

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALEXANDER HODOROVYCH,)
on behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

DOLLAR GENERAL CORPORATION,)

Defendant.)

Case No.: 1:22-cv-03415

Judge Sharon Johnson Coleman

**DEFENDANT DOLLAR GENERAL CORPORATION’S
MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendant Dollar General (“Defendant”), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), moves this Court to dismiss Plaintiff Alexander Hodorovych’s (“Plaintiff”) Complaint in its entirety. In support of this Motion, Defendant submits a memorandum of law in support, which is incorporated herein, and also states as follows:

1. Plaintiff’s Complaint concerns one over-the-counter lidocaine patch product (“Product”), sold by Dollar General, that contains certain phrases on the front label of the Product.

2. Plaintiff claims that the phrasing on the Product label that indicates the “stay-put flexible patch” provides “numbing relief” and “LASTS UP TO 12 HOURS” is false, deceptive and/or misleading, because the Product fails to adhere for twelve hours or “even longer,” fails to provide “maximum strength” relief for twelve hours, and does not provide “numbing relief” that is equivalent to the relief of a prescription medical treatment provided by a physician.

3. As a result, Plaintiff asserts claims on behalf of an Illinois consumer class and a multi-state class, specifically: (1) violation of the Illinois Consumer Fraud Act (“ICFA”); (2) violations of various state consumer fraud acts, (3) breaches of express warranty, implied warranty

of merchantability and fitness for a particular purposes, and the Magnuson Moss Warranty Act; (4) negligent misrepresentation; (5) fraud; and (6) unjust enrichment.

4. The sole basis for Plaintiff's claims is his unreasonable interpretation of the Product's label. As detailed in the accompanying memorandum of law, Plaintiff's claims should be dismissed because he has not plausibly alleged that the Product label would mislead a significant portion of general consuming public, the operative standard. There is nothing misleading about the Product's labels: "lasts up to 12 hours" constitutes neither a guarantee nor a promise, and provides for the outermost maximum amount of time the patch may last, not the minimum, as Plaintiff suggests. Plaintiff's interpretation otherwise is unreasonable. Plaintiff's interpretations about the strength of the Product fare no better: "numbing relief" and "maximum strength," in no way, implies equivalence with the strength of a prescription product, nor would a reasonable consumer in the market for an over-the-counter Product think the same. To make matters worse, Plaintiff fails to even support his general allegations about the adhesion and strength qualities of the Product with specific averments in the Complaint, failing to allege that the Product (1) did not adhere to him, (2) did not adhere to him for a maximum of twelve hours, and (3) never adheres to anyone for a maximum of twelve hours.

5. Plaintiff's claims should also be dismissed because he fails to plead each claim in compliance with Rule 8 and, where relevant, Rule 9(b).

6. Finally, Plaintiff lacks Article III standing to bring claims for injunctive relief and lacks statutory standing to bring claims on behalf of the nationwide class under other states' consumer fraud statutes.

WHEREFORE, for all of these reasons, and the reasons set forth in Defendant's memorandum of law, Defendant respectfully requests an order dismissing Plaintiff's Complaint with prejudice and such other and further relief as the Court deems appropriate.

Dated: October 18, 2022

Respectfully submitted,

DENTONS US LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of October, 2022, a true copy of the foregoing **DEFENDANT DOLLAR GENERAL CORPORATION'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** was served upon counsel of record via the Court's electronic case filing system.

/s/ Timothy J. Storino
*One of the Attorneys for Defendant
Dollar General Corporation*