

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

RAY STOLL, HEIDI IMHOF, and CHASE
WHITMAN, on behalf of B.W., a minor
child, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MUSCULOSKELETAL INSTITUTE,
CHARTERED d/b/a FLORIDA
ORTHOPAEDIC INSTITUTE,

Defendant.

Case No.: 8:20-cv-01798-CEH (AAS)

I, William (“Billy”) Peerce Howard, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I have been licensed to practice law in the state of Florida since 1997.
2. I am one of the attorneys for the Plaintiffs and the proposed Settlement Class in this case. I submit this declaration in support of the Motion for Attorneys’ Fees and Costs.¹ The facts herein stated are true of my own personal knowledge, and if called to testify to such facts, I could and would do so competently.
3. I lead the Class Action Department at The Consumer Protection Firm. Our firm specializes case in “consumer protection” cases – those in which individuals

¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement and Release, which is attached the Motion for Preliminary Approval as its **Exhibit A**.

have had their rights violated. I have been lead, co-lead and co-counsel in some of the most significant cases in Florida and throughout the country.

4. My career began with a clerkship for the Honorable Edward Rogers the first black judge in Palm Beach County and reputable civil right leader in the community.

5. My practice of law began as a Certified Legal Intern with the Palm Beach State Attorney's Office where I tried numerous jury trials including the first one in the new courthouse.

6. I successfully tried a civil theft case at the very beginning of my law career with Paul Huey (who is currently a Circuit Court Judge in Hillshorough County) as my co-counsel, where we obtained a million-dollar award for our client who had a company stolen from him.

7. I have testified in Tallahassee before an Insurance and Banking Subcommittee to help defeat a proposed change to Florida's consumer protection law from the banking industry.

8. I was asked by the Federal Trade Committee ("FTC") to round-table in D.C. concerning the use of social media, including Facebook, to collect debts and locate consumers.

9. I am one of the few lawyers that has ever obtained a punitive damages verdict against a national debt collection company and have gone to trial numerous times in consumer cases against large companies.

10. I am regarded as an expert in consumer rights cases and have frequently

appeared on national news stations including: Inside Edition, World News Tonight with Dianne Sawyer, 60 Minutes, CNN, ABC Nightly News, Nightline, Fox, Fox and Friends, CBS and NBC.

11. I am often asked by local news stations in the Tampa-Bay area to appear of a variety of legal issues and have been the subject of hundreds of on-line articles world-wide concerning some of my high-profile consumer rights cases.

12. I have lectured at colleges and given seminars concerning consumer rights, in-person and on-line.

13. The Florida Bar, just recently asked me to lecture on numerous consumer protection matters.

14. I regularly lecture for the largest consumer advocacy group in the country-the National Consumer Law Center's (NCLC).

15. I also worked for Nationwide Insurance as their in-house counsel and tried numerous cases.

16. I started Morgan & Morgan's Consumer Protection Department and over an approximate 15 year span worked on a wide variety of consumer cases including the Telephone Consumer Protection Act ("TCPA"), Fair Debt Collection Practice Act ("FDCPA"), Fair Credit Reporting Act ("FCRA"), Unfair and Deceptive Trade Practices, Illegal Tape Recordings, Civil Theft, Fraud, Florida Consumer Collection Practices Act ("FCCPA") and Intentional Infliction of Emotional Distress claims.

17. I has been an honor to practice law in Florida for the past 25 years.

Some of my notable rulings include:

- i) *Zybuero v. NCSPLUS, Inc.*, United States District Court, Southern District of New York, 1:12-cv-06677-JSR, Lead Counsel in a certified TCPA class action where defendant called plaintiff concerning someone else's debt and continued to do so after Plaintiff asked for calls to stop. Case settled two days before a bench trial was set in front of the Honorable Jed Rakoff. Plaintiff's counsel was also awarded sanctions in the amount of \$38,041.63 for fees and costs due to defendant's misconduct. (Doc. 18) (Doc. 57) (Doc. 62) (Doc. 88)
- ii) *McCaskill v. Navient Solutions Inc. No. 8:2015-cv-01559*, Lead counsel in obtaining the then largest TCPA summary judgment, \$363,500.00, in an individual case in the country.
- iii) *Jaquita Lyons v. Dish Network, LLC*, M.D. Florida, 3:12-cv-199-J- 32MCR, Lead counsel in one of the only Orders standing for the proposition that punitive damages are available in TCPA cases.
- iv) *Page v. Regions Bank*, 2012 WL 6913593 (N.D. Ala. 2012), Lead counsel in the first opinion in the Eleventh Circuit to rule that the "called party" has standing to bring a TCPA claim.
- v) *Fini v. Dish Network, LLC*, United States District Court, Middle District of Florida, 6:12-cv-00690-ACC-TBS, Lead Counsel in TCPA case standing for the proposition that the regular user of the phone has standing to bring a case.
- vi) *Kathy Clements v. DSM Supply LLC*, 2014 WL 560561 (M.D. Fla. 2014) and *Brian Gambon v. Regent Asset Management Solutions, Inc.*, 2015 WL 64561 (M.D. Fla. 2015), both TCPA cases ruling that after notice of incorrect calls, each subsequent violation was considered willful and knowing and thus worth \$1,500.00.
- vii) *Coniglio v. Bank of America, N.A.*, 2014 WL 5366248 (M.D. Fla. 2014), final default TCPA judgment issued in the amount of \$1,051,000.00 asserting that each call placed after verbally requesting for the calls to stop were worth \$1,500.00 each, reversed

on a different issue.

viii) *Heather Howard v. MBNA America Bank, N.A.*, Thirteenth Judicial Circuit of Florida, Hillsborough County, 06-CA-01942 and *Heather Howard v. Wolpoff & Abramson, LLP*, Thirteenth Judicial Circuit of Florida, Hillsborough County, 06-CA-001045, allowing punitive damages for alleged false credit reporting and violations of the FCCPA.

ix) *Deleon v. Bank of America, N.A.*, United States District Court, Middle District of Florida, 6:09-cv-0125-CEM-KRS, Lead Counsel in a certified class action where defendant charged plaintiffs with late fees for on-time payments.

18. I have served as Plaintiff's Counsel in the following Class Actions:

- a. *Zybuero v. NCSPLUS, Inc.*, United States District Court, Southern District of New York, 1:12-cv-06677-JSR. (settled after the class was certified)
- b. *Swaney v Regions Bank*, United States District Court Northern District of Alabama, Southern Division, Case No. 2:13-cv-00544. (settled on class basis)
- c. *Cook and Bermudez v. Palmer Riefler & Associates, P.A.*, United States District Court, Middle District of Florida, Jacksonville Division, Case No.: 3:16-cv-673. (settled on class basis)
- d. *Glasser v. Hilton Grand Vacations*, United States District Court, Middle District of Florida, Tampa Division, Case No. 8:16-cv-00952.
- e. *Clark v. Macy's Credit and Customer Services, Inc.*, United States District Court, Middle District of Florida, Orlando Division, Case No: 6:17-cv-692. (settled on individual basis)
- f. *Sawyer v Intermex*, United States District Court, Southern District of Florida, Miami Division, Case No. 1:19-cv-22212. (settled on a class basis)
- g. *Morgan v. Orlando Health, Inc.*, United States District Court,

Middle District of Florida, Orlando Division, Case No. 6:17-cv-1972; (settled on an individual basis)

- h. *Murray v Gatestone & Co.*, United States District Court, District of Arizona, Phoenix Division, Case No. 2:19-cv-05674; (settled on an individual basis)
- i. *Mey v John Doe, et al*, United States District Court, Northern District of West Virginia, Wheeling Division, Case No. 5:19-cv-00237; (pending)
- j. *Stephens v Availity LLC*, United States District Court, Middle District of Florida, Ocala Division, Case No. 5:19-cv-00236. (settled on an individual basis)
- k. *Ahmed v Comenity Bank*, United States District Court, Central District of California, Southern Division, 8:20-cv-00453. (settled on an individual basis)
- l. *Corinti v Asset Plus Corporation*, United States District Court, Northern District of Florida, Tallahassee Division, Case No. 4:20-cv-00173. (settled on an individual basis)
- m. *Longo, Spatz, Pomeroy and Nassar v. Campus Advantage, Inc., and BYL Collection Services, LLC*, United States District Court, Middle District of Florida, Tampa Division, Case No. 8:20-cv-02651-KKM-TGW (settled on an individual basis)
- n. *In Re: Capital One Consumer Data Security Breach Litigation*, United States District Court, Eastern District of Virginia, Alexandria Division, Case No. 1:19-md-02916 (settled on a class basis)
- o. *Wilson v. Badcock Home Furniture*, United States District Court, Middle District of Florida, Tampa Division, Case No. 8:17-cv-02739. (settled on an individual basis)
- p. *In Re: Blackbaud, Inc. Customer Data Breach Litigation*, United States District Court, District of South Carolina, Columbia Division, Case No. 3:20-mn-02972. (pending)

- q. *Kivett v. Whole Foods Market, Inc., and Whole Foods Market California, Inc.* Superior Court of the State of California, County of Santa Clara, 21-cv-387976. (pending)

19. We filed this matter on behalf of the Plaintiffs on June 30, 2020, accusing Defendant, Musculoskeletal Institute, Chartered d/b/a Florida Orthopaedic Institute (“Defendant”) of failing to securely maintain Plaintiffs’ and Class Members’ personally identifiable information.

20. On August 21, 2020, Defendant filed its Motion to Dismiss. (Doc. No. 14). On September 8, 2020, Plaintiffs responded to the Motion to Dismiss. (Doc. No. 23). Defendant replied on September 28, 2020. (Doc. No. 27).

21. Subsequently, the parties began exploring the potential for resolution of Plaintiffs’ claims on a class-wide basis. These discussions were prompted by the parties’ desire to avoid the expense, uncertainties, and burden of protracted litigation, and to put to rest any and all claims or causes of action that have been, or could have been, asserted against Defendant.

22. The parties engaged in a mediation with Mediator Rodney Max of Upchurch Watson White & Max on November 6, 2020. At all times, the parties’ negotiations were adversarial, non-collusive, and conducted at arm’s length. During this first session, the parties set forth and discussed their respective positions on the merits of the putative class claims and the potential for a settlement that would involve class-wide relief. The parties exchanged offers and counteroffers and negotiated the points of each vigorously. Ultimately, this first session did not result in settlement, and the parties continued litigating the case.

23. Plaintiffs subsequently moved to amend their complaint on January 29, 2021 (Doc. No. 59) and on October 22, 2021, Defendant responded by filing another Motion to Dismiss, (Doc. No. 89), which Plaintiffs responded to on November 5, 2021. (Doc. No. 91).

24. Thereafter, the parties engaged in subsequent settlement discussions.

25. Throughout the settlement process, proposed Class Counsel—Mr. Yanchunis, Mr. McGee, Mr. Barthle, and I—carefully weighed: (1) the benefits to the Class Representatives and the Class under the terms of this Settlement, which provides significant relief to the Class; (2) the attendant risks and uncertainty of litigation, an assessment I felt confident I could make based on my trial experience, as well as the difficulties and delays inherent in such litigation, including the challenges to certification of a class, both at the trial court level and at the appellate level if we were successful in obtaining an order certifying the class; (3) the desirability of consummating the present Settlement to ensure that the Class receives a fair and reasonable Settlement; and (4) providing the proposed Class Representatives and Class Members prompt relief. The matter of attorneys' fees, costs, and expenses were only negotiated after the parties reached agreement on all other material settlement terms.

26. I spent hours on the phone with opposing counsel to bridge the settlement gap between the parties discussing all aspects of the complexities of this case and insurance.

27. The hourly rates of the professionals in my firm, including my own, reflect experience and accomplishments in the area of class litigation. The rate of \$800

per hour which I charge for my time is commensurate with hourly rates charged by my contemporaries around the country, including those rates charged by lawyers with my level of experience who practice in the area of class litigation across the nation. Prior to submitting the motion for attorneys' fees, costs and expenses, I compared and confirmed the hourly rate of the professionals in my firm with lawyers at other law firms whose practice is focused on class litigation. Moreover, as I have been retained as an expert on attorneys' fees in other cases, and as part of my legal education, I routinely survey hourly rates charged by lawyers around the country in published surveys, and review continuously as part of my continuing education, opinions rendered by courts on attorneys' fee requests.

28. The lawyers and other professional staff of my firm maintain and record their respective time and the specific services they perform contemporaneously in a computerized system. Based upon the records in this system, my firm's lodestar is in excess of 122 hours as of July 1, 2022, amounts to \$96,7600.00 in lodestar. Additional time will be spent to prepare the motion for final approval and respond to any objections, to prepare for and attend the fairness hearing and obtain final approval, to defend any appeals taken from the final judgment approving settlement, and ensure that the distribution of settlement proceeds to class members is done in a timely manner in accordance with the terms of the settlement. I assert that the attorneys' fees sought in the motion for attorneys' fee is reasonable and seeks fair and reasonable compensation for undertaking this case on a contingency basis, and for obtaining the relief for the proposed Class Representatives and the Class. Throughout this action,

we have been challenged by highly experienced and skilled counsel who deployed very substantial resources on Defendant’s behalf.

29. The chart below reflects the amount of time spent by me and members of my firm in the prosecution of this case:

THE CONSUMER PROTECTION FIRM			
Name	Hourly Rate	Hours Billed	Total
Billy Howard	\$800	122	\$97,600

30. My firm has not incurred any costs or expenses in litigating this case.

31. As stated above, a number of tasks will be required of my firm to conclude the litigation. In my experience leading class actions of this type and magnitude, I reasonable estimate that the future number of hours required to bring this Settlement to finality would be:

Additional Work Required of Class Counsel	Projected Hours
Work reviewing and responding to objections	100
Continued work preparing and finalizing the Motion for Final Approval, and preparing for and attending the final hearing	75
Responding to and litigating any appeals taken	300
Overseeing the administration of the Settlement	100
Total	575

32. Although the present case was resolved before trial, we invested significant time and resources investigating and litigating this action. Specifically, among other work, we: (1) consulted with the Class Representatives throughout the course of this case and reviewed the facts and documentation that they had provided concerning identity theft and other forms of fraud; (2) investigated their claims through; (3) researched claims that could be and eventually were pursued in the

Complaint; (4) drafted the Complaint, and subsequent amendments; (5) prepared and served discovery on Defendant; (6) reviewed documents and data produced by Defendant; (7) reviewed, responded to, and briefed two motions to dismiss; (8) briefed and argued discovery motions; (9) conferred with experts to model damages; (10) attended mediation, where we negotiated a comprehensive class action settlement; (11) drafted and filed a motion for preliminary approval of the settlement and supporting memorandum and exhibits; and (12) drafted and filed this motion for attorneys' fees, costs and expenses.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5, 2022 at Tampa, Florida.

By: William "Billy" Peerce Howard
William ("Billy") Peerce Howard, Esq.