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

AUG 29 2018

Sherril R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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

CASE NO. **BC 719889**

13 Plaintiff,

COMPLAINT FOR PENALTY AND
INJUNCTION

14
15 v.

16 DOLLAR GENERAL CORPORATION, a
Tennessee Corporation;
17 DOLLAR GENERAL STORE #17772, an
entity unknown; and DOES 1-20;

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

18
19 Defendants.

UNLIMITED CIVIL CASE
(Demand exceeds \$25,000)

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21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 Defendants, DOLLAR GENERAL CORPORATION; DOLLAR GENERAL STORE #17772;
23 and DOES 1-20 as follows:

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COPY

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant, DOLLAR GENERAL (“DOLLAR”), is a Tennessee Corporation conducting substantial business in the State of California at all relevant times herein.
3. Defendant, DOLLAR STORE #17774 (“STORE”), is a business entity unknown, engaging in substantial business in the state of California at all relevant times herein.
4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
5. At all times mentioned herein, the term “Defendants” includes DOLLAR, STORE, and DOES 1-20.
6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
7. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint

1 were ratified and approved by every other Defendant or their officers or managing agents.
2 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
3 wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

- 22 11. Venue is proper in the County of Los Angeles because one or more of the instances of
23 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
24 because Defendants conducted, and continue to conduct, business in the County of Los
25 Angeles with respect to the consumer Hooks that is the subject of this action.

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1 BACKGROUND AND PRELIMINARY FACTS

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

11 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
14 chemicals and chemical families. Proposition 65 imposes warning requirements and
15 other controls that apply to Proposition 65-listed chemicals.

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

22 15. Proposition 65 provides that any person “violating or threatening to violate” the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
24 “Threaten to violate” means “to create a condition in which there is a substantial
25 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

8 17. On October 1, 1992, the Governor of California added DEHP to the list of chemicals
9 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
10 Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after the
11 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
12 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

13 18. On February 27, 1987, the Governor of California added DEHP to the list of chemicals
14 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
15 DEHP is known to the State to cause developmental, female, and male reproductive
16 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
17 months after addition of DEHP to the list of chemicals known to the State to cause
18 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
19 requirements and discharge prohibitions.

20 **SATISFACTION OF PRIOR NOTICE**

21 19. On or about April 13, 2018, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6, concerning consumer product exposures and occupational
23 exposures, subject to a private action to DOLLAR, STORE, and to the California
24 Attorney General, County District Attorneys, and City Attorneys for each city containing
25 a population of at least 750,000 people in whose jurisdictions the violations allegedly
26 occurred, concerning PLIERS.

1 20. On or about April 18, 2018, Plaintiff gave notice of alleged violations of Health and
2 Safety Code section 25249.6, concerning consumer product exposures and occupational
3 exposures, subject to a private action to DOLLAR, STORE, and to the California
4 Attorney General, County District Attorneys, and City Attorneys for each city containing
5 a population of at least 750,000 people in whose jurisdictions the violations allegedly
6 occurred, concerning HOOKS.

7 21. Before sending the notices of alleged violations, Plaintiff investigated the consumer
8 products involved, the likelihood that such products would cause users to suffer
9 significant exposures to DEHP, and the corporate structure of each of the Defendants.

10 22. Plaintiff's notices of alleged violation included a Certificate of Merit executed by the
11 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
12 Plaintiff who executed the certificate had consulted with at least one person with relevant
13 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
14 subject Proposition 65-listed chemical of this action. Based on that information, the
15 attorney for Plaintiff who executed the Certificate of Merit believed there was a
16 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
17 to the Certificate of Merit served on the Attorney General the confidential factual
18 information sufficient to establish the basis of the Certificate of Merit.

19 23. Plaintiff's notices of alleged violations also included a Certificate of Service and a
20 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
21 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

22 24. On or about May 16, 2018, Plaintiff received confirmation of withdrawing without
23 prejudice allegations of Occupational Exposure in the Notices referenced in paragraphs
24 nineteen (19) and twenty (20). Notice referenced by number 2018-00589 and 2018-
25 00557, respectively.

1 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notice of the alleged violations to DOLLAR, STORE, and the public prosecutors
3 referenced in Paragraph nineteen (19).

4 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
5 gave notice of the alleged violations to DOLLAR, STORE, and the public prosecutors
6 referenced in Paragraph twenty (20).

7 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
8 any applicable district attorney or city attorney has commenced and is diligently
9 prosecuting an action against the Defendants.

10 **FIRST CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against, DOLLAR, STORE,**
12 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**
13 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Handheld Tools**

15 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
16 reference paragraphs 1 through 27 of this complaint as though fully set forth herein.

17 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Handheld Tools, specifically, Long Nose Pliers
19 containing Bis (2-ethylehexyl) phthalate (“DEHP”), also known as Di (2-ethylhexyl)
20 phthalate. An exemplar of the violations caused by Long nose pliers containing DEHP
21 includes but is not limited to: Long nose pliers with navy blue handle; “DG hardware”,
22 “Durable Matte Grip Drop Forged”, “Distributed by: DOLGENCORP, LLC”, “100
23 Mission Ridge Goodlettsville, TN” 37072-2170”, “Made in China”, “N0050”,
24 “430000480838” (“PLIERS”)

25 30. Plaintiff is informed, believes, and thereon alleges that PLIERS contain DEHP.
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27
28

1 31. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer and reproductive toxicity and therefore
3 was subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of DEHP in PLIERS within Plaintiff's notice of alleged violations further
5 discussed above at Paragraph nineteen (19)

6 32. Plaintiff's allegations regarding PLIERS concerns "Consumer Product Exposure[s]"
7 which "is an exposure that results from a person's acquisition, purchase, storage,
8 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
9 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
10 PLIERS are consumer products, and, as mentioned herein, exposures to DEHP took place
11 as a result of such normal and foreseeable use.

12 33. Plaintiff is informed, believes, and thereon alleges that between April 13, 2015 and the
13 present, each of the Defendants knowingly and intentionally exposed and California
14 consumers and users of PLIERS, which Defendants manufactured, distributed, or sold as
15 mentioned above, to DEHP, without first providing any type of clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed and sold PLIERS in California. Defendants know and intend that California
18 consumers will use PLIERS, thereby exposing them to DEHP. Defendants thereby
19 violated Proposition 65.

20 34. The principal routes of exposure are through dermal contact, and ingestion. Persons
21 sustain exposures by handling PLIERS without wearing gloves or any other personal
22 protective equipment, or by touching bare skin or mucous membranes with gloves after
23 handling PLIERS, as well as through direct and indirect hand to mouth contact, hand to
24 mucous membrane, or breathing in particulate matter dispersed from PLIERS.

25 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to PLIERS have been ongoing and continuous to the date of the signing
27

1 of this complaint, as Defendants engaged and continue to engage in conduct which
2 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
3 promotion, and sale of PLIERS, so that a separate and distinct violation of Proposition 65
4 occurred each and every time a person was exposed to lead by PLIERS as mentioned
5 herein.

6 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
7 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
8 violations alleged herein will continue to occur into the future.

9 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
10 \$2,500.00 per day per individual exposure to DEHP from PLIERS, pursuant to Health
11 and Safety Code section 25249.7(b).

12 38. In the absence of equitable relief, the general public will continue to be involuntarily
13 exposed to DEHP that is contained in PLIERS, creating a substantial risk of irreparable
14 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
15 harm for which there is no plain, speedy, or adequate remedy at law.

16 39. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
17 filing this Complaint.

18
19 **SECOND CAUSE OF ACTION**

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

23 **Home Accessories**

24 40. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 39 of this complaint as though fully set forth herein.

26 41. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Home Accessories, specifically, Suction Hooks
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1 containing Bis (2-ethylehexyl) phthalate (“DEHP”), also known as Di (2-ethylhexyl)
2 phthalate. An exemplar of the violations caused by Hooks containing DEHP includes but
3 is not limited to: “Snap-Lock Suction Hooks”, “Adheres to most smooth surfaces!”,
4 “Ideal for home, school or office”, “Snap-lock feature creates strong suction”, “BASE4”,
5 “2017 Distributed by BASE4”, “Carrollton, TX 75006”, “Contact: info@ebase4.com”,
6 “Made in China”, “ITEM #00274”, UPC: 846145002741 (“HOOKS”).

7 42. Plaintiff is informed, believes, and thereon alleges that the HOOKS contain DEHP.

8 43. Defendants knew or should have known that DEHP has been identified by the State of
9 California as a chemical known to cause cancer and reproductive toxicity and therefore
10 was subject to Proposition 65 warning requirements. Defendants were also informed of
11 the presence of DEHP in HOOKS within Plaintiff's notice of alleged violations further
12 discussed above at Paragraph twenty (20).

13 44. Plaintiff's allegations regarding HOOKS concerns “Consumer Product Exposure” which
14 “is an exposure that results from a person’s acquisition, purchase, storage, consumption,
15 or other reasonably foreseeable use of a consumer good, or any exposure that results from
16 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. HOOKS are
17 consumer products, and, as mentioned herein, exposures to DEHP took place as a result
18 of such normal and foreseeable use.

19 45. Plaintiff is informed, believes, and thereon alleges that between April 18, 2015 and the
20 present, each of the Defendants knowingly and intentionally exposed California
21 consumers and users of HOOKS, which Defendants manufactured, distributed, or sold as
22 mentioned above, to DEHP, without first providing any type of clear and reasonable
23 warning of such to the exposed persons before the time of exposure. Defendants have
24 distributed and sold HOOKS in California. Defendants know and intend that California
25 consumers will use HOOKS, thereby exposing them to DEHP. Defendants thereby
26 violated Proposition 65.

1 46. The principal routes of exposure are through dermal contact, and ingestion. Persons
2 sustain exposures by handling HOOKS without wearing gloves or any other personal
3 protective equipment, or by touching bare skin or mucous membranes with gloves after
4 handling HOOKS, as well as through direct and indirect hand to mouth contact, hand to
5 mucous membrane, or breathing in particulate matter dispersed from HOOKS.

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

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

16 49. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to DEHP from HOOKS, pursuant to Health
18 and Safety Code section 25249.7(b).

19 50. In the absence of equitable relief, the general public will continue to be involuntarily
20 exposed to lead that is contained in HOOKS, creating a substantial risk of irreparable
21 harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable
22 harm for which there is no plain, speedy, or adequate remedy at law.

23 51. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;
4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
5 3. Costs of suit;
6 4. Reasonable attorney fees and costs; and
7 5. Any further relief that the court may deem just and equitable.

8
9 **Dated:** August 29, 2018

YEROUSHALMI & YEROUSHALMI

10
11 BY: _____
12 Reuben Yeroushalmi
13 Attorneys for Plaintiff,
14 Consumer Advocacy Group, Inc.