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Dena M. Adams, Clerk
White County, Georgia

IN THE SUPERIOR COURT OF WHITE COUNTY
STATE OF GEORGIA

**MIKE ALLEN and MONTE
POMROY, individually and on
behalf of all others similarly situated as
defined herein,**

Plaintiffs,

v.

**DOLGENCORP., LLC. and DOLLAR
GENERAL CORP.,**

Defendants.

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CASE NO. SUCV202000385

**PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES,
AND CLASS REPRESENTATIVE SERVICE AWARDS**

I. INTRODUCTION

Plaintiffs respectfully move this Court to enter an order approving an award of attorneys' fees, reimbursement of litigation expenses, and Class Representative service awards as contemplated by the Settlement Agreement reached between the Parties and previously given preliminary approval by this Court. As demonstrated herein and in the supporting Affidavit of R. Brent Irby, the requested fee and expense awards are fair and reasonable when considering the factors set forth in *Camden I Condo. Assn. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), and especially considering the risk that Class Counsel undertook and the results obtained for the Settlement Class. Further, the percentage requested for the fee and expense award is wholly consistent with percentages endorsed and allowed by other Georgia state and federal courts hearing class action litigation. Finally, the Class Representative service awards are reasonable given the commitment and efforts of the Class Representatives to this litigation.

In accordance with the Settlement Agreement, Class Counsel request, and Defendants do not oppose, an award of attorneys' fees and reimbursement of litigation expenses constituting thirty percent (30%) of the \$3.1 million "Maximum Settlement Amount" as defined in the Settlement Agreement. Per the Settlement Agreement, the \$3.1 million Maximum Settlement Amount does not include the cost or value surrounding the non-monetary programmatic relief benefitting all Class Members. If the value of the programmatic relief was considered - - - and legal precedent dictates that it should be - - - then the percentage fee and expense award requested would be less than thirty percent (30%). Moreover, unlike other class action cases approving a similar percentage, here the requested thirty percent (30%) compensates for *both* attorneys' fees and unreimbursed litigation expenses. Class Counsel has incurred \$14,364 in unreimbursed expenses in pursuing this litigation. (Irby Dec., ¶20) Thus, the attorneys' fee award requested is slightly less than thirty percent (30%) of the Maximum Settlement Amount. Either way, the percentage sought here for fees and expenses is fair, reasonable, and entirely consistent with similar awards granted by Georgia state and federal courts hearing class action litigation.

For the reasons stated herein, Class Counsel respectfully request the Court to approve their Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards, the amounts of which are routinely authorized in class actions as fair, reasonable, and supported by established class action jurisprudence. In support of this motion, Plaintiffs are filing herewith the Affidavit of R. Brent Irby("Irby Aff'd.").

II. BACKGROUND

In their action, Plaintiffs allege that Defendants deceptively and unlawfully labeled, packaged, and marketed certain ground coffee Products¹ as containing enough coffee such that it

¹ Those Products are defined in the Settlement Agreement and listed on Exhibit C to the Settlement Agreement.

“makes up to [a certain number] of cups.” *See generally*, Second Amended Complaint. According to Plaintiffs, contrary to this representation on the label, the Products do not contain enough ground coffee to make the stated number of cups when following the brewing instructions on the Product label. *Id.*

Prior to filing Plaintiffs’ action, Class Counsel thoroughly investigated the facts and claims, including testing of the Products’ quantities and servings, consultation with an expert in consumer behavior and retail marketing, review of publicly available information, interviews with other coffee consumers and Dollar General shoppers, and legal research regarding state law claims, remedies, and class certification. (Irby Aff’d., ¶5)

Earlier this year, counsel for the Parties began discussing the possibility of exploring settlement. These discussions were prompted by the Parties’ desire to avoid the expense, uncertainties, and burden of protracted litigation. To facilitate those discussions, Defendants provided Class Counsel with relevant information regarding the Products, sales figures, and the scope of the Class and its membership. After analysis of this information and several discussions, counsel for the Parties began to have preliminary talks about a general framework for a potential nationwide settlement. (Irby Aff’d., ¶6)

The Parties ultimately elected to schedule a mediation and chose Greg Parent of Miles Mediation and Arbitration as the mediator. Mr. Parent is a highly skilled and well-respected mediator in the Atlanta area. On February 11, 2021, the Parties and their counsel conducted a full-day mediation with the input, assistance, and oversight of Mr. Parent. At all times, the negotiations were arms-length, adversarial, and free of collusion. Throughout the mediation, the Parties exchanged numerous offers and counter-offers, and negotiated the points of each vigorously. It was only after the Parties reached an agreement on the substantive relief to the Class that they

turned to any discussion of attorneys' fees and class representative service awards. All negotiations were conducted at arms-length and with the assistance of Mr. Parent. (*Id.*, ¶7)

After a full day of mediation, the Parties reached an agreement on the material terms of a class settlement that would resolve this matter on a nationwide basis. On the evening of February 11, 2021, the Parties executed a Term Sheet memorializing the material terms of the class-wide Settlement that was negotiated. (*Id.*, ¶ 8)

On February 26, 2021, the Parties filed with the Court a Notice of Settlement, proposing the next steps to be carried out in the Settlement process. (*Id.*, ¶9)

Following mediation, the Parties began memorializing, negotiating, and finalizing the details of the Settlement Agreement. This began another round of discussions and negotiations in which each aspect of the Settlement Agreement was addressed. Counsel for the Parties worked with one another in drafting, editing, and finalizing the full Settlement Agreement and its exhibits. Numerous conferences and exchange of drafts occurred between counsel before the full Settlement Agreement was finalized. Further, before the final Settlement Agreement was executed, the Parties exchanged additional confirmatory discovery pertinent to the Settlement. Further, before the final Settlement Agreement was executed, the Parties exchanged additional confirmatory discovery pertinent to the Settlement. Class Counsel thoroughly reviewed and analyzed this confidential business information from Dollar General to further confirm the fairness of the Settlement. (*Id.*, ¶10)

On March 31, 2021, the Parties executed the final Settlement Agreement. The Parties only reached settlement after engaging in a significant exchange of information, confirmatory discovery, and arms-length negotiations, including a full- day mediation with mediator Greg Parent. Plaintiffs' objectives in filing the Action were to remedy the allegedly deceptive

representations made on Defendants' labeling and to compensate Settlement Class Members for the alleged misrepresentations. (*See generally*, Second Amended Complaint). Through the Settlement Agreement, Plaintiffs have achieved both objectives - - - providing significant benefits for the Settlement Class Members, especially in light of the substantial risks Class Members would face if the Action progressed. Class Counsel believe the Settlement confers substantial benefits upon the Settlement Class Members. Class Counsel have evaluated the Settlement and believe it is fair, reasonable, and adequate to resolve Plaintiffs' grievances and is in the best interest of the Settlement Class. (Irby Aff'd., ¶22 & 23).

Class Counsel prepared Plaintiffs' Unopposed Motion for Preliminary Approval and Conditional Class Certification, which was heard by the Court at the Preliminary Approval Hearing conducted on April 1, 2021. Following preliminary approval by the Court, Class Counsel worked closely with the Settlement Administrator and defense counsel through several conference calls and email exchanges to ensure that all class notices and forms were accurate and finalized. Class Counsel also worked closely with the Settlement Administrator and defense counsel to ensure that the Settlement website and hotline were accurate and functioning properly prior to the Settlement's Notice Date. (Irby Aff'd., ¶12).

Since entry of the Preliminary Approval Order, Class Counsel have regularly monitored Settlement administration and responded to many Class Member inquiries, which Class Counsel will continue to do throughout the Settlement process. Further, if final approval is granted, Class Counsel will continue to work to ensure that the cash benefits are properly administered to Class Members and that the programmatic relief is properly implemented. (Irby Aff'd., ¶14).

III. THE SETTLEMENT BENEFITS

The Settlement Agreement previously preliminarily approved by the Court defines the Settlement Class, describes the Parties' agreed-upon Settlement relief, and outlines the plan for disseminating notice to the Settlement Class Members that a settlement has been effectuated.

A. Certification of the Settlement Class

Under the Settlement Agreement, the Parties agree to the certification of a nationwide Settlement Class defined as follows:

All Persons who purchased any Products in the United States during the class period.

Agr. ¶ 2.49. Excluded from the Settlement Class are: (a) Persons who purchased or acquired any Products for resale; (b) the Released Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiffs' counsel and Defendants' counsel; (e) federal, state and local governments; and (f) the judicial staff and courtroom staff overseeing the Action. *Id.*

B. Relief for the Members of the Settlement Class

The Settlement Agreement negotiated on behalf of Plaintiffs and the Settlement Class provides for significant injunctive and monetary relief.

1. Monetary Relief

With respect to monetary relief, the Settlement Agreement provides for a Maximum Settlement Amount of \$3.1 million in the aggregate. Agr. ¶ 2.26. This consideration is available to pay valid claimants, notice and settlement administration costs, attorneys' fees and expenses, and any service awards approved by the Court.

The Settlement Agreement provides Settlement Class Members who submit a timely and valid Claim Form with compensation regardless of whether they are able to provide a Proof of Purchase.

Settlement Class Members without Proof of Purchase can recover \$0.85 per Product, up to four (4) total Product purchases. Settlement Class Members with Proof of Purchase can recover \$0.85 per Product, up to twenty (20) total Product purchases.²

2. Programmatic/Injunctive Relief

The Settlement Agreement also provides for injunctive relief. In sum, Defendants will have the option of either removing the Challenged Language from the labeling of the Products or revise it consistent with verified testing results from a reputable third-party laboratory. Agr. ¶ 5.1.

The Settlement Agreement provides for Heffler Claims Group (“Heffler”) to administer the class notice and claims process, and outlines the forms and methods by which notice and claims will be administered. The Court previously approved Heffler as the Settlement Administrator.

IV. ARGUMENT

For the reasons outlined herein and in the supporting Affidavit of R. Brent Irby, Plaintiffs respectfully request that the Court grant the requested award for attorneys’ fees, expenses, and Class Representative service awards.

A. **The Attorneys’ Fee and Expense Award Requested Is Reasonable and Should Be Granted.**

In Georgia, an award of fees to class counsel is to be based on the “percentage of the fund” method after consideration of the *Camden I* factors. *Friedrich v. Fidelity Nat. Bank*, 247 Ga. App.

² Cash payments payable to Settlement Class Members eligible for a cash payment would be reduced on a *pro rata* basis if the total of the cash payments, Notice and Settlement Administration Costs, Attorneys’ Fees, and any Class Representative Service Awards would otherwise exceed the Maximum Settlement Amount of \$3.1 million. Agr. ¶ 5.2

704, 707 (2001); *see also Teachers Retirement System of Georgia v. Plymel*, 296 Ga. App. 839, 846 (2009).

In *Camden I*, the Eleventh Circuit provided a set of factors that the Court may use to determine a reasonable percentage to award as an attorneys' fee to class counsel: (1) the time and labor required; (2) the novelty and difficulty of the relevant questions; (3) the skill required to properly carry out the legal services; (4) the preclusion of other employment by the attorney as a result of his acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the clients or the circumstances; (8) the results obtained, including the amount recovered for the clients; (9) the experience, reputations, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the clients; and (12) awards in similar cases. 946 F.2d at 772 n.3 (citing factors in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). The Court may also consider the time required to reach a settlement, whether there are any substantial objections to the settlement terms or requested fees, any non-monetary benefits to the class, and the economics of prosecuting a class action. *Id.* at 775. These *Camden I* considerations support approval of the requested fee.

1. The Time and Labor Involved

Class Counsel have expended substantial time and resources to investigate, litigate, and ultimately resolve this litigation on a nationwide basis. (Irby Aff'd). As summarized in Class Counsel's Affidavit, the work performed was necessary and the time spent justified, particularly given the complex nature of the claims and the abilities of defense counsel. The work and efforts of Class Counsel are detailed in the supporting Affidavit of R. Brent Irby. Class Counsel's work

will continue beyond approval of the Settlement. Accordingly, the resources and labor devoted to this case amply demonstrate the reasonableness of the attorneys' fee request.

2. The Novelty and Difficulty of the Issues and Potential Risks

The second and tenth *Camden I* factors consider “the novelty and difficulty of the questions” presented by the case and the “undesirability” of the case. 946 F.2d at 772-773. These factors recognize that class counsel “should be appropriately compensated for accepting the challenge” of undertaking challenging cases, *id.*, and “must be evaluated from the standpoint of plaintiffs’ counsel as of the time they commenced the suit, not retroactively, with the benefit of hindsight.” *In re Checking Account Overdraft Litig.*, 2013 WL 11319392 at *15 (S.D. Fla. Aug. 5, 2013).

Here, this case presented difficult factual and legal issues and hurdles that created enormous risks for Class Counsel. For example, obtaining and maintaining a certified class of consumer claims of this nature is difficult even on a single-state basis. Absent this Settlement, it is difficult to perceive how a national class of consumers could maintain certification and be afforded relief in a contested proceeding. Yet, Class Counsel were able to achieve a Class Settlement benefiting consumers across the nation.

Further, Defendants have disputed liability of the underlying state law claims. Not only would Class Counsel face difficult legal hurdles surrounding class certification, but success on the underlying merits of the claims was by no measure guaranteed.

From the outset, Class Counsel faced difficult and challenging legal hurdles, and the resulting risk that Class Counsel undertook when they agreed to accept this case on a contingency basis strongly supports the requested fee award.

3. *The Skill and Experience to Perform the Legal Services Properly*

The Court should also consider “the skill and acumen required to successfully investigate, file, litigate, and settle a complicated class action lawsuit such as this one,” *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362, at *8 n.15 (S.D. Fla. Apr. 15, 2010), and “the experience, reputation and ability of the attorneys” involved. *Camden I*, 946 F.2d at 772 n.3. Proper case management and effective representation in any complex class action, especially one involving a national class and large corporate defendant, require a high level of experience and skill. This case is no different, and as evidenced by the terms of the proposed Settlement, Class Counsel had the necessary experience and skill to negotiate a favorable Settlement, thereby bringing substantial benefits to the Settlement Class. (Irby Aff’d. ¶16).

“In evaluating the quality of the representation by Class Counsel, the Court should also consider the quality of opposing counsel.” *Lunsford v. Woodforest Nat’l Bank*, No. 2014 WL 12740375, *13 (N.D. Ga. May 19, 2014). Here, Dollar General is a large retail corporation in this country and spared no expense to defend itself by hiring one of the nation’s leading law firms to represent it in this case. The fact that Class Counsel were able to bring this case to a swift and successful conclusion against capable opposing counsel further speaks to their skill and to the quality of representation they have provided to the Class.

4. *The Preclusion of Other Employment*

The fourth and seventh *Camden I* factors consider the “time limitations imposed by the client or the circumstances[,]” and whether other available business was foreclosed by “the fact that once the employment is undertaken the attorney is not free to use the time spent on the client’s behalf for other purposes.” 946 F.2d at 772. These factors recognize that “[p]riority work that delays the lawyer’s other work is entitled to some premium.” *Id.* These factors weigh in favor of

the requested fee award because during the time that this case has been litigated and the settlement consummated, Class Counsel have devoted substantial time, effort, and resources to this case to the exclusion of others. Each of the firms representing the Settlement Class are small and were required to forego other employment opportunities while working on this matter. (Irby Aff'd. ¶19). Accordingly, this factor weighs in favor of the fee request.

5. The Customary and Contingent Nature of the Fee

Consumer class actions like this case are typically handled on a contingent fee basis because virtually no individual possesses a sufficiently large stake in the litigation to justify paying attorneys an hourly rate. *Ressler v. Jackson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). Fees in such cases may often range from one-third to 40 percent of the recovery. The requested fee here is well within this range.

Here, Class Counsel undertook this case purely on a contingent basis. (Irby Aff'd. ¶19). Class Counsel assumed a significant risk that they would not be paid for their work. The substantial risk of nonpayment that Class Counsel assumed when they undertook this case on a contingent basis strongly supports their fee request.

6. The Results Obtained

“One of the primary determinants of the quality of the work performed is the result obtained.” *Ressler*, 149 F.R.D. at 655. Here, Class Counsel have achieved substantial and meaningful benefits for Class Members that directly address the objectives in pursuing this litigation. Class Members are entitled to cash relief to compensate them for any lost benefit of the bargain, with and without proof of purchase, by virtue of a consumer-friendly claims process. Additionally, the Settlement provides meaningful non-monetary benefits in the form of programmatic relief designed to remedy the alleged false advertising. It is appropriate for the Court

to consider *both* the monetary relief and the non-monetary relief provided under the Settlement that benefit each and every member of the Settlement Class. *See, e.g., Poertner v. Gillette Co.*, 618 Fed. Appx. 625, 628 (11th Cir. 2015); *see also, Faught v. American Home Shield Corp.*, 668 F.3d. 1233, 1243 (11th Cir. 2011) (court could consider compensation for class counsel based upon non-monetary benefits, including changes to business practices).

The strong results obtained for the Class strongly support Class Counsel’s fee request.

7. *Fee Awards in Similar Cases*

As stated in the Introduction, Class Counsel seek an award of 30% of the \$3.1 million Maximum Settlement Amount to cover *both* their attorneys’ fees and expenses incurred. Because the request is inclusive of expenses, it would result in an attorneys’ fee of slightly less (29.5%) of the Maximum Settlement Amount.³

The requested percentage here is consistent with percentages that have been awarded by other Georgia state and federal courts hearing class action cases. *See, e.g., Teachers Retirement System of Georgia v. Plymel*, 296 Ga. App. 839 (2009) (affirming fee and expense award of 30% of the common fund over defendant’s objection); *see also In re: Arby’s Restaurant Group, Inc. Data Security Litigation* 2019 WL 2720818 (N.D. Ga. June 6, 2019) (“[a]wards of up to 33% of the common fund are not uncommon in the Eleventh Circuit, and especially in cases where Class Counsel assumed substantial risk by taking complex cases on a contingency basis.”); *accord Lundsford v. Woodforest National Bank*, 2014 WL 12740375 (N.D. Ga. May 19, 2014) (approving award of one-third of the settlement fund and collecting other Georgia federal court cases awarding one-third); *Columbus Drywall & Insulation, Inc. v. Masco Corporation*, 2012 WL 12540344 at *7

³ As noted previously, the Maximum Settlement Amount does not include the value or cost of the Settlement’s non-monetary benefits. Additionally, Class Counsel have incurred \$14,364 in unreimbursed expenses. (Irby Aff’d., ¶20).

(N.D. Ga. Oct. 26, 2012) (same); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, *5 (S.D. Fla. Sept. 26 2012) (collecting cases), *adopted*, 2012 WL 5289628 (S.D. Fla. Oct. 25, 2012); *accord George v. Academy Mortg. Corp.*, 369 F.Supp.3d 1356, 1382 (N.D. Ga. 2019) (collecting cases from the Northern District of Georgia and other districts within the Eleventh Circuit in which fees were awarded in the amount of one-third of the recovery); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming a fee award of one-third of a \$40 million settlement plus expenses). *Morgan v. Public Storage*, 301 F.Supp. 3d 1237 (S.D. Fla 2016) (approving fee award of one-third of the settlement fund in a class action brought under Florida's Unfair and Deceptive Trade Practices Act).

A fee award of slightly less than 30% of the Maximum Settlement Amount is reasonable in this case in light of the result obtained for the Class and the risk that Class Counsel undertook to achieve that result.

8. *Other Factors Support the Requested Fee*

Additional *Camden I* factors support the requested fee and expense award. For example, public policy favors the requested fee award in a case of this nature. Ultimately, the public has an interest in compensating class counsel in consumer cases such as this, because recoveries in these cases are far too small if pursued on an individual basis, leaving only contingency-fee class actions as a mechanism to pursue viable claims and protect consumer rights. There is an important societal stake in rewarding such advocacy. *Columbus Drywall and Insultation, Inc.*, 2012 WL 12540344 at *7 (“[C]ourts should award fees that provide capable attorneys with a suitable incentive to represent clients in this type of litigation and compensation for success in doing so.”); *see also Lunsford*, 2014 WL 12740375 at *11.

Further, economic considerations support Class Counsel's fee request in this case. The

economics of prosecuting a class action can be daunting. Just as was the case here, class counsel often times work for small law firms with limited resources, yet face off against large corporations and large firms with deep resources. Class Counsel have devoted substantial time and resources to the prosecution of this case on a contingent basis. They have done so against a large corporation represented by skilled defense counsel. And although they may receive a fee for their success in this case, there are other consumer class action cases taken on by Class Counsel in which they recovered nothing. Again, these economic considerations support the fee request in this case.

Finally, the fact that Class Counsel were able to achieve substantial results in the most efficient manner possible without requiring protracted and extended litigation further supports the fee and expense award under the *Camden I* analysis. See, e.g., *McLendon v. PSC Recovery Systems, Inc.*, 2009 WL 10668635, at *4 (N.D. Ga. June 2, 2009).

For these reasons, Class Counsel respectfully submit that the requested fee and expense award is reasonable in relation to the result achieved for Settlement Class Members and the efforts of Class Counsel. Further, the attorneys' fee and expense award requested is consistent with other fee and cost awards endorsed and approved by other Georgia state and federal courts hearing class action litigation. Accordingly, Class Counsel respectfully request that the Court approve the requested fee and expense award in accordance with the Parties' Settlement Agreement.

B. The Requested Service Awards for Each of the Class Representatives Are Reasonable Considering Their Efforts On Behalf Of The Class.

The Settlement Agreement permits each of the Class Representatives to apply for a service award of three thousand two hundred and fifty dollars (\$3,250) to compensate and reward each Class Representative for their service in this case and efforts on behalf of the Class. As outlined in the Affidavit of R. Brent Irby, Class Counsel submit that such an award is appropriate in this case

considering each Class Representative's service to the Class and the extent to which the Class will benefit from that service. Class Counsel respectfully submit that a class service award in the amount of \$3,250 is fair, reasonable, and appropriate in this case, and the amount is consistent with, if not on the low end, of other service awards that are typically granted by Georgia courts hearing class action cases.

V. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully submit that their Unopposed Motion for An Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards should be granted.

Respectfully submitted,

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