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By: J. CAO-NGUYEN

5 Attorneys for Plaintiff
6 PAUL WOZNIAK

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANTA CLARA
9 UNLIMITED CIVIL JURISDICTION

11 PAUL WOZNIAK,

12 Plaintiff,

13 v.

14 DOLLAR GENERAL CORPORATION;
15 DOLGENCORP, LLC; and DOES 1-150,
16 inclusive,

17 Defendants.

) Case No. **114CV274391**

) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**

) (Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK
3 in the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to: (i) di(2-ethylhexyl)phthalate (“DEHP”),
5 a toxic chemical found in vinyl/PVC storage baskets, vinyl/PVC pencil pouches, and tape
6 measures with vinyl/PVC hand straps, sold by defendants in California; and (ii) lead, a toxic
7 chemical found in metal tape measurers, sold by defendants in California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
9 warn California citizens and other individuals about the risks of exposure to DEHP present in
10 and on the vinyl/PVC components of storage baskets, pencil pouches, and tape measures; and to
11 lead present in and on metal tape measures, manufactured, distributed, and offered for sale or
12 use to consumers and other individuals throughout the State of California.

13 3. Detectable levels of DEHP are found in and on the vinyl/PVC storage baskets,
14 vinyl/PVC pencil pouches, and tape measures with vinyl/PVC hand straps that defendants
15 manufacture, distribute, and offer for sale to consumers and other individuals throughout the
16 State of California.

17 4. Detectable levels of lead are found in and on the metal tape measures that
18 defendants manufacture, distribute, and offer for sale to consumers and other individuals
19 throughout the State of California.

20 5. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
22 doing business shall knowingly and intentionally expose any individual to a chemical known to
23 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
24 warning to such individual . . .” Health & Safety Code § 25249.6.

25 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
26 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
27 subject to the “clear and reasonable warning” requirements of the act one year later on October
28

1 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 7. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
4 lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to
5 the “clear and reasonable warning” requirements of the act one year later on February 27, 1988.
6 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 8. Defendants manufacture, distribute, import, sell, and offer for sale without health
8 hazard warnings in California: (i) vinyl/PVC storage baskets containing DEHP including but
9 not limited to the *Storage/S5 PVC Baskets, BTS13, UPC #4 30000 15958 1* (“BASKET
10 PRODUCTS”); (ii) vinyl/PVC pencil pouches containing DEHP, including but not limited to
11 the *iImagine Pencil Pouch, #77YRE13, UPC #4 00024 55546 1* (“POUCH PRODUCTS”); and
12 (iii) metal tape measures containing lead with vinyl/PVC hand straps that contain DEHP,
13 including but not limited to the *DG Hardware Tape Measure 16 Feet, UPC #4 30000 23457 8*
14 (“TAPE MEASURE PRODUCTS”). BASKET PRODUCTS, POUCH PRODUCTS, and
15 TAPE MEASURE PRODUCTS are referred to collectively hereinafter as “PRODUCTS.”

16 9. Defendants’ failure to warn consumers, workers and other individuals in the State
17 of California not covered by California’s Occupational Safety Health Act, Labor Code section
18 6300 et seq. of the health hazards associated with exposures to DEHP in conjunction with
19 defendants’ sales of the PRODUCTS, and exposures to lead in conjunction with defendants’
20 sales of the TAPE MEASURE PRODUCTS, are violations of Proposition 65, and subject
21 defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each
22 violation. Health & Safety Code § 25249.7(a) & (b)(1).

23 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
24 permanent injunctive relief to compel defendants to provide purchasers or users of the
25 PRODUCTS with the required warning regarding the health hazards associated with the
26 respective exposures to DEHP and/or lead. Health & Safety Code § 25249.7(a).

1 use of the PRODUCTS, without the individual purchasers and users first having been provided
2 with a “clear and reasonable warning” regarding the harms associated with such exposures, as
3 required by Proposition 65.

4 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
5 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
6 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
7 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
8 the future.

9 33. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
10 public enforcement agencies have commenced and diligently prosecuted a cause of action
11 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
12 subject of plaintiff’s notice of violation.

13 34. DEFENDANTS manufacture, import, distribute, sell, and offer for sale or use in
14 California, PRODUCTS which cause exposures to DEHP as a result of their reasonably
15 foreseeable use, and TAPE MEASURE PRODUCTS which cause additional exposures to lead
16 as a result of their reasonably foreseeable use. Such exposures caused by DEFENDANTS and
17 endured by consumers and other individuals in California are not exempt from the “clear and
18 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

19 35. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufactured, imported, distributed, sold, and offered for sale or use in California contained
21 DEHP, and that the TAPE MEASURE PRODUCTS they manufactured, imported, distributed,
22 sold, and offered for sale or use in California contained lead.

23 36. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
24 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use, including
25 through workplace exposure to the PRODUCTS.

1 37. Lead is present in or on the TAPE MEASURE PRODUCTS in such a way as to
2 expose individuals to lead through dermal contact and/or ingestion during reasonably
3 foreseeable use, including through workplace exposure to the TAPE MEASURE PRODUCTS.

4 38. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, consumer exposures and workplace exposures to DEHP, as defined by title
6 27 of the California Code of Regulations, section 25602(b).

7 39. The normal and reasonably foreseeable use of the TAPE MEASURE
8 PRODUCTS has caused, and continues to cause, consumer exposures and workplace exposures
9 to lead, as defined by title 27 of the California Code of Regulations, section 25602(b).

10 40. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion, and
12 that the normal and reasonably foreseeable use of the TAPE MEASURE PRODUCTS exposed
13 individuals to lead through dermal contact and/or ingestion.

14 41. DEFENDANTS intended that exposures to DEHP from the reasonably
15 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
16 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
17 use to consumers and other individuals in California.

18 42. DEFENDANTS intended that exposures to lead from the reasonably foreseeable
19 use of the TAPE MEASURE PRODUCTS would occur by their deliberate, non-accidental
20 participation in the manufacture, importation, distribution, sale, and offering of the TAPE
21 MEASURE PRODUCTS for sale or use to consumers and other individuals in California.

22 43. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers and other individuals in California who were or who would become exposed to
24 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS, and
25 to lead through dermal contact and/or ingestion resulting from their use of the TAPE
26 MEASURE PRODUCTS.

1 currently in the chain of commerce in California without a “clear and reasonable warning” as
2 defined by California Code of Regulations title 27, section 25601 et seq.;


3 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and proper.

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6 Dated: December 10, 2014

Respectfully Submitted,

7 THE CHANLER GROUP

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10 By: 
11 Josh Voorhees
12 Attorneys for Plaintiff
13 PAUL WOZNIAK
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