

**IN THE SUPERIOR COURT OF WHITE COUNTY
 STATE OF GEORGIA**

MIKE ALLEN and MONTE POMROY, *
individually and on behalf of all others *
similarly situated as defined herein, *

Plaintiffs, *

v. *

CASE NO. SUCV2020000385

DOLGENCORP., LLC. and DOLLAR *
GENERAL CORP., *

Defendants. *

AFFIDAVIT OF R. BRENT IRBY

Personally appeared before the undersigned attesting officer authorized by law to administer oaths, R. Brent Irby, who after first being duly sworn, deposes and states that he is above the age of eighteen, that he is competent to give this Affidavit, that he has personal knowledge of the facts contained in this Affidavit, and the same are true and correct:

1. I am the principal of Irby Law, LLC, counsel of record for Plaintiffs in this matter. I am a member in good standing of the bars of the states of Alabama, Georgia, and Tennessee. As detailed herein, I have acted as lead or co-lead counsel in several class action matters pending in Georgia courts. My firm, along with the firms of Lober & Dobson, LLC and The Law Offices of Todd Lord, have been prosecuting this matter and are court-appointed Class Counsel in this case, having been appointed by the Court to represent the Settlement Class. I respectfully submit this affidavit in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards and Plaintiffs' Unopposed Motion for Final Approval. Except as otherwise noted, I have personal knowledge of the facts set forth in

this affidavit. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

2. As discussed more herein, I believe that the requested fees and expenses are fair, reasonable, and consistent with precedent in Georgia state and federal courts, particularly considering the risk that Class Counsel faced in litigation and the relief obtained for Class Members. I also believe that the requested service awards are fair and reasonable given the efforts of the Class Representatives to this litigation.

3. As discussed more herein, it is my opinion that that the proposed Settlement is fair, reasonable, and adequate, and should be granted final approval by the Court. Class Counsel have taken into account several factors, including the risk and cost of continued litigation and the scope of the relief provided by the Settlement, and Class Counsel believe that the Settlement is fair and in the best interest of all Class Members.

4. On November 16, 2020, Plaintiff Mike Allen filed his action in this Court on behalf of himself and a Georgia class. On December 2, 2020, Plaintiff Monte Pomroy filed her action in the Fourth Judicial Circuit Court for Clay County, Florida on behalf of herself and a proposed Florida class. In their actions, Plaintiffs allege that Defendants deceptively and unlawfully labeled, packaged, and marketed certain ground coffee Products as containing enough coffee such that it “makes up to [a certain number] of cups.” According to Plaintiffs, contrary to this representation on the label, the Products do not contain enough ground coffee to make the stated number of cups when following the brewing instructions on the Product label.

5. Prior to filing, Class Counsel thoroughly investigated the facts and claims, including testing of the Products’ quantities and servings, consultation with an expert in consumer

behavior and retail marketing, review of publicly available information, interviews with other coffee consumers and Dollar General shoppers, and legal research regarding state law claims, remedies, and class certification. We knew that class certification and the assertion of state law claims would have to be approached on a state-by-state basis in a contested proceeding, so we thoroughly researched these issues for several states where we had been retained, including Georgia, Florida, and Alabama. We also researched similar cases pending in various other jurisdictions. Following this pre-suit investigation, I drafted Complaints for filing in Georgia, Florida, and Alabama.

6. Earlier this year, counsel for the Parties began discussing the possibility of exploring settlement. These discussions were prompted by the Parties' desire to avoid the expense, uncertainties, and burden of protracted litigation. To facilitate those discussions, Defendants provided Class Counsel with informal discovery, including relevant information regarding the Products, sales figures, and the scope of the Class and its membership. After analysis of this information and several discussions, counsel for the Parties began to have preliminary talks about a general framework for a potential nationwide settlement.

7. The Parties ultimately elected to schedule a mediation and chose Greg Parent of Miles Mediation and Arbitration as the mediator. Mr. Parent is a highly skilled and well-respected mediator in the Atlanta area. On February 11, 2021, the Parties and their counsel conducted a full-day mediation with the input, assistance, and oversight of Mr. Parent. At all times, the negotiations were arms-length, adversarial, and free of collusion. Throughout the mediation, the Parties exchanged numerous offers and counter-offers, and negotiated the points of each vigorously. It was only after the Parties reached an agreement on the substantive relief to the Class that they

turned to any discussion of attorneys' fees and Class Representative Service Awards. All negotiations were conducted at arms-length and with the assistance of Mr. Parent.

8. After a full day of mediation, the Parties reached an agreement on the material terms of a class settlement that would resolve this matter on a nationwide basis. On the evening of February 11, 2021, the Parties executed a Term Sheet memorializing the material terms of the class-wide Settlement that was negotiated.

9. On February 26, 2021, the Parties filed with the Court with a Notice of Settlement, proposing the next steps to be carried out in the Settlement process.

10. Following mediation, the Parties began memorializing, negotiating, and finalizing the details of the Settlement Agreement. This began another round of discussions and negotiations in which each aspect of the Settlement Agreement was addressed. Counsel for the Parties worked with one another in drafting, editing, and finalizing the full Settlement Agreement and its numerous, detailed exhibits. Numerous conferences and exchanges of drafts occurred between counsel before the full Settlement Agreement was finalized. Further, before the final Settlement Agreement was executed, the Parties exchanged additional confirmatory discovery pertinent to the Settlement. Class Counsel thoroughly reviewed and analyzed this confidential business information from Dollar General to further confirm the fairness of the Settlement.

11. On March 31, 2021, the Parties executed the final Settlement Agreement. The Parties only reached settlement after engaging in a significant exchange of information, confirmatory discovery, and arms-length negotiations, including a full-day mediation with mediator Greg Parent. Plaintiffs' objectives in filing the Action were to remedy the allegedly deceptive representations made on Defendants' labeling and to compensate Settlement Class

Members for the alleged misrepresentations. (*See generally*, Second Amended Complaint). Through the Settlement Agreement, Plaintiffs have achieved both objectives - - - providing significant benefits for the Settlement Class Members, especially in light of the substantial risks the Parties would face if the Action progressed. Class Counsel believe the Settlement confers substantial benefits upon the Settlement Class Members. Class Counsel have evaluated the Settlement and believe it is fair, reasonable, and adequate to resolve Plaintiffs' grievances and is in the best interest of the Settlement Class.

12. I prepared Plaintiffs' Unopposed Motion for Preliminary Approval and Conditional Class Certification, which was heard by the Court at the preliminary approval hearing conducted on April 1, 2021. Following preliminary approval by the Court, I worked closely with the Settlement Administrator and defense counsel through several conference calls and email exchanges to ensure that all class notices and forms were accurate and finalized. I also worked closely with the Settlement Administrator and defense counsel to ensure that the Settlement website and hotline were accurate and functioning properly prior to the Settlement's Notice Date.

13. We negotiated a notice and claims program that is state-of-the-art, user-friendly, and designed to ensure that Class Members receive notice of their rights and options and have the ability to easily claim their benefits. The Settlement Administrator, Heffler Claims Group, will be submitting a declaration attesting to the adequacy and reach of the notice plan that was utilized.

14. Since entry of the Preliminary Approval Order, I have regularly monitored Settlement administration and responded to many Class Member inquiries, which I will continue to do throughout the Settlement process. Further, if final approval is granted, Class Counsel will

continue to work to ensure that the cash benefits are properly administered to Class Members and that the programmatic relief is properly implemented.

15. Among Class Counsel, I was typically the key point person for communications and exchanges with defense counsel throughout the litigation, settlement discussions, and settlement process, as well as with the Settlement Administrator in finalizing the notice, forms, website content, and the claims process. I drafted the pleadings in this matter, and also coordinated with and directed all work with my co-Class Counsel to accomplish all tasks in furtherance of the Settlement Class in the most efficient manner possible. Accordingly, in my role in this litigation, I am thoroughly familiar with all of the work done and the contributions/resources devoted by Class Counsel to the investigation, litigation, and ultimate settlement of this litigation.

16. Irby Law, LLC is a boutique litigation firm based in Birmingham, Alabama. My firm specializes in complex consumer and business litigation, including class actions and mass torts in Alabama, Georgia, Tennessee, and various other states. I have been appointed lead counsel or co-lead counsel in several class actions and in many nationwide class actions. Cases in which I have served as Class Counsel and in which I played a lead role include:

Warren Burch and James Bodley v. Whirlpool Corporation,
Case No.: 1:17-CV-18-PLM; United States District Court, Western
District of Michigan (Southern Division);

Wendy and Nicholas Grasso v. Electrolux Home Products, Inc.,
Case No.: 8:16-cv-00911-CEH-TGW; United States District Court,
Middle District of Florida (Tampa Division);

Robert Brown v. Electrolux Home Products, Inc. d/b/a Frigidaire,
Case No.: 1:08-cv-00030-LGW-BKE; United States District Court,
Southern District of Georgia (Augusta Division);

Timmy L. Murphy v. Walgreen Co., d/b/a Wallgreens, Case No.:
2015-CV-63251; In the Superior Court of Bibb County, State of

Georgia;

Golden Eaton, Jr., et al. v. Vaughan Regional Medical Center, LLC, et al., Case No.: 27-CV-2014-900317.00; In the Circuit Court of Dallas County, Alabama;

Scott A. Chambers, et al. v. Merrill Lynch & Co., Inc., et al.; Case No.: 10-cv-07109-NRB; United States District Court, Southern District of New York;

O'Shaugnessey Wallace v. Greene Finance Company, Inc., et al.; Case No.: 2007-cv-052; In the Superior Court of Quitman County, State of Georgia;

Amber Osborne v. Rite Aid Corporation, Case No.: 2011-cv-0685-MM; In the Superior Court of White County, State of Georgia;

Washer & Refrigeration Supply Co., Inc., et al. v. PRA Government Services, LLC d/b/a "Revenue Discovery Systems" and/or "RDS" and/or "Alatax," et al.; Case No.: CV-2010-903417.00; In the Circuit Court of Jefferson County, Alabama (Birmingham Division);

Joretta Rhodes Smith, individually and on behalf of a class of Alabama citizens in Alabama Similarly situated v. CVS Pharmacy, Inc.; CVS/Caremark Corporation; Case No.: CV-2008-900054; Circuit Court of Bullock County, Alabama;

Eufaula Family Medicine, P.C. v. Stericycle, Inc.; Case No. CV-2008-900066; Circuit Court of Barbour County, Alabama (Eufaula Division);

Jimmy S. Calton, Sr. and Jim S. Calton, Jr., d/b/a Calton & Calton v. Shred-It USA, Inc.; Case No. CV-2008-900006; Circuit Court of Barbour County, Alabama (Eufaula Division);

Earl R. Cates, et al. v. Cooper Tire and Rubber Company, Case No. 3:06-cv-940; United States District Court for the Northern District of Ohio (Western Division).

Margaret Franklin v. Acceptance Insurance Agency, Inc., et al.; Civil Action No. CV-06-000065; Circuit Court of Bullock County, Alabama;

Annette Rush v. Village Auto Insurance Company, Inc.; 2005-CV-107983; In the Superior Court of Fulton County State of Georgia;

Shelly Jones and Dennis Hill v. Southland National Insurance Corporation; Civil Action No. CV-05-0200; Circuit Court of Barbour County, Alabama (Eufaula Division);

In Re Textile Rental Services Litigation; Civil Action No. CV-05-019; Circuit Court of Barbour County, Alabama (Clayton Division);

Fred Phillips, et al. v. Columbiana Bancshares, Inc., et al.; Civil Action No. CV-03-1405; Circuit Court of Shelby County, Alabama;

Ann Harbin, individually and d/b/a Harbin Research Services, et al. v. Pitney Bowes, Inc.; Pitney Bowes Credit Corporation; Case No. 2002-769; Circuit Court of Montgomery County, Alabama;

In Re Allstate Insurance Company Underwriting and Rating Practices Litigation; MDL Docket No. 3:02-md-1457 – All Cases; United States District Court Middle District of Tennessee (Nashville Division).

17. In addition to Irby Law, LLC's complex litigation practice, my firm also represents local businesses and clients in several areas of commercial litigation, including shareholder actions, business torts, and partnership disputes.

18. I graduated *cum laude* from the University of Alabama School of Law in 1998. Since then, my practice has focused solely on complex commercial and class action litigation. As set forth above, I have extensive experience litigating class actions and routinely practice *pro hac vice* in federal and state courts across the country. In addition, I also have written and lectured on class action topics. For the past eight (8) years I have served as an adjunct professor at the University of Alabama School of Law teaching Complex Litigation/Class Actions, as well as Remedies.

19. Class Counsel took on this litigation against a sophisticated and well-financed national retail corporation on a completely contingent basis, advancing all expenses and accepting all risk that we would work for potentially years and receive no compensation or reimbursement whatsoever. Each of the firms representing the Class are small, and the significant time and resources devoted to this matter have necessarily precluded each firm from being engaged in other employment.

20. In addition to the time spent in the litigation and ultimate settlement of this matter, the firms representing the Settlement Class have collectively advanced \$14,364 in unreimbursed litigation expenses that were reasonably and necessarily incurred in prosecuting this matter and consummating the Settlement. Among other items, Class Counsel have incurred costs relating to travel for hearings and mediation, mediator fees, consultant fees, on-line legal research, copying and printing, and various Federal Express, mail, and other charges. Class Counsel's unreimbursed litigation expenses are supported by receipts, expense records, and similar documents maintained by them in the ordinary course of business and in reference to this case, and can be provided to the Court *in camera* at the Court's request.

21. The Settlement provides for service awards of \$3,250 to each Class Representative for their efforts on behalf of the Class. Since inception, each Plaintiff has indicated his or her desire and willingness to undertake the responsibilities and fiduciary duties on behalf of the Class. This is a voluntary obligation that goes beyond the pursuit of his or her individual claim, and each Plaintiff has diligently fulfilled his or her duties to the class up to the present moment. The Class Representatives have remained in close contact with Class Counsel prior to the filing of the case and throughout the litigation and settlement process. Each Class Representative has provided all

information and materials requested by Class Counsel and each provided input throughout the settlement negotiation process. We have conferred with each of the Class Representatives, and they fully support and endorse the Settlement. For these reasons, I believe that a service award in the amount of Three Thousand Two Hundred Fifty Dollars (\$3,250.00) to each Class Representative is reasonable and warranted for their efforts on behalf of the Class.

22. Class Counsel are all highly experienced in the litigation, certification, and settlement of nationwide class action cases involving consumer claims like those at issue here. Based on my experience in litigating and resolving several nationwide and statewide consumer class action cases over the last 20 years, it is my opinion that the proposed Settlement is fair, reasonable, and adequate, and should be granted final approval by the Court. Throughout the settlement negotiations and settlement process, Class Counsel have considered the fairness and adequacy of the Settlement by evaluating the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of any further litigation and appeals; the risk of certifying a class and maintaining class action status throughout trial; the amount offered in Settlement, and the experience and views of Class Counsel. While Class Counsel have continued confidence in the substantive merits of the claims asserted, Class Counsel have taken into account the risk and cost of continued litigation and the scope of relief offered in the Settlement compared to the potential relief should the case continue through trial and appeal. In considering these factors, Class Counsel believe that the Settlement is fair, reasonable, and adequate.

23. Throughout the settlement discussions and negotiations, the Parties had more than adequate information before them to evaluate their relative positions and to make knowledgeable decisions regarding the Settlement. Class Counsel had sufficient information in order to evaluate

the strengths and weaknesses of the case and the fairness of the proposed Settlement. I am confident and satisfied that the Settlement is fair, adequate and well within a range of possible recoveries to warrant final approval, especially when weighed against the risk and legal challenges faced by the Class. Continued litigation would undoubtedly involve considerable time and expense, and the value of any judgment would have to be discounted by the delay in obtaining a judgment. By contrast, the Settlement provides certain, immediate, and substantial relief. Class Counsel enthusiastically endorse final approval of the Settlement and believe that it is in Class Members' best interest.

24. Class Counsel request an award of attorneys' fees and reimbursement of litigation expenses representing thirty percent (30%) of the \$3.1 million Maximum Settlement Amount, as defined in the Settlement Agreement. Per the Settlement Agreement, the \$3.1 million Maximum Settlement Amount does not include the cost or value surrounding the non-monetary programmatic relief that benefits all Class Members. If the value of the programmatic relief was considered, then the percentage fee and expense award requested would be less than thirty percent (30%).

25. I believe that the requested fee and expense award is reasonable in relation to the result achieved for the Settlement Class Members and the efforts of Class Counsel. Further, the attorneys' fee and expense award requested is consistent with other fee and cost awards endorsed and approved by other Georgia state and federal courts hearing class action litigation.

I swear and attest under the penalty of perjury of the laws of Georgia and the United States that the foregoing is true and correct, and that this affidavit was executed in Birmingham, Alabama on June 15, 2021.

R. Brent Irby
R. Brent Irby

Sworn to and subscribed before
me this 15th day of June, 2021.



Lee Ann Wasden
Notary Public

My Commission Expires
5/24/2025