

June 6, 2017

(505) 660-2216

Attorney General Balderas Files Suit against Major Discount Chain Dollar General

Albuquerque, NM – Attorney General Hector Balderas announced today that the Office of the Attorney General ("OAG") filed a lawsuit last night against national discount retail chain Dollar General for false advertising, unfair trade practices, and environmental public nuisance for the sale of obsolete motor oil in New Mexico stores from 2010 until February of this year. Dollar General has eight-seven (87) stores located across New Mexico, including in rural and suburban communities, many of which are lower income.

"My office continues to aggressively protect hard working New Mexico families and vulnerable consumers by holding big corporations like Dollar General accountable for preying on them and lying about the quality of the products that they sell," said Attorney General Hector Balderas. "Putting New Mexicans' valuable property and safety at risk is unacceptable, and companies that harm our communities and profit by taking money out of the pockets of our families will face consequences for their bad acts."

In its thirty-five (35) page complaint, the OAG alleges that Dollar General knowingly marketed, distributed and sold its DG Auto brand obsolete motor oil (labeled "DG Auto" SAE 10W-30, SAE 10W-40 and DG SAE-30) in its stores in the State of New Mexico, utilizing false advertising and deceptive and misleading marketing and sales practices. Dollar General's DG SAE 10W-30 and DG SAE 10W-40 motor oil products are manufactured to the API Service Category "SF" specification, which is obsolete and not suitable for motor vehicles built after 1988. Dollar General's DG SAE-30 motor oil product is manufactured to the API Service Category "SA" specification, which is not suitable for motor vehicles manufactured after 1930. Use of this obsolete motor oil in modern engines can cause engine damage.

Dollar General misled and deceived consumers by (a) positioning its DG Auto obsolete motor oil immediately adjacent to the more expensive brand-name motor oil, wrongfully representing that its obsolete motor oil is lower-priced but comparable to the brand-name products; (b) failing to adequately warn its customers of the fact that its DG Auto obsolete motor oil is unsuitable for use by the vast majority of its customers; and (c) distributing advertisements and other marketing materials that contain materially misleading statements and other representations as to the appropriate use and quality of its obsolete motor oil products.

Dollar General has also done significant harm to New Mexico's pristine air quality by selling obsolete motor oil that was unknowingly used by its customers in modern vehicles, damaging engines and deactivating emission control equipment that is required to reduce and control the emission of harmful pollutants. By doing so, Dollar General has caused an increase of ambient concentrations of carbon monoxide, hydrocarbons, nitrogen oxides, particulate matter, and other possible carcinogens, each of which has been linked to adverse human health and environmental impacts.

In addition to penalties, the OAG is asking the court to order Dollar General to develop and fund a state-approved program that would notify New Mexico Dollar General customers of the damages caused by the use of obsolete motor oil; inspect the engine of any customer who used obsolete Dollar General motor oils in their car and repair or replace any damaged components or the entire automobile if necessary; and take any other steps necessary to fix the harm done to New Mexico's clean air from cars that used Dollar General obsolete motor oil.

See attached for a copy of the complaint that includes photos.

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, *ex rel.*
HECTOR H. BALDERAS, Attorney General,

Plaintiff,

v.

DOLGENCORP, LLC (d/b/a DOLLAR
GENERAL, CORPORATION), a Kentucky
limited liability company,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS
OF NEW MEXICO'S UNFAIR PRACTICES ACT,
FALSE ADVERTISING ACT AND FOR PUBLIC NUISANCE**

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COMES NOW Plaintiff, the State of New Mexico, by the Honorable Hector Balderas, Attorney General of the State of New Mexico (“Plaintiff” or “State”), and brings this action against defendant DOLGENCORP, LLC (d/b/a Dollar General, Corporation) (“Defendant” or “Dollar General”), seeking statutory penalties and all damages recoverable at law or in equity to remedy Defendant’s willful and deliberate violations of New Mexico’s consumer protection and false advertising statutes,¹ and for public nuisance under New Mexico common law.

In support of its Complaint, the State avers as follows:

I. INTRODUCTION

1. Plaintiff, by and through undersigned counsel, brings this action to redress the unlawful and deceptive practices employed by Defendant, DOLGENCORP, LLC (d/b/a Dollar General, Corporation), in connection with its statements and other representations made in the course of its marketing and sale of its company-branded motor oil sold in its stores.

2. At all relevant times, Dollar General sold a line of company-branded motor oil (labeled “DG Auto”) that included motor oil that is obsolete and potentially harmful to its customers’ automobiles and to the environment by using sales, marketing, advertising and labeling tactics that may, tend to or do mislead and deceive the people of the State of New Mexico, including: (a) positioning its DG Auto obsolete motor oil immediately adjacent to the more expensive brand-name motor oil, wrongfully representing that its obsolete motor oil is lower-priced but comparable to the brand-name products; (b) failing to adequately warn its customers of the material fact that its DG Auto obsolete motor oil is unsuitable for use by many of its customers; and (c) distributing

¹ The State provided Dollar General notice of its intent to commence a civil action regarding this matter, as required by NMSA 1978, Section 57-15-3, on May 11, 2017. Defendant responded on May 26, 2017. Defendant’s response did not adequately show why such action should not be commenced.

advertisements and other marketing materials that contain materially misleading statements and other representations as to the appropriate use and quality of its obsolete motor oil products.

3. Dollar General's unlawful and deceptive business practices violate the New Mexico Unfair Practices Act, NMSA 1978, Sections 57-12-1 to -22 ("UPA"), and the New Mexico False Advertising Act, NMSA 1978, Sections 57-15-1 to -10 ("FAA").

4. As a result of its unlawfully deceptive and misleading business practices, Dollar General caused its DG Auto obsolete motor oil to be sold and used in modern automobiles for which it is not suitable for use. The use of obsolete motor oil causes extensive damage to modern engines and emission control systems, including catalytic converters and oxygen sensors, which when damaged result in the increased emissions of toxic substances and human carcinogens into the air throughout the State of New Mexico.

5. The increase in toxic emissions and resulting pollution caused by the use of DG Auto obsolete motor oil in modern vehicles causes more than inconvenience and annoyance to the people of the State and is an unreasonable interference with the common rights of the people of the State of New Mexico to a clean and healthy environment amounting to a public nuisance.

II. JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendant because Defendant's acts, practices, and conduct that give rise to this civil action occurred in the State of New Mexico. Defendant deliberately and purposefully marketed and sold its DG Auto obsolete motor oil in the State, and subsequently caused illegal pollution of the air and the environment here.

7. This Court has subject matter jurisdiction because the claims at issue arise solely under the statutes and common law of the State of New Mexico.

8. Venue is proper in Santa Fe County because substantial acts, practices and conduct of Defendant which give rise to this civil action occurred here in Santa Fe County, where Dollar General operates one Dollar General Store that sold DG Auto obsolete motor oils.

9. Section 57-12-8(A) provides that an action brought by the Attorney General pursuant to the UPA may be brought in the district court in any county in which the Defendant is using, has used or is about to use the practice which has been alleged to be unlawful.

10. At all relevant times, Defendant marketed, distributed and sold its DG Auto obsolete motor oil in its stores in the State of New Mexico, including this County, utilizing deceptive and misleading marketing and sales practices to induce consumers in the State into purchasing its obsolete motor oil for use in their modern-day vehicles knowing that its motor oil is obsolete and likely to cause damage to any such vehicle and the environment.

III. PARTIES

A. PLAINTIFF

11. Plaintiff is the State of New Mexico, by the Honorable Hector H. Balderas, the duly-elected Attorney General of the State of New Mexico, who has the statutory authority to enforce laws for the protection of the public. The Attorney General is authorized to act on behalf of the State in all actions when the interests of the State require action in his judgment.

12. The Attorney General is specifically authorized to bring suit to enforce the UPA, Section 57-12-8, and the FAA, Section 57-15-8.

B. DEFENDANT

13. Defendant DOLGENCORP, LLC, d/b/a Dollar General Corporation, incorporated under the laws of the State of Kentucky, with its headquarters located at 100 Mission Ridge,

Goodlettsville, Tennessee, operates a chain of variety stores. As of February 2017, Dollar General operated over 13,320 stores in 43 states, with 87 stores located in the State of New Mexico.

IV. FACTUAL ALLEGATIONS

A. DOLLAR GENERAL'S DG AUTO OBSOLETE MOTOR OIL

14. Dollar General is a discount retailer focused on low and fixed income consumers in highly localized, small markets. Dollar General's business model includes locating its stores in rural and suburban communities; in its more densely populated markets, Dollar General's customers are generally from the neighborhoods surrounding the stores. Dollar General's stores are located with the needs of its core customers (low and fixed income households) in mind.

15. Dollar General stores are "grab and go" stores cognizant of the limited time its core customers have to shop. Dollar General knows that its customers make rapid purchasing decisions, relying on Dollar General's integrity.

16. Dollar General offers basic every-day and household goods, along with a variety of general merchandise at low prices to provide its customers with one-stop shopping opportunities generally in their own neighborhoods.

17. In addition to offering name brand and generic merchandise, Dollar General distributes and markets its own lines of inexpensive products, which bear the designation "DG." DG lines include "DG Auto," "DG Hardware," "DG Health," and "DG Office."

18. Beginning in 2010, Dollar General's DG Auto line of motor oil consisted of three types of obsolete motor oil: DG SAE 10W-30, DG SAE 10W-40 and DG SAE-30. DG SAE 30 and DG SAE 10W-40 were first sold in 2010. DG SAE 10W-30 was first introduced in 2015. These obsolete motor oil products fail to protect, and can actively damage, modern-day automobiles.

19. Prior to the introduction of the DG Auto brand in 2010, Dollar General sold its obsolete motor oil under a different private label: the “Uni-lab” label.

20. Motor oil lubricates the engines of automobiles. Its main function is to reduce wear on an engine’s moving parts and to enhance engine performance, including its emissions control functions. Motor oil also inhibits corrosion, improves sealing and keeps engines properly cooled.

21. Motor oil has evolved in parallel with the automobiles it is meant to protect, adapting to changing circumstances, including automotive and emission control concerns. Institutions like the Society of Automotive Engineers (“SAE”) employ rigorous tests to ensure that motor oil meets evolving standards relating to, among other criteria, sludge buildup, temperature volatility, resistance to rust, resistance to foaming, resistance to oil consumption, homogeneity and miscibility.

22. Motor oil designed to protect engines from earlier eras does not protect, and can harm, modern-day engines. Thus, motor oil that would be suitable to use in an engine manufactured in the 1980s or 1930s or earlier is not suitable for use in modern-day engines. However, current, non-obsolete motor oil is backwards compatible and is suitable for engines manufactured in earlier years.

23. Dollar General’s DG SAE 10W-30 and DG SAE 10W-40 motor oil products are manufactured to the API Service Category “SF” specification, which is obsolete and not suitable for motor vehicles built after 1988. Dollar General’s DG SAE-30 motor oil product is manufactured to the API Service Category “SA” specification, which is not suitable for motor vehicles manufactured after 1930.

24. Upon information and belief, in 2016, Dollar General began selling API Service Category “SN” motor oil products under its DG Auto label in addition to its three obsolete motor oil

products. SN is the current API Service Category. Plaintiff's allegations herein do not relate to Dollar General's SN motor oil products.

B. DOLLAR GENERAL ENGAGED IN UNFAIR AND DECEPTIVE MARKETING PRACTICES AND MISLEADING ADVERTISING AND LABELING PRACTICES IN ITS SALE OF DG AUTO OBSOLETE MOTOR OIL

25. At all relevant times, Dollar General engaged in the unfair, unlawful, deceptive, misleading and fraudulent practice of making false and misleading statements in the course of its marketing, advertising, selling and causing to be manufactured its DG Auto obsolete motor oil, and failing to adequately warn that its product is unsuitable for, and can harm, the vehicles driven by many of the people of the State of New Mexico.

26. Dollar General makes representations that may, tend to or do deceive and mislead the people of the State by using product placement tactics and misleading product labels and advertisements that obscure a critical fact: that Dollar General's obsolete motor oil is unfit for, and can harm, the vehicles driven by many of the people of the State.

27. The front label of Dollar General's DG Auto obsolete motor oil uses the same or similar SAE nomenclature (*e.g.*, 10W-30, 10W-40, 30) found on the other brands of non-obsolete motor oil sold by Dollar General and beside which Dollar General places its DG Auto obsolete motor oil on its shelves.

28. Dollar General's DG Auto obsolete motor oil bears the designation "DG Auto" and is prominently labelled "Motor Oil" on the front of the containers.

29. The front label of Dollar General's DG SAE 10W-30 and DG SAE 10W-40 motor oil specifically states, "Lubricates and protects your engine."

30. The front label of Dollar General's DG Auto obsolete motor oil also shows a prominent checkered flag, suggestive of auto racing and winning.

31. “Dollar General Racing” also embraces this checkered flag logo with respect to Dollar General’s NASCAR team.

32. A person would believe and expect that these products are suitable for use in automotive engines in vehicles actually in use on the date of sale and that these products will “lubricate and protect” such engines.

33. The average person does not know that obsolete motor oil exists or what obsolete motor oil is and would have no reason to check any small print on the back label of a motor oil container.

34. There is no statement or other representation on the front label or principal display panel that a person should check any small print on the back or that the DG Auto obsolete motor oil is different in kind and quality from the surrounding motor oil.

35. Only in small print on the back label of Dollar General’s DG SAE 10W-30 and DG SAE 10W-40 motor oil can the statement that these products are “not suitable for use in most gasoline powered automotive engines built after 1988” and “may not provide adequate protection against the build-up of engine sludge” be found. Similarly, the statement that Dollar General’s DG SAE 30 motor oil is “not suitable for use in most gasoline powered automotive engines built after 1930,” and its “use in modern engines may cause unsatisfactory engine performance or equipment harm” appears only in small print on the back of the DG SAE 30 motor oil container.

36. Based on Dollar General’s representations made through product placement and on the front label, a reasonable person has no reason to examine the back label of the DG Auto obsolete motor oil.

37. Dollar General conceals the non-suitability language by rendering it in small font and confining it to the product’s back label, which is not visible when the products are on the store shelves.

38. Dollar General further conceals this language by placing it below a message that presents a misleading impression of the product.

39. For the DG SAE 10W-30 and DG SAE 10W-40 products, the language preceding that non-suitability statement reads that the DG SAE 10W-30 / DG SAE 10W-40 “motor oil is an all-season, multi-viscosity, heavy duty detergent motor oil recommended for gasoline engines in older model cars and trucks. This oil provides oxidation stability, anti-wear performance, and protection against deposits, rust and corrosion.”

40. For the DG SAE 30 product, the language preceding the non-suitability statement reads: “DG Quality SAE 30 is a non-detergent motor oil designed for use in older engines where consumption may be high and economical lubricants are preferred.”

41. Dollar General fails to warn its customers adequately of the obsolete nature of DG Auto motor oil or of the dangers DG Auto motor oil poses to the very automobiles its customers are trying to protect by purchasing Dollar General’s motor oil, thereby representing that its obsolete motor oils are suitable for use in all engines when they are not. An adequate warning for Dollar General’s DG Auto obsolete motor oil would be displayed conspicuously and would inform Dollar General’s customers of the appropriate uses, if any, of the various types of DG Auto motor oil. But Dollar General provides its customers with no such conspicuous warnings. Instead, the Defendant misleads and deceives people by burying the aforementioned statements on the back of its products in small type where people are unlikely to encounter them prior to purchase or use.

42. DG SAE 10W-30 bears the following labels on its front (left) and back (right):



The photograph below is a close-up of DG SAE 10W-30's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



43. DG SAE 10W-40 bears the following labels on its front (left) and back (right):



The following photograph is a close-up of DG SAE 10W-40's back label, which includes the warnings, "IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1988" and "IT MAY NOT PROVIDE ADEQUATE PROTECTION AGAINST THE BUILD-UP OF ENGINE SLUDGE":



44. Prior versions of the DG SAE 10W-40 label provided even less warnings.

45. DG SAE 30 bears the following the labels on its front (left) and back (right):



The photograph below is a close-up of DG SAE 30’s back label which includes the warnings, “IT IS NOT SUITABLE FOR USE IN MOST GASOLINE POWERED AUTOMOTIVE ENGINES BUILT AFTER 1930” and “USE IN MODERN ENGINES MAY CAUSE UNSATISFACTORY ENGINE PERFORMANCE OR EQUIPMENT HARM”:



46. Prior versions of the DG SAE 30 label provided even less warnings.

47. Prior to converting to its DG Auto label, Dollar General sold the same obsolete motor oil under its “Uni-Lab” label. The front label of the Uni-Lab SAE 10W-40 motor oil product specifically warned customers that the product was for pre-1989 automobiles.

48. When Dollar General switched to its DG Auto label, it knowingly and willingly removed that specific warning language from the front of the product and hid it on the back in smaller font.

49. Dollar General’s obsolete motor oil is not suitable for use in the modern vehicles in use at the time the products are sold. That the obsolete motor oil is not suitable for, and can damage, these vehicles is a material fact.

50. The use of the term “older” is a relative term that does not inform a person that these motor oils are not safe for cars manufactured within the past *29 years*, or in the case of Dollar General’s DG SAE 30, the past *87 years*.

51. Dollar General also fails to disclose that the other motor oil that it sells is not obsolete, is backwards compatible and thus, is suitable for use in older model automobiles.

52. Dollar General further disguises the obsolete and harmful nature of its DG Auto motor oil with its positioning of these motor oil products on its shelves in a misleading manner and represents that it is suitable for use in all vehicles when it is not.

53. Dollar General places its DG Auto obsolete motor oil adjacent to the other brands of motor oil that it sells, such as PEAK, Pennzoil, and Castrol; these other brands are non-obsolete motor oil that, unlike the DG Auto obsolete motor oil, are meant to be used in modern automotive engines.

54. All of the motor oil sold by Dollar General, including DG Auto obsolete motor oil, use the same or similar SAE viscosity nomenclature on the front or principal display panel (*e.g.*, 10W-30, 10W-40, 30).

55. The only apparent difference between the DG Auto obsolete motor oil and the other mainstream, non-harmful, current and useful brands of motor oil sold by Dollar General is the price, as its DG Auto obsolete motor oil is less expensive than the others.

56. Dollar General's placement of its DG Auto obsolete motor oil next to these other brands of motor oil defines or anchors its DG Auto obsolete motor oil as simply another (less expensive) variety of the same product as the other brands displayed.

57. In addition, the quantities of the DG Auto obsolete motor oil on display are similar to the quantities displayed of other brands of motor oil that are suitable for modern day vehicles, representing to a person that, like those other brands, the DG Auto obsolete motor oil has widespread use and that legitimate demand for the product is similar in volume to demand for the other motor oil on display when it is not. Dollar General's placement of the DG Auto obsolete motor oil on the same shelves and in similar quantities as the other motor oil represents to a person that the products are the same and conceals the fact that the DG Auto obsolete motor oil has an extremely obscure and limited use, that the product is an obsolete product, and that the motor oil is likely to cause damage to the engines of many of Dollar General's customers' vehicles.

58. Defendant's representations made through its product positioning and the deceptive labeling and advertising of its DG Auto obsolete motor oil may, tend to or do mislead or deceive any person.

59. Defendant's statements and representations made in the course of its advertising and labeling practices with regard to its DG Auto obsolete motor oil products are also misleading in material respects and are likely to deceive reasonable consumers.

60. Dollar General's print advertisements of its DG Auto obsolete motor oil products are also misleading, deceptive and fail to disclose the material facts regarding suitable uses for its motor

oil products (*i.e.*, that they are not suitable for use in modern vehicles). Not one of Dollar General's advertisements contains any warnings, suitability language or any other representations to alert its customers that its motor oil products are not suitable for use in, and can severely damage, their modern vehicles.

61. Dollar General only shows the front of its DG Auto obsolete motor oil products in its advertisements and uses descriptions such as "Auto Essentials," "Home Basics," "Quality Auto Care," "Auto for Less," "Complete Car Savings," and "Auto Savings that Shine," along with its advertised low price, to wrongly represent that the DG Auto obsolete motor oil is an everyday product, similar in kind and quality to brand-name motor oil products, only cheaper, when it is not.

62. Dollar General distributes monthly "In-Store Handouts" to its customers that contain misleading statements and representations regarding its DG Auto obsolete motor oil products, and fails to disclose the material facts regarding suitable uses for its motor oil products (*i.e.*, that they are not suitable for use in modern vehicles). Not one of Dollar General's advertisements contains any warnings or suitability language to alert people that its motor oil products are not suitable for use in, and can severely damage, modern vehicles.

63. For example, Dollar General distributed various In-Store Handouts, developed on a monthly basis, that are misleading in material fact in that they picture DG Auto obsolete motor oil, including the DG SAE 30, DG SAE 10W-30 and DG SAE 10W-40 varieties, under language such as "Auto Essentials" and "Home Basics," which wrongly represents that the obsolete motor oil is a product necessary for common, conventional or prevalent vehicles, rather than few vehicles manufactured before 1930 (for DG SAE 30) or 1988 (for DG SAE 10W-30 and DG SAE 10W-40) for which the DG-brand obsolete motor oils are actually suitable.

LOW PRICES on auto essentials! **DOLLAR GENERAL**

Turtle Wax® Top Coat
16 oz. Spray Bottle
\$3.75

DG auto®
16 oz. Spray Bottle
\$1.75

DG auto®
16 oz. Spray Bottle
\$3.95

AmeriGas®
15 lb. Propane Cylinder
\$3.25

AmeriGas®
15 lb. Propane Cylinder
\$4.50

DG auto®
16 oz. Spray Bottle
\$1.50

Black Magic®
16 oz. Spray Bottle
\$5

Turtle Wax®
16 oz. Spray Bottle
\$5

SALE Peak®
16 oz. Spray Bottle
\$3

DG auto®
16 oz. Spray Bottle
\$2.75

DG auto®
16 oz. Spray Bottle
\$2.95

DG auto®
16 oz. Spray Bottle
\$4.50

DG auto®
16 oz. Spray Bottle
\$3

Gas Can
5.7 Gallon
\$16

Little Trees®
16 oz. Spray Bottle
\$1

Refresh Your Car®
16 oz. Spray Bottle
\$3

Refresh The Driveway™
16 oz. Spray Bottle
\$5

SALE
16 oz. Spray Bottle
\$2.75

SALE
16 oz. Spray Bottle
\$5.50

\$29
16 oz. Spray Bottle
\$29

Options: New 7.5 lb. propane cylinder \$1.50. Propane cylinder \$1.50. Propane cylinder \$1.50. Propane cylinder \$1.50.

Home Basics
Stock Up and Save!

\$3.75
Energizer MAX®
Batteries AA or AAA
4 pk.

2 for \$5
SALE DG® hardware
2 in. Duct Tape 40 yards

\$2.75
DG® auto
Motor Oil
10W-30
10W-40 or
SAE 30 1 qt.

\$20
AmeriGas®
Cylinder Exchange
15 lb.

AmeriGas®
Replacement
Cylinder \$49
Available in most stores

64. Dollar General also distributed various monthly In-Store Handouts that are misleading in material respect in that they pictured DG Auto obsolete motor oils under language stating “Quality Auto Care,” wrongly representing that the obsolete motor oil products are of superior excellence or value to vehicles, while failing to disclose the fact that the motor oil products are not suitable for, and can cause extensive damage to, modern vehicles.

DG autoTM
Quality auto care!

\$275 DG autoTM Motor Oil 10W-40 or SAE 30 1 qt.

\$185 DG autoTM Gas Treatment 5.25 oz. or Fuel Injection Cleaner 5.25 oz.

\$295 DG autoTM Car Wash 64 oz. or Protectant or Cleaning Wipes 25 ct.

65. A number of Dollar General's In-Store Handouts distributed to its customers are further misleading in material respect in that they pictured DG Auto obsolete motor oils under language stating "Auto for Less," "Complete Car Savings," and "Auto Savings that Shine," wrongly representing that the obsolete motor oil products are of the same kind and quality as Dollar General's name-brand competitors, but simply offered at a lower price, when they are not.

Auto for Less!

DG autoTM

\$275 DG autoTM Motor Oil 10W-30 SF, 10W-40 or SAE 30 1 qt.

\$475 DG autoTM Tire Shine 24 oz.

\$350 DG autoTM Power Steering Fluid 32 oz.

\$350 DG autoTM Gas Treatment 5.25 oz. or Fuel Injection Cleaner 5.25 oz.

\$395 DG autoTM Microfiber Towels 5 pk.

\$175 DG autoTM Car Wash 64 oz.

\$295 DG autoTM Auto Wipes 25 ct.

DGNM0001540

DG autoTM **Complete car care savings!**

\$1 DG autoTM Microfiber Cleaning Towel 2 pk., Mini Detail Towel 1 ct. or Microfiber Hand Duster 1 ct.

\$250 DG autoTM Tire Shine 24 oz.

\$295 DG autoTM Protectant or Cleaning Wipes 25 ct. or Car Wash 64 oz.

\$395 DG autoTM Terry Towel or SALE Microfiber Cleaning Towel 5 pk.

\$185 DG autoTM Gas Treatment or S.A.L.E. Fuel Injector/Carburetor Cleaner 5.25 oz.

\$350 DG autoTM Power Steering Fluid 32 oz.

\$275 DG autoTM Motor Oil 10W-40 or SAE 30 1 qt.

\$2 DG autoTM Accessories

\$8 DG autoTM Auto Mats Carpeted or Vinyl 4 pc.



66. Dollar General also distributed In-Store Handouts that are misleading in material respect in that they pictured bottles of DG SAE 10W-40 and DG SAE 30 motor oils with the language “Your Choice” in a bubble next to the sale price, with no warning or indication regarding the significant differences between these two motor oils, thereby wrongly representing that a person could choose which bottle they preferred, simply deciding between the viscosity—either SAE 10W-40 or SAE 30—without knowing or having reason to know that the DG SAE 10W-40 is not suitable for vehicles manufactured after 1988 and DG SAE 30 is not suitable for vehicles manufactured after 1930.



67. Dollar General has no reason to believe that a person would knowingly buy obsolete motor oil to be used in a modern engine, because it has no automotive utility and is a worthless product to people that drive modern automobiles. The products can in fact be harmful to these automobiles.

68. Dollar General is able to sell its DG Auto obsolete motor oil because it is successfully deceiving a sufficient number of customers to make its unlawful practice profitable and therefore worthwhile. It is unfair, unlawful, deceptive and fraudulent for Dollar General to make false and misleading statements and representations to distribute, market, and sell a line of obsolete motor oil that is unfit for, and presents concrete dangers to, the automobiles driven by the vast majority of its customers.

69. Dollar General knew or should have known that the people of the State may, tend to be or are being deceived by its statements and representations made in the course of its marketing and

advertisement of its obsolete motor oil based on the quantity of its DG Auto obsolete motor oil sold compared to the limited number of automobiles for which this oil is appropriate.

70. New Mexico's consumer protection laws are designed to protect people from this type of predatory conduct.

71. Defendant's unfair and deceptive course of conduct victimized the people of New Mexico, including all purchasers of Dollar General's DG Auto obsolete motor oil from Dollar General stores in New Mexico.

72. As a direct and proximate result of Dollar General's deceptive and fraudulent practices, New Mexico consumers have purchased a product they would not have otherwise purchased and have suffered and will continue to suffer damages. Indeed, the products are worthless to most people.

C. DOLLAR GENERAL'S OBSOLETE MOTOR OIL DAMAGES MODERN ENGINES AND EMISSION CONTROL SYSTEMS, RESULTING IN INCREASED EMISSION OF HAZARDOUS POLLUTANTS

73. Many New Mexico consumers have sustained injuries to their automobiles as a result of the use of Dollar General's DG Auto motor oil, which is not suitable for use in modern automobiles, and have suffered and will continue to suffer damage as a result.

74. Motor vehicles play a major role in urban air quality problems, as the incomplete burning of gasoline leads to the formation of pollutants that have several harmful effects on the environment and human health, including carbon monoxide, hydrocarbons, nitrogen oxides, particulate matter, and other possible carcinogens.

75. Advances in engine and vehicle technology have been made to reduce the toxicity of exhaust leaving the engine, including the development of catalytic converters, an emission control device that converts toxic gases and pollutants in exhaust gas to less toxic pollutants.

76. When working properly, catalytic converters are very efficient in reducing gaseous pollutants in exhaust gas to levels that meet emission standards. Catalytic converters have been required as standard equipment within a motor vehicle since the 1980s.

77. Oxygen sensors are also a key component of a vehicle emission control system. When functioning properly, an oxygen sensor measures the proportional amount of oxygen in a liquid or a gas, which, when uncontrolled, can result in fuel that is not burned that causes excess pollution, decreased vehicle performance, or other engine damage.

78. Using DG Auto obsolete motor oil in modern vehicles can cause damage to the engine and engine components that results in, among other things, the accumulation of excessive sludge, incomplete combustion, or over-heating in the engine. Impairment to engine function due to the use of obsolete oil can decrease the efficiency in an engine and result in increased fuel consumption. This damage caused by the use of obsolete oil can increase over time and can significantly shorten the life of an engine

79. Using DG Auto obsolete motor oil in modern vehicles can also damage emission control systems within an engine intended to reduce harmful emissions, including catalytic converters and oxygen sensors. Using obsolete motor oil in a modern vehicle may, for example, poison the precious metals used in the catalytic converter and deactivate the catalyst.

80. The impairment of engine emission control devices results in increased emission of pollutants that have several harmful effects on the environment and human health, including carbon monoxide, hydrocarbons, nitrogen oxides, particulate matter and other possible carcinogens.

81. Carbon monoxide (“CO”) is a toxic air pollutant produced in the incomplete combustion of gasoline. CO is harmful when breathed because it displaces oxygen in the blood and deprives

the heart, brain, and other vital organs of oxygen. Overexposure to carbon monoxide may be fatal. People with existing heart problems are likely to suffer greater effects from exposure to CO. The elderly, children and unborn babies are also particularly at risk of harm.

82. Hydrocarbons are carcinogenic and are also a major contributor to smog. Prolonged exposure to hydrocarbons contributes to asthma, liver disease, lung disease and cancer.

83. Nitrogen oxides (“NO_x”) are hazardous and harmful air pollutants that can have significant effects on breathing and the respiratory system, cause damage to lung tissue, and lead to premature death. Small particles of NO_x can penetrate deeply into sensitive parts of the lungs, and may cause or worsen respiratory diseases like emphysema and bronchitis, and aggravate existing heart disease. Children, the elderly, people with lung diseases, and people who work or exercise outside are particularly susceptible to such adverse health effects.

84. NO_x also contribute to acid rain and ozone formation. Ozone, even at low levels, can cause cardiovascular and respiratory health problems; can worsen bronchitis, emphysema, and asthma; and particularly impacts children and the elderly. Ozone can also prevent public enjoyment of public lands by diminishing air quality and visibility, damaging vegetation, reducing crop yields, and causing deterioration in water quality.

85. Particulate matter (“PM”), when inhaled, causes negative health effects such as asthma, lung cancer, cardiovascular disease, respiratory diseases, premature delivery, birth defects, and premature death. Children are particularly susceptible to PM pollution, as are older adults and people with existing heart or lung disease.

86. PM can also have negative impacts on the environment by making lakes and streams acidic, changing the nutrient balance in coastal waters and large river basins, depleting the nutrients in

soil, damaging sensitive forests and farm crops, affecting the diversity of ecosystems, and contributing to acid rain.

87. When released into the air, these pollutants can cause significant, long-lasting impacts to human health and the environment.

88. The significant impacts of increased air pollution resulting from the improper use of DG Auto obsolete motor oil in modern vehicles is wholly avoidable but for Dollar General's deceptive and misleading business practices.

89. The public has a common right to a clean and healthy environment.

90. The Attorney General may bring an action to abate a public nuisance and protect the public's common right to clean air and clean water.

91. Plaintiff therefore brings the statutory and common law claims alleged herein to abate Dollar General's deceptive practices and to obtain compensation for the losses suffered by Plaintiff and New Mexico consumers.

V. CLAIMS AND VIOLATIONS ALLEGED

A. COUNT 1 – VIOLATION OF THE NEW MEXICO UNFAIR PRACTICES ACT

92. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

93. Plaintiff brings this claim under the UPA, Section 57-12-3, which prohibits Dollar General from engaging in "unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce."

94. The UPA defines an "unfair or deceptive trade practices" as an "act specifically declared unlawful pursuant to the UPA, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or

loan of goods or services . . . which may, tends to or does deceive or mislead any person.” Section 57-12-2(D).

95. The UPA further defines an “unfair or deceptive trade practice” as:

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

....

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another; or

....

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.

Id.

96. Dollar General engaged in deceptive conduct in the course of its marketing and sale of its DG Auto obsolete motor oil in violation of Section 57-12-3.

97. Specifically, as described herein, Dollar General made the following representations, expressly or by implication to New Mexico consumers about the deceptively labeled motor oil:

- a) that Dollar General’s DG Auto obsolete motor oil was suitable for use in all automobiles;
- b) that Dollar General’s DG Auto obsolete motor oil was safe to use in all automobiles; and
- c) that Dollar General’s DG Auto obsolete motor oil was of similar quality as the other motor oil beside which Dollar General positions its DG Auto obsolete motor oil on its store shelves.

98. These representations were false and misleading that may, tend to or do deceive or mislead any person.

99. Defendant violated and continues to violate the UPA by engaging in the following practices proscribed by Section 57-13-2(D):

- a) By representing that DG Auto obsolete motor oil “lubricates and protects your engine,” placing the DG Auto obsolete motor oil on shelves next to legitimate motor oil intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG Auto obsolete motor oil has characteristics, uses or benefits which it does not have, in violation of Section 57-12-2(D)(5);
- b) By representing that DG Auto obsolete motor oil “lubricates and protects your engine,” placing the DG Auto obsolete motor oil on shelves next to legitimate motor oil intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is representing that DG Auto obsolete motor oil is of a particular standard, quality, or grade, when it is of another, in violation of Section 57-12-2(D)(7); and
- c) By representing that DG Auto obsolete motor oil “lubricates and protects your engine,” placing the DG Auto motor oil on shelves next to legitimate motor oil intended for use in modern day vehicles, and failing to adequately warn consumers of the harm their products can cause, Defendant is “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact [that] deceives or tends to deceive,” in violation of Section 57-12-2(D)(14).

100. Defendant violated the UPA by failing to state material facts that would adequately warn New Mexico consumers that DG Auto obsolete motor oil is not suitable for, and can harm, most vehicles on the road.

101. Defendant's actions as described herein were done knowingly and willfully, with conscious disregard of the rights of New Mexico citizens.

102. Pursuant to Section 57-12-8(B), Plaintiff seeks injunctive relief in the form of an order requiring Defendant to cease (1) all current and/or future sales of obsolete motor oil while continuing its deceptive and misleading practices; (2) expressly or impliedly representing to current and potential purchasers of the DG Auto obsolete motor oil that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; and (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendant to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of its DG Auto obsolete motor oil.

103. Plaintiff and the people of New Mexico will be irreparably harmed if such an order is not granted.

104. Section 57-12-11 states,

[i]n any action brought under Section 57-12-8 N.M. Stat. Ann. 1978, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty of not exceeding five thousand dollars (\$5,000) per violation.

105. Defendant committed a separate and independent violation of the UPA through each and every unfair, deceptive, false or misleading statement or other representation, or omission of material facts.

106. Each and every time Defendant advertised or presented for sale its DG Auto obsolete motor oil in the State of New Mexico, Defendant committed a separate and independent violation of the UPA through unconscionable, unfair and deceptive trade practices.

107. Defendant has engaged in violations of the UPA by making unfair, deceptive, false or misleading statements or other representations and by omitting material information with respect to its DG Auto obsolete motor oil since it began selling the product in 2010, with multiple violations occurring on each and every day during this period.

108. Defendant should therefore be assessed a civil penalty of \$5,000 for each of those violations.

109. New Mexico consumers have lost money as a result of Defendant's deceptive conduct. New Mexico consumers would not have purchased the DG Auto obsolete motor oil if they had known it was obsolete and not suitable for their vehicles, was not capable of protecting or lubricating their vehicles' engine, and could harm their vehicles.

110. Defendant collected substantial profits from these illegal sales. Dollar General's sale of DG Auto obsolete motor oil produced increased profit margins for each sale than would the sale of non-obsolete motor oil.

111. Accordingly, Plaintiff also seeks restitution for the disgorgement of unlawful profits obtained by Defendant through the sale of its DG Auto obsolete motor oil pursuant to Section 57-12-8(B), as well as any other such other relief as the Court may deem appropriate.

C. COUNT 2 – VIOLATION OF THE NEW MEXICO FALSE ADVERTISING ACT

112. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

113. Plaintiff brings this claim under the FAA, Section 57-15-1, which prohibits false advertising in the conduct of any business, trade, or commerce.

114. The FAA defines "false advertising" as "advertising, including labeling, which is misleading in any material respect," and in determining whether any advertising is misleading, the

FAA instructs that “representations made by statement, word, design, device, sound or any combination thereof” as well as “the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual” should be considered. Section 57-15-2.

115. Dollar General engaged in false advertising in the course of its marketing of its DG Auto obsolete motor oil in violation of NMSA 1978, Sections 57-15-1 to -10.

116. Specifically, as described herein, Dollar General’s advertising, including labeling, of its DG Auto obsolete motor oil was and is misleading in material respects:

- a) Dollar General’s labeling on its DG Auto obsolete motor oil failed to reveal material facts with respect to the DG Auto obsolete motor oil. Dollar General’s advertising, including its front label, failed to reveal that its DG SAE 10W-30 and DG SAE 10W-40 motor oil products are not suitable for motor vehicles built after 1988, that its DG SAE-30 motor oil product is not suitable for motor vehicles manufactured after 1930, that its DG Auto obsolete motor oil products can harm modern engines, and that current, non-obsolete motor oils are backwards compatible and are suitable for engines manufactured in earlier years.
- b) Dollar General’s advertisements, including its labeling, are misleading in material respects in that Dollar General only shows the front of its DG Auto obsolete motor oil products in its advertisements and uses descriptions such as “Auto Essentials,” “Home Basics,” “Quality Auto Care,” “Auto for Less,” “Complete Car Savings,” and “Auto Savings that Shine,” along with its advertised low price, to wrongly suggest that the

DG Auto obsolete motor oil is an everyday product, similar in kind and quality to brand-name motor oil products, only cheaper.

117. Defendant's actions as described herein were done knowingly and willfully, with conscious disregard of the rights of New Mexico consumers.

118. Pursuant to Section 57-15-5, Plaintiff seeks injunctive relief in the form of an order requiring Defendant to cease (1) all current and/or future sales of obsolete oil while continuing to engage in false advertising practices; (2) expressly or impliedly representing to current and potential purchasers of the DG Auto obsolete motor oil that the product is suitable for use in modern day vehicles manufactured after 1988, or in the case of SAE-30, after 1930; and (3) providing inadequate warnings as to the harm the oil can cause. Plaintiff also seeks injunctive relief in the form of corrective advertising requiring Defendant to disseminate truthful, adequate disclosures and warnings about the actual uses (to the extent there are any) of its DG Auto obsolete motor oil.

119. Section 57-15-4 states, "[a]ny person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practices made unlawful by this act shall be liable to a civil penalty of not more than five hundred dollars (\$500) for each violation."

120. Defendant committed a separate and independent violation of the FAA with each and every false advertisement, including its labeling, that was materially misleading and/or omitted material facts about its DG Auto obsolete motor oil.

121. Each and every time Defendant placed a bottle of its DG Auto obsolete motor oil on a store shelf or otherwise advertised its DG Auto obsolete motor oil in the State of New Mexico, Defendant committed a separate and independent violation of the FAA through its materially

misleading representations and omissions on the product labels and in its advertisements of the same.

122. Defendant has engaged in violations of the FAA by making false or misleading statements and by omitting material information on its product labels and in its advertisements of the same with respect to its DG Auto obsolete motor oil since it began selling the products in 2010, with multiple violations occurring on each and every day during this period.

123. Defendant should therefore be assessed a civil penalty in the amount of \$500 for each violation of the FAA.

C. COUNT 3 – COMMON LAW PUBLIC NUISANCE

124. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

125. Under New Mexico law, a common law public nuisance is similar to the New Mexico public nuisance statute, NMSA 1978, § 30-8-1, both described as an “unreasonable interference with a common right to the general public.” *Sunland Park v. Harris News, Inc.*, 2005-NMCA-128, ¶ 40, 138 N.M. 588, 124 P.3d 566 (quoting *State ex rel. Los Ranchos v. Albuquerque*, 1994-NMSC-126, 119 N.M. 150, 889 P.2d 185).

126. Dollar General’s deceitful and misleading marketing and advertising practices, as described herein, induces Dollar General’s customers into purchasing its DG Auto obsolete motor oil for use in their modern-day vehicles without knowing that the motor oil is obsolete and not suitable for use in their modern vehicles.

127. The improper use of Dollar General’s obsolete motor oil in modern vehicles damages engines and deactivates emission control equipment that is required to reduce and control the emission of harmful pollutants and thereby causes the increase of ambient concentrations of carbon

monoxide, hydrocarbons, nitrogen oxides, particulate matter, and other possible carcinogens, each of which has been linked to adverse human health and environmental impacts.

128. Many New Mexico consumers have sustained damage to their automobiles as a result of the use of Dollar General's DG Auto obsolete motor oil, including damages to their engines and emission control systems, which reduce the toxicity of exhaust leaving the engine.

129. When damaged, engines run less efficiently and emission control systems will fail to control the emission of dangerous pollutants into the atmosphere, including carbon monoxide, hydrocarbons, nitrogen oxides, particulate matter and other possible carcinogens. When released into the air, these pollutants can cause significant, long-lasting impacts to human health and the environment.

130. The public has a common right to a clean and healthy environment.

131. The practices of Dollar General with regard to its sale of obsolete motor oil pollute and degrade the environment in such a way that interferes with the public's common right to clean air and clean water, which constitutes a common law public nuisance.

132. The increased presence of toxic air pollution interferes with the comfortable enjoyment of the environment for the people of the State of New Mexico.

133. The increased presence of toxic air pollution interferes with New Mexico's efforts to comply with state and federal air quality standards.

134. The presence of toxic emissions causes inconvenience and annoyance to the State, who is charged with reducing air pollutants towards levels prescribed by state and federal law, in order to protect human health and the environment and the quality of air in New Mexico.

135. Defendant's deceitful and misleading conduct caused an unreasonable interference with common rights enjoyed by the people of the State of New Mexico and by the general public

because Defendant knew or should have known that its conduct would create a continuing problem with long-lasting significant negative effects on the rights of the public to a clean and healthy environment.

136. Defendant's deceitful and misleading conduct created this public nuisance and Defendant's actions were a direct and legal cause of the public nuisance.

137. Plaintiff seeks injunctive relief to abate the public nuisance caused by Dollar General in the form of an order requiring Defendant to develop and fund a program by which it will inspect all automobiles in which DG Auto obsolete motor oil has been used and repair or replace all automobiles or their parts whose engines, emission controls systems or catalytic converters have been damaged from the use of DG Auto obsolete motor oil and are emitting dangerous pollutants into the air by: (1) providing notification to all Dollar General customers of the damages caused to modern automobiles from the use of DG Auto obsolete motor oil; (2) inspecting all automobiles in which DG Auto obsolete motor oil has been used to determine the extent of damages; (3) repairing, if possible, or replacing damaged automobiles or their parts to end the increased emission of pollutants and human carcinogens; and (4) taking any other action deemed necessary to mitigate the detriment to the clean air of New Mexico.

138. Plaintiff and New Mexico consumers shall be irreparably harmed if such an order is not granted.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, the State of New Mexico, respectfully requests that the Court enter judgment in its favor and against Defendant by granting relief as follows:

- A. Declaring that Defendant must provide accurate representations of the kind and quality of the motor oil sold at its stores;

- B. Enjoining Defendant from continuing the deceptive practices alleged herein;
- C. Ordering Defendant to develop and fund a State-approved program through which:
 - 1. Notification will be provided to all Dollar General customers of the damages caused by the use of DG Auto obsolete motor oil in modern automobiles;
 - 2. All automobiles in which DG Auto obsolete motor oil has been use will have the engine, emission control system and catalytic converters inspected to determine the extent of damage, if any; and
 - 3. If found to be damaged, unsuitable for driving, or to be emitting an increased level of pollutants, Defendant will repair or replace the damaged elements of the automobile or the entire automobile if necessary; and
 - 4. Defendant will take any other action necessary to mitigate the detriment to the clean air and environment of the State of New Mexico.
- D. Awarding the maximum amount of statutory penalties available under NMSA 1978, § 57-12-11 for each violation of the New Mexico Unfair Practices Act;
- E. Awarding the maximum amount of statutory penalties available under NMSA 1978, §54-15-4 for violations of New Mexico's False Advertising Act;
- F. Awarding restitution and disgorgement of the unlawful profits collected by the Defendant;
- G. Awarding prejudgment and post-judgment interest at the prevailing legal rate;
- H. Awarding Plaintiff's attorneys' fees and costs of suit; and
- I. Awarding such other and further relief as the Court may deem necessary and appropriate.

VII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable.

Dated: June 5, 2017

Respectfully submitted,

**HECTOR H. BALDERAS
NEW MEXICO ATTORNEY GENERAL**

/s/Scott Cameron

Scott Cameron

P. Cholla Khoury

Assistant Attorneys General

201 Third Street NW, Suite 300

Albuquerque, NM 87102

(505) 717-3500

scameron@nmag.gov

ckhoury@nmag.gov

Attorneys for Plaintiff/Petitioner

KANNER & WHITELEY, L.L.C.

Allan Kanner, Esq.*

Cynthia St. Amant, Esq.*

Conlee Whiteley, Esq.*

Allison Brouk, Esq.*

701 Camp Street

New Orleans, LA 70130

Telephone: (504) 524-5777

Facsimile: (504) 524-5763

**Pro Hac Vice Applications Pending*

Attorneys for Plaintiff State of New Mexico