 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."

17. 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 either fail to protect, or can actively damage, modern-day automobiles.

18. 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.

19. 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.

20. 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.

21. Plaintiff asserts that Dollar General engages in the unfair, unlawful, deceptive and fraudulent practice of marketing, selling and causing to be manufactured less expensive, obsolete motor oil that is unsuitable for, and can harm, the vehicles driven by the overwhelming majority of Dollar General’s customers. Dollar General also engages in the unfair, unlawful, deceptive and fraudulent practices of concealing the obsolete and harmful nature of its motor oil from its customers through deceitful product placement tactics and misleading 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 any, 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 brands of motor oil sold by Dollar General and beside which Dollar General places its DG brand motor oil on its shelves.

23. 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.”

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

25. Dollar General further conceals this language by placing it below a message that presents a misleading impression of the product and is likely the only message customers encounter, if they examine the back label at all. 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.”

26. 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.

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

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



28. 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.

29. Defendant's product display conceals the fact that these Dollar General-brand motor oils have an extremely obscure and limited use and are likely to cause damage to the engines of most of the consumers purchasing motor oil. Instead, by using this deceptive method of product positioning, along with its deceptive label, Dollar General misleads consumers into thinking that the quality of the Dollar General-brand motor oils are the same type of oil and are

comparable to that of the other motors oils sold by Dollar General. This impression is false and misleading. Dollar General's motor oils are of a much lower quality than non-Dollar General motor oils, and they are only fit for a negligible fraction of the vehicles on the road today. Arguably, Dollar General's motor oils do not belong anywhere on Dollar General's shelves, let alone adjacent to standard- or premium-quality motor oils.

30. 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 backs of its products in small type where customers are unlikely to encounter them.

31. 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 following small print language, "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”:



32. 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 following small print language, “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 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 following small print language, "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":



34. 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 Dollar General, except that it 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 manufacture, 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.

35. 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.

36. Oklahoma's consumer protection laws, and the consumer protection laws of every other State and the District of Columbia, are designed to protect consumers from this type of false advertising and predatory conduct.

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

38. As a direct and proximate result of Dollar General's deceptive and unfair practices, Plaintiff and the Class Members purchased a product and have suffered and will continue to suffer economic damages.

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

40. 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**

41. 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 Oklahoma who purchased Defendant's DG-branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE 30, from at least 2010 to present.**

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

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

44. **Numerosity.** Membership in the Class is so numerous that separate joinder of each member is impracticable. The precise number of Class Members is unknown at this time but can be readily determined from Defendant's records. Plaintiff reasonably estimates that there tens of thousands of persons in the Class.

45. **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.

46. **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.

47. **Existence and Predominance of Common Questions of Law and Fact.** There are numerous and substantial questions of law and fact common to all Class Members that control this litigation and predominate over any individual issues. 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 maintained a corporate policy of producing and selling obsolete, harmful, deceptively labeled and deceptively marketed motor oil;
- i) Whether the placement of the obsolete Dollar General motor oil was unfair or deceptive;
- j) Whether the warnings provided on the labels of Dollar General's motor oil were conspicuous;
- 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 Defendant's conduct and scheme to defraud Plaintiff and Class Members is unfair, misleading, deceitful, and/or unlawful;
- m) Whether the acts of Defendant violated, Oklahoma common and statutory law;
- n) Whether Plaintiff and the Classes have been damaged;
- o) The proper method for calculating the damages suffered by Plaintiff and Class Members; and

- p) Whether Plaintiff and Class Members are entitled to declaratory, injunctive and/or other equitable relief.
48. **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.
49. Certification is also warranted under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate with respect to the Classes as a whole.



50. The claims asserted herein are applicable to all individuals throughout the United States who purchased obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General.

**CLAIMS FOR RELIEF**

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

**COUNT I**  
**UNFAIR AND DECEPTIVE ACTS IN**  
**VIOLATION OF THE OKLAHOMA CONSUMER PROTECTION ACT**  
**(15 O.S. § 752 et seq.)**

52. Plaintiff incorporates by reference, as though fully set forth herein, each and every allegation and statement in the foregoing paragraphs.

53. Plaintiff brings this claim on behalf of himself and the Oklahoma Class.

54. The Oklahoma Consumer Protection Act prohibits unlawful practices, 15 O.S. § 753(20), that are unfair or deceptive as defined in Section 752.

55. Section 752(13) provides: "'Deceptive trade practice' means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral." Section 752(14) provides: "'Unfair trade practice' means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."

56. As Plaintiff alleges in the preceding paragraphs, Defendant has violated the Oklahoma Consumer Protection Act by engaging in unconscionable commercial practices, using deception and fraud, false pretenses, false promises, misrepresentations, and knowingly concealing, suppressing, and omitting material facts, intending that others rely upon the concealment, suppression and omission of such facts, in connection with the sale of its DG brand motor oil.

57. In its advertising for 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).

58. Defendant is aware that its conduct is likely to deceive reasonable consumers. The misrepresentations, misleading labeling, misleading marketing and placement of its product, conduct and inadequate disclosures and warnings by Defendant are material and constitute an unfair and deceptive business practice.

59. Defendant’s business practices as alleged herein 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 the Class members' motor 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.

60. 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 competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business practice.

61. Defendant's misrepresentations and omissions were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

62. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Dollar General's business. Dollar General's wrongful conduct is a part of a pattern of generalized course of conduct that is still perpetuated and repeated, in the State of Oklahoma.

63. Plaintiff and the members of the Class seek an order of this Court enjoining Defendant from engaging in the unfair competition alleged herein and corrective advertising in connection with the sale of DG-motor oil. Additionally, Plaintiff requests an order awarding Plaintiff and the Class restitution of the money wrongfully acquired by Defendant by means of the unfair and deceptive acts alleged herein. Plaintiff and other members of the Class have suffered injury in fact and have lost money as a result of Defendant's unfair and deceptive conduct.

64. Plaintiff and the Class request that the Court award punitive as well as attorney's fees, costs, and expenses, pursuant to Oklahoma law as well as any and all such additional legal and/or equitable relief to which Plaintiff and the Oklahoma Class Members may be entitled.

## **COUNT II**

### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (12A O.S. § 2-314)**

65. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

66. 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.

67. 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.

68. 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.

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

70. 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.

### **COUNT III**

#### **Breach of Implied Warranty of Fitness for a Particular Purpose (12 O.S. § 2-315)**

71. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

72. 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.

73. 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.

74. 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.

75. 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.

#### **COUNT IV**

##### **Unjust Enrichment**

76. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

77. A benefit has been conferred upon Dollar General by Plaintiff and Class Members in their purchase of Defendant's DG-branded motor oil.

78. If Plaintiff and Class Members had been aware that Dollar General's DG-branded motor oil was not suitable for use in their vehicles, they would not have purchased the product.

79. Under principles of equity and good conscience, Dollar General should not be permitted to retain revenue that they acquired by virtue of their unlawful conduct. All funds,

revenue, and benefits received by Dollar General rightfully belong to Plaintiff and Class Members, which Dollar General has unjustly received as a result of its actions.

**DEMAND/PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff on behalf of himself and members of the Class and Sub-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;
- D. Compensatory damages;
- E. Punitive Damages;
- F. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- G. 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;
- H. Prejudgment and post-judgment interest at the prevailing legal rate;
- I. Plaintiff's attorneys' fees and costs of suit; and
- J. 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.

**Dated: December 21, 2015**

**Respectfully submitted,**

/s/ Wilfred K. Wright Jr.  
Wilfred K. Wright Jr. OBA #16349  
**WRIGHT LAW PLC**  
P.O. BOX 982  
Claremore Oklahoma 74018  
(918) 341-1923 tele/facsimile

Allan Kanner, Esq. OBA#20948  
Conlee Whiteley Esq.  
Cindy St. Amant, Esq.  
**KANNER & WHITELEY, LLC**  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
(504) 524-5763 - Facsimile

*Attorneys for Plaintiff and those similarly situated*



# Exhibit 16

**United States District Court  
Northern District of Illinois - CM/ECF LIVE, Ver 6,1 (Chicago)  
CIVIL DOCKET FOR CASE #: 1:16-cv-02196**

Solis v. Dollar General et al  
Assigned to: Honorable Andrea R. Wood  
Demand: \$9,999,000  
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/12/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Gerardo Solis**  
*on behalf of himself and all others  
similarly situated*

represented by **Colin W. McClain**  
Humphrey, Farrington & McClain, P.C.  
Suite #400  
221 West Lexington  
Independence, MO 64050  
816-836-5050  
Email: cwm@hfmlegal.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Kevin D. Stanley**  
Humphrey, Farrington & McClain, P.C.  
221 West Lexington  
Suite 400  
Independence, MO 64050  
816-836-5050  
Email: kds@hfmlegal.com  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Toby Patrick Edwin Mulholland**  
Rubens and Kress  
134 N. LaSalle St., Ste. 444  
Chicago, IL 60602  
(312) 201-9640  
Email: rubens.kress@gmail.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dollar General**  
*a Tennessee corporation*

represented by **Helen Deborah Arnold**  
McGuireWoods LLP  
77 West Wacker Drive  
Suite 4100  
Chicago, IL 60601

(312) 849-8100

Email: harnold@mcguirewoods.com

ATTORNEY TO BE NOTICED

**Defendant****DG Retail, LLC***a Tennessee Limited Liability Company*represented by **Helen Deborah Arnold**

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/12/2016	<a href="#"><u>1</u></a>	COMPLAINT filed by Gerardo Solis; Jury Demand. Filing fee \$ 400, receipt number 0752-11610446. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet Civil Cover Sheet)(Mulholland, Toby) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>2</u></a>	ATTORNEY Appearance for Plaintiff Gerardo Solis by Toby Patrick Edwin Mulholland (Mulholland, Toby) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>3</u></a>	ATTORNEY Appearance for Plaintiff Gerardo Solis by Toby Patrick Edwin Mulholland (Mulholland, Toby) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>4</u></a>	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 50, receipt number 0752-11610675. (Mulholland, Toby) (Entered: 02/12/2016)
02/12/2016	<a href="#"><u>5</u></a>	MOTION for Leave to Appear Pro Hac Vice Filing fee \$ 50, receipt number 0752-11610718. (Mulholland, Toby) (Entered: 02/12/2016)
02/12/2016		CASE ASSIGNED to the Honorable Andrea R. Wood. Designated as Magistrate Judge the Honorable Jeffrey Cole. (dc, ) (Entered: 02/12/2016)
02/12/2016		SUMMONS Issued as to Defendants DG Retail, LLC, Dollar General (pg, ) (Entered: 02/12/2016)
02/17/2016	<a href="#"><u>6</u></a>	MINUTE entry before the Honorable Andrea R. Wood: Initial status hearing set for 4/19/2016 at 9:00 AM. The parties are directed to meet and conduct a planning conference pursuant to Federal Rule of Civil Procedure 26(f). At least seven days before the initial status hearing, the parties shall file a joint written status report, not to exceed five pages in length. The initial status report shall provide the information described on the Court's website at www.ilnd.uscourts.gov under District Judges, Judge Andrea R. Wood, Initial Status Conference. Attorney applications to appear pro hac vice on behalf of Plaintiff <a href="#"><u>4</u></a> and <a href="#"><u>5</u></a> are granted. Mailed notice (ef, ) (Entered: 02/17/2016)
02/17/2016	<a href="#"><u>7</u></a>	ATTORNEY Appearance for Plaintiff Gerardo Solis by Toby Patrick Edwin Mulholland <i>Appearance for Kevin D. Stanley</i> (Mulholland, Toby) (Entered: 02/17/2016)
02/17/2016	<a href="#"><u>8</u></a>	ATTORNEY Appearance for Plaintiff Gerardo Solis by Toby Patrick Edwin Mulholland <i>Appearance for Colin W. McClain</i> (Mulholland, Toby) (Entered: 02/17/2016)
02/19/2016	<a href="#"><u>9</u></a>	AFFIDAVIT of Service filed by Plaintiff Gerardo Solis regarding Summons and Complaint served on LaShawn DeVos for DG Retail, L.L.C. on February 17, 2016 (Mulholland, Toby) (Entered: 02/19/2016)

02/26/2016	<a href="#">10</a>	MOTION by Defendants DG Retail, LLC, Dollar General for extension of time (Arnold, Helen) (Entered: 02/26/2016)
02/26/2016	<a href="#">11</a>	NOTICE of Motion by Helen Deborah Arnold for presentment of extension of time <a href="#">10</a> before Honorable Andrea R. Wood on 3/2/2016 at 09:00 AM. (Arnold, Helen) (Entered: 02/26/2016)
02/29/2016	<a href="#">12</a>	ATTORNEY Appearance for Defendants DG Retail, LLC, Dollar General by Helen Deborah Arnold (Arnold, Helen) (Entered: 02/29/2016)
02/29/2016	<a href="#">13</a>	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Dollar General (Arnold, Helen) (Entered: 02/29/2016)
02/29/2016	<a href="#">14</a>	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by DG Retail, LLC (Arnold, Helen) (Entered: 02/29/2016)
02/29/2016	<a href="#">15</a>	MINUTE entry before the Honorable Andrea R. Wood: Defendants' Motion for extension of time <a href="#">10</a> is granted. Defendants shall answer or otherwise plead to Plaintiff's complaint by 4/8/2016. The motion presentment date of 3/2/2016 is stricken. Parties need not appear. Mailed notice (ef, ) (Entered: 02/29/2016)

PACER Service Center			
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03/07/2016 08:38:42			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	1:16-cv-02196
Billable Pages:	2	Cost:	0.20

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

GERARDO SOLIS, on behalf of )  
himself and all others similarly situated, )  
 )  
Plaintiffs, )

Case No. \_\_\_\_\_

V. )

JURY TRIAL DEMANDED

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

CLASS ACTION

and )

DG RETAIL, L.L.C., )  
a Tennessee Limited Liability Company )  
Serve Registered Agent: )  
Corporation Service Company, )  
801 Adlai Stevenson Drive )  
Springfield, IL 62703 )

Defendants. )

**COMPLAINT**

Plaintiff Gerardo Solis ("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 Illinois, 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 Illinois and DG Retail, LLC, a Tennessee corporation (individually referred to as “DG Retail”) doing business in Illinois (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 Illinois 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. Defendant’s unlawful and deceptive business practices violate the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 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 state of Tennessee, 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 Defendants because Defendants are foreign corporations or associations authorized to do business in Illinois, do sufficient business in

Illinois, and have sufficient minimum contacts with Illinois or otherwise intentionally avail themselves of the laws and markets of Illinois, through the promotion, sale, marketing and distribution of its merchandise in Illinois, to render the exercise of jurisdiction by the Illinois courts permissible.

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 Illinois and have received substantial compensation from Illinois consumers who purchase goods from Defendants.

### **PARTIES**

9. Plaintiff Gerardo Solis is an individual adult resident citizen of Elgin, Cook County, Illinois and is a member of the Class alleged herein.

10. Plaintiff purchased Dollar General's DG SAE 10W-30, 10W-40 and SAE 30 motor oil from Dollar General's store at 321 S. Bartlett Road, Streamwood, Illinois 60107, on February 4, 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 DG Retail, LLC is a Tennessee limited liability company with its principal office located at 100 Mission Ridge, Goodlettsville, Tennessee 37072. Defendant DG



Retail, LLC can be served through its registered agent for service: Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, Illinois, 62703.

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 Illinois, 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. Dollar General operates a chain of retail variety stores 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, Defendants manufacture and market their 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. Defendants engage 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. Defendants mislead 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. Defendants conceal this language by rendering it in small font and confining it to the product's back label.

28. Defendants further conceal 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. Defendants further disguise the obsolete and harmful nature of their motor oils with its positioning of these motor oils on its shelves in a misleading manner. Specifically, Defendants place 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. Defendants place their 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. Defendants also fail to warn their 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 10W-30 bears the following label on the back: “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.”

35. DG SAE 30 bears the following label on its back: “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.”

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. Defendants knew or should have known that their 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 Illinois Consumer Fraud and Deceptive Business Practices Act is designed to protect consumers from this type of false, deceptive, misleading and predatory unconscionable conduct.

39. Defendant's 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 Illinois.

40. As a direct and proximate result of Defendants' 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 Defendants' 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 Defendants' 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 Illinois 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 February 15, 2013.**







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 an deceptive, misleading or unconscionable act or practice actionable under the Illinois Consumer Fraud and Deceptive Business Practices 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 Illinois Consumer Fraud and Deceptive Business Practices 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 ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS**  
**PRACTICES ACT (ICFDBPA) – 815 ILCS § 505/1 ET SEQ.**

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

58. Plaintiff, Class Plaintiffs and Defendants are all “person[s]” for purposes of the ICFDBPA. 815 ILCS 505/1(c).

59. Plaintiff and Class Plaintiffs are “consumers” within the meaning of 815 ILCS 505/1 (e).

60. Defendants engaged in “trade” or “commerce” within the meaning of 815 ILCS 505/1 (f).

61. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, provides in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

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

63. Defendants’ sales of the obsolete and potentially harmful DG-branded motor oil meet the definition of “sale” within the meaning of the ICFDBPA. 815 ILCS 505/1 (d).

64. The DG-branded oil at issue meets the definition of “merchandise” for purposes of the ICFDBPA. 815 ILCS 505/1 (b).

65. In selling the DG-branded oil at issue to Plaintiff, Defendants have used deception fraud, false pretense, misrepresentation or the concealment, suppression or omission of material facts, 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 Defendant’s stores.

66. 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.

67. As a result of Defendants’ unlawful business practices, Plaintiff and Class Plaintiffs, pursuant to 815 ILCS 505/10a, 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.

68. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered actual economic damages as a proximate result of Defendant’s actions as set forth herein.

**DEMAND/PRAAYER 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 ICFDBPA 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 designates Chicago, Illinois as the place of trial for this matter.

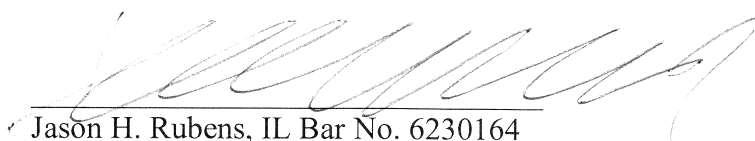


**JURY DEMAND**

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

Dated: February 10, 2016

Respectfully submitted,



Jason H. Rubens, IL Bar No. 6230164  
Toby P. Mulholland, IL Bar No. 6273511  
Rubens and Kress  
134 N. LaSalle Street, Suite 444  
Chicago, IL 60602  
Telephone: (312) 201-9640  
Facsimile: (312) 252-5253  
*Local Counsel for Plaintiff*

Kenneth B. McClain  
Steven E. Crick  
Kevin D. Stanley  
Colin W. McClain  
Humphrey Farrington & McClain, P.C.  
221 West Lexington, Suite 400  
Independence, MO 64050  
Telephone: (816) 836-5050  
Facsimile: (816) 836-8966  
*Lead Counsel for Plaintiff*

## 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

GERARDO SOLIS, on behalf of himself and all others similarly situated

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

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

Jason H. Rubens, Toby P. Mulholland, Rubens and Kress, 134  
N. LaSalle St., Ste. 444, Chicago, IL 60602 (312) 201-9640

## DEFENDANTS

DOLLAR GENERAL CORPORATION, a Tennessee Corporation,  
and DG RETAIL, L.L.C., a Tennessee Limited Liability Company

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

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

Attorneys (If Known)

## 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	✓ 1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	✓ 5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	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 Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input 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 checked="" 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"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <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> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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 (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

28 U.S.C. §§1332(d). Defendants engaged in unlawful and deceptive practices in the marketing and sale of their motor oil

## VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

## DEMAND \$

In excess of \$5,000,000.00 plus costs

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## IX. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

## X. This case (check one box)

☒ Is not a refile of a previously dismissed action

☐ is a refile of case number

previously dismissed by Judge

DATE February 10, 2016

SIGNATURE OF ATTORNEY OF RECORD



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. Previous Bankruptcy Matters** For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

**VIII. 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.

**IX. 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.

**X. Refiling Information.** Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# Exhibit 17

ACCO,(DTBx),DISCOVERY

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF  
CALIFORNIA (Eastern Division - Riverside)  
CIVIL DOCKET FOR CASE #: 5:16-cv-00242-FMO-DTB**

Roberto Vega v. Dolgencorp LLC  
Assigned to: Judge Fernando M. Olguin  
Referred to: Magistrate Judge David T. Bristow  
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/08/2016  
Jury Demand: Plaintiff  
Nature of Suit: 370 Other Fraud  
Jurisdiction: Diversity

**Plaintiff**

**Roberto Vega**

*individually and on behalf of all others  
similarly situated*

represented by **Gillian L Wade**

Milstein Adelman LLP  
10250 Constellation Boulevard Suite 1400  
Los Angeles, CA 90067  
310-396-9600  
Fax: 310-396-9635  
Email: gwade@milsteinadelman.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Marc Castaneda**

Milstein Adelman LLP  
10250 Constellation Boulevard Suite 1400  
Los Angeles, CA 90067  
310-396-9600  
Fax: 310-396-9635  
Email: mcastaneda@milsteinadelman.com  
*ATTORNEY TO BE NOTICED*

**Sara D Avila**

Milstein Adelman LLP  
10250 Constellation Boulevard Suite 1400  
Los Angeles, CA 90067  
310-396-9600  
Fax: 310-396-9635  
Email: savila@milsteinadelman.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Dolgencorp LLC**

*a Kentucky limited liability  
doing business as  
Dollar General Corporation*

Date Filed	#	Docket Text
02/08/2016	<a href="#">1</a>	COMPLAINT Receipt No: 0973-17248201 - Fee: \$400, filed by Plaintiff Roberto Vega. (Attorney Gillian L Wade added to party Roberto Vega(pty:pla))(Wade, Gillian) (Entered: 02/08/2016)
02/08/2016	<a href="#">2</a>	CIVIL COVER SHEET filed by Plaintiff Roberto Vega. (Wade, Gillian) (Entered: 02/08/2016)
02/08/2016	<a href="#">3</a>	NOTICE of Interested Parties filed by Plaintiff Roberto Vega, (Wade, Gillian) (Entered: 02/08/2016)
02/08/2016	<a href="#">4</a>	DECLARATION of Gillian L. Wade <i>Regarding Venue</i> filed by Plaintiff Roberto Vega. (Wade, Gillian) (Entered: 02/08/2016)
02/08/2016	<a href="#">5</a>	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) <a href="#">1</a> filed by Plaintiff Roberto Vega. (Wade, Gillian) (Entered: 02/08/2016)
02/09/2016	<a href="#">6</a>	NOTICE OF ASSIGNMENT to District Judge Fernando M. Olguin and Magistrate Judge David T. Bristow. (vp) (Entered: 02/09/2016)
02/09/2016	<a href="#">7</a>	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) <a href="#">1</a> as to Defendant Dolgencorp LLC. (vp) (Entered: 02/09/2016)
02/10/2016	8	TEXT ONLY ENTRY by Chambers of Judge Fernando M. Olguin. This matter has been assigned to District Judge Fernando M. Olguin. All pleadings filed in this matter should contain the case number and the assigned judges' initials to ensure proper routing of documents. The Court refers counsel to the Court's Initial Standing Order found on the Court's Website under Judge Olguin's Procedures and Schedules. Please read this Order carefully. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (vdr) TEXT ONLY ENTRY (Entered: 02/10/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 06:40:53			
PACER Login:	mp1188:2810168:3994037	Client Code:	5049303-0133
Description:	Docket Report	Search Criteria:	5:16-cv-00242-FMO-DTB End date: 3/7/2016
Billable Pages:	2	Cost:	0.20



Gillian Wade, Esq. (State Bar No. 229124)  
gwade@milsteinadelman.com  
 Sara D. Avila (State Bar. No. 263213)  
savila@milsteinadelman.com  
 Marc Castaneda (State Bar No. 299001)  
mcastaneda@milsteinadelman.com  
**MILSTEIN ADELMAN, LLP**  
 10250 Constellation Boulevard, 14<sup>th</sup> Floor  
 Los Angeles, California 90067  
 Telephone: (310) 396-9600  
 Facsimile: (310) 396-9635

Allan Kanner, Esq. (State Bar No. 109152)  
a.kanner@kanner-law.com  
 Conlee Whiteley, Esq. (*Pro Hac Vice*)  
c.whiteley@kanner-law.com  
 Cynthia St. Amant, Esq. (*Pro Hac Vice*)  
c.stamant@kanner-law.com  
**KANNER & WHITELEY, L.L.C.**  
 701 Camp Street  
 New Orleans, LA 70130  
 Telephone: (504) 524-5777  
 Facsimile: (504) 524-5763

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

ROBERTO VEGA, individually and on  
 behalf of all others similarly situated,

Plaintiff,  
 v.

DOLGENCORP, LLC, (d/b/a  
 DOLLAR GENERAL,  
 CORPORATION), a Kentucky limited  
 liability company,

Defendant.

Case No. 5:16-cv-00242

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

1. Violations of the Consumer Legal Remedies Act, *California Civil Code* §1750, *et seq.*
2. Violations of False and Misleading Advertising Law, *California Business and Professions Code* §17500, *et seq.*
3. Violations of Unfair Competition Law, *California Business and Professions Code* §17200, *et seq.* (unfair and fraudulent prongs)
4. Violations of Unfair Competition Law, *California Business and Professions Code* §17200, *et seq.* (unlawful conduct prong)



5. Violations of the Song-Beverly Consumer Warranty Act, *California Civil Code* §§1792 & 1791.1(a)
6. Violations of the Song-Beverly Consumer Warranty Act, *California Civil Code* §§1792.1 & 1791.1(b)
7. Breach of Implied Warranty of Merchantability
8. Breach of Implied Warranty of Fitness for a Particular Purpose

Plaintiff Roberto Vega (“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 and sub-class defined below, comprised of all individuals similarly situated nationwide and within the State of California, 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. During the Class Period (February 8, 2012 to present), Dollar General has sold and continues to sell 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 sales and marketing tactics including: (a) the positioning of its DG line of obsolete motor oils immediately adjacent to the more expensive standard- and premium-quality motor oils manufactured by its

competitors and (b) failing to adequately warn its customers that its DG motor oil is unsuitable for use by the vast majority, if not all, of its customers.

3. Dollar General's unlawful and deceptive business practices violate California's Unfair Competition Law, *Business & Professions Code* §17200, *et seq.* ("UCL"); California's False Advertising Law, *Business & Professions Code* §17500, *et seq.* ("FAL"); California's Consumer Legal Remedies Act, *Civil Code* §1750, *et seq.* ("CLRA"); the Song-Beverly Consumer Warranty Act, *Civil Code* §§ 1792 and 1791, *et seq.*; 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 and Sub-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 California and registered with the California Secretary of State, does sufficient business in California, and has sufficient minimum contacts with California or otherwise intentionally avails itself of the laws and markets of California, through the promotion, sale, marketing and distribution of its merchandise in California, to render the exercise of jurisdiction by the California 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 100 stores in California and has received substantial compensation from California consumers who purchase goods

1 from Defendant.

2 **PARTIES**

3 8. Plaintiff Roberto Vega is an individual adult resident of Perris, California and  
4 is a member of the Class and Sub-Class alleged herein.

5 9. Plaintiff purchased Dollar General's DG SAE 10W-30 motor oil from  
6 Dollar General's store in Perris, California for his 2000 Nissan Altima. Plaintiff  
7 purchased DG-branded motor oil for his own personal use during the Class  
8 Period. In so doing, he relied upon the false representations referenced above and  
9 believed the DG-branded motor oil was legitimate and suitable for use in his  
10 vehicle, and was not aware that it could actually harm his vehicle. Had he known  
11 the truth, he would not have purchased the DG-branded motor oil.

12 10. Defendant DOLGENCORP, LLC, d/b/a Dollar General Corporation, is  
13 incorporated under the laws of the State of Kentucky, with its headquarters located  
14 at 100 Mission Ridge, Goodlettsville, Tennessee. Dollar General maintains over  
15 100 stores throughout the state of California.

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

22 **FACTUAL ALLEGATIONS**

23 12. Dollar General operates a chain of variety stores headquartered in  
24 Goodlettsville, Tennessee. As of January 2015, Dollar General operated over  
25 12,198 stores in 43 states, with close to 150 stores located in the State of  
26 California.

27 13. Dollar General is a discount retailer focused on low and fixed income  
28 consumers in small markets. Dollar General's business model includes locating its

1 stores in rural, suburban communities, and in its more densely populated markets,  
2 Dollar General's customers are generally from the neighborhoods surrounding the  
3 stores. Dollar General's stores are located with the needs of its core customers  
4 (low and fixed income households) in mind.

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

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

12 16. Dollar General's DG Auto line consists of three types of obsolete motor  
13 oil: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30 that fail to protect and  
14 can actively damage, modern-day automobiles.

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

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

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

27 20. Dollar General engages in the unfair, unlawful, deceptive and fraudulent  
28 practice of marketing, selling and causing to be manufactured, obsolete motor oil

1 without adequately warning that its product is unsuitable for, and can harm, the  
2 vehicles driven by the overwhelming majority of Dollar General's customers (and  
3 the public at large).

4 21. Dollar General misleads customers by using product placement tactics and  
5 misleading product labels which obscure a critical fact from Dollar General's  
6 customers: Dollar General's motor oil is unfit for, and can harm, the vehicles  
7 driven by the vast majority, if not all, of its customers.

8 22. Dollar General's in-house motor oils use the same or similar SAE  
9 nomenclature on the front of its labels (*e.g.*, 10W-30, 10W-40, SAE 30) as do the  
10 other mainstream, non-harmful, and actually useful brands of motor oil sold by  
11 Dollar General. Dollar General places its DG brand motor oil next to these brand  
12 motor oil products on its shelves.

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

15 24. However, among the small print on the back label of Dollar General's  
16 motor oils is the statement that DG SAE 10W-30 and DG SAE 10W-40 are  
17 admittedly "not suitable for use in most gasoline powered automotive engines built  
18 after 1988" and "may not provide adequate protection against the build-up of  
19 engine sludge" and that DG SAE 30 is admittedly "not suitable for use in most  
20 gasoline powered automotive engines built after 1930," and its "use in modern  
21 engines may cause unsatisfactory engine performance or equipment harm."

22 25. Dollar General conceals this language by rendering it in small font and  
23 confining it to the product's back label, which is not visible when the products are  
24 on the store shelves.

25 26. Dollar General further conceals this language by placing it below a  
26 misleading and contradictory message regarding the product. For the DG SAE  
27 10W-30 and DG SAE 10W-40 products, that message reads: "SAE 10W-30 motor  
28 oil is an all-season, multi-viscosity, heavy duty detergent motor oil recommended

1 for gasoline engines in older model cars and trucks. This oil provides oxidation  
2 stability, antiwear performance, and protection against deposits, rust and  
3 corrosion.” For the DG SAE 30 product, that message reads: “DG Quality SAE  
4 30 is a non-detergent motor oil designed for use in older engines where  
5 consumption may be high and economical lubricants are preferred.”

6 27. Few, if any, Dollar General customers drive vehicles for which these  
7 products are safe, and the use of the term “older” is a relative term that does not  
8 inform a reasonable consumer that these motor oils are not safe for cars  
9 manufactured within the past 27 *years*, or in the case of Dollar General’s DG SAE  
10 30, the past 85 *years*.

11 28. Dollar General further disguises the obsolete and harmful nature of its  
12 motor oils with its positioning of these motor oils on its shelves in a misleading  
13 manner. Specifically, Dollar General places similar quantities of its in-house brand  
14 motor oils, DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30, none of which is  
15 suitable for modern-day automobiles, adjacent to an array of other motor oils  
16 which are suitable for modern-day vehicles.

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

23 30. Defendant’s product display conceals the fact that its DG-brand motor oils  
24 have an extremely obscure and limited use and are likely to cause damage to the  
25 engines of most of its customers’ cars. Defendant’s product positioning and the  
26 deceptive label on the motor oil are likely to deceive reasonable consumers.

27 31. Dollar General also fails to warn its customers adequately of the obsolete  
28 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":

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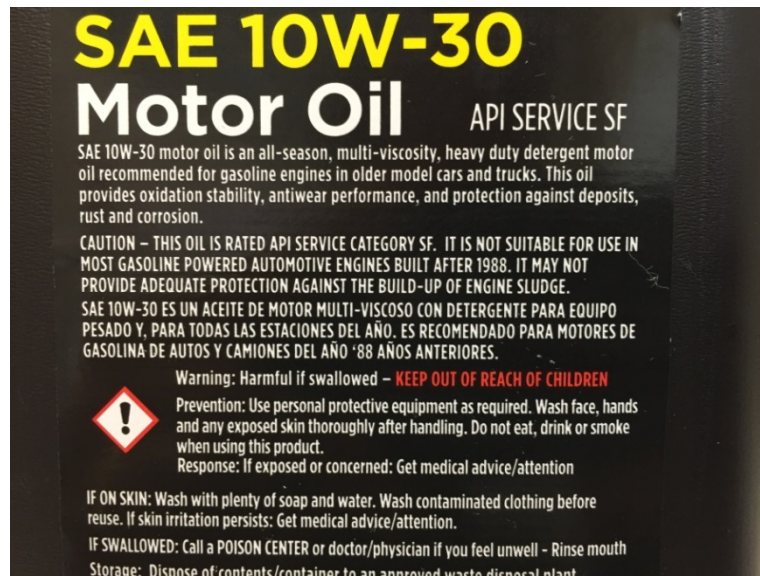
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33. DG SAE 10W-40 bears the following labels on its front (left) and back (right):



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. California's consumer protection laws, and the consumer protection laws of every other State and the District of Columbia, 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

1 economic damages. Indeed, the products are worthless.

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

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

### 8 **Unjust Enrichment**

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

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

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

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

22 46. Defendant should be required to account for and disgorge all monies,  
23 profits and gains which it has obtained or will unjustly obtain in the future at the  
24 expense of consumers.

### 25 **CLASS ACTION ALLEGATIONS**

26 47. Plaintiff brings this class action pursuant to Rule 23(b)(2) and 23(b)(3) of  
27 the Federal Rules of Civil Procedure on behalf of himself and all members of the  
28 following Class:

1       **All persons in the United States who purchased Defendant's DG-**  
 2       **branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE**  
 3       **30, for personal use and not for re-sale, since February 8, 2012.**

4       48. Plaintiff also brings this class action pursuant to Rule 23(b)(2) and  
 5       23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and all  
 6       members of the following Sub-Class:

7       **All persons in the State of California who purchased Defendant's DG-**  
 8       **branded motor oil, DG SAE 10W-30, DG SAE 10W-40 and/or DG SAE**  
 9       **30, for personal use and not for re-sale, since February 8, 2012.**

10       49. Subject to additional information obtained through further investigation  
 11       and discovery, the foregoing definition of the Class and Sub-Class may be  
 12       expanded or narrowed by amendment or amended complaint.

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

#### 19       **FRCP 23(a) Factors**

20       51. **Numerosity.** Membership in the Class and Sub-Class is so numerous that  
 21       separate joinder of each member is impracticable. The precise number of Class  
 22       Members is unknown at this time but can be readily determined from Defendant's  
 23       records. Plaintiff reasonably estimates that there are hundreds of thousands of  
 24       persons in the Class and tens of thousands of persons in the Sub-Class.

25       52. **Adequacy of Representation.** Plaintiff will fairly and adequately  
 26       represent and protect the interests of the members of the Class and Sub-Class.  
 27       Plaintiff has retained counsel highly experienced in complex consumer class action  
 28       litigation and intends to prosecute this action vigorously. Plaintiff is a member of



1 the Class and Sub-Class described herein and does not have interests antagonistic  
2 to, or in conflict with, the other members of the Class and Sub-Class.

3 **53. Typicality.** Plaintiff's claims are typical of the claims of the members of  
4 the Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class  
5 purchased obsolete, harmful, deceptively labeled and deceptively marketed motor  
6 oil from Dollar General and were subjected to Defendant's common course of  
7 conduct.

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

- 13 a) The amount of Defendant's in-house brand motor oil it sold relative to  
14 the other brands of oil on its shelves;
- 15 b) The amount of Defendant's in-house brand motor oil it sold relative to  
16 the limited number of automobiles for which these motor oils are  
17 appropriate;
- 18 c) Whether Defendant studied the effect of its product placement on its  
19 shelves;
- 20 d) Whether Defendant studied or tested its label and the effect of its  
21 labels on consumers' perceptions;
- 22 e) Whether Defendant studied the susceptibility of consumers;
- 23 f) The cost to Defendant to manufacture, distribute, market and sell its  
24 DG-branded motor oil compared to the revenue it received from its  
25 sales;
- 26 g) Whether Defendant misrepresented the safety and suitability of its  
27 DG-branded motor oil sold at its stores nationwide;
- 28

- 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 California's Unfair Competition Law, California Business & Professions Code §17200, *et seq.*;
- m) Whether Dollar General's conduct, as alleged herein, violates California's Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*;
- n) Whether Dollar General's conduct, as alleged herein, violates California's False Advertising Law, California Business and Professions Code § 17500, *et. seq.*;
- o) Whether the Class is entitled to injunctive relief prohibiting the wrongful practices alleged herein and enjoining such practices in the future;
- p) Whether Plaintiff and members of the Class are entitled to restitution;
- q) Whether compensatory, consequential and punitive damages ought to be awarded to Plaintiff and Class Members;
- r) Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount;



- 1 s) The proper method for calculating damages and restitution classwide;  
 2 and  
 3 t) Whether Plaintiff and Class Members are entitled to declaratory  
 4 and/or other equitable relief.

5  
 6 **FRCP 23(b)(2)**

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

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

17 **FRCP 23(b)(3)**

18 57. **Common Issues Predominate:** As set forth in detail herein above, common  
 19 issues of fact and law predominate because all of Plaintiff's UCL, FAL CLRA, and  
 20 warranty claims are based on a deceptive common course of conduct. Whether  
 21 Dollar General's conduct is likely to deceive reasonable consumers and breaches  
 22 the implied warranties of merchantability and fitness for a particular purpose is  
 23 common to all members of the Classes and are the predominate issues, and  
 24 Plaintiff can prove the elements of his claims on a class-wide basis using the same  
 25 evidence as would be used to prove those elements in individual actions alleging  
 26 the same claims

27 58. **Superiority.** A class action is superior to other available methods for the  
 28 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.

59. **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 a Dollar General 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.

60. The Class members have suffered economic harm 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**

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

**FIRST CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA CIVIL CODE § 1750, *et seq.***  
***California Civil Code §1750, et seq.***  
**(on behalf of the California Sub-Class)**

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

63. Plaintiff brings this claim under *Civil Code* § 1750, *et seq.*, the CLRA, on behalf of himself and the Class, who were subject to Defendant's above-described unfair and deceptive conduct.

64. 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.

65. Plaintiff and members of the California Sub-Class are consumers as defined by California Civil Code section 1761(d). The DG-branded motor oils are goods within the meaning of California Civil Code section 1761(a).

66. Plaintiff is concurrently filing the declaration of venue required by *Civil Code* § 1780(d) with this complaint. This cause of action is asserted on behalf of a subclass of the putative California Sub-Class, comprised of those members who purchased DG-branded motor oil within three (3) years of the commencement of this action. Plaintiff and members of the Sub-Class are individuals who have purchased the goods (the DG-branded motor oil) for personal use.

67. Specifically, as described herein, Dollar General made the following representations, expressly or by implication to Plaintiff and Sub-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.

1       68. These representations were materially misleading.

2       69. Defendant violated and continues to violate the CLRA by engaging in the  
3 following practices proscribed by California Civil Code section 1770(a) in  
4 transactions with Plaintiff and members of the Sub-Class, which were intended to  
5 result in, and did result in, the sale of DG-branded motor oils:

6           a. By representing that DG-branded motor oils “lubricate[] and  
7 protect[] your engine,” placing the DG-branded motor oils on  
8 shelves next to legitimate motor oils intended for use in modern  
9 day vehicles, and failing to adequately warn consumers of the harm  
10 their products can cause, Defendant is representing that DG-  
11 branded motor oils have characteristics, uses or benefits which they  
12 do not have, in violation of Civ. Code § 1770(a)(5);

13           b. By representing that DG-branded motor oils “lubricate[] and  
14 protect[] your engine,” and placing the DG-branded motor oils on  
15 shelves next to legitimate motor oils intended for use in modern  
16 day vehicles, and failing to adequately warn consumers of the harm  
17 their products can cause, Defendant is representing that DG-  
18 branded motor oils are of a particular standard, quality, or grade,  
19 when they are of another, in violation of Civ. Code § 1770(a)(7);

20           c. By representing that DG-branded motor oils “lubricate[] and  
21 protect[] your engine,” and placing the DG-branded motor oils on  
22 shelves next to legitimate motor oils intended for use in modern  
23 day vehicles, and failing to adequately warn consumers of the harm  
24 their products can cause, Defendant is “[a]dvertising goods... with  
25 intent not to sell them as advertised,” in violation of Civ. C.  
26 1770(a)(9); and,

27           d. By representing that DG-branded motor oils “lubricate[] and  
28 protect[] your engine,” and placing the DG-branded motor oils on

1 shelves next to legitimate motor oils intended for use in modern  
2 day vehicles, and failing to adequately warn consumers of the harm  
3 their products can cause, Defendant has represented that the  
4 products have “been supplied in accordance with a previous  
5 representation when it has not,” in violation of Civ. C. 1770(a)(16).

6 70. Defendant violated the CRLA by failing to adequately warn Plaintiff and  
7 members of the Sub-Class that DG-branded motor oils are not suitable for, and can  
8 harm, most vehicles on the road.

9 71. Defendant’s actions as described herein were done with conscious  
10 disregard of Plaintiff’s rights, and Defendant was wanton and malicious in its  
11 concealment of the same.

12 72. Defendant’s wrongful business practices constituted, and constitute, a  
13 continuing course of conduct in violation of the CLRA because Defendant  
14 continues to sell the obsolete oil without adequate warnings and represent the DG-  
15 branded motor oils have characteristics and abilities which the products do not  
16 have, and has thus injured and continues to injure Plaintiff and the Sub-Class.

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

22 74. Pursuant to *Civil Code* § 1780(a), Plaintiff seeks injunctive relief in the  
23 form of enjoining Defendant from (1) selling obsolete oil; (2) expressly or  
24 impliedly representing to current and potential purchasers of the DG-branded  
25 motor oils that the product is suitable for use in modern day vehicles manufactured  
26 after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings  
27 as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of  
28 corrective advertising requiring Defendant to disseminate truthful, adequate

1 disclosures and warnings about the actual uses (to the extent there are any) of the  
2 DG-branded motor oils.

3 75. Plaintiff and members of the Sub-Class shall be irreparably harmed if such  
4 an order is not granted.

5 76. On February 8, 2016, Plaintiff sent Defendant notice advising Defendant it  
6 violated and continues to violate, Section 1770 of the CLRA (the “Notice”)  
7 concurrently with the filing of this complaint. The Notice complies in all respects  
8 with Section 1782 of the CLRA. Plaintiff sent the Notice by Certified U.S. Mail,  
9 return-receipt requested to Defendant at Defendant’s principal place of business.  
10 Plaintiff’s Notice advised Defendant it must correct, repair, replace or otherwise  
11 rectify its conduct and the product alleged to be in violation of Section 1770,  
12 including that Defendant cease falsely and misleadingly advertising its DG brand  
13 motor oil, provide corrective advertising and provide restitution to its customers  
14 who paid money to Defendant for said products. However, Plaintiff advised  
15 Defendant that if it fails to respond to Plaintiff’s demand within thirty (30) days of  
16 receipt of this notice, pursuant to Sections 1782(a) and (d) of the CLRA, Plaintiff  
17 will amend this complaint to seek restitution, actual damages and punitive  
18 damages.

## 19 **SECOND CAUSE OF ACTION**

### 20 **Violations of False and Misleading Advertising Law (FAL)** 21 ***California Business and Professions Code §17500, et seq.*** 22 **(on behalf of the California Sub-Class)**

23 77. Plaintiff hereby incorporates by reference each of the proceeding  
24 allegations as if fully set forth herein.

25 78. At all times relevant hereto, Defendant was a “person” as that term is  
26 defined in *California Business and Professions Code §17506*.

27 79. *California Business and Professions Code §17500* provides that “[i]t is  
28 unlawful for any person, firm, corporation or association with intent directly or

1 indirectly to dispose of . . . personal property . . . to induce the public to enter into  
2 any obligation relating thereto, to make or disseminate or cause to be made or  
3 disseminated before the public in this state . . . any statement . . . which is untrue or  
4 misleading, and which is known, or which by the exercise of reasonable care  
5 should be known, to be untrue or misleading . . . .”

6 80. In its advertising for the obsolete DG-branded motor oil, Defendant  
7 makes false and misleading statements the product will “lubricate and protect  
8 your engine,” deceptively places the products next to legitimate motor oils, and  
9 fails to conspicuously or adequately warn consumers that the DG-branded motor  
10 oil is not suitable for most vehicles and can harm vehicles manufactured after  
11 1988 (or 1930).

12 81. Defendant engaged in the deceptive conduct alleged hereinabove, which  
13 included deceptive and untrue representations regarding DG-branded motor oil  
14 made to induce the public to purchase the products.

15 82. Defendant’s act of untrue and misleading advertising presents a continuing  
16 threat to members of the public because their advertisements induce consumers to  
17 purchase its motor oil, which are unsafe and not suitable for use in their  
18 automobiles, instead of other motor oils.

19 83. By its actions, Dollar General is disseminating uniform advertising  
20 concerning its products and services, which by its nature is unfair, deceptive,  
21 untrue, or misleading within the meaning of the *California Business and*  
22 *Professions Code* §17500, *et seq.* Such advertisements are likely to deceive, and  
23 continue to deceive, the consuming public for the reasons detailed above.

24 84. Defendant is aware that its advertising is false in that Defendant knows  
25 DG-branded motor oil is not suitable for most vehicles on the road today, is not  
26 capable of protecting or lubricating the engines of modern day vehicles and that it  
27 does not adequately warn consumers about the harmful effects of the product.  
28



85. As a result of the violations of California 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.

86. These misrepresentations and non-disclosures by Dollar General of the material facts detailed above constitute false and misleading advertising and therefore constitute a violation of *California Business and Professions Code* §17500, *et seq.*

87. Plaintiff and other members of the putative Sub-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.

88. Pursuant to *Business & Professions Code* §§ 17203 and 17535, Plaintiff and the members of the Sub-Class seek an order of this Court enjoining Defendant from engaging in the false advertising alleged herein in connection with the marketing and sale of DG-branded motor oil. Additionally, Plaintiff requests the money wrongfully acquired by Defendant by means of the unfair competition and false advertising alleged herein, and will request, in an amended complaint, an order awarding Plaintiff and the Sub-Class restitution.

### THIRD CAUSE OF ACTION

## Violations of the Unfair Competition Law (UCL)

## Unfair and Fraudulent Prongs

***California Business and Profession Code §17200, et seq.***

**(on behalf of the California Sub-Class)**

89. Plaintiff incorporates by this reference the allegations contained in the

preceding paragraphs as if fully set forth herein.

90. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this action, Plaintiff purchased DG-branded motor oil for his own personal use. In so doing, he relied upon the false representations referenced above and believed the DG-branded motor oil was legitimate and suitable for use in his vehicle, and was not aware that it could actually harm his vehicle.

91. Defendant is aware that its conduct is likely to deceive reasonable consumers.

92. The misrepresentations, conduct and inadequate disclosures by Defendant are material and constitute an unfair and fraudulent business practice within the meaning of *Business & Professions Code* § 17200, *et seq.*

93. 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.

94. 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.

95. 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

1 which are not as represented constitutes unfair competition, unfair, deceptive,  
2 untrue or misleading advertising, and an unlawful business practice within the  
3 meaning of *Business & Professions Code* § 17200, *et seq.*

4 96. Defendant's wrongful business practices constituted, and constitute, a  
5 continuing course of conduct of unfair competition since Defendant is marketing  
6 and selling DG-motor oil in a manner likely to deceive the public.

7 97. Defendant has peddled, and continues to peddle, its misrepresentations  
8 through a nationwide advertising campaign.

9 98. There were reasonably available alternatives to further Defendant's  
10 legitimate business interests, other than the conduct described herein.

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

14 100. Plaintiff and other putative Sub-Class Members were misled, and,  
15 because the misrepresentations and omissions were uniform and material,  
16 presumably believed that DG-motor oil was capable of lubricating and protecting  
17 modern day vehicle engines and would not harm them.

18 101. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the  
19 members of the Sub-Class seek an order of this Court enjoining Defendant from  
20 engaging in the unfair competition alleged herein and ordering corrective  
21 advertising in connection with the sale of DG-motor oil. Additionally, Plaintiff  
22 will amend this complaint to request an order awarding Plaintiff and the Sub-Class  
23 restitution of the money wrongfully acquired by Defendant by means of the unfair  
24 competition alleged herein.

25 102. Plaintiff and other members of the putative Sub-Class have suffered  
26 injury in fact and have lost money as a result of Defendant's deceptive conduct.  
27 Plaintiff would not have purchased the DG-branded motor oil if he had known it  
28

1 was obsolete and not suitable for his vehicle, was not capable of protecting or  
 2 lubricating his vehicle's engine, and could harm his vehicle.

### 3 **FOURTH CAUSE OF ACTION**

#### 4 **Violations of the Unfair Competition Law (UCL)**

##### 5 **Unlawful Conduct Prong**

##### 6 ***California Business and Profession Code §17200, et seq.***

##### 7 **(on behalf of the California Sub-Class)**

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

10 104. The actions of Defendant, as alleged herein, constitute illegal and  
 11 unlawful practices committed in violation of *Business & Professions Code* §  
 12 17200, *et seq.*

13 105. Defendant has unlawfully marketed, advertised and sold its DG-branded  
 14 motor oil because: (1) it is violating sections 1770(a)(5), 1770(a)(7), and  
 15 1770(a)(9) of the CLRA, *Civil Code* § 1750, *et seq.*; (2) it is violating *Business &*  
 16 *Professions Code* § 17500; and it is violating California *Civil Code* sections 1792  
 17 & 1791.1(a).

18 106. Plaintiff and other putative class members were misled, and, because the  
 19 misrepresentations and omissions were uniform and material, presumably  
 20 believed that DG-motor oil was capable of lubricating and protecting modern day  
 21 vehicle engines and would not harm them.

22 107. Pursuant to *Business & Professions Code* § 17203, Plaintiff and the  
 23 members of the Sub-Class seek an order of this Court enjoining Defendant from  
 24 engaging in the unfair competition alleged herein and corrective advertising in  
 25 connection with the sale of DG-motor oil. Additionally, Plaintiff will amend this  
 26 complaint to request an order awarding Plaintiff and the Sub-Class restitution of  
 27 the money wrongfully acquired by Defendant by means of the unfair competition  
 28 alleged herein.

108. Plaintiff and other members of the putative Sub-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.

### **FIFTH CAUSE OF ACTION**

#### **Violation of the Song-Beverly Consumer Warranty Act for Breach of Implied Warranty of Merchantability, §§ 1792 and 1791.1(a) of the California Civil Code (on behalf of the California Sub-Class)**

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

110. Plaintiff and members of the California Sub-Class are "retail buyers" within the meaning of §1791(b) of the California Civil Code.

111. DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 are each a "consumer good" within the meaning of §1791(a) of the California Civil Code.

112. Dollar General is a "distributor", "manufacturer", and/or "retailer" of DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 within the meaning of §1791(e), (j), and (l) of the California Civil Code.

113. Dollar General impliedly warranted to Plaintiff Sub-Class Members that DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 were "merchantable" as automotive motor oil within the meaning of §§ 1791.1(a) and 1792 of the California Civil Code.

114. Dollar General breached the implied warranty of merchantability to Plaintiff and Sub- Class Members because DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 (i) are not fit for the ordinary purpose for which they are used; (ii) are not adequately contained, packaged and labeled (*i.e.*, it lacked a sufficiently conspicuous caution label about the risk posed by the motor oil when used

1 according to the directions on the product packaging); and (iii) do not conform to  
 2 the promises or affirmations of fact made on the container or label (*i.e.*, that it was  
 3 at all suitable to use).

4 115. Dollar General's failure to warn Plaintiff and Sub-Class Members  
 5 adequately about the defective and unsafe quality of the product was willful.

6 116. As a proximate result of Dollar General's breach of the implied warranty  
 7 of merchantability, Plaintiff and Sub-Class Members sustained damages including  
 8 but not limited to the receipt of goods they would not have otherwise purchased  
 9 and which have or are likely to cause damage to their automobiles if used in the  
 10 manner intended.

11 117. Pursuant to §§ 1791.1(d) and 1794 of the California Civil Code, Plaintiff  
 12 and the members of the California Sub-Class are entitled to damages, civil  
 13 penalties and other legal and equitable relief including, a right of reimbursement,  
 14 as well as costs, expenses and attorneys' fees. Plaintiff will amend this complaint  
 15 to seek damages.

#### 16 **SIXTH CAUSE OF ACTION**

#### 17 **Violations of Song-Beverly Consumer Warranty Act for Breach of Implied** 18 **Warranty of Fitness, §§ 1792.1 and 1791.1(b) of the California Civil Code** 19 **(on behalf of the California Sub-Class)**

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

22 119. Plaintiff and members of the California Sub-Class are "retail buyers"  
 23 within the meaning of §1791(b) of the California Civil Code.

24 120. DG SAE 10W-30, DG SAE 10W-40 and DG SAE 30 are each a  
 25 "consumer good" within the meaning of §1791(a) of the California Civil Code.

26 121. Dollar General is a "distributor", "manufacturer", and/or "retailer" of DG  
 27 SAE 10W-30, DG SAE 10W-40 and DG SAE 30 within the meaning of §1791(e),  
 28 (j), and (l) of the California Civil Code.

1       122. Defendant specifically marketed DG SAE 10W-30, DG SAE 10W-40 and  
2 DG SAE 30 as motor oils that could be used in its customer's automobiles. At the  
3 time of the sale of the product, Defendants knew or should have known that  
4 Plaintiff and members of the California Sub-Class would (i) use DG SAE 10W-30,  
5 DG SAE 10W-40 and DG SAE 30 as motor oil and be exposed to these products'  
6 potentially harmful qualities and (ii) reasonably rely on Dollar General's skill or  
7 judgment to select or furnish suitable goods.

8       123. Plaintiff and members of the California Sub-Class did in fact purchase DG  
9 SAE 10W-30, DG SAE 10W-40 and DG SAE 30 with the particular purpose of  
10 using them as motor oil for their automobiles.

11       124. Plaintiff and members of the California Sub-Class did in fact reasonably  
12 rely on Dollar General's skill or judgment to furnish suitable goods.

13       125. By manufacturing, marketing, and distributing such products without an  
14 adequate warning, Dollar General breached its implied warranty of fitness for a  
15 particular purpose and is liable to Plaintiff and the California Sub-Class.

16       126. Dollar General's failure to warn Plaintiff and members of the California  
17 Sub-Class adequately about the defective and unsafe quality of the product was  
18 willful.

19       127. As a proximate result of Dollar General's breach of the implied warranty  
20 of fitness, Plaintiff and members of the California Sub-Class sustained damages,  
21 including but not limited to the receipt of goods whose they would not have  
22 otherwise purchased and which have or are likely to cause damage to their  
23 automobiles if used in the manner intended.

24       128. Pursuant to §§ 1791.1(d) and 1794 of the California Civil Code, Plaintiff  
25 and members of the California Sub-Class are entitled to and hereby seek damages,  
26 civil penalties and other legal and equitable relief including, a right of  
27 reimbursement, as well as costs, expenses and attorneys' fees under this Cause of  
28 Action only.



**SEVENTH CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability**  
**(on behalf of the Class and Sub-Class)**

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

130. 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.

131. 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.

132. 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.

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

134. As a proximate result of this breach of warranty by Defendant, Plaintiff and Class Members have been damaged. Plaintiff will amend this complaint to seek damages in an amount to be determined at trial.

**EIGHTH CAUSE OF ACTION**  
**Breach of Implied Warranty of Fitness for a Particular Purpose**  
**(on behalf of the Class and Sub-Class)**

135. Plaintiff incorporates by this reference the allegations contained in the

1 preceding paragraphs as if fully set forth herein.

2 136. Beginning at an exact date unknown to Plaintiff, but at least since four  
3 years prior to the filing date of this action, and as set forth above, Defendant sold  
4 its DG-branded motor oils to Plaintiff and Class Members, who bought those  
5 goods from Defendant in reliance on Defendant's skill and judgment.

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

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

16 139. As a proximate result of this breach of warranty by Defendant, Plaintiff  
17 and Class Members have been damaged. Plaintiff will amend this complaint to  
18 seek damages in an amount to be determined at trial.

19 **DEMAND/PRAYER FOR RELIEF**

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

- 22 A. An order certifying that this action may be maintained as a class action;  
23 B. Compensatory damages as to the Sixth Cause of Action only;  
24 C. Punitive Damages as to the Sixth Cause of Action only;  
25 D. Restitution and disgorgement of the unlawful profits collected by the  
26 Defendant;  
27 E. An order providing for declaratory and/or injunctive relief:  
28

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;

F. Prejudgment and post-judgment interest at the prevailing legal rate;

G. Plaintiff's attorneys' fees and costs of suit; and

H. 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.

DATED: February 8, 2016

**MILSTEIN ADELMAN, LLP**

/s/ Gillian L. Wade

Gillian L. Wade  
Sara D. Avila  
Marc Castaneda  
10250 Constellation Boulevard  
Suite 1400  
Los Angeles, CA 90067  
Telephone: (310) 396-9600  
Facsimile: (310) 396-9635

**KANNER & WHITELEY, L.L.C.**

Allan Kanner, Esq.  
Conlee Whiteley, Esq.  
Cynthia St. Amant, Esq.  
701 Camp Street  
New Orleans, LA 70130  
Telephone: (504) 524-5777  
Facsimile: (504) 524-5763

*Attorneys for Plaintiff*

# Exhibit 18

**U. S. District Court**  
**Western District of Arkansas (Fayetteville)**  
**CIVIL DOCKET FOR CASE #: 5:16-cv-05036-TLB**

Wait v. Dollar General Corporation et al  
Assigned to: Honorable Timothy L. Brooks  
Demand: \$5,000,000  
Cause: 28:1332 Diversity-Property Damage

Date Filed: 02/16/2016  
Jury Demand: Plaintiff  
Nature of Suit: 380 Personal Property:  
Other  
Jurisdiction: Diversity

**Plaintiff**

**Matthew Wait**  
*on behalf of himself and all others*  
*similarly situated*

represented by **Cynthia Green St. Amant**  
Kanner Whiteley L.L.C.  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
Email: c.stamant@kanner-law.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Allan Kanner**  
Kanner Whiteley L.L.C.  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
Email: a.kanner@kanner-law.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Conlee Whiteley**  
Kanner Whiteley L.L.C.  
701 Camp Street  
New Orleans, LA 70130  
(504) 524-5777  
Email: c.whiteley@kanner-law.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**J. Timothy Smith**  
Elliott & Smith Law firm  
P.O. Box 9090  
1200 E. Joyce Blvd., Suite 401  
Fayetteville, AR 72703  
(479) 587-8423  
Fax: (479) 575-0039  
Email: tsmith@elliottsmithlaw.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Kevin Daniel Stanley**  
Humphrey Farrington McClain P.C.  
221 West Lexington  
Suite 400  
Independence, MO 64050  
(816) 836-5050  
Fax: (816) 836-8966  
Email: kds@hfmlegal.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Dollar General Corporation**  
*a Tennessee Corporation*

**Defendant**

**Dolgencorp, L.L.C.**  
*a Kentucky Limited Liability Company*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
02/16/2016	<a href="#"><u>1</u></a>	COMPLAINT with Jury Demand against Dolgencorp, L.L.C., Dollar General Corporation ( Filing fee \$ 400 receipt number 5005356), filed by Matthew Wait.(src) (Entered: 02/16/2016)
02/16/2016	<a href="#"><u>2</u></a>	CIVIL COVER SHEET for case initiated by Matthew Wait. (src) (Entered: 02/16/2016)
02/16/2016		CLERK'S NOTICE re Multiple Attorneys Listed on Pleading directed to Plaintiff Matthew Wait. Complaint <a href="#"><u>1</u></a> lists multiple attorneys appearing for the filer indicating they will appear Pro Hac Vice. The following attorneys, who did not sign the pleading, must enter a separate Notice of Appearance in order to receive electronic notification of future activity in the case: <b>Kenneth McClain, Kevin Stanley, Colin McClain, Allan Kanner, Conlee Whiteley, Cynthia St. Amant</b> . TEXT ONLY ENTRY, NO DOCUMENT ATTACHED. (src) (Entered: 02/16/2016)
02/16/2016	<a href="#"><u>3</u></a>	Magistrate Notice/Consent Furnished (src) (Entered: 02/16/2016)
02/29/2016	<a href="#"><u>4</u></a>	NOTICE of Appearance by Cynthia Green St. Amant on behalf of Matthew Wait. (St. Amant, Cynthia) (Entered: 02/29/2016)
02/29/2016	<a href="#"><u>5</u></a>	NOTICE of Appearance by Allan Kanner on behalf of Matthew Wait. (Kanner, Allan) (Entered: 02/29/2016)
03/04/2016	<a href="#"><u>6</u></a>	MOTION for Attorney Kevin Daniel Stanley to Appear Pro Hac Vice . (PHV Application fee paid \$ 100; receipt number 0861-1288682) by Matthew Wait. (Attachments: # <a href="#"><u>1</u></a> Exhibit Certificate of Good Standing)(Stanley, Kevin) (Entered: 03/04/2016)
03/04/2016		TEXT ONLY ORDER granting <a href="#"><u>6</u></a> Motion to Appear Pro Hac Vice. Kevin Daniel Stanley is directed to immediately register as a CM/ECF user if he has not already done so and

		enter his appearance in this matter. Signed by Honorable Timothy L. Brooks on March 4, 2016. (slc) (Entered: 03/04/2016)
03/04/2016	<a href="#">7</a>	NOTICE of Appearance by Kevin Daniel Stanley on behalf of All Plaintiffs. (Stanley, Kevin) (Entered: 03/04/2016)
03/04/2016	<a href="#">8</a>	NOTICE of Appearance by Conlee Whiteley on behalf of Matthew Wait. (Whiteley, Conlee) (Entered: 03/04/2016)

PACER Service Center			
Transaction Receipt			
03/07/2016 08:48:31			
<b>PACER Login:</b>	mp1188:2810168:3994037	<b>Client Code:</b>	5049303-0133
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	5:16-cv-05036-TLB
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.20



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
AT FAYETTEVILLE

US DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FILED

FEB 16 2016

DOUGLAS F. YOUNG, Clerk  
By Deputy Clerk

MATTHEW WAIT, on behalf of  
himself and all others similarly  
situated,

Plaintiffs,

V.

DOLLAR GENERAL  
CORPORATION, a Tennessee  
corporation;

and

DOLGENCORP, L.L.C., a Kentucky  
Limited Liability Company.

Defendants.

Case No.

5:16-5036 TLB

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Matthew Wait ("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 Arkansas to redress the unlawful and deceptive practices employed by Defendants Dollar General Corporation, a Tennessee corporation, and Dolgencorp, LLC (hereinafter "Defendants") in connection with its marketing and sale of its company-branded

motor oil sold in its stores.

2. Defendants sell 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. Defendants’ unlawful and deceptive business practices violate Arkansas Deceptive Trade Practices Act (DTPA), Ark. Code Ann. § 4-88-101 *et seq.*

### **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 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.

5. This Court has jurisdiction over Defendants because Defendants are foreign corporations or associations authorized to do business in Arkansas, does sufficient business in Arkansas, and have sufficient minimum contacts with Arkansas or otherwise intentionally avail themselves of the laws and markets of Arkansas, through the promotion, sale, marketing and distribution of their merchandise in Arkansas, to render the exercise of jurisdiction by the Arkansas courts permissible.

6. 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, was directed from, and/or emanated from 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.

7. In addition, Defendants operate numerous stores in Arkansas and have received substantial compensation from Arkansas consumers who purchase goods from Defendants.

### **PARTIES**

8. Plaintiff Matthew Wait is an individual adult resident citizen of Fayetteville, Washington County, Arkansas 70724, and is a member of the Class alleged herein.

9. Plaintiff purchased Defendants' DG SAE 10W-40 motor oil from the Dollar General store at 1221 S. School Avenue, Fayetteville, Arkansas 72701, on February 4, 2016.

10. Defendant Dollar General Corporation is incorporated under the laws of the State of Tennessee, with its corporate headquarters located at 100 Mission Ridge, Goodlettsville, Tennessee. Defendant Dollar General Corporation can be served through its registered agent, Corporation Service Company, located at 2908 Poston Avenue, Nashville, Tennessee 37203.

11. Defendant Dolgencorp, LLC is a Kentucky limited liability company with its registered agent, Corporation Service Company, located at 300 S. Spring Street, Suite 900, Little Rock, Arkansas 72201.

12. At all relevant times, Defendants produced, marketed, distributed and sold their obsolete DG-branded motor oil in its stores throughout the United States, including in the State of Arkansas, utilizing deceptive and misleading marketing and sales practices to induce Plaintiff and Class Members into purchasing their 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**

13. Defendants operate a chain of variety stores under the name "Dollar General Store" that are headquartered in Goodlettsville, Tennessee.

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

15. Dollar General Store 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.

16. In addition to offering name brand and generic merchandise, Defendants manufacture and market their own lines of inexpensive household products, which bear the designation "DG." DG lines include "DG Auto," "DG Hardware" "DG Health" and "DG Office."

17. Defendants' 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.

18. 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.

19. 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.

20. 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.

21. Defendants engage 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 Store’s customers (and the public at large)

22. Defendants mislead customers using product placement tactics and misleading product labels which obscure a critical fact from Dollar General Store’s customers: Dollar General Store’s motor oil is unfit for, and can harm, the vehicles driven by the vast majority, if not all, of its customers.

23. Dollar General Store’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.

24. Additionally, the front label of DG’s SAE 10W-30 and SAE 10W-40 motor oils says, “Lubricates and protects your engine.”

25. However, among the small print on the back label of Defendants’ 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.”

26. Defendants conceal this language by rendering it in small font and confining it to the product’s back label.

27. Defendants further conceal 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.

28. 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 Store 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. Defendants further disguise the obsolete and harmful nature of their motor oils with its positioning of these motor oils on its shelves in a misleading manner. Specifically, Defendants place 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. Defendants place 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 Defendants' motor oils are less expensive than the others are.

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

33. Defendants also fail to warn 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 Store'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 Store motor oils. However, Dollar General Store 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. Defendants’ entire line of low-cost motor oil is unsuitable for the modern-day vehicles driven by their 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. Defendants knew or should have known that their customers are being or will, in reasonable probability, be deceived by its marketing strategy based on the quantity of their obsolete DG motor oil sold compared to the limited number of automobiles for which these oils are appropriate.

38. The DTPA 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 Store’s motor oil from Dollar General Store, throughout the country and in the State of Arkansas.

40. As a direct and proximate result of Defendants’ 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 Defendants' deceptive practices and to obtain compensation for the losses suffered by Named Plaintiff and all Class Members.

### **Unjust Enrichment**

43. Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing its useless and harmful motor oil, and Defendants have consciously and willingly accepted and enjoyed these benefits.

44. Defendants knew or should have known that consumers' payments for their 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.

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

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

47. Defendants 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.

### **CLASS ACTION ALLEGATIONS**

48. 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 herself and all members of the following Class:

**All persons in the State of Arkansas 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 February 2011.**

49. 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.

50. 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**

51. **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 tens of thousands of persons in the Class.

52. **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.

53. **Typicality.** Named Plaintiff's claims are typical of the claims of the members of the Class and Sub-Class. Plaintiff and all members of the Class and Sub-Class purchased

obsolete, harmful, deceptively labeled and deceptively marketed motor oil from Dollar General Store and were subjected to Defendants' common course of conduct.

**54. 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 their shelves;
- b) The amount of Defendants' in-house brand motor oil they sold relative to the limited number of automobiles for which these motor oils are appropriate;
- c) Whether Defendants studied the effect of their product placement on their shelves;
- d) Whether Defendants studied or tested their label and the effect of their labels on consumers' perceptions;
- e) Whether Defendants studied the susceptibility of consumers;
- f) The cost to Defendants to manufacture, distribute, market and sell their DG-branded motor oil compared to the revenue they received from its sales;
- g) Whether Defendants misrepresented the safety and suitability of their DG branded motor oil sold at their stores nationwide;
- h) Whether Defendants' conduct of placing the obsolete Dollar General Store motor oil next to legitimate, useful motor oil is likely to deceive reasonable consumers;

- i) Whether the warnings provided on the labels of Defendants' 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 their DG-branded motor oil;
- l) Whether Defendants' conduct, as alleged herein, constitutes an unconscionable act or practice actionable under the DTPA. Ark. Code Ann. § 4-88-101 *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, 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)**

55. 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 member of the Class that would establish incompatible standards of conduct for Defendants.

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

**FRCP 23(b)(3)**

57. **Common Issues Predominate:** As set forth in detail herein above, common issues of fact and law predominate because all of Named Plaintiff's DTPA and warranty claims are based on a deceptive common course of conduct. Whether Defendants' conduct is likely to deceive reasonable consumers and breaches the implied warranties of merchantability 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.

58. **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 its 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.

59. 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 a Dollar General Store's rewards program or for whom Defendants have specific information. Further, publication notice can be easily targeted to Dollar General Store customers because Defendants only sells the subject motor oil in their own stores.

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

### **CLAIMS FOR RELIEF**

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



## **FIRST CAUSE OF ACTION**

### **VIOLATION OF THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT ("DTPA") – ARK. CODE ANN. § 4-88-101 *ET SEQ.***

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

63. Plaintiff, Class Plaintiffs and Defendants are all "person[s]" for purposes of the DTPA. Ark. Code Ann § 4-88-102(5).

64. Defendants' DG-branded motor oils are "goods" within the meaning of the DTPA. Ark. Code Ann § 4-88-102(4).

65. Defendants' business practices constitute the sale of "goods" or "services" within the meaning of Ark. Code Ann. § 4-88-102(4) and (7). The same business practices constitute business, commerce, or trade within the meaning of Ark. Code Ann. § 4-88-107.

66. Ark. Code Ann. § 4-88-107(a)(1) provides that it shall be unlawful to "[k]nowingly make a false representation as to the characteristics, uses, benefits ... of goods or services or as to whether goods are original or new or of a particular standard quality, grade, stule, or model[.]"

67. Ark. Code Ann. § 4-88-108 provides that when utilized in connection with a sale or advertisement of any goods, shall be unlawful: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission."

68. In selling the DG-branded oil at issue to Plaintiff, Defendants have engaged in an unfair practice, deceptive acts, fraud, false pretense, or misrepresentation or omission of a

material facts, either expressly or by implication by representing that: (i) Dollar General Store's DG-branded motor oil was suitable for use in its customers' automobiles; (ii) that Dollar General Store's DG-branded motor oil was safe to use in its customers' automobiles; and (iii) that Dollar General Store'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.

69. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers;

70. Defendants violated the DTPA 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;

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

72. Defendants' false, deceptive and misleading business practices constituted, and constitute, a continuing course of conduct in violation of the DTPA because Defendants continue to sell the obsolete oil without adequate warnings and represent that the DG-branded motor oils have characteristics, uses and benefits which the products do not have, and has thus caused economic damage and continues to cause economic damage to Plaintiff and the Class;

73. Neither Plaintiff nor any reasonable consumer would have purchased the DG-branded motor oil if they were informed it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engines, and could harm their vehicles;

74. Plaintiff seeks injunctive relief pursuant to Ark. Code Ann. § 4-88-104 in the

form of enjoining Defendants from (1) selling obsolete oil; (2) expressly or impliedly representing to current and potential purchasers of the DG-branded motor oils that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of the DG-branded motor oils;

75. Plaintiff and members of the Class shall be irreparably harmed if such an order is not granted.

**SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty of Merchantability –**  
**ARK. CODE ANN. § 4-2-301 *ET SEQ.***

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

77. Beginning at an exact date unknown to Plaintiff, but since at least five years prior to the filing date of this action, and as set forth above, Defendants represented to consumers, including Named 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 Store's customers. Named Plaintiff and Class Members bought those goods from the Defendants.

78. Defendants are merchants with respect to goods of the kind which were sold to Named Plaintiff and Class Members, and there was in the sale to Named Plaintiff and Class Members an implied warranty that those goods were merchantable.

79. However, Defendants 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 Store's customers, as set forth in greater detail above.

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

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

### **THIRD CAUSE OF ACTION** **Unjust Enrichment**

82. Named Plaintiff and Class Members have conferred substantial benefits on the Defendants by purchasing its useless and harmful motor oil, and Defendants have consciously and willingly accepted and enjoyed these benefits.

83. Defendants knew or should have known that consumers' payments for their 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.

84. Because of the fraudulent misrepresentations, concealments, and other wrongful activities described herein, Defendants have been unjustly enriched by their wrongful receipt of Named Plaintiff and Class Members' monies.

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

86. Defendants 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 Named Plaintiff and Class Members of full restitution;
- C. An order pursuant to Ark. Code Ann. § 4-88-104; enjoining Defendants 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 economic damages;
- E. Restitution and equitable disgorgement of the unlawful profits collected by the Defendants;
- F. 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;
- 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 Fayetteville, Arkansas 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/ J. Timothy Smith

J. Timothy Smith   
ELLIOTT & SMITH LAW FIRM  
4302 N. Waterside Court  
Fayetteville, AR 72703  
(479) 587-8423

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 Ave., Ste. 400  
Independence, MO 64051  
(816) 836-5050  
(816) 836-8966 –fax  
kbm@hfmlegal.com  
kds@hfmlegal.com  
cwm@hfmlegal.com  
AND

**Allan Kanner, Esq. (Pro Hac Vice)**  
**Conlee Whiteley, Esq. (Pro Hac Vice)**  
**Cynthia St. Amant, Esq. (Pro Hac Vice)**  
**KANNER & WHITELEY, L.L.C.**  
**a.kanner@kanner-law.com**  
**c.whiteley@kanner-law.com**  
**c.stamant@kanner-law.com**  
**701 Camp Street**  
**New Orleans, LA 70130**  
**Telephone: (504) 524-5777**  
**Facsimile: (504) 524-5763**

**ATTORNEYS for Plaintiff**