

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

**RESPONSE OF THE INDIVIDUAL DEFENDANTS TO
COURTHOUSE NEWS SERVICES’ MOTION TO INTERVENE**

The eleven Individual Defendants¹ file this response to Courthouse News Services’ (“CNS”) Motion to Intervene for Limited Purpose of Seeking Access to Sealed Court Records and Request for Hearing by Video Conference (“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 oppose CNS’s Motion to Intervene at this time and 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.²

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.

² In addition to this opposition, the Individual Defendants are filing a motion seeking additional time to respond to the Motion to Intervene. The Individual Defendants also understand that Dollar General and KKR may consent to CNS’s intervention in this matter. As discussed herein, because undersigned counsel has not been able to reach each of the Individual Defendants concerning the Motion to Intervene as of the date of this filing, the Individual Defendants are unable to consent to intervention at this time.

As the Court is aware, 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 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.

Without any 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. Again without consulting Defendants or their counsel, CNS requested that its motion be heard on December 18, 2020.

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. During the week of December 6, 2020, undersigned counsel began contacting the Individual Defendants (via electronic mail and phone and Federal Express delivery, as necessary) 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. That process is on-going and has not yet been completed, as current contact information for certain of the Individual Defendants has not been readily available and/or located as of the date of this filing.

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. In addition to needing additional time to actually 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.

The designation of materials as “Confidential” and/or “Highly Confidential” leading to the filing of certain pleadings and exhibits under seal 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.

Counsel for the Individual Defendants anticipates and the Individual Defendants most certainly will expect 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 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.

The Individual Defendants also note that a number of third-parties produced a substantial amount of documents and were deposed in response to party subpoenas during discovery and those documents and the testimony of third-party witnesses may be implicated by the Motion to Intervene. It does not appear that such third-parties would have received notice of this Motion to Intervene in order to allow them the opportunity to protect any interests that they may have in the documents at issue as may be required under the Protective Order.

For the reasons set forth herein and given the upcoming holidays and the current COVID-19 health crisis, the Individual Defendants must oppose the relief sought by CNS at this time and 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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