

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

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| IN RE: DOLLAR GENERAL CORP. |) | MDL No. 2709 |
| MOTOR OIL MARKETING AND |) | |
| SALES PRACTICES LITIGATION |) | Master Case No. 16-02709-MD-W-GAF |
| |) | |
| THIS PLEADING RELATES TO: |) | |
| |) | |
| ALL ACTIONS |) | |
| |) | |

**FINAL ORDER AND JUDGMENT GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASS,
AWARDING ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS,
AND DISMISSING ACTION**

On February 8, 2021, this Court granted preliminary approval of the proposed class action settlement set forth in the Settlement Agreement between Plaintiffs, on behalf of themselves and all members of the Settlement Class, and Defendants Dollar General Corporation, Dolgencorp, LLC, and DG Retail, LLC.

On June 22, 2021, the Court held a duly noticed Final Approval hearing to consider, among other things: (a) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (b) whether the proposed Class should be certified for settlement purposes; (c) whether and in what amount to approve Class Counsel's request for an award of attorneys' fees and costs, and Service Awards; and (d) whether a judgment should be entered dismissing the Action with prejudice.

Having duly considered all papers filed and arguments presented, pursuant to Rule 23 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED and ADJUDGED as follows:

1. Capitalized terms used in this Final Order and Judgment shall have the same meaning as those defined in the Parties' Settlement Agreement on file with the Court.

2. The Court has jurisdiction over this Action, over each of the Parties and over all Settlement Class Members.

Class Certification

3. The Court finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23(a) and (b)(3) have been satisfied for settlement purposes in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class they represent; (d) the Class Representatives have fairly and adequately represented the interests of the Settlement Class for purposes of entering into the Settlement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

4. The Court grants final certification of the Settlement Class for settlement purposes only, defined as:

All Persons in the United States who, between September 1, 2010 and December 31, 2017, for personal use and not for resale, purchased Defendants' DG-branded motor oil, DG SAE 10W-30 (SF specification) and/or DG SAE 10W-40 (SF specification) for use in vehicles manufactured after 1988, and/or DG SAE 30 (SA specification) for use in vehicles manufactured after 1930.

Excluded from the Settlement Class are: (a) Dollar General, its officers, directors, agents, trustees, corporations, trusts, representatives, employees, successors, assigns, or other Persons or entities related to or affiliated with Dollar General and/or their officers and/or directors; (b) Judges, justices, magistrates or judicial officers presiding over this matter and their immediate family

members and staff; (c) Counsel for Plaintiffs in the lawsuits that comprise this MDL and their employees; and (d) Settlement Class Members who filed a valid, timely Opt-Out request.¹

5. The Court finally appoints Plaintiffs Robert Oren, Roberto Vega, Allen Brown, Bradford Barfoot, Gerardo Solis, Nicholas Meyer, John Foppe, John McCormick, Bruce Goel, Scott Sheehy, Janine Harvey, William Flinn, Kevin Gadson, Miriam Fruhling, Robin Preas, James Taschner, Jason Wood, Roger Barrows, Brandon Raab, and Seit Alla as Class Representatives of the Settlement Class and finds that they have continued to adequately and fairly represent the Settlement Class.

6. The Court finally appoints the following Plaintiffs' counsel as Class Counsel for the Settlement Class and finds that they have continued to adequately and fairly represent the Settlement Class:

Lead Class Counsel
Allan Kanner
Cynthia G. St. Amant
KANNER & WHITELEY, LLC

Liaison Counsel
Kenneth B. McClain
Kevin D. Stanley
HUMPHREY FARRINGTON
& MCCLAIN, P.C.

Mitchell Breit
SIMMONS HANLY
CONROY

Esther E. Berezofsky
Michael J. Quirk
MOTLEY RICE, LLC

Gillian Wade
Sara D. Avila
Marc Castaneda
MILSTEIN JACKSON
FAIRCHILD & WADE

M. Ryan Casey
THE CASEY LAW FIRM

David Futscher
FUTSCHER LAW PLLC

Stephen J. Nolan
SMITH, GILDEA &
SCHMIDT, LLC

John P. Zuccarini
LAW OFFICES OF JOHN
P. ZUCCARINI

Gerald H. Clark
Mark W. Morris
CLARK LAW FIRM, P.C.

Shpetim Ademi
Mark A. Eldridge
ADEMI LLP

Jed Chronic
MASCHKA, RIEDY, RIES
& FRENTZ LAW FIRM

A. Craig Eiland

Walter Daniels

Brian Ku

¹ A list of individuals who timely and properly excluded themselves from the Settlement Class was filed under seal by Plaintiffs in conjunction with their Motion for Final Approval.

Class Notice

7. The Court finds that Class Notice was given in the manner ordered by the Court in its Preliminary Approval Order.

8. The Court has determined that the Notice given to the Settlement Class, in accordance with the Notice Plan in the Settlement Agreement and the Preliminary Approval Order, fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all applicable law.

9. The Class Notice given to the Settlement Class apprised Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right to make a claim, object to the Settlement, or exclude themselves from the Settlement Class, their right to appear at the Final Approval Hearing, and the binding effect of this Final Order and Judgment on all Settlement Class Members who did not timely exclude themselves from the Settlement Class.

10. Due and adequate notice of the proceedings having been given to the Settlement Class and a full opportunity having been offered to the Settlement Class to participate in the Final Approval Hearing, it is hereby determined that all Settlement Class Members are bound by this Final Order and Judgment, except those who properly excluded themselves from the Settlement.

11. The Court also finds that the appropriate state and federal officials were timely notified of the Settlement Agreement under the Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, and that ninety (90) days have passed without comment or objection from any governmental entity.

Objection to the Settlement

12. One purported objection was received by the Court on April 12, 2021, from Michael Lujan. Doc. # 263. Mr. Lujan's objection does not comply with the requirements for objections set forth in Paragraph 14 of the Court's Preliminary Approval Order. Doc. # 256 at 6-7. Specifically, Mr. Lujan's objection is deficient in at least the following ways:

- a. it fails to contain a statement that Mr. Lujan reviewed the definition of the Settlement Class and that he qualifies as a Settlement Class Member;
- b. it fails to identify the type of DG Auto motor oil Mr. Lujan purchased, the approximate date or dates of purchase, and the location or locations of purchase;
- c. it fails to provide a detailed list of other objections to settlements submitted to any court within the past five (5) years; and
- d. it was not mailed to Class Counsel or Defendants' Counsel as required.

13. In addition, Mr. Lujan did not clearly state the substance of his objection.

14. The Court finds that the objection of Michael Lujan (Doc. # 263) is not well-taken and does not comply with the requirements of this Court's February 8, 2021 Order. Mr. Lujan's objection is OVERRULED.

Approval of the Settlement

15. The Court grants final approval to the Settlement.

16. Factors supporting the Court's order granting final approval to this Settlement include:

- a. The Settlement was the product of arm's length negotiations conducted in good faith among experienced counsel, with no evidence of collusion. The Settlement was reached after extensive negotiations and under the supervision of a professional mediator.
- b. If the case did not settle, continued litigation would be time consuming, complicated and expensive, including Defendant's pending appeal of the Court's class certification order. Settlement at this stage avoids the expenditure of the Parties' and the Court's resources.

- c. The reaction of the Class has been favorable. Claims are being made and will continue through the claims period.
- d. The Parties have engaged in significant litigation, discovery, and motion practice, which this Court have overseen. The Court finds that each side possessed sufficient information to assess both the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses thereto.
- e. If the case had not settled, Plaintiffs faced considerable risks in maintaining certification of the litigation classes. The Settlement guarantees a good result for the Settlement Class and eliminates the risks that the Settlement Class Members may not recover at all.
- f. The benefits offered by the Settlement make it fair, reasonable, and adequate, factoring in the strengths and weaknesses of the case.

17. The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members.

18. The Court confirms the appointment of Heffler Claims Group as the Settlement Administrator and Mark Rapazzini as the Special Master to help administer the Property Damage Benefits (Tier 3) claims process, to carry out the duties and responsibilities set forth in the Settlement Agreement. Neither Class Representatives, Class Counsel, Defendants, nor Defendants' Counsel shall be liable for any act or omission of the Settlement Administrator or the Special Master.

19. The Court hereby directs the Parties to implement the Settlement Agreement in accordance with its terms and conditions. The Court expressly approves the Settlement benefit provisions as fair, reasonable, adequate and consistent with due process, including the prospective injunctive relief, which shall be binding on the Defendants on the terms set forth in the Settlement Agreement.

20. The Release provided in Section 7 of the Settlement Agreement is approved.

21. As of the Effective Date of the Settlement Agreement, the Released Claims as defined in the Settlement Agreement will be released. The release shall not bar the claims of the State of New Mexico in *State of New Mexico ex rel. Hector Balderas v. Dolgencorp, LLC*, No. D-101-CV-2017-01562, First Judicial District Court, County of Santa Fe, New Mexico, and the State of Mississippi in *State of Mississippi ex rel. Jim Hood, Attorney General of the State of Mississippi, v. Dollar General Corp. and Dolgencorp, LLC*, No. 4:18-cv-92-GAF (W.D. Mo.).

22. As of the Effective Date of the Settlement Agreement, the terms of the Settlement Agreement, and of this Final Order and Judgment, shall be forever binding on, and shall have *res judicata* and preclusive effect for the Released Claims in, all pending and future lawsuits maintained by Plaintiffs and all Settlement Class Members who did not timely exclude themselves from the Settlement Class, as well as any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate.

23. Members of the Settlement Class identified in Exhibit 1 to this Order, which is filed under seal, have opted out of, or sought exclusion from, the Settlement by the date set by the Court, are deemed not to be Settlement Class Members for purposes of this Order, do not release their claims against the Released Parties by operation of the Settlement Agreement, and will not obtain any benefits from the Settlement.

Attorneys' Fees, Costs and Expenses

24. The Court has considered the submissions by the Parties and all other relevant factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on behalf of the Class.

25. The Court notes that the Settlement Agreement and the Notice to the Settlement Class provides that Class Counsel may seek up to an amount not to exceed ten million dollars (\$10,000,000.00) as attorneys' fees, costs, and expenses and that this amount was negotiated with Defendants under the supervision of the mediator only after the Parties reached agreement on the other substantive terms of the Settlement.

26. Class Counsel moved for an award of \$10,000,000.00 for fees, costs, and expenses.

27. After carefully considering Class Counsel's application, the Court awards Class Counsel the full amount of \$10,000,000.00 as requested.

28. Factors supporting the Court's order granting Plaintiffs' Motion for Attorneys' Fees, Costs, and Expenses include:

- a. The time and labor expended by Class Counsel on behalf of the Settlement Class;
- b. The complexity and risks of the litigation;
- c. The results achieved in this Settlement, including both monetary and injunctive relief;
- d. The quality of the representation;
- e. The contingent nature of the fee;
- f. The reasonableness of the requested fee under both the percentage method and the lodestar cross check; and
- g. The value of the litigation to the public.

29. The Court has reviewed and considered Class Counsel's declarations in support of the Motion for fees and finds:

- a. The amount of hours expended by Class Counsel was reasonable in light of the litigation.
- b. The hourly rate requested for each counsel was reasonable and the Court approves these rates.

30. The Court awards Class Counsel \$10,000,000.00 in attorneys' fees, costs, and expenses, to be paid by Defendants in accordance with and at the times prescribed by the Settlement Agreement. Class Counsel shall allocate the fee award among themselves according to their own agreement.

Service Awards

31. The Court finds the Plaintiffs served as adequate Class Representatives and performed work on behalf of the absent Settlement Class Members.

32. The Settlement Agreement and the Notice to the Settlement Class provides that Class Counsel may seek a lump sum amount of one hundred and thirty-five thousand dollars (\$135,000) as Service Awards to the Plaintiffs, to be allocated among the Plaintiffs by the Court.

33. Class Counsel has requested Service Awards to the Plaintiffs in the amount of \$135,000.00, to be divided equally among the twenty Plaintiffs, resulting in an individual Service Award for each Plaintiff/Class Representative in the amount of \$6,750.00.

34. The Court grants Class Counsel's request for Service Awards in the amount of \$6,750.00 each to Plaintiffs Robert Oren, Roberto Vega, Allen Brown, Bradford Barfoot, Gerardo Solis, Nicholas Meyer, John Foppe, John McCormick, Bruce Goel, Scott Sheehy, Janine Harvey, William Flinn, Kevin Gadson, Miriam Fruhling, Robin Preas, James Taschner, Jason Wood, Robert Barrows, Brandon Raab, and Seit Alla. This amount shall be paid by Defendants in accordance with and at the times prescribed by the Settlement Agreement.

Final Judgment

35. This Action, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice in favor of Defendants and against the Plaintiffs

and all Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

36. This Final Order and Judgment shall not be: (1) construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind; or (2) construed as an admission or concession by the Settlement Class as to any lack of merit of the claims or the Action.

37. This Court retains exclusive jurisdiction over the Settlement, including the implementation, administration, enforcement, and interpretation of this Settlement Agreement and of this Final Order and Judgment.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: June 22, 2021