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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 PETER ENGLANDER,

14 Plaintiff,

15 v.

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

18 Defendants.  
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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.

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:

16  
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](http://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.

1           **4.3     Dollar General’s Release of Englander**

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

8           **5.     COURT APPROVAL**

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

12          **7.     GOVERNING LAW**

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 In the event that Proposition 65 is repealed, or is otherwise  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

19          **8.     NOTICE**

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

2 Kelly Collier, Vice President  
3 & Asst. General Counsel  
4 Dollar General Corporation  
5 100 Mission Ridge  
6 Goodlettsville, TN 37072

7 with a copy to:

8 Jeffrey Margulies  
9 Norton Rose Fulbright US LLP  
10 555 South Flower Street, Forty-First Floor  
11 Los Angeles, California 90071

12 For Englander:

13 Proposition 65 Coordinator  
14 The Chanler Group  
15 2560 Ninth Street  
16 Parker Plaza, Suite 214  
17 Berkeley, CA 94710-2565

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

20 **6. SEVERABILITY**

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **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:**

23  
24 Date: 6/5/2018

25  
26 By: 

PETER ENGLANDER

**AGREED TO:**

27 Date: 6/4/18

28 By: 

Kelly Collier, Vice President & Asst. General  
Counsel  
DOLLAR GENERAL CORPORATION