

IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

IN RE: DOLLAR GENERAL

Master Docket No. 07MD1
(Consolidated Action)

Judge Thomas Brothers

**COURTHOUSE NEWS SERVICE’S REPLY IN
SUPPORT OF ITS MOTION TO INTERVENE AND RESPONSE TO
DEFENDANTS’ MOTION FOR EXTENSION OF TIME**

On December 3, 2020, Courthouse News Service (“CNS”), filed its Motion to Intervene for Limited Purpose of Seeking Access to Sealed Court Records and Request for Hearing by Video Conference (the “Motion to Intervene”) and a supporting Memorandum of Law (the “CNS Memo of Law”), which seeks to have the Court unseal court records in the above style case. CNS requested a hearing by video conference on Friday, December 18, 2020. On December 14, 2020, the Individual Defendants¹ filed a Response to the Motion to Intervene and a Motion for an Extension of Time, both of which sought an additional forty-five (45) days to respond to the Motion to Intervene. The Company Defendants² joined the Individual Defendants’ Motion for Extension of Time and requested in their Response to the Motion to Intervene “a reasonable extension of time for all defendants to review the sealed information and to determine what, if any, information the defendants contend should remain under seal.” (Company Def.’s Resp. at 1.) No response was filed by Plaintiffs’ counsel.

As set forth herein, while CNS does not oppose a reasonable extension of time for Defendants to conduct a document-by-document review of the court records that are currently

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 The Company Defendants are Dollar General Corporation, Kohlberg Kravis Roberts & Co., Buck Holdings, L.P., and Buck Acquisition Group.

under seal (Individual Defendants' Resp. at 3) in order to respond to CNS's motion, CNS respectfully requests that the Court tailor any such extension to balance the interests of the parties, the Court, and the public. Specifically, CNS requests that instead of granting the Defendants' requested forty-five (45) day extension to respond to CNS's motion, the Court enter a scheduling order that provides as follows:

- On or before December 30, 2020, Defendants review, publicly file, and serve on CNS an unsealed or redacted version of Doc. 292, the August 25, 2008 deposition transcript of Senator Perdue, without the exhibits; Defendants' proposed redactions to that transcript, if any, shall be limited to material that Defendants will argue must remain sealed under governing law.
- On or before January 25, 2021, Defendants publicly file and serve on CNS their responses.
 - As part of Defendants' response, they would publicly file and serve on CNS: (1) redacted versions of any documents that they argue should be redacted rather than unsealed in their entirety; and (2) any documents that they identify as requiring no sealing or redaction.
- On or before February 8, 2021, CNS shall publicly file and serve on Defendants its reply.
- On February 12, 2021, the Court will hear CNS's Motion to Intervene and Unseal by video conference.

On Tuesday, December 15, 2020, counsel for CNS emailed a compromise proposal consistent with this Response regarding the requested extension. The undersigned spoke with counsel for the Individual Defendants on Wednesday, December 16, 2020, but counsel for the Individual Defendants was not able to agree with CNS's proposal. That same day, counsel for CNS circulated a modified proposal that narrowed the documents it seeks expedited review of by the parties and altered the proposed schedule to provide additional response times for all the parties, but the parties were not able to reach an agreement.

CNS's proposed schedule balances the needs of Defendants, CNS, the Court, and the public. Defendants have stated that one of the reasons they need additional time is because they anticipate "the necessity of a document-by-document and line-by-line review of the documents sought to be unsealed by CNS." (Individual Defs. Motion for Extension at 4; *see also* Individual Defs. Resp. at 3 (similar statement).) This schedule would provide Defendants with a forty-two (42) day extension of time from their original response deadline to undertake this review.

Moreover, critically, CNS's proposed schedule would serve CNS's and the public's interest by providing for expedited review and production by Defendants of the August 25, 2008 deposition of Senator Perdue, permitting the public an opportunity to read Senator Perdue's own words related to the case in which he was alleged to have breached his fiduciary duty. The public will benefit from access to the transcript, even if in redacted form, prior to the January 5, 2021 special election in Georgia in which Senator Perdue is seeking a second term in the U.S. Senate. *Minneapolis Star & Tribune Co. v. Minnesota Com'r of Revenue*, 460 U.S. 575, 585, 103 S. Ct. 1365, 1372, 75 L. Ed. 2d 295 (1983) ("an informed public is the essence of working democracy"). The fact that the redactions, if any, should be limited to only the most compelling reasons reinforces the reasonableness of CNS's request. *See Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 308 (6th Cir. 2016) ("In civil litigation, only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence (such as the name of a minor victim of a sexual assault), is typically enough to overcome the presumption of access." (citation omitted)). The public interest in the sealed court records in this case is particularly high and an order from the Court providing for expedited access before the January 5, 2021 special election to a version of Senator Perdue's August 25, 2008 deposition transcript that includes redactions, if

any, that Defendants will argue satisfy the stringent constitutional and common law tests for access to court records is a balanced approach that takes into account the needs of the public and the parties in this case.

CNS respectfully requests that the Court enter an order consistent with CNS's proposed schedule outlined above and such further relief it deems just and proper.

Respectfully submitted,

By: /s/ Paul R. McAdoo

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2020, a true and correct copy of the foregoing was furnished by U.S. Mail, facsimile, and email to each of the following:

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