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**CONFORMED COPY**  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 17-2013

John A. Clarke, Executive Officer/Clerk

By LA TRESE JOHNSON, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 **BC521628**

11 CONSUMER ADVOCACY GROUP, INC.,  
12 in the public interest,

13 Plaintiff,

14 v.

15 DOLGENCORP, LLC, a Kentucky Limited  
16 Liability Company; DOLLAR GENERAL  
17 CORPORATION, a Tennessee Corporation;  
18 DOLGEN CALIFORNIA, LLC, a Tennessee  
Limited Liability Company; and DOES 1-20;

19 Defendants.  
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CASE NO.

COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants DOLGENCORP, LLC, DOLLAR GENERAL CORPORATION, DOLGEN  
23 CALIFORNIA, LLC and DOES 1-20 as follows:  
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COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)

THE PARTIES

- 1  
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant DOLGENCORP, LLC ("DOLGENCORP") is a Kentucky limited liability  
8 company, doing business in the State of California at all relevant times herein.
- 9 3. Defendant DOLLAR GENERAL CORPORATION ("DOLLAR GENERAL") is a  
10 Tennessee corporation, doing business in the State of California at all relevant times  
11 herein.
- 12 4. Defendant DOLGEN CALIFORNIA, LLC ("DOLGEN CALIFORNIA") is a Tennessee  
13 limited liability company, doing business in the State of California at all relevant times  
14 herein.
- 15 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
17 complaint to allege their true names and capacities when ascertained. Plaintiff is  
18 informed, believes, and thereon alleges that each fictitiously named defendant is  
19 responsible in some manner for the occurrences herein alleged and the damages caused  
20 thereby.
- 21 6. At all times mentioned herein, the term "Defendants" includes DOLGENCORP,  
22 DOLLAR GENERAL, DOLGEN CALIFORNIA and DOES 1-20.
- 23 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
24 times mentioned herein have conducted business within the State of California.
- 25 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
26 including DOES 1-20, was an agent, servant, or employee of each of the other  
27 Defendants. In conducting the activities alleged in this Complaint, each of the  
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1 Defendants was acting within the course and scope of this agency, service, or  
2 employment, and was acting with the consent, permission, and authorization of each of  
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
4 were ratified and approved by every other Defendant or their officers or managing agents.  
5 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
6 wrongful conduct of each of the other Defendants.

- 7 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
8 Defendants was a person doing business within the meaning of Health and Safety Code  
9 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
10 employees at all relevant times.

#### 11 JURISDICTION

12 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
13 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
14 those given by statute to other trial courts. This Court has jurisdiction over this action  
15 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
16 violations of Proposition 65 in any Court of competent jurisdiction.

17 11. This Court has jurisdiction over Defendants named herein because Defendants either  
18 reside or are located in this State or are foreign corporations authorized to do business in  
19 California, are registered with the California Secretary of State, or who do sufficient  
20 business in California, have sufficient minimum contacts with California, or otherwise  
21 intentionally avail themselves of the markets within California through their manufacture,  
22 distribution, promotion, marketing, or sale of their products within California to render  
23 the exercise of jurisdiction by the California courts permissible under traditional notions  
24 of fair play and substantial justice.

25 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
26 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
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1 because Defendants conducted, and continue to conduct, business in the County of Los  
2 Angeles with respect to the consumer product that is the subject of this action.

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4 **BACKGROUND AND PRELIMINARY FACTS**

5 13. In 1986, California voters approved an initiative to address growing concerns about  
6 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
7 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
8 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
10 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
11 from contamination, to allow consumers to make informed choices about the products  
12 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
13 fit.

14 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
15 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
16 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
17 chemicals and chemical families. Proposition 65 imposes warning requirements and  
18 other controls that apply to Proposition 65-listed chemicals.

19 15. All businesses with ten (10) or more employees that operate or sell products in California  
20 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
21 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
22 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
23 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
24 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

25 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
26 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.

27 "Threaten to violate" means "to create a condition in which there is a substantial  
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1 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
2 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
3 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

4 17. Plaintiff identified certain practices of manufacturers and distributors of DEHP-bearing  
5 products of exposing, knowingly and intentionally, persons in California to the  
6 Proposition 65-listed chemicals of such products without first providing clear and  
7 reasonable warnings of such to the exposed persons prior to the time of exposure.  
8 Plaintiff later discerned that Defendants engaged in such practice.

9 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
10 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
11 to the list of chemicals known to the State to cause developmental male reproductive  
12 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
13 months after addition of DEHP to the list of chemicals known to the State to cause cancer  
14 and reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
15 requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 19. On or about November 30, 2012, Plaintiff gave notice of alleged violations of Health and  
18 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
19 private action to DOLGENCORP, DOLLAR GENERAL, DOLGEN CALIFORNIA and  
20 to the California Attorney General, County District Attorneys, and City Attorneys for  
21 each city containing a population of at least 750,000 people in whose jurisdictions the  
22 violations allegedly occurred, concerning the products Kitchen Tools containing DEHP.

23 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
24 products involved, the likelihood that such products would cause users to suffer  
25 significant exposures to DEHP, and the corporate structure of each of the Defendants.

26 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
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1 Plaintiff who executed the certificate had consulted with at least one person with relevant  
2 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
3 subject Proposition 65-listed chemical of this action. Based on that information, the  
4 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
5 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
6 to the Certificate of Merit served on the Attorney General the confidential factual  
7 information sufficient to establish the basis of the Certificate of Merit.

8 22. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
9 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
10 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

11 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
12 gave notices of the alleged violations to DOLGENCORP, DOLLAR GENERAL,  
13 DOLGEN CALIFORNIA and the public prosecutors referenced in Paragraph 19.

14 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
15 any applicable district attorney or city attorney has commenced and is diligently  
16 prosecuting an action against the Defendants.

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19 **FIRST CAUSE OF ACTION**

20 (By CONSUMER ADVOCACY GROUP, INC. and against DOLGENCORP,  
21 DOLLAR GENERAL, DOLGEN CALIFORNIA and DOES 1-20 for Violations of  
22 Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
(*Health & Safety Code*, §§ 25249.5, *et seq.*))

23 **Kitchen Tools**

24 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
25 reference paragraphs 1 through 24 of this complaint as though fully set forth herein.

26 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
27 distributor, promoter, or retailer of Kitchen Tools, which includes but is not limited to  
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1 "trueliving® Swivel Peeler Stainless Steel Blade K0344, SKU# 0002062263"  
2 ("TOOLS").

3 27. TOOLS contain DEHP.

4 28. Defendants knew or should have known that DEHP has been identified by the State of  
5 California as a chemical known to cause reproductive toxicity and therefore was subject  
6 to Proposition 65 warning requirements. Defendants were also informed of the presence  
7 of DEHP in TOOLS within Plaintiff's notice of alleged violations further discussed above  
8 at Paragraph 19.

9 29. Plaintiff's allegations regarding TOOLS concern "[c]onsumer products exposure[s],"  
10 which "is an exposure that results from a person's acquisition, purchase, storage,  
11 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
12 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).  
13 TOOLS are consumer products, and, as mentioned herein, exposures to DEHP took place  
14 as a result of such normal and foreseeable consumption and use.

15 30. Plaintiff's allegations regarding TOOLS also concern Occupational Exposures, which  
16 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*  
17 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred through  
18 the course of their employment in their employers' workplaces.

19 31. Plaintiff is informed, believes, and thereon alleges that between November 30, 2009 and  
20 the present, each of the Defendants knowingly and intentionally exposed their employees  
21 and California consumers and users of TOOLS, which Defendants manufactured,  
22 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
23 clear and reasonable warning of such to the exposed persons before the time of exposure.  
24 Defendants have distributed and sold DEHP in California. Defendants know and intend  
25 that California consumers will use and consume TOOLS, thereby exposing them to  
26 DEHP. Defendants thereby violated Proposition 65.

1 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

2 Persons sustain exposures by handling TOOLS without wearing gloves or any other  
3 personal protective equipment, or by touching bare skin or mucous membranes with  
4 gloves after handling TOOLS, as well as through direct and indirect hand to mouth  
5 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
6 TOOLS. And as to Defendants' employees, employees may be exposed to DEHP in the  
7 course of their employment by handling, distributing, and selling TOOLS.

8 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
9 Proposition 65 as to TOOLS have been ongoing and continuous to the date of the signing  
10 of this complaint, as Defendants engaged and continue to engage in conduct which  
11 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
12 promotion, and sale of TOOLS, so that a separate and distinct violation of Proposition 65  
13 occurred each and every time a person was exposed to DEHP by TOOLS as mentioned  
14 herein.

15 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
17 violations alleged herein will continue to occur into the future.

18 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to DEHP from TOOLS, pursuant to Health  
20 and Safety Code section 25249.7(b).

21 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
22 filing this Complaint.

23 **PRAYER FOR RELIEF**

24 Plaintiff demands against each of the Defendants as follows:

- 25 1. A permanent injunction mandating Proposition 65-compliant warnings;  
26 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
27 3. Costs of suit;

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- 4. Reasonable attorney fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated: 09/17, 2013

YEROUSHALMI & ASSOCIATES

BY:   
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.