

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

REBECCA NOCERA, TRACY MICHEL,  
JENNIFER ROSSMAN, ANGELA RENEAU,  
FELICIA SAMMARCO, JOHN J. NOTTO,  
STEVEN WILLNER, and HEATHER  
SHARP, individually and on behalf of all  
others similarly situated,

Case No. 2:18-cv-01222

Plaintiffs,

v.

DOLLAR GENERAL CORPORATION  
D/B/A DOLLAR GENERAL,  
DOLGENCORP, LLC D/B/A DOLLAR  
GENERAL, DOLGEN NEW YORK, LLC,  
DG RETAIL, LLC, AND DOLGEN  
CALIFORNIA, LLC,

Defendants.

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION  
FOR REASONABLE ATTORNEYS' FEES AND COSTS**

Through their undersigned counsel, Plaintiffs Rebecca Nocera, Tracy Michel, Jennifer Rossman, Angela Reneau, Felicia Sammarco, John J. Notto, Steven Willner and Heather Sharp (collectively, "Plaintiffs"), respectfully requests that the Court order the payment of reasonable attorneys' fees and costs pursuant to the proposed Class Action Settlement that this Court preliminarily approved in its Order dated January 27, 2021 ("Preliminary Approval Order") (Dkt No. 79).<sup>1</sup> The total amount Plaintiff requests for approval of all fees and costs in this litigation is \$385,000.00. Plaintiff is entitled to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 12205. Defendant does not oppose this motion.

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<sup>1</sup> The Settlement Agreement was attached as Exhibit 1 to the Amended Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion") (Dkt. No. 76).

## I. BACKGROUND OF THE LITIGATION

On September 13, 2018, by and through her undersigned Plaintiffs' co-counsel Carlson Lynch, LLP ("Carlson Lynch"), Plaintiff Rebecca Nocera initiated this action by way of class action complaint alleging that Dollar General violated Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the "ADA"), and its implementing regulations based on Defendants placement of non-fixed objects in locations at their stores that reduce or eliminate accessible routes of travel for people with mobility disabilities (the "Pennsylvania Lawsuit"). (ECF 1). On June 25, 2019 with consent of the parties, Judge Phipps consolidated the class action captioned *Michel v. Dollar Gen. Corp., et. al.*, No. 2:18-cv-1624, with the Pennsylvania Lawsuit, and a Consolidated Amended Complaint was filed. (ECF 29 and 31). On May 15, 2018, Plaintiff Jennifer Rossman, by and through her counsel Disability Rights New York ("DRNY"), initiated a class action lawsuit in the United States District Court for the Northern District of New York, civil action number 6:18-cv-00573 (the "New York Lawsuit"), alleging substantially similar claims against Defendants as in this action. Additionally, Plaintiffs Angela Reneau (citizen of Illinois), Felicia Sammarco (citizen of Illinois), John J. Notto (citizen of Illinois), Steven Willner (citizen of Florida), and Heather Sharp (citizen of California) all retained Carlson Lynch for substantially similar allegations of access barriers limiting or narrowing the accessible routes of Defendants' stores for people with mobility disabilities.

Both Carlson Lynch and DRNY engaged in extensive investigation and research before filing their clients' respective suits. After the Pennsylvania Lawsuit and New York Lawsuit were filed, the parties engaged in motions practice, discovery, and each engaged in mediation. The parties in the Pennsylvania Lawsuit mediated with Carole Katz on July 30, 2019. While the July 30, 2019 mediation in the Pennsylvania Lawsuit was unsuccessful, the parties to that action agreed

to continue working towards a resolution of the action. The parties in the New York Lawsuit mediated with David Homer on September 17, 2019. Thereafter, the parties to the Pennsylvania Lawsuit and New York Lawsuit, along with Dollar General, began negotiation of a global resolution for those two actions, along with the (then) unfiled claims of Plaintiffs Reneau, Sammarco, Notto, Willner, and Sharp. On February 18, 2020, all parties engaged in another in-person mediation with Carole Katz, involving both Carlson Lynch's and DRNY's clients' claims, to discuss a global, nationwide class resolution.

After extended negotiations that ultimately occurred throughout the course of over a year, and facilitated by Carole Katz – who remained actively involved in the continued negotiations after the February 2020 global mediation – the parties reached an agreement in principle on or about June 11, 2020 for a class resolution of all Plaintiffs claims related to mobility accessibility barriers as a result of the placement of non-fixed items that limit or narrow paths of travel within or to Defendants' stores. The parties agreed to stay Plaintiff Rossman's New York Lawsuit, and that Plaintiff Rossman, along with Plaintiffs Reneau, Sammarco, Notto, Willner, and Sharp would file their claims in this Court in a Consolidated Second Amended Complaint ("SAC") for purposes of this nationwide class settlement. Plaintiffs' SAC was filed on July 20, 2020. (ECF 56).

Plaintiffs allege in the SAC that each Plaintiff has a mobility disability under the ADA, and each Plaintiff uses a wheelchair for mobility assistance. (SAC ¶¶ 31-38). Plaintiffs further allege that they are regular customers of Defendants' stores and have experienced access barriers in the form of merchandise, merchandise displays, carts, boxes, dollies, and other non-fixed items placed in accessible routes of Defendants' stores in manner that has limited Plaintiffs' ability to navigate through pathways of travel while using their wheelchairs. (SAC ¶¶ 45-84). The SAC

alleges violations of the ADA, and seeks injunctive relief, along with attorneys' fees and costs. (SAC, p. 28).

On December 10, 2020 the parties finalized terms of a written settlement agreement, which all parties have now executed. A copy of the Class Settlement Agreement is attached to Plaintiffs' Unopposed Motion as Exhibit A (hereinafter, "Settlement Agreement"). The Settlement Agreement becomes effective only upon final approval by this Court. The terms of the Settlement Agreement are discussed below.

## II. THE TERMS OF THE SETTLEMENT

The Settlement Agreement is intended to effect a complete resolution and settlement of all claims and controversies relating to the assertions of Plaintiffs and the Class. In exchange for a release of claims by Plaintiffs and the Class, Dollar General will agree to provide the injunctive relief as described, *infra*.

### A. Injunctive Relief for the Benefit of the Class

The parties have agreed to the following injunctive relief:

#### 1. ADA Access Compliance

Defendants agree to ensure that the placement of merchandise, shopping carts, boxes and/or other non-fixed items in areas of the stores, both inside and out, will not reduce or eliminate accessibility to any of the following paths of travel: parking in designated accessible parking spaces and adjoining access aisles; the entrances or exits of the stores; accessible routes within the stores (i.e., aisles or pathways to merchandise on the sales floor); access routes to publicly available restroom facilities; the route to or ability to use the publicly available fountains; and paths to any emergency exits and/or fire escape doors (the "Access Routes"). Defendants further agree that, if Access Routes are obstructed, they will follow the protocols set forth herein to promptly remedy

the issue.

2. ADA Customer Service Assistance

Defendants will include a toll-free customer assistance line phone number on a customer-facing door poster or sign that includes the universal persons with disabilities symbol with language to the effect of, “We are committed to compliance with the Americans with Disabilities Act. Our employees are glad to help! If you need assistance, please ask a Dollar General associate or call 1-877-463-1553.” Defendants will instruct its Customer Service intake representatives that all ADA accessibility issues reported through the Customer Service line must be recorded and promptly forwarded, in writing, to Defendants’ applicable District Managers for prompt investigation and, if necessary, prompt remediation.

3. Training on Accessibility Plan

Defendants will ensure that all Regional Directors, District Managers, and Store Managers hired prior to the Effective Date of the Settlement Agreement complete a computer-based ADA Title III training that encompasses the full scope of the injunctive relief detailed herein, the content of which may be reviewed by Class Counsel prior to finalization. Defendant shall consider Class Counsel’s recommendations regarding such changes, but is not required to make any substantive changes based on Class Counsel’s review. For all Regional Directors, District Managers, and Store Managers hired after the Effective Date of the Settlement Agreement, completion of the computer-based Title III ADA Compliance Training will be part of the onboarding process.

Dollar General agrees that all hourly employees hired prior to the Effective Date of the Settlement Agreement at Defendants’ stores will receive training through a one-page ADA Title III Compliance educational document regarding the requirements of the injunctive relief detailed herein, the content of which may be reviewed by Class Counsel prior to finalization. Defendants

shall consider Class Counsel's recommendations regarding such changes, but are not required to make any substantive changes based on Class Counsel's review. For all employees encompassed by this provision that are hired after the Effective Date of the Settlement Agreement, the one-page ADA Compliance document will be made part of their onboarding materials.

**B. Monitoring Provisions**

The Settlement Agreement contains monitoring and reporting provisions to ensure that Dollar General meets its obligations. Dollar General will ensure that the District Managers monitor the stores' compliance with this agreement by including an inspection for any Access Barriers in any Access Routes during each District Manager Quarterly Store Compliance Visit. Should the District Manager determine that there are any Access Barriers in any Access Routes, the District Manager will work with the Store Manager to remedy the specific issue immediately if possible, but no later than within 24 hours. If for an unforeseen reason the District Manager and the Store Manager cannot work to remedy the issues within 24 hours, Dollar General will advise Class Counsel of the additional need for time to cure.

No later than March 31<sup>st</sup> for each year during the Term of the Settlement Agreement, Dollar General shall provide Class Counsel with a summary report compiling the District Manager Quarterly Store Compliance Visit Reports performed during the year that shows the itemized total for all ADA access results in the following or similar form: (a) All Clear or (b) Appropriate Corrective Action Taken ("Annual Summary Report"). In the event that an Access Barrier is identified and Appropriate Corrective Action is taken, the Annual Summary shall include a brief description of the identified Access Barriers. The Annual Summary Report shall include an update as to any changes to the districts (i.e., new stores, closed stores, changed district boundary lines, etc.) for purposes of monitoring the compliance under this agreement.

Beginning on the ninety-first (91<sup>st</sup>) day after the Effective Date, Class Counsel or their agents may monitor Defendants' compliance with the Settlement Agreement through inspections of Defendants' stores, which monitoring may be performed without advance notice to Defendants.

The Parties agree to the following with respect to the monitoring:

- Class Counsel or their agent may inspect up to three percent (3%) of all Defendants' stores (for a total of 480 stores) during the Term of the Settlement Agreement.
- During the Term of the Settlement Agreement, Class Counsel may perform up to one (1) inspection and one (1) follow-up inspection per specific Store location. However, if Access Barriers are identified in any Access Route upon follow-up inspection of a specific Store location, the aforementioned restriction on the number of inspections permitted by Class Counsel at that specific Store location is removed.
- Class Counsel will inspect no more than eight (8) stores in a single district in a calendar month. To facilitate this agreement, within ninety (90) days after the Effective Date, Defendants will provide Class Counsel with a listing of all stores with their addresses, and their respective districts.

**C. Additional Relief; Payment of Incentive Awards to Plaintiffs and Reasonable Attorneys' Fees and Expenses to Class Counsel**

The Settlement Agreement includes a payment of \$1,000.00 to each Named Plaintiff. This payment is granted in exchange for the release of the Named Plaintiffs' claims as described in the Settlement Agreement as well as for the service each Named Plaintiff provided in the course of the lawsuit.

Additionally, Dollar General has agreed to pay Class Counsel's fees and expenses of \$385,000.00 which reflects compensation for Class Counsel's work on this litigation to date, reasonable expenses incurred to date, and fees for future monitoring of Dollar General's

compliance with the Settlement Agreement. Class Counsel's fees and expenses were negotiated only after an agreement was reached on the injunctive relief provisions of the settlement agreement.

### **III. PLAINTIFFS ARE ENTITLED TO RECOVER ALL REASONABLE ATTORNEYS' FEES AND COSTS FOR THEIR WORK ON THIS MATTER**

#### **A. The Law Provides for an Award of Attorneys' Fees and Costs to Plaintiff**

The Americans with Disabilities Act authorizes the payment of attorneys' fees and costs to a prevailing party who files a case to enforce their rights under the statute. 42 U.S.C. § 12205. Under statutes with fee-shifting provisions, "it is well-established that a prevailing party should recover an award of attorneys' fees absent special circumstances." *Truesdell v. Philadelphia Housing Authority*, 290 F.3d 159, 163 (3d Cir. 2002) (citation omitted); *accord People Against Police Violence v. City of Pittsburgh*, 520 F.3d 226, 232 (3d Cir. 2008).

Here, through the resulting settlement, Plaintiff has achieved all the relief sought in this litigation. Plaintiff has prevailed for purposes of recovering fees and costs, and there are no special circumstances that would warrant a denial of her request.

#### **B. Plaintiffs are a Prevailing Party for the Purpose of Fee and Cost Recovery**

A plaintiff is the "prevailing party" if she "succeed[s] on any significant issue in litigation which achieves some of the benefits the part[y] sought in bringing suit." *People Against Police Violence*, 520 F.3d at 232 (citation omitted). "To 'succeed' under this standard, a party must achieve a 'court-ordered change in the legal relationship between the plaintiff and the defendant.'" *Id.* (citations omitted).<sup>2</sup> The settlement obtained by Plaintiff in this case unquestionably meets this standard.

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<sup>2</sup> When a court *approves a settlement agreement and retains jurisdiction*, there is a judicially-sanctioned material alteration in the legal relationship of the parties sufficient to confer prevailing party status on the plaintiff under fee-shifting statutes, such as the ADA. *Truesdell*, 290 F.3d at 164, 165; *accord P.N. v. Clementon Bd. of Educ.*, 442 F.3d

The legally binding and judicially enforceable settlement agreement that resolves this case effects a material alteration in the legal relationship between Plaintiff and Defendant. The Agreement obligates Defendant to take concrete steps to benefit Plaintiff and people living with mobility disabilities, and Defendant will take steps to ensure its stores are accessible as a result of the judicially enforceable settlement agreement achieved in this litigation. Defendant likely would not have taken these actions absent this litigation and resulting agreement. Accordingly, Plaintiff has achieved a judicially-sanctioned, material alteration in the relationship between the parties for purposes of recovering fees and costs in this case.

### C. Plaintiffs' Lodestar Is Reasonable

To calculate the amount of reasonable attorneys' fees, courts multiply the number of hours reasonably expended by the reasonable hourly rates to obtain the "lodestar." *Hensley v. Eckherhart*, 461 U.S. 424, 433-34 (1983); *Ursic v. Bethlehem Mines*, 719 F.2d 670, 676 (3d Cir. 1983) (describing a "twin inquiry into reasonableness: a reasonable hourly rate *and* a determination of whether it was reasonable to expend the number of hours in a particular case"). The "resulting product is *presumed* to be the reasonable fee to which counsel is entitled." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986) (emphasis in original). Where, as here, the "plaintiff has obtained excellent results, [her] attorney should recover a fully compensatory fee... encompass[ing] all hours reasonably expended on the litigation..." *Hensley*, 461 U.S. at 435.

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848, 853 (3d Cir.), *cert. denied*, 549 U.S. 881 (2006); *Arc of Delaware v. Meconi*, No. 02-255-KAJ, 2005 WL 3657319 at \*2 (D. Del. June 13, 2005); *Witcher v. Philadelphia Housing Authority*, No. 01-cv-585, 2002 WL 32351170 at \*1-\*2 (E.D. Pa. Aug. 19, 2002). Here, the Agreement embodies the type of judicial involvement necessary to confer prevailing party status on Plaintiff. The Agreement must be approved and adopted by the Court. (SA ¶ 11). Also, the Agreement provides that the Court will retain jurisdiction for purposes of interpretation and enforcement of the Agreement. (SA ¶ 14).

A court determines an attorney's lodestar award by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000); see also *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). Attorney fee awards in complex civil rights cases are "governed by the same standards which prevail in other types of *equally complex federal litigation*..." *Hensley*, 461 U.S. at 430 n. 4 (comparing complex civil rights case with complex antitrust litigation for purposes of awarding attorneys' fees) (emphasis added).

Class Counsel's aggregate lodestar through today was \$395,254.00. See Declaration of R. Bruce Carlson and accompanying exhibits ("Carlson Declaration"), and Declaration of Christina Asbee and accompanying exhibits ("Asbee Declaration"), attached to Plaintiffs' Motion as Exhibit A and B, respectively. Class Counsel spent a total 856 hours on this matter. *Id.* To date, this case has involved a significant commitment of time by Class Counsel, and the work is ongoing. Class Counsel committed a reasonable amount of time necessary to obtain the results achieved in light of the complexity of the access barriers at issue and the significant exchanges of information with Defendant that were necessary to assess the feasibility of the relief provided. Moreover, Class Counsel expended only as much time as was necessary to fully protect the interests of the class and to successfully litigate and settle this matter.

Class Counsel's hourly rates are reasonable. The Court "should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001).

Plaintiff and the Class were represented by Carlson Lynch, LLP (“Carlson Lynch”) and Disability Rights New York (“DRNY”). Carlson Lynch has extensive experience litigating class action cases, including disability rights actions. Carlson Lynch’s fee requests and hourly rates have routinely been approved as reasonable, including in this Court. *See, e.g., Flynn v. Concord Hospitality Enterprises Co.*, No. 2:17-cv-1618- LPL, Dkt. No. 41 (W.D. Pa. Nov. 27, 2018) (finding requested attorneys’ fees, future monitoring fees, and allowable costs to be fair and reasonable); *Heinzl v. Cracker Barrel Old Country Store, Inc.*, No. 14-cv-1455-RCM, Judgment Approving Class Action Settlement (Dkt. No. 172) (W.D. Pa. Aug. 10, 2017) (same); *Jahoda, et al. v. Redbox Automated Retail, LLC*, No. 2:14-cv-1278-LPL, (Dkt. No. 80) (W.D. Pa. Oct. 16, 2017) (same); *In re: The Home Depot, Inc., Customer Data Security Breach Litigation*, No. 14-md-2583-TWT, Final Order on Plaintiffs’ Motion for Attorneys’ Fees, Expenses and Service Awards, (N.D. Ga. Oct. 11, 2017) (same); *In re: Target Corporation Customer Data Security Breach Litigation*, No. 14-md-2522-PAM, Memorandum and Order granting final approval motion and attorneys’ fees motion, (D. Minn. May 12, 2016) (same).

**D. Plaintiff Is Entitled to Reasonable Fees and Costs for Monitoring Compliance**

Plaintiff is entitled to reasonable fees and costs for monitoring compliance with the settlement. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 558, supplemented, 483 U.S. 711 (1987) (finding post-judgment monitoring is compensable activity for which counsel is entitled to a reasonable fee). Here, Class Counsel will monitor Defendants’ stores to ensure that they comply with the terms of the settlement. Should any issues occur, Class Counsel will utilize the Dispute Resolution process in the Settlement Agreement to meet and confer with Defendant’s counsel to seek remedy of any failures. If such meet and confer efforts are unsuccessful, the parties will elect to mediate before seeking court intervention. While future fees

and expenses in this action are an estimate, based upon its experience, Class Counsel believes the fees and costs for monitoring work will be approximately \$240,000.00.

#### **E. Plaintiff Is Entitled to Litigation Costs and Expenses**

Unless otherwise provided by law or court order, “costs – other than attorneys’ fees – should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). Here, Class Counsel have incurred \$12,130.16 in reimbursable costs. *See* Carlson Declaration; Asbee Declaration. The total costs and expenses at issue are reasonable given the technical nature of the relief sought in the litigation and the extensive negotiations that led to the settlement agreement in this case. The costs incurred by Class Counsel are included in the \$385,000.00 agreed-upon by the parties.

#### **F. Fees Requested Compared to Lodestar**

Class Counsel has incurred \$395,254.00 in fees to date; \$12,130.16 in costs to date; and reasonably anticipates the fees and costs for monitoring compliance with the Settlement Agreement to be at least \$240,000.00 for Defendant’s 480 stores.<sup>3</sup> The total lodestar and costs for litigating and monitoring this action is, therefore, \$647,384.16. The agreed-upon fees and expenses in the Settlement of \$385,000, represents 59% of the total fees and expenses that Class Counsel has, and expects to put, into this action.

### **IV. CONCLUSION**

For the reasons discussed above, Plaintiff respectfully requests that the Court enter an order approving the amount of \$385,000.00 in attorneys’ fees and costs to be paid to Class Counsel for their work on this matter.

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<sup>3</sup> While Defendant has over 16,200 stores, the Parties have agreed to limit monitoring to 3%, or 480, of Defendants’ stores.

Dated: February 10, 2021

Respectfully submitted,

By: /s/ R. Bruce Carlson  
R. Bruce Carlson  
Kelly K. Iverson  
**CARLSON LYNCH, LLP**  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
Tel: 412-322-9243

/s/ Christina Asbee  
Christina Asbee  
*Admitted pro hac vice*  
Amanda Pearlstein  
*Pro hac vice pending*  
**DISABILITY RIGHTS NEW YORK**  
725 Broadway Ste. 450  
Albany, NY 12207  
(518) 432-7861 (telephone)

*Co-Counsel for Plaintiffs*