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.	*	**CASE NO. SUCV2020000385**
DOLGENCORP., LLC. and DOLLAR GENERAL CORP.,	*	
Defendants.	*	

PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

The Court previously granted preliminary approval of the proposed Settlement Agreement (hereinafter, "Settlement") reached by and between Plaintiffs and Defendants (collectively, the "Parties") in this case. Notice of the Settlement has now been disseminated to Class Members pursuant to the Notice Program set forth in the Settlement Agreement. By this motion, Plaintiffs respectfully ask the Court to grant final approval to the Settlement, reached after months of arms-length negotiations under the supervision of a highly qualified mediator. The Settlement is fair, reasonable and adequate and it meets and exceeds established legal standards governing final approval.[1] The Settlement provides significant and meaningful benefits to the Settlement Class Members that are well-tailored to the nature of the harm incurred by Class Members.

[1] Class Counsel has submitted a separate motion and supporting papers seeking approval of service awards for the Class Representatives and for reimbursement of attorneys' fees, costs, and expenses.

In support of this motion and memorandum, Plaintiffs rely on the Affidavit of R. Brent Irby previously filed, and also on the Affidavit of Jeanne C. Finegan on behalf of the Settlement Administrator which is being filed separately.

II. BACKGROUND

In their action, Plaintiffs allege that Defendants deceptively and unlawfully labeled, packaged, and marketed certain ground coffee Products[2] as containing enough coffee such that it "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)

[2] Those Products are defined in the Settlement Agreement and listed on Exhibit C to the Settlement Agreement.

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

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 has been effectuated.

A. Certification of the Settlement Class

Under the Settlement Agreement, the Parties agree and stipulate 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.[3]

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.

3. Release

The release is tailored to the claims that have been plead or could have been plead in this case. Agr. ¶ 12. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release all claims, whether known or unknown, against Defendants and their affiliates. *Id*.

C. Service Awards and Attorneys' Fees and Expenses

Defendants have agreed not to oppose an application for payment of Class Representative Service Awards of up to $3,250 to each Class Representative to compensate them for the actions

[3] 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

they took in their capacities as class representatives. *Id*. at ¶ 7.3. The Service Awards are to come out of the $3.1 million Maximum Settlement Amount. *Id.*

Defendants have also agreed not to oppose an Attorneys' Fees and Costs/Expenses award of up to thirty percent (30%) of the Maximum Settlement Amount. *Id.* at ¶ 7.1.[4] As shown in Class Counsel's Fee Petition, this amount constitutes fair and reasonable compensation for Class Counsel's work on the Action.

D. Settlement Notice

Per the Settlement Agreement, the Court appointed Heffler Claims Group ("Heffler") to administer the notice process.[5] The Settlement Agreement outlined the forms and methods by which notice of the Settlement was given to the Settlement Class Members, including notice of the deadlines to opt-out of, or object to, the Settlement. Agr. ¶ 8.1.

In terms of the methods of notice, direct notice to the Settlement Class Members was not possible, as there is no comprehensive record of the identity of purchasers of Defendants' Products. As a consequence, the Parties developed a robust notice program with the assistance of Heffler that includes: (1) targeted digital advertising on search engines, social media, and consumer websites; (2) a widespread press release; (3) a dedicated Settlement Website through which Settlement Class Members can submit a claim, obtain more detailed information about the Settlement, and access case documents; and (4) a toll-free telephone helpline through which Settlement Class Members can obtain additional information about the Settlement and request the Class Notice and/or a Claim Form. The Notice Plan has been designed to reach an estimated 70%

[4] Plaintiffs have filed a separate Motion for Attorneys' Fees, and Reimbursement of Expenses and Class Representative Service Awards. *See* Preliminary Approval Order at ¶ 17.
[5] Since entry of the Preliminary Approval Order, Heffler Claims Group is now known as Kroll Settlement Administration (Finegan ¶ 1).

of the target audience with a frequency of 3x across all media tactics. The Affidavit of Jeanne C. Finegan addresses in detail the reach and adequacy of the Notice Campaign.

Per the Settlement Agreement, the Settlement Website provides links to Settlement- related and case-related documents such as the Settlement Agreement, the Long-Form Notice, and the Preliminary Approval Order. *Id.* at ¶ 8.3. The Settlement Website also includes procedural information regarding the status of the Court approval process, such as announcements of the Final Approval Hearing date and when the Final Order and Judgment has been entered. *Id.*

E. Claims, Exclusions, and Objections

1. Claims

The timing of the claims process is designed to give Settlement Class Members adequate time to access and review notice documents, determine whether they would like to make a claim; opt-out, or object; and gather any supporting documents necessary to do so. Class Members will have sixty-five (65) days from the Notice Date to complete and submit their claim form to the Settlement Administrator, either by mail or online. Agr. ¶ 2.12. The notice and claim form are written in plain language to facilitate Settlement Class Members' ease in completing it. To allow for the maximum convenience of the Settlement Class Members, claims may be submitted online. The Settlement Administrator is tasked with the responsibility of reviewing and determining the validity of the claims. Agr. ¶ 6.4.

2. Requests for Exclusion and Objections

The timing of the exclusion and objection process is similarly structured to give Settlement Class Members the ability to assess their options. Settlement Class Members will have sixty (60) days from the Notice Date to object to or to submit a request for exclusion from the Settlement. Agr. at ¶¶ 2.31 and 2.32. The process for exclusion and objections is clearly outlined in both the

Settlement Agreement and Notice documents. Agr. ¶¶ 8.8 and 9.3. As of the date of this filing, there have been no objections and no exclusions. (Finegan Aff'd., ¶17).

F. Preliminary Approval and Class Notice

On April 1, 2021, the Court granted preliminary approval to the proposed Settlement. Pursuant to the Court's Order, Heffler disseminated Notice to Settlement Class Members in accordance with the plan for Notice, which this Court found to be the "best notice practicable under the circumstances," and consistent with the requirements of due process. The Affidavit of Jeanne C. Finegan("Finegan Aff'd."), filed concurrently herewith, discusses in detail the successful implementation of this Notice Plan and dissemination of the Class Notice.

IV. ARGUMENT

A. Final Approval of the Settlement is Appropriate.

If a class action settlement releases the claims of a certified class, it must be approved by the Court. O.C.G.A. § 9-11-23(e). Because of the substantial identity of Georgia's class action statute and Rule 23 of the Federal Rules of Civil Procedure, federal authority is deemed persuasive when applying Georgia's procedural rules in the context of class action litigation. *State Farm Ins. Co. v. Mabry,* 274 Ga. 498, 499(1) 556 S.E. 2d 114 (2001); *Earthlink, Inc. v. Eaves*, 293 Ga. App. 75, 666 S.E. 2d 420.

Georgia follows the well-established standards that give effect to the strong policy favoring class action settlement. A Court's analysis should be "informed by the strong judicial policy favoring settlements, as well as the realization that compromise is the essence of settlement." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982); *see also Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984). There is an "overriding public interest in favor of settlements." *Meyer v. Citizens and Southern Nat'l Bank,* 677 F. Supp. 1196, 1200 (M.D. Ga.

1988) (citation and internal quotations omitted); *see also In re U.S. Oil & Gas Litig.,* 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits."). This is because "[s]ettlements conserve judicial resources by avoiding the expense of a complicated and protracted litigation process and are highly favored by the law." *In re Motorsports Merchandise Antitrust Litig*., 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000). The Court has broad discretion in approving a settlement. *Id*.

In approving a class settlement, a court must find that it "is fair, adequate and reasonable and is not the product of collusion between the parties." *Bennett v. Behring Corp*., 737 F.2d at 986 (internal quotations omitted). "The Court [must] make a determination that: (1) there is no fraud or collusion in reaching the settlement, and (2) the settlement is fair, adequate and reasonable." *Warren v. City of Tampa,* 693 F. Supp. 1051, 1054 (M.D. Fla. 1988), *aff'd*, 893 F.2d 347 (11th Cir. 1989). Approval of a class action settlement, including application of the foregoing factors, "is committed to the sound discretion of the district court." *U.S. Oil & Gas Litig*., 967 F.2d at 493; *Bennett*, 737 F.2d at 987.

The Eleventh Circuit has held that in determining whether a proposed settlement is "fair, adequate and reasonable," a court should look to the following factors: (1) the plaintiffs' likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *See Bennett,* 737 F.2d at 986; *In re Motorsports,* F. Supp. 2d at 1333. As set forth below, the *Bennett* factors strongly support a finding that the Settlement is fair, reasonable, and adequate and warrants final approval by the Court.

1. The Settlement Is The Result of Good Faith, Arm's-Length Negotiations Conducted by Informed and Experienced Counsel with the Assistance of an Experienced Mediator

A threshold consideration in evaluating a proposed settlement is whether it is the product of fraud or collusion between the parties. *See In re Motorsports*, 112 F. Supp. 2d at 1333. "In determining whether there was fraud or collusion, the court examines whether the settlement was achieved in good faith through arms-length negotiations, whether it was the product of collusion between the parties and/or their attorneys, and whether there was any evidence of unethical behavior or want of skill or lack of zeal on the part of the class counsel." *Canupp v. Sheldon*, No. 204-CV-260-FTM-99DNF, 2009 WL 4042928, at *9 (M.D. Fla. Nov. 23, 2009) (citing *Bennett*, 737 F.2d at 987 n.9), *aff'd sub nom. Canupp v. Liberty Behavioral Healthcare Corp*., 447 F. App'x 976 (11th Cir. 2011).

Here, there was no fraud or collusion. The Parties engaged in good faith negotiations over a period of months that included an all-day mediation conducted by a mediator experienced in complex litigation. *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) ("The fact that the entire mediation was conducted under the auspices of . . . a highly experienced mediator, lends further support to the absence of collusion."). As part of their settlement discussions and negotiations, the Parties exchanged relevant information regarding the Products, sales figures, and the scope of the Class and its membership. (Irby Aff'd., ¶ 6). The Parties also exchanged additional confirmatory discovery pertinent to the Settlement, including confidential business information from Defendants to further confirm the fairness of the settlement. (*Id*., ¶ 10) The Parties also discussed and exchanged information pertinent to possible injunctive relief and the merits of Plaintiffs' claims. This exchange of information ensured sophisticated and meaningful settlement discussions. (*Id*., ¶ 23)

In evaluating settlement, the Court is "entitled to rely upon the judgement of experienced counsel for the parties." *Canupp*, 2009 WL 4042928, at *5. Through arm's-length negotiations between sophisticated counsel experienced in litigating complex cases, the Parties were able to reach an agreement that accomplishes the objectives of the litigation and provides Class Members with significant and meaningful relief.

Further, Class Counsel's extensive experience with vigorous and successful litigation of complex class action litigation provides strong indicia that Settlement Class members have been well-represented throughout the litigation and while negotiating the proposed Settlement, weighing in favor of approval. Lead defense counsel, McGuireWoods, LLP, is a prominent national law firm with an excellent reputation in the field of complex class action litigation and proved to be a formidable adversary in this litigation. Class Counsel have all successfully prosecuted and settled numerous consumer class actions and other complex litigation throughout the country and were well-qualified to negotiate the Settlement here. (Irby Aff'd., ¶ 16). *See, e.g., Blessing v. Sirius XM Radio Inc.,* 507 F. App'x 1, 3 (2d Cir. 2012) (finding that "the district court did not abuse its discretion when it presumed the proposal settlement was fair" where "competent counsel appeared on both sides" and "settlement was reached only after contentious negotiations"); *In re Inter-Op Hip Prosthesis Liab. Litig*., 204 F.R.D. 330, 351 (N.D. Ohio 2001) ("Moreover, when a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair."); *see also Mangone v. First USA Bank,* 206 F.R.D. 222, 226 (S.D. Ill. 2001) (listing cases and noting that arm's-length negotiations conducted by competent counsel leads to a presumption of fairness of a settlement).

Attorney fees and service awards were not discussed or negotiated until all other material terms of the benefits to the Class had been agreed upon, eliminating the possibility of a trade-off

between compensation for the Settlement Class members and compensation for Class Counsel or the Class Representatives. (Irby Aff'd. ¶ 7).

2. Continued Litigation Would Be Risky, Lengthy, and Expensive

Absent this Settlement, this litigation would likely continue for many more years. Because a contested nationwide class trial would likely pose management concerns under Rule 23, Class Counsel would most likely need to proceed on a state-by-state basis in order to secure relief for consumers across the country. (Irby Aff'd, ¶¶ 5 & 23). If not settled, this Court and perhaps others would be required to rule on inevitable motions to dismiss and the Parties would move forward with intense fact and expert discovery, which would be followed by briefing on class certification, summary judgment, *Daubert* challenges, a lengthy trial, and appeals. During this process, likely lasting years, the Parties would incur potentially millions of dollars in fees and out-of-pocket expenses, while providing no guarantee that the Class would see any recovery.

In contrast, the Settlement avoids this outcome, ends the litigation, saves the Parties and Court considerable resources, and provides immediate and substantial relief to the Class. Accordingly, this factor supports final approval. *See In re U.S. Oil & Gas Litig.,* 967 F.2d at 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive"); *In re Domestic Air Transp. Antitrust Litig*., 148 F.R.D. 297, 315, 317, 325-26 & n.32 (N.D. Ga. 1993) ("The very uncertainty of outcome in litigation, as well as the avoidance of wasteful litigation and expense, lay behind the Congressional infusion of a power to compromise. This is a recognition of the policy of the law generally to encourage settlements.").

3. The Opinions of Class Counsel, the Class Representatives, and Absent Class Members Favor Approval of the Settlement

The fairness of the Settlement is enthusiastically endorsed by experienced Class Counsel and each of the Class Representatives (Irby Aff'd., ¶¶ 21-23), which strongly supports the fairness of the Settlement. *See, e.g., Warren*, 693 F. Supp. At 1060 (a court should afford "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation"); *see also Domestic Air*, 148 F.R.D. at 312-13; *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. at 660, 669 (M.D. Ala. 1988) ("If plaintiffs' counsel did not believe these factors all pointed substantially in favor of this settlement as presently structured, this Court is certain that they would not have signed their names to the settlement agreement.").

Moreover, every indication is that collectively the absent class members also support the Settlement. While the objection and opt out deadline is still less than two weeks away, to date, no Class Member has objected and no Class Member has opted out. (Finegan Aff'd., ¶ 17). This response strengthens the argument that the Settlement should be approved. *See, e.g., In re the Home Depot, Inc., Customer Data Sec. Breach Litig.,* 2016 WL 6902351, at *4 (N.D. Ga. Aug. 23, 2016) (that the number of objectors amounts to an "infinitesimal percentage" of the class indicates "strong support for the settlement" and weighs strongly in favor of final approval).

4. Investigation and Discovery Have Been Sufficient to Allow Counsel to Exercise Reasoned Judgment Regarding the Litigation and the Settlement

The Parties had more than adequate information before them to evaluate their relative positions and to make knowledgeable decisions about the Settlement throughout the negotiations. (Irby Aff'd., ¶ 23). Prior to filing, 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). To facilitate settlement discussions, Defendants provided Class Counsel with informal discovery, including relevant information regarding the Products, sales figures, and the scope of the class and its membership. Following mediation, the Parties exchanged additional confirmatory discovery pertinent to the Settlement which was reviewed and analyzed by Class Counsel to further confirm the fairness of the Settlement. Class Counsel also had information to evaluate the strengths and weaknesses of the case and the merits of the Settlement based upon their extensive experience in consumer litigation, and through input and insight from a respected mediator experienced in these types of matters. (*Id*.)

"The absence of formal discovery in no way undermines the integrity of the settlement given the extensive investigation that has occurred as a result of the proceedings thus far which demonstrates that counsel have a full understanding of the strengths and weaknesses of their case." *Griffin v. Flagstar Bancorp Inc.*, 2013 WL 6511860 at *4 (E.D. Mich. Dec. 12, 2013); *see also N.Y. State Teacher's Ret. Sys. V. Jen. Motors Co.,* 315 F.R.D. 226, 236 (E.D. Mich. 2016) ("The relevant inquiry is whether the plaintiff has obtained a sufficient understanding of the case to gauge the strengths and weaknesses of the claims and the adequacy of the settlement."); *In re Packaged Ice Antitrust Litig*., 2010 WL 3070161 at *6 ("Particularly where, as here, there is the potential for a significant benefit to the class in the form of cooperation on the part of the settling Defendant, this Court is reluctant to refuse to consider the very preliminary approval that will trigger that cooperation."); *see e.g., Mashburn*, 684 F. Supp. at 669 (holding that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery is required to determine the fairness of the settlement.); *see, e.g., Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (approving settlement over objection that not enough discovery was conducted because plaintiffs

were adequately informed despite fact that "very little formal discovery was conducted and there is no voluminous record in the case"); *In re Jiffy Lube Securities Litig.,* 927 F.2d 155 (4th Cir. 1991) (plaintiffs were sufficiently informed about the strength of the case as a result of evidence obtained through informal discovery); *Lipuma v. American Express Co.*, 407 F.Supp.2d 1298, 1324 (S.D. Fla. 2005) ("vast formal discovery need not be taken" for settlement approval).

5. The Settlement is Within the Range of Possible Recoveries and is Fair, Adequate, and Reasonable

The next factor in the fairness analysis is the range of possible recoveries if the case is tried, which here obviously range from a defense verdict to a total victory for the class. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 212 (5th Cir. 1981). In applying this factor, "the Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but rather, to evaluate the proposed settlement in its totality." *Figueroa v. Sharper Image Co.*, 517 F. Supp 2d 1292, 1326 (S.D. Fla. 2007). Further, the Court is not called upon to decide whether class counsel have reached the best deal possible, nor whether class members will receive as much from the settlement as they might recover from winning at trial. *In re Checking,* 2014 WL 113701156 at *8. "As settlements are constructed upon compromise, the merits of the parties' claims and defenses are deliberately left undecided. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement." *Ressler,* 822 F. Supp. at 1552-53.

The Court's evaluation of this factor is guided by several "important maxims," one of which is "the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *Behrens v. Wometco Enterprises., Inc.,* 118 F.R.D. 534, 542(S.D. Fla. 1988), *aff'd,* 899 F.2d 21 (11th Cir. 1990). Indeed, a "settlement can be

satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Id.* That is because a settlement must be evaluated considering the attendant risks. *In re Checking,* 2014 WL 113701156 at *10; *see also Bennett,* 737 F.2d at 986 ("compromise is the essence of settlement"). Courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." *Warren,* 693 F. Supp. at 1059; *see also, e.g., In re Domestic Air,* 148 F.R.D. at 325 ("That the proposed settlement amounts to a fraction of [the] potential recovery does not render the proposed settlement inadequate or unfair").

The Settlement here easily passes muster. The Settlement is fair, reasonable, and adequate because it squarely addresses and resolves the issues raised in this litigation. The Settlement provides cash relief to Class Members to compensate for any lost benefit of the bargain, with or without proof of purchase. Besides significant cash relief, the Settlement provides meaningful non-monetary benefits in the form of programmatic relief in order to remedy the alleged false advertising.

Weighed against the risks and legal challenges faced by Class Members, these settlement benefits are well within a range of reasonableness to warrant final approval. Class Counsel have reviewed and analyzed informal discovery and confidential business information provided by Defendants; have carefully researched legal issues surrounding the claims and class certification; and have carefully investigated the underlying facts and areas of dispute in the litigation, and are confident and satisfied that the Settlement is fair, adequate, and well within a reasonable range of possible recoveries to warrant final approval. (Irby Aff'd., ¶ 23). Undoubtedly, continued litigation would involve considerable time and expense, particularly in a consumer class action of this nature. The value of any judgment would be discounted by the delay the Class would suffer in actually obtaining a judgment. By contrast, the Settlement provides certain, timely, and substantial

relief. It also avoids a huge consumption of resources of the Parties and the Court. Evaluated against the delays, costs, and uncertainties associated with trial and appeals, the Settlement provides immediate, substantial economic benefits and falls well within the range of reasonableness.

This Settlement establishes a means for prompt resolution of the claims against Dollar General, while avoiding protracted and expensive litigation that could lead to little or no recovery at all. Given the multi-faceted forms of relief available under the Settlement, and the avoidance of the risk and expense of further litigation, this factor likewise weighs in favor of final approval.

B. The Proposed Class Satisfies the Prerequisites for Certification of a Settlement Class.

As detailed in Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support, Plaintiffs contend that the proposed nationwide class satisfies each of O.C.G.A. § 9-11-23's prerequisites for settlement purposes. For the purpose of implementing the proposed Settlement, and for no other purpose, Defendants have agreed to conditionally withdraw any objections to the certification of a nationwide class and stipulate to the certification of the Settlement Class. Accordingly, the Parties refer the Court to the analysis in Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support, which is fully applicable to the Court's consideration of final approval, and incorporate that analysis by reference.

C. The Notice Program, as Implemented, Satisfies Due Process and O.C.G.A. § 9-11-23.

O.C.G.A. § 9-11-23(e) provides that "notice of the proposed dismissal or compromise [of a class action] shall be given to all members of the class in such manner as the court directs." The

notice program approved by the Court in its preliminary approval order satisfies Georgia law and due process for the reasons set forth in Plaintiffs' preliminary approval brief.

As Ms. Finegan describes in her affidavit, the notice program was carried out, under Class Counsel's supervision, by the nationally-recognized notice and claims administration firm selected by the Parties and approved by the Court. Further, the various notices provided to Class Members each describe in plain language the Settlement terms, the claims at issue, the release, the process for objecting and opting out, how to make a claim, all pertinent deadlines, and the time, date and place of the final approval hearing.

These efforts to inform Class Members of the Settlement, and of their attendant rights and obligations, satisfy the requirements of due process and O.C.G.A. § 9-11-23. *See, e.g., In re Nissan Motor Corp.*, 552 F.2d at 1104 (form of notice satisfies due process if it contains "an adequate description of the proceedings written in objective, neutral terms, that . . . may be understood by the average absentee class member"); *In re Checking,* 2014 WL 113701156 at * 7-8. Accordingly, the Court should affirm in its final approval order that the Class was provided the best notice practicable under the circumstances.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order finally approving the Settlement, certifying the Settlement Class, and finding that the notice program, as implemented, met the requirements of due process and O.C.G.A. § 9-11-23.

Respectfully submitted,

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