

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

**REPLY OF THE INDIVIDUAL DEFENDANTS IN SUPPORT OF THEIR
MOTION FOR AN EXTENSION OF TIME TO RESPOND TO
COURTHOUSE NEWS SERVICES’ MOTION TO INTERVENE**

The eleven Individual Defendants¹ file this Reply Memorandum in support of their Motion for an Extension of Time to Respond to Courthouse News Services’ (“CNS”) Motion to Intervene. The Individual Defendants’ Motion for Extension seeks forty-five (45) days for a reasonable opportunity: (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. The Individual Defendants file this Reply Memorandum in response to CNS’s Opposition and specifically to address CNS’s “compromise proposal.”

As explained to CNS’s counsel in the December 16 conference referenced in CNS’s Opposition, the Individual Defendants are unable to consent to the “compromise proposal” for two reasons. *First*, despite significant and good faith efforts commenced upon receipt of CNS’s motion, undersigned counsel has been unable to contact each of 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

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.

Motion to Intervene given the possibility that distinct individual confidentiality and/or privacy interests would be implicated by the Motion to Intervene. *Second*, undersigned counsel explained that the “compromise proposal” would not allow for a meaningful opportunity to review even a more limited set of documents, including the deposition transcript sought by CNS.

The Individual Defendants should be entitled to a reasonable period of time to be contacted regarding CNS’s Motion to Intervene and evaluate the Motion to Intervene relative to their own personal interests. This has not been accomplished to date. For example, undersigned counsel has not established contact with David L. Beré, who served as President of Dollar General and served as a Board Member. With respect to the other ten Individual Defendants, it has taken nearly two weeks to complete the process of notifying the Individual Defendants of CNS’s Motion to Intervene. To say that this has been a significant undertaking to contact each of the Individual Defendants would be a substantial understatement.

Moreover, CNS’s “compromise proposal” is not a compromise at all, as it otherwise would not allow for the Individual Defendants to have a reasonable opportunity to review even the deposition transcript sought by CNS and to allow the Individual Defendants to consult with counsel regarding any determinations regarding confidentiality and/or privacy interests that may be implicated by that transcript. Given the fact that it took two weeks to simply locate and contact each of the Individual Defendants, it is unreasonable to think that each of the Individual Defendants could review the transcript and each have a meaningful opportunity to consult with counsel by December 30, 2020, especially in view of the upcoming holidays and important year-end obligations the Individual Defendants undoubtedly have. CNS’s “compromise proposal” gives no consideration to this reality.

CNS asserts that its proposed schedule “balances the needs of Defendants, CNS, the Court, and the public.” To the contrary, it would entirely deprive the Individual Defendants’ their right to consider their respective confidentiality and privacy interests and consult meaningfully with counsel. The urgency cited by CNS to justify the relief it now seeks is entirely of its own making, and perhaps even by design. This matter was dismissed with prejudice more than ten years ago. The litigation was well-publicized in the media, as was the settlement reached by the parties.² Yet, as set forth in the Individual Defendants’ Motion for Extension, 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.

Having sat idly by for years, CNS’s own delay in seeking the requested eleventh-hour relief does not heighten CNS’s purported need or the public’s need for the information CNS seeks and is insufficient to justify depriving the Defendants their right to a reasonable period of time to consult with counsel and to review the materials at issue. In short, CNS’s argument could be summed up as: “*We’ve waited so long, there is no time to allow anyone to meaningfully review the documents and consult with counsel.*” While this argument may serve CNS’s interests, it would steamroll the rights of the parties who have relied on the designation of the documents at issue as “Confidential,” for more than a decade. The upcoming runoff election in Georgia involving Senator Perdue does not constitute just cause to deprive the Individual Defendants of their rights and force the “expedited review” CNS now seeks. Indeed, Senator

² See, e.g., “Shareholder Lawsuit Targets Dollar General Buyout,” Nashville Post (Mar. 12, 2007) (available at <https://www.nashvillepost.com/home/article/20451791/shareholder-lawsuit-targets-dollar-general-buyout>); and *In re Dollar General Corp. Shareholder Litigation*, Notice of Pendency and Proposed Settlement of Class Action (Dec. 19, 2008) (providing notice of terms of proposed class action settlement) (available at <http://cases.gardencitygroup.com/pdf/DLG/DLGNotice.pdf>).

Perdue first ran for election in 2014, has been a United States Senator since winning that election, and advanced from the primary to the general election in the United States Senate race in Georgia in June 2020. All the while, CNS did nothing to advance the arguments it now casts as “critical[]” and “compelling.” The Court should reject these arguments and allow the Individual Defendants a meaningful opportunity to receive notice, consult with counsel and review the documents at issue.

All of the foregoing makes clear the fact that there are a number of issues raised by CNS’s Motion to Intervene – both legal and factual – that need a reasonable opportunity to be developed before the Court. First and foremost would be the basic due process rights of the Individual Defendants (and all Defendants) to have a reasonable opportunity to receive notice and to be heard on the substance of these issues. Second, CNS’s heavy reliance on federal appellate case law (CNS’s Mot. at 10-14 (discussing the Sixth Circuit’s opinion in *Shane Group* and arguing how it should apply to the relief CNS now seeks) highlights the fact that the law in Tennessee is not as well-developed as CNS implies regarding whether and to what extent documents may be sealed by the Court when challenged by third-parties. Third, there are significant equitable considerations at issue given the Individual Defendants’ reliance interests and reputational interests balanced against the more than ten-year delay by CNS in seeking the information at issue. CNS’s Motion to Intervene and the expedited relief sought would by-pass all of these issues with the only justification being the timeline that CNS itself has created. No case law cited by CNS would support such an outcome.

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 17th day of December 2020.

Respectfully submitted:

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CERTIFICATE OF SERVICE

Pursuant to Tennessee Rule of Civil Procedure 5.02(2), the undersigned certifies that a true and correct copy of the Individual Defendants' Reply in Support of Motion for Extension of Time to Respond to Courthouse News Service's Motion to Intervene (5 pages) has been served via electronic mail and U.S. Mail on all counsel of record on this afternoon of the 17th day of December 2020. If you did not receive this document, please contact the sender immediately to receive an electronic or physical copy of this document:

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