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

11 PAUL WOZNIAK,

12 Plaintiff,

13 v.

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

16 Defendants.

Case No. 114CV274391

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Paul Wozniak (“Wozniak”)
4 and defendants Dollar General Corporation and Dolgencorp, LLC (collectively, “Dollar General”),
5 with Wozniak and Dollar General each individually referred to as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 Notice of Violation**

16 On or about March 26, 2014, Wozniak served Dollar General and certain requisite public
17 enforcement agencies with a 60-day Notice of Violation under Proposition 65 (The Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*) (the
19 “Notice”). The Notice alleges that Dollar General manufactures, imports, sells, or distributes for sale
20 in California, vinyl/PVC storage baskets and pencil pouches that contain di(2-ethylhexyl)phthalate
21 (“DEHP”), and metal tape measures containing lead with vinyl/PVC hand straps containing DEHP,
22 without first providing the exposure warning required by Proposition 65. To the best of the Parties’
23 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth
24 in the Notice.

25 **1.5 Product Descriptions**

26 The products covered by this Consent Judgment are: (i) Storage/S5 PVC Baskets, BTS13,
27 UPC #4 30000 15958 1 containing DEHP (“Basket Products”); (ii) iImagine Pencil Pouch,
28 #77YRE13, UPC #4 00024 55546 1 containing DEHP (“Pouch Products”); and (iii) DG Hardware

1 Tape Measure 16 Feet, UPC #4 30000 23457 8 containing lead with vinyl/PVC hand straps that
2 contain DEHP (“Tape Measure Products”). The Basket Products, Pouch Products, and Tape Measure
3 Products are referred to collectively hereinafter as “Products”.

4 **1.6 Complaint**

5 On December 12, 2014, Wozniak filed the instant action (“Complaint”) naming Dollar
6 General as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are
7 the subject of the Notice

8 **1.7 No Admission**

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

17 **1.8 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Dollar General as to the allegations contained in the Complaint, that venue is proper
20 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
21 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.9 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation of Products**

3 As of the Effective Date, Dollar General shall not sell, manufacture, purchase, or import for
4 sale in the State of California any Pouch Products that contain DEHP in concentrations of more than
5 1,000 parts per million (ppm) in any component.

6 As of the Effective Date, Dollar General shall not sell, manufacture, purchase, or import for
7 sale in the State of California any Tape Measure Products that: (a) contain DEHP in concentrations of
8 more than 1,000 ppm in any component; or (b) contain lead in concentrations of more than 90 ppm in
9 any component.

10 No later than five (5) business days after the Effective Date, Dollar General shall provide
11 Wozniak with a written certification confirming compliance with the requirements of this Section 2.1.

12 **2.2 Action Regarding Basket Products**

13 On or before the Effective Date, Dollar General shall cease selling the Basket Products. No
14 later than five (5) business days after the Effective Date, Dollar General shall provide Wozniak with a
15 written certification confirming compliance with the requirements of this Section 2.2.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Civil Penalty Payments**

18 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
19 this Consent Judgment, Dollar General shall pay \$3,000 in civil penalties, after applying a \$10,000
20 penalty credit for Dollar General's commitment to reformulate its Products as set forth in Section 2.1.
21 The civil penalty payment shall be allocated according to Health and Safety Code section
22 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of
23 Environmental Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds
24 remitted to Wozniak. Within five (5) business days of the Effective Date, Dollar General shall make
25 the civil penalty payment of in two checks for the following amounts made payable to: (a) "OEHHA"
26 in the amount of \$2,250; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$750, as set
27 forth in Sections 3.4.
28

1 **3.2 Reimbursement of Attorney’s Fees and Costs**

2 The parties acknowledge that Wozniak and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly
5 after the other settlement terms had been finalized, Dollar General expressed a desire to resolve
6 Wozniak’s fees and costs. The Parties then attempted to (and did) reach an accord on the
7 compensation due to Wozniak and his counsel under general contract principles and the private
8 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
9 performed through the mutual execution of this Consent Judgment. Within five (5) business days
10 after the Effective Date, Dollar General shall pay \$25,000 for the fees and costs incurred by
11 Wozniak investigating, bringing this matter to Dollar General’s attention, litigating and negotiating a
12 settlement in the public interest.

13 **3.3 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Wozniak’s Public Release of Proposition 65 Claims**

23 In consideration of the promises and commitments herein contained, Wozniak, on his own
24 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
25 assignees, and in the public interest, hereby waives and releases Dollar General and its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
27 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
28 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
franchisees, cooperative members, licensors and licensees (“Downstream Releasees”) from all
claims for violations of Proposition 65 based on exposures to DEHP and lead from the Products, as

1 specified in the Notice, through the Effective Date. Dollar General's compliance with this Consent
2 Judgment constitutes compliance with Proposition 65.

3 **4.2 Wozniak's Individual Release of Claims**

4 Wozniak, in his individual capacity only and *not* in his representative capacity, also provides
5 a release to Dollar General, Releasees, and Downstream Releasees which shall be effective as a full
6 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Wozniak of any nature, character
8 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to DEHP or lead from the Products, as specified in the Notice. This waiver and release is
10 limited to those claims arising under Proposition 65 for unwarned exposures to DEHP and lead from
11 Products manufactured, imported, purchased, or sold by Dollar General before the Effective Date.

12 **4.3 Dollar General's Release of Wozniak**

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

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
22 has been fully executed by the Parties. If this Consent Judgment is not approved by the Court in its
23 entirety, (a) this Consent Judgment and any and all prior agreements between the parties as to the
24 Notice or Complaint referenced herein shall terminate and become null and void, and the action shall
25 revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of
26 this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or
27 aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be
28 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the parties

1 agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to
2 resubmit it for approval.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the state of California
9 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
10 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dollar General
11 may provide written notice to Wozniak of any asserted change in the law, and shall have no further
12 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
13 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Dollar General from any
14 obligation to comply with any pertinent state or federal toxics control laws.

15 **8. NOTICE**

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

19 **Dollar General**

20 Legal Department
21 Dollar General Corporation
22 100 Mission Ridge
Goodlettsville, TN 37022

Jeffrey Margulies, Esq.
Julia Scher, Esq.
Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor
Los Angeles, California 90071

23 **Wozniak**

24 The Chanler Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or portable
5 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
6 taken together, shall constitute one and the same document.

7 **10. POST EXECUTION ACTIVITIES**

8 Wozniak agrees to comply with the reporting form requirements referenced in Health and
9 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
10 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement.
11 Dollar General shall support the entry of this Consent Judgment.

12 **11. MODIFICATION**

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

16 **12. DUTIES LIMITED TO CALIFORNIA**

17 This Consent Judgment shall have no effect on Products sold by Dollar General outside the
18 State of California.

19 **13. ATTORNEY'S FEES**

20 Except as specifically provided in this Consent Judgment, each Party shall bear its own costs
21 and attorneys' fees in connection with this action.

22 **14. OTHER TERMS**

23 **14.1** This Consent Judgment contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all
25 prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed
26 merged. There are no warranties, representations, or other agreements between the Parties except as
27 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or
28 implied, other than those specifically referred to in this Consent Judgment have been made by any

1 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or
2 otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification,
3 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
4 Party to be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or
5 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
6 constitute a continuing waiver.

7 **14.2** Nothing in this Consent Judgment shall release, or in any way affect any rights that
8 Dollar General might have against any other party.

9 **15. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment and have read, understood,
11 and agree to all of the terms and conditions contained herein.

12
13
14 **AGREED TO:**

AGREED TO:

15
16 Date: 3/21/2016 _____

Date: _____

17
18 By:  _____
19 PAUL WOZNIAK

By: _____

Name: _____

Title: _____

Dollar General Corporation

1 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or
2 otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification,
3 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
4 Party to be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or
5 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
6 constitute a continuing waiver.

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8 Dollar General might have against any other party.

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10 The undersigned are authorized to execute this Consent Judgment and have read, understood,
11 and agree to all of the terms and conditions contained herein.

12
13
14 **AGREED TO:**

AGREED TO:

15
16 Date: _____

Date: March 30, 2016

17
18 By: _____
PAUL WOZNIAK

By: 
Name: EMYLIV TAYLOR
Title: SVP General Merch Mgr.
Dollar General Corporation