

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**In re: Family Dollar Pest Infestation
Litigation**

MDL No.

**MOTION FOR TRANSFER AND COORDINATION
OR CONSOLIDATION UNDER 28 U.S.C. § 1407**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movant-Plaintiff Jerome Whitney (“Whitney” or “Plaintiff”),¹ respectfully moves the Judicial Panel on Multidistrict Litigation (“Panel”) to transfer and centralize the actions listed in the Schedule of Actions, and subsequent tag-along actions, to the Honorable Sheryl H. Lipman, United States District Court Judge for the Western District of Tennessee, who currently presides over the action brought by Plaintiff, for coordinated or consolidated pretrial proceedings, or alternatively, the Southern District of Mississippi.

Transfer and centralization of these actions is appropriate for the following reasons:

1. Family Dollar sells groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).
2. On or about February 18, 2022, Defendants temporarily closed approximately 400 of its stores in Tennessee, Alabama, Louisiana, Mississippi, Arkansas, and Missouri after the U.S. Food and Drug Administration (FDA) announced that it had inspected, and found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202

(“Distribution Facility”) in West Memphis, Arkansas (the “Rodent Infestation”).¹

3. Of the approximately 400 Family Dollar stores involved in the FDA’s investigation, almost 25 percent are located in the State of Tennessee (approximately 90 stores).²

4. On February 18, 2022, the FDA issued an “FDA Alert” concerning the Rodent Infestation and provided initial safety recommendations and warnings.³

5. On February 18, 2022, Family Dollar announced it would initiate a voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

6. Defendant has been operating the Distribution Facility since 1994.⁴

7. Between January 11, 2022, and February 11, 2022, five FDA investigators inspected the Distribution Facility approximately 15 times. An official FDA inspection report concerning its findings was finalized on February 11, 2022 (FDA 483 Inspection Report No. 3004286071).

8. The Rodent Infestation—that was never disclosed to Defendant’s consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

9. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

10. Defendant has had actual knowledge of the Rodent Infestation since at least March

¹ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

² <https://www.fda.gov/media/156367/download> (last visited 3/8/2022)

³ FDA Alerts the Public to Potentially Contaminated Products from Family Dollar Stores in Six States | FDA (last visited 3/3/2022)

⁴ Family Dollar Distribution Center at West Memphis, AR (last visited 3/3/2022)

29, 2021. Family Dollar knew or should have known of the Rodent Infestation from far earlier due to its obligation to inspect its facilities, including distribution facilities and/or centers, for safety and health-related issues. Nevertheless, Defendant chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

11. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of infestation,”** the agency said.⁵

12. According to the FDA Report, rodent urine (and odor), nesting materials, rodent carcasses, and excreta was found on or near pallets or food at the Distribution Facility.

13. According to WMUR9 News, New Hampshire, “The distribution center in West Memphis was not the only Family Dollar to have rodent infestations in recent years. Family Dollar stores in Las Vegas, Sacramento, Richmond, Miami Gardens, Pittsburgh, Canton, New York, and other areas had to close down over the past few years because of rodent infestations.”⁶

14. Despite its knowledge, Defendant omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with plaintiffs and other consumers prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. Because Defendant knowingly failed to disclose the Rodent Infestation and associated

⁵ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

⁶ 400 Family Dollar stores closed after a rat infestation. It's part of a troubling pattern (wmur.com) (last visited 3/7/2022)

risk of contamination to consumers or correct the problem, Plaintiff and other consumers purchased Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and that are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

15. Movant's case was filed on March 4, 2022, in the Western District of Tennessee. See *Whitney, et al. v. Family Dollar, Inc. and Dollar Tree, Inc.*, 22-cv-02138 (W.D. of Tenn.) (Judge S. Lipman).

16. To date, six additional actions seeking similar relief in federal court have been filed (referred to collectively, with the Movant's Action, as the "Schedule of Actions").⁷ In total, there are six putative class actions pending in the following six different districts:

- Western District of Tennessee, *Whitney, et al. v. Family Dollar, Inc. and Dollar Tree, Inc.*, 22-cv-02138 (W.D. of Tenn.) (Judge S. Lipman), filed March 4, 2022.
- Southern District of Mississippi, *Lacy, et al. v. Family Dollar, Inc.*, 22-cv-00098 (S.D. of Miss.) (Judge K. Johnson), filed February 2, 2022.
- Eastern District of Virginia, *Smith, et al. v. Family Dollar Services, Inc. t/a Family Dollar and Dollar Tree, Inc. t/a Family Dollar*, 22-cv-000208 (E.D. Va.) (Judge A. Trenga), filed February 23, 2022.
- Western District of Louisiana, *Fields, et al. v. Family Dollar, Inc.*, 22-cv-00611 (W.D. La.) (Judge T. Doughty), filed March 2, 2022.
- Southern District of Alabama, *Brown, et al. v. Family Dollar, Inc. and Dollar Tree, Inc.*, 22-cv-00105 (S.D. Ala) (Judge T. Moorer), filed March 7, 2022.
- Western District of Missouri, *Perrone, et al. v. Family Dollar, Inc.*, 22-cv-03056 (S.D. Mo.) (Judge Jill A. Morris), filed March 8, 2022.
- Eastern District of Arkansas, *Brown, et al. v. Family Dollar, Inc.*, 22-cv-40 (E.D. Ark)

⁷ The Schedule of Actions is attached to the accompanying Brief as Exhibit "A." Complaints (without exhibits) in the Actions and their related docket sheets are attached to the accompanying Brief as Exhibit "B."

(Judge B.S. Miller).⁸

17. In light of the fact there are thousands of consumers impacted by Defendants' conduct, more cases will likely be filed.

18. The Actions, as well as any additional tag-along actions pending against Defendant, will involve similar if not identical questions of fact, and will involve common discovery and pretrial motion practice, and will have numerous overlapping class claims. Accordingly, there is the potential for inconsistent pretrial rulings if the cases are not transferred for coordinated or consolidated proceedings pursuant to 28 U.S.C. § 1407.

19. The convenience of the courts, witnesses, parties, and counsel will all be served by transferring these cases to the Western District of Tennessee and specifically to the Honorable Sheryl H. Lipman, United States District Judge for the Western District of Tennessee, for coordinated or consolidated pretrial proceedings.

20. In support of the motion, Movant relies upon:

- (a) the Brief describing the background of the litigation and Movant's factual and legal contentions;
- (b) the Schedule of Actions providing: (1) the complete name of each action involved, listing the full name of each party included; (2) the district court and division where each action is pending; (3) the civil action number of each action; and (4) the name of the Judge assigned to each action, if available;

⁸ A case was also filed in Arkansas state court. *See Graves, et al. v. Family Dollar Stores of Arkansas, LLC and Family Dollar Services, LLC*, 55-cv-22 (Cir. Ct. Pope County, Ark.) filed February 22, 2022.

- (c) a copy of all complaints (without exhibits) and docket sheets for all actions listed on the Schedule of Actions (attached as Exhibits A with the accompanying Brief);
- (d) the Statement Regarding Oral Argument; and,
- (e) the Proof of Service.

21. Alternatively, if the Panel does not decide to transfer the Actions to the Western District of Tennessee, Movant requests that they be transferred to the Southern District of Mississippi. *See Lacy, et al. v. Family Dollar, Inc.*, 22-cv-00098 (S.D. of Miss.) (Judge K. Johnson). The Southern District of Mississippi is close in proximity to the Defendant's Distribution Facility and is similarly well suited for this kind of complex litigation.

WHEREFORE, Movant respectfully request that the Panel grant his motion and transfer all of the Actions, for coordinated or consolidated pretrial proceedings, to the Western District of Tennessee and assign them to the Honorable Sheryl H. Lipman.

Dated: March 10, 2022

Respectfully submitted,

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**BEFORE THE UNITED STATES JUDICIAL PANEL ON
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**BRIEF IN SUPPORT OF MOTION FOR TRANSFER AND
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I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movant-Plaintiff Jerome Whitney (“Whitney”),¹ respectfully moves the Judicial Panel on Multidistrict Litigation (“Panel”) to transfer and centralize the actions listed in the Schedule of Actions, and subsequent tag-along actions, to the Honorable Sheryl H. Lipman United States District Court Judge for the Western District of Tennessee, who currently presides over the putative class action brought by Whitney against Family Dollar (“Defendant” or “Family Dollar”), for coordinated or consolidated pretrial proceedings.

Family Dollar sells groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).

On or about February 18, 2022, Defendant temporarily closed approximately 400 of its stores in Tennessee, Alabama, Louisiana, Mississippi, Arkansas, and Missouri after the U.S. Food and Drug Administration (FDA) announced that it had inspected, and found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202 (“Distribution

Facility”) in West Memphis, Arkansas (the “Rodent Infestation”).¹

On February 18, 2022, the FDA issued an “FDA Alert” concerning the Rodent Infestation and provided initial safety recommendations and warnings.²

On February 18, 2022, Family Dollar announced it would initiate a voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

Of the approximately 400 Family Dollar stores involved in the FDA’s investigation, almost 25 percent of them are located in the State of Tennessee (approximately 90 stores).³

Defendant has been operating the Distribution Facility since 1994.⁴

Between January 11, 2022 and February 11, 2022, five FDA investigators inspected the Distribution Facility approximately 15 times. An official FDA inspection report concerning its findings was finalized on February 11, 2022 (FDA 483 Inspection Report No. 3004286071).

The Rodent Infestation—that was never disclosed to Defendants’ consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

Defendant has had actual knowledge of the Rodent Infestation since at least March 29, 2021. Family Dollar knew or should have known of the Rodent Infestation from far earlier due to

¹ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

² FDA Alerts the Public to Potentially Contaminated Products from Family Dollar Stores in Six States | FDA (last visited 3/3/2022)

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⁴ Family Dollar Distribution Center at West Memphis, AR (last visited 3/3/2022)

its obligation to inspect its facilities, including distribution facilities and/or centers, for safety and health-related issues. Nevertheless, Defendant chose to omit information about the Rodent Infestation and not to disclose the Rodent Infestation to Plaintiff and other putative Class Members, so that it could continue to profit from the sale of the Products.

According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

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According to WMUR9 News, New Hampshire, “The distribution center in West Memphis was not the only Family Dollar to have rodent infestations in recent years. Family Dollar stores in Las Vegas, Sacramento, Richmond, Miami Gardens, Pittsburgh, Canton, New York and other areas had to close down over the past few years because of rodent infestations.”⁶

Despite its knowledge, Defendant omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiff and other consumers prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. As a result of Defendant’s failure to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiff and other consumers purchased

⁵ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

⁶ 400 Family Dollar stores closed after a rat infestation. It's part of a troubling pattern (wmur.com) (last visited 3/7/2022)

Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

II. BACKGROUND

On February 18, 2022, the U.S. Food and Drug Administration issued the following press release:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company's distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

"Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe," said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. "No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families' health at risk. We will continue to work to protect consumers."

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if

thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team's arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company's internal records also indicated the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁷

On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of "certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202."⁸

Family Dollar acknowledged the health and safety concerns arising from the Rodent Infestation:⁹

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with

⁷ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

⁸ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

⁹ *Id.*

cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

Defendant's voluntary recall is limited in scope to certain FDA-regulated products:¹⁰

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

While the various Actions may contain different state law claims or seek damages for personal injuries, they all share key core factual questions:

- (a) whether Defendant owed a duty of care;
- (b) whether Defendant knew or should have known that the Rodent Infestation existed;
- (c) whether Defendant knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendant failed to disclose the Rodent Infestation;
- (e) whether Defendant's representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendant had knowledge that those representations were false, deceptive, and misleading;

¹⁰ *Id.*

- (h) whether Defendant continues to disseminate those representations despite knowledge that the representations were false, deceptive, and misleading;
- (i) whether Defendant's omissions or otherwise failing to disclose the Rodent Infestation is material to a reasonable consumer;
- (j) whether Defendant's marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendant violated State consumer protection laws;
- (l) whether Defendant's decision to not withdraw food products not under the jurisdiction of FDA was false, misleading, or is otherwise actionable;
- (m) whether Defendants established and enforced proper hazard analysis critical control points ("HACCP"), good manufacturing practices ("GMP"), quality assurance, and/or quality control practices sufficient to identify and prevent pest and rodent infestations;
- (n) whether Defendant followed industry custom and practice to prevent pest and rodent infestations; and
- (o) whether Plaintiff and the members of the putative Class are entitled to declaratory and injunctive relief.

These central questions are too important to the thousands of purchasers and users of Defendant's Products to leave their determination to numerous courts across the country that could reach divergent and conflicting results. Moreover, simply because the plaintiffs who have filed suit may have different damages does not weigh in favor of denying centralization. *See In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prod. Liab. Litig.*, 363 F. Supp. 3d 1378, 1381-

82 (J.P.M.L. 2019) (centralizing consumer claims for economic damages with personal injury claims).

Legally, the purpose of centralizing these cases is to promote the just and efficient litigation of these actions, to avoid inconsistent rulings on key and fundamental issues, and to prevent duplicative discovery or other inefficiencies that would threaten to drain judicial resources. It is not necessary that the cases are identical or that common issues predominate; all that is required are enough common questions to warrant coordination or consolidation. Federal judges are well equipped to manage centralization in cases where there are substantial differences and complexities. Often, the more complicated and voluminous situations confirm the strengths of centralization, where skilled judges can work with experienced counsel to create plans for moving otherwise seemingly complex and overwhelming cases to an efficient and successful resolution.

While Defendant's conduct has caused damage and unquestionably impacted users in many states, the Western District of Tennessee would be an excellent and appropriate forum for this litigation. It is easily accessible, and it is centrally located. The Western District of Tennessee has had vast experience successfully managing multidistrict litigation as described more fully below. Transfer to the Western District of Tennessee for consolidated or coordinated pretrial proceedings before the Honorable Sheryl H. Lipman, United States District Court Judge for the Western District of Tennessee is warranted.

III. ARGUMENT

A. TRANSFER OF THE ACTIONS TO ONE COURT FOR COORDINATION OR CONSOLIDATION IS APPROPRIATE UNDER 28 U.S.C. § 1407.

Transfer is appropriate when actions pending in different judicial districts involve similar questions of fact such that coordinating or consolidating pretrial proceedings would “promote the

just and efficient conduct of such actions.” 28 U.S.C. § 1407. In relevant part, Section 1407 provides as follows:

When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

Id.; see also *In re Nifedipine*, 266 F. Supp. 2d 1382, 1382 (J.P.M.L. 2003). The purpose of multidistrict litigation is to “eliminate the potential for conflicting contemporaneous pretrial rulings by coordinate district and appellate courts in multidistrict related civil actions.” *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968); *In re Ethicon Physiomesb Flexible Composite Hernia Mesh Prod. Liab. Litig.*, 254 F. Supp. 3d 1381, 1382 (J.P.M.L. 2017) (same); *In re Capital One Customer Data Sec. Breach Litig.*, 396 F. Supp. 3d 1364, 1365 (J.P.M.L. 2019) (same).

Pursuant to 28 U.S.C. § 1407, transfer of actions to one district for coordinated or consolidated pretrial proceedings is appropriate where: (1) actions pending in different districts involve one or more common questions of fact, and (2) the transfer of such actions will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions. 28 U.S.C. § 1407(a); *Ethicon Physiomesb*, 254 F. Supp. 3d at 1382 (transfer of related actions to a single district for pretrial proceedings “conserve[s] the resources of the parties, their counsel, and the judiciary.”); *Capital One Customer Data Sec. Breach*, 396 F. Supp. 3d at 1365 (same). Consolidation is especially important in multidistrict litigations where “the potential for conflicting, disorderly, chaotic” action is greatest. *Plumbing Fixture Cases*, 298 F. Supp. at 493.

Consolidation of actions involving common factual questions makes sense when numerous judges will be asked to address similar pretrial matters and resolve similar pretrial motions involving similar fact patterns. *See In re Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1349 (J.P.M.L. 2006). Notably, “[t]ransfer under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. Centralization will permit all actions to proceed before a single transferee judge who can structure pretrial proceedings to consider all parties’ legitimate discovery needs, while ensuring that common parties and witnesses are not subjected to duplicative discovery demands.” *In re Katz Interactive Call Processing Patent Litig.*, 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007).

Here, there are already the following seven pending federal actions in seven different districts and presumably many more to come:

- Western District of Tennessee, *Whitney, et al. v. Family Dollar, Inc. and Dollar Tree, Inc.*, 22-cv-02138 (W.D. of Tenn.) (Judge S. Lipman), *filed* March 4, 2022.
- Southern District of Mississippi, *Lacy, et al. v. Family Dollar, Inc.*, 22-cv-00098 (S.D. of Miss.) (Judge K. Johnson), *filed* February 2, 2022.
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- Western District of Missouri, *Perrone, et al. v. Family Dollar, Inc.*, 22-cv-03056 (S.D. Mo.) (Judge Jill A. Morris), *filed* March 8, 2022.
- Eastern District of Arkansas, *Brown, et al. v. Family Dollar, Inc.*, 22-cv-40 (E.D. Ark.) (Judge B.S. Miller).¹¹

¹¹ A case was also filed in Arkansas state court. *See Graves, et al. v. Family Dollar Stores of Arkansas, LLC and Family Dollar Services, LLC*, 55-cv-22 (Cir. Ct. Pope County, Ark.) *filed* February 22, 2022.

Inconsistent judicial rulings in litigation affecting thousands of consumers who purchased the Products and have been subjected to an unreasonable risk of harm is precisely the type of disorderly and chaotic action that consolidation and coordination under Section 1407 was intended to prevent. The transfer of the Actions to the Western District of Tennessee for consolidated or coordinated proceedings is appropriate because common questions of fact exist, and consolidation or coordination before one court will ensure efficient management of the litigation and avoid inconsistent rulings on these issues impacting so many plaintiffs across the United States.

1. The Actions Involve Common Factual Questions.

Here, all of the Actions and any tag-along actions will require a determination of whether the Defendant's conduct was deceptive, unfair, fraudulent, negligent, unjust, and constituted a breach of warranty. Further, all of the Actions will require an assessment of the risks of serious injury and harm that consumers are facing as a result of being exposed to Products that were stored next to, near, and touching, rodent urine, nesting materials, rodent carcasses, and excreta. Section 1407 does not require a majority of common factual issues as a condition for transfer, only that there are common questions presented which justify consolidation and coordination. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 360 F. Supp. 2d 1371, 1372 (J.P.M.L. 2005) (“To those defendants opposing transfer because they wish to litigate the arguably narrower or more questionable claims against them without entanglement in a litigation that they consider to be much broader in scope, we point out that transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer.”). In this case, the facts surrounding Defendant's conduct in the development, sale, housing/ storing, and marketing of its Products applies equally to all plaintiffs.

The fact that the Actions are based on various state law claims for damages does not preclude consolidated or coordinated discovery because the central issues – whether the recalled Products pose risks of injury to users – will be the same across all cases. *See, e.g., In re National Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1379 (J.P.M.L. 2017) (“Although individualized factual issues may arise in each action, such issues do not – especially at this early stage of litigation – negate the efficiencies to be gained by centralization. The transferee judge might find it useful, for example, to establish different tracks for the different types of parties or claims. The alternative of allowing the various cases to proceed independently across myriad districts raises a significant risk of inconsistent rulings and inefficient pretrial proceedings.”); *In re: Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335 (J.P.M.L. 2009) (“While there will be some unique questions of fact from bank-to-bank, these actions share sufficient factual questions relating to industry-wide bank posting policies and procedures to warrant centralization of all actions in one MDL docket.”). The Panel and transferee courts have routinely dealt with complexities, including plaintiffs with varied claims and injuries. *See, e.g., Checking Account Overdraft*, 626 F. Supp. 2d at 1335; *National Prescription Opiate*, 290 F. Supp. 3d at 1379; *c.f. In re Silicone Gel Breast Implants Prod. Liab. Litig.*, 793 F. Supp. 1098, 1099-1100 (J.P.M.L. 1992) (transfer and centralization of claims against multiple defendants by plaintiffs claiming different injuries); *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 1997 WL 186325, at *1-2 (E.D. Pa. Apr. 16, 1997) (more than 2,000 civil actions including claims of different types of injuries caused by products manufactured by dozens of defendants).

What is important and relevant to the Panel’s decision is that transfer and consolidation or coordination will provide a consistent and uniform resolution to the common factual issues, which will facilitate the efficient adjudication of all the Actions even considering any differences that may

exist. “[T]ransfer under Section 1407 has the salutary effect of placing all actions in th[e] docket before a single judge who can formulate a pretrial program that: (1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (Jud.Pan.Mult.Lit.1976); and (2) ensures that pretrial proceedings will be conducted in a manner leading to a just and expeditious resolution of the actions to the benefit of not just some but all of the litigation’s parties.” *Ins. Brokerage Antitrust*, 360 F. Supp. 2d at 1372; *see also Checking Account Overdraft*, 626 F. Supp.2d at 1335. The common questions of fact that are implicated here weigh heavily in favor of consolidation and coordination.

2. Transfer Will Serve the Convenience of the Parties and Witnesses and Will Promote the Just and Efficient Conduct of the Actions.

According to the Manual for Complex Litigation, the following four factors govern whether transfer will facilitate the convenience of the parties and promote the just and efficient conduct of the transferred cases:

1. The elimination of duplicative discovery;
2. The avoidance of conflicting rules and schedules;
3. The reduction of litigation cost; and
4. The conservation of the time and effort of the parties, attorneys, witnesses, and courts.

Manual for Complex Litigation (Fourth), § 20.131, at 219.

In this litigation, there are currently seven pending Actions in seven different districts but those numbers are sure to rise. Each Action involves virtually identical factual questions regarding Defendants’ conduct, and overlapping issues exist concerning plaintiffs’ damages. Consolidation or coordination will eliminate the likelihood of duplicative discovery and proceedings that might result

in inconsistent rulings and will prevent judicial resources from being needlessly wasted. *See In re Vioxx Prod. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005); *see also In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 698 (J.P.M.L. 1995) (concluding that consolidation was necessary to eliminate inconsistent pretrial rulings); *In re A.H. Robins Co. "Dalkon Shield" IUD Prod. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975) (concluding that transfer was necessary to prevent duplication of discovery and to eliminate the possibility of conflicting pretrial rulings).

Without transfer, coordination, and/or consolidation of the Actions and tag-along cases, litigation will needlessly entail judicial inefficiency and unnecessary expense. Further, different federal courts, in duplicating rulings on the same issues, could make contradictory findings. Litigation of this scope and importance should not be beset with such inconsistencies and inefficiencies.

B. THE WESTERN DISTRICT OF TENNESSEE IS THE APPROPRIATE FORUM FOR TRANSFER AND COORDINATION OR CONSOLIDATION.

Defendant's Products, which were the subject of an FDA investigation and report, were distributed in the forum State along with five other surrounding states. Family Dollar maintains approximately 90 stores in Tennessee which is nearly 25 percent of the 400 stores that are subject to the FDA investigation. The Western District of Tennessee is geographically central and accessible forum for many of the plaintiffs and witnesses who have been affected by Defendant's conduct. The Panel has taken geographic centrality and ease of access into consideration as weighing in favor of a particular transferee forum.¹² The Western District of Tennessee, and Memphis, Tennessee, is easily accessible by plane from any location (with a world-class airport that is home to the FedEx Express global hub (FedEx Superhub)) and has ample accommodations

¹² *See* Transfer Order in *In re Teflon Products Liability Litigation*, MDL No. MDL No. 1733, No. 4:06-md-01733.

for business travelers. The size of the city and infrastructure is certainly in place to host this MDL. Memphis borders along the State of Arkansas where the Distribution Facility is located. According to Google Maps, the Facility, which housed evidence, and be where many witnesses are located, is approximately only 15 miles away from the Memphis.

Further, the Western District of Tennessee has capable staff with a long history of successfully managing high-profile multidistrict litigation. The Western District of Tennessee's docket demonstrates that the court has the capacity to handle this litigation. As of December 31, 2021, the Western District of Tennessee had 1,525 pending cases¹³ with a median time from filing to disposition of 10.2 months.¹⁴

Within the Western District of Tennessee, United States District Judge Lipman is an excellent jurist who can shepherd this litigation. Judge Lipman is currently presiding over Movant's case. Judge Lipman is an experienced jurist who was appointed to the bench by President Barack Obama in 2014. Judge Lipman is a fair, demanding but reasonable, extremely organized, and efficient judge accustomed to presiding over complex and multi-plaintiff, multi-defendant cases. *See, e.g., In re Vision Service Plan Tax Litig.*, 484 F. Supp. 2d 1356, 1357 (J.P.M.L. 2007) (“we are assigning this litigation to an experienced jurist with the ability to steer this litigation on a prudent course”).

C. ALTERNATIVELY, MOVANT SEEKS THE SOUTHERN DISTRICT OF MISSISSIPPI FOR TRANSFER

Alternatively, if the Panel does not decide to transfer the Actions to the Western District of Tennessee, Movant requests that they be transferred to the Southern District of Mississippi. *See*

¹³ U.S. District Courts – Civil Cases Commenced, Terminated, and Pending During the 12 Month Period Ending December 31, 2021 (available at: [stfj_c1_1231.2021.xlsx](#) (live.com))

¹⁴ U.S. District Courts – Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending December 31, 2021 (available at: [stfj_c5_1231.2021.xlsx](#) (live.com))

Lacy, et al. v. Family Dollar, Inc., 22-cv-00098 (S.D. of Miss.) (Judge K. Johnson). The Southern District of Mississippi is close in proximity to the Distribution Facility and is similarly well suited for this kind of complex litigation.

IV. CONCLUSION

For these reasons, Movant respectfully requests that the Panel grant its motion for transfer and coordination or consolidation under 28 U.S.C. § 1407 and transfer the Actions to the Western District of Tennessee before the Honorable Judge Sheryl Lipman.

Dated: March 10, 2022

Respectfully submitted,

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EXHIBIT "A"**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

In re: Family Dollar Pest Infestation Litigation

MDL No.
SCHEDULE OF ACTIONS

	Case Caption	Court	Civil Action No.	Judge
1	<i>Plaintiff(s):</i> Whitney, individually and on behalf of all others similarly situated, <i>Defendant(s):</i> Family Dollar, Inc. and Dollar Tree, Inc. Family Dollar, Inc. and Dollar Tree, Inc.	Western District of Tennessee	22-cv-02138	Honorable S. Lipman
2	<i>Plaintiff(s):</i> Lacy, individually and on behalf of all others similarly situated, <i>Defendant(s):</i> Family Dollar, Inc.	Southern District of Mississippi	22-cv-00098	Honorable K. Johnson
3	<i>Plaintiff(s):</i> Smith, individually and on behalf of all others similarly situated, <i>Defendant(s):</i> Family Dollar Services, Inc. t/a Family Dollar and Dollar Tree, Inc.	Eastern District of Virginia	22-cv-000208	Honorable A. Trenga

4	<p>Plaintiff(s): Fields, individually and on behalf of all others similarly situated,</p> <p>Defendant(s): Family Dollar, Inc.</p>	Western District of Louisiana	22-cv-00611	Honorable T. Doughty
5	<p>Plaintiff(s): Brown, individually and on behalf of all others similarly situated,</p> <p>Defendant(s): Family Dollar, Inc. and Dollar Tree, Inc.</p>	Southern District of Alabama	22-cv-00105	Honorable T. Moorer
6	<p>Plaintiff(s): Perrone, individually and on behalf of all others similarly situated,</p> <p>Defendant(s): Family Dollar, Inc.</p>	Western District of Missouri	22-cv-03056	Honorable J. Morris
7	<p>Plaintiff(s): Brown, individually and on behalf of all others similarly situated,</p> <p>Defendant(s): Family Dollar, Inc. and Dollar Tree, Inc.</p>	Eastern District of Arkansas	22-cv-40	Honorable J. Miller

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

<p>In re: Family Dollar Pest Infestation Litigation</p>
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MDL No.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion to Transfer and Consolidate and this Proof of Service was served by via the office of Neal & Harwell, PLC on this 10th day of March 2022 to the following:

VIA FIRST CLASS MAIL

United States District Court for the Western District of Tennessee Clerk of Court 167 N. Main Street Room 242 Memphis, TN 38103	United States District Court for the Southern District of Mississippi Clerk of Court Thad Cochran United States Courthouse 501 E. Court Street Suite 2500 Jackson, MS 39201
United States District Court for the Eastern District of Virginia Clerk of Court 401 Courthouse Square Alexandria, VA 22314	United States District Court for the Western District of Louisiana Clerk of Court 201 Jackson Street, Suite 215 Monroe, LA 71201
United States District Court for the Southern District of Alabama Clerk of Court 908 Alabama Avenue Selma, AL 36701	United States District Court for the Western District of Missouri Clerk of Court 222 N. John Q. Hammons Parkway Springfield, MO 65806

VIA ELECTRONIC MAIL

Charles J. LaDuca Alexandra C. Warren Brendan S. Thompson CUNEO GILBERT & LADUCA, LLP 4725 Wisconsin Avenue NW, Suite 200 Washington, DC 20016 Tel: (202) 789-3960 Email: charles@cuneolaw.com Email: awarren@cuneolaw.com	John W. Barrett Katherine Barrett Riley Sarah Sterling Aldridge BARRETT LAW GROUP, PA P.O. Box 927 404 Court Square Lexington, MS 39095 Tel: (662) 834-2488 Email: dbarrett@barrettlawgroup.com
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<p>Email: brendant@cuneolaw.com</p> <p><i>Attorneys for Plaintiffs Martha Keisha Lacy, Lorraine Bennett-Freeman, Sheena Bibbs, Nakedra Freeman; S.D. Miss. Case No. 3:22-cv-00098</i></p> <p><i>Attorney for Plaintiffs Reginald Fields and Sonja Fields; W.D. La. Case No. 3:22-cv-00611</i></p>	<p>Email: kbriley@barrettllawgroup.com Email: saldridge@barrettllawgroup.com</p> <p><i>Attorneys for Plaintiffs Martha Keisha Lacy, Lorraine Bennett-Freeman, Sheena Bibbs, Nakedra Freeman; S.D. Miss. Case No. 3:22-cv-00098</i></p> <p><i>Attorneys for Plaintiffs Reginald Fields and Sonja Fields; W.D. La. Case No. 3:22-cv-00611</i></p>
<p>Joseph Michael Langone David Hilton Wise WISE LAW FIRM, PLC 10640 Page Avenue, Suite 320 Fairfax, VA 22030 Tel: (703) 934-6377 Email: jlangone@wiselaw.pro Email: dwise@wiselaw.pro</p> <p><i>Attorneys for Plaintiffs Lakindal Smith and Keith Martin; E.D. Va. Case No. 1:22-cv-00208</i></p>	<p>Jerry Abdalla ABDALLA LAW, PLLC 602 Steed Road, # 200 Ridgeland, MS 39157 Tel: (601) 487-4590 Email: gmabdall@hotmail.com</p> <p><i>Attorneys for Plaintiffs Martha Keisha Lacy, Lorraine Bennett-Freeman, Sheena Bibbs, Nakedra Freeman; S.D. Miss. Case No. 3:22-cv-00098</i></p> <p><i>Attorney for Plaintiffs Reginald Fields and Sonja Fields; W.D. La. Case No. 3:22-cv-00611</i></p>
<p>J. Luke Sanderson WAMPLER, CARROLL, WILSON & SANDERSON, PC 208 Adams Avenue Memphis, TN 38103 Tel: (901) 523-1844 Email: Luke@wcwslaw.com</p> <p><i>Attorneys for Plaintiffs Lakindal Smith and Keith Martin; E.D. Va. Case No. 1:22-cv-00208</i></p>	<p>Gary E. Mason MASON LIETZ & KLINGER LLP 5101 Wisconsin Avenue NW, Suite 305 Washington, DC 20016 Tel: (202) 429-2290 Email: gmason@masonllp.com</p> <p><i>Attorneys for Plaintiffs Lakindal Smith and Keith Martin; E.D. Va. Case No. 1:22-cv-00208</i></p>
<p>Robert K. Shelquist Rebecca A. Peterson Craig D. Davis LOCKRIDGE GRINDAL NAUEN P.L.L.P. 100 Washington Avenue South, Suite 2200 Minneapolis, MN 55401 Tel: (612) 339-6900 Email: krshelquist@locklaw.com Email: rapeterson@locklaw.com Email: csdavis@locklaw.com</p>	<p>Patrick Wayne Pendley PENDLEY BAUDIN & COFFIN P.O. Drawer 71 Plaquemine, LA 70765 Tel: (225) 687-6396 Email: pwpendley@pbclawfirm.com</p> <p><i>Attorney for Plaintiffs Reginald Fields and Sonja Fields; W.D. La. Case No. 3:22-cv-00611</i></p>

<p><i>Attorney for Plaintiffs Reginald Fields and Sonja Fields; W.D. La. Case No. 3:22-cv-00611</i></p>	
<p>Gregory W. Aleshire William R. Robb Kevin J. Rapp ALESHIRE ROBB, P.C. 2847 Ingram Mill Road, A-102 Springfield, MO 65804 Tel: (417) 869-3737 Email: galeshire@aleshirerobb.com</p> <p><i>Attorneys for Plaintiff Terri Perrone W.D. Mo. Case No. 6:22-cv-03056</i></p>	<p>Steven A. Martino Joseph Stewart Dennis Tiffany Ray TAYLOR MARTINO, P.C. P.O. Box 894 Mobile, AL 36601 Tel: (251) 433-3131 Email: stevemartino@taylormartino.com Email: joseph@taylormartino.com Email: tiffany@taylormartino.com</p> <p><i>Attorneys for Plaintiffs Muriel Vanessa Brown, Donrea Brown, Rosalind Dunning; S.D. Ala. Case No. 2:22-cv-00105</i></p>
<p>James Robertson Jerry Garner BARBER LAW FIRM PLLC 425 West Capitol Avenue, Suite 3400 Little Rock, Arkansas 72201 Telephone: (501) 707-6125 jrobertson@barberlawfirm.com jgarner@barberlawfirm.com</p> <p>Gregory W. Aleshire Aleshire Robb, P.C. 284 7 Ingram Mill Road - A102 Springfield, Missouri 65804 Telephone: (417) 869-3737</p> <p><i>Attorneys for Plaintiff in Kimberly Brown E.D. Ark. Case No. 22-cv-40</i></p>	

VIA FIRST CLASS MAIL

<p>Family Dollar, Inc. 500 Volvo Pkwy Chesapeake, VA 23320</p>	<p>Family Dollar Services, LLC 500 Volvo Pkwy Chesapeake, VA 23320</p>
<p>Dollar Tree, Inc. 500 Volvo Pkwy Chesapeake, VA 23320</p>	<p>Dollar Tree Stores, Inc. 500 Volvo Pkwy Chesapeake, VA 23320</p>

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

/s/ Aubrey H. Harwell, Jr.
Aubrey H. Harwell, Jr.

EXHIBIT B

PART I

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

**JEROME WHITNEY, Individually and
On Behalf of All Others Similarly Situated,**

Plaintiffs,

vs.

**FAMILY DOLLAR, INC. and DOLLAR
TREE, INC.,**

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff Jerome Whitney, individually and on behalf of all others similarly situated (“Plaintiffs”), by and through their undersigned attorneys, bring this Class Action Complaint against Defendants Family Dollar, Inc. and Dollar Tree, Inc. (together, “Defendants”), for their negligent, reckless, and/or intentional practice of selling products that may be contaminated by virtue of a rodent infestation and other unsanitary conditions in stores throughout Tennessee, Louisiana, Mississippi, Arkansas, Alabama, and Missouri (together, the “States”). Defendant Family Dollar, Inc. is a wholly owned subsidiary of Defendant Dollar Tree, Inc. Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including requiring full and accurate disclosure of the rodent infestation and other unsanitary conditions and restoring monies to the members of the proposed Classes. Plaintiffs allege the following based upon personal knowledge, investigation by counsel, and facts that are a matter of public record and, as to all other matters, upon information and belief.

I. INTRODUCTION

2. Family Dollar is a value store chain that aspires to be “[t]he best small-format value and convenience retailer, serving the needs of [its] shoppers in the neighborhoods [it] serves.”¹

3. Defendants sell groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).

4. On or about February 18, 2022, Family Dollar temporarily closed 404 of its stores in Tennessee, Louisiana, Mississippi, Arkansas, Alabama, and Missouri after the U.S. Food and Drug Administration (FDA) announced that it had inspected, and found unsanitary conditions,

¹ <https://www.familydollar.com/about-us> (last visited 2/22/2022)

including a rodent infestation, inside Family Dollar Distribution Center 202 (“Distribution Facility”) in West Memphis, Arkansas (the “Rodent Infestation”).²

5. On February 18, 2022, the FDA issued an “FDA Alert” concerning the Rodent Infestation and provided initial safety recommendations and warnings.³

6. On February 18, 2022, Family Dollar announced it would initiate a voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

7. Defendants operate approximately 88 store locations in the Tennessee.⁴

8. Defendants have been operating the Distribution Facility since 1994 which is depicted here:⁵



² <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

³ [FDA Alerts the Public to Potentially Contaminated Products from Family Dollar Stores in Six States | FDA](#) (last visited 3/3/2022)

⁴ [Family Dollar Stores Issues Voluntary Recall of Certain FDA-Regulated Products in Six States Including Drugs, Devices, Cosmetics, Foods | Business Wire](#)
[Family Dollar Stores Issues Voluntary Recall of Certain FDA-Regulated Products in Six States Including Drugs, Devices, Cosmetics, Foods | Business Wire](#) (last visited 3/3/2022)

⁵ [Family Dollar Distribution Center at West Memphis, AR](#) (last visited 3/3/2022)

9. Between January 11, 2022 and February 11, 2022, five FDA investigators inspected the Distribution Facility approximately 15 times. An official FDA inspection report concerning its findings was finalized on February 11, 2022 (FDA 483 Inspection Report No. 3004286071) (the “FDA Report”).⁶

10. The Rodent Infestation—that was never disclosed to Family Dollar consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

11. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

12. Defendants have had actual knowledge of the Rodent Infestation since at least March 29, 2021. They knew or should have known of the Rodent Infestation from far earlier due to their obligation to inspect their facilities, including distribution facilities and/or centers, for safety and health-related issues. Nevertheless, Defendants chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

13. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of**

⁶ Available at, <https://www.fda.gov/media/156334/download> (last visited 3/2/2022).

infestation,” the agency said.⁷

14. According to the FDA Report, rodent urine (and odor), nesting materials, rodent carcasses, and excreta was found on or near pallets or food at the Distribution Facility.

15. In a FORM 8K submitted to the Securities and Exchange Commission (SEC), dated March 2, 2022, Defendant Dollar Tree Inc. admitted “The circumstances leading to the Recall (and/or the Recall itself) has had and may have other negative impacts, which could include reputational damage, lost sales, further or additional governmental investigations and/or enforcement actions, private litigation (see below) and/or further diversion of management attention, which could have a material adverse effect, individually or collectively, on the Company’s business, results of operations and/or financial condition.”⁸

16. Despite its knowledge, Defendants omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiffs and members of the Classes prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. By knowingly failing to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiffs and the Classes purchased Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

17. Plaintiffs bring this action on behalf of themselves and all those similarly situated (the “Classes,” “Class Members,”) for Defendants’ deceptive trade practices in violation of the consumer protection laws of the States. Plaintiffs seek damages, attorney fees and costs, punitive

⁷ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

⁸ [Inline XBRL Viewer \(sec.gov\)](#) (last visited 3/3/2022).

damages, and the replacement of, or refund of money paid to purchase the Products, and any other legal relief available for their claims. Should Plaintiffs' demanded legal relief be unavailable or prove insufficient, Plaintiffs seeks appropriate equitable and injunctive relief in the alternative pursuant to Fed. R. Civ. P. 8(a)(3).

II. PARTIES

18. Named Plaintiff Jerome Whitney is, and at all times relevant hereto has been, a citizen of Memphis, Tennessee, located in Shelby County. Plaintiff Whitney purchased medicines and food items, from January 2017 through February 2022, from a Family Dollar located in Tennessee.

19. During the time Plaintiff Whitney purchased and used the Products, and due to the false and misleading claims and omissions by Defendants, Plaintiff Whitney believed the products he purchased were safe. Plaintiff Whitney was unaware the Products contained, or had a risk of containing, Salmonella or other infectious diseases. Plaintiff Whitney would not have purchased the Products if the Rodent Infestation and the related potential for contamination with Salmonella or other infectious disease had been fully and accurately disclosed and represented to him.

20. Defendant Family Dollar, Inc. is incorporated under the laws of the state of North Carolina with its principal place of business located at 500 Volve Pkwy, Chesapeake, Virginia.

21. Defendant Dollar Tree, Inc, is a Virginia corporation with its principal place of business at the same location as Family Dollar.

22. Defendant Family Dollar is a wholly owned subsidiary of Defendant Dollar Tree.

23. Defendants are responsible for the manufacturing, marketing, distribution, sale, and labeling of the Products to millions of consumers throughout the States, including in this District. Defendants created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent,

unfair, misleading, and/or deceptive labeling and advertising for the Products.

24. The marketing and advertising relied on by Plaintiff Whitney and the Classes was disseminated throughout the States, including this District, by Defendant and its agents through advertising, packaging, and labeling that contained the omissions alleged herein. The marketing and advertising were designed to encourage consumers, and reasonably misled consumers, into purchasing the Products throughout the States, including this District.

III. JURISDICTION AND VENUE

25. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d) for the following reasons: (a) some of the class members are citizens of a state that is different from the citizenship of the Defendants; (b) the putative class size is greater than 100 persons; (c) the amount in controversy in the aggregate for the putative class exceeds the sum of \$5 million, exclusive of interest and costs; and (d) the primary defendants do not include States, State officials, and/or other governmental entities against whom the district court may be foreclosed from ordering relief.

26. This Court has original jurisdiction over this action under CAFA, 28 U.S.C. §1332(d), because, upon information and belief, no other class action has been filed asserting the same or similar factual allegations against the defendants on behalf of the same or other persons during the 3-year period preceding the filing of this class action.

General Personal Jurisdiction

27. This Court has personal jurisdiction over Named Plaintiff Whitney, who is a resident of the State of Tennessee.

28. This Court has both general and specific personal jurisdiction over the Defendants.

29. This Court has general personal jurisdiction over Defendants because Defendants operate in Tennessee and because Defendants advertise, market, and sell the Products in Tennessee, accepts money from purchasers located in Tennessee, has engaged in systematic and continuous business activities in Tennessee, transacted substantial business with Tennessee entities and residents, and generally has sufficient minimum contacts in Tennessee to satisfy the Tennessee Long Arm Statute, T.C.A. § 20-2-214(a).

Specific Personal Jurisdiction

30. This Court has specific personal jurisdiction over Defendants arising from Defendants' advertising, marketing, and sale of the Products in Tennessee, which at all relevant times, included or risked including dangerous substances, all of which have caused harm in Tennessee as a result of the specific business activities complained of herein, either directly or through Defendants' agents.

31. This Court has specific personal jurisdiction over Defendants because the advertising, marketing, and sale of the Products, which included or risked including dangerous substances, occurred in parts of Tennessee that are located in this District.

32. Venue is proper in Tennessee pursuant to 28 U.S.C. §1391(b)(2), because Plaintiffs reside in this District and ingested and handled the Products at issue within the confines of this District.

33. Venue is proper in Tennessee under 28 U.S.C. §1391(b)(1) & (2) and 28 USC §1391(d) because Defendants regularly conduct substantial business within this District

34. Venue is also proper in Tennessee under 28 U.S.C. §1391(b)(2) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in this District, namely Defendants' advertisement, sale, and marketing of the Products, which occurred

in this District and caused financial harm to members of the putative class that reside in this District.

IV. FACTUAL BACKGROUND

35. On February 18, 2022, the U.S. Food and Drug Administration issued the following press release based on its February 11, 2022 Report:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company’s distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

“Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe,” said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. “No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families’ health at risk. We will continue to work to protect consumers.”

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team's arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company's internal records also indicated the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁹

36. On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of "certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202."¹⁰

37. Family Dollar acknowledges the health and safety concerns arising from the Rodent Infestation:¹¹

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly

⁹ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

¹⁰ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

¹¹ *Id.*

people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

38. Defendants' voluntary recall is limited in scope to certain FDA-regulated products:¹²

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

39. Defendants' recall is further defective and contradicts the FDA Alert because while the FDA Alert advises that certain products should be discarded, the recall asks customers to return the same products to stores (which are no longer open anymore as a result of the Rodent Infestation).

V. FRAUDULENT OMISSION ALLEGATIONS

40. Absent discovery, Plaintiffs are unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Family Dollar and Dollar Tree responsible for disseminating unfair, deceptive, and misleading marketing materials regarding the Products. Defendants are necessarily in possession of all this information. Plaintiffs' claims arise out of Defendants' fraudulent omission of the Rodent Infestation.

41. Plaintiffs allege that at all relevant times, including specifically at the time of purchased the Products, Defendants knew, should have known, or was reckless in not knowing of

¹² *Id.*

the Rodent Infestation; Defendants had a duty disclose information material to a consumer, such as the Rodent Infestation, based upon its exclusive knowledge; but Defendants never disclosed the Rodent Infestation to Plaintiffs, Class Members, or the general public other than its halfhearted, inadequate recall of some Products.

42. Plaintiffs make the following allegations as specific as reasonably possible:

- a. **Who:** Defendants actively omitted information concerning the existence of the Rodent Infestation from Plaintiffs and Class Members at the point of sale or thereafter. Defendants' agents should have and could have disclosed the Rodent Infestation. As to Plaintiffs themselves, Defendants should have and could have disclosed the Rodent Infestation at the time they purchased the Products or thereafter.
- b. **What:** Defendants knew, should have known, or was reckless in not knowing, that the Products were exposed to Salmonella and other infectious diseases due to the Rodent Infestation. Despite its knowledge, Defendants *failed to disclose the Rodent Infestation* at the point of sale or thereafter.
- c. **When:** Defendants' omissions began *from the start of the Class period and continue to this day*. Defendants has never taken any action to inform Plaintiffs, Class Members, or the general public of the true nature of the Rodent Infestation. As to Plaintiffs themselves, Defendants have continually omitted the true nature of the Rodent Infestation for the entirety of the relevant time period, including at the point of sale.
- d. **Where:** Defendants' omissions occurred *in every communication* it had with Plaintiffs, Class Members, and the general public. As to Plaintiffs

themselves, Defendants' omissions occurred in every communication it had with Plaintiffs about the Products, including all communications that happened before, at the point of and after their purchases of the Products.

- e. **How:** Defendants *omitted and failed to disclose* the Rodent Infestation to Plaintiffs, Class Members, or the general public at the point of sale or thereafter via a press release, permanent warnings affixed to the Products, direct mail campaign, or otherwise. As to Plaintiffs themselves, Defendants omitted and failed to disclose the Rodent Infestation in any communication or point of sale document.
- f. **Why:** Due to corporate greed, Defendants omitted the Rodent Infestation to deceive Plaintiffs, Class Members, and the general public into buying Products to *maximize its profits*. Furthering its goal to maximize profits, Defendants failed to notify Class Members of the true nature of the Rodent Infestation to avoid an avalanche of requests to refund Product purchases. As to Plaintiffs themselves, Defendants omitted the Rodent Infestation to deceive them into purchasing the Products, thereby maximizing Defendants' profits and to avoid refunding the cost of the Products.
- g. **Causation:** Because Family Dollar failed to disclose the Rodent Infestation, despite its extensive knowledge, Plaintiffs and Class Members purchased Products that did not or will not safely perform and as such are worth less than one that does safely perform. Had Defendants disclosed the Rodent Infestation, *Plaintiffs and other Class Members would not have purchased the Products, or certainly would have paid less for the Products.*

VI. TOLLING OF STATUTES OF LIMITATIONS

43. Defendants were and remain under a continuing duty to disclose to Plaintiffs and members of the Classes the true character, quality, and nature of the Products, that the Products were exposed to contamination by virtue of the Rodent Infestation, and that the Rodent Infestation poses a health and safety concern to consumers and diminishes the value of the Products.

44. As a result of this active concealment by Defendants, all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

A. DISCOVERY RULE TOLLING

45. Class Members had no way of knowing about the Rodent Infestation and the other information concealed by Defendants.

46. Within the time period of any applicable statutes of limitation, Plaintiffs and the Class Members could not have discovered through the exercise of reasonable diligence that Defendants were concealing the Rodent Infestation.

47. Plaintiffs and the Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendants did not report information within its knowledge to federal authorities (including the FDA), their stores or consumers, nor would a reasonable and diligent investigation have disclosed that Defendants had information in its possession about the existence and dangerousness of the Rodent Infestation and opted to conceal that information until shortly before this action was filed.

48. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. FRAUDULENT CONCEALMENT TOLLING

49. All applicable statutes of limitation have also been tolled by Defendants' knowing

and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

50. By failing to disclose the Rodent Infestation of which it was aware, Defendants disregarded the safety of consumers who purchased the Products.

C. ESTOPPEL

51. Defendants were under a continuous duty to disclose to Plaintiffs and the Class Members the true character, quality, and nature of the Rodent Infestation and the contamination risks it posed to Products.

52. Defendants knowingly, affirmatively, and actively concealed the Rodent Infestation and, thereby, the true nature, quality, and character of the Products from consumers, as well as the fact that the Rodent Infestation systematically devalued the Products and undermined consumer safety.

53. Based on the foregoing, Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATION

54. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes:

Tennessee Class

All persons residing in the state of Tennessee who, during the maximum period of time permitted by law, purchased Products from Defendants.

Louisiana Class

All persons residing in the state of Louisiana who, during the maximum period of time permitted by law, purchased Products from Defendants.

Mississippi Class

All persons residing in the state of Mississippi who, during the maximum period of time permitted by law, purchased Products from Defendants.

Missouri Class

All persons residing in the state of Missouri who, during the maximum period of time permitted by law, purchased Products from Defendants.

Alabama Class

All persons residing in the state of Alabama who, during the maximum period of time permitted by law, purchased Products from Defendants.

Arkansas Class

All persons residing in the state of Arkansas who, during the maximum period of time permitted by law, purchased Products from Defendants.

(Collectively referred to herein as the “Classes”).

55. Excluded from the Classes are Defendants, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendants, Class Counsel and their employees, and the judicial officers and their immediate family members and associates court staff assigned to this case.

56. Numerosity—Fed. R. Civ. P. 23(a)(1). The Classes are comprised of thousands of individuals who were Defendants’ customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class Members is presently unknown. The identity of the Class Members is ascertainable and can be determined based on Defendants’ records.

57. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3). The questions of law and fact common to the Classes predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendants owed a duty of care;
- (b) whether Defendants knew or should have known that the Rodent Infestation existed;

- (c) whether Defendants knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendants failed to disclose the Rodent Infestation;
- (e) whether Defendants' representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendants had knowledge that those representations were false, deceptive, and misleading;
- (h) whether Defendants continues to disseminate those representations despite knowledge that the representations were false, deceptive, and misleading;
- (i) whether Defendants' omissions or otherwise failing to disclose the Rodent Infestation is material to a reasonable consumer;
- (j) whether Defendants' marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendants violated State consumer protection laws;
- (l) whether Defendants' decision to not withdraw food products not under the jurisdiction of FDA was false, misleading, or is otherwise actionable;
- (m) whether Defendants established and enforced proper hazard analysis critical control points ("HACCP"), good manufacturing practices ("GMP"), quality assurance, and/or quality control practices sufficient to identify and prevent pest and rodent infestations;
- (n) whether Defendants followed industry custom and practice to prevent pest and rodent infestations; and

- (o) whether Plaintiffs and the members of the Classes are entitled to declaratory and injunctive relief.

58. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

59. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiffs’ claims are typical of those of the members of the Classes in that they are based on the same underlying facts, events, and circumstances relating to Defendants’ conduct.

60. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs will fairly and adequately represent and protect the interests of the Classes, have no interest incompatible with the interests of the Classes, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

61. Predominance —Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes.

62. Superiority—Fed. R. Civ. P. 23(b)(3). A class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members’ claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiffs and members of the Classes have suffered irreparable harm as a result of Defendants’ bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class Members’ claims, no Class Member could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Classes would have no

reasonable remedy and would continue to suffer losses, as Defendants continue to engage in the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and Defendants would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

63. Plaintiffs and the Classes do not anticipate any difficulty in the management of this litigation.

VIII. CAUSES OF ACTION

**COUNT I
VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW
(LA. REV. STAT. § 51:1401, et seq.)
(brought on behalf of the Louisiana Class)**

64. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

65. This claim is brought on behalf of Louisiana residents.

66. Defendants and Plaintiffs are “persons” within the meaning of the LA. REV. STAT. § 51:1402(8).

67. Plaintiffs are “consumer[s]” within the meaning of LA. REV. STAT. § 51:1402(1).

68. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” LA. REV. STAT. § 51:1405(A).

69. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive

business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

70. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

71. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

72. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

73. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

74. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

75. Defendants knew or should have known that its conduct violated the Louisiana CPL.

76. Defendants owed a duty to disclose the true safety and reliability of the Products.

77. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

78. Plaintiffs suffered ascertainable loss caused by Defendants’ misrepresentations and its concealment.

79. As a direct and proximate result of Defendants’ violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants’ misconduct, Plaintiffs and the Class incurred damages.

80. Pursuant to LA. REV. STAT. § 51:1409, Plaintiffs seek to recover actual damages in an amount to be determined at trial; treble damages for Defendants’ knowing violations of the Louisiana CPL; an order enjoining Defendants’ unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys’ fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

COUNT II
VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE. ANN. § 75-24-1, et seq.)
(brought on behalf of the Mississippi Class)

81. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

82. This claim is brought on behalf of Mississippi residents.

83. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.”

84. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

85. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

86. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

87. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

88. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

89. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

90. Defendants knew or should have known that its conduct was violative.

91. Defendants owed a duty to disclose the true safety and reliability of the Products.

92. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

93. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

94. As a direct and proximate result of Defendants' violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

95. Plaintiffs seek actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

COUNT III
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE § 8-19-1, et seq.)
(brought on behalf of the Alabama Class)

96. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

97. This claim is brought on behalf of Alabama residents.

98. Plaintiffs are "consumer[s]" within the meaning of ALA. CODE § 8-19-3(2).

99. Plaintiffs are "person[s]" within the meaning of ALA. CODE § 8-19-3(5).

100. The Products are "goods" within the meaning of ALA. CODE § 8-19-3(3).

101. Defendants engaged in "trade or commerce" within the meaning of ALA. CODE § 8-19-3(8).

102. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several specific actions to be unlawful, including: "(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have," "(7) Representing that goods or services are of a particular standard, quality, or grade, or

that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5.

103. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices prohibited by the Alabama DTPA, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

104. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

105. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices in violation of the Alabama DTPA.

106. In the course of Defendants’ business, it willfully failed to disclose and actively concealed the dangerous risks posed by the Products. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

107. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

108. Defendants knew or should have known that its conduct violated the Alabama DTPA.

109. Defendants owed a duty to disclose the true safety and reliability of the Products.

110. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

111. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

112. As a direct and proximate result of Defendants' violations of the Alabama DTPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

113. Pursuant to ALA. CODE § 8-19-10, Plaintiffs seeks monetary relief against Defendants.

114. Plaintiffs also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under ALA. CODE § 8-19-1, et seq.

COUNT IV
VIOLATION OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, et seq.)
(brought on behalf of the Arkansas Class)

115. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

116. This claim is brought on behalf of Arkansas residents.

117. Defendants and Plaintiffs are "persons" within the meaning of the Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).

118. The Products are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).

119. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,” which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.” ARK. CODE ANN. § 4-88-108.

120. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

121. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

122. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

123. In the course of Defendants’ business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

124. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

125. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

126. Defendants knew or should have known that its conduct was violative.

127. Defendants owed a duty to disclose the true safety and reliability of the Products.

128. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

129. Plaintiffs suffered ascertainable loss caused by Defendants’ misrepresentations and its concealment.

130. As a direct and proximate result of Defendants’ violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants’ misconduct, Plaintiffs and the Class incurred damages.

131. As a result of Defendants’ actions, Plaintiffs seek monetary relief against Defendants.

**COUNT V
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. § 407.010, et seq.)
(brought on behalf of the Missouri Class)**

132. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

133. This claim is brought on behalf of Missouri residents.

134. Defendants and Plaintiffs are “persons” within the meaning of MO. REV. STAT. § 407.010(5).

135. Defendants engaged in “trade” or “commerce” in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

136. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” MO. REV. STAT. § 407.020.

137. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

138. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

139. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

140. In the course of Defendants’ business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

141. Defendants’ unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

142. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

143. Defendants knew or should have known that its conduct was violative.

144. Defendants owed a duty to disclose the true safety and reliability of the Products.

145. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of its bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

146. Plaintiffs suffered ascertainable loss caused by Defendants’ misrepresentations and its concealment.

147. As a direct and proximate result of Defendants’ violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants’ misconduct, Plaintiffs and the Class incurred damages.

148. Defendants are liable to Plaintiffs for damages in amounts to be proven at trial, including attorneys’ fees, costs, and punitive damages, as well as injunctive relief enjoining Defendants’ unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

**COUNT VI
NEGLIGENCE
(brought on behalf of the Classes)**

149. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

150. Defendants owed a duty to Plaintiffs and the Classes to exercise reasonable care in the sale, quality control and marketing of the Products.

151. Defendants breached its duty to Plaintiffs and the Classes by marketing, selling, advertising and warranting defective Products (which contain or have a risk of containing Salmonella or other infectious diseases) to Plaintiffs and the Classes, and by failing to take those steps necessary to discontinue selling the Products to consumers.

152. Defendants were aware, or reasonably should have been aware, that the Products were harmful and did not perform their intended use.

153. When they purchased the Products, Plaintiffs and the Classes were unaware of their unsafe and dangerous nature.

154. As a direct and proximate cause of the foregoing, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss described fully above.

155. Plaintiffs and the Classes are entitled to damages in an amount to be determined at trial.

**COUNT VII
BREACH OF IMPLIED WARRANTY
(brought on behalf of the Classes)**

156. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

157. Defendants are a merchant engaging in the sale of goods to Plaintiffs and the Class members.

158. There was a sale of goods from Defendants to Plaintiffs and the Class members.

159. As set forth herein, Defendants marketed and sold the Products, and prior to the time the Products were purchased by Plaintiffs and the Classes, Defendants impliedly warranted

to them that they were of merchantable quality, fit for their ordinary use, and conformed to the promises and affirmations of fact made on the Products' packages and labels that they did not.

160. Plaintiffs and the Classes relied on Defendants' promises and affirmations of fact.

161. Contrary to these representations and warranties, the Products were not fit for their ordinary use and did not conform to Defendants' representations.

162. Defendants breached the implied warranties by selling Products that risk serious harm and Defendants were or should have been on notice of this breach.

163. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Classes have suffered actual damages in that they have purchased the Products that are worth less than the price they paid and that they would not have purchased at all had they known the harms and risks that the Products contained.

**COUNT VIII
UNJUST ENRICHMENT
(brought on behalf of the Classes)**

164. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

165. Substantial benefits have been conferred on Defendants by Plaintiffs and the Classes through the purchase of the Products. Defendants knowingly and willingly accepted and enjoyed these benefits.

166. Defendants either knew or should have known that the payments rendered by Plaintiffs and the Classes were given and received with the expectation that the Products would have the qualities, characteristics, ingredients, and suitability for use represented and warranted by Defendants. As such, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances.

167. Defendants’ acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendants to retain the benefits without payment of the value to Plaintiffs and the Classes.

168. Plaintiffs and the Classes are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

**COUNT IX
FRAUDULENT CONCEALMENT AND FAILURE TO DISCLOSE
(brought on behalf of the Classes)**

169. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

170. During the Class period, Defendants knowingly, fraudulently, and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of its Products.

171. Defendants have a duty to disclose to Plaintiffs and the Classes the actual quality of its Products which contain or have a risk of containing Salmonella or other infectious diseases.

172. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiffs and the Classes have been damaged, as alleged herein.

173. Plaintiffs and the Classes reasonably and actually relied upon Defendants’ representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendants’ wrongful conduct.

174. Based on such reliance, Plaintiffs and the Classes purchased Products and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

175. Had Plaintiffs and the Classes been aware of the true nature of Defendants’ business practices, they would not have purchased the Products.

176. Defendants’ acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiffs and the Classes to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendants.

**COUNT X
DECLARATORY AND INJUNCTIVE RELIEF
(brought on behalf of the Classes)**

177. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

178. Plaintiffs and the Classes are entitled to declaratory relief establishing that Defendants engaged in unfair and deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for a judgment to be entered upon Defendants as follows:

- A. Appointing Plaintiffs as representatives of the Classes and the undersigned counsel as Class counsel;
- B. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;
- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class Members are entitled;
- E. For injunctive relief, compelling Defendants to cease its unlawful actions and to account to Plaintiffs for their unjust enrichment;

F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and

G. For such other and further relief this Court deems just and appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: March 4, 2022

Respectfully submitted,

NEAL & HARWELL, PLC

s/ Charles F. Barrett

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U.S. District Court
Western District of Tennessee (Memphis)
CIVIL DOCKET FOR CASE #: 2:22-cv-02138-SHL-tmp

Whitney v. Family Dollar Inc.
Assigned to: Judge Sheryl H. Lipman
Referred to: Chief Magistrate Judge Tu M. Pham
Cause: 42:1396 - Tort Negligence

Date Filed: 03/04/2022
Jury Demand: None
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Plaintiff**Jerome Whitney**

represented by **Charles Foose Barrett**
NEAL & HARWELL, PLC
1201 Demonbreun St.
Ste 1000
Nashville, TN 37203
615-238-3647
Email: cbarrett@nealharwell.com
ATTORNEY TO BE NOTICED

V.

Defendant**Family Dollar Inc.**

Date Filed	#	Docket Text
03/04/2022	1	COMPLAINT <i>Class Action Complaint</i> against All Plaintiffs (Filing fee \$ 402 receipt number ATNWDC-3824514), filed by All Plaintiffs. (Attachments: # 1 Civil Cover Sheet Cover Sheet)(Barrett, Charles) (Entered: 03/04/2022)
03/04/2022	2	Judge Sheryl H. Lipman and Chief Magistrate Judge Tu M. Pham added. (agj) (Entered: 03/07/2022)
03/04/2022	3	NOTICE TO COMPLY WITH PLAN FOR ALTERNATE DISPUTE RESOLUTION (ADR): Pursuant to Section to 2.1 of the ADR Plan, all civil cases filed on or after Sept. 1, 2014, shall be referred automatically for ADR. For compliance requirements, refer to the ADR Plan at: http://www.tnwd.uscourts.gov/pdf/content/ADRPlan.pdf (agj) (Entered: 03/07/2022)
03/04/2022	4	NOTICE OF CASE TRACKING ASSIGNMENT PURSUANT TO LOCAL RULE 16.2: Pursuant to Local Rule 16.2, this case has been assigned to the Standard track. http://www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf (agj) (Entered: 03/07/2022)
03/04/2022	5	NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE Pursuant to 28 U.S.C. 636(c), Fed.R.Civ.P.73, and Local Rule 72.1, this Court has designated the Magistrate Judges of this District to conduct trials and otherwise dispose of any civil case that is filed in this Court. Your decision to consent, or not consent, to the referral of your case to a United States Magistrate Judge for trial and entry of a final judgment must be entirely voluntary. The judge or magistrate judge to whom the case has been assigned will not be informed of your decision unless all parties agree that the case may be referred to a magistrate judge for these specific purposes. A less than unanimous decision will not be communicated by this office to either the judge or magistrate judge. The consent form is available on the courts website at https://www.tnwd.uscourts.gov/forms-and-applications.php (agj) (Entered: 03/07/2022)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA**

**MURIEL VANESSA BROWN,
DONDREA BROWN, ROSALIND
DUNNING, Individually and On Behalf of
All Others Similarly Situated,**

Plaintiffs,

vs.

**FAMILY DOLLAR, INC. and DOLLAR
TREE STORES, INC.,**

Defendants.

Case No. 2:22-cv-00105

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiffs, Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning individually and on behalf of all others similarly situated (“Plaintiffs”), by and through their undersigned attorneys, bring this Class Action Complaint against Defendants Family Dollar, Inc. and Dollar Tree Stores, Inc. (together, “Defendants”), for their negligent, reckless, and/or intentional practice of selling products that may be contaminated by virtue of a rodent infestation and other unsanitary conditions in stores throughout Alabama, Louisiana, Mississippi, Arkansas, Tennessee, and Missouri (together, the “States”). Defendant Family Dollar, Inc. is a wholly owned subsidiary of Defendant Dollar Tree Stores, Inc. Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including requiring full and accurate disclosure of the rodent infestation and other unsanitary conditions and restoring monies to the members of the proposed Classes. Plaintiffs allege the following based upon personal knowledge, investigation by counsel, and facts that are a matter of public record and, as to all other matters, upon information and belief.

I. INTRODUCTION

2. Family Dollar is a value store chain that aspires to be “[t]he best small-format value and convenience retailer, serving the needs of [its] shoppers in the neighborhoods [it] serves.”¹

3. Defendants sell groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).

4. On or about February 18, 2022, Family Dollar temporarily closed 404 of its stores in Alabama, Tennessee, Louisiana, Mississippi, Arkansas, and Missouri after the U.S. Food and

¹ <https://www.familydollar.com/about-us> (last visited 2/22/2022)

Drug Administration (FDA) announced that it had inspected, and found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202 (“Distribution Facility”) in West Memphis, Arkansas (the “Rodent Infestation”).²

5. On February 18, 2022, the FDA issued an “FDA Alert” concerning the Rodent Infestation and provided initial safety recommendations and warnings.³

6. On February 18, 2022, Family Dollar announced it would initiate a voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

7. Defendants have been operating the Distribution Facility since 1994 which is depicted here:⁴



8. Between January 11, 2022 and February 11, 2022, five FDA investigators inspected

² <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

³ [FDA Alerts the Public to Potentially Contaminated Products from Family Dollar Stores in Six States | FDA](#) (last visited 3/3/2022)

⁴ [Family Dollar Distribution Center at West Memphis, AR](#) (last visited 3/3/2022)

the Distribution Facility approximately 15 times. An official FDA inspection report concerning its findings was finalized on February 11, 2022 (FDA 483 Inspection Report No. 3004286071) (the “FDA Report”).⁵

9. The Rodent Infestation—that was never disclosed to Family Dollar consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

10. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

11. Defendants have had actual knowledge of the Rodent Infestation since at least March 29, 2021. They knew or should have known of the Rodent Infestation from far earlier due to their obligation to inspect their facilities, including distribution facilities and/or centers, for safety and health-related issues. Nevertheless, Defendants chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

12. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of infestation,”** the agency said.⁶

⁵ Available at, <https://www.fda.gov/media/156334/download> (last visited 3/2/2022).

⁶ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

13. According to the FDA Report, rodent urine (and odor), nesting materials, rodent carcasses, and excreta was found on or near pallets or food at the Distribution Facility.

14. In a FORM 8K submitted to the Securities and Exchange Commission (SEC), dated March 2, 2022, Defendant Dollar Tree Inc. admitted “The circumstances leading to the Recall (and/or the Recall itself) has had and may have other negative impacts, which could include reputational damage, lost sales, further or additional governmental investigations and/or enforcement actions, private litigation (see below) and/or further diversion of management attention, which could have a material adverse effect, individually or collectively, on the Company’s business, results of operations and/or financial condition.”⁷

15. According to WMUR9 News, New Hampshire, “The distribution center in West Memphis was not the only Family Dollar to have rodent infestations in recent years. Family Dollar stores in Las Vegas, Sacramento, Richmond, Miami Gardens, Pittsburgh, Canton, New York and other areas had to close down over the past few years because of rodent infestations ... Some experts say these issues point to a larger pattern of neglect at Dollar Tree, Family Dollar's parent company, which acquired the chain in 2015 and has a long record of worker safety violations.”⁸

16. Despite its knowledge, Defendants omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiffs and members of the Classes prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. By knowingly failing to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiffs and the Classes purchased Products of a lesser standard, grade and quality represented that do not meet ordinary

⁷ [Inline XBRL Viewer \(sec.gov\)](#) (last visited 3/3/2022).

⁸ [400 Family Dollar stores closed after a rat infestation. It's part of a troubling pattern \(wmur.com\)](#) (last visited 3/7/2022)

and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

17. Plaintiffs bring this action on behalf of themselves and all those similarly situated (the “Classes,” “Class Members,”) for Defendants’ deceptive trade practices in violation of the consumer protection laws of the States. Plaintiffs seek damages, attorney fees and costs, punitive damages, and the replacement of, or refund of money paid to purchase the Products, and any other legal relief available for their claims. Should Plaintiffs demanded legal relief be unavailable or prove insufficient, Plaintiffs seeks appropriate equitable and injunctive relief in the alternative pursuant to Fed. R. Civ. P. 8(a)(3).

II. PARTIES

18. Named Plaintiffs Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning, and at all times relevant hereto have been, citizens of Sweetwater, Alabama, in Marengo County. Plaintiffs Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning purchased medicines and food items, from January,2017 through February,2022 from a Family Dollar located in Linden, Alabama.

19. During the time Plaintiffs Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning purchased and used the Products, and due to the false and misleading claims and omissions by Defendants, Plaintiffs believed the products he purchased were safe. Plaintiffs were unaware the Products contained, or had a risk of containing, Salmonella or other infectious diseases. Plaintiff s would not have purchased the Products if the Rodent Infestation and the related potential for contamination with Salmonella or other infectious disease had been fully and accurately disclosed and represented to them.

20. Defendant Family Dollar, Inc. is incorporated under the laws of the state of North Carolina with its principal place of business located at 500 Volve Pkwy, Chesapeake, Virginia.

21. Defendant Dollar Tree Stores, Inc, is a Virginia corporation with its principal place of business at the same location as Family Dollar.

22. Defendant Family Dollar is a wholly owned subsidiary of Defendant Dollar Tree.

23. Defendants are responsible for the manufacturing, marketing, distribution, sale, and labeling of the Products to millions of consumers throughout the States, including in this District. Defendants created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Products.

24. The marketing and advertising relied on by Plaintiffs Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning and the Classes was disseminated throughout the States, including this District, by Defendants and their agents through advertising, packaging, and labeling that contained the omissions alleged herein. The marketing and advertising were designed to encourage consumers, and reasonably misled consumers, into purchasing the Products throughout the States, including this District.

III. JURISDICTION AND VENUE

25. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d) for the following reasons: (a) some of the class members are citizens of a state that is different from the citizenship of the Defendants; (b) the putative class size is greater than 100 persons; (c) the amount in controversy in the aggregate for the putative class exceeds the sum of \$5 million, exclusive of interest and costs; and (d) the primary defendants do not include States, State officials, and/or other governmental entities against whom the district court may be foreclosed from ordering relief.

26. This Court has original jurisdiction over this action under CAFA, 28 U.S.C. §1332(d), because, upon information and belief, no other class action has been filed asserting the same or similar factual allegations against the defendants on behalf of the same or other persons during the 3-year period preceding the filing of this class action.

General Personal Jurisdiction

27. This Court has personal jurisdiction over Named Plaintiffs Muriel Vanessa Brown, Dondrea Brown, Rosalind Dunning who are residents of the State of Alabama.

28. This Court has both general and specific personal jurisdiction over the Defendants.

29. This Court has general personal jurisdiction over Defendants because Defendants operate in Alabama and because Defendants advertise, market, and sell the Products in Alabama, accepts money from purchasers located in Alabama, has engaged in systematic and continuous business activities in Alabama, transacted substantial business with Alabama entities and residents, and generally has sufficient minimum contacts in Alabama to satisfy the Alabama Long Arm Statute.

Specific Personal Jurisdiction

30. This Court has specific personal jurisdiction over Defendants arising from Defendants' advertising, marketing, and sale of the Products in Alabama, which at all relevant times, included or risked including dangerous substances, all of which have caused harm in Alabama, as a result of the specific business activities complained of herein, either directly or through Defendants' agents.

31. This Court has specific personal jurisdiction over Defendants because the advertising, marketing, and sale of the Products, which included or risked including dangerous substances, occurred in parts of Alabama that are located in this District.

32. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2), because Plaintiffs reside in this District and ingested and handled the Products at issue within the confines of this District.

33. Venue is proper in this District under 28 U.S.C. §1391(b)(1) & (2) and 28 USC §1391(d) because Defendants regularly conduct substantial business within this District

34. Venue is also proper in this District under 28 U.S.C. §1391(b)(2) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in this District, namely Defendants' advertisement, sale, and marketing of the Products, which occurred in this District and caused financial harm to members of the putative class that reside in this District.

IV. FACTUAL BACKGROUND

35. On February 18, 2022, the U.S. Food and Drug Administration issued the following press release based on its February 11, 2022 Report:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company's distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

"Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe," said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. "No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families' health at risk. We will continue to work to protect consumers."

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some

examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team's arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company's internal records also indicated the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁹

36. On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of "certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas

⁹ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202.”¹⁰

37. Family Dollar acknowledges the health and safety concerns arising from the Rodent Infestation:¹¹

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

38. Defendants’ voluntary recall is limited in scope to certain FDA-regulated products:¹²

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

39. Defendants’ recall is further defective and contradicts the FDA Alert because while the FDA Alert advises that certain products should be discarded, the recall asks customers to return the same products to stores (which are no longer open anymore as a result of the Rodent Infestation).

¹⁰ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

¹¹ *Id.*

¹² *Id.*

V. FRAUDULENT OMISSION ALLEGATIONS

40. Absent discovery, Plaintiffs are unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Family Dollar and Dollar Tree responsible for disseminating unfair, deceptive, and misleading marketing materials regarding the Products. Defendants are necessarily in possession of all this information. Plaintiffs' claims arise out of Defendants' fraudulent omission of the Rodent Infestation.

41. Plaintiffs allege that at all relevant times, including specifically at the time of purchased the Products, Defendants knew, should have known, or were reckless in not knowing of the Rodent Infestation; Defendants had a duty disclose information material to a consumer, such as the Rodent Infestation, based upon its exclusive knowledge; but Defendants never disclosed the Rodent Infestation to Plaintiffs, Class Members, or the general public other than its halfhearted, inadequate recall of some Products.

42. Plaintiffs make the following allegations as specific as reasonably possible:

- a. **Who:** Defendants actively omitted information concerning the existence of the Rodent Infestation from Plaintiffs and Class Members at the point of sale or thereafter. Defendants' agents should have and could have disclosed the Rodent Infestation. As to Plaintiffs themselves, Defendants should have and could have disclosed the Rodent Infestation at the time they purchased the Products or thereafter.
- b. **What:** Defendants knew, should have known, or were reckless in not knowing, that the Products were exposed to Salmonella and other infectious diseases due to the Rodent Infestation. Despite their knowledge,

Defendants *failed to disclose the Rodent Infestation* at the point of sale or thereafter.

- c. **When:** Defendants' omissions began *from the start of the Class period and continue to this day*. Defendants have never taken any action to inform Plaintiffs, Class Members, or the general public of the true nature of the Rodent Infestation. As to Plaintiffs themselves, Defendants have continually omitted the true nature of the Rodent Infestation for the entirety of the relevant time period, including at the point of sale.
- d. **Where:** Defendants' omissions occurred *in every communication* it had with Plaintiffs, Class Members, and the general public. As to Plaintiffs themselves, Defendants' omissions occurred in every communication it had with Plaintiffs about the Products, including all communications that happened before, at the point of and after their purchases of the Products.
- e. **How:** Defendants *omitted and failed to disclose* the Rodent Infestation to Plaintiffs, Class Members, or the general public at the point of sale or thereafter via a press release, permanent warnings affixed to the Products, direct mail campaign, or otherwise. As to Plaintiffs themselves, Defendants omitted and failed to disclose the Rodent Infestation in any communication or point of sale document.
- f. **Why:** Due to corporate greed, Defendants omitted the Rodent Infestation to deceive Plaintiffs, Class Members, and the general public into buying Products to *maximize its profits*. Furthering its goal to maximize profits, Defendants failed to notify Class Members of the true nature of the Rodent

Infestation to avoid an avalanche of requests to refund Product purchases. As to Plaintiffs themselves, Defendants omitted the Rodent Infestation to deceive them into purchasing the Products, thereby maximizing Defendants' profits and to avoid refunding the cost of the Products.

- g. Causation:** Because Family Dollar failed to disclose the Rodent Infestation, despite its extensive knowledge, Plaintiffs and Class Members purchased Products that did not or will not safely perform and as such are worth less than one that does safely perform. Had Defendants disclosed the Rodent Infestation, *Plaintiffs and other Class Members would not have purchased the Products, or certainly would have paid less for the Products.*

VI. TOLLING OF STATUTES OF LIMITATIONS

43. Defendants were and remain under a continuing duty to disclose to Plaintiffs and members of the Classes the true character, quality, and nature of the Products, that the Products were exposed to contamination by virtue of the Rodent Infestation, and that the Rodent Infestation poses a health and safety concern to consumers and diminishes the value of the Products.

44. As a result of this active concealment by Defendants, all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

A. DISCOVERY RULE TOLLING

45. Class Members had no way of knowing about the Rodent Infestation and the other information concealed by Defendants.

46. Within the time period of any applicable statutes of limitation, Plaintiffs and the Class Members could not have discovered through the exercise of reasonable diligence that Defendants were concealing the Rodent Infestation.

47. Plaintiffs and the Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendants did not report information within its knowledge to federal authorities (including the FDA), their stores or consumers, nor would a reasonable and diligent investigation have disclosed that Defendants had information in its possession about the existence and dangerousness of the Rodent Infestation and opted to conceal that information until shortly before this action was filed.

48. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. FRAUDULENT CONCEALMENT TOLLING

49. All applicable statutes of limitation have also been tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

50. By failing to disclose the Rodent Infestation of which it was aware, Defendants disregarded the safety of consumers who purchased the Products.

C. ESTOPPEL

51. Defendants were under a continuous duty to disclose to Plaintiffs and the Class Members the true character, quality, and nature of the Rodent Infestation and the contamination risks it posed to Products.

52. Defendants knowingly, affirmatively, and actively concealed the Rodent Infestation and, thereby, the true nature, quality, and character of the Products from consumers, as well as the fact that the Rodent Infestation systematically devalued the Products and undermined consumer safety.

53. Based on the foregoing, Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATION

54. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes:

Alabama Class

All persons residing in the state of Alabama who, during the maximum period of time permitted by law, purchased Products from Defendants.

Tennessee Class

All persons residing in the state of Tennessee who, during the maximum period of time permitted by law, purchased Products from Defendants.

Louisiana Class

All persons residing in the state of Louisiana who, during the maximum period of time permitted by law, purchased Products from Defendants.

Mississippi Class

All persons residing in the state of Mississippi who, during the maximum period of time permitted by law, purchased Products from Defendants.

Missouri Class

All persons residing in the state of Missouri who, during the maximum period of time permitted by law, purchased Products from Defendants.

Arkansas Class

All persons residing in the state of Arkansas who, during the maximum period of time permitted by law, purchased Products from Defendants.

(Collectively referred to herein as the “Classes”).

55. Excluded from the Classes are Defendants, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendants, Class Counsel and their employees, and the judicial officers and their immediate family members and associates court staff assigned to this case.

56. Numerosity—Fed. R. Civ. P. 23(a)(1). The Classes are comprised of thousands of

individuals who were Defendants' customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class Members is presently unknown. The identity of the Class Members is ascertainable and can be determined based on Defendants' records.

57. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3). The questions of law and fact common to the Classes predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendants owed a duty of care;
- (b) whether Defendants knew or should have known that the Rodent Infestation existed;
- (c) whether Defendants knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendants failed to disclose the Rodent Infestation;
- (e) whether Defendants' representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendants had knowledge that those representations were false, deceptive, and misleading;
- (h) whether Defendants continue to disseminate those representations despite knowledge that the representations were false, deceptive, and misleading;
- (i) whether Defendants' omissions or otherwise failing to disclose the Rodent Infestation is material to a reasonable consumer;

- (j) whether Defendants' marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendants violated State consumer protection laws;
- (l) whether Defendants' decision to not withdraw food products not under the jurisdiction of FDA was false, misleading, or is otherwise actionable;
- (m) whether Defendants established and enforced proper hazard analysis critical control points ("HACCP"), good manufacturing practices ("GMP"), quality assurance, and/or quality control practices sufficient to identify and prevent pest and rodent infestations;
- (n) whether Defendants followed industry custom and practice to prevent pest and rodent infestations; and
- (o) whether Plaintiffs and the members of the Classes are entitled to declaratory and injunctive relief.

58. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

59. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of those of the members of the Classes in that they are based on the same underlying facts, events, and circumstances relating to Defendants' conduct.

60. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs will fairly and adequately represent and protect the interests of the Classes, have no interest incompatible with the interests

of the Classes, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

61. Predominance—Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes.

62. Superiority—Fed. R. Civ. P. 23(b)(3). A class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members’ claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiffs and members of the Classes have suffered irreparable harm as a result of Defendants’ bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class Members’ claims, no Class Member could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Classes would have no reasonable remedy and would continue to suffer losses, as Defendants continue to engage in the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and Defendants would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

63. Plaintiffs and the Classes do not anticipate any difficulty in the management of this litigation.

VIII. CAUSES OF ACTION

COUNT I VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (LA. REV. STAT. § 51:1401, et seq.) (brought on behalf of the Louisiana Class)

64. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

65. This claim is brought on behalf of Louisiana residents.

66. Defendants and Plaintiffs are “persons” within the meaning of the LA. REV. STAT. § 51:1402(8).

67. Plaintiffs are “consumer[s]” within the meaning of LA. REV. STAT. § 51:1402(1).

68. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” LA. REV. STAT. § 51:1405(A).

69. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

70. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

71. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

72. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

73. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

74. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

75. Defendants knew or should have known that its conduct violated the Louisiana CPL.

76. Defendants owed a duty to disclose the true safety and reliability of the Products.

77. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

78. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

79. As a direct and proximate result of Defendants' violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

80. Pursuant to LA. REV. STAT. § 51:1409, Plaintiffs seek to recover actual damages in an amount to be determined at trial; treble damages for Defendants' knowing violations of the Louisiana CPL; an order enjoining Defendants' unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

COUNT II
VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE. ANN. § 75-24-1, et seq.)
(brought on behalf of the Mississippi Class)

81. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

82. This claim is brought on behalf of Mississippi residents.

83. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.”

84. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

85. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of

any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

86. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

87. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

88. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

89. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

90. Defendants knew or should have known that its conduct was violative.

91. Defendants owed a duty to disclose the true safety and reliability of the Products.

92. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

93. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

94. As a direct and proximate result of Defendants' violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

95. Plaintiffs seek actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

COUNT III
VIOLATION OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, et seq.)
(brought on behalf of the Arkansas Class)

96. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

97. This claim is brought on behalf of Arkansas residents.

98. Defendants and Plaintiffs are “persons” within the meaning of the Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), ARK. CODE ANN. § 4-88-102(5).

99. The Products are “goods” within the meaning of ARK. CODE ANN. § 4-88-102(4).

100. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,” which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.” ARK. CODE ANN. § 4-88-108.

101. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

102. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

103. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

104. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

105. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

106. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

107. Defendants knew or should have known that its conduct was violative.

108. Defendants owed a duty to disclose the true safety and reliability of the Products.

109. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

110. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

111. As a direct and proximate result of Defendants' violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

112. As a result of Defendants’ actions, Plaintiffs seek monetary relief against Defendants.

COUNT IV
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. § 407.010, et seq.)
(brought on behalf of the Missouri Class)

113. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

114. This claim is brought on behalf of Missouri residents.

115. Defendants and Plaintiffs are “persons” within the meaning of MO. REV. STAT. § 407.010(5).

116. Defendants engaged in “trade” or “commerce” in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

117. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” MO. REV. STAT. § 407.020.

118. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

119. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

120. By failing to disclose and by actively concealing the defects in the Products, Defendants engaged in unfair and deceptive business practices.

121. In the course of Defendants' business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

122. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

123. Defendants intentionally and knowingly misrepresented material facts regarding the Products.

124. Defendants knew or should have known that its conduct was violative.

125. Defendants owed a duty to disclose the true safety and reliability of the Products.

126. Because Defendants fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of its bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

127. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

128. As a direct and proximate result of Defendants' violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendants' misconduct, Plaintiffs and the Class incurred damages.

129. Defendants are liable to Plaintiffs for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendants' unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

COUNT V
VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN § 47-18-101, et seq.)
(brought on behalf of the Tennessee Class)

130. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

131. This claim is brought on behalf of Tennessee residents.

132. Plaintiffs are "natural persons" and "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(19).

133. Defendants are a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2).

134. Defendants' conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

135. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "Representing that goods or services have . . . characteristics, [or] . . . benefits . . . that they do not have . . .;" "Representing those goods or services are of a particular standard, quality or grade . . . if they are of another;" and "Advertising goods or services with intent not to sell them as advertised." TENN. CODE ANN. § 47-18-104.

136. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendants engaged in deceptive

business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable false, misleading, or deceptive practices.

**COUNT VI
NEGLIGENCE
(brought on behalf of the Classes)**

137. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

138. Defendants owed a duty to Plaintiffs and the Classes to exercise reasonable care in the sale, quality control and marketing of the Products.

139. Defendants breached its duty to Plaintiffs and the Classes by marketing, selling, advertising and warranting defective Products (which contain or have a risk of containing Salmonella or other infectious diseases) to Plaintiffs and the Classes, and by failing to take those steps necessary to discontinue selling the Products to consumers.

140. Defendants were aware, or reasonably should have been aware, that the Products were harmful and did not perform their intended use.

141. When they purchased the Products, Plaintiffs and the Classes were unaware of their unsafe and dangerous nature.

142. As a direct and proximate cause of the foregoing, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss described fully above.

143. Plaintiffs and the Classes are entitled to damages in an amount to be determined at trial.

**COUNT VII
BREACH OF IMPLIED WARRANTY
(brought on behalf of the Classes)**

144. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

145. Defendants are a merchant engaging in the sale of goods to Plaintiffs and the Class members.

146. There was a sale of goods from Defendants to Plaintiffs and the Class members.

147. As set forth herein, Defendants marketed and sold the Products, and prior to the time the Products were purchased by Plaintiffs and the Classes, Defendants impliedly warranted to them that they were of merchantable quality, fit for their ordinary use, and conformed to the promises and affirmations of fact made on the Products' packages and labels that they did not.

148. Plaintiffs and the Classes relied on Defendants' promises and affirmations of fact.

149. Contrary to these representations and warranties, the Products were not fit for their ordinary use and did not conform to Defendants' representations.

150. Defendants breached the implied warranties by selling Products that risk serious harm and Defendants were or should have been on notice of this breach.

151. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Classes have suffered actual damages in that they have purchased the Products that are worth less than the price they paid and that they would not have purchased at all had they known the harms and risks that the Products contained.

**COUNT VIII
UNJUST ENRICHMENT
(brought on behalf of the Classes)**

152. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

153. Substantial benefits have been conferred on Defendants by Plaintiffs and the Classes through the purchase of the Products. Defendants knowingly and willingly accepted and enjoyed these benefits.

154. Defendants either knew or should have known that the payments rendered by Plaintiffs and the Classes were given and received with the expectation that the Products would have the qualities, characteristics, ingredients, and suitability for use represented and warranted by Defendants. As such, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances.

155. Defendants' acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendants to retain the benefits without payment of the value to Plaintiffs and the Classes.

156. Plaintiffs and the Classes are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

COUNT IX
FRAUDULENT CONCEALMENT AND FAILURE TO DISCLOSE
(brought on behalf of the Classes)

157. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

158. During the Class period, Defendants knowingly, fraudulently, and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of its Products.

159. Defendants have a duty to disclose to Plaintiffs and the Classes the actual quality of its Products which contain or have a risk of containing Salmonella or other infectious diseases.

160. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiffs and the Classes have been damaged, as alleged herein.

161. Plaintiffs and the Classes reasonably and actually relied upon Defendants' representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendants' wrongful conduct.

162. Based on such reliance, Plaintiffs and the Classes purchased Products and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

163. Had Plaintiffs and the Classes been aware of the true nature of Defendants' business practices, they would not have purchased the Products.

164. Defendants' acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiffs and the Classes to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendants.

**COUNT X
DECLARATORY AND INJUNCTIVE RELIEF
(brought on behalf of the Classes)**

165. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

166. Plaintiffs and the Classes are entitled to declaratory relief establishing that Defendants engaged in unfair and deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for a judgment to be entered upon Defendants as follows:

A. Appointing Plaintiffs as representatives of the Classes and the undersigned counsel as Class counsel;

B. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;

- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class Members are entitled;
- E. For injunctive relief, compelling Defendants to cease its unlawful actions and to account to Plaintiffs for their unjust enrichment;
- F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- G. For such other and further relief this Court deems just and appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: March 7, 2022

Respectfully submitted,

/s/ Steven A. Martino
STEVEN A. MARTINO (MAR057)
/s/ Tiffany N. Ray
TIFFANY N. RAY (RAY037)
/s/ Joseph S. Dennis
JOSEPH S. DENNIS (DEN 034)
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CERTIFICATE OF SERVICE

I hereby certify that on this the 7th day of March, 2022, I filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification to all counsel of record.

/s/ Steven A. Martino

U.S. District Court
SOUTHERN DISTRICT OF ALABAMA (Selma)
CIVIL DOCKET FOR CASE #: 2:22-cv-00105-TFM-MU

Brown et al v. Family Dollar, Inc. et al
Assigned to: District Judge Terry F. Moorer
Referred to: Magistrate Judge P. Bradley Murray
Cause: 28:1332 Diversity Action

Date Filed: 03/07/2022
Jury Demand: Plaintiff
Nature of Suit: 380 Personal Property: Other
Jurisdiction: Diversity

Plaintiff

Muriel Vanessa Brown

Individually and On Behalf of All Others Similarly Situated

represented by **Steven A. Martino**

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Tiffany Ray

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Plaintiff

Rosalind Dunning

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V.

Defendant

Family Dollar, Inc.

Defendant

Dollar Tree Stores, Inc.

Date Filed	#	Docket Text
03/07/2022	1	COMPLAINT <i>Brown et al. v. Family Dollar</i> against All Defendants (Filing fee \$402 receipt number AALSDC-2973289, Online Credit Card Payment), filed by All Plaintiffs. 90 day Rule 4m deadline set for 6/6/2022. (Martino, Steven) (Entered: 03/07/2022)
03/07/2022	2	NOTICE of Filing Proposed Summons by All Plaintiffs (Martino, Steven) (Entered: 03/07/2022)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

**REGINALD FIELDS AND SONJA
FIELDS, Individually and On Behalf of All
Others Similarly Situated,**

Plaintiffs,

vs.

**FAMILY DOLLAR, INC., A North
Carolina Corporation,**

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Reginald Fields and Sonja Fields (together “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, bring this Class Action Complaint against Defendant Family Dollar, Inc. (“Family Dollar”), for its negligent, reckless, and/or intentional practice of selling products that may be contaminated by virtue of a rodent infestation and other unsanitary conditions in stores throughout Louisiana, Mississippi, Arkansas, Alabama, Missouri and Tennessee (together, the “States”). Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including requiring full and accurate disclosure of the rodent infestation and other unsanitary conditions and restoring monies to the members of the proposed Classes. Plaintiffs allege the following based upon personal knowledge, investigation by counsel, and facts that are a matter of public record and, as to all other matters, upon information and belief.

I. INTRODUCTION

1. Family Dollar is a value store chain that aspires to be “[t]he best small-format value and convenience retailer, serving the needs of [its] shoppers in the neighborhoods [it] serves.”¹
2. Family Dollar sells groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).
3. On or about February 18, 2022, Family Dollar temporarily closed 404 of its stores in Louisiana, Mississippi, Arkansas, Alabama, Missouri and Tennessee after the U.S. Food and Drug Administration (FDA) announced that it had found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202 in West Memphis, Arkansas (the “Rodent

¹ <https://www.familydollar.com/about-us> (last visited 2/22/2022)

Infestation”).²

4. The Rodent Infestation—that was never disclosed to Family Dollar consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

5. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

6. Family Dollar has had actual knowledge of the Rodent Infestation since at least March 29, 2021. Family Dollar knew or should have known of the Rodent Infestation from far earlier due to its obligation to inspect its facilities, including distribution centers, for safety and health-related issues. Nevertheless, Defendant chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

7. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of infestation,”** the agency said.³

8. It was only on February 18, 2022, that Family Dollar announced it would initiate a

² <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

³ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

9. Despite its knowledge, Defendant omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiffs and members of the Classes prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. By knowingly failing to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiffs and the Classes purchased Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

10. Plaintiffs bring this action on behalf of themselves and all those similarly situated (the “Classes,” “Class Members,”) for Defendant’s deceptive trade practices in violation of the consumer protection laws of the States. Plaintiffs seek damages, attorney fees and costs, punitive damages, and the replacement of, or refund of money paid to purchase the Products, and any other legal relief available for their claims. Should Plaintiffs’ demanded legal relief be unavailable or prove insufficient, Plaintiffs seeks appropriate equitable and injunctive relief in the alternative pursuant to Fed. R. Civ. P. 8(a)(3).

II. PARTIES

11. Plaintiffs Reginald Fields and Sonja Fields are, and at all times relevant hereto have been, citizens of Monroe, Louisiana, located in Ouachita Parish. Plaintiffs purchased various items, on or about February 2022, from a Family Dollar located in Monroe, Louisiana.

12. During the time Plaintiffs purchased and used the Products, and due to the false and

misleading claims and omissions by Defendant, Plaintiffs believed the products they purchased were safe. Plaintiffs were unaware the Products contained, or had a risk of containing, Salmonella or other infectious diseases. Plaintiffs would not have purchased the Products if the Rodent Infestation and the related potential for contamination with Salmonella or other infectious disease had been fully and accurately disclosed and represented.

13. Defendant Family Dollar is incorporated under the laws of the state of North Carolina with its principal place of business located at 500 Volve Pkwy, Chesapeake, Virginia. Family Dollar is a brand under its parent company, Dollar Tree, Inc, a Virginia corporation with its principal place of business at the same location as Family Dollar. Defendant is responsible for the manufacturing, marketing, distribution, sale, and labeling of the Products to millions of consumers throughout the States, including in this District. Defendant created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Products.

14. The marketing and advertising relied on by Plaintiffs was disseminated throughout the States, including this District, by Defendant and its agents through advertising, packaging, and labeling that contained the omissions alleged herein. The marketing and advertising were designed to encourage consumers, and reasonably misled consumers, into purchasing the Products throughout the States, including this District.

III. JURISDICTION AND VENUE

15. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d) for the following reasons: (a) some of the class members are citizens of a state that is different from the citizenship of the Defendant; (b) the putative class size is greater than 100 persons; (c) the amount in controversy in

the aggregate for the putative class exceeds the sum of \$5 million, exclusive of interest and costs; and (d) the primary defendants do not include States, State officials, and/or other governmental entities against whom the district court may be foreclosed from ordering relief.

16. This Court has original jurisdiction over this action under CAFA, 28 U.S.C. §1332(d), because, upon information and belief, no other class action has been filed asserting the same or similar factual allegations against the defendants on behalf of the same or other persons during the 3-year period preceding the filing of this class action.

General Personal Jurisdiction

17. This Court has personal jurisdiction over Plaintiffs, who are residents of the State of Louisiana.

18. This Court has both general and specific personal jurisdiction over the Defendant, Family Dollar.

19. This Court has general personal jurisdiction over Defendant Family Dollar because Defendant operates in Louisiana and because Defendant advertises, markets, and sells the Products in Louisiana, accepts money from purchasers located in Louisiana, has engaged in systematic and continuous business activities in Louisiana, transacted substantial business with Louisiana entities and residents, and generally has sufficient minimum contacts in Louisiana to satisfy the Louisiana Long Arm Statute.

Specific Personal Jurisdiction

20. This Court has specific personal jurisdiction over Defendant arising from Defendant's advertising, marketing, and sale of the Products in Louisiana, which at all relevant times, included or risked including dangerous substances, all of which have caused harm in

Louisiana as a result of the specific business activities complained of herein, either directly or through Defendant's agents.

21. This Court has specific personal jurisdiction over Defendant because the advertising, marketing, and sale of the Products, which included or risked including dangerous substances, occurred in parts of Louisiana that are located in this District.

22. Venue is proper in Louisiana pursuant to 28 U.S.C. §1391(b)(2), because Plaintiffs reside in this District and ingested and handled the Products at issue within the confines of this District.

23. Venue is proper in Louisiana under 28 U.S.C. §1391(b)(1) & (2) and 28 USC §1391(d) because Defendant regularly conducts substantial business within this District

24. Venue is also proper in Louisiana under 28 U.S.C. §1391(b)(2) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in this District, namely Defendant's advertisement, sale, and marketing of the Products, which occurred in this District and caused financial harm to members of the putative class that reside in this District.

IV. FACTUAL BACKGROUND

25. On February 18, 2022, the U.S. Food and Drug Administration issued the following press release:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company's distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

“Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe,” said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. “No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families’ health at risk. We will continue to work to protect consumers.”

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team’s arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company’s internal records also indicated the collection of

more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁴

26. On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of “certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202.”⁵

27. Family Dollar acknowledges the health and safety concerns arising from the Rodent Infestation:⁶

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

28. Defendant’s voluntary recall is limited in scope to certain FDA-regulated products:⁷

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

⁴ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

⁵ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

⁶ *Id.*

⁷ *Id.*

V. FRAUDULENT OMISSION ALLEGATIONS

29. Absent discovery, Plaintiffs are unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Family Dollar responsible for disseminating unfair, deceptive, and misleading marketing materials regarding the Products. Defendant is necessarily in possession of all this information. Plaintiffs' claims arise out of Defendant's fraudulent omission of the Rodent Infestation.

30. Plaintiffs allege that at all relevant times, including specifically at the time they and Class Members purchased the Products, Defendant knew, should have known, or was reckless in not knowing of the Rodent Infestation; Defendant had a duty disclose information material to a consumer, such as the Rodent Infestation, based upon its exclusive knowledge; but Defendant never disclosed the Rodent Infestation to Plaintiffs, Class Members, or the general public other than its halfhearted, inadequate recall of some Products.

31. Plaintiffs make the following allegations as specific as reasonably possible:

- a. **Who:** *Family Dollar* actively omitted information concerning the existence of the Rodent Infestation from Plaintiffs and Class Members at the point of sale or thereafter. Defendant's agents should have and could have disclosed the Rodent Infestation. As to Plaintiffs themselves, Defendant should have and could have disclosed the Rodent Infestation at the time they purchased the Products or thereafter.
- b. **What:** Family Dollar knew, should have known, or was reckless in not knowing, that the Products were exposed to Salmonella and other infectious diseases due to the Rodent Infestation. Despite its knowledge, Family

Dollar *failed to disclose the Rodent Infestation* at the point of sale or thereafter.

- c. **When:** Family Dollar's omissions began *from the start of the Class period and continue to this day*. Family Dollar has never taken any action to inform Plaintiffs, Class Members, or the general public of the true nature of the Rodent Infestation. As to Plaintiffs themselves, Defendant has continually omitted the true nature of the Rodent Infestation for the entirety of the relevant time period, including at the point of sale.
- d. **Where:** Family Dollar's omissions occurred *in every communication* it had with Plaintiffs, Class Members, and the general public. As to Plaintiffs themselves, Defendant's omissions occurred in every communication it had with Plaintiffs about the Products, including all communications that happened before, at the point of and after their purchases of the Products.
- e. **How:** Defendant *omitted and failed to disclose* the Rodent Infestation to Plaintiffs, Class Members, or the general public at the point of sale or thereafter via a press release, permanent warnings affixed to the Products, direct mail campaign, or otherwise. As to Plaintiffs themselves, Defendant omitted and failed to disclose the Rodent Infestation in any communication or point of sale document.
- f. **Why:** Due to corporate greed, Family Dollar omitted the Rodent Infestation to deceive Plaintiffs, Class Members, and the general public into buying Products to *maximize its profits*. Furthering its goal to maximize profits, Family Dollar failed to notify Class Members of the true nature of the

Rodent Infestation to avoid an avalanche of requests to refund Product purchases. As to Plaintiffs themselves, Family Dollar omitted the Rodent Infestation to deceive them into purchasing the Products, thereby maximizing Defendant's profits and to avoid refunding the cost of the Products.

- g. Causation:** Because Family Dollar failed to disclose the Rodent Infestation, despite its extensive knowledge, Plaintiffs and Class Members purchased Products that did not or will not safely perform and as such are worth less than one that does safely perform. Had Defendant disclosed the Rodent Infestation, *Plaintiffs and other Class Members would not have purchased the Products, or certainly would have paid less for the Products.*

VI. TOLLING OF STATUTES OF LIMITATIONS

32. Defendant was and remains under a continuing duty to disclose to Plaintiffs and members of the Classes the true character, quality, and nature of the Products, that the Products were exposed to contamination by virtue of the Rodent Infestation, and that the Rodent Infestation poses a health and safety concern to consumers and diminishes the value of the Products.

33. As a result of this active concealment by Defendant, all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

A. DISCOVERY RULE TOLLING

34. Class Members had no way of knowing about the Rodent Infestation and the other information concealed by Defendant.

35. Within the time period of any applicable statutes of limitation, Plaintiffs and the Class Members could not have discovered through the exercise of reasonable diligence that Defendant was concealing the Rodent Infestation.

36. Plaintiffs and the Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendant did not report information within its knowledge to federal authorities (including the FDA), their stores or consumers, nor would a reasonable and diligent investigation have disclosed that Defendant had information in its possession about the existence and dangerousness of the Rodent Infestation and opted to conceal that information until shortly before this action was filed.

37. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. FRAUDULENT CONCEALMENT TOLLING

38. All applicable statutes of limitation have also been tolled by Defendant's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

39. By failing to disclose the Rodent Infestation of which it was aware, Family Dollar disregarded the safety of consumers who purchased the Products.

C. ESTOPPEL

40. Defendant was under a continuous duty to disclose to Plaintiffs and the Class Members the true character, quality, and nature of the Rodent Infestation and the contamination risks it posed to Products.

41. Defendant knowingly, affirmatively, and actively concealed the Rodent Infestation and, thereby, the true nature, quality, and character of the Products from consumers, as well as the

fact that the Rodent Infestation systematically devalued the Products and undermined consumer safety.

42. Based on the foregoing, Defendant is estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATION

43. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes:

Louisiana Class

All persons residing in the state of Louisiana who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Mississippi Class

All persons residing in the state of Mississippi who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Missouri Class

All persons residing in the state of Missouri who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Tennessee Class

All persons residing in the state of Tennessee who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Alabama Class

All persons residing in the state of Alabama who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Arkansas Class

All persons residing in the state of Arkansas who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

(Collectively referred to herein as the “Classes”).

44. Excluded from the Classes are Defendant, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendant, Class Counsel and their employees, and the judicial officers and their immediate family

members and associates court staff assigned to this case.

45. Numerosity—Fed. R. Civ. P. 23(a)(1). The Classes are comprised of thousands of individuals who were Defendant’s customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class Members is presently unknown. The identity of the Class Members is ascertainable and can be determined based on Defendant’s records.

46. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3). The questions of law and fact common to the Classes predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendant owed a duty of care;
- (b) whether Defendant knew or should have known that the Rodent Infestation existed;
- (c) whether Defendant knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendant failed to disclose the Rodent Infestation;
- (e) whether Defendant’s representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendant had knowledge that those representations were false, deceptive, and misleading;
- (h) whether Defendant continues to disseminate those representations despite knowledge that the representations were false, deceptive, and misleading;

- (i) whether Defendant's omissions or otherwise failing to disclose the Rodent Infestation is material to a reasonable consumer;
- (j) whether Defendant's marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendant violated State consumer protection laws;
- (l) whether Defendant's decision to not withdraw food products not under the jurisdiction of FDA was false, misleading, or is otherwise actionable;
- (m) whether Defendant established and enforced proper hazard analysis critical control points ("HACCP"), good manufacturing practices ("GMP"), quality assurance, and/or quality control practices sufficient to identify and prevent pest and rodent infestations;
- (n) whether Defendant followed industry custom and practice to prevent pest and rodent infestations; and
- (o) whether Plaintiffs and the members of the Classes are entitled to declaratory and injunctive relief.

47. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

48. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of those of the members of the Classes in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

49. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs will fairly and adequately represent and protect the interests of the Classes, have no interest incompatible with the interests of the Classes, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

50. Predominance—Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes.

51. Superiority—Fed. R. Civ. P. 23(b)(3). A class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiffs and members of the Classes have suffered irreparable harm as a result of Defendant's bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class Members' claims, no Class Member could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Classes would have no reasonable remedy and would continue to suffer losses, as Defendant continues to engage in the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and Defendant would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

52. Plaintiffs and the Classes do not anticipate any difficulty in the management of this litigation.

COUNT I
VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE. ANN. § 75-24-1, et seq.)
(brought on behalf of the Mississippi Class)

53. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

54. This claim is brought on behalf of Mississippi residents.

55. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.”

56. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

57. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of

any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

58. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

59. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

60. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

61. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

62. Defendant knew or should have known that its conduct was violative.

63. Defendant owed a duty to disclose the true safety and reliability of the Products.

64. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

65. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

66. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

67. Plaintiffs seek actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

COUNT II
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE § 8-19-1, et seq.)
(brought on behalf of the Alabama Class)

68. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

69. This claim is brought on behalf of Alabama residents.

70. Plaintiffs are “consumer[s]” within the meaning of ALA. CODE § 8-19-3(2).

71. Plaintiffs are “person[s]” within the meaning of ALA. CODE § 8-19-3(5).

72. The Products are “goods” within the meaning of ALA. CODE § 8-19-3(3).

73. Defendant engaged in “trade or commerce” within the meaning of ALA. CODE § 8-19-3(8).

74. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several specific actions to be unlawful, including: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5.

75. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices prohibited by the Alabama DTPA, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other

unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

76. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

77. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices in violation of the Alabama DTPA.

78. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risks posed by the Products. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

79. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

80. Defendant knew or should have known that its conduct violated the Alabama DTPA.

81. Defendant owed a duty to disclose the true safety and reliability of the Products.

82. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

83. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

84. As a direct and proximate result of Defendant's violations of the Alabama DTPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

85. Pursuant to ALA. CODE § 8-19-10, Plaintiffs seeks monetary relief against Defendant.

86. Plaintiffs also seek an order enjoining Defendant's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under ALA. CODE § 8-19-1, et seq.

COUNT III
VIOLATION OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, et seq.)
(brought on behalf of the Arkansas Class)

87. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

88. This claim is brought on behalf of Arkansas residents.

89. Defendant and Plaintiffs are "persons" within the meaning of the Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).

90. The Products are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).

91. The Arkansas DTPA prohibits "[d]eceptive and unconscionable trade practices," which include, but are not limited to, a list of enumerated items, including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]" ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission." ARK. CODE ANN. § 4-88-108.

92. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

93. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

94. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

95. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

96. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

97. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

98. Defendant knew or should have known that its conduct was violative.

99. Defendant owed a duty to disclose the true safety and reliability of the Products.

100. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

101. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

102. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

103. As a result of Defendant's actions, Plaintiffs seek monetary relief against Defendant.

COUNT IV
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. § 407.010, et seq.)
(brought on behalf of the Missouri Class)

104. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

105. This claim is brought on behalf of Missouri residents.

106. Defendant and Plaintiffs are "persons" within the meaning of MO. REV. STAT. § 407.010(5).

107. Defendant engaged in "trade" or "commerce" in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

108. The Missouri Merchandising Practices Act ("Missouri MPA") makes unlawful the "act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise." MO. REV. STAT. § 407.020.

109. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

110. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

111. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

112. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

113. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

114. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

115. Defendant knew or should have known that its conduct was violative.

116. Defendant owed a duty to disclose the true safety and reliability of the Products.

117. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of its bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

118. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

119. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

120. Defendant is liable to Plaintiffs for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendant's unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

COUNT V
VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. § 47-18-101, et seq.)
(brought on behalf of the Tennessee Class)

121. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

122. This claim is brought on behalf of Tennessee residents.

123. Plaintiffs are "natural persons" and "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

124. Defendant is a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2).

125. Defendant's conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

126. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods or services are of a particular standard, quality or grade... if they are of another;” and “Advertising goods or services with intent not to sell them as advertised.” TENN. CODE ANN. § 47-18-104.

127. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

128. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

129. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

130. In the course of Defendant’s business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

131. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

132. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

133. Defendant knew or should have known that its conduct was violative.

134. Defendant owed a duty to disclose the true safety and reliability of the Products.

135. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

136. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

137. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

138. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs seek monetary relief against Defendant measured as actual damages in an amount to be determined at trial, treble damages as a result of Defendant's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

**COUNT VI
NEGLIGENCE
(brought on behalf of the Classes)**

139. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

140. Defendant owed a duty to Plaintiffs and the Classes to exercise reasonable care in the sale, quality control and marketing of the Products.

141. Defendant breached its duty to Plaintiffs and the Classes by marketing, selling, advertising and warranting defective Products (which contain or have a risk of containing Salmonella or other infectious diseases) to Plaintiffs and the Classes, and by failing to take those steps necessary to discontinue selling the Products to consumers.

142. Defendant was aware, or reasonably should have been aware, that the Products were harmful and did not perform their intended use.

143. When they purchased the Products, Plaintiffs and the Classes were unaware of their unsafe and dangerous nature.

144. As a direct and proximate cause of the foregoing, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss described fully above.

145. Plaintiffs and the Classes are entitled to damages in an amount to be determined at trial.

**COUNT VII
BREACH OF IMPLIED WARRANTY
(brought on behalf of the Classes)**

146. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

147. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the Class members.

148. There was a sale of goods from Defendant to Plaintiffs and the Class members.

149. As set forth herein, Defendant marketed and sold the Products, and prior to the time the Products were purchased by Plaintiffs and the Classes, Defendant impliedly warranted to them that they were of merchantable quality, fit for their ordinary use, and conformed to the promises and affirmations of fact made on the Products' packages and labels that they did not.

150. Plaintiffs and the Classes relied on Defendant's promises and affirmations of fact.

EXHIBIT B

PART II

151. Contrary to these representations and warranties, the Products were not fit for their ordinary use and did not conform to Defendant's representations.

152. Defendant breached the implied warranties by selling Products that risk serious harm and Defendant were or should have been on notice of this breach.

153. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Classes have suffered actual damages in that they have purchased the Products that are worth less than the price they paid and that they would not have purchased at all had they known the harms and risks that the Products contained.

**COUNT VIII
UNJUST ENRICHMENT
(brought on behalf of the Classes)**

154. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

155. Substantial benefits have been conferred on Defendant by Plaintiffs and the Classes through the purchase of the Products. Defendant knowingly and willingly accepted and enjoyed these benefits.

156. Defendant either knew or should have known that the payments rendered by Plaintiffs and the Classes were given and received with the expectation that the Products would have the qualities, characteristics, ingredients, and suitability for use represented and warranted by Defendant. As such, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances.

157. Defendant's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendant to retain the benefits without payment of the value to Plaintiffs and the Classes.

158. Plaintiffs and the Classes are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

COUNT IX
FRAUDULENT CONCEALMENT AND FAILURE TO DISCLOSE
(brought on behalf of the Classes)

159. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

160. During the Class period, Defendant knowingly, fraudulently, and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of its Products.

161. Defendant has a duty to disclose to Plaintiffs and the Classes the actual quality of its Products which contain or have a risk of containing Salmonella or other infectious diseases.

162. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiffs and the Classes have been damaged, as alleged herein.

163. Plaintiffs and the Classes reasonably and actually relied upon Defendant's representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendant's wrongful conduct.

164. Based on such reliance, Plaintiffs and the Classes purchased Products and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

165. Had Plaintiffs and the Classes been aware of the true nature of Defendant's business practices, they would not have purchased the Products.

166. Defendant's acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiffs and the Classes to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendant.

**COUNT X
REDHIBITION
(brought on behalf of the Classes)**

167. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

168. Plaintiffs plead redhibition under Louisiana Civil Code Article 2520, *et seq.*

169. At all relevant times, the Products were dangerous, a risk to harm, not fit for sale, and defective.

170. The harms and defects with Defendant's Products existed at the time of purchase by Plaintiffs.

171. Defendant is the seller and marketer of the dangerous and defective Products and deemed to have known at the time of sale that the Products it sold to Plaintiffs and Class Members contained redhibitory defects.

172. As a result of Defendant's actions, it is liable to Plaintiffs and Class Members for damages.

**COUNT XI
DECLARATORY AND INJUNCTIVE RELIEF
(brought on behalf of the Classes)**

173. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

174. Plaintiffs and the Classes are entitled to declaratory relief establishing that Defendant engaged in unfair and deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for a judgment to be entered upon Defendant as follows:

A. Appointing Plaintiffs as representatives of the Classes and the undersigned counsel as Class counsel;

B. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;

C. For actual damages sustained;

D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class Members are entitled;

E. For injunctive relief, compelling Defendant to cease its unlawful actions and to account to Plaintiffs for their unjust enrichment;

F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and

G. For such other and further relief this Court deems just and appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: March 2, 2022

Respectfully submitted,

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U.S. District Court
Western District of Louisiana (Monroe)
CIVIL DOCKET FOR CASE #: 3:22-cv-00611-TAD-KDM

Fields et al v. Family Dollar Inc
Assigned to: Judge Terry A Doughty
Referred to: Magistrate Judge Kayla D McClusky
Demand: \$75,000
Cause: 28:1332 Diversity-Product Liability

Date Filed: 03/03/2022
Jury Demand: Plaintiff
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

Reginald Fields

Individually & on Behalf of All Others Similary
Situatd

represented by Patrick Wayne Pendley
Pendley Baudin & Coffin
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225-687-6396
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Sonja Fields

Individually & on Behalf of All Others Similary
Situatd

represented by Patrick Wayne Pendley
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Family Dollar Inc

Table with 3 columns: Date Filed, #, Docket Text. Contains 3 rows of docket entries including complaint filing and summons issued.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MARTHA “KEISHA” LACY,
LORRAINE BENNETT-FREEMAN,
SHEENA BIBBS, AND NAKEDRA
FREEMAN, Individually and On Behalf of
All Others Similarly Situated,**

Plaintiffs,

vs.

**FAMILY DOLLAR, INC., A North
Carolina Corporation,**

Defendant.

Case No. 3:22-cv-98-KHJ-MTP

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Martha “Keisha” Lacy, Lorraine Bennett-Freeman, Sheena Bibbs, and Nakedra Freeman (together “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, bring this Class Action Complaint against Defendant Family Dollar, Inc. (“Family Dollar”), for its negligent, reckless, and/or intentional practice of selling products that may be contaminated by virtue of a rodent infestation and other unsanitary conditions in stores throughout Mississippi, Arkansas, Louisiana, Alabama, Missouri and Tennessee (together, the “States”). Plaintiffs seek both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including requiring full and accurate disclosure of the rodent infestation and other unsanitary conditions and restoring monies to the members of the proposed Classes. Plaintiffs allege the following based upon personal knowledge, investigation by counsel, and facts that are a matter of public record and, as to all other matters, upon information and belief.

I. INTRODUCTION

1. Family Dollar is a value store chain that aspires to be “[t]he best small-format value and convenience retailer, serving the needs of [its] shoppers in the neighborhoods [it] serves.”¹

2. Family Dollar sells groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).

3. On or about February 18, 2022, Family Dollar temporarily closed 404 of its stores in Mississippi, Arkansas, Louisiana, Alabama, Missouri and Tennessee after the U.S. Food and Drug Administration (FDA) announced that it had found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202 in West Memphis, Arkansas (the “Rodent

¹ <https://www.familydollar.com/about-us> (last visited 2/22/2022)

Infestation”).²

4. The Rodent Infestation—that was never disclosed to Family Dollar consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

5. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

6. Family Dollar has had actual knowledge of the Rodent Infestation since at least March 29, 2021. Family Dollar knew or should have known of the Rodent Infestation from far earlier due to its obligation to inspect its facilities, including distribution centers, for safety and health-related issues. Nevertheless, Defendant chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

7. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of infestation,”** the agency said.³

8. It was only on February 18, 2022, that Family Dollar announced it would initiate a

² <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

³ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

9. Despite its knowledge, Defendant omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiffs and members of the Classes prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. By knowingly failing to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiffs and the Classes purchased Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

10. Plaintiffs bring this action on behalf of themselves and all those similarly situated (the “Classes,” “Class Members,”) for Defendant’s deceptive trade practices in violation of the consumer protection laws of the States. Plaintiffs seek damages, attorney fees and costs, punitive damages, and the replacement of, or refund of money paid to purchase the Products, and any other legal relief available for their claims. Should Plaintiffs’ demanded legal relief be unavailable or prove insufficient, Plaintiffs seeks appropriate equitable and injunctive relief in the alternative pursuant to Fed. R. Civ. P. 8(a)(3).

II. PARTIES

11. Plaintiff Martha “Keisha” Lacy is, and at all times relevant hereto has been, a citizen of Durant, Mississippi, located in the County of Holmes. Plaintiff Lacy purchased various dry items on or about February 16, 2022, from a Family Dollar located in Durant, Mississippi.

12. Plaintiff Lorraine Bennett-Freeman is, and at all times relevant hereto has been, a

citizen of Pearl, Mississippi, located in the County of Rankin. Plaintiff Bennett-Freeman purchased supplements on or about December 2021 and January and February 2022 from a Family Dollar located in Pearl, Mississippi.

13. Plaintiff Sheena Bibbs is, and at all times relevant hereto has been, a citizen of Byram, Mississippi, located in the County of Hinds. Plaintiff Bibbs purchased dietary products, food, baby medicine, soap, and hair products on or about January and February 2022 from a Family Dollar located in Jackson, Mississippi.

14. Plaintiff Nakedra Freeman is, and at all times relevant hereto has been, a citizen of Jackson, Mississippi, located in the County of Hinds. Plaintiff Freeman purchased various items on September 3, 2021, October 2, 2021, October 6, 2021, and June 29, 2021, from a Family Dollar located in Jackson, Mississippi.

15. During the time Plaintiffs purchased and used the Products, and due to the false and misleading claims and omissions by Defendant, Plaintiffs believed the products they purchased were safe. Plaintiffs were unaware the Products contained, or had a risk of containing, Salmonella or other infectious diseases. Plaintiffs would not have purchased the Products if the Rodent Infestation and the related potential for contamination with Salmonella or other infectious disease had been fully and accurately disclosed and represented.

16. Defendant Family Dollar is incorporated under the laws of the state of North Carolina with its principal place of business located at 500 Volve Pkwy, Chesapeake, Virginia. Family Dollar is a brand under its parent company, Dollar Tree, Inc, a Virginia corporation with its principal place of business at the same location as Family Dollar. Defendant is responsible for the manufacturing, marketing, distribution, sale, and labeling of the Products to millions of consumers throughout the States, including in this District. Defendant created, allowed,

negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Products.

17. The marketing and advertising relied on by Plaintiffs was disseminated throughout the States, including this District, by Defendant and its agents through advertising, packaging, and labeling that contained the omissions alleged herein. The marketing and advertising were designed to encourage consumers, and reasonably misled consumers, into purchasing the Products throughout the States, including this District.

III. JURISDICTION AND VENUE

18. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d) for the following reasons: (a) some of the class members are citizens of a state that is different from the citizenship of the Defendant; (b) the putative class size is greater than 100 persons; (c) the amount in controversy in the aggregate for the putative class exceeds the sum of \$5 million, exclusive of interest and costs; and (d) the primary defendants do not include States, State officials, and/or other governmental entities against whom the district court may be foreclosed from ordering relief.

19. This Court has original jurisdiction over this action under CAFA, 28 U.S.C. §1332(d), because, upon information and belief, no other class action has been filed asserting the same or similar factual allegations against the defendants on behalf of the same or other persons during the 3-year period preceding the filing of this class action.

General Personal Jurisdiction

20. This Court has personal jurisdiction over Plaintiffs, who are residents of the State of Mississippi.

21. This Court has both general and specific personal jurisdiction over the Defendant, Family Dollar.

22. This Court has general personal jurisdiction over Defendant Family Dollar because Defendant operates in Mississippi and because Defendant advertises, markets, and sells the Products in Mississippi, accepts money from purchasers located in Mississippi, has engaged in systematic and continuous business activities in Mississippi, transacted substantial business with Mississippi entities and residents, and generally has sufficient minimum contacts in Mississippi to satisfy the Mississippi Long Arm Statute, Miss. Code Ann. § 13-3-57.

Specific Personal Jurisdiction

23. This Court has specific personal jurisdiction over Defendant arising from Defendant's advertising, marketing, and sale of the Products in Mississippi, which at all relevant times, included or risked including dangerous substances, all of which have caused harm in Mississippi as a result of the specific business activities complained of herein, either directly or through Defendant's agents.

24. This Court has specific personal jurisdiction over Defendant because the advertising, marketing, and sale of the Products, which included or risked including dangerous substances, occurred in parts of Mississippi that are located in the Southern District of Mississippi.

25. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §1391(b)(2), because Plaintiffs reside in the Southern District of Mississippi and ingested and handled the Products at issue within the confines of this District.

26. Venue is proper in the Southern District of Mississippi under 28 U.S.C. §1391(b)(1) & (2) and 28 USC §1391(d) because Defendant regularly conducts substantial business within the Southern District of Mississippi.

27. Venue is also proper in the Southern District of Mississippi under 28 U.S.C. §1391(b)(2) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in this District, namely Defendant's advertisement, sale, and marketing of the Products, which occurred in this District and caused financial harm to members of the putative class that reside in this District.

IV. FACTUAL BACKGROUND

28. On February 18, 2022, the U.S. Food and Drug Administration issued the following press release:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company's distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

"Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe," said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. "No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families' health at risk. We will continue to work to protect consumers."

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team's arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company's internal records also indicated the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁴

29. On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of "certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202."⁵

⁴ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

⁵ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

30. Family Dollar acknowledges the health and safety concerns arising from the Rodent Infestation⁶:

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

31. Defendant's voluntary recall is limited in scope to certain FDA-regulated products⁷:

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

V. FRAUDULENT OMISSION ALLEGATIONS

32. Absent discovery, Plaintiffs are unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Family Dollar responsible for disseminating unfair, deceptive, and misleading marketing materials regarding the Products. Defendant is necessarily in possession of all this information. Plaintiffs' claims arise out of Defendant's fraudulent omission of the Rodent Infestation.

33. Plaintiffs allege that at all relevant times, including specifically at the time they and Class Members purchased the Products, Defendant knew, should have known, or was reckless in not knowing of the Rodent Infestation; Defendant had a duty disclose information material to a

⁶ *Id.*

⁷ *Id.*

consumer, such as the Rodent Infestation, based upon its exclusive knowledge; but Defendant never disclosed the Rodent Infestation to Plaintiffs, Class Members, or the general public other than its halfhearted, inadequate recall of some Products.

34. Plaintiffs make the following allegations as specific as reasonably possible:

- a. **Who:** *Family Dollar* actively omitted information concerning the existence of the Rodent Infestation from Plaintiffs and Class Members at the point of sale or thereafter. Defendant's agents should have and could have disclosed the Rodent Infestation. As to Plaintiffs themselves, Defendant should have and could have disclosed the Rodent Infestation at the time they purchased the Products or thereafter.
- b. **What:** Family Dollar knew, should have known, or was reckless in not knowing, that the Products were exposed to Salmonella and other infectious diseases due to the Rodent Infestation. Despite its knowledge, Family Dollar *failed to disclose the Rodent Infestation* at the point of sale or thereafter.
- c. **When:** Family Dollar's omissions began *from the start of the Class period and continue to this day*. Family Dollar has never taken any action to inform Plaintiffs, Class Members, or the general public of the true nature of the Rodent Infestation. As to Plaintiffs themselves, Defendant has continually omitted the true nature of the Rodent Infestation for the entirety of the relevant time period, including at the point of sale.
- d. **Where:** Family Dollar's omissions occurred *in every communication* it had with Plaintiffs, Class Members, and the general public. As to Plaintiffs

themselves, Defendant's omissions occurred in every communication it had with Plaintiffs about the Products, including all communications that happened before, at the point of and after their purchases of the Products.

- e. **How:** Defendant *omitted and failed to disclose* the Rodent Infestation to Plaintiffs, Class Members, or the general public at the point of sale or thereafter via a press release, permanent warnings affixed to the Products, direct mail campaign, or otherwise. As to Plaintiffs themselves, Defendant omitted and failed to disclose the Rodent Infestation in any communication or point of sale document.
- f. **Why:** Due to corporate greed, Family Dollar omitted the Rodent Infestation to deceive Plaintiffs, Class Members, and the general public into buying Products to *maximize its profits*. Furthering its goal to maximize profits, Family Dollar failed to notify Class Members of the true nature of the Rodent Infestation to avoid an avalanche of requests to refund Product purchases. As to Plaintiffs themselves, Family Dollar omitted the Rodent Infestation to deceive them into purchasing the Products, thereby maximizing Defendant's profits and to avoid refunding the cost of the Products.
- g. **Causation:** Because Family Dollar failed to disclose the Rodent Infestation, despite its extensive knowledge, Plaintiffs and Class Members purchased Products that did not or will not safely perform and as such are worth less than one that does safely perform. Had Defendant disclosed the Rodent

Infestation, Plaintiffs and other Class Members would not have purchased the Products, or certainly would have paid less for the Products.

VI. TOLLING OF STATUTES OF LIMITATIONS

35. Defendant was and remains under a continuing duty to disclose to Plaintiffs and members of the Classes the true character, quality, and nature of the Products, that the Products were exposed to contamination by virtue of the Rodent Infestation, and that the Rodent Infestation poses a health and safety concern to consumers and diminishes the value of the Products.

36. As a result of this active concealment by Defendant, all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

A. DISCOVERY RULE TOLLING

37. Class Members had no way of knowing about the Rodent Infestation and the other information concealed by Defendant.

38. Within the time period of any applicable statutes of limitation, Plaintiffs and the Class Members could not have discovered through the exercise of reasonable diligence that Defendant was concealing the Rodent Infestation.

39. Plaintiffs and the Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendant did not report information within its knowledge to federal authorities (including the FDA), their stores or consumers, nor would a reasonable and diligent investigation have disclosed that Defendant had information in its possession about the existence and dangerousness of the Rodent Infestation and opted to conceal that information until shortly before this action was filed.

40. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. FRAUDULENT CONCEALMENT TOLLING

41. All applicable statutes of limitation have also been tolled by Defendant's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

42. By failing to disclose the Rodent Infestation of which it was aware, Family Dollar disregarded the safety of consumers who purchased the Products.

C. ESTOPPEL

43. Defendant was under a continuous duty to disclose to Plaintiffs and the Class Members the true character, quality, and nature of the Rodent Infestation and the contamination risks it posed to Products.

44. Defendant knowingly, affirmatively, and actively concealed the Rodent Infestation and, thereby, the true nature, quality, and character of the Products from consumers, as well as the fact that the Rodent Infestation systematically devalued the Products and undermined consumer safety.

45. Based on the foregoing, Defendant is estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATION

46. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes:

Mississippi Class

All persons residing in the state of Mississippi who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Missouri Class

All persons residing in the state of Missouri who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Tennessee Class

All persons residing in the state of Tennessee who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Alabama Class

All persons residing in the state of Alabama who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Arkansas Class

All persons residing in the state of Arkansas who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Louisiana Class

All persons residing in the state of Louisiana who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

(Collectively referred to herein as the “Classes”).

47. Excluded from the Classes are Defendant, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendant, Class Counsel and their employees, and the judicial officers and their immediate family members and associates court staff assigned to this case.

48. Numerosity—Fed. R. Civ. P. 23(a)(1). The Classes are comprised of thousands of individuals who were Defendant’s customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class Members is presently unknown. The identity of the Class Members is ascertainable and can be determined based on Defendant’s records.

49. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3). The questions of law and fact common to the Classes predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendant owed a duty of care;

- (b) whether Defendant knew or should have known that the Rodent Infestation existed;
- (c) whether Defendant knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendant failed to disclose the Rodent Infestation;
- (e) whether Defendant's representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendant had knowledge that those representations were false, deceptive, and misleading;
- (h) whether Defendant continues to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;
- (i) whether Defendant's failure to disclose the Rodent Infestation is material to a reasonable consumer;
- (j) whether Defendant's marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendant violated State consumer protection laws; and
- (l) whether Plaintiffs and the members of the Classes are entitled to declaratory and injunctive relief.

50. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this

action.

51. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of those of the members of the Classes in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

52. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs will fairly and adequately represent and protect the interests of the Classes, have no interest incompatible with the interests of the Classes, and have retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

53. Predominance—Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes.

54. Superiority—Fed. R. Civ. P. 23(b)(3). A class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiffs and members of the Classes have suffered irreparable harm as a result of Defendant's bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class Members' claims, no Class Member could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Classes would have no reasonable remedy and would continue to suffer losses, as Defendant continues to engage in the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and Defendant would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

55. Plaintiffs and the Classes do not anticipate any difficulty in the management of this litigation.

VIII. CAUSES OF ACTION

COUNT I VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT (MISS. CODE. ANN. § 75-24-1, et seq.) (brought on behalf of the Mississippi Class)

56. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

57. This claim is brought on behalf of Mississippi residents.

58. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.”

59. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

60. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

61. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

62. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

63. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

64. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

65. Defendant knew or should have known that its conduct was violative.

66. Defendant owed a duty to disclose the true safety and reliability of the Products.

67. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

68. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

69. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

70. Plaintiffs seek actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

COUNT II
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE § 8-19-1, et seq.)
(brought on behalf of the Alabama Class)

71. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

72. This claim is brought on behalf of Alabama residents.

73. Plaintiffs are “consumer[s]” within the meaning of ALA. CODE § 8-19-3(2).

74. Plaintiffs are “person[s]” within the meaning of ALA. CODE § 8-19-3(5).

75. The Products are “goods” within the meaning of ALA. CODE § 8-19-3(3).

76. Defendant engaged in “trade or commerce” within the meaning of ALA. CODE § 8-19-3(8).

77. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several specific actions to be unlawful, including: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5.

78. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices prohibited by the Alabama DTPA, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are

of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

79. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

80. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices in violation of the Alabama DTPA.

81. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risks posed by the Products. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

82. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

83. Defendant knew or should have known that its conduct violated the Alabama DTPA.

84. Defendant owed a duty to disclose the true safety and reliability of the Products.

85. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

86. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

87. As a direct and proximate result of Defendant's violations of the Alabama DTPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

88. Pursuant to ALA. CODE § 8-19-10, Plaintiffs seeks monetary relief against Defendant.

89. Plaintiffs also seek an order enjoining Defendant's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under ALA. CODE § 8-19-1, et seq.

COUNT III
VIOLATION OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, et seq.)
(brought on behalf of the Arkansas Class)

90. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

91. This claim is brought on behalf of Arkansas residents.

92. Defendant and Plaintiffs are "persons" within the meaning of the Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).

93. The Products are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).

94. The Arkansas DTPA prohibits "[d]eceptive and unconscionable trade practices," which include, but are not limited to, a list of enumerated items, including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]" ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: "(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission." ARK. CODE ANN. § 4-88-108.

95. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

96. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

97. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

98. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

99. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

100. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

101. Defendant knew or should have known that its conduct was violative.

102. Defendant owed a duty to disclose the true safety and reliability of the Products.

103. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

104. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

105. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

106. As a result of Defendant's actions, Plaintiffs seek monetary relief against Defendant.

COUNT IV
VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW
(LA. REV. STAT. § 51:1401, et seq.)
(brought on behalf of the Louisiana Class)

107. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

108. This claim is brought on behalf of Louisiana residents.

109. Defendant and Plaintiffs are "persons" within the meaning of the LA. REV. STAT. § 51:1402(8).

110. Plaintiffs are "consumer[s]" within the meaning of LA. REV. STAT. § 51:1402(1).

111. The Louisiana Unfair Trade Practices and Consumer Protection Law ("Louisiana CPL") makes unlawful "deceptive acts or practices in the conduct of any trade or commerce." LA. REV. STAT. § 51:1405(A).

112. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a

risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

113. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

114. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

115. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

116. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

117. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

118. Defendant knew or should have known that its conduct violated the Louisiana CPL.

119. Defendant owed a duty to disclose the true safety and reliability of the Products.

120. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

121. Plaintiffs suffered ascertainable loss caused by Defendant’s misrepresentations and its concealment.

122. As a direct and proximate result of Defendant’s violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant’s misconduct, Plaintiffs and the Class incurred damages.

123. Pursuant to LA. REV. STAT. § 51:1409, Plaintiffs seek to recover actual damages in an amount to be determined at trial; treble damages for Defendant’s knowing violations of the Louisiana CPL; an order enjoining Defendant’s unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys’ fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

COUNT V
VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT
(MO. REV. STAT. § 407.010, et seq.)
(brought on behalf of the Missouri Class)

124. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

125. This claim is brought on behalf of Missouri residents.

126. Defendant and Plaintiffs are “persons” within the meaning of MO. REV. STAT. § 407.010(5).

127. Defendant engaged in “trade” or “commerce” in the State of Missouri within the meaning of MO. REV. STAT. § 407.010(7).

128. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation, unfair practice, or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise.” MO. REV. STAT. § 407.020.

129. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

130. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

131. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

132. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

133. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

134. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

135. Defendant knew or should have known that its conduct was violative.

136. Defendant owed a duty to disclose the true safety and reliability of the Products.

137. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of its bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

138. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

139. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

140. Defendant is liable to Plaintiffs for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendant's unfair and deceptive practices, and any other just and proper relief under MO. REV. STAT. § 407.025.

COUNT VI
VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. § 47-18-101, et seq.)
(brought on behalf of the Tennessee Class)

141. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

142. This claim is brought on behalf of Tennessee residents.

143. Plaintiffs are "natural persons" and "consumers" within the meaning of TENN. CODE ANN. § 47-18-103(2).

144. Defendant is a "person" within the meaning of TENN. CODE ANN. § 47-18-103(2).

145. Defendant's conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of TENN. CODE ANN. § 47-18-103(19).

146. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods or services are of a particular standard, quality or grade... if they are of another;” and “Advertising goods or services with intent not to sell them as advertised.” TENN. CODE ANN. § 47-18-104.

147. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

148. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

149. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

150. In the course of Defendant’s business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

151. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

152. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

153. Defendant knew or should have known that its conduct was violative.

154. Defendant owed a duty to disclose the true safety and reliability of the Products.

155. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

156. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

157. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

158. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs seek monetary relief against Defendant measured as actual damages in an amount to be determined at trial, treble damages as a result of Defendant's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

**COUNT VII
NEGLIGENCE
(brought on behalf of the Classes)**

159. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

160. Defendant owed a duty to Plaintiffs and the Classes to exercise reasonable care in the sale, quality control and marketing of the Products.

161. Defendant breached its duty to Plaintiffs and the Classes by marketing, selling, advertising and warranting defective Products (which contain or have a risk of containing Salmonella or other infectious diseases) to Plaintiffs and the Classes, and by failing to take those steps necessary to discontinue selling the Products to consumers.

162. Defendant was aware, or reasonably should have been aware, that the Products were harmful and did not perform their intended use.

163. When they purchased the Products, Plaintiffs and the Classes were unaware of their unsafe and dangerous nature.

164. As a direct and proximate cause of the foregoing, Plaintiffs and the Classes have suffered and will continue to suffer damages and economic loss described fully above.

165. Plaintiffs and the Classes are entitled to damages in an amount to be determined at trial.

**COUNT VIII
BREACH OF IMPLIED WARRANTY
(brought on behalf of the Classes)**

166. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

167. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the Class members.

168. There was a sale of goods from Defendant to Plaintiffs and the Class members.

169. As set forth herein, Defendant marketed and sold the Products, and prior to the time the Products were purchased by Plaintiffs and the Classes, Defendant impliedly warranted to them that they were of merchantable quality, fit for their ordinary use, and conformed to the promises and affirmations of fact made on the Products' packages and labels that they did not.

170. Plaintiffs and the Classes relied on Defendant's promises and affirmations of fact.

171. Contrary to these representations and warranties, the Products were not fit for their ordinary use and did not conform to Defendant's representations.

172. Defendant breached the implied warranties by selling Products that risk serious harm and Defendant were or should have been on notice of this breach.

173. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Classes have suffered actual damages in that they have purchased the Products that are worth less than the price they paid and that they would not have purchased at all had they known the harms and risks that the Products contained.

**COUNT IX
UNJUST ENRICHMENT
(brought on behalf of the Classes)**

174. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

175. Substantial benefits have been conferred on Defendant by Plaintiffs and the Classes through the purchase of the Products. Defendant knowingly and willingly accepted and enjoyed these benefits.

176. Defendant either knew or should have known that the payments rendered by Plaintiffs and the Classes were given and received with the expectation that the Products would have the qualities, characteristics, ingredients, and suitability for use represented and warranted by Defendant. As such, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances.

177. Defendant's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendant to retain the benefits without payment of the value to Plaintiffs and the Classes.

178. Plaintiffs and the Classes are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

**COUNT X
FRAUDULENT CONCEALMENT AND FAILURE TO DISCLOSE
(brought on behalf of the Classes)**

179. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

180. During the Class period, Defendant knowingly, fraudulently, and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of its Products.

181. Defendant has a duty to disclose to Plaintiffs and the Classes the actual quality of its Products which contain or have a risk of containing Salmonella or other infectious diseases.

182. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiffs and the Classes have been damaged, as alleged herein.

183. Plaintiffs and the Classes reasonably and actually relied upon Defendant's representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendant's wrongful conduct.

184. Based on such reliance, Plaintiffs and the Classes purchased Products and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

185. Had Plaintiffs and the Classes been aware of the true nature of Defendant's business practices, they would not have purchased the Products.

186. Defendant's acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiffs and the Classes to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendant.

**COUNT XI
DECLARATORY AND INJUNCTIVE RELIEF
(brought on behalf of the Classes)**

187. Plaintiffs re-allege and incorporate by reference each of the paragraphs above.

188. Plaintiffs and the Classes are entitled to declaratory relief establishing that Defendant engaged in unfair and deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action and for a judgment to be entered upon Defendant as follows:

- A. Appointing Plaintiffs as representatives of the Classes and the undersigned counsel as Class counsel;
- B. For economic and compensatory damages on behalf of Plaintiffs and all Class Members;
- C. For actual damages sustained;
- D. For treble damages pursuant to law, and all other actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class Members are entitled;
- E. For injunctive relief, compelling Defendant to cease its unlawful actions and to account to Plaintiffs for their unjust enrichment;
- F. For reasonable attorneys' fees, reimbursement of all costs for the prosecution of this action, and pre-judgment and post-judgment interest; and
- G. For such other and further relief this Court deems just and appropriate.

VIII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: February 23, 2022

Respectfully submitted,

/s/ Don Barrett

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U.S. District Court
Southern District of Mississippi (Northern (Jackson))
CIVIL DOCKET FOR CASE #: 3:22-cv-00098-KHJ-MTP

Lacy et al v. Family Dollar, Inc., A North Carolina Corporation
Assigned to: District Judge Kristi H. Johnson
Referred to: Magistrate Judge Michael T. Parker
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/23/2022
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

Martha Keisha Lacy
Individually and On Behalf of All Others Similarly Situated

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Plaintiff

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Plaintiff**Sheena Bibbs***Individually and On Behalf of All Others Similarly Situated*represented by **John W. Barrett**
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*ATTORNEY TO BE NOTICED***Plaintiff****Nakedra Freeman***Individually and On behalf of All Others Similarly Situated*represented by **John W. Barrett**
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ATTORNEY TO BE NOTICED

V.

Defendant**Family Dollar, Inc., A North Carolina Corporation**

Date Filed	#	Docket Text
02/23/2022	<u>1</u>	COMPLAINT against Family Dollar, Inc., A North Carolina Corporation (Filing fee \$ 402 receipt number AMSSDC-4773866), filed by Martha Keisha Lacy, Lorraine Bennett-Freeman, Nakedra Freeman, Sheena Bibbs. (Attachments: # <u>1</u> Civil Cover Sheet)(PG) (Entered: 02/24/2022)
02/24/2022	<u>2</u>	Summons Issued as to Family Dollar, Inc., A North Carolina Corporation. (PG) (Entered: 02/24/2022)
02/24/2022	<u>3</u>	NOTICE of Appearance by Sarah Sterling Aldridge on behalf of Lorraine Bennett-Freeman, Sheena Bibbs, Nakedra Freeman, Martha Keisha Lacy (Aldridge, Sarah) (Entered: 02/24/2022)
02/24/2022	<u>4</u>	NOTICE of Appearance by Katherine Barrett Riley on behalf of Lorraine Bennett-Freeman, Sheena Bibbs, Nakedra Freeman, Martha Keisha Lacy (Riley, Katherine) (Entered: 02/24/2022)
03/01/2022	<u>5</u>	SUMMONS Returned Executed by Martha Keisha Lacy, Lorraine Bennett-Freeman, Nakedra Freeman, Sheena Bibbs. Family Dollar, Inc., A North Carolina Corporation served on 2/28/2022, answer due 3/21/2022. (Aldridge, Sarah) (Entered: 03/01/2022)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

**TERRI PERRONE, Individually and On
Behalf of All Others Similarly Situated,**

Plaintiffs,

vs.

**FAMILY DOLLAR, INC., A North
Carolina Corporation,**

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Terri Perrone (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through her undersigned attorneys, bring this Class Action Complaint against Defendant Family Dollar, Inc. (“Family Dollar”), for its negligent, reckless, and/or intentional practice of selling products that may be contaminated by virtue of a rodent infestation and other unsanitary conditions in stores throughout Missouri, Arkansas, Louisiana, Alabama, Mississippi and Tennessee (together, the “States”). Plaintiff seeks both injunctive and monetary relief on behalf of the proposed Classes (as defined herein), including requiring full and accurate disclosure of the rodent infestation and other unsanitary conditions and restoring monies to the members of the proposed Classes. Plaintiff alleges the following based upon personal knowledge, investigation by counsel, and facts that are a matter of public record and, as to all other matters, upon information and belief.

I. INTRODUCTION

1. Family Dollar is a value store chain that aspires to be “[t]he best small-format value and convenience retailer, serving the needs of [its] shoppers in the neighborhoods [it] serves.”¹

2. Family Dollar sells groceries and household goods at discounted prices in stores throughout the United States including over-the-counter medications, medical devices, dietary supplements, cosmetics, human food, and pet food (the “Products”).

3. On or about February 18, 2022, Family Dollar temporarily closed 404 of its stores in Missouri, Arkansas, Louisiana, Alabama, Mississippi and Tennessee after the U.S. Food and Drug Administration (FDA) announced that it had found unsanitary conditions, including a rodent infestation, inside Family Dollar Distribution Center 202 in West Memphis, Arkansas (the “Rodent

¹ <https://www.familydollar.com/about-us> (last visited 2/22/2022)

Infestation”).²

4. The Rodent Infestation—that was never disclosed to Family Dollar consumers prior to the FDA and Family Dollar’s announcements—poses a health and safety hazard to consumers.

5. There are numerous dangers associated with rodents including the potential presence of Salmonella, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems.

6. Family Dollar has had actual knowledge of the Rodent Infestation since at least March 29, 2021. Family Dollar knew or should have known of the Rodent Infestation from far earlier due to its obligation to inspect its facilities, including distribution centers, for safety and health-related issues. Nevertheless, Defendant chose to omit information about the Rodent Infestation and not to disclose Rodent Infestation to Plaintiffs and the Classes, so that it could continue to profit from the sale of the Products.

7. According to the New York Times:

A recent Food and Drug Administration inspection of the facility, in West Memphis, Ark., found live and dead rodents “in various states of decay,” rodent droppings, evidence of gnawing and nesting, and products stored in conditions that did not protect against these unsanitary conditions, the agency said in a statement on Friday.

A fumigation of the facility last month revealed more than 1,100 dead rodents, **and a review of company records indicated the collection of more than 2,300 rodents from late March to September, “demonstrating a history of infestation,”** the agency said.³

8. It was only on February 18, 2022, that Family Dollar announced it would initiate a

² <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

³ <https://www.nytimes.com/2022/02/19/us/fda-family-dollar-recall.html> (last visited 2/22/2022) (emphasis added)

voluntary retail level product recall of some FDA-regulated products that were affected by the Rodent Infestation.

9. Despite its knowledge, Defendant omitted information regarding the Rodent Infestation from all advertising, promotion, or other contacts with Plaintiff and members of the Classes prior to their purchase of the Products and continued to ship the products to its stores from the warehouse. By knowingly failing to disclose the Rodent Infestation and associated risk of contamination to consumers and by failing to correct the problem, Plaintiffs and the Classes purchased Products of a lesser standard, grade and quality represented that do not meet ordinary and reasonable consumer expectations regarding the quality or value of the Products and are unfit for their intended purpose. Moreover, the contamination associated with the Rodent Infestation poses a health risk to consumers that used or handled the Products.

10. Plaintiff brings this action on behalf of herself and all those similarly situated (the “Classes,” “Class Members,”) for Defendant’s deceptive trade practices in violation of the consumer protection laws of the States. Plaintiff seeks damages, attorney fees and costs, punitive damages, and the replacement of, or refund of money paid to purchase the Products, and any other legal relief available for their claims. Should Plaintiff’s demanded legal relief be unavailable or prove insufficient, Plaintiff seeks appropriate equitable and injunctive relief in the alternative pursuant to Fed. R. Civ. P. 8(a)(3).

II. PARTIES

11. Plaintiff Terri Perrone (“Perrone” or “Plaintiff”) is, and at all times relevant hereto has been, a citizen of Springfield, Greene County, Missouri. Plaintiff Perrone purchased various dry items throughout 2021, including toilet paper, toothbrushes, laundry detergent, ibuprofen, canned foods, candy bars, make-up foundation and dry dog food, from Family Dollar located in

Springfield, Missouri. These purchases were for her personal, family or household use. Plaintiff Perrone, at all times relevant hereto, acted as a reasonable consumer under the circumstances and would not have purchased the items but for Defendant's conduct alleged herein. Plaintiff Perrone, Class Members who are Missouri residents and Class Members who are residents of the States referred in Counts II-VI have suffered the same or similar damages as a direct result of Defendant's conduct alleged herein.

12. During the time Plaintiffs purchased and used the Products, and due to the false and misleading claims and omissions by Defendant, Plaintiffs believed the products they purchased were safe. Plaintiff was unaware the Products contained, or had a risk of containing, Salmonella or other infectious diseases. Plaintiff would not have purchased the Products if the Rodent Infestation and the related potential for contamination with Salmonella or other infectious disease had been fully and accurately disclosed and represented.

13. Defendant Family Dollar is incorporated under the laws of the state of North Carolina with its principal place of business located at 500 Volve Pkwy, Chesapeake, Virginia. Family Dollar is a brand under its parent company, Dollar Tree, Inc, a Virginia corporation with its principal place of business at the same location as Family Dollar. Defendant is responsible for the manufacturing, marketing, distribution, sale, and labeling of the Products to millions of consumers throughout the States, including in this District. Defendant created, allowed, negligently oversaw, and/or authorized the unlawful, fraudulent, unfair, misleading, and/or deceptive labeling and advertising for the Products.

14. The marketing and advertising relied on by Plaintiff was disseminated throughout the States, including this District, by Defendant and its agents through advertising, packaging, and labeling that contained the omissions alleged herein. The marketing and advertising were designed

to encourage consumers, and reasonably misled consumers, into purchasing the Products throughout the States, including this District.

III. JURISDICTION AND VENUE

15. This Court has original jurisdiction over all causes of action asserted herein under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d) for the following reasons: (a) some of the class members are citizens of a state that is different from the citizenship of the Defendant; (b) the putative class size is greater than 100 persons; (c) the amount in controversy in the aggregate for the putative class exceeds the sum of \$5 million, exclusive of interest and costs; and (d) the primary defendants do not include States, State officials, and/or other governmental entities against whom the district court may be foreclosed from ordering relief.

16. This Court has original jurisdiction over this action under CAFA, 28 U.S.C. §1332(d), because, upon information and belief, no other class action has been filed asserting the same or similar factual allegations against the defendants on behalf of the same or other persons during the 3-year period preceding the filing of this class action.

General Personal Jurisdiction

17. This Court has personal jurisdiction over Plaintiff who is a resident of the State of Missouri.

18. This Court has both general and specific personal jurisdiction over the Defendant, Family Dollar.

19. This Court has general personal jurisdiction over Defendant Family Dollar because Defendant operates in Missouri and because Defendant advertises, markets, and sells the Products in Missouri, accepts money from purchasers located in Missouri, has engaged in systematic and continuous business activities in Missouri, transacted substantial business with Missouri entities

and residents, and generally has sufficient minimum contacts in Missouri to satisfy the Missouri Long Arm Statute, RSMo. § 506.500.

Specific Personal Jurisdiction

20. This Court has specific personal jurisdiction over Defendant arising from Defendant's advertising, marketing, and sale of the Products in Missouri, which at all relevant times, included or risked including dangerous substances, all of which have caused harm in Missouri as a result of the specific business activities complained of herein, either directly or through Defendant's agents.

21. This Court has specific personal jurisdiction over Defendant because the advertising, marketing, and sale of the Products, which included or risked including dangerous substances, occurred in parts of Missouri that are located in the Western District of Missouri.

22. Venue is proper in the Western District of Missouri pursuant to 28 U.S.C. §1391(b)(2), because Plaintiffs reside in the Western District of Missouri and ingested and handled the Products at issue within the confines of this District.

23. Venue is proper in the Western District of Missouri under 28 U.S.C. §1391(b)(1) & (2) and 28 USC §1391(d) because Defendant regularly conducts substantial business within the Western District of Missouri.

24. Venue is also proper in the Western District of Missouri under 28 U.S.C. §1391(b)(2) because a substantial portion of the events or omissions giving rise to Plaintiff's claims occurred in this District, namely Defendant's advertisement, sale, and marketing of the Products, which occurred in this District and caused financial harm to members of the putative class that reside in this District.

IV. FACTUAL BACKGROUND

25. On February 18, 2022, the U.S. Food and Drug Administration issued the following press release:

Today, the U.S. Food and Drug Administration is alerting the public that several categories of FDA-regulated products purchased from Jan. 1, 2021, through the present from Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee may be unsafe for consumers to use. The impacted products originated from the company's distribution facility in West Memphis, Arkansas, where an FDA inspection found insanitary conditions, including a rodent infestation, that could cause many of the products to become contaminated. The FDA is working with the company to initiate a voluntary recall of the affected products.

"Families rely on stores like Family Dollar for products such as food and medicine. They deserve products that are safe," said Associate Commissioner for Regulatory Affairs Judith McMeekin, Pharm.D. "No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility. These conditions appear to be violations of federal law that could put families' health at risk. We will continue to work to protect consumers."

This alert covers FDA-regulated products purchased from Family Dollar stores in those six states from Jan. 1, 2021, through the present. Some examples of these products include human foods (including dietary supplements (vitamin, herbal and mineral supplements)), cosmetics (skincare products, baby oils, lipsticks, shampoos, baby wipes), animal foods (kibble, pet treats, wild bird seed), medical devices (feminine hygiene products, surgical masks, contact lens cleaning solutions, bandages, nasal care products) and over-the-counter (OTC) medications (pain medications, eye drops, dental products, antacids, other medications for both adults and children).

Consumers are advised not to use and to contact the company regarding impacted products. The agency is also advising that all drugs, medical devices, cosmetics and dietary supplements, regardless of packaging, be discarded. Food in non-permeable packaging (such as undamaged glass or all-metal cans) may be suitable for use if thoroughly cleaned and sanitized. Consumers should wash their hands immediately after handling any products from the affected Family Dollar stores.

Consumers who recently purchased affected products should contact a health care professional immediately if they have health concerns after using or handling impacted products. Rodent contamination may cause

Salmonella and infectious diseases, which may pose the greatest risk to infants, children, pregnant women, the elderly and immunocompromised people.

Following a consumer complaint, the FDA began an investigation of the Family Dollar distribution facility in West Memphis, Arkansas, in January 2022. Family Dollar ceased distribution of products within days of the FDA inspection team's arrival on-site and the inspection concluded on Feb. 11. Conditions observed during the inspection included live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings, and products stored in conditions that did not protect against contamination. More than 1,100 dead rodents were recovered from the facility following a fumigation at the facility in January 2022. Additionally, a review of the company's internal records also indicated the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation.⁴

26. On the same day, Family Dollar issued a press release indicating it was initiating a voluntary retail level product recall of "certain products regulated by the [FDA] that were stored and shipped to 404 stores from Family Dollar Distribution Center 202 in West Memphis, Arkansas from January 1, 2021, through the present due to the presence of rodents and rodent activity at Family Dollar Distribution Center 202."⁵

27. Family Dollar acknowledges the health and safety concerns arising from the Rodent Infestation⁶:

There are numerous hazards associated with rodents including the potential presence of *Salmonella*. Use or consumption of affected products may present risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can

⁴ <https://www.fda.gov/news-events/press-announcements/fda-alerts-public-potentially-contaminated-products-family-dollar-stores-six-states> (last accessed 2/22/2022)

⁵ <https://www.businesswire.com/news/home/20220218005563/en/Family-Dollar-Stores-Issues-Voluntary-Recall-of-Certain-FDA-Regulated-Products-in-Six-States-Including-Drugs-Devices-Cosmetics-Foods> (last visited 2/22/2022)

⁶ *Id.*

result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (*i.e.*, infected aneurysms), endocarditis and arthritis.

28. Defendant's voluntary recall is limited in scope to certain FDA-regulated products⁷:

Products covered by this retail level recall include all: (i) drugs; (ii) medical devices; (iii) cosmetics; (iv) dietary supplements; and (v) human and animal (pet) food products. The recall does not apply to products shipped directly to the stores by the distributor or manufacturer, such as all frozen and refrigerated items. The 404 stores to which this recall applies are listed on the attached schedule. The recall does not apply to other store locations.

V. FRAUDULENT OMISSION ALLEGATIONS

29. Absent discovery, Plaintiff is unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Family Dollar responsible for disseminating unfair, deceptive, and misleading marketing materials regarding the Products. Defendant is necessarily in possession of all this information. Plaintiff's claims arise out of Defendant's fraudulent omission of the Rodent Infestation.

30. Plaintiffs alleges that at all relevant times, including specifically at the time she and Class Members purchased the Products, Defendant knew, should have known, or was reckless in not knowing of the Rodent Infestation; Defendant had a duty disclose information material to a consumer, such as the Rodent Infestation, based upon its exclusive knowledge; but Defendant never disclosed the Rodent Infestation to Plaintiff, Class Members, or the general public other than its halfhearted, inadequate recall of some Products.

31. Plaintiff makes the following allegations as specific as reasonably possible:

- a. **Who:** *Family Dollar* actively omitted information concerning the existence of the Rodent Infestation from Plaintiff and Class Members at the point of sale or thereafter. Defendant's agents should have and could have disclosed

⁷ *Id.*

the Rodent Infestation. As to Plaintiff herself, Defendant should have and could have disclosed the Rodent Infestation at the time she purchased the Products or thereafter.

- b. **What:** Family Dollar knew, should have known, or was reckless in not knowing, that the Products were exposed to Salmonella and other infectious diseases due to the Rodent Infestation. Despite its knowledge, Family Dollar *failed to disclose the Rodent Infestation* at the point of sale or thereafter.
- c. **When:** Family Dollar's omissions began *from the start of the Class period and continue to this day*. Family Dollar has never taken any action to inform Plaintiffs, Class Members, or the general public of the true nature of the Rodent Infestation. As to Plaintiff herself, Defendant has continually omitted the true nature of the Rodent Infestation for the entirety of the relevant time period, including at the point of sale.
- d. **Where:** Family Dollar's omissions occurred *in every communication* it had with Plaintiffs, Class Members, and the general public. As to Plaintiff herself, Defendant's omissions occurred in every communication it had with Plaintiff about the Products, including all communications that happened before, at the point of and after their purchases of the Products.
- e. **How:** Defendant *omitted and failed to disclose* the Rodent Infestation to Plaintiff, Class Members, or the general public at the point of sale or thereafter via a press release, permanent warnings affixed to the Products, direct mail campaign, or otherwise. As to Plaintiff herself, Defendant

omitted and failed to disclose the Rodent Infestation in any communication or point of sale document.

- f. **Why:** Due to corporate greed, Family Dollar omitted the Rodent Infestation to deceive Plaintiff, Class Members, and the general public into buying Products to *maximize its profits*. Furthering its goal to maximize profits, Family Dollar failed to notify Class Members of the true nature of the Rodent Infestation to avoid an avalanche of requests to refund Product purchases. As to Plaintiff herself, Family Dollar omitted the Rodent Infestation to deceive her into purchasing the Products, thereby maximizing Defendant's profits and to avoid refunding the cost of the Products.
- g. **Causation:** Because Family Dollar failed to disclose the Rodent Infestation, despite its extensive knowledge, Plaintiff and Class Members purchased Products that did not or will not safely perform and as such are worth less than one that does safely perform. Had Defendant disclosed the Rodent Infestation, *Plaintiff and other Class Members would not have purchased the Products, or certainly would have paid less for the Products.*

VI. TOLLING OF STATUTES OF LIMITATIONS

32. Defendant was and remains under a continuing duty to disclose to Plaintiff and members of the Classes the true character, quality, and nature of the Products, that the Products were exposed to contamination by virtue of the Rodent Infestation, and that the Rodent Infestation poses a health and safety concern to consumers and diminishes the value of the Products.

33. As a result of this active concealment by Defendant, all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

A. DISCOVERY RULE TOLLING

34. Class Members had no way of knowing about the Rodent Infestation and the other information concealed by Defendant.

35. Within the time period of any applicable statutes of limitation, Plaintiff and the Class Members could not have discovered through the exercise of reasonable diligence that Defendant was concealing the Rodent Infestation.

36. Plaintiff and the Class Members did not discover, and did not know of facts that would have caused a reasonable person to suspect, that Defendant did not report information within its knowledge to federal authorities (including the FDA), their stores or consumers, nor would a reasonable and diligent investigation have disclosed that Defendant had information in its possession about the existence and dangerousness of the Rodent Infestation and opted to conceal that information until shortly before this action was filed.

37. All applicable statutes of limitation have been tolled by operation of the discovery rule.

B. FRAUDULENT CONCEALMENT TOLLING

38. All applicable statutes of limitation have also been tolled by Defendant's knowing and active fraudulent concealment and denial of the facts alleged herein throughout the time period relevant to this action.

39. By failing to disclose the Rodent Infestation of which it was aware, Family Dollar disregarded the safety of consumers who purchased the Products.

C. ESTOPPEL

40. Defendant was under a continuous duty to disclose to Plaintiff and the Class Members the true character, quality, and nature of the Rodent Infestation and the contamination

risks it posed to Products.

41. Defendant knowingly, affirmatively, and actively concealed the Rodent Infestation and, thereby, the true nature, quality, and character of the Products from consumers, as well as the fact that the Rodent Infestation systematically devalued the Products and undermined consumer safety.

42. Based on the foregoing, Defendant is estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATION

43. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following classes:

Missouri Class

All persons residing in the state of Missouri who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Arkansas Class

All persons residing in the state of Arkansas who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Tennessee Class

All persons residing in the state of Tennessee who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Alabama Class

All persons residing in the state of Alabama who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Mississippi Class

All persons residing in the state of Mississippi who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

Louisiana Class

All persons residing in the state of Louisiana who, during the maximum period of time permitted by law, purchased Products from Family Dollar.

(Collectively referred to herein as the “Classes”).

44. Excluded from the Classes are Defendant, its employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of Defendant, Class Counsel and their employees, and the judicial officers and their immediate family members and associates court staff assigned to this case.

45. Numerosity—Fed. R. Civ. P. 23(a)(1). The Classes are comprised of thousands of individuals who were Defendant’s customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class Members is presently unknown. The identity of the Class Members is ascertainable and can be determined based on Defendant’s records.

46. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3). The questions of law and fact common to the Classes predominate over questions affecting only individual Class Members, and include, but are not limited to, the following:

- (a) whether Defendant owed a duty of care;
- (b) whether Defendant knew or should have known that the Rodent Infestation existed;
- (c) whether Defendant knew or should have known that the Rodent Infestation posed health and safety risks to consumers;
- (d) whether Defendant failed to disclose the Rodent Infestation;
- (e) whether Defendant’s representations in advertising, warranties, packaging, and/or labeling are false, deceptive, and misleading;
- (f) whether those representations are likely to deceive a reasonable consumer;
- (g) whether Defendant had knowledge that those representations were false, deceptive, and misleading;

- (h) whether Defendant continues to disseminate those representations despite knowledge that the representations are false, deceptive, and misleading;
- (i) whether Defendant's failure to disclose the Rodent Infestation is material to a reasonable consumer;
- (j) whether Defendant's marketing and advertising of the Products are likely to mislead, deceive, confuse, or confound consumers acting reasonably;
- (k) whether Defendant violated State consumer protection laws; and
- (l) whether Plaintiff and the members of the Classes are entitled to declaratory and injunctive relief.

47. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Identical statutory violations and business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

48. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of those of the members of the Classes in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

49. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiff will fairly and adequately represent and protect the interests of the Classes, has no interest incompatible with the interests of the Classes, and has retained counsel competent and experienced in class action, consumer protection, and false advertising litigation.

50. Predominance—Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes.

51. Superiority—Fed. R. Civ. P. 23(b)(3). A class action is the best available method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiff and members of the Classes have suffered irreparable harm as a result of Defendant's bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class Members' claims, no Class Member could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Classes would have no reasonable remedy and would continue to suffer losses, as Defendant continues to engage in the bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and Defendant would be permitted to retain the proceeds of its violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

52. Plaintiff and the Classes do not anticipate any difficulty in the management of this litigation.

VIII. CAUSES OF ACTION

COUNT I VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT (MO. REV. STAT. § 407.010, et seq.) (brought on behalf of the Missouri Class)

53. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

54. The Defendants, individually or collectively, as sellers have engaged in deceptive and unfair practices and/or fraud in connection with the sale of merchandise in trade or commerce, as those terms are used and defined in the Missouri Merchandising Practices Act,

RSMo. §407.010 *et seq.* (“MMPA”) as it relates to Plaintiff and the other putative Class Members.

55. Under the MMPA, “merchandise” includes any “objects, wares, goods, commodities, intangibles, real estate or services” RSMo. §407.010 (4).

56. Under the MMPA, “person” includes “a natural person,” “for-profit corporation,” “agent” or “employee” RSMo. §407.010 (5).

57. Under the MMPA, “sale” includes a “sale, lease ... or attempt to sell or lease merchandise for cash or on credit.” RSMo. §407.010 (6).

58. Under the MMPA, “the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale ... of any merchandise in trade or commerce ... is declared to be an unlawful practice.” RSMo. §407.020.1.

59. Under the MMPA, “any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale...” under RSMo. §407.020.1. *Conway v. CitiMortgage, Inc.*, 438 S.W. 3d 410, 415 (Mo banc 2014).

60. Under Missouri 15 CSR 60 – 8.020: “an unfair practice is any practice which-

(A) Either-

1. Offends any public policy as it has been established by... statutes or common law of this state... or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.”

61. Under Missouri 15 CSR 60 – 8.090: “(1) It is an unfair practice for any person in connection with the ... sale of merchandise to violate the duty of good faith in ... performance,

or any manner fail to act in good faith (see section 400.2 – 103 (1) (b), *Restatement 2nd, Contracts, section 205*).”

62. Under Missouri 15 CSR 60 –9.040: “(1) (1) Fraud includes any acts, omissions or artifices which involve falsehood, deception, trickery, breach of a legal or equitable duty, trust or confidence, and are injurious to another or by which an undue or unconscious advantage over another is obtained.

63. (2) (2) Fraud, as used in section 407.020.1, RSMo. is not limited to common law fraud or deceit and is not limited to finite rules, but extends to the infinite variations of human invention.” (Citations omitted).

64. Plaintiff and the putative Class Members do not have to show their reliance in order for Defendant to be liable for an unfair practice under the MMPA. *Hess v. Chase Manhattan Bank, USA*, 200 S.W.3d 758, 774 (Mo banc 2007).

65. The Defendant’s intent is irrelevant to a determination of whether it violated the MMPA. *State ex. rel. Webster v. Areaco Inv. Co.*, 756 S.W.2d 633, 635 (Mo. App. 1988).

66. The Defendant violated the MMPA by engaging in fraud, misrepresentation, concealment, unfair practices and violations of the common law and statutes of Missouri (as these terms are defined and used under the MMPA) in the sale of the Products to Plaintiff and the Class Members.

67. As a direct result of Defendant’s acts or omissions as alleged herein Plaintiff and Class Members have suffered the ascertainable losses as set forth above, including but not limited to, the money they paid to purchase the Products.

68. Under the MMPA, Plaintiff and Class Members are entitled to actual damages, equitable relief, attorneys’ fees and punitive damages under RSMo. §407.025.

69. As to equitable relief in particular, each Plaintiff and each Class Member is entitled to the relief sought in Count IX of this Complaint.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count I of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding treble damages and attorneys' fees and costs; and
- (f) Providing such further relief as may be fair and reasonable.

COUNT II
VIOLATION OF THE DECEPTIVE TRADE PRACTICE ACT
(ARK. CODE ANN. § 4-88-101, et seq.)
(brought on behalf of the Arkansas Class)

- 70. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.
- 71. This claim is brought on behalf of Arkansas residents.
- 72. Defendant and Plaintiffs are "persons" within the meaning of the Arkansas Deceptive Trade Practices Act ("Arkansas DTPA"), ARK. CODE ANN. § 4-88-102(5).
- 73. The Products are "goods" within the meaning of ARK. CODE ANN. § 4-88-102(4).
- 74. The Arkansas DTPA prohibits "[d]eceptive and unconscionable trade practices," which include, but are not limited to, a list of enumerated items, including "[e]ngaging in any other

unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” ARK. CODE ANN. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.” ARK. CODE ANN. § 4-88-108.

75. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

76. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

77. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

78. In the course of Defendant’s business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

79. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

80. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

81. Defendant knew or should have known that its conduct was violative.

82. Defendant owed a duty to disclose the true safety and reliability of the Products.

83. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

84. Plaintiffs suffered ascertainable loss caused by Defendants' misrepresentations and its concealment.

85. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

86. As a result of Defendant's actions, Plaintiffs seek monetary relief against Defendant.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count II of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;

(d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;

(e) Awarding treble damages and attorneys' fees and costs; and

(f) Providing such further relief as may be fair and reasonable.

COUNT III
VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. § 47-18-101, et seq.)
(brought on behalf of the Tennessee Class)

87. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

88. This claim is brought on behalf of Tennessee residents.

89. Plaintiffs are “natural persons” and “consumers” within the meaning of TENN. CODE ANN. § 47-18-103(2).

90. Defendant is a “person” within the meaning of TENN. CODE ANN. § 47-18-103(2).

91. Defendant’s conduct complained of herein affected “trade,” “commerce” or “consumer transactions” within the meaning of TENN. CODE ANN. § 47-18-103(19).

92. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods or services are of a particular standard, quality or grade... if they are of another;” and “Advertising goods or services with intent not to sell them as advertised.” TENN. CODE ANN. § 47-18-104.

93. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

94. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

95. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

96. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

97. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

98. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

99. Defendant knew or should have known that its conduct was violative.

100. Defendant owed a duty to disclose the true safety and reliability of the Products.

101. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

102. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

103. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

104. Pursuant to TENN. CODE § 47-18-109(a), Plaintiffs seek monetary relief against Defendant measured as actual damages in an amount to be determined at trial, treble damages as a result of Defendant's willful or knowing violations, and any other just and proper relief available under the Tennessee CPA.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count III of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding treble damages and attorneys' fees and costs; and

- (f) Providing such further relief as may be fair and reasonable.

COUNT IV
VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT
(ALA. CODE § 8-19-1, et seq.)
(brought on behalf of the Alabama Class)

105. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.
106. This claim is brought on behalf of Alabama residents.
107. Plaintiffs are “consumer[s]” within the meaning of ALA. CODE § 8-19-3(2).
108. Plaintiffs are “person[s]” within the meaning of ALA. CODE § 8-19-3(5).
109. The Products are “goods” within the meaning of ALA. CODE § 8-19-3(3).
110. Defendant engaged in “trade or commerce” within the meaning of ALA. CODE § 8-19-3(8).

111. The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several specific actions to be unlawful, including: “(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” ALA. CODE § 8-19-5.

112. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices prohibited by the Alabama DTPA, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other

unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

113. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

114. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices in violation of the Alabama DTPA.

115. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risks posed by the Products. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

116. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

117. Defendant knew or should have known that its conduct violated the Alabama DTPA.

118. Defendant owed a duty to disclose the true safety and reliability of the Products.

119. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

120. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

121. As a direct and proximate result of Defendant's violations of the Alabama DTPA, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

122. Pursuant to ALA. CODE § 8-19-10, Plaintiffs seeks monetary relief against Defendant.

123. Plaintiffs also seek an order enjoining Defendant's unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under ALA. CODE § 8-19-1, et seq.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count IV of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding treble damages and attorneys' fees and costs; and
- (f) Providing such further relief as may be fair and reasonable.

COUNT V
VIOLATION OF MISSISSIPPI CONSUMER PROTECTION ACT
(MISS. CODE. ANN. § 75-24-1, et seq.)
(brought on behalf of the Mississippi Class)

124. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

125. This claim is brought on behalf of Mississippi residents.

126. The Mississippi Consumer Protection Act (“Mississippi CPA”) prohibits “unfair or deceptive trade practices in or affecting commerce.” MISS. CODE. ANN. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, “(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;” “(g) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods or services with intent not to sell them as advertised.”

127. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality, and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

128. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

129. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

130. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

131. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

132. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

133. Defendant knew or should have known that its conduct was violative.

134. Defendant owed a duty to disclose the true safety and reliability of the Products.

135. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

136. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

137. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

138. Plaintiffs seek actual damages in an amount to be determined at trial any other just and proper relief available under the Mississippi CPA.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count V of this Class Action Petition:

- (a) Certifying the Class as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;

(c) Awarding damages to the Plaintiff and proposed Class Members;

(d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;

(e) Awarding treble damages and attorneys' fees and costs; and

(f) Providing such further relief as may be fair and reasonable.

COUNT VI
VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW
(LA. REV. STAT. § 51:1401, et seq.)
(brought on behalf of the Louisiana Class)

139. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

140. This claim is brought on behalf of Louisiana residents.

141. Defendant and Plaintiffs are “persons” within the meaning of the LA. REV. STAT. § 51:1402(8).

142. Plaintiffs are “consumer[s]” within the meaning of LA. REV. STAT. § 51:1402(1).

143. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” LA. REV. STAT. § 51:1405(A).

144. By concealing the risks and harms associated with the use and handling of the Products (which due to the Rodent Infestation and other unsanitary conditions contain or have a risk of containing Salmonella or other infectious diseases), Defendant engaged in deceptive business practices, including representing that Products have characteristics, uses, benefits, and qualities which they do not have; representing that Products are of a particular standard, quality,

and grade when they are not; and engaging in other unconscionable, false, misleading, or deceptive acts or practices in the conduct of trade or commerce. All of this deception would be material to a reasonable consumer.

145. Defendant also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Products.

146. By failing to disclose and by actively concealing the defects in the Products, Defendant engaged in unfair and deceptive business practices.

147. In the course of Defendant's business, it willfully failed to disclose and actively concealed the dangerous risk posed by the Products.

148. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

149. Defendant intentionally and knowingly misrepresented material facts regarding the Products.

150. Defendant knew or should have known that its conduct violated the Louisiana CPL.

151. Defendant owed a duty to disclose the true safety and reliability of the Products.

152. Because Defendant fraudulently concealed the harms and risks associated with the Products, consumers were deprived of the benefit of their bargain since the Products purchased were worth less than they would have been if they were free from such harms and risks.

153. Plaintiffs suffered ascertainable loss caused by Defendant's misrepresentations and its concealment.

154. As a direct and proximate result of Defendant's violations, Plaintiffs have suffered injury-in-fact and/or actual damage as alleged above. As a direct result of Defendant's misconduct, Plaintiffs and the Class incurred damages.

155. Pursuant to LA. REV. STAT. § 51:1409, Plaintiffs seek to recover actual damages in an amount to be determined at trial; treble damages for Defendant's knowing violations of the Louisiana CPL; an order enjoining Defendant's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under LA. REV. STAT. § 51:1409.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count VI of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding treble damages and attorneys' fees and costs; and
- (f) Providing such further relief as may be fair and reasonable.

**COUNT VII
NEGLIGENCE
(brought on behalf of the Classes)**

156. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

157. Defendant owed a duty to Plaintiff and the Classes to exercise reasonable care in the sale, quality control and marketing of the Products.

158. Defendant breached its duty to Plaintiff and the Classes by marketing, selling, advertising and warranting defective Products (which contain or have a risk of containing Salmonella or other infectious diseases) to Plaintiff and the Classes, and by failing to take those steps necessary to discontinue selling the Products to consumers.

159. Defendant was aware, or reasonably should have been aware, that the Products were harmful and did not perform their intended use.

160. When they purchased the Products, Plaintiff and the Classes were unaware of their unsafe and dangerous nature.

161. As a direct and proximate cause of the foregoing, Plaintiff and the Classes have suffered and will continue to suffer damages and economic loss described fully above.

162. Plaintiff and the Classes are entitled to damages in an amount to be determined at trial.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count VII of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of

their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;

- (e) Providing such further relief as may be fair and reasonable.

**COUNT VIII
BREACH OF IMPLIED WARRANTY
(brought on behalf of the Classes)**

163. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

164. Defendant is a merchant engaging in the sale of goods to Plaintiffs and the Class members.

165. There was a sale of goods from Defendant to Plaintiff and the Class members.

166. As set forth herein, Defendant marketed and sold the Products, and prior to the time the Products were purchased by Plaintiff and the Classes, Defendant impliedly warranted to them that they were of merchantable quality, fit for their ordinary use, and conformed to the promises and affirmations of fact made on the Products' packages and labels that they did not.

167. Plaintiff and the Classes relied on Defendant's promises and affirmations of fact.

168. Contrary to these representations and warranties, the Products were not fit for their ordinary use and did not conform to Defendant's representations.

169. Defendant breached the implied warranties by selling Products that risk serious harm and Defendant were or should have been on notice of this breach.

170. As a direct and proximate result of Defendant's conduct, Plaintiff and the Classes have suffered actual damages in that they have purchased the Products that are worth less than the price they paid and that they would not have purchased at all had they known the harms and risks that the Products contained.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count VIII of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding attorneys' fees and costs; and
- (f) Providing such further relief as may be fair and reasonable.

**COUNT IX
UNJUST ENRICHMENT
(brought on behalf of the Classes)**

171. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

172. Substantial benefits have been conferred on Defendant by Plaintiff and the Classes through the purchase of the Products. Defendant knowingly and willingly accepted and enjoyed these benefits.

173. Defendant either knew or should have known that the payments rendered by Plaintiff and the Classes were given and received with the expectation that the Products would have the qualities, characteristics, ingredients, and suitability for use represented and warranted by Defendant. As such, it would be inequitable for Defendant to retain the benefit of the payments under these circumstances.

174. Defendant's acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendant to retain the benefits without payment of the value to Plaintiff and the Classes.

175. Plaintiff and the Classes are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count IX of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;
- (d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;
- (e) Awarding attorneys' fees and costs; and
- (f) Providing such further relief as may be fair and reasonable.

**COUNT X
FRAUDULENT CONCEALMENT AND FAILURE TO DISCLOSE
(brought on behalf of the Classes)**

176. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

177. During the Class period, Defendant knowingly, fraudulently, and actively misrepresented, omitted and concealed from consumers material facts relating to the quality of its Products.

178. Defendant has a duty to disclose to Plaintiff and the Classes the actual quality of its Products which contain or have a risk of containing Salmonella or other infectious diseases.

179. The misrepresentations, omissions and concealments complained of herein were material and were made on a uniform and market-wide basis. As a direct and proximate result of these misrepresentations, omissions and concealments, Plaintiff and the Classes have been damaged, as alleged herein.

180. Plaintiffs and the Classes reasonably and actually relied upon Defendant's representations, omissions and concealments. Such reliance may also be imputed, based upon the materiality of Defendant's wrongful conduct.

181. Based on such reliance, Plaintiff and the Classes purchased Products and, as a result, suffered and will continue to suffer damages and economic loss in an amount to be proven at trial.

182. Had Plaintiff and the Classes been aware of the true nature of Defendant's business practices, they would not have purchased the Products.

183. Defendant's acts and misconduct, as alleged herein, constitute oppression, fraud and/or malice entitling Plaintiff and the Classes to an award of punitive damages to the extent allowed in an amount appropriate to punish or to set an example of Defendant.

WHEREFORE, Plaintiff and each member of the proposed Classes pray for a judgment on Count X of this Class Action Petition:

- (a) Certifying the Classes as requested herein;
- (b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;
- (c) Awarding damages to the Plaintiff and proposed Class Members;

(d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;

(e) Awarding attorneys' fees and costs; and

(f) Providing such further relief as may be fair and reasonable.

**COUNT XI
DECLARATORY AND INJUNCTIVE RELIEF
(brought on behalf of the Classes)**

184. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

185. Plaintiff and the Classes are entitled to declaratory relief establishing that Defendant engaged in unfair and deceptive practices.

WHEREFORE, Plaintiff and each member of the proposed Plaintiffs' Class pray for a judgment on Count XI of this Class Action Petition:

(a) Certifying the Classes as requested herein;

(b) Entering an order appointing Aleshire Robb, P.C. as lead counsel for the Plaintiffs' Class;

(c) Awarding damages to the Plaintiff and proposed Classes;

(d) Awarding declaratory and injunctive relief as permitted by law or equity, including but not limited to directing Defendants to identify, with Court supervision, victims of their conduct and pay them the damages as a result of any act or practice declared by this Court to be wrongful;

(e) Awarding attorneys' fees and costs; and

(f) Providing such further relief as may be fair and reasonable.

IX. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: March 8, 2022

Respectfully submitted,

ALESHIRE ROBB, P.C.

By 

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ATTORNEYS FOR PLAINTIFFS

**U.S. District Court
Western District of Missouri (Springfield)
CIVIL DOCKET FOR CASE #: 6:22-cv-03056-JAM**

Perrone v. Family Dollar, Inc.
Assigned to: Magistrate Judge Jill A. Morris
Cause: 28:1391 Personal Injury

Date Filed: 03/08/2022
Jury Demand: Plaintiff
Nature of Suit: 367 Personal Injury: Health
Care/Pharmaceutical Personal Injury Product
Liability
Jurisdiction: Federal Question

Plaintiff**Terri Perrone**

represented by **Gregory W. Aleshire**
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ATTORNEY TO BE NOTICED

V.

Defendant**Family Dollar, Inc.**

Date Filed	#	Docket Text
03/08/2022	1	COMPLAINT <i>TERRI PERRONE</i> against Family Dollar, Inc. filed by Gregory W. Aleshire on behalf of All Plaintiffs. Filing fee \$402, receipt number AMOWDC-7836209. Service due by 6/6/2022 unless otherwise directed by the court. (Attachments: # 1 Civil Cover Sheet)(Aleshire, Gregory) (Entered: 03/08/2022)
03/08/2022	2	NOTICE OF INCLUSION FOR MEDIATION AND ASSESSMENT PROGRAM (MAP). REVIEW NOTICE AND MAP GENERAL ORDER CAREFULLY FOR IMPORTANT CHANGES, DEADLINES AND REQUIREMENTS. Notice of MAP assignment to an outside mediator. (Attachments: # 1 MAP General Order)(Keller, Jeanne) (Entered: 03/08/2022)
03/08/2022		NOTICE OF MAGISTRATE JUDGE ASSIGNMENT as to Plaintiff: All parties must file the Notice Regarding Magistrate Judge Jurisdiction Form consenting to or opting out of the Magistrate Judge assignment. Click here for instructions. Form due by 3/29/2022 unless otherwise directed by the court. (Keller, Jeanne) (Entered: 03/08/2022)

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

LAKINDAL SMITH
4765 Bending Oaks Ave.
Memphis, TN 38128,

and

KEITH MARTIN
2410 St. Elmo Dr.
Memphis, TN 38127

individually and on behalf all others similarly
situated,

Plaintiffs,

v.

FAMILY DOLLAR SERVICES, LLC,
t/a FAMILY DOLLAR
500 Volvo Parkway
Chesapeake, VA 23320

SERVE REGISTERED AGENT
Corporation Service Company
100 Shockoe Slip Fl 2,
Richmond, VA 23219-4100

and

DOLLAR TREE, INC. t/a FAMILY
DOLLAR
500 Volvo Parkway
Chesapeake, VA 23320

SERVE REGISTERED AGENT
Corporation Service Company
100 Shockoe Slip Fl 2,
Richmond, VA 23219-4100
Defendants.

CASE NO. 1:22-cv-208

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs LAKINDAL SMITH and KEITH MARTIN, on behalf of themselves and all others similarly situated, bring this action against Defendants FAMILY DOLLAR (“Family Dollar”) and DOLLAR TREE, INC. (“Dollar Tree”) (collectively, “Defendants”), to obtain damages, restitution, and injunctive relief for the Class, as defined below, from the Defendants. Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record.

NATURE OF THE CASE

1. This class action arises out of the recently disclosed rodent infestation of a distribution center operated by Defendant Family Dollar in West Memphis, Arkansas. The warehouse stored and shipped products, including products that were intended for human and animal consumption. As a result of the rodent infestation, Plaintiffs and thousands of Class Members who purchased these products were subjected to actual harm.

2. The U.S. Food and Drug Administration (“FDA”) announced on February 18, 2022, that Family Dollar stores in six states may have received products from a distribution center in West Memphis, Arkansas that were contaminated by a rodent infestation. The agency warning includes items purchased since January of 2021, such as food for the Plaintiffs’ and their family, cosmetics, vitamins and dietary supplements, over-the-counter medications, surgical masks, feminine hygiene products, and contact lens cleaning solutions, and toiletry items among others. The FDA is asking Family Dollar customers to contact the company if they purchased any of these products. The agency also recommends discarding any medical items immediately and is working with the store chain to begin a product recall.

3. Family Dollar has issued a voluntary recall which covered numerous FDA regulated products, including medicine, pet food and cosmetics, that were sold between January 2021 and February 2022 in Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee (the “Recalled Products”).

4. The use or consumption of affected products presents a risk of illness due to the potential presence of *Salmonella*, an organism which can cause serious and sometimes fatal infections in infants, young children, frail or elderly people, pregnant persons, persons with pre-existent pathology (e.g., patients with cancer undergoing chemotherapy treatments, organ transplant recipient, etc.) and others with weakened immune systems. Healthy persons infected with *Salmonella* often experience fever, diarrhea (which may be bloody), nausea, vomiting and abdominal pain. In rare circumstances, infection with *Salmonella* can result in the organism getting into the bloodstream and producing more severe illnesses such as arterial infections (i.e., infected aneurysms), endocarditis and arthritis.

5. Accordingly, Plaintiffs, individually and on behalf of a Class of all persons similarly situated bring claims for breach of the implied warranty of merchantability and unjust enrichment.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action wherein the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed class, and at least one member of the class is a citizen of a state different from a Defendant.

7. The Court has personal jurisdiction over Defendants Dollar Tree and Family Dollar because Dollar Tree is headquartered in Chesapeake, Virginia, and Family Dollar is a wholly owned subsidiary of Dollar Tree. In addition, the Defendants do business and/or transact business in this District.

8. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant Dollar Tree is headquartered in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

PARTIES

9. Plaintiff Lakindal Smith ("Smith") is and at all times mentioned herein an individual citizen of the State of Tennessee residing in the city of Memphis. Smith purchased one or more of the Recalled Products from Family Dollar stores in and around the Millington and Memphis, Tennessee areas.

10. Plaintiff Keith Martin ("Martin") is and at all times mentioned herein an individual citizen of the State of Tennessee residing in the city of Memphis. Martin purchased one or more of the Recalled Products from a Family Dollar stores in and around the Millington and Memphis, Tennessee areas.

11. Defendant Family Dollar maintains its company offices in Charlotte, NC at 10401 Monroe Road, Charlotte, NC 28201. Family Dollar is a wholly owned subsidiary of Defendant Dollar Tree.

12. Defendant Dollar Tree is a Virginia corporation whose corporate offices are located at 500 Volvo Parkway, Chesapeake, VA 23320.

STATEMENT OF COMMON FACTS

13. Family Dollar is a wholly owned subsidiary of Dollar Tree.

14. Dollar Tree is a Fortune 200 company and a leading operator of discount variety stores in North America for more than thirty years. The company operates more than 15,500 stores across the 48 contiguous states and five Canadian provinces, supported by a coast-to-coast logistics network and more than 193,000 associates.

15. Family Dollar operates a distribution center in West Memphis, Arkansas. (the “Distribution Center”). The Distribution Center distributed products to 404 stores across six states – Alabama, Arkansas, Louisiana, Missouri, Mississippi and Tennessee.

16. Records obtained through the Arkansas Freedom of Information Act show that the Distribution Center has been inspected by the Arkansas Department of Health (“ADH”) at least five times since March 3, 2021.

17. During a site inspection on March 3, 2021, state inspectors reported seeing significant rodent activity where human and pet food is stored. “I observed live and dead rodents in this area. I observed products that had been contaminated by rodents,” the inspector wrote. “This product was disposed on site.”

18. Health officials at the time reported that staff at the distribution center said they knew about the rodent issue and that it had been going on for about 60 days. The inspection documents showed that the facility claimed to have hired a pest control company that would service the facility three times weekly to get the issue under control. The documents also indicated that any affected merchandise would not go to stores.

19. “The firm has a policy which states if product has any evidence of pest activity, gnawing, droppings, etc., the entire pallet is disposed in the onsite compacter,” the report shows.

20. During the 2021 inspections, which took place on March 3, March 19, April 2, September 22, records showed that Arkansas inspectors found rodents where human and pet food

is stored. In September's inspection, documents show the state found a rodent in a case of chips but noted the facility had made vast improvements in sanitation and pest control.

21. In an inspection on January 3, 2022, health inspectors reported effective measures were not being taken to stop the pest problem. The state reported finding significant rodent activity where human and pet food is stored, including a dead roof rat in one of the facility's aisles.

22. Arkansas health officials notified the Food and Drug Administration ("FDA") about the problem in October of 2021, after four of the state's inspections the FDA said last week.

23. In January of 2022, the FDA was alerted to unsanitary conditions at the Family Dollar distribution center in West Memphis, Arkansas by a consumer complaint.

24. FDA inspectors concluded their investigation on Feb. 11, 2022, after finding "live rodents, dead rodents in various states of decay, rodent feces and urine, evidence of gnawing, nesting and rodent odors throughout the facility, dead birds and bird droppings" at the center.

25. More than 1,100 dead rodents were found after the center was fumigated.

26. The FDA reported that in addition to their investigation of the premises, internal company records showed "the collection of more than 2,300 rodents between Mar. 29 and Sep. 17, 2021, demonstrating a history of infestation."

27. As a result of the rodent infestation at the Arkansas distribution center, Family Dollar temporarily closed more than 400 stores in six states so that Recalled Products could be removed from the shelves.

28. On Friday, February 18, 2022, Family Dollar issued a voluntary recall which covered numerous FDA regulated products, including medicine, pet food and cosmetics, that were sold between January 2021 and February 2022 in Family Dollar stores in Alabama, Arkansas, Louisiana, Mississippi, Missouri and Tennessee (the "Recalled Products").

29. Family Dollar said in its announcement that the voluntary recall applies to products that were sent to the affected stores by the West Memphis, Arkansas distribution center.

30. The company said it has asked the affected stores “to check their stock immediately and to quarantine and discontinue the sale of any affected product.”

31. The FDA said that it initiated its investigation of the warehouse, known as Family Dollar Distribution Center 202, in January, 2022, and that “Family Dollar ceased distribution of products within days of the FDA inspection team’s arrival on-site.”

32. Rodents can pass diseases on to humans, including salmonellosis, an infection caused by salmonella bacteria, which can be especially dangerous to immunocompromised and other vulnerable people.

33. The FDA advised consumers to throw away any drugs, medical devices, cosmetics and dietary supplements they bought from the affected stores in the past 13 months.

34. As stated by Judith McMeekin, the FDA’s associate commissioner for regulatory affairs, consumers who depend on Family Dollar stores for necessary goods such as food and medicine “deserve products that are safe. “No one should be subjected to products stored in the kind of unacceptable conditions that we found in this Family Dollar distribution facility,” McMeekin said in a statement. “These conditions appear to be violations of federal law that could put families’ health at risk. We will continue to work to protect consumers.”

STATEMENT OF INDIVIDUAL FACTS

35. During the last 13 months, Plaintiff Smith purchased numerous items from Family Dollar Store #00854 located at 4839 Navy Road, in Millington, Tennessee; Store #00723 located at 2168 Frayser Blvd., Memphis, Tennessee; and numerous other stores in and around the Millington and Memphis, Tennessee, areas. These items included food for her family and herself,

diapers for her minor child, drugs, medical devices, cosmetics and/or dietary supplements purchased for consumption by herself, her family, or her pets that are subject to the recall.

36. During the last 13 months, Plaintiff Martin purchased numerous items from the Family Dollar Store #00854 located at 4839 Navy Road, in Millington, Tennessee; Store #00723 located at 2168 Frayser Blvd., Memphis, Tennessee, and numerous other stores in and around the Millington and Memphis, Tennessee areas. These items included food for his family and himself, diapers for his minor child, drugs, medical devices, cosmetics and/or dietary supplements purchased for consumption by himself, his family, or his pets that are subject to the recall.

CLASS ACTION ALLEGATIONS

37. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to a class defined as “All persons who purchased a Recalled Products from Family Dollar” and a Tennessee Subclass defined as “All persons residing in the State of Tennessee who purchased a Recalled Products from Family Dollar.”

38. Excluded from the Class are Defendants’ officers and directors, and any entity in which Defendants have a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendants. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

39. Plaintiffs hereby reserve the right to amend or modify the Class definitions with greater specificity or division after having had an opportunity to conduct discovery.

40. Numerosity. The Members of the Class are so numerous that joinder of all of them is impracticable. While the exact number of Class Members is unknown to Plaintiffs at this time,

based on information and belief, the Class consists of thousands of persons who purchased Recalled Products.

41. Commonality. There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation, whether the Defendants may be held liable to the Plaintiffs for breach of implied warranty of merchantability and unjust enrichment.

42. Typicality. Plaintiffs' claims are typical of the claims of other Class Members. Plaintiffs and each of the other Class Members purchased the Recalled Products.

43. Adequacy of Representation. Plaintiffs will fairly and adequately represent and protect the interests of the Members of the Class. Plaintiffs' Counsel are competent and experienced in litigating class actions.

44. Predominance. Defendants have engaged in a common course of conduct toward Plaintiffs and Class Members. The common issues arising from Defendants' conduct affecting Class Members set out above predominate over any individualized issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

45. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation. Absent a class action, most Class Members would likely find that the cost of litigating their individual claims is prohibitively high and would therefore have no effective remedy. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendants. In contrast, the conduct of this action as a class action presents far fewer management

difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class Member.

CAUSES OF ACTION

COUNT I **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

46. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 45 above as if fully set forth herein.

47. “Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” UCC § 2-314(1).

48. “Goods to be merchantable must be at least such as (a) pass without objection in the trade under the contract description; . . . (c) are fit for the ordinary purposes for which such goods are used; . . . (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and . . . (f) conform to the promise or affirmations of fact made on the container or label if any.” UCC § 2-314(2).

49. “It is not necessary to the creation of an express warranty that the seller use formal words such as ‘warranty’ or ‘guarantee’ or that he have a specific intention to make a warranty.” UCC § 2-313(2).

50. Defendants are a “merchant” within the meaning of UCC § 2-104(1).

51. The Recalled Products were not merchantable at the time of sale because they were not fit for human or animal consumption. Defendants therefore breached the implied warranty of merchantability.

52. Plaintiffs and Class Members sustained damages as a direct and proximate result of Defendants' breach, including damages for economic injuries from spending money on a product that should not have been sold to them.

53. Plaintiffs, on behalf of themselves and all similarly situated Class Members, demand judgment against Defendants for compensatory damages, including a complete refund of the purchase price of the Recalled Products, pre- and post-judgment interest, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

COUNT II

UNJUST ENRICHMENT

54. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 53 above as if fully set forth herein.

55. Defendants received from Plaintiffs and Class Members benefits in the form of money and profits from the sale of the Recalled Products.

56. Defendants sold the Recalled Products to the Plaintiffs and Class Members with knowledge of the rat infestation and with knowledge that the Recalled Products were not fit for human or animal consumption at the time of sale.

57. Defendants have been unjustly enriched and it would be inequitable for Defendants to retain benefits obtained from Plaintiffs and Class Members.

58. Plaintiffs and Class Members are entitled to restitution of the amount by which Defendants were unjustly enriched at their expense.

59. Plaintiffs, on behalf of themselves and all similarly situated Class Members, demand restitution by the Defendants in the amounts by which Defendants have been unjustly

enriched at Plaintiffs' and Class Members' expense, and such other relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated individuals, demand judgment against Defendants as follows:

- a. Declaring this action to be a proper Class action maintainable pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure and declaring Plaintiffs and their Counsel to be representatives of the Classes;
- b. Awarding damages sustained by Plaintiffs and the Classes as a result of the Defendants' conduct, together with pre-judgment interest;
- c. Awarding punitive damages sustained by Plaintiffs and the Classes as a result of the Defendants' conduct, together with pre-judgment interest;
- d. Finding that Defendants have been unjustly enriched and requiring them to refund all unjust benefits to Plaintiffs and the Classes, together with pre-judgment interest;
- e. Awarding Plaintiffs and the Classes costs and disbursements and reasonable allowances for the fees of Plaintiffs and the Classes' Counsel and experts, and reimbursement of expenses;
- f. Awarding such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Classes request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: February 25, 2022

Respectfully submitted,

/s/ David Hilton Wise
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Joseph M. Langone, VSB #43543
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**pro hac vice to be filed*

Attorneys for Plaintiffs and the proposed Classes

U.S. District Court
Eastern District of Virginia - (Alexandria)
CIVIL DOCKET FOR CASE #: 1:22-cv-00208-AJT-IDD

Smith et al v. Family Dollar Services, LLC et al
Assigned to: District Judge Anthony J Trenga
Referred to: Magistrate Judge Ivan D. Davis
Demand: \$5,000,000
Cause: 28:1332 Diversity-Product Liability

Date Filed: 02/25/2022
Jury Demand: Plaintiff
Nature of Suit: 195 Contract Product Liability
Jurisdiction: Diversity

Plaintiff

Lakindal Smith

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Plaintiff

Keith Martin

represented by Joseph Michael Langone
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ATTORNEY TO BE NOTICED

Defendant

Family Dollar Services, LLC
trading as
Family Dollar

Defendant

Dollar Tree, Inc.
trading as
Family Dollar

Table with 3 columns: Date Filed, #, Docket Text. Row 1: 02/25/2022, 1, Complaint (Filing fee \$ 402, receipt number BVAEDC-8264782.), filed by Lakindal Smith, Keith Martin. Row 2: 02/25/2022, 2, NOTICE of Appearance by Joseph Michael Langone on behalf of Keith Martin, Lakindal Smith (Langone,

	Joseph) (Entered: 02/25/2022)
02/28/2022	Initial Case Assignment to District Judge Anthony J Trenga and Magistrate Judge Ivan D. Davis. (shea) (Entered: 02/28/2022)