

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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

Plaintiff,

v.

Case No. 3:20-cv-1037-TJC-MCR

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

Defendants.

ORDER

This case is before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 22). The Court held a hearing on the motion on April 13, 2021, the record of which is incorporated by reference. The motion advises the Court that Plaintiff David Levy, on behalf of himself and the Settlement Class ("Plaintiff"),¹ and Defendants Dolgencorp, LLC, Dollar General Corp., and DG Retail, LLC ("Dollar General" or "Defendants") have entered into a Settlement Agreement (Doc. 22-1 at 1-49), dated February 2, 2021, after arms-length settlement discussions. The Court

¹ All capitalized or defined terms shall have the same meaning herein as provided in the Settlement Agreement (Doc. 22-1).

has received and considered the Settlement Agreement, including the accompanying exhibits. (Docs. 22, 22-1, 22-2, 22-3). The parties seek preliminary approval of the settlement and dismissal with prejudice of this action upon the terms and conditions set forth in the Settlement Agreement.

Pursuant to Federal Rule of Civil Procedure 23(e)(1), the parties have provided the Court with sufficient evidence and information to enable the Court to determine that the Notice Plan (Doc. 22-1 at 57–62) should be effectuated. At this stage, under Rule 23(e)(1)(B), and based upon the information presented by the parties, it appears likely that the Court will be able to: (1) approve the proposed settlement as fair, adequate, and reasonable under Rule 23(e)(2); and (2) certify the class for purposes of judgment on the proposed settlement under Rules 23(a) and (b).

The Court is satisfied that notice should be given to the class so that the Court may consider whether to give final approval to the settlement because it appears from the motion and matters of record that:

- A. The Settlement Class is so numerous that joinder of all members is impracticable;
- B. There are questions of law and fact common to the proposed settlement class;
- C. The individual claims of Plaintiff are typical of the claims of the settlement class;

- D. Plaintiff is an appropriate and adequate representative for the settlement class;
- E. The questions of law and fact common to the settlement class predominate over any questions affecting only individual members;
- F. A class action is superior to other methods for fairly and efficiently settling this controversy; and
- G. The named Plaintiff and Plaintiff's counsel also appear to be qualified to represent the putative class members.

Accordingly, it is hereby

ORDERED:

1. Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 22) is **GRANTED** and the Notice Plan (Doc. 22-1 at 57–62), including all notices attached to the Settlement Agreement as exhibits, is **APPROVED**. The Court therefore preliminarily **APPROVES** the proposed settlement as set forth in the Settlement Agreement (Doc. 22-1 at 1–49).

2. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only, the Court hereby certifies the following Class:

All individuals in the United States who purchased DG Health Infants' Acetaminophen, from September 15, 2016 to the date notice of the Class is first published, 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.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints Plaintiff David Levy as the class representative.

4. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court hereby appoints the law firms of Pearson, Simon & Warshaw LLP; Shamis & Gentile, P.A.; Edelsberg Law, P.A.; and Dapeer Law, P.A. as Class Counsel.

5. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Final Approval Hearing on **October 28, 2021 at 2:00 p.m.** in Courtroom 10D of the Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville, FL 32202,² before the Honorable Timothy J. Corrigan, for the following purposes:

- A. Finally determining whether the Class meets all applicable requirements of Federal Rule of Civil Procedure 23 and, thus, whether the Class should be certified for purposes of effectuating

² All persons entering the Courthouse must present photo identification to Court Security Officers. Although cell phones, laptop computers, and similar electronic devices are not generally allowed in the building, counsel are permitted to bring those items with them upon presentation to Court Security Officers of a Florida Bar card or Order of special admission pro hac vice.

the settlement;

- B. Determining whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;
- C. Considering the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as provided for under the Settlement Agreement;
- D. Considering the applications of Plaintiff for a Class Representative Service Award, as provided for under the Settlement Agreement;³
- E. Considering whether the Court should enter a Final Settlement Order and Judgment;
- F. Considering whether the release of the Released Claims as set forth in the Settlement Agreement should be provided; and
- G. Ruling upon such other matters as the Court may deem just and appropriate.

6. The Court may reschedule or adjourn the Final Approval Hearing and later reconvene such hearing without further notice to Class Members.

³ The parties should address the Eleventh Circuit's recent decision in Johnson v. NPAS Sols., LLC, 975 F.3d 1244 (11th. Cir. 2020) if they continue to seek approval of a Class Representative Service Award for Plaintiff. As it stands, unless Johnson is vacated, the Court is unlikely to grant such an award.

7. The parties may further modify the Settlement Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided thereunder. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the parties, if appropriate, without further notice to Class Members.

8. The Court finds that the distribution of Notice substantially in the manner and form set forth in the Settlement Agreement meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court approves, as to form and content, the proposed Publication Notice and Class Notice (collectively the “Notice”), which are Exhibits C and E, respectively, to the Settlement Agreement (Doc. 22-1 at 63–66, 74–84).

9. The Court approves the designation of JND Legal Administration to serve as the Court-appointed Claim Administrator for the settlement. The Claim Administrator shall cause the Publication Notice to be published, disseminate Class Notice, and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Settlement Agreement and this Order under the direction and supervision of the Court.

10. The Court directs the Claim Administrator to establish a Settlement Website, making available copies of this Order, Class Notice, Claim Forms that may be downloaded and submitted online, by mail, or by facsimile, the Settlement Agreement and all Exhibits thereto, a toll-free hotline, and such other information as may be of assistance to Class Members or required under the Settlement Agreement. The Class Notice and Claim Forms shall be made available to Class Members through the Settlement Website on the date notice is first published and continuously thereafter through the Effective Date (and on the websites of Class Counsel at their option during the same period).

11. The Claim Administrator is ordered to complete publication of the Publication Notice no later than **June 8, 2021**.

12. The costs of Notice, processing of claims of Class Members, creating and maintaining the Settlement Website, and all other Claim Administrator and Notice expenses shall be paid by Dollar General in accordance with the applicable provisions of the Settlement Agreement.

13. The Court approves the parties' proposed Claim Form (Doc. 22-1 at 85–88). Any Class Member who wishes to participate in the settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claim Administrator during the Claim Submission Period set forth in the Settlement Agreement, which date will be specifically identified

in the Claim Form. Such deadline may be further extended without notice to the Class by written agreement of the parties and approval of the Court.

14. The Claim Administrator shall have the authority to accept or reject claims in accordance with the Settlement Agreement, including the Claims Administration Protocols, which is Exhibit A to the Settlement Agreement (Doc. 22-1 at 50–56).

15. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class Members who do not enter an appearance will be represented by Class Counsel.

16. All Class Members who do not timely opt out from the Class shall be bound by all determinations and judgments in the Action concerning the settlement, whether favorable or unfavorable to the Class.

17. Any person or entity falling within the definition of the Class may, upon his, her, or its request, opt out from the Class. Any such person or entity must submit a request for exclusion to the Claim Administrator, postmarked or delivered no later than **October 11, 2021**, and that deadline will be specifically identified in the Publication Notice and Class Notice, and in accordance with the procedures set forth in the Settlement Agreement. Requests for exclusion purportedly filed on behalf of groups of persons/or entities are prohibited and will be deemed to be void.

18. Any Class Member who does not send a signed request for exclusion postmarked or delivered on or before the time period described above will be deemed to be a Class Member for all purposes and will be bound by all judgments and further orders of this Court related to the settlement of this Action and by the terms of the settlement, if finally approved by the Court. The written request for exclusion must include the Class Member's full name, current address, and telephone number; a statement saying that the Class member wants to be excluded from the Class; the case name and case number (Levy v. Dolgencorp, No. 3:20cv1037); and the Class Member's signature. All persons or entities who submit valid and timely requests for exclusion in the manner set forth in the Settlement Agreement shall have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the Final Settlement Order and Judgment.

19. A list reflecting all requests for exclusion shall be filed with the Court by Class Counsel at or before the Final Approval Hearing.

20. Any Class Member wishing to object to or oppose the approval of this Settlement, the motion for the Class Representative Service Award to Plaintiff and/or the Fee Award shall file with the Court a written objection no later than **October 11, 2021**. The objecting Class Member must send a copy of the written objection and supporting documents to the counsel listed below:

Scott Edelsberg Edelsberg Law 20900 NE 30th Ave, Suite 417 Aventura, FL 33180 scott@edelsberglaw.com	Dollar General c/o McGuireWoods LLP Gateway Plaza 800 East Canal Street Richmond, VA 23219 Attn: R. Trent Taylor rtaylor@mcguirewoods.com
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The objection must contain:

- A. The objecting Class Member's full name, current address, email address (if available), and telephone number;
- B. If represented by an attorney with respect to the objection, his or her name, address, email address, bar number, telephone number, and signature;
- C. A written statement containing the factual and legal grounds for the Objection(s);
- D. A statement of the objector's membership in the Class, including all information required by the Claim Form, made under penalty of perjury;
- E. The objector's signature or the signature of a legally-authorized representative;
- F. The case name and case number; and
- G. A statement indicating whether or not the objector intends to speak at the Final Approval Hearing. If the objector or his or her attorney

wants to appear and speak at the Final Approval Hearing, the Objection must also contain:

- i. A detailed description of any and all evidence the objector may offer at the Final Approval Hearing, including photocopies of exhibits which the objector may introduce; and
- ii. The names and addresses of any witnesses expected to testify at the Final Approval Hearing.

Any Class Member who fails to timely file and serve a written Objection containing all of the information listed in (A) through (G)(ii) of the previous paragraph shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

21. If any Objection is received by the Claim Administrator, but not filed with the Court, the Claim Administrator shall forward the Objection and all supporting documentation to Class Counsel, Defendants' Counsel, and the Court.

22. A Class Member who objects to the settlement may also submit a Claim Form on or before the **August 27, 2021** claim forms deadline which shall be processed in the same way as all other Claim Forms. A Class 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.

23. Class Counsel will file with the Court its motion for the requested Class Representative Service Awards for Plaintiff and an application for a Fee Award no later than **September 20, 2021**. Class Counsel will file with the Court its Motion for Final Approval of the Settlement no later than **October 19, 2021**.

24. Class Counsel and/or Defendants have the right, but not the obligation, to respond to any Objection no later than **October 19, 2021**. 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 member of the Class or to the individually-hired attorney for the objecting member of the Settlement Class; to Class Counsel; and to Defendants' Counsel.

25. Pertinent dates and deadlines imposed by this Order are summarized in the table below:

<u>Event/Deadline</u>	<u>Date</u>
Deadline for case website and toll-free hotline to go live	June 8, 2021
Deadline to commence notice program	June 8, 2021
Deadline for Claim Forms to be postmarked or submitted online	August 27, 2021
Deadline for Class Counsel to file a Motion seeking a Fee Award	September 20, 2021
Deadline for Requests for Exclusion to be postmarked	October 11, 2021
Deadline for Objections to be filed with the Court and served upon Class Counsel and Defendants' Counsel	October 11, 2021

Deadline for Plaintiffs to file a response to any objections	October 19, 2021
Deadline for Plaintiffs to file a Motion for Final Approval of the Settlement	October 19, 2021
Dollar General shall submit a report to the Court confirming notices pursuant to 28 U.S.C. § 1715 were sent.	October 19, 2021
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.	October 19, 2021
Final Approval Hearing	October 28, 2021 2:00 p.m.

DONE AND ORDERED in Jacksonville, Florida the 19th day of May, 2021.



Timothy J. Corrigan
 TIMOTHY J. CORRIGAN
 United States District Judge

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 Copies:

Counsel of record