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FILED
 San Francisco County Superior Court

AUG 03 2018

CLERK OF THE COURT

BY: [Signature]
 Deputy Clerk

11 Attorneys for Plaintiff
 12 PETER ENGLANDER

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 COUNTY OF SAN FRANCISCO
 15 UNLIMITED CIVIL JURISDICTION

16 PETER ENGLANDER,
 17 Plaintiff,
 18 v.
 19 DOLLAR GENERAL CORPORATION, *et al.*,
 20 Defendant.

Case No. CGC-17-562339
 [PROPOSED] JUDGMENT PURSUANT
 TO TERMS OF PROPOSITION 65
 SETTLEMENT AND CONSENT
 JUDGMENT
 Date: August 3, 2018
 Time: 9:30 a.m.
 Dept.: 302
 Judge: Hon. Harold E. Kahn
 Reservation No.: 06120803-11

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1 Plaintiff Peter Englander and defendant Dollar General Corporation having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a stipulated judgment ("Consent judgment"), and
4 following this Court's issuance of an order approving their Proposition 65 settlement and
5 Consent Judgment, and for good cause being shown,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
8 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
9 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
10 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

11 **IT IS SO ORDERED.**

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Dated: 01/31/18

Richard B. Ulmer
JUDGE OF THE SUPERIOR COURT

RICHARD ULMER

EXHIBIT 1

1 Josh Voorhees, State Bar No. 241436
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
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6 Attorneys for Plaintiff
7 PETER ENGLANDER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

16 DOLLAR GENERAL CORPORATION, *et*
17 *al.*,

18 Defendants.

Case No. CGC-17-562339

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 ("Englander"), and Dollar General Corporation ("Dollar General"), with Englander and Dollar
5 General each individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Englander is an individual residing in California who seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Dollar General employs ten or more individuals and is a "person in the course of doing
12 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Englander alleges that Dollar General imports, sells, or distributes for sale in California,
16 vinyl/PVC ID holder components that contain di(2-ethylhexyl)phthalate ("DEHP") without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are DG Office ID holders #37072-2170,
21 UPC #4 30000 65056 9 with vinyl/PVC components containing DEHP that are manufactured,
22 imported, distributed, sold and/or offered for sale in California by Dollar General ("Products").

23 **1.6 Notice of Violation**

24 On August 1, 2017, Englander served Dollar General, and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation ("Notice") alleging that Dollar General violated
26 Proposition 65 by failing to warn its customers and consumers in California of the health hazards
27 associated with exposures to DEHP from the Products. No public enforcer has commenced and is
28 diligently prosecuting an action to enforce the violations alleged in the Notice.

1 **1.7 Complaint**

2 On November 7, 2017, Englander filed the instant action (“Complaint”), naming Dollar
3 General as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are
4 the subject of the Notice.

5 **1.8 No Admission**

6 Dollar General denies the material, factual, and legal allegations contained in the Notice and
7 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
8 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
9 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
10 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
11 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
12 not, however, diminish or otherwise affect Dollar General’s obligations, responsibilities, and duties
13 under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Dollar General as to the allegations in the Complaint, that venue is proper in the
17 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
18 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
21 the Court enters an order approving this Consent Judgment.

22 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

23 **2.1 Commitment to Reformulate or Warn**

24 Commencing on the Effective Date and continuing thereafter, Dollar General agrees to only
25 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)
26 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
27 reasonable health hazard warning pursuant to Section 2.3 below.

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1 **2.2 Reformulation Standard**

2 For the purposes of this Consent Judgment, "Reformulated Products" are defined as Products
3 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
4 pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C
5 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
6 DEHP content in a solid substance.

7 **2.3 Clear and Reasonable Warnings**

8 Commencing on the Effective Date, Dollar General shall provide clear and reasonable health
9 hazard warnings for all non-Reformulated Products it sells or distributes in California. Dollar
10 General agrees that the warning will be prominently placed with such conspicuousness when
11 compared with other words, statements, designs, or devices as to render it likely to be read and
12 understood by an ordinary individual under customary conditions before purchase or use. For
13 purposes of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed
14 to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the
15 following statement:

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17 **⚠ WARNING:** This product can expose you to chemicals
18 including DEHP, which is known to the
19 State of California to cause birth defects
20 or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov.

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Civil Penalty Payments**

23 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
24 referred to in the Notice, Complaint, and this Consent Judgment, Dollar General shall pay \$2,500 in
25 civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code
26 section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
27 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five
28 percent (25%) of the penalty retained by Englander. Englander's counsel shall be responsible for

1 delivering OEHHA's portion of any penalty payment(s) made under this Consent Judgment. Dollar
2 General shall provide its payment in a check made payable to "Peter Englander, Client Trust
3 Account" in the amount of \$625 and a check made payable to "OEHHA" in the amount of \$1,875 to
4 be delivered to the address provided in Section 3.3, below. Dollar General shall issue three separate
5 1099 forms to OEHHA, Englander and The Chanler Group for the respective amount paid to each
6 under this agreement.

7 **3.2 Reimbursement of Attorney's Fees and Costs**

8 The parties acknowledge that Englander and his counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
10 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
11 the other settlement terms had been finalized, the Parties negotiated the compensation due to
12 Englander and his counsel under general contract principles and the private attorney general doctrine
13 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
14 mutual execution of this Consent Judgment, and court approval of the same, but exclusive of fees and
15 costs on appeal, if any. Under these legal principles, Dollar General shall pay \$26,000 for all fees
16 and costs incurred by Englander investigating, bringing this matter to Dollar General's attention,
17 litigating and negotiating a settlement in the public interest. Dollar General's payment shall be
18 delivered to the address in Section 3.4 in a check payable to "The Chanler Group."

19 **3.3 Payment Timing: Penalty for Late Payment**

20 All payments due under this Consent Judgment shall be delivered to Englander's counsel
21 within ten (10) days after the Effective Date. Dollar General agrees and represents that should any
22 settlement payment required by this Consent Judgment be late or untimely, the Parties agree and
23 acknowledge that (a) Dollar General shall be liable to Englander for an additional 10% late payment
24 penalty for all unpaid or untimely amount(s); (b) Englander may seek to enforce Defendant's
25 payment obligations under general contract principles and Code of Civil Procedure section 664.6;
26 and (c) Englander shall be entitled to the reasonable fees incurred recovering any unpaid or untimely
27 settlement payments pursuant to general contract principles and Code of Civil Procedure section
28 1021.5.

1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Englander's Public Release of Proposition 65 Claims**

10 Englander, acting on his own behalf and in the public interest, releases Dollar General and
11 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
12 and attorneys ("Releasees"), and each entity to whom Dollar General directly or indirectly
13 distributes or sells the Products including, without limitation, its downstream customers,
14 distributors, wholesalers, and retailers and each entity from whom Dollar General directly or
15 indirectly obtains the Products, including, without limitation, its upstream manufacturers,
16 distributors, and importers ("Additional Releasees") for any violation arising under Proposition 65
17 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed for sale
18 by Dollar General prior to the Effective Date, as set forth in the Notice. Compliance with the terms
19 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
20 DEHP from Products sold or distributed for sale by Dollar General after the Effective Date.

21 **4.2 Englander's Individual Release of Claims**

22 Englander, in his individual capacity only and *not* in any representative capacity, also
23 provides a release to Dollar General, Releasees, and Additional Releasees, which shall be effective as
24 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Englander of any
26 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
27 alleged or actual exposures to DEHP in Products sold or distributed for sale by Dollar General before
28 the Effective Date.

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4.3 Dollar General's Release of Englander

Dollar General, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Englander, and his attorneys and other representatives, for any and all actions taken or statements made by Englander, and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if it is not approved and entered by the Court within one year after it has been fully executed by the Parties, or by such additional time as the Parties may agree in writing.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable by reason of law generally or as to the Products, then Dollar General may provide written notice to Englander of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required by this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

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For Dollar General:

Kelly Collier, Vice President
& Asst. General Counsel
Dollar General Corporation
100 Mission Ridge
Goodlettsville, TN 37072

with a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071

For Englander:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other, a change of address to which all notices and other communications shall be sent.

6. SEVERABILITY

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST EXECUTION ACTIVITIES

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion Englander shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this

1 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
2 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
3 approval, responding to any objection that any third-party may file or lodge, and appearing at the
4 hearing before the Court if so requested.

5 **11. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof; and any and all prior discussions, negotiations,
8 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
9 are no warranties, representations, or other agreements between the Parties except as expressly set
10 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
11 referred to in this Consent Judgment have been made by any Party hereto. No other agreements not
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
13 of the Parties hereto.

14 **12. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
16 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
17 of any Party, and the entry of a modified consent judgment thereon by the Court.

18 **13. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
20 have read, understand, and agree to all of the terms and conditions contained herein.

21
22 **AGREED TO:**

AGREED TO:

23
24 Date: 6/5/2018

Date: 6/4/18

25
26 By: 

PETER ENGLAUER

By: 

Kelly Collier, Vice President & Asst. General
Counsel

DOLLAR GENERAL CORPORATION