



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHIVA Y. STEIN, Individually and  
on Behalf of All Others Similarly  
Situated,

Plaintiff,

v.

FAMILY DOLLAR STORES, INC.,  
MARK R. BERNSTEIN, PAMELA L.  
DAVIES, SHARON ALLRED  
DECKER, EDWARD C. DOLBY,  
GLENN A. EISENBERG, HOWARD  
R. LEVINE, GEORGE R.  
MAHONEY, JR., JAMES G.  
MARTIN, HARVEY MORGAN,  
DALE C. POND, DOLLAR TREE,  
INC., and DIME MERGER SUB,  
INC.,

Defendants.

C.A. No. ~~\_\_\_\_\_~~ 9985-CB

**VERIFIED AMENDED CLASS ACTION COMPLAINT**

~~The allegations of the Complaint are based on the personal knowledge of Plaintiff, Shiva Y. Stein (“Plaintiff”) as to herself and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters stated herein, as follows:~~

~~1. Plaintiff individually and on behalf of all other similarly situated public shareholders of Family Dollar Stores, Inc. (“Family Dollar” or the “Company”), by her attorneys, makes the following allegations against Family Dollar; the members of Family Dollar’s board of directors identified below (the “Board” or the “Individual Defendants”); Dollar Tree, Inc. (“Dollar Tree”), Dime Merger Sub, Inc. (“Merger Sub”) (collectively, the “Dollar Tree”) (Family Dollar, the Board, and Dollar Tree are collectively the “Defendants”), in support of Plaintiff’s claims relating to the proposed acquisition of all of the Company’s outstanding stock by Dollar Tree at the unfair price of \$74.50 per share and on grossly unfair and inadequate terms (the “Proposed Transaction”). The total value of the Proposed Transaction is approximately \$9 billion. The Board has unanimously recommended to the Company’s stockholders to vote for the Proposed Transaction. The Defendants expect to complete the Proposed Transaction by the fourth quarter of 2014.~~

### ~~**NATURE OF THE ACTION**~~

~~2. This is a class action on behalf of the securities holders of Family Dollar alleging breaches of fiduciary duties, including the duties of loyalty, good faith, due care, independence, and fair dealing, being committed by the Board.~~

Plaintiff Shiva Y. Stein (“Plaintiff”), by her attorneys, brings the following class action on behalf of herself and all stockholders of Family Dollar Stores, Inc. (“Family Dollar” or the “Company”), other than Defendants (defined below) and their affiliates, against Family Dollar, Family Dollar’s board of directors (the “Board”), Dollar Tree, Inc. (“Parent”), and Dime Merger Sub, Inc. (“Merger Sub,” collectively with Parent, “Dollar Tree”) for breaching their fiduciary duties (and/or aiding and abetting thereof) in connection with Dollar Tree’s proposed acquisition of all the outstanding stock of Family Dollar. The allegations in this amended complaint are based on information and belief, including investigation of counsel and review of publicly-available information, except for Plaintiff’s own acts, which are alleged on personal knowledge.

### NATURE AND SUMMARY OF THE ACTION

1. ~~3. These breaches are being committed in connection with Family Dollar’s announcement of the Proposed Transaction on July 28, 2014, and execution of a Merger Agreement dated July 27, 2014.~~ On July 28, 2014, Family Dollar announced a definitive Agreement and Plan of Merger (the “Merger Agreement”) ~~with Dollar Tree in a transaction valued at approximately \$8.5 billion. Pursuant to the Merger Agreement, Family Dollar shareholders~~ dated July 27, 2014, under which Dollar Tree, through Parent and Merger Sub, will acquire all outstanding shares of stock of Family Dollar (the “Proposed Transaction”).

Pursuant to the Proposed Transaction, Family Dollar's stockholders will receive \$59.60 in cash and approximately \$14.90 equivalent in worth of Dollar Tree shares for a total value consideration of approximately \$74.50 per share. After the consummation of the Proposed Transaction, current Family Dollar shareholders will own anywhere from 12.7% to stockholders would own somewhere between 12.7% and 15.1% of the outstanding stock of Dollar Tree. because the stock portion of the Proposed Transaction is subject to a collar. The total value of the transaction is approximately \$8.5 billion.

2. As described below, the Proposed Transaction is the product of, and is being maintained as a result of, the Company Board's breaches of fiduciary duty. At all relevant times, the Family Dollar Board has inappropriately deferred to Defendant Levine, allowed him to impermissibly favor a transaction with Dollar Tree over one with Dollar General for his own purposes and at the expense of the Company's stockholders, and has utterly failed to even attempt to maximize stockholder value. Indeed, the Family Dollar Board appears to be actively intent on refusing to maximize stockholder value by attempting to ramrod through the inferior Proposed Transaction rather than accept the superior offer presented by Dollar General Corp. ("Dollar General" or "Company A").

3. During the negotiations with Dollar Tree, the Company was also in talks with another suitor, Dollar General. As shown below, Howard Levine

(“Levine”), Family’s Dollar Chief Executive Officer (“CEO”), resisted and undermined negotiations with Dollar General due to personal conflicts of interests, even as the Board “directed Levine to encourage [Dollar General] to re-engage in discussions about...a potential strategic transaction.”

4. Despite Levine’s efforts to sideline Dollar General in favor of Dollar Tree, on August 18, 2014, Dollar General publicly announced a \$9.7 billion offer to buy the Company at \$78.50 per share in cash for each share of Family Dollar’s stock, a 29.4% premium, trumping Dollar Tree’s inferior \$8.5 billion cash and stock proposal.

5. Dollar General’s offer would pay \$78.50 per share in cash, \$4.00 per share more than Dollar Tree’s offer. Dollar General has also indicated that it was willing to pay the \$305 termination fee that would be owed to Dollar Tree if the Company were to terminate the Merger Agreement in favor of entering into an agreement with Dollar General. As of the date of the filing of this Amended Complaint, the Board has not accepted the clearly superior proposal from Dollar General.

6. To show its earnestness, Dollar General’s CEO, Richard Dreiling (“Dreiling”), has announced that he would postpone his retirement and stay on as CEO through May 2016 to complete the transaction, and agreed to stay on the Board beyond that time if requested by the Board. Dollar General also has

financing fully in place, which would cover the \$305 termination fee that Family Dollar would have to pay Dollar Tree in the event that Family Dollar accepts Dollar General's superior offer. To alleviate any potential antitrust concerns, Dollar General stated that it would sell or close 700 stores.

7. Nevertheless, the Company's Board has rejected Dollar General's superior offer. Specifically, on August 21, 2014, Family Dollar rejected Dollar General's proposal (which offered a 5% premium over Dollar Tree's bid), under the pretext of having "antitrust regulatory" concerns and doubts that Dollar General's proposal is "reasonably likely to be completed on the terms proposed," thus claiming that Dollar General's offer does not constitute a superior proposal as defined in the Merger Agreement. However, as repeatedly represented in the Registration Statement filed by Dollar Tree on August 11, 2014 on Form S-4 ("Registration Statement") with the United States Securities and Exchange Commission ("SEC"), Family Dollar had analyzed antitrust issues with respect to a potential combination with both Dollar Tree and Dollar General and never concluded, based on the Registration Statement, that a transaction with Dollar General posed more of a regulatory hurdle than a transaction with Dollar Tree.

8. In fact, the Registration Statement discloses significant uncertainty with respect to the Dollar Tree offer. The Registration Statement clearly states that that Dollar Tree "cannot assure [the stockholders] that it will be able to obtain

additional financing on terms acceptable to Dollar Tree or at all.” In addition, Dollar Tree stated only that it was “proffering or agreeing to divest, or divesting, up to [only] 500 retail stores if necessary to obtain antitrust clearance.”

9. Seemingly aware that its superior offer was nevertheless about to be rejected by Family Dollar, Dollar General published an open letter to the Company’s Board dated August 20, 2014, in which Dollar General explicitly stated that it was misled during negotiations and that the Registration Statement filed in connection with the Proposed Transaction is materially misleading.

10. Specifically, Dollar General’s August 20, 2014 letter stated that Family Dollar never told Dollar General that the deal with Dollar Tree was imminent, and never gave Dollar General a real chance to make an offer before or contemporaneously with Dollar Tree’s bid. Dollar General further asserted that the Registration Statement filed with the SEC in connection with the Proposed Transaction falsely stated that Dollar General was not interested in a transaction with Dollar Tree when the opposite was the case, and failed to disclose the Defendant Levine was actively negotiating his continued position with a post-transaction company at the very outset of discussions. The August 20, 2014 letter further stated that the Company’s failure to deal honestly with Dollar General would ultimately cost the Company’s stockholders \$305 million that could have

gone to the Company's owners but instead, as a result of the terms of the Proposed Transaction, would be diverted to Dollar Tree as a termination fee.

11. Despite Dollar General's clear willingness to address regulatory issues and offer Family Dollar's stockholders a superior price, fully financed, Defendant Levine, on account of his personal conflicts of interest, has not permitted the sales process to unfold on an even playing field, instead drastically favoring Dollar Tree and skewing the process heavily toward the inferior Proposed Transaction. Dollar General specifically stated that Levine had discussed his wish to be CEO of a post-transaction entity during negotiations. In the August 20, 2014 letter to the Family Dollar Board, Dollar General CEO Dreiling reported that at one particular meeting between Family Dollar and Dollar General "Levine expressed his own interest in the social issues of a combination, including, among other things, *his desire to be chief executive officer of the combined companies.*" (Emphasis added). Upon the consummation of the Proposed Transaction, Levine will stay on as the CEO of Family Dollar.

12. Activist investor Carl Icahn ("Icahn"), who pushed for a sale of Family Dollar, also suggested that Levine's post-transaction role promised by Dollar Tree may have kept him from seeking out other bidders. Icahn also publicly opined that the Family Dollar Board has been far too deferential to Levine, calling the directors "a crony board" more concerned with ensuring that Levine (the son of



the founder of the Company) gets to keep his job than with maximizing value for stockholders.

13. Despite his obvious conflicts of interest, Levine and his management team ran the entire sales process, including meeting with Dollar Tree representatives on several occasions without the presence of Morgan Stanley & Co. (“Morgan Stanley”), the financial advisor to Family Dollar on the Proposed Transaction, or independent legal counsel. Levine and his management team even negotiated for themselves for continuing employment with the surviving entity.

14. Any attempt to cleanse the transaction through the appointment of a Board Committee of independent directors (the “Board Committee”) was utterly unconvincing. The Board Committee was purely illusory as it did not have its own counsel or financial expert, and merely rubberstamped decisions made by Levine and Family Dollar management. Indeed, Levine conducted nearly all of the negotiations with Family Tree and Dollar General unsupervised. Moreover, one of the members of the Board Committee is Defendant George Mahoney, Jr. (“Mahoney”), who was employed by Family Dollar as General Counsel in 1976 until his retirement in May 2005. Mahoney cannot be said to truly be independent to the Company, or to Levine and other executive officers.

15. ~~4.The Proposed Transaction offers unfair and inadequate consideration that does not constitute a maximization of~~ The Proposed Transaction

~~fails to maximize~~ stockholder value for Plaintiff and other Family Dollar public stockholders. ~~Analysts have projected that the inherent value of the Company is worth at least \$79 per share and Company stock hit a high this past year of \$75.29 per share.~~ Dollar Tree's offer of \$74.50 of cash and stock is clearly inferior to Dollar General's \$78.50 all-cash offer.

16. ~~5. Certain insiders of the Company, including Howard R. Levine ("Levine"), the Company's Chief Executive Officer ("CEO") and Chairman of the Board, who collectively own~~ Yet Levine, who (along with affiliated entities and family members) owns and/or controls 16% of Family Dollar's outstanding stock ~~have,~~ has already agreed to vote for the Proposed Transaction by executing voting and support agreements ("Voting Agreements").

~~6. The Board members have therefore breached their fiduciary duties owed to Plaintiff and the Class (as defined herein) to take all necessary steps to ensure that Family Dollar stockholders will receive the maximum realizable value for their shares on a sale of the Company.~~

17. Moreover, Dollar General cannot take the matter directly to the stockholders. The Family Dollar Board put a "Stockholders Rights Plan" ("SRP") in place on June 8, 2014 that effectively makes it impossible for Dollar General -- or anyone other than Dollar Tree, which has been exempted from the SRP -- to buy the Company or commence a tender offer therefore.

18. Moreover, in addition to misleading Dollar General, the Registration Statement misleads the Company's public stockholders as to the events leading up to the signing of the Merger Agreement. The Registration Statement repeatedly suggests that Dollar General showed little interest in acquiring the Company, and even states that Icahn was a deterrent for Dollar General to move forward with the negotiations. Both Dreiling and Icahn have publicly disputed this. In Dollar General's August 20, 2014 letter to the Board, Dreiling states that "Dollar General representatives have consistently expressed a keen interest in putting [the] two companies together."

19. The Registration Statement also fails to disclose and/or misrepresents, in violation of the Board's fiduciary duties, the following: (i) certain management projection metrics relied upon by Morgan Stanley in rendering its fairness opinion; (ii) certain material information regarding the analysis performed by Morgan Stanley in rendering its fairness opinion; and (iii) several important details regarding the process leading up to the signing of the Merger Agreement.

20. 7. Furthermore, the Merger Agreement contains preclusive deal protection devices that are not contemplated to benefit the Company or its stockholders, but instead, benefit Dollar Tree. For example, under the Merger Agreement, Defendants agreed to: (i) a no-solicitation provision that prevents the Company from soliciting other potential acquirers or even in continuing

discussions and negotiations with potential acquirers; (ii) a provision that provides Dollar Tree with five business days to match any competing proposal in the event one is made; (iii) a provision that requires the Company to pay Dollar Tree a termination fee ~~as high as of~~ \$305,000,000 ~~plus (including up to~~ \$90,000,000 in expenses reimbursement) in order to enter into a transaction with a superior bidder; and (iv) ~~a~~ the SRP or “poison pill” put in effect to thwart any possible hostile alternative bidders, whether or not superior to Dollar Tree. These provisions substantially and improperly limit the Board’s ability to act with respect to investigating and pursuing superior proposals and alternatives, including a sale of all or part of Family Dollar.

~~8. These provisions essentially “lock up” the Proposed Transaction and prevent the Board from fulfilling its fiduciary duties to the Company. The Proposed Transaction will deny the Company and its non-insider shareholders of adequate consideration in light of the Company’s promising prospects for growth, increased sales, and future profitability.~~

~~9. Furthermore, the Company announced that Chief Executive Officer (“CEO”), and Chairman of the Board, Defendant Howard R. Levine (“Levine”) and the rest of the rest of the management team will continue as executives of Dollar Tree. Levine will also become a Dollar Tree Board member.~~

~~10. Additionally, the Board members and executives might also benefit from the~~

~~Proposed Transaction through vested and unvested stock options, accelerated vesting of restricted share awards, accelerated vesting of performance share awards, receipt of certain payments pursuant to employment agreements and indemnification and exculpation. Moreover, Levine, who owns approximately 8% of the shares outstanding, will receive about \$130 million from the sale of his stock.~~

~~11. In just the past few months, Family Dollar undertook some strategic initiatives that have greatly benefitted the Company for a positive turnaround. Family Dollar had been trying to improve operations by closing approximately 370 underperforming stores. The Company has also been lowering its prices to entice shoppers away from its competitors. These events were designed to positively impact current earnings and will lead to improved earnings in future years.~~

21. These provisions were put in place specifically for the purpose of dissuading Dollar General (or anyone else) from making a topping bid for the Company. The termination fee, which represents 3.6% of enterprise value, is unusually high for a transaction of this size. Coupled with the poison pill and other deal protections, the Board is free to stonewall Dollar General's superior offer with apparent impunity.

22. ~~12.~~ Because of the Board's breaches of its fiduciary duties, Plaintiff and the Class have been and will be damaged, ~~and will not receive the fair value of~~

by not being permitted to participate in a value-maximizing transaction for their Family Dollar<sup>2</sup>s assets stock.

23. ~~13.~~ Plaintiff and the other members of the Class are immediately threatened by the wrongs complained of herein, and lack an adequate remedy at law.

24. ~~14.~~ Plaintiff seeks preliminary and permanent injunctive relief preventing the Individual Defendants, who are aided and abetted by Family Dollar and Dollar Tree, from inequitably and unlawfully depriving Plaintiff and the Class of their rights to realize full and fair value for their Family Dollar stock, and ~~to~~ ~~compel~~ compelling the Individual Defendants to carry out their fiduciary duties to maximize shareholder value on a sale of the Company.

25. ~~THE~~ For these reasons and as set forth in detail herein, Plaintiff seeks to (among other things) invalidate the SRP and other improper deal protection devices and steps taken by the Board and Family Dollar, enjoin Defendants from taking any steps to consummate the Proposed Transaction, and/or recover damages resulting from the Individual Defendants' violations of their fiduciary duties of loyalty, good faith, due care, and candor.

## **PARTIES**

~~15. Plaintiff has owned the common stock of Family Dollar since prior to the announcement of the Proposed Transaction herein complained of, and continues to~~

~~own this stock.~~

26. Plaintiff is and has been a stockholder of Family Dollar at all times relevant hereto.

27. Family Dollar is a corporation duly organized and existing under the laws of the State of Delaware and maintains its principal offices at P.O. Box 1017 10401 Monroe Road, Charlotte, North Carolina 28201-1017. Family Dollar is, and at all relevant times hereto was, listed and traded on the New York Stock Exchange under the symbol “FDO.” Family Dollar was founded in 1959 by Leon Levine, father of CEO Howard Levine, in Charlotte, North Carolina. By 1969, there were 50 stores in Charlotte alone, in addition to stores in the southern United States.

Family Dollar is named as a defendant herein for the sole purpose of providing full and complete relief.

28. ~~17.~~ Defendant Dollar Tree is an American chain of discount variety stores that purportedly sells items for \$1 or less. Dollar Tree is headquartered in Chesapeake, Virginia and operates 4,900 stores.

29. ~~18.~~ Defendant Merger Sub is a wholly-owned subsidiary of Dollar Tree created to effectuate the Proposed Transaction.

30. ~~19.~~ Defendant Levine is President and CEO of the Company and Chairman of the Board since August 1998 and January 2003, respectively. Levine joined the Company founded by his father in 1981 and has held positions in

various capacities until 1987. Levine rejoined the Company in April 1996 as Vice President, General Merchandise Manager: Softlines.

31. ~~20.~~ Defendant Mark R. Bernstein (“Bernstein”) has served as a member of the Board since 1980.

32. ~~21.~~ Defendant Pamela L. Davies (“Davies”) has served as a member of the Board since 2009.

33. ~~22.~~ Defendant Sharon Allred Decker (“Decker”) has served as a member of the Board since 1999.

34. ~~23.~~ Defendant Edward C. Dolby (“Dolby”) has served as a member of the Board since 2003.

35. ~~24.~~ Defendant Glenn A. Eisenberg (“Eisenberg”) has served as a member of the Board since 2003.

36. ~~25.~~ Defendant Edward P. Garden (“Garden”) has served as a member of the Board since 2011.

37. ~~26.~~ Defendant George R. Mahoney, Jr. (“Mahoney”) has served as a member of the Board since 1987.

38. ~~27.~~ Defendant James G. Martin (“Martin”) has served as a member of the Board since 1996.

39. ~~28.~~ Defendant Harvey Morgan (“Morgan”) has served as a member of the Board since 2007.



40. ~~29.~~ Defendant Dale C. Pond (“Pond”) has served as a member of the Board as Lead Director since 2006.

~~*fiduciary duties of loyalty, good faith, and care to shareholders. To diligently comply with their fiduciary duties, the Individual Defendants may not take any action that: (a) adversely affects the value provided to the Company’s shareholders;*~~

~~*(b) favors themselves or will discourage or inhibit alternative offers to purchase control of the Company or its assets;*~~

~~*(c) adversely affects their duty to search for and secure the best value reasonably available under the circumstances for the Company’s shareholders; and/or*~~

~~*(d) will provide the Individual Defendants with preferential treatment at the expense of, or separate from, the public shareholders.*~~

~~32. In accordance with their duties of loyalty and good faith, the Individual Defendants are obligated to refrain from:~~

~~*(a) participating in any transaction where the Individual Defendants’ loyalties are divided;*~~

~~*(b) participating in any transaction where the Individual Defendants receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the Company; and/or*~~

~~*(c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.*~~

~~33. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Transaction, are knowingly or recklessly violating their fiduciary duties, including their duties of care, loyalty, good faith, and~~

~~independence owed to Plaintiff and other public shareholders of Family Dollar. Certain Individual Defendants stand on both sides of the transaction, are engaging in self-dealing, and are obtaining for themselves personal benefits, including personal financial benefits not equally shared by Plaintiff or the Class (as defined below). Certain Family Dollar executives are also retaining their prestigious and lucrative positions and compensation at the post-Proposed Transaction company. These executives have managed to secure for themselves substantial employment at the expense of the public shareholders' best interests. Accordingly, the Proposed Transaction will benefit the Individual Defendants in significant ways not shared with Class members. As a result of the Individual Defendants' self-dealing and divided loyalties, neither Plaintiff nor the Class will receive adequate or fair value for their Family Dollar common stock in the Proposed Transaction.~~

### ~~INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES~~

~~30. The Individual Defendants, as officers and/or directors of the Company, stand in a fiduciary relationship to Plaintiff and the Company's other public stockholders and owe them the highest fiduciary obligations of good faith, fair dealing, due care, loyalty, and full and candid disclosure.~~

~~41. 31. Under Delaware law, the directors and officers of a publicly traded corporation have Defendants in ¶¶30-40 are referred to herein as the "Individual Defendants" or the "Board."~~

42. The Individual Defendants, Family Dollar, Parent, and Merger Sub are collectively referred to herein as “Defendants.”

### CLASS ACTION ALLEGATIONS

43. 34. Plaintiff brings this action on her own behalf and as a class action, pursuant to ~~Rule 23 of the Rules of the Delaware~~ Delaware Court of Chancery Rule 23, on behalf of all holders of ~~the Family Dollar~~ common stock ~~of the Company who are being and will be harmed by Defendants’ actions described below (except the the “Class”).~~ Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants) ~~and their successors in interest, who are or will be threatened with injury arising from Defendants’ actions as more fully described herein (the “Class”).~~

44. 35. This action is properly maintainable as a class action ~~because:~~

a. 36. The Class is so numerous that joinder of all members is impracticable. As of As of July 5, 2014, there were reportedly 113,949,687 shares of Family Dollar common stock issued and outstanding, ~~owned by hundreds, if not thousands, of shareholders.~~ The holders of these shares of stock are believed to be geographically dispersed throughout the United States;

b. There are questions of law and fact, ~~which are common to the Class~~ including and which predominate over questions affecting any individual

Class member. The common questions include, *inter alia*, the following: (a)  
whether

- i. ~~37.~~Whether the Individual Defendants have fulfilled and are capable of fulfilling their ~~the Individual Defendants have breached their fiduciary duties owed by them to Plaintiff and the members of the Class; and (b) whether the Class is entitled to injunctive relief or damages as a result of the wrongful conduct committed by Defendants, as alleged herein.~~ fiduciary duties of loyalty, due care, good faith, and candor;
- ii. Whether the Individual Defendants have breached their fiduciary duty to maximize stockholder value under the circumstances for the benefit of Plaintiff and the other members of the Class in connection with the Proposed Transaction;
- iii. Whether the Individual Defendants, in bad faith and for improper motives, have impeded or erected barriers to discourage other offers for the Company or its assets;

iv. Whether Parent and/or Merger Sub have aided/abetted the Individual Defendants' breaches of fiduciary duty; and

v. Whether Plaintiff and the other members of the Class will be irreparably harmed if Defendants are not enjoined from continuing the conduct described herein.

c. ~~38.~~ Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. ~~The Plaintiff's~~ claims ~~of the Plaintiff~~ are typical of the claims of the other Class members ~~of the Class~~ and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative for the Class and will fairly and adequately ~~represent the Class.~~ protect the interests of the Class;

~~39. Defendants have acted in a manner which affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.~~

d. ~~40.~~ The prosecution of separate actions by individual members of the Class would create ~~a~~ the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for ~~defendants~~ Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive

of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

e. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

## SUBSTANTIVE ALLEGATIONS

### *The Proposed Transaction*

~~41. On July 28, 2014, Family Dollar and Dollar Tree announced that they had entered into the Merger Agreement dated July 27, 2014, filed with the Securities and Exchange Commission (“SEC”), whereby Dollar Tree would acquire Family Dollar and make Family Dollar a wholly-owned subsidiary of Dollar Tree:~~

~~CHESAPEAKE, VA and MATTHEWS, NC— July 28, 2014— Dollar Tree, Inc. (NASDAQ: DLTR), the nation’s leading operator of discount variety stores selling everything for \$1 or less, and Family Dollar Stores, Inc. (NYSE: FDO), a leading national discount retailer offering name brands and quality, private brand merchandise, today announced that they have entered into a definitive merger agreement under which Dollar Tree will acquire Family Dollar in a cash and stock transaction. The value of the consideration is \$74.50 per share, a 22.8% premium over Family Dollar’s closing price as of July 25, 2014.~~

~~The transaction, which has been unanimously approved by the Boards of Directors of both companies, is expected to close by early 2015, at which time the Family Dollar shareholders will receive \$59.60 in cash and \$14.90 equivalent in Dollar Tree shares, subject to the collar~~

~~described below. At closing, Family Dollar shareholders will own no less than 12.7% and no more than 15.1% of the outstanding common stock of Dollar Tree. Howard R. Levine and Triam Fund Management, L.P. and funds managed by it, which collectively own approximately 16% of the outstanding stock of Family Dollar, have entered into voting agreements in support of the merger.~~

~~“This is a transformational opportunity,” stated Bob Sasser, Dollar Tree’s Chief Executive Officer. “With the acquisition of Family Dollar Stores, Dollar Tree will become a leading discount retailer in North America, with over 13,000 stores in 48 states and five Canadian Provinces, sales of over \$18 billion, and more than 145,000 associates on our team. We will continue to operate under the Dollar Tree, Deals, and Dollar Tree Canada brands, and when this transaction is complete, we will operate under the Family Dollar brand as well. Throughout our history, we have strived continuously to evolve and improve our business. This acquisition, which enhances our footprint and diversifies our company, will enable us to build on that progression, and importantly, positions Dollar Tree for accelerated growth. By offering both fixed-price and multi-price point formats and an even broader, more compelling merchandise assortment, we will be able to provide even greater value and choice to a wider array of customers.~~

~~Dollar Tree has a long record of consistent, profitable growth, strong financial performance, prudent capital management, and outstanding total shareholder returns. The acquisition of Family Dollar is consistent with our vision to be the leader in value retailing.”~~

~~Sasser added, “This acquisition will extend our reach to lower-income customers and strengthen and diversify our store footprint. We plan to leverage best practices across both organizations to deliver significant synergies, while we accelerate and augment Family Dollar’s recently introduced strategic initiatives. Combined, our growth potential is enhanced with improved opportunities to increase the productivity of the stores and to open more stores across multiple banners.”~~

~~\* \* \*~~

~~Under the terms of the transaction, Family Dollar shareholders will~~

~~receive \$74.50 for each share they own, comprised of \$59.60 in cash and \$14.90 in Dollar Tree stock. The stock portion will be subject to a collar such that Family Dollar shareholders will receive 0.2484 Dollar Tree shares if the average Dollar Tree trading price during a specified period preceding closing is equal to or greater than \$59.98 and 0.3036 Dollar Tree shares if this average trading price is less than or equal to \$49.08. If the average trading price of Dollar Tree stock during this period is between \$49.08 and \$59.98, Family Dollar shareholders will receive a number of shares between 0.2484 and 0.3036 equal to \$14.90 in value. The transaction values Family Dollar at an enterprise value of approximately \$9.2 billion, and it represents an enterprise value to last twelve months May 31, 2014 EBITDA multiple of 11.3x.~~

~~Dollar Tree intends to finance the acquisition through a combination of existing cash on hand, bank debt and bonds. Following the transaction, Dollar Tree expects to continue to have a solid balance sheet supported by strong free cash flow of the combined business. In connection with the transaction, Dollar Tree has received a financing commitment from JPMorgan Chase Bank, N.A. with the bank debt syndication and bond offering expected to occur prior to closing.~~

~~The transaction is subject to Family Dollar stockholder approval, expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act and other customary closing conditions.~~

~~J.P. Morgan Securities LLC acted as exclusive financial advisor to the board of directors of Dollar Tree, and J.P. Morgan Chase Bank, N.A. committed to provide bridge financing for the transaction. Wachtell, Lipton, Rosen & Katz and Williams Mullen acted as legal counsel to Dollar Tree in connection with the transaction. Morgan Stanley & Co. LLC acted as exclusive financial advisor to the board of directors of Family Dollar in connection with the transaction. Cleary Gottlieb Steen & Hamilton LLP acted as legal counsel to Family Dollar in connection with the transaction.~~

***~~The Proposed Transaction Price is Inadequate and Unfair~~***



~~42. The \$74.50 per share agreed to in the Proposed Transaction represents an inadequate price, and in fact, represents a discount of the stock price of the Company against the price on the day before the Proposed Transaction was announced, and Defendants' claims that the transaction provides a great return for investors are unsound.~~

### **Background**

45. Family Dollar offers an assortment of merchandise for families ranging from household cleaners, name brand foods, health and beauty aids, toys, apparel, and home fashions. While shoppers can find many items for \$1 or less, most items in Family Dollar stores are priced below \$10. Family Dollar's mix of name brands and quality, private brand merchandise appeals to shoppers in more than 8,200 stores in rural and urban settings across 46 states.

46. Family Dollar reported record sales and earnings results for the fourth quarter and fiscal year ended August 31, 2013. Total net sales for fiscal year 2013 increased 11.4% to \$10.4 billion compared with total net sales of \$9.3 billion in fiscal year 2012. Gross profit in fiscal year 2013 increased 9% to \$3.6 billion, or 34.2% of net sales, compared with \$3.3 billion, or 34.9% of net sales, in fiscal year 2012. Earnings per diluted share increased 7% to \$3.83 in fiscal year 2013, and adjusted diluted earnings per share increased 4.4% to \$3.80.

47. The upward trend continued in the next quarter. Family Dollar reported that net sales increased 3.2% to \$2.5 billion for the first quarter of fiscal year 2014 ended November 30, 2013, compared to \$2.4 billion for the first quarter of fiscal year 2013. Gross profit for the first quarter of fiscal year 2014 increased 3.6% to \$856.8 million, or 34.3% of net sales, compared to \$826.8 million, or 34.1% of net sales, in the first quarter of fiscal year 2013.

48. However, the second quarter results of fiscal year 2014 did not meet the Company's expectations as they were significantly impacted by severe winter weather, which resulted in numerous store closings, disrupted merchandise deliveries, and higher than expected utility and store maintenance expenses. In an effort to improve the Company's performance after the second quarter results, Defendant Levine said, "[W]e have initiated an in-depth business review to identify opportunities to strengthen our value proposition, increase operational efficiencies and improve financial performance."

49. ~~43.~~The Company announced third quarter results on July 10, 2014, reporting that the Company has been seeing progress in its strategic initiatives and stellar financial results:

“We are executing our previously announced restructuring initiatives to improve our performance,” said Howard R. Levine, Chairman and CEO. “Our recent investment to permanently lower prices is resonating with customers; we are seeing savings from our workforce optimization efforts; and we are on track to close approximately 370

## Strategic Plan Update

As part of its ongoing business review, the Company is taking deliberate actions to strengthen its value proposition, increase operational efficiencies and improve its financial performance. As previously announced, the Company has:

- Lowered prices on nearly 1,000 basic items, investing more than \$50 million, on an annualized basis, to deliver more compelling values to customers;
- Reduced corporate overhead and re-aligned key organizational functions to improve execution and reinforce a commitment to being an efficient, low-cost retailer;
- Launched a process to close approximately 370 underperforming stores in the second half of fiscal 2014; and
- Made plans to slow new store growth beginning in fiscal 2015.

The Company now expects to open 350-400 new stores in fiscal 2015, down from approximately 525 new stores in fiscal 2014.

In addition, the Company is investing in longer-term initiatives to drive more profitable growth. These initiatives include:

- Building on efforts to capture more food trips, the Company intends to further expand its cooler program beginning in fiscal 2015;
- Continuing to expand traffic-driving categories with a multi-year rollout of beer and wine, beginning in fiscal 2015; and
- Leveraging the scale and considerable diversity of the chain to launch a multi-year clustering initiative designed to enhance store productivity.

56. In just the past few months, Family Dollar has undertaken strategic initiatives that have greatly benefitted the Company and positioned it for improved financial performance. Family Dollar had been trying to improve operations by closing approximately 370 underperforming stores.

The Company has also been lowering its prices to pull shoppers away from its competitors. These events were designed to positively impact current earnings and will lead to improved earnings in future years.

**The Proposed Transaction Fails to Maximize Shareholder Value**

50. Given the Company's prior strong performance and its positioning for growth, as discussed above, the Proposed Transaction consideration is inadequate and significantly undervalues the Company.

51. ~~44.~~ Shares of Family Dollar rose as high as \$75.29 per share less than a year ago on September 19, 2013. Despite the fact that the Company recently released excellent financial results and has positioned itself for exceptional growth with significant market share, ~~a benefit now to be enjoyed by Dollar Tree and not the Company's shareholders,~~ the Proposed Transaction does not offer fair consideration to Family Dollar ~~shareholders.~~ public shareholders, and instead threatens to take this benefit away from the Company's public shareholders and hand it over to Dollar Tree for grossly inadequate consideration and as the result of a flawed and fundamentally unfair process.

52. For months before the Proposed Transaction was announced, going as far back as September 2013, it was speculated that Family Dollar's primary competitor, Dollar General, was the most suitable and logical buyer for Family Dollar, and that such a transaction would add so much value to the resulting entity

that no other buyer would conceivably pay as much for Family Dollar as Dollar General would likely pay. Indeed, a report published by Credit Suisse touted the compelling synergies and other strengths of such a combination between Family Dollar and Dollar General, but presciently noted that such a deal was likely being held back by a lack of an appetite for such a transaction by Family Dollar management. Indeed, on August 18, 2014, Dollar General announced that it was offering to acquire the Company in a deal worth \$78.50 a share in cash for the shareholders.

~~45. The proposed consideration to be paid to Plaintiff and the Class in the Proposed Transaction is unfair and grossly inadequate because, among other things, the synergies anticipated to be achieved through the deal are far in excess of the premium offered by Dollar Tree.~~

53. ~~46. Analysts have been commenting that the offer price was lower than expected. For example, Credit Suisse gives~~ On July 28, 2014, an article published on *TheStreet.com* reported analysts' comments that Dollar General remains a better buyer of the Company. Credit Suisse had assigned Family Dollar shares an \$80 price target, while Jefferies set price target of \$79 per share. well above Dollar Tree's \$74.50 cash and stock offer. *TheStreet.com* further reported:

Bank of America Merrill Lynch analysts see the fit of Family Dollar with Dollar General as so strong it could boost the company's earnings per share by 50% in the first year after a deal is closed. That projects synergies in excess of \$500 million, well above the \$300

million synergy target Dollar Tree believes it can achieve within three years of its Family Dollar acquisition.

54. As Bank of America Merrill Lynch suggested, the Proposed Transaction consideration fails to adequately compensate Family Dollar's shareholders for the significant synergies created by the merger. In the July 28, 2014 press release announcing the Proposed Transaction, Bob Sasser ("Sasser"), Dollar Tree's CEO, readily acknowledged recognized the valuable potential synergies, stating, in relevant part:

This is a transformational opportunity. With the acquisition of Family Dollar Stores, Dollar Tree will become a leading discount retailer in North America, with over 13,000 stores in 48 states and five Canadian Provinces, sales of over \$18 billion, and more than 145,000 associates on our team. We will continue to operate under the Dollar Tree, Deals, and Dollar Tree Canada brands, and when this transaction is complete, we will operate under the Family Dollar brand as well. Throughout our history, we have strived continuously to evolve and improve our business. This acquisition, which enhances our footprint and diversifies our company, will enable us to build on that progression, and importantly, positions Dollar Tree for accelerated growth. By offering both fixed-price and multi-price point formats and an even broader, more compelling merchandise assortment, we will be able to provide even greater value and choice to a wider array of customers.

\* \* \*

This acquisition will extend our reach to lower-income customers and strengthen and diversify our store footprint. We plan to leverage best practices across both organizations to deliver significant synergies, while we accelerate and augment Family Dollar's recently introduced strategic initiatives. Combined, our growth potential is enhanced with improved opportunities to increase the productivity of the stores and to open more stores across multiple banners.

~~47. As disclosed in the press release announcing the Proposed Transaction, the deal is~~

~~financed by approximately \$9.5 billion in debt, and may raise Dollar Tree's ratio of debt to EBITDA to 5.6x. This increased leverage puts Family Dollar at risk for a ratings cut to junk level, according to Bloomberg.~~

55. ~~48.~~ The combined post-transaction company will be the largest US discount retailer by store count, with approximately 13,326 in US and Canada. The synergies benefiting Dollar Tree ~~is~~ are approximately \$300 in cost savings per year, and the combined business will give Dollar Tree an improved position in bargaining with suppliers.

56. As disclosed in the press release announcing the Proposed Transaction, the deal is to be financed by approximately \$9.5 billion in debt, which is itself not yet a certainty for Dollar Tree, and which if obtained may raise Dollar Tree's ratio of debt to EBITDA to 5.6x. This increased leverage puts Family Dollar at risk for a ratings cut to junk level, according to Bloomberg.

### ***The Flawed and Deficient Sales Process***

57. As far back as 2010, Family Dollar has been considering strategic alternatives to maximize shareholder value. However, the Company chose to implement a stand-alone strategy instead of seriously entertaining acquisition proposals, concluding that this would be in the best interests of Family Dollar shareholders. As recently as June 2014, even with the pressure to sell pushed upon the Company by Mr. Icahn, the Company was adamant in focusing on its growth.

58. In March 2011, Family Dollar rejected a proposal by Trian Fund Management, L.P. (“Trian”) to acquire the Company for \$55 to \$60 per share in cash and adopted a poison pill in the form of a shareholder rights plan (the “Rights Agreement”) to deter any unsolicited takeover proposals. A few months later, in September, Family Dollar entered in an agreement with Trian whereby Family Dollar agreed to increase the number of board members to eleven and appointed Trian’s Chief Investment Officer and founding partner (Defendant Garden) to the Board. In return, Trian promised not to purchase more than 9.9% of Family Dollar’s outstanding stock.

59. Then, in June 2011, William Ackman of Pershing Square Capital Management, L.P. (collectively, “Pershing Square”) announced at an investment conference that it believed the Company should consider selling itself. Pershing Square proceeded to acquire more shares in the Company to increase its holdings to 8.9% of the then outstanding Family Dollar stock. In response to this development, the Board (except for Garden) voted to extend the Rights Agreement for one year. The Rights Agreement was later terminated after Pershing Square sold all of its holdings in Family Dollar stock.

60. Defendant Levine, son of the founder of the Company, Chairman of the Board and CEO of the Company, and Defendant Mahoney, a Board member, met with Dollar General to discuss the potential merger of the companies in the



retail sector in October 2013. The two companies scheduled a meeting to continue discussions in January 2014, but Dollar General purportedly postponed such a meeting.

61. Also, in October 2013, Levine met with John Paulson of Paulson & Co. Inc. (collectively, “Paulson”). At this meeting, Paulson urged Levine to sell the Company. A month later, Paulson disclosed that it owned 9.9% of the then-outstanding Family Dollar common stock. Paulson reiterated its message to the Company in January 2014 after the Company had terminated the employment with Family Dollar’s previous President and Chief Operating Officer due to concerns regarding the Company’s operating performance.

62. A month after Dollar General had purportedly canceled its meeting with Family Dollar, Dollar Tree contacted the Company through their respective financial advisors, J.P. Morgan Securities LLC (“JPMorgan”) and Morgan Stanley (Family Dollar’s advisor), to discuss a potential merger. Morgan Stanley indicated to JPMorgan that the Company was not for sale, but that Levine was open to discussions if Dollar Tree’s CEO Bob Sasser were to contact him.

63. Sasser and Levine then began discussing a potential transaction in March 2014. Meanwhile, the Company continued preparing its new stand-alone strategic plan.

64. Negotiations with Dollar Tree continued, and the two companies executed a mutual non-disclosure agreement (NDA) in April. Dollar Tree's first proposal to buy the Company came in May, offering between \$68 and \$70 per share, with 75% of the consideration in the form of cash and the remainder in Dollar Tree stock. Dollar Tree conditioned this proposal on Levine remaining with the post-transaction entity after the closing of the Proposed Transaction. The Board rejected this proposal on the basis that it was inadequate. The Company indicated, however, to Dollar Tree that it would consider a "more competitive offer in line with multiples and premia for precedent transactions of this type."

65. On June 8, 2014, the Board specifically directed Defendant Levine to encourage [Dollar General] to re-engage in discussions about . . . a potential strategic transaction [with Family Dollar." However, Levine never followed this instruction, never informed Dollar General that the Company was actively exploring a sale and negotiating with another bidder, and never solicited a bid from Dollar General.

66. In June 2014, Mr. Icahn filed a Schedule 13D disclosing that he and some affiliates beneficially owned approximately 9.39% of the then-outstanding shares of Family Dollar common stock, that the Company should consider selling itself, and then threatened to purchase more shares of Family Dollar stock and institute a proxy fight for Board representation. During a call regarding a possible

transaction between Mr. Icahn and the Company, Mr. Icahn refused Levine's request that he sign a confidentiality agreement with Family Dollar.

67. The Board met to discuss Mr. Icahn's investment activities and activist campaigns, and "the risk that Icahn would acquire sufficient negative control." In response to this "risk," the Board, once again without Defendant Garden's vote, approved the adoption of another Rights Agreement (the SRP), which remains in place (as amended to exclude Dollar Tree) today.

68. On June 13, 2014, Dollar Tree increased its offer to \$72 per share, with 75% of the consideration to be paid in the form of cash and the remainder in stock. This proposal was also rejected.

69. The Registration Statement indicates that on June 19, 2014, Defendant Levine met with Dreiling and a member of Dollar General's board, but that Dollar General (Company A) indicated to the Company that it was not interested in pursuing a transaction. This statement is flatly contradicted by Dollar General's own version of events. Moreover, Family Dollar never informed Dollar General that the Company was in a sales process at this time or that the Company was speaking to another bidder. The next day, Dollar Tree increased its offer to \$74.50 per share as its best and final offer. The Board instructed that the advisors should begin negotiation of the Merger Agreement. Dollar Tree and Family Dollar executed an exclusivity agreement for a period expiring July 28, 2014.

70. Family Dollar and Dollar Tree continued their discussions and negotiations of the material terms of the Merger Agreement ensued.

71. On July 27, 2014, at a joint meeting of the Board and Board Committee, Morgan Stanley opined on the fairness of the Proposed Transaction. The Board Committee and the entire Board then adopted and approved the Merger Agreement.

72. As demonstrated above, the Company failed to run anything resembling a robust sale process.

73. For example, Levine was allowed to run the entire sales process essentially unsupervised despite the fact that Dollar Tree had held out the prospect of a long term contract for employment as the joint Company's CEO as an inducement to Levine early in the negotiations, while Dollar General had rebuffed Levine's overtures seeking assurances that he would be made CEO of the combined company if Dollar General was the winning bidder.

74. Mr. Icahn likewise "questioned whether Levine's future role at Dollar Tree could have influenced the company to go ahead with the deal [with Dollar Tree]." Statements in the Registration Statement that indicate no discussions occurred with Family Dollar management of post-closing ownership, employment, or compensation arrangements before the signing of the Merger Agreement are murky at best, and appear to be affirmatively misleading given Dollar General's

statements that Levine was actively seeking assurances of a position as CEO of the combined company from the outset of their discussions.

75. Family Dollar did not engage with Dollar General fairly, as the Company kept Dollar General in the dark regarding the sales process and the imminent offer from Dollar Tree.

76. The formation of the Board Committee is also purely illusory, as it did not have its own legal counsel and/or financial advisor.

77. On August 18, 2014, Dollar General came forward with a topping bid for the Company. Dollar General submitted a letter to the Board stating:

As you know, we at Dollar General admire your company and its attractive footprint and business prospects. We have respect for Family Dollar, its employees and its leadership, and both Dollar General and Family Dollar share a commitment to serving customers in the communities in which we operate. As such, we were surprised and disappointed to find out you had entered into a merger agreement with Dollar Tree.

The Board of Directors of Dollar General is pleased to submit a proposal to you and the Board of Directors of Family Dollar that offers Family Dollar shareholders \$78.50 per share in cash for all outstanding shares, providing them with superior value and immediate and certain liquidity for their shares. Not only is our offer superior in price, it is 100% cash, as compared to the mix of cash and stock being offered by Dollar Tree.

Our proposal provides Family Dollar's shareholders with approximately \$466 million of additional aggregate value over Dollar Tree's offer and represents a premium of 29.4% over the closing price of \$60.66 for Family Dollar stock on the day prior to the Dollar Tree announcement.

Our proposal is not subject to any financing condition. Goldman Sachs and Citigroup Global Markets Inc. have agreed to provide committed financing for all of the financing necessary to consummate the transaction.

We have conducted a thorough review and analysis of the antitrust issues that may be raised by our proposed transaction, including engaging experienced antitrust counsel and a team from Compass Lexecon as our economist to assist us with our analysis. As a result of our review and analysis, coupled with the numerous econometric studies Compass Lexecon has performed utilizing extensive information and data supplied by Dollar General, we are prepared to commit to divest up to 700 retail stores in order to achieve the requisite antitrust approvals, which is approximately the same percentage of the total combined stores represented by the 500 store divestiture commitment in the Dollar Tree merger agreement. We are confident that, with this commitment, we will be able to quickly and efficiently resolve any potential antitrust issues and that our transaction is capable of being completed. We look forward to having the opportunity to share with your counsel the conclusions of our extensive antitrust work once you have taken the appropriate steps under your existing merger agreement with Dollar Tree to enable us to begin discussions.

The Board of Directors of Dollar General has unanimously approved this proposal and has authorized us to proceed expeditiously. We are prepared, promptly following the termination of your merger agreement with Dollar Tree, to enter into a merger agreement that would provide greater value to your shareholders and would otherwise be substantially similar to the one that you entered into with Dollar Tree, modified as necessary to accommodate our all-cash proposal, as described above with respect to antitrust matters and to provide a time period to close the proposed transaction consistent with that set forth in the existing agreement. In addition, we are prepared to revise the agreement to permit Family Dollar to continue to pay its regular quarterly cash dividend through closing on terms consistent with past practice. Dollar General would also agree to fund the \$305 million break-up fee should you become obligated to pay that fee to Dollar Tree upon termination of the existing agreement in order to enter into an agreement with Dollar General.

In addition, I have committed to our Board of Directors to remain as Chief Executive Officer of Dollar General through May 2016 if this combination occurs in order to oversee the successful integration of our two companies. Beyond that date, if asked by the Board and elected by shareholders, I have agreed to continue to serve as a Board member and as Chairman.

We have engaged Goldman, Sachs & Co. as our financial advisor and Simpson Thacher & Bartlett LLP as our legal advisor in connection with this transaction. Our proposal is subject to completion of a confirmatory due diligence review of your company, and we and our advisors are available to commence our due diligence review immediately.

Please note that this letter is not meant to, and does not, create or constitute any legally-binding obligation, liability or commitment by us concerning a proposed transaction, and, other than any confidentiality agreement we may enter into with you, there will be no legally-binding agreement between us regarding the proposed transaction unless and until we enter into a definitive merger agreement with you.

We are confident that after you have considered our offer, you will agree that our proposal constitutes a “Company Superior Proposal” under the terms of the Dollar Tree merger agreement and that our proposal presents a compelling opportunity for your shareholders. This matter has my highest priority and I look forward to hearing from you.

78. On August 20, 2104, Dollar General published an open letter to the

Family Dollar Board, stating:

To the Board of Directors of Family Dollar Stores, Inc.:

We have reviewed the Form S-4 on the background of your current merger agreement with Dollar Tree. As the Family Dollar Board of Directors considers our superior proposal, we believe it is important

for you to take into account certain important facts that are not included in the Form S-4 relating to our interaction with your company.

While the Form S-4 references various meetings between our companies' representatives over the years, it fails to mention that Dollar General representatives have consistently expressed a keen interest in putting our two companies together. The Form S-4 also fails to mention that on more than one occasion at such meetings, Howard Levine expressed his own interest in the social issues of a combination, including, among other things, his desire to be chief executive officer of the combined companies. We cannot help but question whether Dollar General's failure to embrace such requests by Mr. Levine weighed into Family Dollar's decision to pursue an agreement with Dollar Tree.

As you are aware, we continued to express our interest in exploring a combination into June of this year. During the June 7, 2014, phone call referenced in the background section of the Form S-4, our representative reiterated Dollar General's interest in potentially acquiring Family Dollar and stated our preference to negotiate directly with the Board of Directors and not in the public media, as might be the case with an activist investor involved, and suggested a meeting with the Dollar General CEO as soon as possible.

That meeting was held on June 19, 2014, just days before the Family Dollar Board decided to enter into exclusive negotiations with Dollar Tree. During the June 19 meeting, although noting that the timing was not optimal for Dollar General, our representatives expressed more than once our interest in exploring a combination with Family Dollar. At no time during this meeting did Mr. Levine indicate that there was a process, that there was any urgency to act or that there were discussions with another potential buyer. In fact, Mr. Levine's response to specific questions posed by our representatives gave us quite the opposite impression. Had we left the meeting with the belief that a sale of Family Dollar was imminent, we assure you that our course of action would have been different.

At that meeting, the Dollar General representatives communicated to Mr. Levine that Dollar General's interest likely would be at a modest



premium to the current stock price (\$68.14 at such time). It is surprising, then, that, according to the Form S-4, your board was considering at that time a proposal in that range from Dollar Tree, and yet no representative of Family Dollar followed up with any representative of Dollar General after that meeting and before entering into the merger agreement with Dollar Tree.

This lack of engagement is puzzling. Regrettably, as a result, we are now forced to factor a \$305 million break-up fee into our offer – consideration that could have been better used to maximize value for the Family Dollar shareholders.

Nonetheless, we have presented you with a superior proposal for your shareholders (although perhaps not for Mr. Levine personally), and we urge you to evaluate our proposal on its merits considering this full set of facts and in keeping with your obligation to consider first and foremost the best interests of your shareholders.

Finally, we have heard the media reports in which unnamed sources close to Family Dollar are claimed to have expressed concern about antitrust matters relating to a potential acquisition by Dollar General. As we stated in our offer letter, we have engaged experienced counsel and an economist and have conducted extensive review and analysis of these matters, and we are confident that we will be able to quickly and efficiently resolve any potential antitrust issues. In fact, we believe that the number of store divestitures contained in our offer letter is more than sufficient to take this issue completely off the table. We remain ready to share with your counsel the conclusions of our extensive antitrust work once you have taken the appropriate steps under your existing merger agreement with Dollar Tree to enable us to begin discussions.

We urge the Family Dollar Board of Directors to act in the best interests of the Family Dollar shareholders and take the necessary steps to enter into discussions with us.

79. On August 21, 2014, Family Dollar announced that they were rejecting Dollar General's offer. The press release indicated that the Company was

rejecting Dollar General's offer based on antitrust regulatory concerns. The Board apparently determined, in consultation with its legal and financial advisors, that regulatory issues may not permit a combination of the two companies to be completed.

80. These events demonstrate clearly that the supine Family Dollar Board allowed Levine to impermissibly favor a transaction with Dollar Tree for personal reasons and to improperly refuse to negotiate with Dollar General. By refusing to recognize the superior Dollar General offer as that – superior – Levine and the Board are clearly breaching their fiduciary duties.

81. While the Board cited antitrust concerns in connection with their rejection of the Dollar General offer, this concern is clearly a post hoc rationalization without any substance. It is important to note that throughout the Board's considerations of a potential transaction with Dollar Tree or Dollar General, the Board's counsel repeatedly made presentations to the Board concerning potential antitrust implications in connection with a potential combination with either Dollar General or Dollar Tree. The Registration Statement references several of these presentations, and in none of them did counsel inform the Board that Dollar General was an unsuitable buyer for the Company due to antitrust considerations. To the contrary, based on the disclosures in the Registration Statement, the antitrust considerations appear to have been

much the same for Dollar Tree and Dollar General, and even after these presentations were made to the Board, the Board still directed Levine to seek re-engagement with Dollar General as a potential bidder – instructions that Levine ignored. The instruction by the Board to re-engage with Dollar General does not comport with the after-the-fact assertion that Dollar General was an unsuitable bidder due to antitrust concerns.

82. Moreover, Dollar General states that they have fully explored this issue and are satisfied that it does not pose a problem. Indeed, Dollar General has indicated willingness to divest from 700 stores in order to satisfy any antitrust concerns in connection with an acquisition of Family Dollar.

83. It is further important to note that any concerns about consummation risk would apply equally to Dollar Tree. As stated above, the same antitrust issues exist with regard to Dollar Tree as would exist with Dollar General, with Dollar Tree stating that it would divest from up to 500 stores to satisfy any antitrust concerns.

84. Moreover, Dollar Tree's ability to finance and consummate the Proposed Transaction is not assured. Indeed, the Registration Statement states that "[t]he obligation of the commitment parties to provide debt financing under the debt commitment letter is subject to a number of conditions. There is a risk that

these conditions will not be satisfied and the debt financing may not be available when require.”

85. Moreover, the exact quantum of the value of the consideration in the Proposed Transaction is unknown at this time. While a limited collar is in place, it is possible that the overall value of the Proposed Transaction consideration will actually end up being substantially below \$74.50 per share, due to fluctuations in Dollar Tree’s stock price and the component of the consideration that is comprised of such stock. The Dollar General offer, by contrast, offers the certainty of a substantially higher, all cash price.

86. As such, with equal if not superior ability to consummate, valuation certainty, and a substantially higher price, the Dollar General offer is plainly superior, and the Board’s rejection of this offer was clearly made in violation of each Board member’s fiduciary duties.

87. Indeed, had the Board not breached its fiduciary duties in the first place, by allowing Levine to mislead and drive off Dollar General in order to pursue a more personally satisfying transaction with Dollar Tree, Dollar General would have been able to pay an even better price for the Company. Analysts speculated that the Company was worth at least \$80 to Dollar General, due to the synergies involved, and the \$78.50 offer from Dollar General is close to that number. Had Levine played fairly and honestly with Dollar General, it appears

likely that Dollar General would indeed have offered a figure in the \$80s. However, Dollar General has explicitly stated that the \$305 million termination fee payable to Dollar Tree will divert value to Dollar Tree that would otherwise have gone to Family Dollar's stockholders. As such, Defendants' conduct has damaged the Company's shareholders by at least \$305 million.

### ***The Preclusive Deal Protection Devices***

~~49. As part of the Merger Agreement, Defendants agreed to certain onerous and preclusive deal protection devices that operate conjunctively to make the Proposed Transaction a *fait accompli* and ensure that no competing offers will emerge for the Company.~~

88. To the detriment of Family Dollar's stockholders, the Individual Defendants have further agreed to certain additional deal protection devices that serve as hurdles to competing bidders, and may divert value away from Family Dollar stockholders.

89. ~~50.~~ For example, although ~~§~~ Section 5.3(a) of the Merger Agreement provides for a "No Solicitation" provision barring the Company from soliciting interest from other potential acquirers in order to procure a price in excess of the amount offered by Dollar Tree.

90. ~~51.~~ Pursuant to ~~§~~ Section 5.3(d) of the Merger Agreement, should an unsolicited bidder submit a competing proposal, the Company must notify Dollar

Tree within 24 hours of the bidder's identity and the terms of the bidder's offer. Thereafter, should the Board determine that the unsolicited offer is superior, before the Company can terminate the Merger Agreement with Dollar Tree in order to enter into the competing proposal, it must grant Dollar Tree five business days in which the Company must negotiate in good faith with Dollar Tree (if Dollar Tree so desires) and allow Dollar Tree to amend the terms of the Merger Agreement to make a counteroffer that is merely as favorable as the competing proposal. In other words, the Merger Agreement gives Dollar Tree access to any rival bidder's information and allows Dollar Tree a free right to top any superior offer simply by matching it. Accordingly, no rival bidder is likely to emerge because the Merger Agreement unfairly assures that any "auction" will favor Dollar Tree and piggy-back upon the due diligence of the foreclosed second bidder.

91. ~~52.~~ Sections 7.3(a) and (b) of the Merger Agreement also provides for a termination fee of \$305 million ~~and (inclusive of up to \$90,000,000 in expenses-)~~ payable to Dollar Tree by Family Dollar if the Company decides to pursue the competing offer, or otherwise fails to close on the Proposed Transaction pursuant to the Merger Agreement, thereby essentially requiring that the competing bidder agree to pay a naked premium for the right to provide the shareholders with a superior offer. The Merger Agreement does not provide for a reverse termination fee in the event Dollar Tree decides to back out of the deal.

92. ~~53.~~ Any unsolicited competing bidder would have to go to great expense of conducting due diligence, and formulating a proposal within a very limited time frame, which, pursuant to the Merger Agreement, Dollar Tree would have an opportunity to match. Further, a competing bidder will need to negotiate with a management team participating in the Proposed Transaction and already heavily biased in favor of approving the Proposed Transaction. Even if another bidder is tenacious enough to navigate this obstacle course, that bidder will be further discouraged by the onerous termination fee that the Company (and by extension, the “successful” competing bidder) will be forced to pay.

93. ~~54.~~ Section 5.9 of the Merger Agreement provides indemnification for a period of six years for directors and officers liability and fiduciary liability insurance. This provision would shield Defendants and Company executives from any liability going forward insulating them from any scrutiny.

94. ~~55.~~ By entering into the agreement with Dollar Tree, the Family Dollar Board has initiated a process to sell the Company, which imposes heightened fiduciary responsibilities and requires enhanced scrutiny by the Court. However, the terms of the Proposed Transaction were apparently arrived at without a full and thorough investigation by the Board, and they are intrinsically unfair and inadequate from the standpoint of the Family Dollar shareholders.

95. ~~56.~~ Moreover, the Company had adopted a ~~“Poison Pill” in the form of a stockholder Rights Agreement (the “Rights Agreement”), first adopted the SRP~~ on June 9, 2014, ~~—~~ to repulse any unwanted ~~takeover~~ takeover attempts. The adoption of the ~~Rights Agreement~~ SRP was in response to ~~activist investor Carl Ichan’s (“Ichan”)~~ Mr. Icahn’s announcement that he owned 9.4% of the Company stock at the time and planned on pushing for a sale of the Company. The ~~Rights Agreement~~ SRP effectively blocks investors such as Mr. Icahn from acquiring more than 10% of the shares outstanding.

96. ~~57.~~ The ~~Rights Agreement~~ SRP allows existing stockholders to acquire more stock at a discount, for the purposes of discouraging a hostile takeover. Under the ~~Rights Agreement~~ SRP, each stockholder of record on June 19, 2014 received one preferred stock purchase right for each share of common stock held. Subject to limited exceptions, if a person or group acquires 10% or more of the outstanding common stock, then each right (other than those held by that person or group) will become exercisable and entitle its holder to purchase, at the right’s then-current exercise price, a number of shares of common stock having a market value twice the right’s exercise price.

97. ~~58.~~ The ~~Rights Agreement~~ SRP was amended on July 27, 2014, simultaneously with the execution of the Merger Agreement, to exempt the Dollar Tree, Merger Sub, and all parties to the Voting Agreements from being included in



the category of Acquiring Person. This amendment essentially shuts out all other potential buyers except Dollar Tree.

~~59. Ultimately, these preclusive deal protection provisions illegally restrain the Company's ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a significant interest in the Company. The circumstances under which the Board may respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide an effective "fiduciary out" under the circumstances.~~

### *Conflicts of Interests*

98. ~~60.~~ Defendant Levine, along with the management team at Family Dollar, will be guaranteed continuing employment at Dollar Tree upon completion of the Proposed Transaction. Upon the consummation of the Proposed Transaction, Levine will ~~report~~ remain as the CEO of Family Dollar, reporting directly to the CEO of Dollar Tree.

99. ~~61.~~ This benefit not equally shared with the shareholders provides an incentive for Levine to not seek superior offers from other companies, and instead, allows Levine to favor his own interests over those of the Company and its public shareholders. Indeed, it appears that Levine was actively seeking this benefit

throughout the discussions with Dollar Tree and Dollar General, in violation of the directives of the Board.

100. As shown above, Levine was clearly driven to the deal with Dollar Tree by the promise of a CEO position at the post-transaction Company, while it was clear that in a deal with Dollar General, there would be no such guarantee. The assurances from Dollar Tree that he could have the CEO position, contrasted with Dollar General's refusal to extend such an offer, resulted in Levine exhibiting improper favoritism toward Dollar Tree throughout the discussions.

***The Materially False and/or Misleading Registration Statement***

101. On April 18, 2014, Family Dollar filed the Registration Statement with the SEC. Not only does the Registration Statement provide Family Dollar stockholders with materially misleading information, but it also fails to provide: (i) certain management projection metrics relied upon by Morgan Stanley in rendering its fairness opinion; (ii) certain material information regarding the analysis performed by Morgan Stanley in rendering its fairness opinion; and (iii) several important details regarding the process leading up to the signing of the Merger Agreement. Without such information, Family Dollar's stockholders will be unable to make a fully-informed decision as to whether to vote their shares for or against the Proposed Transaction.

102. First, several points in the Registration Statement are shown to be materially misleading and/or materially incomplete based on the facts as set forth in Dollar General's public statements.

103. For example, the Registration Statement indicates that on June 19, 2014, Dollar General informed Defendant Levine that it was not interested in acquiring Family Dollar. This statement is materially false and misleading. In fact, as Dollar General's August 20, 2014 letter explicitly states: "Dollar General representatives have consistently expressed a keen interest in putting [the] two companies together" and specifically indicated several times during that June 19, 2014 meeting Dollar General's "interest in exploring a combination with Family Dollar."

104. Similarly, the Registration Statement states that on June 9, 2014 the Board "directed Levine to encourage [Dollar General] to re-engage in discussions about...a potential strategic transaction." This statement is materially false and misleading, or at minimum materially incomplete, because, as stated in Dollar General's August 20 letter, Levine never solicited a bid from Dollar General, never informed them that a sale process was underway, and never informed Dollar General that the Company was in discussions with another bidder.

105. In another facial inconsistency, the Registration Statement indicates that Levine was repeatedly instructed by the Board not to negotiate a position for

himself with potential bidders until a transaction had been agreed upon, and further repeatedly states that Levine stated that he would follow the Board's directive in this regard. Registration Statement at 67, 69, and 70. However, Dollar General's August 20, 2014 letter shows that Levine was actively seeking assurances of a CEO position for himself throughout discussions concerning a potential transaction, and the fact that Dollar Tree's first formal bid included a statement that Levine's remaining with the combined Company as the CEO shows that Dollar Tree received the same treatment. As such, the Registration Statement is materially false and incomplete in this regard.

106. The Registration Statement repeatedly references presentations to the Board concerning potential antitrust issues stemming from potential acquisitions of the Company by Dollar Tree or Dollar General. These references never state that Dollar General was found to be an unacceptable or problematic bidder. Indeed, following such a presentation, the Board directed Levine to solicit re-engagement with Dollar General as a potential bidder – thereby clearly indicating that Dollar General was a perfectly acceptable bidder and that the antitrust issues did not pose a substantial problem. Now, however, Defendants claim that antitrust concerns are forcing them to reject Dollar General's facially superior offer. Thus, the disclosure concerning these antitrust presentations is materially incomplete and must be augmented to disclose the substance and conclusions of such discussions.

107. In addition to these matters, several other disclosure deficiencies permeate the Registration Statement, as follows.

**1. Materially Incomplete and Misleading Disclosures Regarding Management's Financial Projections**

(a) The Registration Statement omits and/or materially misrepresents information concerning each of the various sets of projections or financial forecasts prepared by or for the parties and their advisors in connection with the Proposed Transaction, including: with respect to the financial projections provided by Family Dollar management and relied upon by Morgan Stanley (Registration Statement at 91-93), the Registration Statement fails to disclose the Wall Street projections (Registration Statement at 91), the unlevered free cash flows, non-GAAP EPS, and net debt (Registration Statement at 93), the Dollar Tree projections, and synergies (Registration Statement at 93).

**2. Materially Incomplete and Misleading Disclosures Concerning Morgan Stanley's Financial Analysis**

108. With respect to the financial valuation analyses underlying the fairness opinion prepared by Morgan Stanley for the Board (Registration Statement at 80-89), Defendants fail to disclose, or otherwise misrepresent, the following material information:

(a) With respect to Morgan Stanley's *Historical Trading Range Analyses*, (i) when in the future the analysts' target prices contemplate, (ii) the undiscounted

range of price targets for both Family Dollar and Dollar Tree, and (ii) the identity, quantity, and source of the cost of equity assumptions.

(b) With respect to the *Comparable Public Companies Analysis*, the observed company-by-company pricing multiples and financial metrics examined by Morgan Stanley,

(c) With respect to the *Discounted Future Equity Value Analysis*, the basis for the range of 7x-8x, in light of the fact that Morgan Stanley selected 8.0x-9.5x for its *Comparable Public Companies Analysis*;

(d) With respect to the *Discounted Cash Flow Analysis*, (i) the basis for the range of discount rates of 7.5% to 8.5%, (ii) the unlevered free cash flows used in the analysis, (iii) the identity, quantity, and source of WACC assumptions;

(e) With respect to the *Leveraged Buyout Analysis*, (i) the basis for the debt assumptions, (ii) the basis for the IRR assumption, (iii) the basis for the leveraged ratio assumption, and (iv) the basis for the exit multiple assumption;

(f) With respect to the *Precedent Transactions and Premia Paid Analysis*, (i) the selection criteria, (ii) the observed transaction-by-transaction enterprise values, pricing multiples and financial metrics, and (iii) a description of the “other things” Morgan Stanley considered in selecting multiples and premia.

(g) Under *Other Considerations*, the fees paid to Morgan Stanley by Family Dollar and Dollar Tree for services rendered during the past two years.

**2. Materially Incomplete and Misleading Disclosures Regarding the Flawed Sales Process**

109. The Background of the Merger section on pages 60 through 71 of the Registration Statement specifically fails to disclose the following material information concerning the flawed sales process that resulted in the Proposed Transaction:

(a) the “balance sheet matters” about which Morgan Stanley advised Family Dollar (Registration Statement at 60);

(b) details regarding the antitrust reports analyzed by Company advisors;

(c) whether the contact with Dollar General (Company A) was solicited or unsolicited, and the circumstances surrounding the initial contact with Company A;

(d) the reasons given by Dollar General (Company A) for not being interested in a transaction with Family Dollar on June 19, 2014.

110. Accordingly, Plaintiffs seek injunctive relief and other equitable relief to prevent the irreparable injury that the Company stockholders will continue to suffer absent judicial intervention.

**COUNT I**

**On Behalf of Plaintiff and the Class for Breach of Fiduciary Duties Against the Individual Defendants**

111. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

112. The Individual Defendants owe the Class the utmost fiduciary duties of loyalty, due care, good faith, and candor. By virtue of their positions as directors and/or officers of Family Dollar and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence, and did control and influence and cause the Company to engage in the practice complained of herein. Each of the Individual Defendants was required to (i) use their ability to control and manage Family Dollar in a fair, just, and equitable manner and (ii) act in furtherance of the best interest of Family Dollar and its stockholders and not their own.

113. The Individual Defendants are obligated by their fiduciary duties under *Revlon* to ensure that any all-cash sale of the Company is accomplished by a process aimed at ***obtaining the highest price reasonably available***. The Individual Defendants breached these duties.

114. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty, due care, good faith, and candor owed to Family Dollar's stockholders because, among other reasons, they failed to obtain the best possible value for the Company's stockholders, by, among other things, failing to adequately consider potential acquirers, instead favoring their own, or their fellow directors' or executive



officers' interests to secure all possible benefits with a friendly suitor, rather than protect the best interests of Family Dollar stockholders. Moreover, the Individual Defendants have failed to fully disclose to Plaintiff and the Class all material information necessary to make an informed decision regarding whether to vote in favor or against the Proposed Transaction.

115. By reason of the foregoing acts, practices, and courses of conduct, the Individual Defendants have failed to exercise and fulfill their fiduciary obligations toward Plaintiff and the other members of the Class.

~~62. The Individual Defendants have violated their fiduciary duties owed to the public shareholders of Family Dollar. The Individual Defendants' agreement to the terms of the Proposed Transaction and its timing demonstrate a clear lack of due care and of loyalty to the Family Dollar public shareholders.~~

~~63. The Individual Defendants' fiduciary obligations under these circumstances require them to undertake an appropriate evaluation of Family Dollar's net worth as an acquisition candidate.~~

~~64. The Individual Defendants have violated their fiduciary duties owed to Plaintiff and the Class in that they have not and are not exercising independent business judgment and have acted and are acting to the detriment of the Company's public shareholders for their own personal benefit.~~

~~116. 65. Plaintiff and other members of the Class have been and will be damaged. As a result of the actions by the Individual Defendants, Plaintiff and the Class have been, and will be, irreparably harmed~~ in that they have not, and will not, receive their fair ~~proportion~~ portion of the value of Family Dollar's assets and ~~business~~ businesses, and will be prevented from obtaining a fair ~~and adequate~~ consideration ~~price~~ for their ~~shares of Family Dollar~~ common stock.

~~66. The consideration to be paid to Class members in the Proposed Transaction is unfair and inadequate because, among other things:~~

~~(a) — The intrinsic value of Family Dollar common stock is materially in excess of the amount offered for those securities in the merger giving due consideration to the anticipated operating results and profitability of the Company; and~~

~~(b) — By entering into the Merger Agreement with Dollar Tree, the Individual Defendants have allowed the price of Family Dollar stock to be capped, thereby depriving Plaintiff and the Class of the opportunity to realize any increase in the value of Family Dollar stock.~~

~~67. By reason of the foregoing, each member of the Class will suffer irreparable injury and damages absent injunctive relief by this Court.~~

~~68. Dollar Tree and Merger Sub aided and abetted the breaches of fiduciary duty by the Individual Defendants. Indeed, the wrongful conduct complained of herein could not have occurred without the knowing participation of these Defendants.~~

~~69. Plaintiff and other members of the Class have no adequate remedy at law.~~

**COUNT I**

117. (~~Breach of Fiduciary Duty against~~ Unless enjoined by this Court, the Individual Defendants) will continue to breach their fiduciary duties owed to Plaintiff and the members of the Class and may consummate the Proposed Transaction to the disadvantage of Family Dollar's public stockholders.

118. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

~~70. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.~~

~~71. By the acts, transactions and courses of conduct alleged herein, the Individual Defendants have violated their fiduciary duties of good faith, loyalty, and due care at the expense of Plaintiff and other members of the Class.~~

~~72. As alleged herein, the Individual Defendants have failed to, *inter alia*:~~

~~(a) Adequately consider the Proposed Transaction, including whether it maximizes shareholder value;~~

~~(b) Apprise themselves of the true value of the Company, or the benefits associated with pursuing the Proposed Transaction or an alternative transaction, by, among other things, considering the merits of such transactions and engaging in a market check or canvas of the industry; and~~

~~(c) Otherwise take the steps necessary to comply with their fiduciary duties.~~

~~73. As such, unless the Individual Defendants' conduct is enjoined by the Court, they will continue to breach their fiduciary duties to Plaintiff and the other members of the Class, and will further a process that inhibits the maximization of shareholder value.~~

~~74. In light of the foregoing, the Individual Defendants and the Company must, as their fiduciary obligations require:~~

~~(a) — Undertake an appropriate evaluation of Family Dollar’s value;~~

~~(b) — Evaluate the Proposed Transaction and other potential transactions;~~

~~(c) — Enable public shareholders to consider the Proposed Transaction in a fair and non-coercive manner, without the threat of deal protection measures or mechanisms that could preclude or dissuade a value-maximizing transaction;~~

~~(d) — Refrain from favoring the Individual Defendants’ interests over those of the Company’s public shareholders, to, among other things, ensure that conflicts of interest do not unfairly influence the shareholders’ decisions or available options; and~~

~~(e) — Disclose all material facts necessary to permit the Company’s public shareholders to make an informed decision with respect to the Proposed Transaction or any alternate transaction.~~

~~75. Absent injunctive relief, Plaintiff and the Class will continue to suffer irreparable harm as result of the Individual Defendants’ breaches of fiduciary duty, for which Plaintiff and the Class have no adequate remedy at law.~~

## COUNT II

~~(For On Behalf of Plaintiff and the Class Against Family Dollar, and Dollar Tree for Aiding and Abetting Breaches the Individual Defendants’ Breach of Fiduciary Duties)~~

~~against Family Dollar and Dollar Tree)~~

~~119. 76. Plaintiff incorporates repeats and realleges each and every allegation ~~set forth~~ above as if ~~fully~~ set forth in full herein.~~

~~77. Defendants Family Dollar and Dollar Tree have aided and abetted the Individual Defendants in the aforesaid breaches of their fiduciary duties.~~

~~78. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of Defendants Family Dollar and Dollar Tree, who, therefore, have aided and abetted such breaches in connection with the Proposed Transaction.~~

~~79. As a result of the unlawful actions of Defendants Family Dollar and Dollar Tree, Plaintiff and the other members of the Class will be irreparably harmed in that they will not receive the true value for Family Dollar's assets and business. Unless their actions of are enjoined by the Court, Defendants Family Dollar and Dollar Tree will continue to aid and abet the Individual Defendants' breaches of their fiduciary duties owed to Plaintiff and the members of the Class.~~

~~80. As a result of this conduct, Plaintiff and the other members of the Class have been and will be damaged in that they have been and will be prevented from obtaining a fair price for their Family Dollar shares.~~

120. Family Dollar and Dollar Tree have acted and are acting with knowledge of, or with reckless disregard to, the fact that the Individual Defendants are in breach of their fiduciary duties to Family Dollar's stockholders, and have participated in such breaches of fiduciary duties. As a result of this conduct by Family Dollar and Dollar Tree, Plaintiff and the Class have and will be damaged

by being denied the best opportunity to maximize the value of their investment in the Company.

121. Family Dollar and Dollar Tree knowingly aided and abetted the Individual Defendants' wrongdoing as alleged herein. In so doing, Family Dollar and Dollar Tree rendered substantial assistance in order to effectuate the Individual Defendants' plan to consummate the Proposed Transaction in breach of their fiduciary duties.

122. ~~81.Plaintiff and other members of the Class have~~ Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

### **PRAYER FOR RELIEF**

**WHEREFORE,** Plaintiff ~~and members of the Class demand~~ demands judgment against Defendants jointly and severally, as follows:

A. Declaring ~~that~~ this action ~~is properly maintainable as a class action to be a Class Action~~ and certifying Plaintiff as ~~the representative of the Class;~~ Class representative and her counsel as Class counsel;

B. Enjoining Defendants, their agents, counsel, employees, and all persons acting in concert with them from consummating the Proposed Transaction;

C. Enjoining the Merger Agreement as invalid and unenforceable, or in the alternative, amending, or enjoining the deal protection provisions as necessary to ensure a full and fair sales process for the benefit of the Class;

~~B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction;~~

D. ~~C. In the event that Rescinding,~~ to the extent already implemented, the Proposed Transaction ~~is consummated, rescinding it and setting it aside, or awarding~~ or any of the terms thereof, or granting Plaintiff and the Class rescissory damages ~~to the Class;~~

E. Directing Defendants to account to Plaintiff and the Class for all damages suffered as a result of the Individual Defendants wrongdoing;

F. Imposition of a constructive trust, in favor of Plaintiff and members of the Class, upon any benefits improperly received by Defendants as a result of their wrongful conduct;

G. ~~D.~~ Awarding Plaintiff the costs and disbursements of this action ~~and a,~~ including reasonable ~~allowances for fees and expenses of Plaintiff's counsel attorneys'~~ and experts' fees; and

H. ~~E.~~ Granting ~~Plaintiff and the Class~~ such other and further equitable relief as ~~the~~ this Court may deem just and proper.



Dated: ~~July 31~~August 22, 2014

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