

**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. 4:
ORDER APPOINTING CO-LEAD COUNSEL AND LIAISON COUNSEL**

On July 15, 2022, the Court held the first Case Management Conference (“CMC”) in this multidistrict litigation. Based on the statements made by Majority Plaintiffs’ counsel, the “Supplementing Plaintiffs’ counsel”,¹ and Defendants’ Counsel at the CMC, the Court: (1) directed Plaintiffs to confer and offer a revised application(s) for the selection of Plaintiffs’ leadership by Wednesday, July 20, 2022, at 12:00 p.m.; and (2) directed both Parties to revise and jointly propose a shortened discovery schedule by August 3, 2022. The Court scheduled the next Status Conference for August 8, 2022, at 11:00 a.m. via Teams.

The Court received Plaintiffs’ and Defendants’ initial applications for leadership on July 8, 2022. On July 20, 2022, it received two revised proposals, one from each of the two groups of Plaintiffs, following a failed attempt to reach a compromise on the issue of leadership.²

¹ Mr. Stranch was designated by Plaintiffs’ Interim Liaison counsel as one who would speak for Plaintiffs at the CMC, and has since been referred to as Majority Plaintiffs’ Counsel. The Court permitted Plaintiffs who objected to the Joint Proposed Agenda (referred to as “Supplementing Plaintiffs”), filed by the Parties on July 8, 2022, to submit a written supplement to Plaintiffs’ proposed Case Management Order (“CMO”) and to share their opinion on certain agenda items discussed during the CMC. (See ECF No. 27.)

² As noted in the Majority Plaintiff’s revised leadership proposal, at the July 15 conference, the Court requested that Plaintiffs’ counsel attempt to reach a consensus on a leadership structure, but in any event consider less than three lead counsel and the importance of diversity and inclusion in any revised

With the receipt of all materials,³ the Court considered the factors outlined in the Manual for Complex Litigation (Fourth) and other accepted guidance regarding the appointment of counsel in multidistrict litigation, as well as the factors outlined in Federal Rule of Procedure 23(g) regarding the appointment of class counsel, in making the following appointments. The Court's appointments intend to reflect its commitment to the diversity of MDL leadership. Moving forward, the litigation will be monitored carefully to ensure that counsel are performing their duties as assigned, free of discrimination and bias.

I. Organization of Plaintiffs' Counsel

A. Plaintiffs' Co-Lead Counsel

The Court appoints the following counsel to serve as Plaintiffs' Co-Lead Counsel:

Sarah Sterling Aldridge, Esq.
Barrett Law Group, P.A.
404 Court Square North
Lexington, MS 39095
Tel: (662) 834-2488
saldridge@barrettlawgroup.com

J. Gerard Stranch, IV
Branstetter, Stranch & Jennings, PLLC
The Freedom Center
223 Rosa L. Parks Ave., Suite 200
Nashville, TN 27203
Tel: (615) 254-8801
gerards@bsjfirm.com

Co-Lead counsel shall generally be responsible for coordinating Plaintiffs' activities during pretrial proceedings. They have the following responsibilities, including, without limitation:

1. Determine (after such consultation with members of Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or other fashion as may be appropriate, personally or by a

proposals. Relying on docket entry minutes for a description of the Court's instruction, as opposed to what the Court said in the conference, is not advised.

³ The Court also reviewed the materials filed after the two proposals, but found very little relevant information in those documents. The Motion to Strike, (ECF No. 42), will be addressed by separate Order but, in the meantime, both groups of Plaintiffs' counsel are instructed to STOP filing documents rife with insults and accusations.

- designee) to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings;
2. Coordinate and conduct discovery on behalf of Plaintiffs consistent with the requirements of Federal Rules 26(b)(1), 26(b)(2), and 26(g), and in compliance with any discovery and scheduling orders that the Court may issue, including the preparation of joint interrogatories and requests for the production of documents and the examination of witnesses in depositions;
 3. Conduct settlement negotiations on behalf of Plaintiffs, but not enter binding agreements except to the extent expressly authorized;
 4. Delegate specific tasks to other counsel or committees of counsel, as authorized by the Court, to ensure efficient and effective pretrial preparation for Plaintiffs;
 5. Enter into stipulations with opposing counsel as necessary;
 6. Consult with and employ experts as necessary;
 7. Prepare and distribute periodic status reports for Plaintiffs to the Court and/or the Parties;
 8. Maintain adequate time and disbursement records covering services as Co-Lead Counsel;
 9. Develop and recommend for Court approval practices and procedures pertaining to attorneys' fees and expenses as further detailed below and, on an ongoing basis, monitor and administer such procedures; and
 10. Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Court order.

Co-Lead Counsel are also hereby designated as Co-Interim Class Counsel pursuant to Rule 23(g) to “act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). However, this Order does not assume that class certification is warranted or foreclose any argument that Defendants may wish to raise in opposition to class certification.

Counsel for Plaintiffs who disagree with Co-Lead Counsel (or their designee), or who have individual or divergent opinions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their clients as appropriate, provided that they give notice to the Court and do not repeat arguments, questions or actions of Co-Lead Counsel.

No pleadings or other papers shall be filed or tasks performed by Plaintiffs' counsel in the class actions without the advance approval of Co-Lead Counsel. No discovery shall be conducted by Plaintiffs without the advance approval of Co-Lead Counsel. This is intended to prevent duplication of pleadings, discovery or tasks by Plaintiffs' counsel. All pleadings or other papers filed with the Court on behalf of any Plaintiff shall be filed through Co-Lead Counsel or a specific designee.

While the Court appoints these Co-Lead Counsel for Plaintiffs, the Court advises counsel that this decision is made based upon the representations that the participating attorneys are not only qualified to serve in these roles, but that these appointments are necessary to promote, *inter alia*, efficiency. In that regard, should any inefficiencies based upon this structure be brought to the attention of the Court, the Parties are well advised that the Court reserves the right to amend the structure of the Parties' leadership during the pendency of these MDL proceedings.

B. Plaintiffs' Liaison Counsel

The Court designates the following to serve as Plaintiffs' Liaison Counsel:

Charles Barrett, Esq.
Neal & Harwell, PLC
1201 Demonbreun St., Suite 1000
Nashville, TN 37203
Direct: (615) 238-3647
cbarrett@nealharwell.com

Liaison Counsel is charged with administrative matters. Liaison Counsel shall not have the right to bind any party as to any matter without the consent of counsel for that party, except Liaison Counsel's own clients. Further, Liaison Counsel remains free to represent the interests and positions of their clients free of any claim (including, without limitation, any claim of conflict) arising from service as liaison counsel. Liaison Counsel shall:

1. Act as the primary contact between the Court and Plaintiffs' counsel;
2. Maintain and promptly distribute to co-counsel and to Defendants' liaison counsel an updated service list;
3. Receive and promptly distribute to co-counsel orders from the Court and documents from opposing Parties and counsel;
4. Establish and maintain a Plaintiffs' document depository (see Manual for Complex Litigation (Fourth), § 40.262);
5. Maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party, except as such documents may be available in the common document depository;
6. In consultation with Co-Lead Counsel, conduct settlement negotiations on behalf of Plaintiffs, but not enter binding agreements except to the extent expressly authorized;
7. In consultation with Co-Lead Counsel, enter into stipulations with opposing counsel as necessary;
8. Maintain adequate time and disbursement records covering services as liaison counsel; and
9. Perform such other functions necessary to effectuate these responsibilities or as may be expressly authorized by further Court orders.

C. Plaintiffs' Steering Committee

The Court will not designate counsel to serve on Plaintiffs' Steering Committee ("PSC") at this time because the Court has insufficient information to make such a decision. Co-Lead Counsel are directed to ensure that the Court has a copy of each proposed PSC Member's resume for proper consideration. This shall include all those who were proposed as part of

Supplementing Plaintiffs' proposed PSC as well as those proposed as part of Co-Lead Counsel's PSC. If a resume is not currently on file, it must be submitted to the Court (via the ECF mailbox) by Monday, July 25, 2022 at 10:00 a.m. for consideration.

The Court intends to appoint three to four attorneys to the PSC. This number is appropriate, given the amount of work this litigation may entail and the need for an expeditious resolution. The Court recognizes that changes to the PSC's organization may be necessary as the litigation progresses and new details emerge. Therefore, the Court may amend or expand the PSC upon request from the PSC or by Court order, if circumstances warrant. Co-Lead Counsel are further instructed to propose a designation of counsel for a state court litigation liaison and any other designation as applicable.

II. Organization of Defendants' Counsel

Having received and reviewed Defendants' application for leadership, the Court appoints the firm Gibson, Dunn & Crutcher LLP, and the following attorneys to the roles of Co-Lead and Liaison Counsel for Defendants: Christopher Chorba, Jason R. Meltzer, and Jesenka Mrdjenovic. As the same firm fulfills these separate roles, the Court entrusts to counsel the proper separation of duties between Co-Lead and Liaison Counsel. Their responsibilities as Liaison Counsel are to:

1. Maintain and distribute to Plaintiffs' liaison counsel an updated service list;
2. Receive, and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing Parties and counsel;
3. Maintain complete files with copies of all documents served upon Liaison counsel and make such files available to Parties upon request;
4. Establish and maintain a document depository;
5. Perform other responsibilities as may be deemed appropriate in consultation with Lead Counsel; and

6. Maintain adequate time and disbursement records covering services as liaison counsel.

Additionally, their responsibilities as Co-Lead Counsel are to:

1. Determine and present (in briefs, oral argument, or other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of Defendants on all matters arising during pretrial proceedings;
2. Coordinate and conduct discovery on behalf of Defendants consistent with the requirements of the Federal Rules of Civil Procedure and any discovery and scheduling orders that the Court may issue, including the preparation of joint interrogatories and requests for the production of documents and the examination of witnesses in depositions;
3. Conduct settlement negotiations on behalf of Defendants, but not enter binding agreements except to the extent expressly authorized;
4. Delegate specific tasks to other counsel or committees of counsel, as authorized by the Court, to ensure efficient and effective pretrial preparation for Defendants;
5. Enter into stipulations with opposing counsel as necessary;
6. Prepare and distribute periodic status reports for Defendants to the Court and /or the Parties;
7. Maintain adequate time and disbursement records covering services as Co-Lead Counsel;
8. Develop and recommend for Court approval practices and procedures pertaining to attorneys' fees and expenses and, on an ongoing basis, monitor and administer such procedures; and
9. Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Court order.

It is further **ORDERED** that Defendants shall confer and notify the Court if they so choose to designate a state court litigation liaison, or whether the appointment of state court litigation liaison for Plaintiffs suffices for both Plaintiffs and Defendants.

III. Term of Appointments

All appointments are made for a one-year period and will expire on August 1, 2023. Counsel may apply for reappointment when that term expires. A reappointment application process will be established at an appropriate time in advance of the expiration date. Applications for reappointment must detail the nature and scope of the attorney's work on this litigation, including the time and resources that he or she expended during the previous term.

IV. Personal Nature of Appointments

The appointment to these positions is of a personal nature. An appointee therefore may not substitute others to perform the functions indicated. This is not intended to prevent appointees from delegating tasks or making assignments of particular work. The tasks, however, must remain under the appointee's supervision and responsibility, and the appointee may not transfer responsibility without prior Court approval for good cause shown. The communication of information among and between counsel shall not be deemed a waiver of the attorney-client privilege or the protection afforded attorney work product, and cooperative efforts contemplated above shall not in any way be used against any party by any other party. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine. It shall be the responsibility of the Parties to review and abide by all pretrial orders previously entered by the Court.

IT IS SO ORDERED, this 22nd day of July, 2022.

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