

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

ELLEN ALLICKS, et al., on behalf of)	
themselves and others similarly situated;)	
Plaintiffs,)	
)	
vs.)	Case No.: 4:19-cv-1038-DGK
)	
OMNI SPECIALTY PACKAGING, LLC,)	
O'REILLY AUTOMOTIVE STORES, INC.,)	
d/b/a O'REILLY AUTO PARTS, and)	
OZARK AUTOMOTIVE)	
DISTRIBUTORS, INC.)	
Defendants.)	

**JOINT MOTION TO APPROVE
SECOND DISTRIBUTION FROM CLASS SETTLEMENT FUND**

COME NOW Plaintiffs, by and through Class Counsel, and Defendants, by and through undersigned counsel, and respectfully state as follows for their Joint Motion to Approve Second Distribution from Class Settlement Fund:

1. On May 12, 2022, the Parties submitted a Joint Status Report Regarding Settlement Administration and Motion to Approve *Cy Pres* Distribution, demonstrating that RG/2 Claims Administrations LLC (“RG/2”), the Court-approved Settlement Administrator, had completed administration of the Class Settlement Fund pursuant to the Settlement Agreement and the Court’s Final Approval Order, and requesting the Court’s approval for RG/2 to distribute the approximately \$1,322,024.38 remaining in the Class Settlement Fund to Legal Aid of Western Missouri (“Legal Aid”), the *cy pres* recipient designated in the Settlement Agreement incorporated into the Final Approval Order. (See generally Joint Status Report Regarding Settlement Administration and Motion to Approve *Cy Pres* Distribution (Doc. #: 47).)

2. On December 5, 2022, the Court entered an Order Requesting Supplemental Briefing (the “Order”), directing the Parties to provide supplemental briefing to demonstrate that

the standard for making a *cy pres* distribution to Legal Aid has been satisfied. (*See* Order (Doc. #: 48) at 2.)

3. On December 16, 2022, the Parties filed their Joint Response to Order Requesting Supplemental Briefing, in which the Parties, having reviewed the Court's Order and the case law cited therein: (i) communicated to the Court their agreement that it would be appropriate under the circumstances to propose a second distribution to Qualified Settlement Class Members before making any *cy pres* distribution, should any such distribution ultimately be necessary; and (ii) explained that counsel for the Parties were currently conferring and working with RG/2 to develop a plan for making an additional distribution to certain Qualified Settlement Class Members from the Class Settlement Fund, which the Parties intended to present to the Court for review and approval. (*See* (Doc. #: 49).)

4. On December 20, 2022, the Court entered its Order Denying as Moot the Parties' Motion for Distribution, in which the Court denied as moot the Parties' Joint Status Report Regarding Settlement Administration and Motion to Approve *Cy Pres* Distribution and ordered the Parties to submit a proposed class distribution plan to the Court on or before December 30, 2022. (*See* (Doc. #: 50).)

5. Counsel for the Parties have conferred further, reviewed applicable case law, and worked with RG/2 to develop a plan for making an additional distribution to certain Qualified Settlement Class Members from the remaining amount in the Class Settlement Fund.

6. RG/2, at the direction of, and in cooperation with, counsel, has prepared a plan for the proposed second distribution, as set forth in the Supplemental Declaration of Tina Chiango, attached hereto as Exhibit 1 and incorporated herein by reference.

7. Under the proposed plan, the remaining \$1,322,024.38 in the Class Settlement Fund would be distributed on a *pro rata* basis among approximately 119,101 Qualified Settlement Class Members who cashed their original distribution checks, after deducting: (i) \$132,150.00 for RG/2's estimated fees and costs for making the distribution; and (ii) \$17,971.68 for re-issuance of original distribution checks to approximately 492 Qualified Settlement Class Members who did not cash their initial distribution checks by the deadline, but thereafter attempted to cash them or requested that new checks be issued. (See Supp. T. Chiango Decl., Ex. 1, at ¶¶ 8, 12-14.)¹

8. As part of the second proposed distribution, it is estimated that each Qualified Settlement Class Member who cashed his or her original distribution check will receive an amount equal to approximately 17.5% of his or her original distribution. For example, a Qualified Settlement Class Member who originally received and cashed a distribution check for \$100 would receive approximately \$17.50 in the proposed second distribution.

9. The chart below summarizes the proposed disposition of the amount remaining in the Class Settlement Fund:

Description	Amount
Amount currently remaining in Class Settlement Fund	\$1,322,024.38
Amount proposed to be distributed to 492 Qualified Settlement Class Members who did not cash their initial distribution checks by the applicable deadline, but thereafter attempted to cash them or requested that new checks be issued	-\$17,971.68
Settlement Administrator's estimated additional administrative costs for the proposed second distribution from the Class Settlement Fund	-\$132,150.00

¹ If RG/2 is to undertake a second distribution to certain Qualified Settlement Class Members, the Parties agree that it would be equitable and appropriate to re-issue the original distribution checks to these 492 Qualified Settlement Class Members, and doing so does not materially detract from the amount being distributed on a *pro rata* basis to the other Qualified Settlement Class Members.

Amount to be distributed <i>pro rata</i> to approximately 119,101 existing Qualified Settlement Class Members who cashed their original distribution checks and the 492 Qualified Settlement Class Members referenced above	-\$1,171,902.70
Remaining balance in the Class Settlement Fund, if all additional distribution checks are cashed	\$0.00

10. The proposed plan would make remaining funds available to all Qualified Settlement Class Members who cashed their original distribution checks in a *pro rata* amount, thus treating those members fairly and in a manner consistent with the authorities cited in the Court’s December 5, 2022 Order. *See, e.g., In re BankAmerica Corp. Sec. Litig.*, 775 F.3d 1060, 1065 (8th Cir. 2015) (noting that “[a]s the Claims Administrator’s cost estimate confirms, lists of NationsBank class members who received and cashed prior distribution checks exist and would form the basis for a further distribution to the classes.”).

11. The checks that would be distributed to the Qualified Settlement Class Members in the second distribution would remain valid for 90 days. At the conclusion of the 90-day period, the Settlement Administrator would provide a report on the second distribution, which the Parties would submit to the Court. (*See* Supp. T. Chiango Decl., Ex. 1, at ¶ 14.)

12. If any amount were to remain in the Class Settlement Fund after the second distribution, including due to uncashed checks, the Parties will then provide the Court with supplemental briefing, as appropriate, addressing any potential *cy pres* distribution, or at any other such time as the Court may direct that briefing be submitted.

WHEREFORE, Plaintiffs and Defendants respectfully request the Court enter an order approving the proposed second distribution from the Class Settlement Fund, as outlined herein, and granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: December 30, 2022

Respectfully Submitted,

HORN AYLWARD & BANDY, LLC

BY: /s/ Thomas V. Bender
Thomas V. Bender MO 28099
Dirk Hubbard MO 37936
2600 Grand, Ste. 1100
Kansas City, MO 64108
(816) 421-0700
(816) 421-0899 (Fax)
tbender@hab-law.com
dhubbard@hab-law.com

**WHITE, GRAHAM, BUCKLEY,
& CARR, L.L.C**

BY: /s/ Gene P. Graham
Gene P. Graham, Jr. MO 34950
William Carr MO 40091
Bryan T. White MO 58805
19049 East Valley View Parkway
Independence, Missouri 64055
(816) 373-9080
Fax: (816) 373-9319
bcarr@wagblaw.com
bwhite@wagblaw.com

CLAYTON JONES, ATTORNEY AT LAW

BY: /s/ Clayton A. Jones
Clayton Jones MO 51802
P.O. Box 257
405 W. 58 Hwy.
Raymore, MO 64083
Office: (816) 318-4266
Fax: (816) 318-4267
clayton@claytonjoneslaw.com

LUNDBERG LAW FIRM, P.L.C.

BY: /s/ Paul D. Lundberg
Paul D. Lundberg, IA Bar #W00003339
600 Fourth St., Suite 906
Sioux City, Iowa 51101
Tel: 712-234-3030

paul@lundberglawfirm.com

**BEASLEY, ALLEN, CROW
METHVIN, PORTIS & MILES, P.C.**

BY: /s/ Rhon E. Jones

Rhon E. Jones, AL
Tucker Osborne, AL
218 Commerce St.
Montgomery, AL 36104
Rhon.Jones@BeasleyAllen.com

EMERSON FIRM, PLLC

BY: /s/ John G. Emerson

John G. Emerson, TX Bar No. 06602600
830 Apollo St.
Houston, TX 77058
Tel: (800) 551-8649
Fax: (501) 286-4659
Email: jemerson@emersonfirm.com

BOLEN ROBINSON & ELLIS, LLP

BY: /s/ Shane M. Mendenhall

Jon D. Robinson
Joshua Rohrscheib
Shane M. Mendenhall– ARDC No. 6297182
Zachary T. Anderson- ARDC No. 6329384
202 S. Franklin St., 2nd Floor
Decatur, IL 62523
Phone: 217-429-4296
Fax: 217-329-0034
Email: smendenhall@brelaw.com
Email: zanderson@brelaw.com

BRYANT LAW CENTER, P.S.C.

BY: /s/ Mark P. Bryant

Mark. P. Bryant KY Bar #08755
P.O. Box 1876
Paducah, KY 42002-1876
Phone: (270) 442-1422

Fax: (270) 443-8788
Mark.bryant@bryantpsc.com

GRIFFITH LAW CENTER, PLLC

BY: /s/ Travis A. Griffith
Travis A. Griffith, WVSB No. 9343
One Bridge Place
10 Hale Street, Suite 203
Charleston, WV 25301
T: (304) 345-8999
F: (304) 345-7638
E: travis@protectingwv.com

**ATTORNEYS FOR PLAINTIFFS
AND SETTLEMENT CLASS MEMBERS**

LEWIS RICE LLC

By: /s/ Thomas P. Berra, Jr.

Thomas P. Berra, Jr., #43399MO
Edward T. Pivin, #64086MO
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
Telephone: (314) 444-1352
Facsimile: (314) 612-1352
tberra@lewisrice.com
epivin@lewisrice.com

Robert W. Tormohlen, #40024MO
Scott A. Wissel, #49085MO
1010 Walnut St., Suite 500
Kansas City, Missouri 64106
Telephone: (816) 472-2507
Facsimile: (816) 472-2500
rwormohlen@lewisricekc.com
sawissel@lewisricekc.com

ATTORNEYS FOR DEFENDANTS

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 30th day of December 2022.

/s/ Dirk Hubbard