

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TANYA YOUNGBLOOD, JEAN
SAMUEL and BEVIS THOMAS, on
behalf of themselves and all others
similarly situated

Plaintiffs,

v.

FAMILY DOLLAR STORES, INC.,
FAMILY DOLLAR, INC., FAMILY
DOLLAR STORES OF NEW YORK,
INC., AND DOES 1 through 10, inclusive,

Defendants.

and

ANTHONY RANCHARAN, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

FAMILY DOLLAR STORES, INC.,

Defendant.

Case No. 09-cv-3176 (RMB)(FM)

Case No. 10-cv-07580 (RMB)(FM)

**DECLARATION OF SETH R. LESSER IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES AND FOR APPROVAL
OF SERVICE PAYMENTS TO THE NAMED PLAINTIFFS**

I, Seth R. Lesser, an attorney admitted to the bar of this Court, declare, under penalty of perjury that:

1. I am a partner in Klafner Olsen & Lesser LLP ("KOL") and represent the plaintiffs and the Class as Class Counsel. I am fully familiar with the facts and circumstances set forth herein, and I make this Declaration in support of Plaintiffs' Unopposed Motion for Final

Approval of Class Action Settlement and Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Expenses and for Approval of Service Payments to the Named Plaintiffs.

GENERAL BACKGROUND

2. In 2009, plaintiffs filed these consolidated actions alleging that defendants Family Dollar Stores, Inc., Family Dollar, Inc., and Family Dollar Stores of New York, Inc. (collectively "defendants" or "Family Dollar") misclassified New York Family Dollar store managers ("SMs") as exempt from the overtime requirements of New York Labor Law ("NYLL"). Plaintiffs sought overtime pay and other damages for hours worked in excess of 40 per week. In October 2011, the Court certified a class of current and former New York Family Dollar SMs. On January 28, 2013, the Court preliminarily approved the Settlement and ordered that notice of the \$14,000,000 Settlement be sent to the Settlement Class.

3. Since preliminary approval, Class Counsel has worked with the Court-appointed Settlement Administrator, Rust Consulting, Inc. ("Rust"), to ensure timely and accurate administration of the Settlement and to address the many requests for information from Class members. Class Counsel has received numerous calls, e-mails, and inquiries from Class members about the Settlement. Many of the calls address a wide range of issues – from seeking to pass on address changes or request re-mailings, to questions about dates, the litigation generally, or what Class members should expect on a going forward basis. But perhaps the most common question has been when the money might be received. The response has been overwhelmingly positive, and Class members have explained that personal circumstances and hardships make the anticipated receipt of the Settlement proceeds particularly valuable.

LITIGATION HISTORY

4. After these actions were remanded from *In re Family Dollar Wage & Hour Litig.*,

MDL No. 3:08-MD-1932 in September 2010 and consolidated in this Court in November 2010, the action was aggressively litigated. The parties served and responded to written discovery, Family Dollar noticed the plaintiffs' depositions, and plaintiffs served a Fed. R. Civ. P. 30(b)(6) deposition notice covering multiple topics. The parties exchanged multiple letters and held numerous conferences addressing discovery, including the scope of discovery, electronically stored information, payroll information, and the production of documents from the *In re Family Dollar* MDL.

5. The parties produced (and plaintiffs' counsel reviewed) approximately 200,000 pages of materials which included, among many other things, job descriptions, personnel files, company policies, store schematics (instructions for setting up products in stores), schedules, timesheets, and pay records. Family Dollar also produced deposition transcripts from the MDL proceeding, which plaintiffs' counsel reviewed.

6. There were 31 depositions: 22 SMs, four Regional Vice Presidents covering Family Dollar's four regions in New York, one District Manager, three Rule 30(b)(6) corporate representatives, and plaintiffs' expert. The SM depositions occurred across New York, from Erie County to Suffolk County. These depositions, along with the document production, provided evidence of the SM job duties and the manner in which Family Dollar operates its New York stores.

7. Plaintiffs' counsel interviewed numerous class members to determine the hours that they worked, the nature of their daily activities, and other information relevant to their claims. This information provided Plaintiffs' Counsel with an unmatched perspective of the claims at issue, including an opportunity to evaluate the strength of the claims if this class action proceeded to trial.

8. The parties also litigated many issues before the Magistrate Judge. For example, after defendants served a subpoena on one of plaintiff Youngblood's employers, plaintiffs filed a motion to quash the subpoena as overbroad and Magistrate Judge Maas granted the motion in part. Plaintiffs also filed a motion to compel contact information for other New York SMs so that they could obtain evidence to support their motion for class certification, which motion Magistrate Judge Maas granted.

9. Upon completion of pre-certification discovery, plaintiffs filed a comprehensive motion for class certification pursuant to Fed. R. Civ. P. 23 on April 27, 2011 that contained 56 exhibits. The parties also filed supplemental briefing after the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). On October 4, 2011, the Court certified a class of New York SMs who worked for Family Dollar at any time from April 2, 2003 to the date of judgment.

10. Following this Order, on October 18, 2011, Family Dollar filed a Fed. R. Civ. P. 23(f) application to appeal this Court's certification decision and a motion to stay the action pending appeal. After Plaintiffs responded, this Court denied the motion to stay pending appeal. The Second Circuit denied the Rule 23(f) application on February 8, 2012.

11. During the post-certification stage, Family Dollar noticed the depositions of absent class members, and plaintiffs moved for a protective order. Magistrate Judge Maas granted plaintiffs' motion on January 6, 2012. Family Dollar objected to the Order, and this Court overruled those objections on January 23, 2012.

12. Discovery continued, and plaintiffs served additional written discovery in order to obtain, among other things, class member payroll data. After receiving the data, plaintiffs engaged an expert, Dr. David Crawford, to prepare a damages report. Family Dollar's expert

also prepared a report.

13. The parties litigated other matters, such as whether Family Dollar would produce documents relating to its Fair Labor Standards Act (“FLSA”) audit and electronic discovery issues, including the production of store-level e-mails. These issues were briefed and pending before Magistrate Judge Maas, when the parties requested a stay of proceedings to permit negotiation, which eventually resulted in settlement.

14. Before settlement, plaintiffs’ counsel also began preparing for trial by reviewing the evidentiary record, developing strategies, and considering potential trial witnesses.

HISTORY OF SETTLEMENT NEGOTIATIONS

15. Following the Court’s direction, in October 2011, the parties initiated settlement dialogue and exchanged letters on the subject in October and November 2011.

16. On January 3, 2012, plaintiffs requested that the Court compel the parties to appear for a settlement conference before Magistrate Judge Maas and the Court granted that request. The parties made confidential submissions, and, on February 10, 2012, appeared for a settlement conference. While that conference proved unsuccessful in resolving the matter, pursuant to Judge Maas’s guidance, the parties agreed to continue discussions with a mediator.

17. The parties retained Mark Rudy, Esq., an experienced and well-regarded mediator of wage-hour class actions. The parties prepared comprehensive mediation statements and, after telephone consultations with Mr. Rudy, held a full-day mediation session with him in New York on March 30, 2012. However, the parties did not resolve the matter at the first session.

18. Thereafter, the parties’ counsel met between themselves in Philadelphia, Pennsylvania to continue settlement discussions on April 17, 2012. After the Philadelphia meeting, lead counsel for the parties had multiple settlement discussions which led to a second

mediation session with Mr. Rudy, this time in San Francisco (where Mr. Rudy practices) on August 15, 2012. The matter still did not resolve. The parties thereupon held a third full-day mediation session with Mr. Rudy in New York on August 21, 2012. The parties left that session still some distance apart, but Mr. Rudy continued discussions by telephone and, ultimately, the parties agreed in principle to the key terms of the settlement. The parties thereafter engaged in negotiating the full Settlement Agreement and the notice plan. As is apparent from the many months of negotiations, a settlement conference before Magistrate Judge Maas, an in-person meeting in Philadelphia, and the need for three full-day mediation sessions, the negotiations were comprehensive, intense, and conducted on an arm's-length basis.

THE CLASS ACTION SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

19. Because of the extensive discovery and pre-trial work, the parties were put in an exceedingly favorable position to evaluate the merits of their claims and defenses. Class Counsel and the other plaintiffs' counsel are uniquely informed of the matters in this case inasmuch as they have spoken to an unusually large percentage of the Class members during this litigation and, accordingly, gained particular perspective of the strengths and weaknesses of their claims against Family Dollar. Plaintiffs can unequivocally say – and believe this cannot be gainsaid – that the proposed Settlement is the product of two fully informed sides negotiating intensely at arm's length. The Settlement offers a fair and reasonable resolution of the litigation and incorporates and recognizes the substantial risks each side faced, whether at trial or upon appeal, had the litigation continued. Furthermore, the reaction of the Settlement Class has been exceedingly positive, and Class Counsel has received numerous messages of thanks from Class Members who support this Settlement.

20. This \$14 million settlement is reasonable because it is a substantial compromise

of a fiercely disputed matter that will provide significant and certain benefits to each Settlement Class member, with net payments allocated to individual settlement class members averaging approximately \$5,100. Since the amount each Class member will receive will be proportional to his or her time worked within the applicable statute of limitations, fairness in payments will result.

21. While plaintiffs may have been able to obtain a larger amount at trial, this Settlement provides certain relief now to the Class without the risks of a class action trial, decertification, and/or summary judgment. There are also other risks within this area of law because many matters remain *sui generis* or are not entirely developed.

22. Moreover, in recent years, more trials have been lost on misclassification claims than have been won, and, as best we can tell, no New York Labor Law class action has ever been tried to a verdict. Trials of analogous FLSA collective actions are even themselves rare. When Class Counsel tried such a case to a jury verdict in 2009, creating the jury instructions took weeks of day after day of post-trial argument and deliberations between counsel and the able Hon. Patty Shwartz (then of the District of New Jersey; now on the Third Circuit) because there were no sufficiently comprehensive jury instructions to be found *anywhere* as precedent explicating the intricacies of the FLSA's executive exemption test – precisely the exemption at issue in this litigation.

23. If the case went to trial, Family Dollar would have to prove that its New York SMs were properly classified as exempt from overtime. This would involve a fact-intensive inquiry into the duties that these employees performed and the amount of time these employees spent performing the duties. Such issues can and would be disputed by defendants' witnesses, giving rise to credibility issues and significant risk at trial. The Settlement Agreement

appropriately takes into account these risks and still provides substantial relief to the Class.

24. In light of the significant risks, Class Counsel believes that the result here is excellent. Obtaining a gross average payment per class member of approximately \$7,100 (this gross sum includes the requested amounts of attorney's fees, litigation costs, and named plaintiff service awards; the net amount per class member is approximately \$5,100) is a significant result in a retail misclassification case.

25. Although every case is different, by comparison, in another of our recent cases, an assistant store manager settlement for \$34 million, the average class member claimant recovery was \$1,760, a result District Judge McConnell last year termed "magnificent" at the final approval hearing. *Nash v. CVS Caremark Corp.*, 1:09-cv-00079 (D.R.I.) (final approval order dated Apr. 9, 2012).

26. Also, by comparison, the gross settlement value of the Rite Aid assistant store manager case was \$1,845 per class member (\$20.9 million total settlement) (*Craig v. Rite Aid Corp.*, 2013 U.S. Dist. LEXIS 2658, at *41 (M.D. Pa. Jan. 7, 2013)), and the class member gross recoveries in other recent retail misclassification settlements in which Class Counsel has been involved have been \$1,561 (*Alli v. Boston Market Corp.*, No. 10-cv-0004 (D. Conn.) (final approval obtained April 17, 2012 for \$3 million for 1,921 class members); \$1,771 (*Jenkins v. Sports Authority*, No. 09-cv-224 (E.D.N.Y.) (final approval obtained September 30, 2011 for \$990,000 settlement for class of 559 co-managers); and \$3,264 (*Caissie v. BJ's Wholesale Club*, No. 08-cv-30220 (D. Mass. June 24, 2010) (final approval obtained June 24, 2010 for \$9.15 settlement for class of 2,803 "mid-managers"); cf. *In re Staples Inc. Wage & Hour Employment Practices Litig.*, No. 08-cv-5746 (D.N.J.) (MDL-2025) (final approval obtained on October 26, 2010 for \$42 million settlement on behalf of 6,251 assistant store managers after favorable trial

verdict on behalf of FLSA claimants).

NOTICE AND CLAIMS ADMINISTRATION

27. Attached as Exhibit A hereto is the Declaration of Stacy Roe (the "Rust Dec."), Senior Project Administrator of Rust, appointed by the Court to be the Settlement Administrator, which affidavit sets forth the notice that was effectuated pursuant to the Court's direction in the Order preliminarily approving the settlement and the response of the Class members.

28. As set forth in the Rust Declaration, Rust has complied with providing notice to the Class pursuant to the Settlement Agreement and the Court's Preliminary Approval Order, including the establishment of a website and toll-free telephone line and the mailing of the Notice to the Class. Ex. A at ¶¶ 3-6. Rust has taken care of such matters as handling inquiries from Class members (still ongoing), re-mailings, skip-tracings, resolving disputed dates of employment (still ongoing), deficiency notifications, and dealing with death beneficiaries. Ex. A at ¶¶ 3-13.

29. Rust will continue to perform these duties and those outlined in the Settlement Agreement and Preliminary Approval Order. To date, Rust received 978 valid claims from Class Members, resulting in a claims rate of 48.39 percent. Ex. A at ¶ 13. The 978 claims filed account for 57.90 percent of the settlement fund that will be paid to Class Members. Ex. A at ¶ 13.

30. Rust anticipates that the total cost of administration to be \$63,791.45. Ex. A at ¶ 17. This number is, in my experience, reasonable and should be approved by the Court.

**CLASS COUNSEL'S REQUESTS FOR AN AWARD OF FEES AND
EXPENSES AND SERVICE PAYMENTS TO THE
CLASS REPRESENTATIVES**

31. Class Counsel ask the Court to approve payment of (1) an award of attorneys' fees in the amount of \$4.2 million; (2) reimbursement of a portion of Class Counsel's reasonable out-of-pocket costs and expenses in the amount of \$120,000; and (3) service payments in the amount of \$12,500 to Named Plaintiffs Anthony Rancharan, Jean Samuel, Bevis Thomas, and Tanya Youngblood for their services as the Settlement Class Representatives, all of which requests defendants agreed not to oppose.

32. As Class Counsel, KOL led this litigation and directed its course. Paragraphs 4-18, above, and paragraph 42, below, detail much of the work done by Class Counsel. Of particular note, KOL developed the strategy for this litigation including creating the appropriate discovery requests, interviewing and selecting numerous witnesses, drafting many discovery letters and multiple motions, reviewing and selecting the pertinent documents, drafting the comprehensive class certification motion, drafting response to the Rule 23(f) petition, drafting the protective order motions relating to the overbroad subpoenas and absent class member depositions, arguing multiple motions before the Magistrate Judge, and drafting the Preliminary Approval and Final Approval Motions. KOL also took the lead in negotiating the Settlement that is before the Court.

33. Attached as Exhibits B-F hereto are declarations from each of the Settlement Class Counsel law firms attesting to the work they put into this litigation and setting forth other relevant information. These declarations are (by exhibit identification): (B) Hepworth Gershbaum & Roth PLLC; (C) Barkan Meizlish Handelman Goodin DeRose Wentz LLP; (D) Lite DePalma Greenberg LLC; (E) Khorrami LLP; and (F) Berger Attorney, P.C. As discussed

below, the efforts of all firms were necessary to achieve this result.

34. The expertise and experience of Class Counsel and Settlement Class Counsel and their views are an important factor to consider in assessing the reasonableness of this Settlement. As the attached law firm-specific declarations demonstrate, plaintiffs' counsel has significant experience, and success, in the areas of law relevant here: wage and hour litigation and complex and class actions. Class Counsel believes it fairly can be said that plaintiffs' counsel includes some of the leading plaintiffs' employment and wage and hour attorneys in the country. *See* Settlement Class Counsel Firm Resumes, attached as exhibits to Exhibits B-F.

35. With respect to the standing of my firm, attached hereto as Exhibits G and H, respectively, are a brief biography of my firm and copy of my own CV. In this connection, I would note that, as is here specifically relevant, my firm has in recent years successfully litigated to conclusion over two dozen FLSA/state wage and hour cases and settlements that, to date, constitute over \$100 million in value. This includes, as noted, *Stillman v. Staples, Inc.*, 07-cv-849 (D.N.J.), which was a FLSA wage and hour case that my firm ultimately successfully tried to a jury verdict on behalf of 342 opt-ins and which case is one of the rare FLSA misclassification cases that has, at least in recent years, been successfully tried to a jury verdict for plaintiffs. That trial, which, even pursuant to an expedited schedule, occurred nearly two years after the filing of the case, consumed six weeks of time, cost hundreds of thousands of dollars and presented innumerable contested issues of both law and fact. Although a jury verdict was obtained, the post-trial motion practice that thereupon followed was quite extensive and included, among other things, motions for judgment notwithstanding the verdict, to have the damages reduced pursuant to the "fluctuating work week" basis of calculating overtime, and for decertification of the collective class. Ultimately, the *Staples* case resulted in an omnibus settlement totaling \$42

million, *In re Staples Wage & Hour Litigation*, MDL No. 2025 (D.N.J.) (final approval obtained November 3, 2011; KOL was the agreed-upon lead counsel in the same). In addition, included in the cases in which I have acted as the lead counsel are the largest FLSA/state wage and hour settlements in the District of New Jersey (the *Staples* litigation), the District of Rhode Island (*Nash v. CVS*, 09-cv-079 (D.R.I.) (\$34 million settlement)), the Middle District of Pennsylvania (*Craig v. Rite Aid Corp.*, 08-cv-2317 (M.D. Pa.) (\$20.9 million settlement)), and the District of Massachusetts (*Caissie v. BJ's Wholesale Club*, 08-cv-30220 (D. Mass.) (\$9.3 million settlement)). In addition to the *Stillman v. Staples* trial, my firm also tried another FLSA collective action to a successful verdict, a case which, by virtue of having been tried in an arbitration forum, has the details protected from disclosure as confidential. However, it is rare for a law firm to have tried one, much less certainly two, FLSA collective actions to successful verdict.

36. As stated above and reiterated here, it is the opinion of Class Counsel and Settlement Class Counsel that the Settlement achieved is fair, adequate and reasonable and should be approved by this Court.

37. It is also important to consider the amount of effort undertaken prior to settlement. As of today, plaintiffs' counsel have expended 5,688.78 hours, have a combined lodestar of \$2,756,958.82, and incurred out-of-pocket costs of \$184,739.18 (which is more than what the expenses request of \$120,000). The hours reported are reasonable for a case of this complexity, magnitude and length and were compiled from contemporaneous time records maintained by each attorney, paralegal, and support staff participating in the case. All of this time was expended on a contingency fee basis in a difficult and unsettled area of the law.

38. Based on Class Counsel's experience, we expect that there will be significant time

spent in the future administering the settlement, resolving issues with the Settlement Administrator and defendants' counsel, and speaking with class members about the administration and the Settlement. Over a year ago, for instance, the District of Rhode Island granted final approval to the CVS assistant store manager wage and hour settlement and, as of today's date, the undersigned is still involved in finalizing the implementation of that settlement and in addressing requests from class members and the claims administrator.

39. The work performed by Class Counsel and Settlement Class Counsel in attaining the settlement should also be evaluated in light of the quality of the opposition. Defendants are represented by three highly experienced and respected law firms, Akin Gump Strauss Hauer & Feld, LLP, Littler Mendelson, P.C., and Quinn Emanuel Urquhart & Sullivan LLP. These firms spared little effort in defending Family Dollar in this case – as demonstrated, to use but three examples, by the decision to take 22 depositions of Family Dollar SMs, collect declarations from dozens of SMs and other employees, and by the avowed willingness to take this case to trial (indeed, specifically engaging the Quinn Emanuel firm as trial counsel) should it not settle. Likewise, and without belaboring the point, throughout the litigation, there were many motions and requests for Court intervention, all of which are testament to a dogged and tenacious defense of the case. In all, there can be no doubt that in reaching this substantial Settlement, the work undertaken was significant.

40. The reaction of the Class to the Settlement also strongly supports approval of the fee award and cost reimbursement request. The Court-approved notice was clear and explicitly stated that “Class Counsel will submit a motion to the Court seeking approval for an award of \$4.2 million for attorney’s fees and out of pocket expenses incurred in litigating this action.” Ex. A at p. 12. No objections to this request were received.

41. The time spent by Class Counsel – 5,688.78 hours – was spent in the prosecution and settling this litigation, as summarized in paragraphs 4-18, above, and paragraph 42, below. Even with the substantial effort expended by Class Counsel, the prosecution of this action proceeded in an efficient manner. Work was handled primarily by those attorneys involved in the case, who had the greatest experience in the relevant area of the law or of the case, and time was not wasted by a multiplicity of attorneys assigned to the same tasks. Where necessary and cost effective, legal assistants and paralegals were employed. Assignments, whether related to discovery or briefing, were given to those lawyers known to have abilities and expertise in those areas, or, as the case progressed by those attorneys with the greatest experience in that aspect of the litigation. As such, the cumulative time of 5,688.78 hours for all the work that this case entailed was reasonably and efficiently expended. While the hours are considerable, there can also be no fair question but that the work expended was also quite considerable inasmuch as it has entailed virtually every aspect of litigation other than trial, even with a Rule 23(f) application to the Second Circuit.

42. The litigation and related tasks performed by KOL included the tasks set out immediately below. Particularly, the firm: (1) initially investigated the potential for this case; (2) analyzed the relevant law and the information provided to the firm by the Anthony Rancharan and other store managers concerning the job duties performed by Family Dollar New York store managers (“SMs”); (3) considered various Family Dollar policies including the policy not to pay overtime to certain ASMs; (4) performed legal research into potential defenses of Family Dollar; (5) researched and considered viability of class action misclassification claims; (6) prepared, including the relevant research for, and finalized the initial complaint in *Rancharan*; (7) conferred with defendants’ counsel regarding their motion to transfer; (8) handled strategy

discussions relating to case transfer to the *In re Family Dollar FLSA* MDL action in the Western District of North Carolina; (9) developed case strategy when the *Rancharan* matter was remanded to the Eastern District of New York; (10) handled initial matters relative to Rule 16 conference; (11) prepared Rule 26 disclosures; (12) coordinated the consolidation of the *Rancharan* matter with the *Youngblood* matter pending in the Southern District of New York; (13) analyzed MDL materials; (14) prepared and propounded multiple sets of discovery requests and effectuated forms and manners of responding to discovery from Family Dollar; (15) analyzed defendants' discovery responses and document production for deficiencies; (16) drafted numerous letters to defendants regarding deficiencies in discovery responses and document production; (17) led discovery conferrals with defendants' counsel and coordinated discovery efforts and plan for plaintiffs; (18) drafted motion to compel class member contact information; (19) drafted motion to compel production of electronically stored information, including store-level e-mails; (20) drafted motion to compel documents relating to defendants' FLSA audit; (21) drafted motion to quash overbroad subpoena; (22) drafted motion for protective order to prevent absent class member depositions; (23) reviewed approximately 200,000 pages of defendants' document production, including corporate policies on operations, training, and pay records to obtain evidence to support class certification motion; (24) prepared detailed deposition outlines for corporate witnesses and store manager depositions; (25) took and defended the depositions of multiple store managers and corporate witnesses; (26) led court conferences and oral arguments of various motions on behalf of plaintiffs; (27) interviewed numerous New York store managers to ascertain their job duties, Family Dollar's corporate policies regarding overtime, store operations, merchandising, and other company directives; (28) selected store managers to serve as witnesses to support Rule 23 motion; (29) reviewed MDL deposition testimony and

admissions of Family Dollar witnesses; (30) prepared subpoenas for third-parties for unemployment record information; (31) negotiated 30(b)(6) deposition topics with defendants' counsel; (32) obtained declarations from store managers and other witnesses; (33) prepared comprehensive witness preparation memoranda for plaintiffs' counsel to utilize while preparing SM witnesses for deposition; (34) conducted legal research, reviewed deposition testimony, selected relevant policy materials, and drafted comprehensive motion for class certification; (35) drafted supplemental briefing concerning the Supreme Court's decision in *Dukes*; (36) after the defendants petitioned for an appeal of this Court's certification decision, conducted legal research and drafted answer in opposition to defendants' Rule 23(f) petition; (37) conducted legal research and drafted opposition to defendants' motion to stay proceedings pending appeal; (38) prepared post-certification merits discovery requests; (39) reviewed defendants' damages data; (40) researched experts and selected an expert to prepare damages report; (41) researched law concerning proper calculation of damages in misclassification case; (42) analyzed deposition transcripts, corporate policies, and conferred with potential witnesses for trial purposes; (43) developed trial strategy plans; (44) coordinated with co-counsel on notice to the class; (45) took the lead as Class Counsel on all matters relative to the negotiations and ultimate Settlement of the litigation throughout the course of the litigation; (46) consulted with co-counsel in other cases regarding the settlement; (47) developed settlement positions; (48) took the lead in the selection of the mediator, the preparation of plaintiffs' multiple mediation statements and the negotiations at the mediation sessions before Judge Maas and Mr. Rudy; (49) took the lead in negotiating the memorandum of understanding, the final Settlement Agreement and the language of the ancillary settlement documents including the proposed class notice and claim form; (50) took the lead in the preparation of the motion for preliminary approval and oral argument of

same before this Court; (51) acted as lead contact for plaintiffs' for all matters relating to the Settlement with Family Dollar's counsel; (52) took the lead in working with the Settlement Administrator during the notice and claims period, including answering questions and making decisions as to the form of notice, communications to clients, the content and materials to be included on the website and discussed via the toll-free telephone number, and the form of additional communications with Class members; (53) handled numerous inquiries from Class members throughout the claims period, relating to job history, settlement terms, and the litigation; (54) negotiated with Family Dollar's counsel concerning claims administration issues; and (55) conducted legal research and took the lead in the preparation, finalization and filing of the present motion for final approval and other relief.

43. The total number of hours spent on this litigation by my firm in undertaking the substantial tasks set forth above, as of today, Monday, May 6, 2013, has been 2,345.45. The total lodestar amount of time based on the firm's current rates is \$1,190,270.50. Time expended in preparing the application for fees and reimbursement of expenses has not been included in these totals. My firm's lodestar figures are based upon time records maintained by my firm and the firm's billing rates, which do not include charges for expense items. The time this reflects was time actually spent, in the exercise of reasonable judgment by the lawyers and staff involved, and is reflected on the books and records of the firm in contemporaneously recorded time records, a copy of which is attached as Exhibit I hereto. Inasmuch as my firm has a great deal of expertise and knowledge with respect to differing aspects of the litigation, including extensive and successful records in the area of wage and hour class and collective action litigation, this knowledge and experience enabled us to proceed, notwithstanding the manner in which the case was litigated, a most substantial way towards trial. This experience also allowed plaintiffs'

counsel to prosecute the case efficiently without the need to “invent the wheel.” In our direction and oversight of assignments and work done by other firms, moreover, we also undertook to ensure that there was neither duplication of effort nor repetition of research for which we had previous knowledge and/or materials. Specifically, as to my firm, the following attorneys and staff worked on this case, for the hours set forth below, to obtain the lodestar figures:

NAME	TITLE	TOTAL HOURS	HOURLY RATE	TOTAL
Jeff Klafner	Partner	13.4	\$750	\$10,050
Seth Lesser	Partner	615.9	\$720	\$443,448
Fran Rudich	Partner	469.6	\$600	\$281,760
Mark Gaffney	Of Counsel	91	\$550	\$50,050
Lana Koroleva	Associate	41	\$350	\$14,350
Michael Palitz	Associate	1094.45	\$350	\$383,057.50
Ruth Arias	Paralegal/Case Assistant	19.2	\$250	\$4,800
Jumarie Martinez	Paralegal/ Case Assistant	7.4	\$210	\$1,480
Nancy Velasquez	Paralegal/Case Assistant	1.1	\$250	\$275
Giselle Quinones	Paralegal/Case Assistant	4.0	\$250	\$1,000
Totals		2357.05		\$1,190,270.50

As to the hourly rates of my firm, we would note that these are rates that we charge paying clients for our services and are rates that we believe reflect the knowledge, experience and reputation of my firm. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

44. Settlement Class Counsel's declarations, attached as Exhibits B through F, contain descriptions of the work that each firm undertook – as the Court will see that work was most substantial. Indeed, the summaries and descriptions of the work undertaken comprises 143 pages of summaries and time records in the declarations, which, to avoid repetition and unnecessary enlargement of this declaration, is not repeated and set forth herein, but which the Court can review to see its nature and scope. *See* Declaration Summaries Ex. B at pp. 2-7; Ex. C at ¶¶ 3-4; Ex. D at ¶ 3; Ex. E at ¶¶ 3-4; and Ex. F at ¶ 2.

45. All of the time and effort that Class Counsel and Settlement Class Counsel put into this litigation was done on a contingent basis with no guarantee of repayment in whole or part.

46. Separated by firm, the total number of hours spent on this litigation and corresponding lodestar is: 2,357.05 hours by KOL for a lodestar of \$1,190,270.50 (*see* ¶ 43, above); 2,392.23 hours by Hepworth Gershbaum & Roth PLLC for a lodestar of \$1,221,858.07 (*see* Ex. B at pp. 8-9 (Hepworth Dec.)); 140.50 hours by Barkan Meizlish Handelman Goodin DeRose Wentz LLP for a lodestar of \$34,219.75 (*see* Ex. C at ¶ 5 (DeRose Dec.)); 105.60 hours by Lite DePalma Greenberg LLC for a lodestar of \$70,215 (*see* Ex. D at ¶ 4) (Tarantino Dec.); 688 hours by Khorrani LLP for a lodestar of \$237,155.50 (*see* Ex. E at ¶ 5 (Drexler Dec.)); and 5.4 hours by Berger Attorney, P.C. for a lodestar of \$3,240 (*see* Ex. F at ¶ 3 (Berger Dec.)). The total lodestar is \$2,756,958.82. The time this reflects was time actually spent, in the exercise of

reasonable judgment by the lawyers and staff involved, and is reflected on the books and records of the firms in the contemporaneous recorded time records, which Class Counsel and Settlement Class Counsel have attached to their declarations.

47. Time spent in preparing the fee declarations and the Fee Memorandum is not included in this lodestar, although this is a necessary part of the case. Moreover, the time spent from now, and in connection with and at the Final Approval hearing is also not included. Nor is the work that will be necessary hereafter in addressing inquiries from Class members in connection with the Settlement. Based upon prior experience, there will be scores of telephone calls and correspondence from Class members in the coming months wanting to know about the status of the settlement, to ask where their checks are, to inquire why they were not paid (usually because they failed to submit the claims forms or failed to submit them properly or timely), to request reissued checks, etc. There will, in addition, also be time spent overseeing the finalization of the claims process through Rust. Based upon experience, such time could easily reach into several hundred hours.

48. Class Counsel's request for payment of fees in the amount of \$4,200,000 represents a positive and modest multiplier of 1.52. Given the risk presented by this litigation and the results obtained, we submit this is a most reasonable enhancement. *See* Memorandum of Law in Support of Award of Attorney's Fees and Expenses at 7-12; List of Wage and Hour Class/Collective Settlements in the Second Circuit, attached as Exhibit J; List of Nationwide Wage and Hour Settlements in Excess of \$9 million, attached as Exhibit K. It is my sincere belief that overtime wage and hour cases present at least as much risk as, and could not be undertaken were one not able to obtain a positive lodestar multiplier, particularly if the desired goal is to obtain a substantial and significant result for the employee class. Routinely, New York

Labor Law and FLSA misclassification actions settle on an individual basis and/or at a negative multiplier and, for each successful case, there can be one or more that are not profitable.

49. As noted, Class Counsel and Settlement Class Counsel seek reimbursement of \$120,000 in litigation expenses reasonably and actually incurred in connection with commencing and prosecuting this case against the Defendants.

50. My firm incurred a total of \$108,256.73 in unreimbursed costs and expenses in connection with the prosecution of this litigation, as follows:

Court Fees	\$350
Subpoena Service	\$1,142.50
Court Reporters	\$48,372.34
Photocopying	\$6,365.87
Postage/Express Mail/Messenger	\$2,140.60
Telephone/Facsimile	\$435.58
Travel, Mileage, Transportation	\$10,117.83
Local Transportation (Parking, Gasoline, Railroad, Taxis)	\$3,516.31
Meals	\$1,728.94
Pacer/Lexis	\$1,673.55
Expert Fees and Mediation Services	\$33,413.21

LESS MDL Litigation Fund	\$1,000
TOTAL	\$108,256.73

51. The expenses incurred in the prosecution of this case are reflected on the books and records of my firm, which are available for submission to the Court upon request. These books and records are prepared from expense vouchers, receipts, and check records, and are accurate regarding all the expenses incurred. These expense items are billed separately by us, and such charges are not duplicated in our time or billing rates. As to these expenses, which constitute hard, out-of-pocket monetary expenses from the beginning of the case, we were aware that we might not recover any of these expenses, and, at the very least, would not recover anything until the litigation was successfully resolved. We also understood that, even assuming that the case was ultimately successful, reimbursement of litigation expenses would not compensate us for the lost use of the funds advanced by us to prosecute this action. Thus, we were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and effective prosecution of the litigation, the latter being the most important consideration.

52. Settlement Class Counsel's Declarations set forth the amounts of expenses actually incurred by these firms. *See* Ex. B at pp. 8-9 (Hepworth Gershbaum & Roth PLLC, \$58,153.46); Ex. C at ¶ 6 (Barkan Meizlish, \$5,493.98); and Ex. E at ¶ 6 (Khorrami, \$12,835.01). Settlement Class Counsel advanced all of the incurred litigation expenses for the benefit of the Class notwithstanding the risk that they would not recover anything until and unless the litigation was successfully resolved. Settlement Class Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of litigation expenses

would not compensate them for the lost use of the funds advanced by them to prosecute this action. Like Class Counsel, Settlement Class Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and effective prosecution of the litigation, the latter being the most important consideration.

53. The expenses already incurred or spent are reflected on the books and records maintained by Settlement Class Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. Copies of these records will be provided to the Court should it request them. The expense items were billed separately by Settlement Class Counsel from the time records, and such charges are not duplicated in the respective firms' billing rates.

THE PROPOSED SERVICE PAYMENTS TO THE CLASS REPRESENTATIVES

54. The Settlement provides service payments of \$12,500 to Anthony Rancharan, Jean Samuel, Bevis Thomas, and Tanya Youngblood, the Settlement Class Representatives. These individuals all not only agreed to "step up" and undertake to represent the New York Class, but they also responded to discovery and were deposed as part of the action. The Settlement Class Representatives also participated in strategy sessions with plaintiffs' counsel, provided factual information relating to Family Dollar's practices, procedures, and electronic systems, and assisted throughout the discovery and trial preparation process.

55. Class Counsel believes these individuals materially assisted the prosecution of this litigation and that the service payments would be reasonable and warranted under the circumstances and in conformity with governing precedent. *See* Memorandum of Law in Support of Award of Attorney's Fees and Expenses at 17-19.

56. The fact that these service payments would be requested was also set out in clear terms in the Notice. *See* Ex. A at p. 12. No class member has objected to these requested service payments.

WHEREFORE, as Class Counsel, I respectfully request the Court to (A) approve the proposed Settlement of this action; (B) approve Class Counsel's request for an award of fees and expenses, (C) approve the requested service payments to the Named Plaintiffs for their service as Class Representatives, and (D) approve the requested fees and expenses of up to \$63,791.45 for the Settlement Administrator.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of May 2013, at Rye Brook, New York.

s/ Seth R. Lesser

Seth R. Lesser