

IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE

_____)	Master Docket No. 07MD1
IN RE DOLLAR GENERAL)	(Consolidated Action)
)	
_____)	Judge Thomas Brothers

MOTION OF THE INDIVIDUAL DEFENDANTS FOR AN EXTENSION OF TIME TO RESPOND TO COURTHOUSE NEWS SERVICES’ MOTION TO INTERVENE

The eleven Individual Defendants¹ file this Motion for an Extension of Time to Respond to Courthouse News Services’ (“CNS”) Motion to Intervene. The Individual Defendants submit that good cause exists to extend the time for them to respond to CNS’s Motion to Intervene. Given the more than ten years that has passed since the dismissal of this action and the nature of the relief requested by CNS, the Individual Defendants have not had a reasonable period of time to be contacted about the Motion to Intervene or to meaningfully consult with counsel about the substance of the Motion to Intervene. As a result, the Individual Defendants request an additional forty-five (45) days: (1) to allow for the contacting of and providing notice to each of the Individual Defendants; (2) to allow for review of the pleadings and associated exhibits at issue; and (3) to allow for a response to the substance of the Motion to Intervene once the foregoing has occurred.

As grounds for this motion, the Individual Defendants state as follows:

1. This action and the claims asserted against the Individual Defendants (as well as other Defendants) were dismissed with prejudice in 2009. Since that time, there have been no filings in this case and no reason for any of the Individual Defendants to devote any time or

¹ The Individual Defendants are the former members of the Board of Directors of Dollar General Corporation and include David L. Beré, Dennis C. Bottorff, Barbara L. Bowles, Reginald D. Dickson, E. Gordon Gee, Barbara M. Knuckles, David A. Perdue, J. Neal Purcell, James D. Robbins, Richard E. Thornburgh, and David M. Wilds.

attention to this action or any of the pleadings filed in the action. And, since dismissal of this action more than a decade ago, none of the Individual Defendants has had any reason to discuss the action or any pleadings with counsel.

2. Without advance consultation with any of the Defendants or their counsel, CNS filed its Motion to Intervene on December 3, 2020, seeking to intervene in this matter and to have more than 90 pleadings and associated exhibits unsealed. Without consulting Defendants or their counsel, CNS requested that its motion be heard on December 18, 2020, which requires a response to CNS's Motion to Intervene by December 14, 2020.

3. Upon receipt of CNS's Motion to Intervene, undersigned counsel acted diligently and immediately began the process of retrieving files of this long-since closed matter and locating contact information for the Individual Defendants. These efforts included the following:

- a. On December 4, undersigned counsel began the process of locating files for this matter and locating last known contact information for the Individual Defendants.
- b. Beginning on December 6, 2020, undersigned counsel began contacting the Individual Defendants to apprise the Individual Defendants of the filing of the motion and to inquire whether the Individual Defendants wanted to seek separate counsel for the purpose of responding to the Motion to Intervene given the possibility that distinct individual confidentiality and/or privacy interests would be implicated by the Motion to Intervene.

- c. Where available, undersigned counsel used last known email addresses to send CNS's Motion to Intervene to the Individual Defendants, as the most efficient means of contacting these individuals.
- d. Where last known email addresses were unavailable or undersigned counsel received notification that the email addresses were no longer valid, undersigned counsel began contacting the Individual Defendants via phone.
- e. When the foregoing efforts proved unsuccessful for three of the Individual Defendants, undersigned counsel sent copies of CNS's Motion to Intervene to those Individual Defendants via Federal Express to their last known address. To date, undersigned counsel has not had an opportunity to consult with those three Individual Defendants. The process of attempting to contact those Individual Defendants remains on-going.

4. The Individual Defendants require additional time to be contacted and then to consult with undersigned counsel and/or consider whether to retain separate counsel regarding the matters raised in the Motion to Intervene relative to any distinct or individual interest each may have.

5. In addition to needing additional time to be contacted and receive notice of the Motion to Intervene, each of the Individual Defendants (and indeed all of the Defendants) should have the right to a reasonable period of time to review the documents that are the subject of the Motion to Intervene. Setting aside discussion of the merits of the Motion to Intervene, CNS itself cites authority referencing the importance of a "document by document" review or even a "line-by-line" analysis with respect to the documents that may be at issue. (Mot. to Intervene at

16 (quoting *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016)). That cannot be done relative to the eleven Individual Defendants absent an additional reasonable period of time.

6. The designation of materials as “Confidential” and/or “Highly Confidential” leading to the filing of certain pleadings and exhibits under seal in this action was never withdrawn, abandoned or waived by any party. Likewise, no party or any third-party, including any media or news outlet, ever challenged the designation of any document as “Confidential” or “Highly Confidential” or the sealing of a single pleading or exhibit in the underlying action during its pendency or in the more than ten years since this case was dismissed.

7. Counsel for the Individual Defendants anticipates the necessity of a document-by-document and line-by-line review of the documents sought to be unsealed by CNS and that such a review will require a reasonable period of time to undertake to determine whether the confidentiality and/or privacy interests that led to the parties designating the documents as “Confidential” or “Highly Confidential” under the Protective Order (entered by the Court upon its own finding of “good cause”) remain or may be withdrawn. This is particularly true given the volume of pleadings, which themselves likely will be replete with citations to and quotations from documents and/or testimony of parties and third-parties designated as “Confidential” and/or “Highly Confidential,” and the volume of associated exhibits sought by CNS. Whether the documents at issue are viewed in their totality or whether with respect to the so-called “priority items” is of little distinction, as either category is quite voluminous.

For the reasons set forth herein and given the upcoming holidays and the current COVID-19 health crisis, the Individual Defendants respectfully request an additional forty-five (45) days: (1) to allow for the contacting of and providing notice to each of the Individual Defendants; (2)

to allow for review of the pleadings and associated exhibits at issue; and (3) to allow for a response to the substance of the Motion to Intervene once the foregoing has occurred.

Dated this 14th day of December 2020.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served as set forth below on the following on this the 14th day of December 2020:

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