

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

DAVID LEVY, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

DOLGENCORP, LLC, DOLLAR)
GENERAL CORP., and DG RETAIL, LLC,)

Defendants.)

Case No. 3:20-cv-01037-TJC-MCR

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this __ day of __, 2021, by and between Plaintiff David Levy on behalf of himself and the Settlement Class (“Plaintiff”), on the one hand, and Defendants Dollar General Corporation; Dolgencorp, LLC; and DG Retail, LLC (collectively “Defendants” or “Dollar General”),¹ on the other hand, subject to and conditioned on preliminary and final approval by the United States District Court for the Middle District of Florida. Capitalized terms used herein are defined in Section 2 of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to the Court’s approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in this Settlement Agreement and upon the entry by the Court of a Final Settlement Order and Judgment and the occurrence of the Effective Date, the Action shall be settled and compromised,

WHEREAS:

A. The definitions appearing in Section 2 and other terms defined in this Settlement

¹ References to payments by Dollar General herein include not only those payments made directly by Dollar General, but also those payments, if any, made by any insurer or vendor who is obligated or voluntarily agrees to contribute to such payments.

Agreement are incorporated by reference in these introductory sections.

B. During the relevant time period, Dollar General marketed, advertised, and sold its own brand of over-the-counter pain reliever and fever reducer under the “DG™ health” label, including Infants’ Pain & Fever Acetaminophen—DG™ (“DG Health Infants’ Acetaminophen”) and Children’s Pain & Fever Acetaminophen—DG™ (“DG Health Children’s Acetaminophen”).

C. The Complaint alleges that Dollar General used deceptive and misleading sales and marketing tactics, including its product labeling, in selling the DG Health Infants’ Acetaminophen and DG Health Children’s Acetaminophen.

D. Plaintiff, on behalf of himself and the putative Class Members, has filed this Action against Dollar General.

E. The Parties and their respective counsel first engaged in extensive direct negotiations over a number of months in the spring and summer of 2020. They then engaged in extensive arm’s-length negotiations under the supervision of an experienced mediator, Judge Morton Denlow with JAMS, and have agreed upon certain terms and conditions to settle and resolve this Action in a manner that is fair, reasonable, and reflects the best interests of the Settlement Class as a whole and avoids the expense, burden, and risks associated with further protracted litigation. A formal mediation was held on October 12, 2020, and after the mediation, the Parties spoke every few days with Judge Denlow until the final terms were agreed to. In using the mediator, the Parties exchanged multiple rounds of settlement proposals related to all aspects of settlement, eventually reaching a settlement in principle in early November 2020.

F. Dollar General vigorously denies all allegations of wrongdoing or liability made in the Action. Dollar General considers it desirable, however, to enter into this Settlement Agreement without in any way acknowledging any fault or liability, and solely for the purpose of

terminating this Action to avoid the cost, expense, inconvenience, uncertainty, distraction, time, and effort required to continue to defend such complex, burdensome, and potentially protracted litigation, and to permit the continued operation of its affairs unfettered by the tangible and intangible expense of the Action and the distraction and diversions of itself and of its key personnel.

G. The Settlement Agreement and all related documents are not and shall not be construed as an admission or concession by Dollar General of any fault or liability or wrongdoing, or of any deficiencies, faults, errors or omissions of any nature whatsoever of or by Dollar General.

H. Class Counsel are familiar with the claims being settled and the defenses asserted. Class Counsel have conducted a thorough investigation regarding the allegations set forth in the Complaint and have consulted frequently with the Named Class Representatives.

I. Class Counsel believe that the Action has substantial merit. However, Class Counsel recognize and acknowledge that the expense and length of continued proceedings necessary to prosecute the Action against Dollar General through trial and appeals may be risky, costly, and a time-consuming undertaking. Class Counsel also have taken into account the uncertain outcome of any future class certification motion and the risk of further litigation, especially in a complex suit such as this action, as well as the difficulties and delays inherent in such litigation. Class Counsel have also taken into account, among other things, the strengths and uncertainties of the claims asserted in the Action and the substantial benefits to be conferred on the Class by the settlement set forth in this Settlement Agreement. Class Counsel, therefore, have determined that the settlement set forth in this Settlement Agreement is in the best interests of the Class and is fair, reasonable, and adequate.

J. It is the intention of the Parties that the proposed Settlement described in this

Settlement Agreement completely resolves, releases, and forever discharges all claims that are, were, or could have been alleged concerning Dollar General's marketing and sales practices, including its product labeling, with its DG Health Infants' Acetaminophen, as further defined in Section 9.

K. Dollar General has agreed to settle the Action as part of a complete settlement and a release of all Released Claims, as defined in Section 9.

NOW THEREFORE, intending to be legally bound hereby, and in consideration of the promises, mutual covenants and conditions contained herein, IT IS STIPULATED, CONSENTED TO AND AGREED as follows, by and among the Parties, through the undersigned attorneys on behalf of their respective clients and the Settlement Class, for purposes of the Settlement only and subject to the approval of the Court under Federal Rule of Civil Procedure 23(e):

1. **Settlement**

The Action and all Released Claims for which a release is being given pursuant to Section 9 shall be finally and fully settled, compromised and dismissed on the merits, with prejudice and without costs (except as set forth herein), subject to the approval of the Court, in the manner and upon the terms and conditions stated in this Settlement Agreement. Neither the settlement nor this Settlement Agreement shall constitute or be an admission for any purpose by Dollar General or any other person, or be deemed evidence of any violation of any statutes, regulation, or law, or an admission of any wrongdoing or liability by Dollar General. Moreover, neither this settlement nor this Settlement Agreement shall constitute or be an admission for any purpose by Dollar General or any other person of acquiescence to class certification in any case other than this Action's Settlement Class for settlement purposes only. The Parties agree that this Settlement Agreement, settlement, and acquiescence to a Settlement Class on the part of the Released Parties

are for settlement purposes only and shall apply only to the facts and circumstances of this case and should not be considered in any other case or set of facts.

2. **Definitions**

As used herein, the following terms shall have the meanings stated in this Section. Capitalized terms used in this Agreement, but not defined below, shall have the meaning ascribed to them in this Agreement and the exhibits attached hereto:

- a. The “**Action**,” means the case entitled *Levy v. Dolgencorp, LLC*, filed on September 15, 2020, in the U.S. District Court for the Middle District of Florida and assigned Case No. 3:20-cv-01037-TJC-MCR.
- b. “**Settlement Administration**” means provision of the required Notice, receiving, assisting, and maintaining participation and proofs of participation, calculating and verifying participation, and overseeing the distribution of the Claim Fund.
- c. “**Agreement**” or “**Settlement Agreement**” means this Settlement Agreement made and entered into by the Parties to the Action and all exhibits attached to it.
- d. “**Approved Claim(s)**” means the claims approved by the Claim Administrator according to the Claims Administration Protocols in Exhibit A.
- e. “**Claim Administrator**” means the independent company agreed upon by the Parties to provide the Class and Media Notice and administer the claims process. The Parties agree that JND Legal Administration will be retained as the Claims Administrator.
- f. “**Claim Form**” means the form that is substantially in the form of Exhibit F hereto.
- g. “**Claim Fund**” means the one million and eight hundred thousand dollars (\$1,800,000) put towards a fund for payment of Class Members’ claims, a Fee Award in an amount to be approved by the Court, a Class Representative Service Award to the named

plaintiff in an amount to be approved by the Court, if any, certain notice and administration costs, and Claim Fund Expenses, if any.

- h. “**Claim Fund Balance**” means the balance, if any, after submission of the Distribution Plan, consisting of the Settlement Amount paid into the Claim Fund minus: (i) the total amount paid to Class Members who submitted Approved Claims; (ii) the total amount, up to \$350,000, paid to the Claim Administrator toward Settlement Administration Expenses; (iii) Claim Fund Expenses; (iv) Fee Award in an amount to be approved by the Court; and (v) Class Representative Service Award to the named plaintiff, if any, in an amount to be approved by the Court.
- i. “**Claim Fund Expenses**” are expenses associated with maintaining the Claim Fund (including taxes that may be owed by the Claim Fund).
- j. “**Claim Review Period**” shall begin no later than 21 days after the Preliminary Approval Order through the date of the Distribution Plan.
- k. “**Claim Submission Period**” means the period beginning on the date notice to the Class is first published, and continuing for at least 75 days after the date of commencement of Class Notice.
- l. “**Class,**” “**Settlement Class,**” “**Class Members,**” or “**Settlement Class Members**” means all individuals in the United States who purchased DG Health Infants’ Acetaminophen within the Class Period for personal or household use. Specifically excluded from the Class are (a) Defendants; (b) the officers, directors, or employees of Defendants and their immediate family members; (c) any entity in which Defendants have a controlling interest; (d) any affiliate, legal representative, heir, or assign of Defendants; (e) all federal court judges who have presided over this Action and their

- immediate family members; (f) all persons who submit a valid request for exclusion from the Class; and (g) those who purchased the DG Health Infants' Acetaminophen for the purpose of resale or for use in a business setting.
- m. **“Class Counsel”** means the attorneys of record for Plaintiffs in this Action.
 - n. **“Class Notice”** means the long form notice “Notice of Class Action Settlement” substantially in the same form as Exhibit E attached hereto.
 - o. **“Class Notice Package”** means the information as approved in the form and content by Class Counsel and Defendants' Counsel and to be approved by the Court. Class Notice Packages will include (a) the Class Notice, and (b) the Claim Form.
 - p. **“Class Period”** is from September 15, 2016, to the date notice to the Class is first published.
 - q. The **“Complaint”** means the Class Action Complaint filed on September 15, 2020 in Case No. 3:20-cv-01037-TJC-MCR, in the Middle District of Florida.
 - r. The **“Court”** means the United States District Court for the Middle District of Florida, Western Division.
 - s. **“Defendants”** or **“Dollar General”** means Dollar General Corporation; Dolgencorp, LLC; and DG Retail, LLC.²
 - t. **“Defendants' Counsel”** means the law firm of McGuireWoods LLP.
 - u. **“Distribution Plan”** means a written final accounting and plan of distribution prepared by the Claim Administrator, identifying (a) each claimant whose claim was approved, including the dollar amount of the payment awarded to each such claimant, and the dollar amount of any pro rata reduction or increase required by Paragraphs 5(b)(ii)(5)-

² See *supra* note 1.

(6); (b) each claimant whose claim was rejected; (c) the dollar amount of the Claim Fund Balance to be disbursed to the recipient(s) selected by the Court as provided in Paragraph 5(b)(ii)(7); and (d) a final accounting of all administration fees and expenses incurred by the Claim Administrator.

- v. **“Effective Date”** means the date on which this Settlement Agreement becomes binding as to all parties, which shall be the date on which the Final Settlement Order and Judgment approving the Settlement Agreement and any separate Fee Award become Final.
- w. **“Fee Award”** means the attorneys’ fees and expenses awarded by the Court from the Claim Fund to Class Counsel, not to exceed one-third of the Claim Fund, for all the past, present, and future attorneys’ fees and costs (including court costs), expenses, and disbursements incurred by them and their experts, agents, staff, and consultants in connection with the Action.
- x. **“Final”** means the later of the following dates:
 - i. The date of expiration of the time for filing or noticing of any appeal from the Final Settlement Order and Judgment, or any separate order on any Fee Award, that is, thirty (30) days after the entry of the Final Settlement Order and Judgment or any order on a Fee Award computed in accord with Federal Rule of Civil Procedure 6(a);
 - ii. The date of final affirmance of any appeal, the date of expiration of the time for filing petitions for writs of certiorari and, if certiorari is granted, the date of final affirmance following review pursuant to that grant; or
 - iii. The final dismissal of any appeal or proceeding on certiorari.

- y. **“Final Approval Hearing”** means the hearing to be held by the Court to consider and determine whether the proposed settlement of the Action as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, and whether the Final Settlement Order and Judgment approving the settlement contained in this Settlement Agreement should be entered.
- z. **“Final Settlement Order and Judgment”** means an order and judgment of the Court substantially in the form submitted by the Parties approving this Settlement Agreement as fair, reasonable, adequate, and in the best interests of the Class; providing for the orderly performance and enforcement of the terms and conditions of the Settlement Agreement; dismissing the Action with prejudice; discharging the Released Parties of and from all further liability for the Released Claims to the Releasing Parties; and permanently barring and enjoining the Releasing Parties from pursuing any of the Released Claims as provided in Section 9. The actual form of the Final Settlement Order and Judgment entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Agreement, and will be substantially in the form hereto attached as Exhibit H.
- aa. **“Class Representative Service Award”** means any award sought by application to and approval by the Court that is payable to the Named Class Representative to compensate him for his efforts in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.³
- bb. The **“Named Class Representative”** shall mean David Levy.

³ See *infra* note 4.

- cc. “**Notice Plan**” means the plan for dissemination of the Media Notice, Mailed/Emailed Notice, and Class Notice Package as described in Section 7 and attached as Exhibit B.
- dd. “**Objection**” means an objection timely filed with the Court by a Class Member objecting to any aspect of the Settlement Agreement by following the procedures set forth in the Settlement Agreement at Paragraph 8(c).
- ee. “**Opt-Out**” means a timely request by a Class Member to be excluded from the Settlement Class by following the procedures set forth in the Settlement Agreement at Paragraph 8(b).
- ff. “**Parties**” (or “**Party**” individually) means Plaintiff and the Defendants.
- gg. “**Person**” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.
- hh. “**Plaintiff**” means David Levy, individually and on behalf of all others similarly situated.
- ii. “**Preliminary Approval Order**” means the “Order Preliminarily Approving Class Action Settlement, Conditionally Certifying Settlement Class, and Providing for Notice and Scheduling Order” substantially in the form of Exhibit G.
- jj. “**Product**” or “**Products**” means the over-the-counter pain reliever and fever reducer under the “DGTM health” label, including DG Health Infants’ Pain & Fever Acetaminophen—DGTM (“DG Health Infants’ Acetaminophen”).
- kk. “**Media Notice**” means information as approved in form and content by Class Counsel and Defendant’s Counsel and to be approved by the Court, substantially in the same form as Exhibit C attached hereto.

- ll. **“Mailed Notice” or “Email Notice”** means information as approved in form and content by Class Counsel and Defendant’s Counsel and to be approved by the Court, substantially in the same form as Exhibit D attached hereto.
- mm. **“Rejected Claims”** means all the claims rejected according to the Claims Administration Criteria in Exhibit A.
- nn. **“Released Claims”** means those claims released pursuant to Section 9.
- oo. **“Released Parties”** means Dollar General Corporation; Dolgencorp, LLC; and DG Retail, LLC, and each of their parent companies, related companies, direct and indirect subsidiaries, corporations, trusts, affiliates, business entities, divisions, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, directors, and agents, and all of their past and present employees including all officers, managers, contractors, members, partners, attorneys, accountants, employees, shareholders, consultants, insurers, agents, representatives, and each of their heirs, executors, administrators, beneficiaries, successors, assigns, and each of them of any of the foregoing. For the avoidance of doubt, Released Parties shall include all Persons or entities in the stream of commerce for the manufacturing, marketing, advertising, labeling, packaging, promotion, sale, and/or distribution of the Products.
- pp. **“Releasing Parties”** means the Plaintiff, individually and as representatives of all those similarly situated, Class Counsel, the Class Members who do not exclude themselves pursuant to Paragraph 8(b), and any Person claiming by or through him/her/it/them as his/her/its/their 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.

qq. “**Settlement Amount**” means the amount of \$1.8 million.

rr. “**Settlement Administration Expenses**” means the costs and expenses associated with notifying the Class of this proposed settlement and administration of the claim process.

ss. “**Settlement Website**” means the website established by the Claim Administrator that will contain documents relevant to the settlement, including the Class Notice Package in English and Spanish. Claim Forms may be submitted by Class Members via the Settlement Website.

3. **Submission of Settlement to the Court**

a. As soon as practicable following the execution of this Settlement Agreement, unless the Parties agree to an extension in writing, the Named Class Representative shall move the Court for entry of the Preliminary Approval Order and the issuance of Class Notice as described in Section 7 below. Defendants shall have no obligation to make separate filings in support of the preliminary approval motion. Defendants shall appear at the Fairness Hearing to confirm their agreement with the terms of the Settlement as provided herein.

b. Within ten (10) days of the date of the Named Class Representative moving for entry of the Preliminary Approval Order, Dollar General will cause notice of the Settlement to be given to the appropriate officials pursuant to 28 U.S.C. § 1715. At least seven (7) days before the Final Approval Hearing, Dollar General shall submit a report to the Court confirming that these notices were timely sent.

- c. If the Court preliminarily approves this Settlement Agreement, Class Notice shall be given substantially in the form of Exhibit E, which has been jointly approved by the Parties, in accordance with due process and with the Class Notice specifications approved by the Court in its Preliminary Approval Order.
- d. The Final Approval Hearing shall be held to decide whether the settlement embodied in this Settlement Agreement shall be finally approved as fair, reasonable, and adequate and whether the terms and conditions shall be approved. The Named Class Representative shall move for entry of a Final Settlement Order and Judgment (substantially in the form attached as Exhibit H) granting final approval of this Settlement and holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided herein, and ordering that the settlement relief be provided as set forth in this Agreement, ordering the releases as set forth in Section 9, and entering judgment in this case. Defendants shall have no obligations to make separate filings in support of the motion. Defendants shall appear at the hearing to confirm their agreement with the terms of the Settlement as provided herein. At or before the Final Approval Hearing, proof of mailing of the Class Notice shall be filed by Class Counsel.
- e. Class Counsel may apply to the Court for a Fee Award, including reimbursements of costs and expenses, in an amount not to exceed one-third of the Settlement Amount, or Six Hundred Thousand Dollars (\$600,000.00). Any such award and reimbursement shall be paid exclusively from the Claim Fund.
- f. All matters relating to the administration of the terms of the Settlement Agreement, including but not limited to payment to Class Counsel of their fees, costs, and expenses,

plus interest and disbursement to the Class of the Claim Fund, shall proceed in accordance with this Settlement Agreement as approved by orders of the Court.

- g. If the Court does not enter the judgments and orders provided for above, or if the Court enters such judgments and orders and appellate review of any of the judgments or orders is sought, and on such review, any such judgment or order is modified, then this Settlement Agreement shall be canceled and terminated, subject to the provisions of this Settlement Agreement, unless each Party within thirty (30) days of the date of the entry of such ruling to the Parties, provides written notice to all other Parties of its intent to proceed with the settlement. Notice of intent to proceed with the settlement may be provided on behalf of the Class by Class Counsel.
- h. If the settlement does not occur for any of the reasons stated in Section 11, this Settlement Agreement shall be of no force and effect and shall be void, and the Claim Fund shall be repaid to Dollar General as provided by this Settlement Agreement, with the exception of any funds paid to the Claim Administrator.
- i. Neither the settlement nor this Settlement Agreement shall constitute or be an admission for any purpose by Dollar General or any other person or be deemed evidence of any violation of any statutes, regulation, or law, or an admission of any wrongdoing or liability by Dollar General.

4. **Class Certification for Settlement Purposes Only**

- a. Plaintiff shall move the Court for an order certifying the Settlement Class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3)(A)-(C) in conjunction with a request for the Court to approve this Settlement Agreement.

- b. Solely for the purposes of this Settlement, Dollar General will not object to the Court's certification of the Settlement Class pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3)(A)-(C).
- c. Solely for the purposes of this Settlement, Dollar General consents to the appointment of the Named Class Representative and Class Counsel as adequate and appropriate representatives of the Settlement Class.
- d. Dollar General expressly denies that this case meets the manageability requirements under Federal Rules of Civil Procedure 23(b)(3)(D). Plaintiff believes that this case meets the manageability requirements under Federal Rules of Civil Procedure 23(b)(3)(D). Moreover, the Parties are aware that the Court in its review of the Settlement Agreement will not evaluate manageability, pursuant to *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).
- e. Subject to Court approval under Rule 23(e) of the Federal Rules of Civil Procedure, payment and other consideration paid or provided by Dollar General in accordance with this Settlement Agreement shall constitute the full and final settlement of the Action, and upon the Effective Date, Dollar General and the Released Parties shall have no further liability or obligation to any Class Member except as specifically set forth in this Settlement Agreement or in the Final Judgment and Order.
- f. If the Settlement does not occur for any reason, this Settlement Agreement shall be of no force and effect and shall be void. Moreover, if the settlement does not occur for any reason, Dollar General retains all of its rights to oppose class certification on any and all grounds.

5. **Settlement Relief**

In consideration of the covenants set forth herein, the Parties agree as follows:

a. **Injunctive Relief**

i. By 360 days following the Effective Date (“Injunctive Relief Effective Date”), Dollar General agrees that it will:

1. Not sell DG Health Infants’ Acetaminophen unless it states that the liquid medicine in the Product contains the same concentration of liquid acetaminophen that is in DG Health Children’s Acetaminophen or language on the labeling/packaging that is substantially similar; and

ii. Sales of DG Health Infants’ Acetaminophen manufactured prior to the Injunctive Relief Effective Date, or during the time Dollar General is using reasonably diligent efforts under the circumstances to modify its current packaging as described in Paragraph 5(a)(i)(1), shall not constitute a violation of this Settlement Agreement or be subject to any claims. For the avoidance of doubt, the Parties agree that Defendants are permitted to sell its existing inventory (including existing packaging and/or labeling) at the time of the Injunctive Relief Effective Date for a period of 360 days after the Injunctive Relief Effective Date.

b. **Monetary Relief.** A Claim Fund will be established and administered as follows:

i. Within ten (10) days of entry of the Preliminary Approval Order, Dollar General must fund the estimated Settlement Administration Expenses by paying into an escrow account established by the Claim Administrator an amount not to exceed \$300,000.00. Class Counsel must approve any payment to the Claim Administrator of costs and expenses from this escrow account. Furthermore,

within three (3) business days of entry of the Final Settlement Order and Judgment, Dollar General agrees to pay the Settlement Amount, less the amount previously funded, to establish the Claim Fund by check or wire transfer into a Qualified Settlement Fund (“QSR”) account to be established by Class Counsel pursuant to the Internal Revenue Code. *See* 26 C.F.R. § 1.468B-1.

- ii. The Claim Fund shall be applied as follows in the following order:
 1. To reimburse or pay up to, but not to exceed, a total of three hundred and fifty thousand dollars (\$350,000) of the total costs reasonably and actually incurred by the Claim Administrator in connection with providing notice to and administering claims submitting by the Class and to pay for Claim Fund Expenses (this \$350,000 total amount includes the \$300,000 amount deposited in the escrow account referenced in Section 5.b.i.);
 2. To the payment of a Fee Award in the amount approved by the Court, not to exceed one-third (1/3) of the Settlement Amount;
 3. To the payment of the Class Representative Service Award in an amount as approved by the Court, if any; and
 4. To distribute to Class Members who submit Approved Claims to the Claim Administrator as follows:
 - (1) With Proof of Purchase: Class Members who have a proof of purchase for all of their Infants’ Acetaminophen during the Class Period will be entitled to a refund of \$1.70 for every 1 fl. oz. bottle of Infants’ Acetaminophen and 2 fl. oz. bottle of Infants’ Acetaminophen for which they have a valid proof of purchase, for each and every bottle without

limitation. A valid proof of purchase means a receipt or other documentation, produced by a third-party commercial source that reasonably establishes the fact and date of purchase of Infants' Acetaminophen during the Class Period in the United States. Class Members will be restricted to 1 claim per household.

(2) Without Proof of Purchase: Class Members who do not have a proof of purchase for all of their Infants' Acetaminophen purchase(s) during the Class Period will be entitled to a partial refund of \$1.70 for every 1 fl. oz. and 2 fl. oz. bottle of Infants' Acetaminophen for a maximum of 3 units, i.e., a total of up to \$5.10 per household. Class Members will be restricted to 1 claim per household. For the sake of clarity, Class Members may not receive reimbursement for any bottle over 3 bottles unless the Class Member has a proof of purchase for every bottle, including the bottles over the 3-bottle cap.

5. If the total amount to be paid for eligible claims pursuant to Paragraph 5(b)(ii)(4) above exceeds the Claim Fund Balance after accounting for and deducting the items described in Paragraphs 5(b)(ii)(1)-(3) above, then each Class Member's award shall be proportionately reduced on a pro rata basis.
6. If the Claim Fund Balance is greater than the total amount to be paid for eligible claims pursuant to Paragraph 5(b)(ii)(4) above, after accounting for and deducting the items described in Paragraphs 5(b)(ii)(1)-(3) above, then each Class Member's award shall be proportionately increased on a pro rata basis such that the Claim Fund Balance is exhausted.

7. If, after all eligible claims are paid, checks sent to eligible claimants remained unclaimed or otherwise not redeemed after 180 days from the date of the check, then the total amount of those unclaimed checks shall be donated to Public Justice.
- iii. Class Members shall have the opportunity to submit a claim to the Claim Administrator during the Claim Submission Period. Class Members must fill out a Claim Form substantially in the Form of Exhibit F and submit it as described therein. Class Members will submit the Claim Form under penalty of perjury and must specify the approximate purchase date(s), and the number of the Products purchased.
- iv. The claim process will be administered by a Claim Administrator, according to the criteria set forth in Exhibit A, and neither Class Counsel nor Defendants shall participate in resolution of such claims.
- v. All expenses of the Claim Administrator shall be paid as provided in Paragraph 5(b)(ii)(1).
- vi. The Claim Administrator shall approve or reject all claims according to the Claims Administration Protocols in Exhibit A. The determination of claims shall occur during the Claim Review Period. The decision of the Claim Administrator shall be final and binding on Defendants and all Class Members submitting Claims, and neither Defendants nor such Class Members shall have the right to challenge or appeal the Claim Administrator's decision.
- vii. Within forty-five (45) days after the Effective Date, the Claim Administrator shall provide to Class Counsel and Defendants' Counsel a written final

accounting and Distribution Plan. No sooner than 20 days, but not later than 45 days after delivering the Distribution Plan, the Claim Administrator shall disburse the remaining amounts in the Claim Fund according to the Distribution Plan and mail and/or email letters to all claimants with Rejected Claims explaining the rejection. In no event shall a Class Member's claim be paid less than 20 days after the Claim Administrator provides the Distribution Plan to Class Counsel and Defendants' Counsel.

- viii. If any distribution payments delivered to Class Members are returned as non-deliverable, or are not cashed within 180 days, or are otherwise not payable, any such funds shall be disbursed as provided in Paragraph 5(b)(ii)(7).

6. **Costs, Fees, and Expenses**

a. **Attorneys' Fees and Expenses**

- i. The Parties agree that the Fee Award, in an amount to be approved by the Court will be drawn from the Claim Fund.
- ii. No later than twenty-one (21) days prior to the deadline for Class Members to make an Objection to the Settlement Class, Class Counsel shall make an application for a Fee Award. Class Counsel acknowledges that the amount of the Fee Award remains in the discretion of the Court.
- iii. In the application described above in Paragraph 6(a)(ii), Class Counsel may seek a Fee Award in an amount not to exceed one-third of the Settlement Amount or Six Hundred Thousand Dollars (\$600,000.00). Class Counsel will not accept a fee award that exceeds this amount. This amount does not include the Settlement

Administration Expenses. The Claims Administrator shall pay from the Claim Fund the Fee Award within five (5) days after the Effective Date.

- iv. In the event the amount of the Fee Award requested is decreased or denied by the Court, such denial or decrease in the Fee Award shall have no effect on this Settlement Agreement and shall not invalidate the settlement agreed to herein.
- v. Class Counsel, in their sole discretion, shall allocate and distribute the Fee Award among Class Counsel. In the event that any Class Member objects to any aspect of this Settlement Agreement, Dollar General shall under no circumstances be obligated or required to pay attorneys' fees or costs claimed by or associated with such objectors (if any).

b. **Class Representative Service Awards.** Defendants agree not to oppose an application for a Class Representative Service Award in an amount not to exceed Five Thousand Dollars (\$5,000.00) to be paid out of the Claim Fund to the Named Class Representative. If permitted, such award shall be paid within five (5) days of the Effective Date. In the event that a Class Member appeals the Fee Award, or the Class Representative Service Award, Defendants shall not take a position contrary to this Agreement.

c. **Claim Administration Costs and Costs of Class Notice.** The Settlement Administration Expenses shall be paid from the Claim Fund as described in Section 5(b).

7. **Class Notice and Duties of the Claim Administrator**

a. **Duties and Responsibilities of Claim Administrator**

- i. Class Counsel and Dollar General recommend and retain JND Legal Administration to be the Claim Administrator for this Agreement. The Claim Administrator shall abide by and shall administer the Settlement in accordance with the terms, conditions, and obligations of this Agreement and the Orders issued by the Court.
- ii. **Class Notice Duties.** The Claim Administrator shall, in cooperation with the Parties, be responsible for consulting on and designing the Class Notice and Claim Form. After the Court's Preliminary Approval of this Agreement and Appointment of the Claim Administrator, the Claim Administrator shall also be responsible for disseminating the Class Notice, substantially in the form as described in the Notice Plan attached as Exhibit B to this Agreement, as specified in the Preliminary Approval Order, and as specified in this Agreement. The Class Notice will comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution. Class Notice duties include, but are not limited to:
 1. consulting on, drafting, and designing the Class Notice and Claim Form. Class Counsel and Dollar General's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over these Notices and Form or any changes to the Notices and Form;
 2. developing a Notice Plan, attached as Exhibit B to this Agreement. Class Counsel and Dollar General's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over this Notice Plan or changes to this Notice Plan;

3. implementing and arranging for the publication of the Class Notice via various forms of paper and electronic media, including implementing media purchases, all in substantial accordance with the Notice Plan, attached as Exhibit B. To the extent that the Claim Administrator believes additional or different Notice should be undertaken than that provided for in the Notice Plan, Class Counsel and Dollar General's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over any additional or different Notice;
 4. establishing and publishing a website that contains the Class Notice and related documents, including a Claim Form capable of being completed and submitted on-line. The website, including the Class Notice, shall remain available for 120 days after the Effective Date;
 5. sending the Class Notice and related documents, including a Claim Form, via electronic mail or regular mail, to any potential Settlement Class Member who so requests and sending such Class Notice and documents to the list of direct consumers provided by Dollar General;
 6. responding to requests from Class Counsel and Dollar General's Counsel;
and
 7. otherwise implementing and assisting with the dissemination of the notice of the Settlement.
- iii. **Claims Process Duties.** The Claim Administrator shall be responsible for implementing the terms of the Claim Criteria and related administrative activities, including communications with Settlement Class Members concerning

the Settlement and the options they have. Those duties include, but are not limited to:

1. executing any mailings required under the terms of this Agreement;
2. establishing a toll-free voice response unit to which Settlement Class Members may refer for information about the Action and the Settlement;
3. establishing a post office box for the receipt of Claim Forms, exclusion requests, and any correspondence;
4. receiving and maintaining on behalf of the Court all correspondence from any Settlement Class Member regarding the Settlement, and forwarding inquiries from Settlement Class Members to Class Counsel or their designee for a response, if warranted;
5. receiving and maintaining on behalf of the Court any Settlement Class Member correspondence regarding any Opt-Out requests, exclusion forms, or other requests to exclude himself or herself from the Settlement, and providing to Class Counsel and Dollar General's Counsel a copy within five (5) calendar days of receipt. If the Claim Administrator receives any such forms or requests after the deadline for the submission of such forms and requests, the Claim Administrator shall promptly provide Class Counsel and Dollar General's Counsel with copies; and
6. receiving and maintaining any Settlement Class Member correspondence regarding Objections to the Settlement and providing to Class Counsel and Dollar General's Counsel a copy of any Objection correspondence within five (5) calendar days of receipt.

iv. **Claims Review Duties.** The Claim Administrator shall be responsible for reviewing and approving Claim Forms in accordance with this Agreement.

Claims Review duties include, but are not limited to:

1. reviewing each Claim Form submitted to determine whether each Claim Form meets the requirements set forth in this Agreement and whether it should be allowed, including determining whether a Claim by any Settlement Class Member is timely, complete, and valid;
2. working with Settlement Class Members who submit timely claims to try to cure any Claim Form deficiencies;
3. using all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, maintaining a database of all Claims Form submissions;
4. keeping an accurate and updated accounting via a database of the number of Claim Forms received, the amount claimed on each Claim Form, the name and address of the Settlement Class Members who made the claim, whether the claim has any deficiencies, and whether the claim has been approved as timely and valid; and
5. otherwise implementing and assisting with the Claim review process and payment of the Claims, pursuant to the terms and conditions of this Agreement.

v. **Periodic Updates.** The Claim Administrator shall provide periodic updates to Class Counsel and Defendants' Counsel regarding Claim Form submissions beginning within seven (7) business days after the commencement of the

dissemination of the Class Notice and continuing on a weekly basis thereafter and shall provide such an update within seven (7) days before the Final Approval Hearing. The Claim Administrator shall also provide such updates to Class Counsel or Defendants' Counsel upon request, within a reasonable amount of time.

- vi. **Duty of Confidentiality.** The Claim Administrator shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity, except to the Parties or as provided for in this Agreement or by Court Order.
- vii. **Right to Inspect.** Class Counsel and Defendants' Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Claim Administrator at any time upon reasonable notice.
- viii. **Failure to Perform.** If the Claim Administrator misappropriates any funds from the Administration or Settlement Funds or makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Dollar General, or Defendants' Counsel, then the Party who discovers the misappropriation or concealment or to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Claim Administrator immediately be replaced. If the Claim Administrator fails to perform adequately on behalf of the Parties, the Parties may agree to remove the Claim Administrator. Neither Party shall unreasonably withhold consent to

remove the Claim Administrator. The Parties will attempt to resolve any disputes regarding the retention or dismissal of the Claim Administrator in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the Court for resolution.

- b. **The Notice Program.** The notice program shall consist of notice by digital media and mail/email (the Media Notice and Mailed or Email Notice, attached hereto as Exhibits C and D) which generally describes the settlement and directs all interested parties to a detailed Class Notice available on the Settlement Website and, at the request of interested parties, by U.S. Mail. The cost associated with the notice program shall be paid from the Claim Fund as described in Paragraph 5(b)(ii)(1), except those costs associated with posting and maintaining notice on Class Counsel's Internet websites.
- c. **Media Notice.** Commencing within two (2) weeks of the Court granting Preliminary Approval or some other date as set by the Court, the Claim Administrator shall cause to be distributed the Media Notice substantially in the form and content of Exhibit C pursuant to the Notice Plan described in Exhibit B. The Notice Plan shall include dissemination of the Media Notice translated into Spanish.
- d. **Mailed or Emailed Notice.** Commencing within two (2) weeks of the Court granting Preliminary Approval or some other date as set by the Court, the Claim Administrator shall cause the Mailed or Emailed Notice substantially in the form and content of Exhibit D pursuant to the Notice Plan described in Exhibit B. In addition, if email is not available or is returned undeliverable (bounceback), the postcard notice will be sent if a mailing address can be located.

- e. **Class Notice Package.** The Class Notice Package shall be available in electronic format on the Settlement Website and mailed as a hard copy or emailed by the Claim Administrator upon request. The Parties are not currently aware of any other litigation involving the same claims as the Action. However, should the Parties become aware, within the Claim Submission Period, of pending litigation that concerns false advertising claims related to the Products, they will notify Dollar General and Dollar General shall direct the Claim Administrator to mail or email the Class Notice Package to counsel for the plaintiff(s) in such pending litigation. Each Class Notice Package shall contain a Class Notice substantially in the form of Exhibit E and the Claim Form substantially in the form of Exhibit F.
- f. **Notice of Deadlines.** The Mailed or Email Notice and the Class Notice shall inform the Class Members of the dates by which they must file any Objections, Opt-Out requests, and submit a Claim Form. The Media Notice will directly link Class Members to the Settlement Website where the dates to file Objections and Opt-Out requests will be posted and where Class Members can submit a Claim Form electronically. Class Members must file any Objections, notices of intent to appear at the Final Approval Hearing, or to submit Opt-Out requests no later than seventeen (17) days prior to the Final Approval Hearing. Class Members will have the opportunity to submit a Claim Form during the period beginning on the date notice to the Class is first published and continuing until 100 days after the date of the Preliminary Approval Order and 13 days prior to the Final Approval Hearing.
- g. **Reporting to Court.** No later than five (5) days prior to the Final Approval Hearing, the Claim Administrator shall file a declaration or affidavit with the Court

that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) describes the scope, methods, and results of the notice program.

8. **Class Member Options**

- a. Class Members seeking to object or “Opt-Out” of this Settlement Agreement must strictly comply with the requirements specified in this Section, the Preliminary Approval Order, and in the Class Notice. For Opt-Outs, failure to do so will result in the Class Member remaining part of the Settlement Class and, to the extent the settlement is approved, being bound by the Settlement Agreement. For Objections, failure to do so may result in the Court not considering the Objection, and to the extent the settlement is approved by the Court, all objecting Class Members will be bound by the Settlement Agreement. Any Settlement Class Member who does not Opt-Out of the Settlement has the right to object to the Settlement. Any Class Member who requests to Opt-Out of the Settlement does not have the right to object to the Settlement.
- b. **Opt-Out Requests.** All Class Members shall have the right to elect to Opt-Out of the monetary portion of this Settlement Agreement, relinquishing their rights to cash compensation under this Agreement and preserving their claims for damages that accrued during the Class Period.
 - i. All Class Members seeking to be excluded from the Settlement must send to the Claim Administrator at the address on the Class Notice a letter by U.S. mail that includes the following:
 1. The Class Member’s full name, current address, and telephone number;

2. A statement saying that the Class Member wants to be excluded from the Class;
 3. The case name and case number (*Levy v. Dolgencorp.*, No. 3:20-cv-1037); and
 4. The Class Member's signature.
- ii. Any Opt-Out letter must be postmarked on or before the Opt-Out deadline specified in the Preliminary Approval Order, which shall be no later than 17 calendar days before the Final Approval Hearing. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Opt-Out letters not containing the required information and/or not submitted to the Claim Administrator by the deadline specified herein will be invalid and the Class Member will not be excluded from the Class, and will not recover.
- c. **Objections.** Any Class Member wishing to object to or oppose the approval of this Settlement Agreement, the motion for the Class Representative Service Award and/or the Fee Award shall file with the Court a written objection no later than 17 days before the date of the Final Approval Hearing.
 - i. All Objections to settlement must be filed with and received by the Clerk of the United States District Court, Middle District of Florida, 300 North Hogan Street, Jacksonville, Florida, 32202. Objectors must also send copies of the written Objections and supporting documents to the counsel listed in Section 13(j) of this Agreement, and to the Claim Administrator.
 - ii. The Objections must include the following information:

1. The objector's full name, current address, email address (if available), and telephone number;
 2. If represented by an attorney with respect to the objection, his or her name, address, email address, bar number, telephone number, and signature;
 3. A written statement containing the factual and legal grounds for the Objection(s);
 4. A statement, under penalty of perjury, evincing the objector's membership in the Class, including all information required by the Claim Form;
 5. A statement indicating whether or not the objector intends to speak at the Final Approval Hearing, which must also include information in Paragraph 8(c)(iii);
 6. The objector's signature or the signature of a legally-authorized representative;
 7. The case name and case number;
 8. A specific list of any other objections by the objector, as well as by the objector's attorney, to any class action settlement submitted to any court in the United States in the previous five years; and
- iii. If the objector or his or her attorney wants to appear and speak at the Final Approval Hearing, the Objection must also contain:
1. A detailed description of any and all evidence the objector may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the objector may introduce; and

2. The names and addresses of any witnesses expected to testify at the Final Approval Hearing.
- iv. By objecting, such Class Members agree to make themselves available to be deposed by any Party in the county of their residence within fourteen (14) days of the deadline to object as identified in the Notice.
 - v. The failure of the Class Member to file the written Objection with the Court by the deadline established herein shall be grounds for striking and/or overruling the Objection, even if the Objection is submitted to the Claim Administrator. Further, any Objections not containing the required information will be deemed waived and will not be considered by the Court.
- d. A Class Member who objects to the settlement may also submit a Claim Form on or before the deadline to do so, which shall be processed in the same way as all other Claim Forms. A Claim Member shall not be entitled to an extension to the deadline to submit a Claim Form merely because the Class Member has also submitted an Objection.
 - e. If more than 100 Class Members Opt-Out, Defendants shall have the right, but not the obligation, to terminate this Settlement Agreement or to seek appropriate modifications to this Settlement Agreement that adequately protects the Parties.
 - f. Class Counsel and/or Defendants' Counsel have the right, but not the obligation, to respond to any Objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Class

Member or to the individually-hired attorney for the objecting member of the Settlement Class; to Class Counsel; and to Defendants' Counsel.

- g. The Named Class Representative is bound by this Settlement Agreement and agrees not to Opt-Out or file an Objection to the Settlement Agreement.

9. **Release**

- a. Subject to Court approval under Rule 23(e) of the Federal Rules of Civil Procedure, payment, and other consideration paid or provided by Dollar General in accordance with this Settlement Agreement shall constitute the full and final settlement of the Action, and upon the Effective Date, Dollar General and other Released Parties shall have no further liability or obligation to any Releasing Party, as defined in Paragraph 2(pp), except as specifically set forth in this Settlement Agreement or in the Final Judgment and Order. Upon the Effective Date, each Releasing Party, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, shall and hereby does forever and fully release and discharge the Released Parties, as defined in Paragraph 2(oo), of and from any manner of civil or administrative actions, causes of actions, suits, injunctive relief, obligations, claims, debts, demands, agreements, promises, liabilities, complaints, liens, contracts, charges, penalties, losses, damages, controversies, costs, expenses, and attorneys' fees whatsoever, whether in law or in equity and whether based on any federal law, state law, common law or foreign law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued which the Releasing Parties, ever had, now have, or can have, or shall have or may hereafter have concerning the Products against the Released Parties, or any of them,

for, based on, by reason of, or arising from or in any way relating to the conduct alleged in the Complaint (“Released Claims”), except that nothing here releases any claim arising out of the violation of breach of the Settlement Agreement. For the avoidance of doubt, this Release also covers any and all claims based on or arising out of the facts set forth in the Complaint, including but not limited to unjust enrichment, state consumer protection act claims, claims under the Magnuson-Moss Warranty Act, and any other claims that could have been brought, whether plead or not plead, by Settlement Class Members. Notwithstanding all of this, the release shall not bar claims for medical harm or personal injuries.

- b. For the purposes of implementing a full and complete release and discharge of all Released Claims, Named Class Representative and Settlement Class Members expressly acknowledge that the Releases provided in this Agreement are intended to include their effect, without limitation, any and all claims, complaints, charges, or suits, including those claims, complaints, charges or suits which they do not know or suspect to exist in their favor at the time of execution hereof, which if known or suspected, could materially affect their decision to execute this Settlement Agreement. This Settlement Agreement contemplates the extinguishment of any such claims, complaints, charges, or suits, and Named Class Representative and Settlement Class Members hereby expressly and knowingly waive and relinquish any and all rights that they have or might have related to the Released Claims under California Civil Code § 1542 (and under other statutes or common law principles of similar effect) which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

- Named Class Representative and Settlement Class Members acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the Released Claims. Named Class Representative and Settlement Class Members agree that this Release and waiver shall be and remain effective in all respects notwithstanding such different or additional facts or discovery thereof, and that this Settlement Agreement contemplates the extinguishment of all such Released Claims. By executing this Agreement, Named Class Representative and Settlement Class Members acknowledge that, by signing the Release, they are releasing and waiving all Released Claims, whether now known or later discovered. In the Release, Named Class Representative and Settlement Class Members will acknowledge and agree that this waiver is an essential and material term of this Release and the settlement that underlies it and that without such waiver the Agreement would not have been accepted.
- c. Named Class Representative and Settlement Class Members further agree, promise, and covenant that they will not, nor will any person, organization, or any other entity acting on their behalf, file, charge, claim, sue, participate in, join or cause permit to be filed, charged, or claimed, any administrative complaints, action for damages, or other relief (including injunctive, declaratory, monetary, or other) against the Released Parties with respect to the allegations and claims asserted in the Class Action or any Released Claims which are the subject of this Agreement.

- d. The Parties agree that this Agreement may be pleaded as a full and complete defense to any and all Released Claims and causes of actions being released pursuant to this Settlement Agreement. Named Class Representative and Settlement Class Members acknowledge and consent that the Settlement Agreement may be used as the basis for an injunction to halt any action, suit, or proceeding based upon the Released Claims.
- e. On consideration of the amounts paid, the injunctive measures, and other good and valuable consideration, Plaintiffs agree to dismiss with prejudice this Action within fourteen (14) days following the Court's entry of the Final Settlement Order and Judgment.
- f. The Final Settlement Order and Judgment shall further provide for and effect the release of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Releasing Parties now have or may have against the Released Parties by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Action or the claims and defenses asserted in the Action.

10. **Covenant Not to Sue**

- a. The Named Class Representative and Settlement Class Members, and each of them, on their own behalf and on behalf of each of their respective heirs, executors, administrators, beneficiaries, predecessors, successors, assigns, and any of their former and present employees, directors, officers, accountants, agents, attorneys, representatives, affiliates, and subsidiaries, covenant and agree not to sue or bring or

assert any action, claim, or cause of action, in any jurisdiction, against the Released Parties asserting any claim released by this Settlement Agreement. Any claim brought in violation of this covenant shall be immediately dismissed by the forum in which it was brought, and Dollar General shall be entitled to payment of its reasonable attorneys' fees and costs incurred in obtaining such dismissal. The Named Class Representative and Settlement Class Members, and each of them, on their own behalf and on behalf of each of their respective successors and assigns, further covenant and agree not to proceed in any manner, in agency or other proceedings, whether at law, in equity, or by way of administrative hearing, or otherwise, to solicit others to institute (or cause or permit to be instituted) any such actions or proceedings against the Released Parties relating to the allegations made in the Action, or join in seeking monetary or other relief inconsistent with this Settlement Agreement.

11. **Contingencies**

- a. The Parties shall each have the right to unilaterally terminate the Settlement Agreement (except with respect to subparagraph (vi.) of this Section for which only Defendants, in the exercise of their sole discretion, shall have the right to terminate this Settlement Agreement) by providing written notice of their election to do so to the other within thirty (30) days if:
 - i. The Court's Preliminary Approval Order of the proposed settlement is materially different from the one set forth in the Settlement Agreement (excluding any changes to the Fee Award and/or the Class Representative Service Award);
 - ii. The Court materially modifies the Settlement Agreement in any manner (excluding any changes to the Fee Award and/or the Class Representative Service

- Award) including, without limitation, any modification of any term or condition that increases the financial costs to Defendants;
- iii. Any court fails to enter a Final Judgment and Order consistent with the Settlement Agreement (excluding any changes to the Fee Award and/or the Class Representative Service Award);
 - iv. The Settlement Agreement is not upheld on appeal (excluding any changes to the Fee Award and/or the Class Representative Service Award); and/or
 - v. More than 100 members of the Settlement Class decide to Opt-Out from the settlement.
 - vi. Should more than 100 members of the Settlement Class decide to Opt-Out from the settlement pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, Dollar General may withdraw from this Settlement Agreement and have no further obligations under this Settlement Agreement whatsoever, except that Class Counsel will not be required to pay any notice and administration costs already incurred and paid from the Claim Fund.
- b. If either Party elects to unilaterally terminate the Settlement Agreement pursuant to Paragraphs 11(a)(i)-(v), then such Party must do so within thirty (30) days of the date of the entry of such ruling to the Parties, provides written notice to all other Parties of its intent to terminate the Settlement Agreement. If Dollar General elects to terminate and withdraw from the Settlement Agreement pursuant to Paragraph 11(a)(vi), it must do so by written notice to Class Counsel within fourteen (14) days of its receipt from Class Counsel of the last copy of an Opt-Out request from a potential Class Member. In the event that either Party withdraws from this Settlement Agreement as provided

in this Section, the Parties shall return to litigation as though no Settlement Agreement ever existed. Should that occur, the Parties agree to be in the exact procedural position they were in before the Motion for Preliminary Approval was filed.

12. **Representations and Warranties**

Each Party represents and warrants to, and agrees with, the other Party as follows:

- a. Authority to Enter Agreement. Plaintiff and Defendants each covenant and warrant that they have the full power and authority to enter into this Settlement Agreement and to carry out its terms, and that they have not previously assigned, sold, or otherwise pledged or encumbered any right, title or interest in the claims released herein or their right, power and authority to enter into this Settlement Agreement. Any person signing this Settlement Agreement on behalf of any other person or entity represents and warrants that he or she has full power and authority to do so and that said other person or entity is bound hereby.
- b. Represented by Counsel. In entering this Settlement Agreement, the Parties represent they have relied upon the advice of attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Settlement Agreement; that the terms of this Settlement Agreement and the legal and income tax consequences of this Agreement have been explained to them by their attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by the Parties.
- c. No Other Actions. As of the date of executing this Settlement Agreement, Plaintiff and Class Counsel represent and warrant that they are not aware of any action or potential action other than the Action that (1) raises allegations similar to those asserted in the Action, and (2) is pending or is expected to be filed in any forum by any person

or entity against Defendants. Until the Effective Date, Plaintiff and Class Counsel shall have a continuing duty to notify Defendants if Plaintiff or Class Counsel become aware of any such action.

13. **Miscellaneous Provisions**

- a. **Entire Agreement.** This Settlement Agreement, together with the Exhibits hereto, constitutes the entire Agreement between the Parties, and no representations, warranties, or inducements other than those set forth herein have been made to any Party concerning this Settlement Agreement. This Agreement supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. Neither the Plaintiff nor Defendants are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement. If finally approved by the Court, this Settlement Agreement supersedes any prior agreement or understanding among the Parties. No representations, warranties, inducements, promises, or agreements oral or otherwise not embodied or incorporated in this Settlement Agreement have been made concerning or in connection with this Settlement Agreement, or the attached exhibits. Any and all prior discussions, negotiations, agreement, commitments and understandings relating to this Settlement Agreement are superseded hereby and merged into this Settlement Agreement.
- b. **Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendants’

Counsel, without notice to Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

- c. Extension of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.
- d. Cooperation. Defendants, Plaintiff, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement. The Parties shall cooperate with the Claim Administrator to the extent reasonably necessary to assist and facilitate the Claim Administrator in carrying out its duties and responsibilities. The Parties will also cooperate so that Class Counsel may have such confirmatory discovery as is reasonably necessary in connection with this Agreement.
- e. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted with the Federal Rules of Civil Procedure and other federal law to the extent applicable; otherwise the law of the State of Florida, without regard to conflict of law issues, shall govern.
- f. Retain Jurisdiction. Without affecting the finality of the Final Judgment and Order to be entered upon this settlement, the Court shall retain such exclusive continuing jurisdiction as is necessary and appropriate to implement and enforce the settlement and the terms of the Settlement Agreement, and to administer the performance of the settlement in accord with its terms. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement. This Settlement Agreement shall be enforced solely in this Court. The

Parties waive any objection which each such Party may have or hereafter have to the venue of any such suit, action, or proceeding and irrevocably consents to the jurisdiction of the Court in any such suit, action, or proceeding and agrees to accept and acknowledge service of any and all process which may be served in any such suit, action, or proceeding. In addition, any failure of the Court to approve the Settlement Agreement and/or any Objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, if the Settlement Agreement is finally approved, the Released Parties may file the Agreement and/or the Final Settlement Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- g. Modification. The terms or provisions of this Settlement Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in writing duly signed by all Parties; any such signed modification shall be with the consent of the Court without further notice to the Class unless the Court requires such additional notice. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of its provisions, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by such other Party.

- h. Stay Pending Court Approval. Class Counsel and Defendants' Counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the settlement, until the Effective Date of the settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Action, in accordance with Section 11 of this Agreement.
- i. Signatures. This Agreement may be executed in one or more counterparts, and, when so executed, shall constitute a binding original; each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.
- j. Notices. Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by United States First Class Mail and email to:

- i. If to Plaintiff or Class Counsel:

Scott Edelsberg
Edelsberg Law
20900 NE 30th Ave, Suite 417
Aventura, FL 33180
scott@edelsberglaw.com

- ii. If to Defendants or Defendants' counsel ("Defendants' Counsel"):

Dollar General
c/o McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219
Attn: R. Trent Taylor
rtaylor@mcguirewoods.com

- k. Good Faith. The Parties agree that they will act in good faith to promote the consummation of this Settlement and achievement of an Effective Date and will not engage in any conduct that will or may frustrate the purpose of this Agreement.
- l. Binding on Successors. This Agreement shall be binding, and inure to the benefit of, the heirs, executors, administrators, successors, and assigns of the Parties, once it is approved by the Court.
- m. Arm's-Length Negotiations. The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.
- n. Construing the Agreement. Because of the arm's-length negotiations described above, all Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement, which, therefore, may not be construed against the drafter of it or any portion of it, and the doctrine of *contra proferentum* shall not apply in constructing this Agreement nor shall any other such similar doctrine apply. All personal pronouns used in this Settlement Agreement, whether used in the masculine, feminine or neutral gender, shall include all other genders, and the singular shall include the plural and vice-versa.
- o. Waiver. The waiver by any Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.
- p. Exhibits. All Exhibits to this Settlement Agreement are material and integral parts hereof, and are completely incorporated by reference as if fully rewritten herein.
- q. Variance. In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

- r. Attorneys' Fees. Notwithstanding any of the provisions herein, if any party finds it necessary to institute legal proceedings to enforce another party's obligation under this Agreement, the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs.
- s. Support from The Parties. ~~After a full investigation, discovery and arm's-length negotiations, Plaintiff the Parties and his their counsel agree that they~~; (a) ~~have independently determined that this Settlement is in the best interest of the Class;~~ and (b) ~~Furthermore, the The Parties agree to shall~~ support motions for entry of the Preliminary Approval Order and Final Approval Order.
- t. Media and Contact of Class Members. To avoid contradictory, incomplete, or confusing information about the Settlement, the Parties agree that if they make any written press releases or statements to the media about the Settlement before the Effective Date, such releases or statements will be approved by the Parties in advance and, where desired by the other Party, made jointly. Except as noted herein and by mutual agreement of the Parties, the Class Notice shall constitute the only communication with Class Members regarding the Settlement prior to the Final Fairness Hearing. Notwithstanding, Class Counsel can answer any inquiries initiated by Class Members and may communicate freely with the Class Representatives.
- u. No Admission of Fault. The Settlement Agreement and every term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption,

concession, or an admission by Plaintiff, Defendants, any Settlement Class Member or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of such Party.

- v. Amendments in Writing. This Settlement Agreement may only be amended in writing signed by Class Counsel and Defendant's Counsel.
- w. Computation of Time. All time periods set forth herein shall be computed consistent with the Federal Rules of Civil Procedure.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their
duly authorized representatives.

Dated this _____ day of _____, 2021.

Plaintiff

Class Counsel

Defendants:

Dollar General Corporation

By: _____

Title: _____

Dolgenercorp, LLC

By: _____

Title: _____

DG Retail, LLC

By: _____

Title: _____