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ATTORNEYS FOR DEFENDANT DOLLAR TREE STORES, INC.

1 On December 7, 2011, the unopposed Motion for Preliminary Approval of
2 Class Action Settlement, filed by Plaintiff Richard Nelson (“Class Representative”
3 or “Plaintiff”) came on regularly in Courtroom 6 of the above captioned court,
4 Hon. John A. Mendez presiding.

5 This Court, having fully received and considered the Plaintiff’s notice of
6 motion, supporting memorandum of points and authorities, the Declarations of
7 Michael Malk and Craig J. Ackermann, the Settlement Agreement, the Class
8 Notice, the Claim Form, the procedure to be excluded and/or to object to the
9 settlement, and the oral argument presented to the Court, and in recognition of the
10 Court’s duty to make a preliminary determination as to the reasonableness of any
11 proposed class action settlement, and to conduct a fairness hearing as to good faith,
12 fairness, adequacy, and reasonableness of any proposed settlement, HEREBY
13 ORDERS and MAKES DETERMINATIONS as follows:

14 Plaintiff and his counsel filed this class action lawsuit alleging that
15 Defendant failed to reimburse its California store managers and assistant managers
16 for the use of their personal vehicles for business-related purposes and failed to pay
17 its California store managers and assistant managers all wages due to them upon
18 termination or separation of employment. Plaintiff also alleged on a class basis that
19 the foregoing violated California’s Unfair Competition Law, Business and
20 Professions Code §17200, *et seq.* On May 20, 2011, Defendant moved to dismiss
21 and to strike portions of Plaintiff’s complaint. On August 15, 2011, this Court
22 dismissed with prejudice Plaintiff’s Second Cause of Action seeking waiting time
23 penalties under Cal. Labor Code §203, struck with prejudice certain remedy
24 requests, and dismissed without prejudice Plaintiff’s claims for mileage expense
25 reimbursement under Cal. Labor Code §2802 and Cal. Bus. & Prof. Code §17200.
26 On September 2, 2011 Plaintiff filed a First Amended Complaint pursuant to the
27 Court’s order. By Stipulation and Order filed on September 14, 2011, the Court
28 stayed this action.

1 After conducting informal discovery and negotiating at arm's length,
2 Plaintiff and Defendant have arrived at what the Court finds to be a fair and
3 equitable settlement of all claims encompassed by Plaintiff's First Amended
4 Complaint. Plaintiff and Defendant have agreed to the entry of a Joint Stipulation
5 of Class Action Settlement and Release ("Settlement Agreement"), attached as
6 Exhibit 1 to the Declaration of Michael Malk, filed in support of the Motion for
7 Preliminary Approval. Defendant continues to deny all allegations contained in
8 Plaintiff's original and first amended class action complaints. Dollar Tree has
9 contended that it at all times had in place a lawful reimbursement policy and a
10 system for submitting reimbursement requests.

11 Plaintiff has moved this Court to (1) provisionally certify a settlement class;
12 (2) preliminarily approve the Settlement Agreement; (3) direct distribution to the
13 class of a proposed Class Notice and Claim Form (collectively the proposed "Class
14 Notice Packet"); and (4) set a hearing date for final approval of the settlement.
15 Defendant does not oppose Plaintiff's motion for purposes of settlement but
16 reserves all rights and defenses with respect to the litigation.

17 **ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS AND**
18 **APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL**

19 The Court finds that under Federal Rules of Civil Procedure, Rule 23(b)(3),
20 and related case law, provisional certification of the following class is appropriate
21 for settlement purposes: "All persons who work or worked for Defendant in the
22 state of California in the position of Assistant Manager or Store Manager at any
23 time from April 8, 2007 through the date of this Order ("Class Members")."¹
24
25

26 _____
27 ¹The Settlement Class excludes persons who have executed releases in favor of Defendant to the
28 extent waived. In any instance of an employee who executed a release while still employed by
Dollar Tree, that person shall be a Class Member only for a period of employment following the
effective date of the release.

1 The Court finds that the Settlement Class meets the numerosity requirement
2 of Rule 23(a)(1) because it consists of approximately 3,500 Class Members who
3 have been identified through Defendant's records. The commonality requirement
4 of Rule 23(a)(2) is also met because there are issues of law and fact common to the
5 Class, such as whether Defendant's California assistant managers and store
6 managers were reimbursed for the use of their vehicle for business-related
7 purposes. In the absence of class certification and settlement, each individual Class
8 Member would be forced to litigate the same core common issues of law and fact.
9 Because Plaintiff's and the Settlement Class Members' claims all arise from the
10 same events and course of conduct, and are based on the same legal theories, the
11 typicality requirement of Rule 23(a)(3) is also satisfied. The adequacy of
12 representation requirement set forth in Rule 23(a)(4) is also met here because the
13 Class Representative has the same interests as all members of the Settlement Class,
14 and is represented by experienced and competent counsel.

15 Pursuant to Rule 23(b)(3), the Court further finds that common issues
16 predominate over individual issues in the litigation and that class treatment is
17 superior to other means of resolving the instant dispute. Employing the class
18 device here will not only achieve economies of scale for Class Members with
19 relatively small individual claims, but will also conserve the resources of the
20 judicial system by avoiding the waste and delay of repetitive proceedings, and
21 prevent the inconsistent adjudications of similar issues and claims.

22 The Court finds that the Class Representative Richard Nelson is adequate
23 class representatives and appoints him as such.

24 Pursuant to Federal Rules of Civil Procedure Rule 23(g), the Court finds that
25 Plaintiff's Counsel Craig Ackermann (Ackermann & Tilajef, P.C.) and Michael
26 Malk (Malk Law Firm) have adequately represented the Settlement Class and are
27 adequate Class Counsel. Specifically, they have sufficiently identified and
28 investigated the potential claims in this matter; have presented evidence to the

1 court of their experience in handling other wage and hour class actions; have
2 demonstrated knowledge of the applicable law; and have allocated sufficient
3 resources to represent the class. Accordingly, pursuant to Rule 23(g)(1),
4 Ackermann & Tilajef, P.C. and The Malk Law Firm are hereby appointed as Class
5 Counsel.

6 The Court recognizes that certification under this Order, including the
7 various Rule 23 findings above, is for settlement purposes only, and shall not be
8 construed as an admission by Defendant that this action is appropriate for class
9 treatment for litigation purposes. Entry of this Order is without prejudice to the
10 rights of Defendant to oppose class certification in this action, and/or to seek
11 decertification or modification of the Settlement Class should the proposed
12 Settlement Agreement not be granted final approval. Defendant admits no liability
13 in entering into this settlement and has contended at all times that it maintains and
14 has maintained a lawful reimbursement policy and practices thereunder. This Order
15 is intended to enforce the terms of the Parties' Joint Stipulation for Class Action
16 Settlement and Release (Joint Stipulation).

17 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

18 The Court has reviewed the Settlement Agreement and the proposed Class
19 Notice and Claim Form, which are attached as exhibits A and B to the Settlement
20 Agreement (the Settlement Agreement is attached as Exhibit 1 to the Declaration
21 of Michael Malk). The Court finds, on a preliminary basis, that the Settlement
22 Agreement falls within the range of reasonableness of a settlement that could
23 ultimately be given final approval by this Court. The Court also finds, on a
24 preliminary basis, that the Settlement Agreement appears to be the product of
25 intensive, non-collusive, arms' length negotiations between well-informed counsel,
26 and is thus presumptively valid. It appears to the Court on a preliminary basis that
27 the maximum settlement fund amount of \$200,000 ("Maximum Settlement Value"
28

1 or “MSV”² is fair and reasonable to all Settlement Class Members when balanced
2 against the probable outcome of further litigation relating to liability and damages
3 issues. It further appears that extensive and costly investigation and research have
4 been conducted such that the parties’ counsel are able to reasonably evaluate their
5 respective positions at this time. It further appears that settlement will avoid
6 additional substantial costs beyond which have already been incurred by both
7 parties, as well the delay and risks that would be presented by further prosecution
8 of the litigation.

9 For the reasons set forth herein, the Court therefore preliminarily and
10 conditionally approves the Settlement, including: (1) the proposed Incentive
11 Award for Plaintiff Richard Nelson of \$2,500 in addition to his pro rata share of
12 the settlement fund pursuant to his return of a valid claim form; (2) the proposed
13 attorneys’ fees of 25% (\$50,000) of the Maximum Settlement Value, and up to
14 \$1,500 in reimbursement for actual costs incurred; and (3) payment of reasonable
15 settlement administration costs of approximately \$17,000 from the MSV. Pursuant
16 to Rule 23(g)(4) and Rule 54(d)(2), Plaintiff’s counsel will file a Motion for
17 Approval of their attorneys’ fees and costs in connection with and to be heard at
18 the same time as the Final Fairness Hearing regarding the settlement.

19 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

20 This Court finds that the Class Notice and Claim Form (attached as Exhibits
21 A and B to the Settlement Agreement) fairly and adequately advise Class Members
22 of the terms of the proposed settlement, the formula that will be used to compute
23 their pro rata allocation of the settlement, and their opportunity to appear at the
24 Fairness Hearing to be conducted on the date set forth below. The Court further
25

26 _____
27 ²This is a claims made settlement with undistributed and unclaimed funds of up to \$25,000
28 remaining with or reverting to Defendant if not needed to pay valid and timely claims, or if
remaining after claims are paid. Any additional unneeded or unclaimed amounts above the
\$25,000 shall be paid to a charity mutually selected by the Parties and approved by the Court.

1 finds that the Class Notice and proposed distribution of such notice by first class
 2 mail to each identified Settlement Class Member at his or her last known address
 3 (with one database search and re-mailing of returned mail if an updated address is
 4 located) comports with all constitutional requirements, including those of due
 5 process and is the best notice practicable under the circumstances.

6 The Court confirms the selection of Simpluris, Inc. as the Claims
 7 Administrator, the reasonable costs of which will be paid from the MSV.
 8 Accordingly, good cause appearing, the Court hereby approves the proposed Class
 9 Notice and related materials for distribution. Furthermore, the Court hereby
 10 approves and adopts the following settlement approval schedule:

11 12 No later than 30 days after entry by 13 the Court of an Order preliminarily 14 approving the settlement 15 16 17	Deadline for Defendant to provide class member information (name, last four digits of social security number, dates of employment as Assistant Managers and/or Store Managers, weeks worked in such positions within the Class Period, and last known address and phone number) to the Claims Administrator
18 No later than 15 after receipt of the 19 Class List and contact information 20 from Defendant	Claims Administrator will send out Class Notice Package to the Settlement Class
21 Postmarked no later than 45 days 22 after the date on which the Notice 23 Packet is first mailed out by the 24 Claims Administrator	Deadline for Eligible Class Members to object to settlement (with 45 days extended from a re-mailing)
25 Postmarked no later than 45 days 26 from date on which the Notice Packet 27 is sent out by the Claims 28 Administrator (“Submission Date”)	Deadline for Eligible Settlement Class Members to submit a Claim Form or a Request for Exclusion Form (except as to those members of the Settlement Class who receive the Notice Package pursuant to re-mailing, whose deadline shall be 45 days from the date the Notice Package is re-mailed to the

1		updated address)
2		
3	Within 10 days of the conclusion of	Claims Administrator will provide a
4	the opt-out period and the claims	written report to Class Counsel and
5	period (including the extended re-	Defense Counsel as to the number of
6	mailing period)	responses received, including but not
7		limited to Claim Forms, Requests for
8	Within 20 days of receipt of the	Exclusion, Objections and the pay-out
9	Claims Administrator's report	value of valid claims
10		Deadline for Defendant to void
11		Settlement Agreement by written
12		notice to Plaintiffs' Counsel, if the
13		number of persons that have timely
14	No later than 10 days prior to Final	submitted Request for Exclusion (opt-
15	Approval Hearing	out) is equal to or greater than 5% of
16		the number of persons to whom
17		Notices are sent
18		Deadline for Claims Administrator to
19	Final Approval Hearing Date	provide the Court and counsel for the
20		parties with a statement detailing the
21		costs of administration
22		<u>April 25, 2012</u> ^{gmr}
23	Effective Date	For purposes of defining the Effective
24		Date, the date upon which the
25		Settlement and Judgment becomes
26		final is the last date (a) final approval
27		by the Court, when no further
28		objections can be made; (b) if there are
		objections to the Settlement which are
		not withdrawn, and if an appeal,
		review or writ is not sought from the
		Judgment, the day after the period for
		appeal has expired; or (c) if an appeal,
		review or writ is sought from the
		Judgment, the day after the Judgment
		is affirmed or the appeal, review or

	writ is dismissed or denied, and the Judgment is no longer subject to further judicial review.
Within 20 days of the Effective Date	Defendant will send payment to Class Counsel for court- approved attorneys' fees and costs, and Plaintiff's' Enhancement Award
Within 20 days following the Effective Date	Defendant shall prepare individual settlement payments to Class Members determined by the Claims Administrator to have filed timely and valid claims.
Within 30 days of the Effective Date	The Action shall be dismissed with prejudice with Plaintiff's and the Class Members' release of claims as set forth in the Parties' Joint Stipulation.

FINAL APPROVAL AND FAIRNESS HEARING

The Court hereby grants the Plaintiff's motion to set a fairness hearing for final approval of the Settlement Agreement on ^{9^{am}} April 25, 2012 at 9:30^{am} a.m. in Courtroom 6 of this Court. Pursuant to Federal Rule of Civil Procedure 23(e)(5), members of the Settlement Class may object to the terms of the settlement. Members of the Settlement Class who object to the proposed settlement may appear and present such objections at the Fairness Hearing in person or by counsel, provided that any objecting Settlement Class Members submit a written statement containing the name and address of the objecting Settlement Class Member and the basis of that person's objections, together with a notice of the intention to appear, if appropriate, which must be postmarked no later than 45 days from the date on which the Class Notices are sent out by the Claims Administrator. No person shall be heard, and no briefs or papers shall be received or considered, unless the foregoing documents have been filed and served as provided in this Order, except as this Court may permit for good cause shown.

1 Class Counsel shall file a memorandum of points and authorities in support
2 of the final approval of the Settlement Agreement and their request and motion for
3 approval of the agreed upon attorneys' fees and litigation expenses no later than 28
4 days before the Final Approval Hearing.

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7 Dated: December 5, 2011


HON. JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE