

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>MICHAEL GOLDEMBERG, ANNIE LE, and HOWARD PETLACK, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 7:13-cv-03073-NSR-LMS</p> <p>AFFIDAVIT OF P. TIMOTHY HOWARD, J.D., Ph.D.</p>
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AFFIDAVIT OF P. TIMOTHY HOWARD, J.D., Ph.D.

I, Dr. P. Timothy Howard declare as follows:

1. I am the founding partner in the law firm of Howard & Associates, P.A., and counsel for the Plaintiff in *Smith v. Johnson & Johnson Consumer Companies, Inc.*, No.: 7:14-cv-07506 (S.D. Fl.). I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto. I submit this declaration in support of Plaintiffs' Uncontested Motions for Final Approval of the Class Action Settlement and for Attorneys' Fees, Expenses, and Service Award Payments.

2. I am admitted to practice before all state courts throughout Florida and the District of Columbia. I am also admitted to practice before numerous federal courts throughout the nation, including the Northern District of Florida, Southern District of Florida, Middle District of Florida, and the United States Supreme Court. I have litigated antitrust, consumer product, environmental protection, health and nutrition and unfair competition law cases, including class actions, for more than twenty-five years. In addition, I have written and published

extensively on the subject, particularly concerning consumer product litigation, during my Doctoral studies at Northeastern University, where I received my Ph.D. in Law, Policy & Society.

3. My firm maintains a practice of keeping contemporaneous time records. The case against the Defendant was taken on a contingency basis. My firm has been involved for over one year and has amassed a tremendous amount of attorney and non-attorney hours from the time of our involvement in this case. Additionally, my firm used considerable billing discretion and judgment throughout our litigation against the Defendant. For example, we did not record each and every email correspondence and/or phone call with opposing counsel and co-counsel in the case. In fact, we anticipate that many more hours will be required to respond to communications from the class members, monitor the settlement claim administration, and monitor the Defendant's compliance with the terms and conditions of the Settlement and Release Agreement.

SUMMARY OF CASE

4. On or about May 5, 2014, Plaintiffs ASHLEY SMITH and NOEH SMITH filed this case, docketed as Case No.: 7:14-cv-07506-NSR-LMS, against Johnson & Johnson Consumer Companies, Inc. ("J&JCC") in the United States District Court for the Northern District of Florida. The Complaint raised a cause of action against Defendant for deceptive acts or practices in violation of Fla. Stat. §501-201 ("False Deceptive Trade Practices Act") as well as claims for breach of express warranty and unjust enrichment under Florida common law.

5. On or about September 11, 2014, a Stipulated Motion to Transfer Venue to the Southern District of New York was filed by Defendant, Johnson & Johnson Consumer Companies, Inc. Subsequently an Order transferring this case was entered on or about September 14, 2014.

6. My office has been working with co-counsel in this action. In addition, I supported the Motions for Appointment of Class Counsel, Motion for Class Certification, and Motion for Preliminary Approval of Class Settlement, among various other matters.

QUALIFICATIONS OF COUNSEL

7. I have litigated numerous class, collective and consumer actions throughout the years, and I am a recognized and court approved expert in class action law. The following list of current and past cases is included for the Court's review:

- *Laventure, et al., v. the United Nations, et al.*, Case No. 1:14-cv-0161. Lead Counsel in Action against UN for Cholera Killing of 8,400 Haitians filed in the Eastern District of New York. This case is a nationwide class action alleging that Defendants negligence resulted in the deaths of 8,400 Haitians. Our firm currently represents over 2,000 Haitian families that lost loved ones from this epidemic unleashed by the United Nations.
- *Evans, et al., v. Lorillard*, SUCV2004-02840 (Lower Court), SJC 11179 (Mass. 2013), largest consumer product personal injury verdict for \$151 million in history of Massachusetts. Coordinating counsel for action.
- *Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010.*, Case No. 2:10-md-02179. Lead counsel on 2,000 BP Oil Spill claims along the Gulf States from 2010 through present. Litigation efforts resulting in approximately \$40 million recovery for clients.
- *Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*. Lead counsel on Toyota litigation. This was a nationwide consumer class action for product liability resulting from unintended acceleration of select Toyota, Lexus and Scion make and models. This case resulted in a nationwide settlement in the amount of \$1.2 billion. I served as counsel for Florida class members. The case was given final approval in 2013.
- *Gordon, et al., v. In Zone, et al.*, Fla. 2nd Cir. 2006. Co-Lead class counsel to protect Florida consumes by removing benzene laden drinks from Florida. Similar case in the District of Columbia filed. Co-counsel in similar actions in Massachusetts, Kansas, New Jersey, and California.
- Co-counsel on successful Engle Trust claims for 6,300 Florida victims of cigarette-related diseases. This was a nationwide consumer class action against Big Tobacco that resulted in an \$88,200,000 recovery for clients in 2009.

- *Hall v. Ferrell Roofing and Summit Insurance*, (Fla. DOAH 2007) (recovery of workers compensation coverage and trial for paraplegic injured from fall from roof). Trial completed on January 14, 2008. \$1,300,000 recovery.
- *Newell, et al., v. Polar, et al.*, (Mass. Sup. Ct., 2006) (Co-Lead class counsel to protect Massachusetts consumers by removing benzene laden drinks from Massachusetts). High dollar confidential settlement.
- *Beverly Rogers and Martin Cohen v. Glenda Hood*, Case No. 2003-CA-001223 (Fla. 2nd Cir. 2003) (counsel for Plaintiffs and Nova University, et al., requesting opportunity and access to inspect and study unused and un-voted ballots from the 2000 election). *Pro bono*.
- *State v. King*, Case No. 97-1979 (Fla. 2nd Cir.)(Propane connection tube broke causing fire with one party dying of smoke inhalation, plea of suspended sentence of 12 years, violation of probation for drinking beer, and later for absconding due to fear of imposing suspended sentence from drinking again. Appeal of illegal sentencing. Portion of case as data for law review article, “Off the Chain” Leon County, Florida Violation of Probation Sentencing and Cry for Restorative Justice. *Pro bono*.
- *Florida v. The American Tobacco Company, et al.*, Case No. 95-1466AO (Fla. 1st Cir. 1997). Coordinating counsel for the historic State of Florida Medicaid tobacco liability lawsuit, leading national tobacco litigation and resulting in national settlement of approximately \$250 billion, and \$27 billion for the State of Florida.
- *Mobile Oil Corp. v. State of Florida, Department of Natural Resources and the Board of Trustees*, Case No. GC-G-82-1089 (Fla. 10th Cir. 1987) (Chief Judge William A. Norris). Counsel of record, one of six attorneys working with the Peace River Litigation Group. Represented the Florida Department of Natural Resources and the Florida Board of Trustees. \$10 billion sovereignty lands litigation addressing the methodology of ordinary high water line and navigability determinations, essential for establishing ownership of various water bodies in Florida. Responsible for discovery depositions, preparing evidence (physically marking and documenting water levels of river during high and low water, working with experts in endocrinology and river morphology), memoranda on the philosophical basis for sovereignty land ownership tracing the law back to Roman and Babylonian codes and treatises and tracing forward to assistance and attendance at various hearings. Case settled on eve of trial.
- *Blevins v. Paris*, #90-537-Civ-J-10 (M.D. Fla. 1992)(Judge Hodges). Chief counsel. Represented the Florida Department of Insurance, Division of Risk Management, the Florida Department of Corrections, and Dr. Joseph Paris, Chief Medical Officer, North Florida Reception and Medical Center. Responsible for all aspects of litigation from strategy, depositions, witness preparations, evidence preparations, and trial presentation. Four (4) day jury trial, claiming deliberate indifference to serious medical needs, addressing complex pneumonia and ulcer treatment where Plaintiff, while in a life

threatening condition, was flow to Shands Hospital for intubation and draining of his lungs. Zero verdict for Plaintiff.

- *Costello v. Dugger*, Case Nos. 72-108-Civ-J-14, and 72-94-Civ-J-14 (M.D. Fla. 1972)(Judge Black and Magistrate Snyder). Represented the Florida Department of Corrections and the Florida Department of Insurance, Division of Risk Management. Dispute over attorneys fees charged by Plaintiff's attorney amounting to nearly \$500,000 in two years for monitoring 1987 consent decree. After a two day bench hearing before Magistrate Snyder, the parties agreed to discuss settlement and eventually reached agreement.
- *St. Luke's Hospital Association d/b/a St. Luke's Hospital v. Agency for Health Care Administration*, Case No. 92-5111 (Fla. Dept. of Admin. Hearings) (Eleanor Hunter Hearing Officer). Represented the Agency for Health Care Administration. Co-counsel was responsible for case strategy, witness preparation and direct and cross examination of witnesses. This was a five day hearing addressing denial of certificate of need for liver transplant services at Mayo Clinic in Jacksonville, with a statewide financial impact in the multi-millions of dollars. Shands Teaching Hospital, Jackson Memorial Hospital, and Tampa General Hospital are already providing this service with their programs just beginning to reach maturity.
- *Harris v. Richard L. Dugger, et al.*, Case No. 88-155-Civ-T-13A (M.D. Fla. 1989)(Judge Conway). Represented the Florida Department of Corrections, various Correctional Officers and Superintendents, and the Department of Insurance, Division of Risk Management. Sole counsel, prevailed on summary judgment and on appeals to the Eleventh Circuit and United States Supreme Court. Plaintiff was a Rastafarian inmate who alleged his First Amendment religious freedom to grow dreadlocks, and Eighth Amendment right to be free from cruel and unusual punishment. Correctional officers had to use force to obtain his compliance with a legitimate order to have his hair cut. Plaintiff claimed denial of his First Amendment and Eighth Amendment rights in violation of Title 42 U.S.C. section 1983.
- *Bailey v. Board of County Commissioners of Alachua County, Florida, et al.*, Case No. GCA 88-0198-MMP (N.D. Fla. 1990)(Judge Paul). Represented State Attorney Investigator Tileston from the Eighth Judicial Circuit as associate counsel. A one month jury trial addressing false imprisonment and due process. Defendant Tileston prevailed on Motion for Directed Verdict at the end of Plaintiff's case. The Alachua County was held liable for over \$1 million dollars. Assisted lead counsel in evidence preparation and research. On appeal to the Eleventh Circuit case was affirmed in part, and reversed in part.
- *Derks v. Turner et al.*, Case No. 89-847-Civ-J-16 (M.D. Fla. 1992)(Judge Melton, Magistrate Snyder). Sole counsel. No opposing counsel. Responsible for all aspects of litigation, discovery, and strategy. Represented the Florida Department of Insurance, Division of Risk Management, Florida Department of Corrections, and various Correctional Officers and Superintendents in the litigation and settlement of twenty-three

(23) state and federal civil rights cases filed against the state and its agencies and employees.

- *Alton Brown v. Dugger, et al.*, Case No. (M.D. Fla. 1987)(Judge Schlesinger). Represented former Superintendent of Florida State Prison, Florida Department of Corrections, and Florida Department of Insurance, Division of Risk Management in a civil rights suit determining prisoner access to law library while in disciplinary confinement. Counsel was responsible for opening statements and cross and direct examination of several witnesses in a jury trial.
- *Hollywood, Inc. v. Trustees, et at.*, Case No. GC-G-99-2412 (Fla. 2nd Cir. 1988) (retired judge). Co-counsel, prepared evidence and law for bench hearing. Representing the Florida Trustees in a land use case from central Florida. Court upheld Defendants summary judgment motion.
- *E.L. "Shorty" Allen, Wigwam, Inc., and Monroe County, ex rel., Wigwam, Inc. v. Governor Martinez, et al., as members constituting the Administration Commission, and the Department of Community Affairs*, 573 So.2d 987 (Fla. 1st DCA 1990)(Judge Thompson L. Ford, Retired, Associate Judge)(Department of Administrative Hearing Number 89-2675, Hearing Officer Rigot). Case addressed the authority of the Administration Commission to enact various land use regulations for the Florida Keys. As assistance counsel, I was responsible for preparing factual and legal arguments for hearing, and representing the Administration Commission on appeal.
- *Phipps v. Dugger, et al.*, Case No. 90-252-Civ-J-16 (M.D. Fla. 1991) (Judge Melton, Magistrate Snyder). Chief counsel, responsible for entire case, evidence preparation, depositions and legal strategy. Counsel was representing the Florida Department of Corrections, and various correctional officers, including the Superintendent and medical staff. Case concerned an attempted murder of inmate Scott Phipps by inmate Michael Gross, and the alleged failure of the correctional officers to take steps to protect inmate Phipps. Opposing counsel withdrew from case after discovery was complete and a dispositive motion was filed. Case was dismissed without prejudice

Published Appellate Decisions:

- *Engle v. Philip Morris, et al.*, (Fla. 2006) (amicus curia counsel for Tobacco Control Resource Center) (upheld Big Tobacco's liability for fraud, misrepresentation, injury from product, addictive nature of product; and denied class certification for individual injuries).
- *Engle et al., v. Liggett Group, Inc., et al.*, SC03-1856 (Fla. 2003) (Appellate counsel for Northeastern University's Tobacco Control Resource Center before the Florida Supreme Court Review of Class Action Status and verdict of anti-tobacco case). Currently co-counsel on 4,000 tobacco cases filed in Florida.
- *Agency for Health Care Administration, et al., v. Associated Industries of Florida, et al.*,

678 So.2d 1239 (Fla. 1996)(co-counsel with Professor Laurence H. Tribe, et al., critical national decision upholding constitutionality of Florida's historic Medicaid tobacco liability law).

- *Feizi v. Department of Management Services, et al.*, Case No. 97-3368 (11th Cir. 1999) (upholding civil battery judgment for Iranian engineer subject to discrimination and battery).
- *Hall v. Singletary*, 999 F.2d 1537 (11th Cir. 1993) (upholding summary judgment authorizing review and controls on mail between inmates).
- *Brown, et al., v. Philip Morris, et al.*, (11th Cir 2009) (appeal of district court order challenging due process in Florida Supreme Court's decision in *Engle v. Liggett Group, et al.*)
- *Lambrix v. Dugger, et al.*, 610 So.2d 1366 (Fla. 1st DCA 1992) (upholding summary judgment limiting sexually explicit material in prison).
- *Allen v. Honorable Bob Martinez, Governor, et al.*, 573 So.2d 987 (Fla. 1st DCA 1991) (upholding rulemaking authority to rezone environmentally sensitive land).
- *Brown, et al., v. Philip Morris, et al.*, (M.D. Fla 2007) (one of 4,000 cases that I am counsel on for Floridians sick and dying from cigarette-related diseases)

8. My firm and I have successfully prosecuted a host of class and collective actions, including ongoing cases against Banker's Life Insurance, Campbell Soup, Coca-Cola, Dollar General, Minute Maid, Publix, Walmart, Maidenform, Wacoal, Target, First Family, A & B Insurance and GM Motors. Currently, we maintain a number of consumer cases in both state and federal court.

9. I have written books, articles, chapters, a dissertation, and delivered professional papers extensively on the subject of class action and consumer litigation, including Warrior Standing, Participant/Observer Account of Florida Tobacco Litigation, Editing for Publication (work in progress); 1990 Judiciary Manual of New Florida Law, Florida Supreme Court (May, 1990); "We've Been Framed!" Cause Lawyer Leadership in Florida Tobacco Liability Litigation, Northeastern University, Law, Policy & Society, Ph.D., (April, 2005); "Litigation

Approaches to Obesity,” *Northeastern University and Tufts University* (September, 2004) “A New Paradigm of Consumer Litigation,” *Law & Society Conference*, (July, 2009), Denver, Colorado; “Cause Lawyers, Social Movements and Tobacco Litigation.” *Law & Society Conference in Berlin, Germany* (July, 2007); “Florida Tobacco Litigation, Narrative Frame, Cause Layers, and Social Change,” paper presented at the *Law & Society Conference in Baltimore, Maryland* (July, 2006); “Florida Tobacco Liability Litigation,” *Mealy’s Tobacco Litigation Conference*, (June 17-19, 1996); “Tobacco Liability Litigation,” *Alabama Governor’s Conference on Addiction and Tobacco* (April 18, 1995)

10. I also served as a Director and Professor from 2007 through 2012 at Northeastern University’s Law & Policy Doctoral Program, including start-up, two cohorts of 70 national and international Law & Policy doctoral scholars that included lawyers, judges, law professors, consumer advocates, and others, duties included law and policy curriculum, admissions, structure, international and U.S. law and policy seminars, law and policy doctoral theses development and advising, and core, affiliate, and distinguished guest faculty selection of Supreme Court Justices, lawyers, Attorney General, former U.S. Senator, former Governor and national consumer advocates, from 2007 through 2012.

11. Currently, I am President of Cambridge Graduate University, involved in the teaching and training of Judges and consumer and human rights advocates globally and in regions of the world, such as Central America, West Africa, and Central Asia. I have an active role in the designing and development of graduate programs in law, policy and global studies

12. Furthermore, I have been invited to, and do, speak at numerous seminars and conferences of Judges, lawyers, human right advocates, international elections monitoring, in various regions of the globe, and as recently as last week for the Judiciary in Honduras. I have

also spoken at several United States Law & Society Conferences, Mealy's Tobacco Litigation Conference, Alabama Governor's Conference on Addiction and Tobacco, the American Bar Association Conference, the Florida Bar Conference and Northeastern University and Tufts University.

13. I have been approved by previous courts as an expert in class action law and have testified in court as to the reasonableness of class action notice, the reasonableness of class action attorneys' fees and costs, and the merits of approval of class action settlements.

APPROVAL OF BILLING RATES

14. My billing rate is \$450 per hour, which is usual and customary for class action practitioners in my field with a J.D., and Ph.D., training, expert qualifications, nearly 30 years of application, and national and international level of expertise and experience on the historic consumer protection cases of this era. My rate has been utilized in previous class action settlements with national companies, including leading entertainment, beverage, and consumer product companies. *See, e.g., Gordon v. The Coca Cola Company, et al.*, Case No. 4:06-cv-00405 (N.D. Fla 2007). My firm has not received any form of payment for fees or costs to date for accepting this case – it has all been contingent on our success. I expended 107.7 attorney hours, and costs amounting to \$14,500.00 yielding a total lodestar for attorney fees and costs in this action of \$62,965.

THE SETTLEMENT

15. The settlement agreement described herein is fair, reasonable and will result in substantial benefits to all class members.

16. My firm conducted an investigation into both the legal and factual background of the claims. I also recognized that the Defendant was represented by excellent defense counsel

who aggressively defended the claims in this case – litigation and trial would not be easy.

CLASS CERTIFICATION

17. Courts are authorized to issue provisional certification to effectuate a class settlement. Here, the class requirements are satisfied as the Court has already certified this case as a class action.

CONCLUSION

18. The settlement was hard fought and concludes hotly debated issues which were aggressively litigated. The settlement resolves all claims and ensures that consumers and class members receives some benefits, rather than none. The Court should provide Final approval so that we can mail the terms and conditions to the class members.

I declare under penalty of perjury under the laws of the State of Florida and the United States of America that the above is true and accurate and if called upon to do so, I would, and could, so testify.

Executed under penalty of perjury this 13th day of October 2017, in Tallahassee, FL.

/s/ P. Timothy Howard
P. Timothy Howard, Declarant