

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ELLEN ALLICKS d/b/a ALLICKS)	
EXCAVATING, et al.,)	
on behalf of themselves)	
and others similarly situated,)	
)	
Plaintiffs,)	
)	Case No. 4:19-cv-01038
v.)	
)	
OMNI SPECIALTY PACKAGING, LLC,)	
et al.,)	
)	
Defendants.)	

**APPLICATION FOR INCENTIVE AWARDS FOR CLASS REPRESENTATIVES AND
FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES**

COME NOW PLAINTIFFS, by and through Class Counsel, and for their Application for Incentive Awards for Class Representatives and for an Award of Attorneys’ Fees and Expenses (“Application”), state as follows:¹

1. The Parties to this Action reached a Settlement which provides substantial relief to thousands of Settlement Class Members who purchased O’Reilly 303 Tractor Hydraulic Fluid in the United States (other than in Missouri) during the Class Period.

2. The Settlement provides significant benefits to Settlement Class Members through, among other things, a Class Settlement Fund of \$8,501,361.10, from which shall be paid: (a) claims of Qualified Settlement Class Members; (b) any Tax and Tax-Related Expenses associated with the Class Settlement Fund; (c) Settlement Administration Fees and Costs, if funds remain after providing initial distributions to Qualified Settlement Class Members and paying Tax and

¹ Unless otherwise noted herein, capitalized terms used in this Motion have the meaning assigned to them in the parties’ Amended Settlement Agreement and Release (Doc. #:22-1).

Tax-Related Expenses; and (d) from any remaining amount, a *pro rata* increase in distribution amounts to Qualified Settlement Class Members.

3. The Class Settlement Fund provides each Qualified Settlement Class Member with a monetary award calculated at 30.51%, 38.00%, or 41.00% of the net sales price each Qualified Settlement Class Member paid for each unit of O'Reilly 303 THF purchased during the Class Period, pursuant to the table set forth in paragraph 74 of the Amended Settlement Agreement and Release. (*See Doc. #: 22-1 at Pages 29-30 of 100.*) The applicable percentage depends on the date and state of purchase.

4. In addition to establishing the Class Settlement Fund for making distributions to Qualified Settlement Class Members, Defendants agreed to separately pay, if approved by the Court, an incentive award to each of the 16 named Plaintiffs (sometimes referred to as the Class Representatives) in the amount of \$5,000.00, totaling \$80,000 in the aggregate. As is set out in the supporting suggestions, the requested \$5,000.00 incentive award for each Class Representative is appropriate. Except for distribution amounts from the Class Settlement Fund pursuant to the terms of the Settlement, the sixteen (16) Class Representatives will receive no additional compensation. The total incentive award of \$80,000 (\$5,000 to each of the 16 Class Representatives) will be paid separately by Defendants and will not reduce the Class Settlement Fund available to Settlement Class Members.

5. Defendants also agreed in the Settlement to separately pay, in addition to the Class Settlement Fund, amounts awarded by the Court for Class Counsel's attorneys' fees and expenses—with the award for Class Counsel's attorneys' fees not to exceed \$2,105,340.28, and the award for Class Counsel's expenses not to exceed \$25,000.00. Such awards will not reduce the Class Settlement Fund available for distributions to Settlement Class Members. Together, such

awards represent 25% of the \$8,501,361.10 Class Settlement Fund, and approximately 20% of the total settlement amount of \$10,711,701.38 (inclusive of the Class Settlement Fund, payments to Class Representatives, expenses of Class Counsel, and attorneys' fees of Class Counsel).

6. Class Counsel respectfully submit the amount agreed to and sought by this Application is fair and reasonable given the complexity of the issues and the relief obtained. Class Counsel thus seek Court approval for an award of Class Counsel's expenses, not to exceed \$25,000.00, and for Class Counsel's reasonable attorneys' fees, not to exceed \$2,105,340.28. As noted, Defendants have agreed to pay awards up to these amounts, if approved by the Court, separate and apart from the Class Settlement Fund. Pursuant to this Court's Orders and the Amended Settlement Agreement, \$100,000.00 of the amount awarded for Class Counsel's attorneys' fees would be paid to Settlement Administrator, RG/2 Claims Administration, LLC, to be held for the benefit of Class Counsel until RG/2 files its Final Report regarding settlement administration.

7. In further support of this Application, Plaintiffs submit their Suggestions in Support.

WHEREFORE, Plaintiffs pray for an order of this Court approving the following awards, to be paid separately from the Class Settlement Fund: (a) a \$5,000 incentive award to each of the 16 Class Representatives; (b) an award of Class Counsel's attorneys' fees in the amount of \$2,105,340.28; and (c) an award of Class Counsel's expenses in the amount of \$25,000.00.

Date: March 4, 2021

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS
AND SETTLEMENT CLASS MEMBERS**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 4th day of March 2021.

/s/ Dirk Hubbard