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10 Attorneys for Plaintiff,
11 CONSUMER ADVOCACY GROUP, INC.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC., in
15 the public interest,

16 Plaintiff,

17 v.

18 DOLLAR GENERAL CORPORATION, a
19 Tennessee Corporation;
20 DOLLAR GENERAL STORE #17772, an
entity unknown;
21 BASE4 VENTURES LCC, a Texas limited
liability corporation;
22 DOLGEN CALIFORNIA LLC, a Tennessee
limited liability corporation; and DOES 1-20,;

23 Defendants.

CASE NO. BC719889

[ASSIGNED FOR ALL PURPOSES TO
THE HON. RUTH ANN KWAN, DEPT.
72]

[PROPOSED] CONSENT JUDGMENT

Hearing Information:

Reservation No.:

Date:

Time:

Complaint: August 29, 2018

Trial Date: December 23, 2019

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between plaintiff, **Consumer**
3 **Advocacy Group, Inc.** (referred to as "CAG") acting on behalf of itself and in the interest of the
4 public, and defendant, **BASE4 VENTURES LLC** (referred to as "Defendant" or "BASE4")
5 with each a Party to the action and collectively referred to as "Parties." Further, Dollar General
6 Corporation, Dollar General Store #17772, and Dolgen California, LLC, will be released by
7 CAG as set forth in Section 5, below.

8 1.2 **Defendants and Products**

9 1.2.1 Defendant is a Texas limited liability company which employs ten or more
10 persons. Defendant manufactured, caused to be manufactured, sold, or distributed certain Suction
11 Hook Products in California.

12 1.2.2 For purposes of this Consent Judgment, Defendant is deemed a person in
13 the course of doing business in California and is subject to the provisions of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6 et
15 seq. ("Proposition 65").

16 1.3 **Chemical Of Concern**

17 1.3.1 Bis(2-ethylhexyl) phthalate (also known as Di(2-ethylhexyl phthalate)
18 ("DEHP") has been listed by the State of California as known to cause cancer and birth defects
19 or other reproductive harm.

20 1.4 **Notice of Violation.**

21 1.4.1 On April 18, 2018, CAG served Defendant; Dolgencorp, LLC; Dollar
22 General Corporation; Dollar General Store #17772 and various public enforcement agencies with
23 a document entitled "60-Day Notice of Violation" ("April 18, 2018 Notice" Attorney General
24 Notice Number #2018-00589) that provided the recipients with notice of alleged violations of
25 Health & Safety Code section 25249.6 for failing to warn individuals in California of exposures
26 to DEHP contained in the Covered Products sold by Defendant. No public enforcer has
27 commenced or diligently prosecuted the allegations set forth in the April 18, 2018 Notice.
28

1 **1.5 Complaint.**

2 On August 29, 2018, CAG filed a Complaint for civil penalties and injunctive relief
3 (“Complaint”) in the California Superior Court, County of Los Angeles, Case No. BC719889,
4 against Defendants Dollar General Corporation and Dollar General Store #17772. CAG named
5 BASE4 as a Doe defendant, on or about November 10, 2018. The Complaint alleges that the
6 defendants violated Proposition 65 by failing to give clear and reasonable warnings of exposure
7 to DEHP from the Covered Products.

8 **1.6 Consent to Jurisdiction**

9 For purposes of this Consent Judgment, the Parties stipulate that this Court has
10 jurisdiction over the allegations of violations contained in the Complaint and personal
11 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
12 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
13 full settlement and resolution of the allegations contained in the Complaint and of all claims
14 which were or could have been raised by any person or entity based in whole or in part, directly
15 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

16 **1.7 No Admission**

17 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
18 into this Consent Judgment pursuant to a full and final settlement of any and all claims among
19 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
20 shall be construed as an admission by any of the Parties of any material allegation of the
21 Complaint (each and every allegation of which Defendant denies), any fact, conclusion of law,
22 issue of law or violation of law, including, without limitation, any admission concerning any
23 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
24 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
25 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
26 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
27 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
28

1 by Defendant, its officers, directors, employees, or parent, subsidiary, or affiliated corporations,
2 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
3 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
4 waive, or impair any right, remedy, argument, or defense the Parties may have in any other or
5 future legal proceeding, except as expressly provided in this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 "Covered Products" means suction hooks, including those bearing the markings
8 "Snap-Lock Suction Hooks," "Adheres to most smooth surfaces!," "Ideal for home, school or
9 office," "Snap-lock feature creates a strong suction," "BASE4," "2017 Distributed by BASE4,"
10 "Carrollton, TX 75006," "Contact: info@ebase4.com," "Made in China," and "ITEM # 00274,"
11 UPC: 846145002741 sold by Defendant. "Covered Products" are limited to those products which
12 are sold or supplied by the Defendant.

13 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
14 Court.

15 2.3 "DEHP" means Bis(2-ethylhexyl phthalate) also known as Di(2-ethylhexyl
16 phthalate).

17 2.4 "Notice" means the April 18, 2018 60 Day Notice of Violation sent by CAG.

18 **3. INJUNCTIVE RELIEF.**

19 3.1 After the Effective Date, Defendant shall not sell the Covered Products in
20 California unless they contain less than 0.1% by weight of DEHP.

21 3.2 After the Effective Date, Defendant shall destroy any Covered Product bearing
22 the UPC 846145002741 existing in its inventory. Any Covered Products that are not still
23 existing in Defendant's inventory as of the effective date and are re-ordered, are to be
24 reformulated in compliance with section 3.1.
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1 **4. SETTLEMENT PAYMENT**

2 **4.1 Payment and Due Date:** Within 10 business days of the approval of the Consent
3 Judgment, Defendant shall pay a total of eighty-five thousand dollars and zero cents
4 (\$85,000.00) in full and complete settlement of all monetary claims by CAG related to the
5 Notice, as follows:

6 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling five
7 thousand seven hundred and twenty dollars (\$5,720.00) as penalties pursuant to Health & Safety
8 Code § 25249.12:

9 (a) Defendant will issue a check made payable to the State of California's
10 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand
11 two hundred and ninety dollars (\$4,290.00) representing 75% of the total penalty and Defendant
12 will issue a check to CAG in the amount of one thousand four hundred and thirty dollars
13 (\$1,430.00) representing 25% of the total penalty; and

14 (b) Separate 1099s shall be issued for each of the above payments:
15 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
16 0284486) in the amounts of \$4,290.00. Defendant will also issue a 1099 to CAG c/o
17 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
18 90212.

19 **4.1.2 Payment In Lieu of Civil Penalties:** Defendant shall pay four thousand
20 two hundred and eighty dollars (\$4,280.00) in lieu of civil penalties to "Consumer Advocacy
21 Group, Inc." CAG will use this payment for investigation of the public's exposure to
22 Proposition 65 listed chemicals through various means, including laboratory fees for testing for
23 Proposition 65 listed chemicals, administrative costs and fees related to such activities, expert
24 fees for evaluating exposures through various mediums, including but not limited to consumer
25 product, occupational, and environmental exposures to Proposition 65 listed chemicals, and the
26 cost of hiring consulting and retained experts who assist with the extensive scientific analysis
27 necessary for those files in litigation, as well as administrative costs and fees related to such
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1 activities in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
2 those persons and/or entities believed to be responsible for such exposures and attempting to
3 persuade those persons and/or entities to reformulate their products or the source of exposure to
4 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
5 the same public harm as alleged in the instant Action. Further, should the Court require it, CAG
6 will submit under seal an accounting of these funds as described above as to how the funds were
7 used. The check shall be made payable to "Consumer Advocacy Group, Inc." and delivered to
8 Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
9 Beverly Hills, California 90212.

10 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Defendant shall pay
11 seventy-five thousand dollars and zero cents (\$75,000.00) to "Yeroushalmi & Associates" as
12 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
13 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
14 negotiating a settlement in the public interest. The check shall be made payable to "Yeroushalmi
15 & Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
16 Boulevard, Suite 610E, Beverly Hills, California 90212.

17 **4.2** Other than the payment to OEHHA described above, Payments shall be delivered
18 to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E,
19 Beverly Hills, CA 90212.

20
21 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

22 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
23 behalf of itself and in the public interest and Defendant, of any alleged violation of Proposition 65
24 that was or could have been asserted by CAG against Defendant for failure to provide Proposition
25 65 warnings of exposure to DEHP from the Covered Products as set forth in the Notice for the
26 Covered Products, and fully resolves all claims that have been or could have been asserted in this
27 action up to and including the Effective Date for failure to provide Proposition 65 warnings for the
28 Covered Products regarding DEHP. CAG, on behalf of itself and in the public interest, hereby

1 discharges Defendant and its parent companies, subsidiaries, divisions, affiliates, suppliers,
2 franchisees, licensors, licensees, customers, distributors, wholesalers, retailers and all downstream
3 entities in the distribution chain of any of the Covered Products (including, but not limited to,
4 Dollar General Corporation, Dollar General Store #17772, and Dolgen California, LLC and their
5 parent companies, subsidiaries, divisions, affiliates), and the predecessors, successors and assigns
6 of any of them, and all of their respective officers, directors, shareholders, members, managers,
7 employees, agents (collectively, "Released Parties"), from all claims up through the Effective Date
8 for violations of Proposition 65 based on exposure to DEHP from the Covered Products.
9 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance by
10 the Released Parties with Proposition 65 regarding alleged exposures to DEHP from the Covered
11 Products. Nothing in this Section affects CAG's right to commence or prosecute an action under
12 Proposition 65 against any person other than Defendant or the Released Parties.

13 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
15 indirectly, any form of legal action and releases all claims, including, without limitation, all
16 actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
17 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
18 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
19 contingent (collectively "Claims"), against the Released Parties arising from any violation of
20 Proposition 65 or any other statutory or common law regarding the failure to warn about
21 exposure to DEHP from the Covered Products. In furtherance of the foregoing, as to alleged
22 exposures to DEHP from the Covered Products, CAG on behalf of itself only, hereby waives any
23 and all rights and benefits which it now has, or in the future may have, conferred upon it with
24 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
25 law regarding the failure to warn about exposure to DEHP from the Covered Products by virtue
26 of the provisions of Section 1542 of the California Civil Code, which provides as follows:
27

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

1 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
2 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
3 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
4 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
5 DEBTOR OR RELEASED PARTY.

6 CAG understands and acknowledges that the significance and consequence of this waiver of
7 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
8 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
9 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
10 about exposure to DEHP from the Covered Products, including but not limited to any exposure
11 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
12 not be able to make any claim for those damages against the Released Parties. Furthermore,
13 CAG acknowledges that it intends these consequences for any such Claims arising from any
14 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
15 about exposure to DEHP from Covered Products as may exist as of the date of this release but
16 which CAG does not know exist, and which, if known, would materially affect its decision to
17 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of
18 ignorance, oversight, error, negligence, or any other cause.

19 **6. ENFORCEMENT OF JUDGMENT**

20 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
21 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
22 California, Los Angeles County, giving the notice required by law, enforce the terms and
23 conditions contained herein. A Party may enforce any of the terms and conditions of this
24 Consent Judgment only after that Party first provides 90 days' notice to the Party allegedly
25 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
26 such Party's failure to comply in an open and good faith manner.

27 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
28 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the

1 date(s) the alleged violation(s) was observed and the location at which the Covered Products
2 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
3 Covered Products, including an identification of the component(s) of the Covered Products that
4 were tested.

5 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
6 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of
7 Election ("NOE") that meets one of the following conditions:

8 (a) The Covered Products were shipped by Defendant for sale in
9 California before the Effective Date, or

10 (b) Since receiving the NOV Defendant has taken corrective action by
11 either (i) requesting that its customers or stores in California, as applicable, remove the
12 Covered Products identified in the NOV from sale in California and destroy or return the
13 Covered Products to Defendant or vendor, as applicable, or (ii) providing a clear and
14 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
15 Code Regs. § 25603.

16 **6.2.2 Contested NOV.** Defendant may serve an NOE informing CAG of its
17 election to contest the NOV within 30 days of receiving the NOV.

18 (a) In its election, Defendant may request that the sample(s) Covered
19 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
20 laboratory.

21 (b) If the confirmatory testing establishes that the Covered Products do
22 not contain DEHP in excess of the levels allowed in Section 3.1, above, CAG shall take
23 no further action regarding the alleged violation. If the testing does not establish
24 compliance with Section 3.1, above, Defendant may withdraw the NOE to contest the
25 violation and may serve a new NOE pursuant to Section 6.2.1.
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1 (c) If Defendant does not withdraw an NOE to contest the NOV, the
2 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
3 an order enforcing the terms of this Consent Judgment.

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
5 Party may seek whatever fines, costs, penalties, or remedies as may be provided by law for any
6 violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code section 25249.7(f). Upon entry of the Consent Judgment, CAG
10 and Defendant waive their respective rights to a hearing or trial on the allegations of the
11 Complaint.

12 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
13 and any and all prior agreements between the parties merged herein shall terminate and become
14 null and void, and the actions shall revert to the status that existed prior to the execution date of
15 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
16 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
17 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
18 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
19 whether to modify the terms of the Consent Judgment and to resubmit it for approval.
20

21 **8. MODIFICATION OF JUDGMENT**

22 8.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Parties prior to filing a motion to modify the Consent Judgment.
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28

1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by
6 Defendant outside the State of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both Parties, on the
9 California Attorney General so that the Attorney General may review this Consent Judgment prior
10 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
11 General has received the aforementioned copy of this Consent Judgment, and in the absence of
12 any written objection by the Attorney General to the terms of this Consent Judgment, the parties
13 may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
16 costs and attorney fees in connection with this action.

17 **13. ENTIRE AGREEMENT**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding
19 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
20 negotiations, commitments, and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the Parties.

24 **14. GOVERNING LAW**

25 14.1 The validity, construction, and performance of this Consent Judgment shall be
26 governed by the laws of the State of California, without reference to any conflicts of law
27 provisions of California law.
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1 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
3 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
4 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
5 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant
6 may provide written notice to CAG of any asserted change in the law, and shall have no further
7 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
8 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
9 Defendant from any obligation to comply with any pertinent state or federal law or regulation.

10 14.3 The Parties, including their counsel, have participated in the preparation of this
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
12 Consent Judgment was subject to revision and modification by the Parties and has been accepted
13 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
14 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
15 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
16 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
17 resolved against the drafting Party should not be employed in the interpretation of this Consent
18 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

19
20 **15. EXECUTION AND COUNTERPARTS**

21 15.1 This Consent Judgment may be executed in counterparts and by means of
22 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
23 one document and have the same force and effect as original signatures.

24 **16. NOTICES**

25 16.1 Any notices under this Consent Judgment shall be by personal delivery of First-
26 Class Mail.

27
28 If to CAG:

1 Reuben Yeroushalmi
2 Yeroushalmi & Yeroushalmi
3 9100 Wilshire Boulevard, Suite 240w
4 Beverly Hills, CA 90212

5 If to BASE4 Ventures LLC:

6 James M. Hanlon, Jr.
7 Glynn & Finley, LLP
8 One Walnut Creek Center
9 100 Pringle Avenue, Suite 500
10 Walnut Creek, CA 94596

11 **17. AUTHORITY TO STIPULATE**

12 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
14 of the party represented and legally to bind that party.

15 AGREED TO:

16 Date: January 24, 2020

17 Michael Marcus
18 Name: Michael Marcus
19 Title: Director
20 CONSUMER ADVOCACY GROUP,
21 INC.

AGREED TO:

22 Date: January 17, 2020

23 Jon Filipski
24 Name: Jon Filipski
25 Title: Chief Operating Officer
26 BASE 4 VENTURES LLC

27 **IT IS SO ORDERED.**

28 Date: _____

JUDGE OF THE SUPERIOR COURT