

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHAEL GOLDEMBERG, ANNIE LE,
and HOWARD PETLACK, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Case No. 7:13-cv-03073-NSR-LMS

**DECLARATION OF KIM RICHMAN IN SUPPORT OF FINAL APPROVAL OF
SETTLEMENT AND PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS**

I, Kim E. Richman, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I make this declaration in support of final approval of settlement and Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards.

2. I am over 18 years of age, and the matters stated herein are based on my personal knowledge, except as otherwise noted. If called upon, I would competently testify to them.

Qualification of Counsel

3. I am the founding and managing Member of the Richman Law Group, a law firm that specializes in class action litigation on behalf of consumers in federal and state courts throughout the United States.

4. I received my juris doctor degree from Brooklyn Law School in 2001. I am a member in good standing of the state bar of New York, to which I was admitted in 2003, as well as numerous federal courts, including but not limited to the United States District Courts for the Southern and Eastern Districts of New York. I have appeared in various state and federal district courts *pro hac vice*. I am in good standing in every court to which I am admitted to practice.

5. I have been litigating class actions on behalf of consumers for over a decade. My

litigation experience ranges from cases involving corporate fraud and insider trading to protecting individuals' constitutional and consumer rights. I have been appointed by various courts to represent consumers in numerous actions.

6. Following is a partial list of cases that I have previously litigated or am currently litigating on behalf of consumers:

- i. *Salamanca v. General Mills, Inc.*, No. 3:16-cv-04871 (N.D. Cal.); *Nuez v. General Mills, Inc.*, No. 1:16-cv-04731 (E.D.N.Y.); *Woloszyn v. General Mills, Inc.*, No. 0:16-cv-02869 (D. Minn.) (class actions alleging deceptive and false labeling of oat products).
- ii. *Stevenson v. Post Consumer Brands, LLC and Post Holdings, Inc.*, No. 1:16-cv-03396 (E.D.N.Y.); *Wu v. Post Consumer Brands, LLC, and Post Holdings, Inc.*, No. 3:16-cv-03494 (N.D. Cal) (class-actions alleging deceptive and false labeling of wheat cereal products);
- iii. *Gibson v. The Quaker Oats Company*, No. 16-cv-04853 (E.D. Ill.) (class action alleging deceptive and false labeling of oat products);
- iv. *Gonzalez v. Costco Wholesale Corp.*, No. 1:16-cv-02590 (E.D.N.Y.) (class action alleging deceptive labeling in connection with laundry detergent and dish soap products);
- v. *Normand v. Nestle Purina Petcare Co.*, No. 6:15-cv-06141 (W.D.N.Y.) (class action alleging that branded dog food is linked to the poisoning and death of thousands of dogs around the country);
- vi. *Hidalgo v. Johnson & Johnson Consumer Cos.*, No. 1:15-cv-05199 (S.D.N.Y) (class action alleging deceptive labeling of baby care products);
- vii. *Segedie v. The Hain Celestial Group, Inc.*, No. 7:14-cv-05029 (S.D.N.Y.) (class action alleging that infant formula is falsely labeled "organic" because it contains ingredients that are not allowed in "organic" products under federal law);
- viii. *Paulino v. Conopco, Inc.*, No. 1:14-cv-05145 (E.D.N.Y.) (class action alleging that "Suave Naturals" products, which use imagery of "natural ingredients" to convey a supposed benefit of the product, contain harmful and synthetic chemicals in violation of New York and California consumer protection laws);
- ix. *Brenner v. Williams-Sonoma, Inc.*, No. 1:13-cv-10931 (D. Mass.) (class action alleging that defendant gathered customers' ZIP codes during credit card transactions, which it used to build databases for advertising and campaigns in violation of the Massachusetts Unfair Trade Act);
- x. *Rich v. Lowe's Home Centers, Inc.*, No. 3:13-cv-30144 (D. Mass.) (class action alleging violation of Massachusetts Unfair Trade Practices Act and unjust

- enrichment);
- xi. *Koehler v. Pepperidge Farm, Inc.*, No. 13-cv-02607 (D. Colo.) (class action alleging that snack food labeled “natural” contains genetically modified organisms);
 - xii. *Barron v. Snyder’s-Lance, Inc.*, No. 0:13-cv-62496 (S.D. Fla.) (class action alleging that snack food products labeled “natural” contain genetically modified organisms and synthetic ingredients);
 - xiii. *In re: Simply Orange Orange Juice Marketing & Sales Practices Litigation*, No. 4:12-md-02361 (W.D. Mo.) (class action alleging that orange juice labeled as “100% pure” and “natural” contains synthetic flavoring and is subject to a high degree of processing);
 - xiv. *In re: Frito Lay North America, Inc. “All Natural” Litigation*, No. 1:12-MD-02413 (E.D.N.Y.) (class action alleging that snack food products labeled as “natural” contain genetically modified organisms);
 - xv. *Koh v. SC Johnson & Son, Inc.*, No. 5:09-cv-00927 (N.D. Cal.) (class action that introduced the concept of “greenwashing” in violation of California advertising laws);
 - xvi. *L’Ottavo Ristorante v. Ingomar Packing Co.*, No. 09-CV-01427 (E.D. Cal.) (class action alleging violation of the Sherman Act);
 - xvii. *Hill v. Roll International Corp.*, No. CGC-09-487547 (San Francisco County Superior Court) (class action alleging violation of California consumer protection laws);
 - xviii. *Serrano v. Cablevision Systems Corp.*, No. 09-CV-1056 (E.D.N.Y.) (class action alleging violation of CFAA and of New York consumer protection law);
 - xix. *Petlack v. S.C. Johnson & Son, Inc.*, No. 08-CV-00820 (E.D. Wisconsin) (class action alleging violation of Wisconsin consumer protection law);
 - xx. *S.K. v. General Nutrition Corp.*, No. 08-CV-9263 (S.D.N.Y.) (class action alleging violation of New York consumer protection laws);
 - xxi. *Fink v. Time Warner Cable*, No. 08-CV-9628 (S.D.N.Y.) (class action alleging violation of New York consumer protection laws);
 - xxii. *All-Star Carts & Vehicles Inc. v. BFI Canada Income Fund*, No. 08-CV-1816 (E.D.N.Y.) (class action alleging violation of the Sherman Antitrust Act);
 - xxiii. *Tan v. Comcast Corp.*, No. 08-CV-02735 (E.D. Pa.) (class action alleging violation of the federal Computer Fraud and Abuse Act (CFAA));
 - xxiv. *Bodoin v. Impeccable L.L.C.*, No. 601801/08 (N.Y. Sup. Ct.) (individual action alleging conspiracy and fraud);
 - xxv. *Gaines v. Home Loan Center, Inc.*, No. 08-CV-667 DOC (C.D. Cal) (class

action alleging violation of the Racketeer Influenced and Corrupt Organizations Act);

xxvi. *Chin v. RCN Corp.*, No. 08-CV-7349 RJS (S.D.N.Y.) (class action alleging violation of Virginia consumer protection law).

Background of Litigation and Work to Achieve Settlement

7. I have been actively engaged in all stages of this litigation.

8. Plaintiffs retained my firm to prosecute their claims against Defendant Johnson & Johnson Consumer Companies, Inc. (“J&JCC” or “Defendant”), for false and misleading labeling, marketing, and advertising of Defendant’s Aveeno Active Naturals brand of personal-care products (the “Products”) in violation of various state consumer fraud statutes.

9. Before bringing this action, I assisted in exhaustively investigating the claims of Plaintiffs and the Class, independently obtaining samples of the Product labels, details of Plaintiffs’ purchases of the Products, and examples of representations made by J&JCC in marketing and advertising the Products.

10. Along with co-counsel, I assisted in preparing the complaint and other documents initiating this action.

11. I effectuated the filing and service of litigation documents, including but not limited to the complaint and various motions and supporting exhibits.

12. On June 26, 2014, the Court appointed Plaintiff Michael Goldemberg as Interim Lead Plaintiff and appointed the firms of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and the Richman Law Group as Interim Co-Lead Class Counsel (Dkt. No. 34).

13. The Richman Law Group, along with co-counsel, drafted and effectuated service of the Amended Complaint (Dkt. 37) and the Second Amended Complaint (Dkt. 42).

14. Along with co-counsel, the Richman Law Group engaged in extensive motion practice, fully briefing Defendant’s motion to dismiss the Action, Plaintiffs’ motion for appointment of interim lead counsel, Plaintiffs’ motion for class certification, and J&JCC’s opposition thereto.

15. Along with co-counsel, the Richman Law Group engaged in intensive discovery, including preparing and responding to document requests, interrogatories, and deposition notices, and preparing witnesses for deposition. Each of the three named Plaintiffs responded to written discovery requests, producing documents relating to the purchases of the Products, and each named Plaintiff sat for lengthy depositions.

16. Following discovery, expert discovery, and extensive briefing, the Richman Law Group, along with co-counsel, prepared and filed Plaintiffs' Notice of Motion for Class Certification (Dkt. No. 69) and Memorandum of Law in Support (Dkt. No. 70).

17. The Richman Law Group, along with co-counsel, prepared and filed briefing in opposition to Defendant's motion to exclude the expert report of Dr. Jean-Pierre H. Dubé (Dkt. Nos. 80-84).

18. Along with co-counsel, the Richman Law Group helped prepare extensive mediation submissions. On January 6, 2017, the Richman Law Group and co-counsel engaged in a full-day mediation session before Professor Eric D. Green of Resolutions, LLC, which was followed by weeks of continued negotiation through the mediator.

19. The Richman Law Group, along with co-counsel, prepared the settlement papers and exhibits documenting the agreement between the parties, as well as on Plaintiff's Motion for Preliminary Approval of Class Action settlement.

20. Once preliminary approval was granted, the Richman Law Group, along with co-counsel, worked extensively on our submissions as to Plaintiffs' fees, expenses, and incentive award.

21. The Richman Law Group also worked with co-counsel to prepare for the Final Approval Hearing.

22. I intend to work on this matter through until this case is brought to a final resolution via payments to Class members.

23. The Richman Law Group worked closely with co-counsel to divide tasks, ensure

efficient case management, and prevent duplication of efforts by assigning specific tasks among firms.

Background and Circumstances Surrounding the Fee Application

24. As discussed above, Class Counsel have actively litigated this case, and the time they dedicated to this case supports their requested fee.

25. Class Counsel undertook representation of this matter on a pure contingency-fee basis, agreeing to advance all necessary expenses and to receive a fee only if there was a recovery. As a result, they shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment, all while devoting time to this case that otherwise could have been spent on other matters.

26. This strategy enabled Class Counsel efficiently and effectively to obtain information about the strengths and weaknesses of Plaintiffs' claims.

Class Counsel Costs

27. My firm has devoted significant human and financial resources to representing the interests of the putative Class and will commit such further resources necessary to bring this matter to final resolution via payments to Class members.

28. When accepting a particular case, my associates and I accept the risk that we will not get paid on that case, even when hundreds of attorney hours, and thousands of dollars in expenses, have been expended.

29. In addition to the time my firm has spent working on this case, it is likely that the Richman Law Group will expend additional time working on this case, including preparing for and attending the final fairness hearing, answering Class Member questions, and working with the Claims Administrator.

30. The Richman Law Group sets its rates for attorneys and staff members based on a variety of factors, including the experience, skill, and sophistication required for the types of legal services typically performed; the rates customarily charged in similar matters; and the

experience, reputation, and ability of the attorneys and staff members.

31. Standard practice at the Richman Law Group is for all attorneys and staff to keep contemporaneous time records describing tasks performed in 0.1-hour increments. Firm policy requires all attorneys and staff to enter their time into an electronic timekeeping system on a daily basis. I reviewed the time entries for this case.

32. To date, I have worked on this matter a total of 972.8 hours. My billable rate is \$700.00 an hour, resulting in \$680,960.00 in fees. I have used this rate in calculating lodestar for attorneys' fee purposes in several other nationwide class actions.

33. In addition to my work on this case, the attorneys and staff at the Richman Law Group have worked on this matter for 430 hours, resulting in \$185,455.00 in fees.

34. In total, the Richman Law Group has spent 1,402.8 hours working on this case, resulting in \$866,415.00 in fees.

35. I estimate that the Richman Law Group will spend at least another 20 hours on this case through final approval and to completion, bringing the firm's total time on this case to 1,422.8 hours.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 12th day of October, 2017.

/s/ Kim E. Richman
Kim E. Richman

CERTIFICATE OF SERVICE

I, Todd S. Garber, hereby certify that on October 13, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Todd S. Garber
Todd S. Garber