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7 DOLLAR TREE STORES, INC.

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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KERI KUEHN ESPINO, an Individual,

Plaintiff,

v.

DOLLAR TREE STORES, INC., a
Virginia Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 3:18-cv-00406-W-MDD

**DEFENDANT DOLLAR TREE
STORES, INC.’S NOTICE OF MOTION
AND MOTION TO COMPEL
ARBITRATION AND DISMISS
ACTION, OR ALTERNATIVELY,
STAY ACTION PURSUANT TO
FEDERAL ARBITRATION ACT [9
U.S.C. § 3]**

**NO ORAL ARGUMENT PURSUANT
TO LOCAL RULE 7.1(D)(1)**

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Travis McNail, Steven Pearson, and Marissa
M. Franco; Request for Judicial Notice]

Date: May 14, 2018

Complaint Filed: December 22, 2017
Removal Date: February 22, 2018
Trial Date: None
District Judge: Hon. Thomas J. Whelan
Courtroom 3C, Schwartz

1 TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 14, 2018, defendant Dollar Tree
3 Stores, Inc. (“Dollar Tree”) will and hereby does move this Court for (1) an order,
4 pursuant to the Federal Arbitration Act (9 U.S.C. § 3), compelling Plaintiff Keri
5 Kuehn Espino (“Plaintiff”) to arbitrate her causes of action, and each of them, set
6 forth in her December 22, 2017 Complaint, and, additionally, (2) an order dismissing
7 or, alternatively, staying this action. Pursuant to Local Rule 7.1 (d) (1), no oral
8 argument will be held on this motion.

9 Dollar Tree’s motion is based upon the grounds that Plaintiff entered into a
10 valid and binding mutual arbitration agreement that applies to all claims in her
11 Complaint. This motion is brought after Dollar Tree apprised Plaintiff of her
12 agreement to arbitrate the instant claims and Plaintiff refused to submit her claims to
13 arbitration. (Declaration of Marissa M. Franco [“Franco Decl.”] ¶¶ 3-7.)

14 This motion is based upon this notice, the accompanying memorandum of
15 points and authorities in support thereof, the request for judicial notice and
16 supporting exhibits, the declarations of Steven Pearson, Travis McNail, and Marissa
17 M. Franco, all papers and pleadings filed in this action, and any other evidence and
18 argument as may be presented in connection with the hearing on the Motion.

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20 DATED: March 29, 2018

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

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23 By: s/ Marissa M. Franco
24 Hardy Ray Murphy
Marissa M. Franco
25 Attorneys for Defendant
DOLLAR TREE STORES, INC.
26 Email: hardy.murphy@ogletree.com
Email: marissa.franco@ogletree.com

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EXHIBIT 10

MUTUAL AGREEMENT TO ARBITRATE CLAIMS
(For Associates Hired Before October 6, 2014)

This is a Mutual Agreement to Arbitrate Claims (“Agreement”) between Dollar Tree¹ and its associate, who was hired prior to October 6, 2014 (“Associate”). Dollar Tree and Associate are each a Party to the Agreement, and together they are the Parties to the Agreement and mutually bound by the Agreement.

The Parties recognize that disputes may arise between them during, or after the end of, Associate’s employment with Dollar Tree. The Parties understand and agree that by entering into this Agreement they mutually agree to waive their right to a trial in court by a judge or jury, the Associate waives the right to participate in class or collective actions, and, in exchange, the Parties anticipate gaining the benefits of arbitration as a final and binding dispute-resolution procedure.

The Parties agree that the Federal Arbitration Act, 9 U.S.C. section 1, *et seq.* (“FAA”), shall govern the interpretation and enforcement of the Agreement and shall govern all proceedings relating to this Agreement. If the FAA does not apply (it being the Parties’ intent that it will apply), then, only in that event, will the law of arbitration of the state in which Associate works or last worked for Dollar Tree apply. Nothing contained in this Agreement shall be construed to prevent Associate (individually or in concert with others) or Dollar Tree from utilizing Dollar Tree’s existing internal procedures for resolution of complaints, and this Agreement is not intended to be a substitute for the use of such procedures.

A copy of this Agreement, the FAQs summarizing this Agreement, the Opt-Out Form, and other information relating to Dollar Tree’s arbitration program can be found on Dollar Tree’s arbitration website: www.dtarbitration.com.

Claims Covered by the Agreement (which must be arbitrated): The Parties agree to the resolution by arbitration of all claims or controversies (“claims”), past, present or future, that can be raised under applicable federal, state, or local law, arising out of or related to Associate’s employment (or its termination), that Dollar Tree may have against Associate or that the Associate may have against any of the following (1) Dollar Tree, (2) its officers, directors, employees, or agents in any capacity, (3) Dollar Tree’s benefit plans or the plans’ sponsors, fiduciaries, administrators, affiliates, and agents, and/or (4) all successors and assigns of any of them.

Claims subject to arbitration include, but are not limited to, claims for: overtime, misclassification as to exempt status, breaks, meal periods, expense reimbursement, pay for bank runs, off the clock work, wages, or other compensation; work conditions, including seating; breach of contract or covenant (express or implied); torts (including without limitation defamation either during or after employment with Dollar Tree); wrongful termination; retaliation or discrimination (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition); benefits (except for claims for employee benefits under any benefit plan sponsored by the Company and (a) covered by the Employee Retirement Income Security Act of 1974 or (b) funded by insurance); intellectual property, confidential information, or trade secrets; or violation of any federal, state, local, or other governmental law, statute, rule, regulation, or ordinance (except as provided below).

Claims Not Covered by the Agreement (and not subject to arbitration): Regardless of any other terms of this Agreement, this Agreement permits the filing of the following: (1) a court action for temporary equitable relief in aid of arbitration, where available by law; (2) claims for worker’s compensation or unemployment compensation benefits. This Agreement also does not cover disputes that, as a matter of law, may not be subject to predispute arbitration agreements, such as claims under

¹ “Dollar Tree” means any direct or indirect subsidiary of Dollar Tree, Inc. organized under the laws of the United States or a state or jurisdiction of the United States that employs Associate, including but not limited to Dollar Tree Stores, Inc., Dollar Tree Distribution, Inc., Dollar Tree Management, Inc., or Greenbrier International, Inc.

the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203).). If Associate works in Texas or any other state where Dollar Tree does not participate in the workers' compensation system, all legal and equitable claims relating to on-the-job injuries are covered by this Agreement and must be arbitrated.

This Agreement does not cover a case on file in court as of February 23, 2015. Therefore, if Associate is a party in an individual case, or a party or a putative member of a class, collective, or representative action that is on file in court as of February 23, 2015, such pending claims are not covered by this Agreement.

Regardless of any other terms of this Agreement, a claim may be brought before and remedies awarded by an administrative agency if applicable law permits the agency to adjudicate the claim notwithstanding the existence of an agreement to arbitrate. Such administrative claims include, without limitation, claims or charges brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, or the National Labor Relations Board. Nothing in this Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration.

Waiver of Class and Collective Actions: Associate and the Company agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis. Accordingly, to the maximum extent allowable by law, there will be no right or authority for any dispute to be brought, heard, or arbitrated as a class or collective action ("Class Action Waiver").

Associate will not be retaliated against, disciplined, or threatened with discipline as a result of exercising rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class or collective action in any forum. However, Dollar Tree may lawfully seek enforcement of this Agreement and the Class Action Waiver under the FAA and seek dismissal of any such action.

Time Limits for Initiating Arbitration and Required Notice of All Claims: The Parties agree that the Party initiating a claim must give written notice to the other Party no later than the expiration of the applicable statute of limitations (that is, the deadline for filing) that the law prescribes for the claim. Otherwise, the claim shall be deemed waived as determined by the arbitrator but only to the same extent as would be the case in a court of law. The initiating Party is encouraged to give written notice of any claim as soon as possible after the event in dispute so that arbitration may take place promptly.

The written notice initiating arbitration (a "Demand for Arbitration") shall be sent to Dollar Tree, its officers, directors, employees, or agents, at the following address: Dollar Tree Arbitration Program c/o the Chief Legal Officer, 500 Volvo Parkway, Chesapeake, VA 23320. The Demand for Arbitration shall be sent to Associate at the last address recorded in Associate's Dollar Tree profile.

The Demand for Arbitration shall identify and describe the nature of all claims asserted, the facts upon which such claims are based, and the relief or remedy sought. It shall be sent to the other Party by certified or registered mail, return receipt requested. A Demand for Arbitration form can be found at www.dtarbitration.com.

Arbitration Procedures: Unless the Parties mutually agree to select a non-JAMS affiliated arbitrator, the arbitration will be administered by JAMS (or any successor of JAMS) ("administrator"). The arbitration shall be held in accordance with the then-current JAMS Employment Arbitration Rules & Procedures (and no other rules), which are currently available at <http://www.jamsadr.com/rules-employment-arbitration>. A link to this site can also be found at www.dtarbitration.com. Dollar Tree will supply Associate with a printed copy of those rules upon written request, which must be made by sending an email to dtarbitration@dollartree.com. In the event of any conflict between the terms of this Agreement and the JAMS Employment Arbitration Rules & Procedures ("JAMS rules"), this Agreement shall control.

The Arbitration shall be conducted before a single arbitrator, who shall be either a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted, or an attorney who is experienced in employment law or the relevant subject matter of the dispute and is licensed to practice law in the state in which the arbitration is convened (the "Arbitrator"). The Parties may mutually agree upon any qualified Arbitrator whether or not he/she is on the JAMS panel, but all Arbitrators shall conduct the proceedings under this Agreement and the JAMS rules. If the Parties are unable to agree upon an Arbitrator, the selection process of the JAMS rules will apply.

After receipt of a Demand for Arbitration, the Parties will discuss whether to participate in a pre-arbitration mediation, using a mutually-selected mediator, whose fees will be paid by Dollar Tree. If the Parties agree to mediate, such mediation will be held promptly. The Parties agree that mediation is encouraged as an initial step in this dispute-resolution process, but participation in mediation is entirely voluntary.

The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The Arbitrator is without jurisdiction to apply any different substantive law or law of remedies. The Federal Rules of Evidence shall apply, and a link to these rules can be found at www.dtarbitration.com. The Arbitration shall be final and binding upon the Parties. The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the Arbitrator deems advisable. The Arbitrator shall have the authority to entertain dispositive motions, including but not limited to a motion to dismiss and/or a motion for summary judgment by any Party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure, and a link to these rules can be found at www.dtarbitration.com. Either Party upon its request shall be given leave to file a post-hearing brief. The time for filing such a brief shall be set by the Arbitrator.

The Arbitrator shall render an award and written opinion in the form typically rendered in labor and employment arbitrations, normally no later than thirty (30) days from the date the arbitration hearing concludes or the post-hearing briefs (if requested) are received, whichever is later. The opinion shall include the essential factual and legal basis for the award.

Representation: Any Party may be represented by an attorney or other representative in arbitration.

Notice of Claims, Discovery, Pre-Hearing, Hearing, and Award Rules: Unless modified by this Agreement, the pre-hearing procedures, including notice of claims by either party, exchange of information, discovery, pre-hearing submissions, the designation of and the securing of witnesses and documents, the conduct of the hearing and the issuance of the arbitration award shall be in accordance with JAMS rules, with the Arbitrator taking into account the Parties' mutual desire to have a speedy, less-formal, cost-effective dispute-resolution mechanism. Claims made by different associates shall not be consolidated under any circumstance, and any JAMS rule to the contrary shall not apply in proceedings under this Agreement.

Subpoenas: Each Party shall have the right to subpoena witnesses and documents to the extent allowable by law, subject to any limitations the Arbitrator shall impose for good cause shown.

Place of Arbitration: The arbitration shall take place in the county (or comparable governmental unit) in which Associate is or was last employed by Dollar Tree, unless both Parties otherwise agree in writing.

Arbitration Fees and Costs: Dollar Tree will be responsible for paying any filing fee and the fees and costs of the Arbitrator and arbitration forum; provided, however, that if Associate is the Party initiating the claim, Associate will contribute the lesser of the filing fee required by JAMS or the filing fee to initiate a claim in the court of general jurisdiction in the state in which Associate is (or was last) employed by Dollar Tree, with Dollar Tree making up the difference. Each Party shall pay in the first

instance its own litigation costs and attorney's fees, if any. However, if any Party prevails on a statutory claim which affords the prevailing Party attorneys' fees and litigation costs, or if there is a written agreement providing for attorneys' fees and/or litigation costs, the Arbitrator shall rule upon a motion for attorneys' fees and/or litigation costs under the same standards a court would apply under the law applicable to the claim(s) at issue. Either Party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, as well as to enforce, confirm, modify, correct, or vacate an arbitration award as provided in the FAA.

Interstate Commerce: Associate agrees that Dollar Tree is engaged in transactions involving interstate commerce and that Associate's employment is related to such interstate transactions.

Retaliation Prohibited: It is against Dollar Tree policy to retaliate against any associate who exercises his or her right to assert a claim under this Agreement or to opt out of this Agreement. If Associate believes that he or she has been subject to retaliation, Associate should report such conduct immediately by going online to associateconnection.dollartree.com or by calling 1-800-876-8077.

Survival: This Agreement shall survive the termination of Associate's employment and the expiration of any benefit plan.

At Will Employment: This Agreement does not create a promise of employment for any period of time. Associate understands that he or she is and will remain employed "at will" and that either Party may terminate Associate's employment at any time.

Sole and Entire Agreement: This Agreement is the full and complete agreement relating to the formal resolution of disputes between the Parties. No Party is relying on any representations, oral or written, relating to the subject matter of this Agreement, except as specifically set forth in this Agreement.

Construction and Severability: If any provision of this Agreement is adjudged to be void, voidable, or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. All other provisions shall remain in full force and effect based on the Parties' mutual intent to create a binding agreement to arbitrate their disputes.

Consideration: The promises by Dollar Tree and by Associate to arbitrate disputes, rather than litigate them before courts or other bodies, provide consideration for each other.

Opting Out of Arbitration: Associate is not required to agree to arbitration. Associate may opt out of (that is, decline to be bound by) this Agreement by (i) completing an electronic Opt-Out Form at www.dtarbitration.com or (ii) postmarking and mailing (by registered or certified mail) a paper Opt-Out Form, which can also be found at www.dtarbitration.com, to Dollar Tree Arbitration c/o Chief Legal Officer, 500 Volvo Parkway, Chesapeake, VA 23320. **Associate must opt out by May 31, 2015. Associate's decision not to opt out by May 31, 2015 constitutes Associate's assent to, and agreement to be bound by, this Agreement.**

Once Dollar Tree receives the Opt-Out Form from Associate, either by mail or electronically, Dollar Tree will acknowledge receipt of it in writing, either by email or first class mail, at the address set forth by Associate on the Opt-Out Form. Associate's decision to opt out must be confirmed in writing by Dollar Tree before the Opt-Out decision can be effective. If Associate files an Opt-Out Form and does not receive a written acknowledgement from Dollar Tree within three weeks, then Associate should immediately send an email to dtarbitration@dollartree.com.

Effective Date: The Effective Date of this Agreement is May 31, 2015.

ASSOCIATE ACKNOWLEDGES THAT ASSOCIATE HAS CAREFULLY READ THIS AGREEMENT AND UNDERSTANDS ITS TERMS, THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE PARTIES RELATING TO THE SUBJECTS COVERED IN THE AGREEMENT ARE CONTAINED IN IT, AND THAT ASSOCIATE HAS ENTERED INTO THE AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY DOLLAR TREE, OTHER THAN THOSE CONTAINED IN THIS AGREEMENT ITSELF.

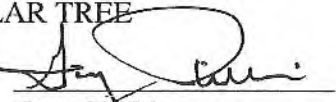
ASSOCIATE FURTHER ACKNOWLEDGES THAT ASSOCIATE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH ASSOCIATE'S PRIVATE LEGAL COUNSEL AND HAS DONE SO TO THE EXTENT ASSOCIATE WISHES.

ASSOCIATE UNDERSTANDS THAT ASSOCIATE AND THE COMPANY ARE GIVING UP THE RIGHT TO A TRIAL IN COURT WITH A JUDGE OR JURY.

This Agreement is made as of the Effective Date by the Parties:

DOLLAR TREE

By:



Gary Philbin
President

And

ASSOCIATE, whose decision not to opt out by May 31, 2015 constitutes Associate's assent to, and agreement to be bound by, this Agreement.