

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

IN RE: Family Dollar Stores, Inc.,)	
Pest Infestation Litigation)	
)	2:22-md-03032-SHL-tmp
This Document Relates To:)	(MDL Docket No. 3032)
)	
ALL CASES)	

**CASE MANAGEMENT ORDER NO. 3:
PRE-CONFERENCE SUPPLEMENTATION OF PLAINTIFFS’ SUBMISSIONS**

This matter comes before the Court on Plaintiffs Lakindal Smith and Keith Martin’s (“Objecting Plaintiffs”) Supplemental Notice and Objection Regarding the ‘Joint Submission’ Filed by Interim Liaison Counsel and Self-Selected Firms Seeking Leadership Positions, (ECF No. 25), filed July 8, 2022. These two Plaintiffs, “with the support of Plaintiffs Sharp, Bishop and Rogers,” object to the Joint Submission filing and request: (1) an opportunity to supplement the agenda previously submitted for July 15, 2022 Case Management Conference (“CMC”), and (2) the selection of an additional attorney to address the Court at the forthcoming CMC. (*Id.* at PageID 77.)

On June 29, 2022, the Court appointed one Interim Liaison Counsel for Plaintiffs and one for Defendants, following a call for volunteers to serve in those roles. (ECF No. 12.) Charles Barrett, of Neal & Harwell, PLC, the only one who volunteered for Plaintiffs, was selected as Interim Liaison Counsel for Plaintiffs. (*Id.* at PageID 41.) In its Order, the Court emphasized that Interim Liaison Counsel were responsible “for organizing the pre-conference submissions outlined in the Court’s June 23 Order . . . submit[ting] a joint proposed agenda . . . for directing the activities of the Parties during the initial CMC and performing such other duties incidental to

the proper coordination of pretrial activities,” which included the distribution of documents to counsel. (*Id.* at PageID 42.) Additionally, in its June 23, 2022 Order, the Court required the Interim Liaison Counsel to “designate one additional attorney to speak on the Party’s behalf” during the CMC, a designation to be included in the joint statement. (ECF No. 9 at PageID 31.)

On July 8, 2022, counsel Charles Barrett submitted Plaintiffs’ proposed Case Management Order (“CMO”) and Plaintiffs’ Proposed Agenda for the CMC, notifying the Court that Defendants were submitting a separate proposed CMO. The Joint Proposed Agenda states that

“Plaintiffs in a majority of the cases propose that the Barrett Law Group, P.A., Cuneo Gilbert & LaDuca, LLP, and Branstetter, Stranch & Jennins, PLLC be appointed as Interim Co-Lead Class Counsel and that Charles Barrett of Neal & Harwell, PLC be appointed as Liaison Counsel. Charles Barrett and Gerard Stranch will appear at the Status Conference on behalf of Plaintiffs.”

Herein lies the rub for Objecting Plaintiffs. They state that “representatives for at least five plaintiffs in this MDL (*Smith, Martin, Sharp, Bishop, Rogers*)¹, and their ten (10) attorneys, have been excluded from any updates concerning contacts with defense counsel, the selection of the agenda items and other important topics.” (ECF No. 25 at PageID 73.)

Specifically, the Objecting Plaintiffs argue that their counsel have not received any communication from Interim Liaison Counsel except for three emails: (1) a request for contact information, (2) an email of the proposed draft joint statement and agenda, sent two hours before the submission of those materials, and (3) notice of their submission to the Court. (*Id.* at PageID 75.) As to the selection of leadership roles in this litigation, the Objecting Plaintiffs note

¹ These names represent plaintiffs in the following member cases: *Sharp v. Family Dollar et al.*, 2:22-cv-2376-SHL-tmp; *Smith et al. v. Family Dollar Services, LLC et al.*, 2:22-cv-2382-SHL-tmp (for Plaintiffs Lakindal Smith and Keith Martin); *Rogers v. Family Dollar et al.*, 2:22-cv-2159-SHL-tmp; and *Bishop v. Family Dollar et al.*, 2:22-cv-2408-SHL-tmp.

that the proposed Joint Agenda’s inclusion of a “self-selected slate of attorneys as proposed interim lead counsel” for Plaintiffs, “with the apparent endorsement of the court-appointed interim liaison counsel . . . raises [the] specter of impropriety that the Manual [for Complex Litigation] and numerous MDL scholars caution against because it ultimately harms the plaintiffs and the class.” (ECF No. 25 at PageID 76.) In sum, to avoid further prejudice to Plaintiffs and to ensure representation on the leadership committee, Plaintiffs seek an opportunity to supplement the joint agenda and to select an additional attorney at the CMC.

The Court has not received a response from Interim Liaison Counsel as to this objection, but the accusation itself merits attention. The appointment of Interim Liaison Counsel was made to facilitate a smooth start to this litigation, not to cause tension or division at its outset. Indeed, counsel appointed by the Court “assume a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties’ counsel.” Manual for Complex Litigation § 10.22 at 24 (Federal Judicial Center 4th ed. 2004). Interim Liaison Counsel for Plaintiffs is therefore reminded of his obligation to perform his duties in the interests of all Plaintiffs, not simply the “majority,” and is again **ORDERED** to receive and distribute to Plaintiffs’ counsel all notices, orders, motions, briefs, and other documents sent by the Court, the opposing party, and other Plaintiffs. See id. at § 10.221 at 24.

Additionally, the Court **GRANTS** all Plaintiffs’ counsel an opportunity to supplement the proposed Agenda. All supplemental comments or additions must be made in writing and submitted to Chambers by **Wednesday, July 13, 2022 at 12 p.m.** If the Objecting Plaintiffs wish to speak on a specific agenda item or subject matter at the CMC, they must identify those

particular items by that date.

IT IS SO ORDERED, this 11th day of July, 2022.

s/ Sheryl H. Lipman
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE