

**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 RESPONSE TO ORDER  
REQUESTING SUPPLEMENTAL BRIEFING**

COME NOW Plaintiffs, by and through Class Counsel, and Defendants, by and through their undersigned counsel, and respectfully submit the following Joint Response to Order Requesting Supplemental Briefing:

1. On May 28, 2021, the Court entered its Final Approval Order and Judgment in this matter (the “Final Approval Order”), fully and finally approving the terms and provisions of the Amended Settlement Agreement and Release (the “Settlement Agreement”) as fair, reasonable, and adequate, and incorporating the Settlement Agreement into the Court’s Final Approval Order. (See Final Approval Order (Doc. #: 46) at ¶¶ 1, 7; Settlement Agreement (Doc. #: 34-1).)<sup>1</sup>

2. 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

---

<sup>1</sup> Capitalized terms used herein that are not otherwise defined have the meaning given them in the Settlement Agreement.

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).)

3. 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.)

4. Counsel for the parties have reviewed the Court’s Order and the case law cited therein, including *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060 (8th Cir. 2015) and *Jones v. Monsanto Co.*, 38 F.4th 693 (8th Cir. 2022). Counsel have also reviewed and considered information related to distribution of the Class Settlement Fund to Qualified Settlement Class Members.

5. In consideration of the foregoing authorities and information, and having conferred on this matter, the Parties have agreed, and believe it to 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.

6. Accordingly, counsel for the Parties are 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 intend to present to the Court for review and approval. The Parties anticipate that they we will be able to submit a proposed distribution plan to the Court on or before December 30, 2022.

7. If the Court approves a second distribution to Qualified Settlement Class Members and, after making that distribution, there are any remaining funds in the Class Settlement Fund, the Parties can then provide the Court with supplemental briefing, as appropriate, addressing any potential distribution to Legal Aid as the *cy pres* recipient, or at any other such time as the Court may direct that briefing be submitted.

WHEREFORE, the Parties respectfully request that the Court accept this Joint Response as the Parties' response to the Court's Order Requesting Supplemental Briefing, allow the Parties until December 30, 2022 to submit to the Court a proposed plan for making an additional distribution to Qualified Settlement Class Members from the Class Settlement Fund, and awarding such other and further relief as the Court deems just and proper under the circumstances.

Dated: December 16, 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](mailto:tbender@hab-law.com)  
[dhubbard@hab-law.com](mailto: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](mailto:bcarr@wagblaw.com)  
[bwhite@wagblaw.com](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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., 2<sup>nd</sup> Floor  
Decatur, IL 62523  
Phone: 217-429-4296  
Fax: 217-329-0034  
Email: smendenhall@brelaw.com  
Email: zanderson@brelaw.

**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](mailto:Mark.bryant@bryantpsc.com)  
[Austin.kennady@bryantpsc.com](mailto:Austin.kennady@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](mailto: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](mailto:tberra@lewisrice.com)  
[epivin@lewisrice.com](mailto: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](mailto:rwormohlen@lewisricekc.com)  
[sawissel@lewisricekc.com](mailto: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 16th day of December 2022.

/s/ Dirk Hubbard