

**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 FINAL STATUS REPORT,
CY PRES DISTRIBUTION,
AND DISTRIBUTION OF CLASS COUNSEL FEE SET ASIDE**

COME NOW Plaintiffs, by and through Class Counsel, and Defendants, by and through counsel, and respectfully submit to the Court the following Joint Motion to Approve Final Status Report, *Cy Pres* Distribution, and Distribution of Class Counsel Fee Set Aside.

1. The Court entered its Final Approval Order and Judgment in this matter on May 28, 2021 (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).)¹

2. After entry of the Final Approval Order, on or about July 16, 2021, Defendants caused \$8,601,361.10 to be wired to RG/2 Claims Administrations LLC (“RG/2”), the Court-approved Settlement Administrator, which amount included: (i) \$8,501,361.10 for establishment

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

of the Class Settlement Fund pursuant to paragraph 36 of the Settlement Agreement; and (ii) \$100,000 to be held by RG/2 for the benefit of Class Counsel as the Holdback Amount from the Court-approved award of attorneys' fees to Class Counsel pursuant to paragraph 40 of the Settlement Agreement. RG/2 received the \$8,601,361.10 wire transfer that same day. (*See* T. Chiango Decl., Ex. 1, at ¶ 5.)

3. As set forth in the attached Declaration of Tina Chiango, Director of Claims Administration for RG/2, RG/2 has administered the funds Defendants provided to RG/2 in accordance with the terms and conditions of the Amended Settlement Agreement and the Court's Final Approval Order. (*See id.* at ¶¶ 6-9.)

4. Pursuant to the terms and conditions of the Settlement Agreement, RG/2 has used the \$8,501,361.10 provided by Defendants to establish and administer the Class Settlement Fund, which fund was used to make settlement payments to Qualified Settlement Class Members and cover Settlement Administration Fees and Costs, as follows:

- (a) Pursuant to paragraphs 73 through 77 of the Settlement Agreement, RG/2 distributed \$6,703,336.72 of the Class Settlement Fund to approximately 119,101 Qualified Settlement Class Members through settlement checks, which included a *pro rata* increase for all Qualified Settlement Class Members, all of which checks have been negotiated.² This amount includes the initial distribution of settlement checks that were mailed on August 4, 2021 pursuant to paragraph 73 of the Settlement Agreement, and subsequent reissuance and mailing of settlement checks that were returned as undeliverable for which RG/2 successfully located new addresses pursuant to paragraph 77 of the Settlement Agreement, and re-issuance of

² Pursuant to the Settlement Agreement, the distribution amounts to Qualified Settlement Class Members were increased *pro rata* prior to the mailing of settlement checks, which *pro rata* increase was calculated based on the amount remaining in the Class Settlement Fund after setting aside amounts sufficient to cover the initial distribution amounts to Qualified Settlement Class Members, estimated Settlement Administration Fees and Costs, and any Tax and Tax-Related Expenses, of which there were none. (*See* Settlement Agreement (Doc. #: 34-1) at ¶ 75; T. Chiango Decl., Ex. 1, at ¶ 8 & n.3.)

checks to certain Qualified Settlement Class Members who requested them.³

- (b) RG/2 determined that no taxes were owed by the Class Settlement Fund, and so no amount of the Class Settlement Fund was used to pay any Taxes or Tax-Related Expenses pursuant to paragraph 83 of the Settlement Agreement.
- (c) Pursuant to paragraph 51 of the Settlement Agreement, \$476,000 of the Class Settlement Fund was distributed to RG/2 to cover all of its costs, fees, and expenses for providing notice to the Settlement Class and administering the Class Settlement Fund, in accordance with the terms and conditions of the Settlement Agreement and RG/2's budget for notice and administration, leaving no amount in RG/2's costs, fees, and expense outstanding or unpaid.

(*Id.*, at ¶¶ 5-9.)

5. Pursuant to the Court's Order of January 13, 2023, a second distribution was provided to Class Members. (Doc. #52). Pursuant to the Court's Order of August 24, 2023 (Doc. #59), stale or uncashed first distribution checks were also reissued upon request. A total of 120,098 checks were issued and mailed as part of the second distribution (the second distribution checks themselves, reissued second distribution checks, and backup withholding checks) and included eight additional first distribution checks which were reissued. Of that total, 77,933 checks have now cleared totaling \$937,998.35, and 42,165 checks totaling \$250,758.10 were not cashed. (*Id.* at ¶ 11).

6. The Settlement Administrator has posted to the settlement website all Status Updates that have been filed since the first distribution, and this Joint Motion will also be posted within 24 hours of its filing. (*Id.* at ¶ 14.)

³ RG/2 set aside \$10,000 of the Class Settlement Fund to address any unexpected changes or additions to the Settlement Distribution Amounts (the "Contingency Amount"), pursuant to paragraph 47 of RG/2's May 13, 2021 declaration submitted in support of final approval. (*See* May 13, 2021 Declaration of T. Chiango (Doc. #: 34-2) at ¶ 47.) RG/2 used \$1,500 of the Contingency Amount to pay for an approved adjustment to the distribution amount for a Qualified Settlement Class Member, which amount is included in the total amount distributed to Qualified Settlement Class Members listed above.

7. Also pursuant to the Court's August 24, 2023 Order, the final date for any outstanding first or second distribution checks to be cashed was November 28, 2023. (Doc. #59.) After all second distribution checks and first distribution reissuances have cleared, \$248,214.45 remains in the Class Settlement Fund. (*Id.* at ¶ 12.)

8. RG/2 initially estimated settlement administration costs and first round distribution costs to be \$476,000.00, and it completed the administration and the first round distribution within that budget. (*Id.* at ¶ 9.) RG/2 estimated the second distribution costs to be \$132,150.00, and it has completed the second distribution within that budget. (*Id.* at ¶ 13.)

9. In its December 5, 2022 Order, the Court cited the Eighth Circuit standard from *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060, 1063-67 (8th Cir. 2015), and noted that prior to any *cy pres* award, the Parties needed to provide sufficient information to the Court "that no further distributions to the class are feasible and/or warranted...." (Doc. #48, p. 1.) The Parties thereafter agreed to, with Court approval, a second distribution to Class Members. The Settlement Administrator has now implemented that second distribution, as discussed above. There are funds remaining as a result of uncashed second distribution checks which are now stale and for which the deadline Ordered by the Court has now passed.

10. The \$248,214.45 remaining after the second distribution is too small for any economically viable third distribution to Class Members, as there would be more than 100,000 Class Members to receive an average of \$1.00 each – after considering the \$130,000 estimated administrative cost of any such third distribution (which estimate is based on the cost of the second distribution). (*See* T. Chiango Decl., Ex. 1, at ¶ 13.) In determining whether further distribution to Class Members is appropriate, "that inquiry must be based primarily on whether the amounts involved are too small to make individual distributions economically viable." *In re BankAmerica*

Corp. Secs. Litig., 775 F.3d at 1065 (quoting ALI Sec. 3.07(a)). That analysis suggests the amount remaining is too small to make individual distributions economically viable. *See, e.g., Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017)(affirming proposed *cy pres* distribution and finding no abuse of discretion where the “remaining funds are insufficient to pay at least \$2 to each approved claimant”); *Anderson v. Travelex Ins. Services*, 2023 WL 2844212 at *2 (D. Neb. 3/15/23)(finding de minimis \$5.97 per class member); *Good v. W. Virginia-Am. Water Co.*, 2021 WL 6197053 at *7 (S.D. W.V. Dec. 30, 2021)(finding de minimis \$5.94 for roughly 1/3 of the claimants and \$1.94 for the rest); *Hashw v. Dep’t Stores Nat’l Bank*, 182 F.Supp. 3d 935, 947-48 (D. Minn. 2016)(\$3 found to be de minimis). Thus, *cy pres* distribution is appropriate for the final remaining amount of \$248,214.45.

11. In its December 5, 2022 Order, the Court also noted the Parties needed to show “that the proposed *cy pres* recipient is the most appropriate under the circumstances,” (Doc. #48, p. 1.), citing *BankAmerica* and *Jones v. Monsanto Co.*, 38 F.4th 693, 698-99 (8th Cir. 2022). A *cy pres* “distribution must be for the next best use ... for indirect class benefit,’ and `for uses consistent with the nature of the underlying action and with the judicial function.”” *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d at 1065 (quoting *In re Katrina Canal Breaches Litig.*, 628 F.3d 185,196 (5th Cir. 2010). “[T]he unclaimed funds should be distributed for a purpose as near as possible to the legitimate objectives underlying the lawsuit, the interests of class members, and the interests of those similarly situated.”” *Id.* (quoting *Airline Ticket Comm’n Antitrust Litig.*, 307 F.3d 679, 682 (8th Cir. 2002)). That standard is satisfied here.

12. This is a consumer-oriented action with a nationwide scope. The claims arise from the purchase and use of O’Reilly 303 Tractor Hydraulic Fluid in the United States, excluding Missouri. The Complaint alleges that product was deceptively labeled, marketed, and

manufactured, and that purchase and use of such product damaged Settlement Class Members' tractors and other equipment. (*See* Compl. (Doc. #: 1) at ¶¶ 41-53, 72-81.) The Complaint asserts claims for breach of warranty, fraud, unjust enrichment, violation of applicable consumer-protection statutes, and personal property damage. (*See generally id.*)

13. The Parties had originally proposed Legal Aid of Western Missouri as the *cy pres* recipient. However, in light of the Court's December 5, 2022 Order (Doc. #: 48), the nature and scope of the asserted claims, and applicable precedent regarding *cy pres* awards, and with Class Counsel having conferred with Legal Aid of Western Missouri regarding the nature and scope of their operations and requirements governing *cy pres* awards (*see* Declaration of Thomas Bender, Exhibit 2 hereto), the Parties have agreed to request Court approval for the remaining amount from the Class Settlement Fund to be split equally between the following two alternative *cy pres* recipients, the missions and reach of which, as summarized below, are commensurate with the nature and scope of the asserted claims: the National Legal Aid and Defender Association ("NLADA") and the National Consumer Law Center ("NCLC"). Class Counsel has notified Legal Aid of Western Missouri of the intention to request Court approval in this regard. (*See id.*)

14. The NLADA is the largest national legal aid organization, with more than 700 program members nationwide dedicated to ensuring access to justice for the poor through the nation's civil legal aid and defender programs. (Ex. 2-A, NLADA Information).

15. The NCLC is a nonprofit that works on a number of issues facing consumers and works for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. (Ex. 2-B, NCLC Information).

16. The Parties' proposed *cy pres* recipients are appropriate under the Eighth Circuit

standards and case law. In *Jones v. Monsanto*, the Eighth Circuit affirmed the Judge Phillips’ approval of *cy pres* recipients National Consumer Law Center, National Advertising Division of the Better Business Bureau, and Berkely Center for Consumer Law & Economic Justice for a class action related to allegedly deceptive labeling on herbicide. 38 F.4th 693 (8th Cir. 2022).

17. Other courts have determined Legal Aid-related organizations to be appropriate *cy pres* recipients in consumer-related cases. *See, e.g., Anderson*, 2023 WL 2844212 at *2-3 (D. Neb. 2023); *Krakauer v. Dish Network, LLC*, 2023 WL 6626112 at *3-4 (M.D. N.C. 2023); *Pearlstone v. Wal-Mart Stores, Inc.*, 2023 WL 2864607 at *2 (E.D. Mo. 2023); *Scott v. Boyd Bros. Transportation, Inc.*, 2014 WL 12535301 at *3 (W.D. Mo. 2014) In *Anderson*, the United States District Court for the District of Nebraska approved Legal Aid of Nebraska and Direct Relief as *cy pres* recipients in a class case involving travel insurance, and the Court’s analysis included the following:

“Essentially, the only thing the Court can say the class members have in common is that they purchased travel insurance. The Court is hard-pressed to think of any charitable organization specifically devoted to helping people who’ve made insurably expensive travel plans. Rather, the Court agrees that the two organizations chosen by the parties are sufficiently consistent with the nature of the underlying action, based on their connection to consumer protection and international travel and aid.... Legal Aid provides, among other things, services to clients needing assistance with consumer debts and economic rights.... And Direct Relief provides humanitarian assistance overseas, presumably of some appeal to those with an interest in international travel.”

Anderson, 2023 WL 2844212 **3.

18. The NLADA is an appropriate *cy pres* recipient. The NLADA’s geographic scope spans the nation, like this case, and the NLADA assists legal aid and other consumer-oriented programs. The selection of NLADA as *cy pres* recipient meets the Eight Circuit’s directive from *Airline Tickets* that district courts “carefully weigh all considerations including geographic scope

of the underlying litigation, and make a thorough investigation to determine whether a recipient can be found that most closely approximates the interests of the class.” 307 F.3d 679, 682-84 (8th Cir. 2002). With no organization found specifically assisting purchasers of tractor fluids or lubricants, the NLADA is an appropriate *cy pres* recipient because it is national in scope, and it assists consumers through Legal Aid organizations in various states. In *Krakauer*, the Court approved NLADA as one of the *cy pres* recipients. 2023 WL 6626112 at *3-4.

19. The NCLC is also an appropriate *cy pres* recipient for similar reasons. The NCLC’s reach is also nationwide, and it also provides services that benefit consumers of all types. In *Krakauer*, the Court also approved NCLC as one of the *cy pres* recipient. *Id.* Other Courts have determined NCLC to be an appropriate *cy pres* recipient in consumer-related class actions. *See, e.g., Smith v. One Nevada Credit Union*, 2020 WL 8479822 at *2 (D. Nev. 2020); *Rawa v. Monsanto Co.*, 2018 WL 2389040 at *11 (E.D. Mo. 2018); *Martinez v. Medcredit, Inc.*, 2018 WL 2223681 at *2 (E.D. Mo. 2018); *Spann v. J.C. Penney Corp.*, 211 F.Supp.3d 1244, 1261 (C.D. Cal. 2016). In *Smith*, the Court noted the NCLC was would “properly provide for the ‘next best’ class of beneficiaries. First, the NCLC is a national organization; its reach is as widespread as the potential class members,” that “the NCLC contributes to the field of consumer protection in multiple ways, al of which are likely to benefit potential class members,” and that “the NCLC plays a role in public education surrounding consumer issues by sharing its research and insights with the media and other major news organizations.” *Smith*, 2020 WL 8479822 at *2. In *Rawa*, the Court noted that “[n]umerous courts have approved *cy pres* awards to the NCLC in nationwide consumer class actions claiming false advertising.” *Rawa*, 2018 WL 2389040 at *11. The Court in *Martinez* similarly concluded “the NCLC closely approximates the interests of the class and is an

appropriate *cy pres* recipient.” *Martinez*, 2018 WL 2223681 at *2. Finally, the Court in *Spann* wrote as follows regarding NCLC:

“Here, plaintiff states that the NCLC is ‘guided by the objectives of this litigation (consumer protection against unfair and deceptive business practices)’.... Indeed, courts have repeatedly found the NCLC to have the requisite nexus with consumer classes for qualification as a *cy pres* recipient.... The court finds that NCLC’s work with respect to consumer protection and unfair and deceptive acts and practices provides the requisite nexus to the interests of class members, the nature of their claims, and the purposes of the underlying statutes, and thus qualifies as the next best distribution to the class.”

Spann, 211 F.Supp. 3d at 1261 (citations omitted). The same is true in this consumer case – NCLC is an appropriate “next best,” *cy pres* recipient.

20. Finally, pursuant to paragraph 40 of the Settlement Agreement and paragraph 11 of the Court’s Final Approval Order, RG/2 set aside \$100,000.00 as the Holdback Amount of Class Counsel’s Fees and, to date, has been holding it for the benefit of Class Counsel. (*See id.* at ¶ 6.) (*See T. Chiango Decl., Ex. 1, at ¶ 6.*) RG/2 will continue to hold this amount until the Court approves its disbursement to Class Counsel. (*See id.*). Along with approval of this Final Status Report and the *cy pres* distribution, Class Counsel also request the Court approve RG/2 releasing to Class Counsel the \$100,000 fee set aside.

WHEREFORE, Plaintiffs and Defendants respectfully request the Court enter an order granting this Joint Motion to Approve Final Status Report, Cy Pres Award, and Distribution of Class Counsel Fee Set Aside, as set forth herein, approving the National Legal Aid and Defender Association and the National Consumer Law Center as *cy pres* recipients in this action, approve release of the \$100,000 Holdback Amount of Class Counsel’s Fees, and awarding such other and further relief as the Court deems equitable, just, and proper.

Dated: January 5, 2024

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

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 5th day of January, 2024.

/s/ Dirk Hubbard

EXHIBIT 1

**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.

OMNI SPECIALTY PACKAGING, LLC,
O'REILLY AUTOMOTIVE STORES, INC.,
d/b/a O'REILLY AUTO PARTS, and
OZARK AUTOMOTIVE
DISTRIBUTORS, INC.,

Defendants.

Case No.: 4:19-cv-1038-DGK

**SUPPLEMENTAL DECLARATION OF TINA CHIANGO PROVIDING
THE SETTLEMENT ADMINISTRATOR'S FINAL STATUS REPORT
REGARDING SETTLEMENT ADMINISTRATION**

I, Tina Chiango, hereby declare as follows:

1. I am the Director of Claims Administration, Securities, and Antitrust for RG/2 Claims Administration LLC ("RG/2"), the Settlement Administrator retained in this matter and approved by the Court.¹ RG/2 is located at 30 S. 17th Street, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

2. RG/2 was retained by the parties and approved by the Court to serve as Settlement Administrator, which includes, among other tasks: disseminating notice to the Settlement Class; contracting and overseeing publication notice; receiving and tracking requests for exclusion and objections; responding to Class Member inquiries; processing Claim and Request for Correction Forms and evaluating Claims; calculating, preparing, and mailing settlement distribution checks

¹ Unless otherwise specified, capitalized terms in this Declaration have the meanings given to them in the Amended Settlement Agreement and Release for this matter.

to all Qualified Settlement Class Members; and any additional tasks the parties mutually agreed upon or the Court ordered RG/2 to perform.

3. I understand that the Court entered its Final Approval Order and Judgment in this matter on May 28, 2021 (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. See Final Approval Order and Judgment (Doc. #46.)

4. I provide this declaration pursuant to paragraph 97 of the Settlement Agreement as the Final Report of the Settlement Administrator, accounting for RG/2's administration of the Class Settlement Fund.

5. After entry of the Final Approval Order, on or about July 16, 2021, Defendants caused \$8,601,361.10 to be wired to RG/2, which amount included: (i) \$8,501,361.10 for establishment of the Class Settlement Fund pursuant to paragraph 36 of the Settlement Agreement; and (ii) \$100,000 to be held by RG/2 for the benefit of Class Counsel as the Holdback Amount from the Court-approved award of attorneys' fees to Class Counsel pursuant to paragraph 40 of the Settlement Agreement. RG/2 received the \$8,601,361.10 that same day.

6. Pursuant to paragraph 40 of the Settlement Agreement and paragraph 11 of the Court's Final Approval Order, RG/2 set aside \$100,000.00 as the Holdback Amount and, to date, has been holding it for the benefit of Class Counsel. RG/2 will continue to hold this amount until the Court approves its disbursement to Class Counsel, at which point RG/2 will pay the full \$100,000.00 to Class Counsel by wire transfer to an account designated in writing by Class Counsel.

7. Pursuant to the terms and conditions of the Settlement Agreement, RG/2 used the \$8,501,361.10 provided by Defendants to establish and administer the Class Settlement Fund, which fund was used to make settlement payments to Qualified Settlement Class Members and cover Settlement Administration Fees and Costs, as described in the following paragraphs.

8. Pursuant to paragraphs 73 through 77 of the Settlement Agreement, RG/2 distributed \$6,703,336.72 of the Class Settlement Fund to approximately 119,101 Qualified Settlement Class Members through settlement checks, which have been successfully negotiated as of the date of this Declaration.² This amount includes the initial issuance and mailing of settlement checks that were mailed on August 4, 2021 pursuant to paragraph 73 of the Settlement Agreement, and subsequent reissuance and mailing of settlement checks that were returned as undeliverable for which RG/2 successfully located new addresses pursuant to paragraph 77 of the Settlement Agreement, and re-issuance and mailing of checks to several Qualified Settlement Class Members who requested them.³ RG/2 determined that no taxes were owed by the Class Settlement Fund, and so no amount of the Class Settlement Fund was used to pay any Taxes or Tax-Related Expenses pursuant to paragraph 83 of the Settlement Agreement.

9. Pursuant to paragraph 51 of the Settlement Agreement and RG/2's budget for providing notice to Class Members and administering the Class Settlement Fund, \$476,000 of the

² RG/2 has deducted and withheld, and has paid to the IRS pursuant to applicable requirements, approximately \$210,099.58 from the settlement distribution amounts to certain of the Qualified Settlement Class Members who each received more than \$600 in settlement distributions, but failed to submit the requested Form W-9s to RG/2 for documentation and reporting purposes. RG/2 sent communications to each of these Qualified Settlement Class Members advising them of the withholding and instructing them that RG/2 would credit them for the amount withheld if they submitted their taxpayer identification number to RG/2 by the end of the 2021 calendar year, but a number of the Qualified Settlement Class Members from whom amounts were withheld did not do so.

RG/2 had set aside \$10,000 of the Class Settlement Fund to address any unexpected changes or additions to the Settlement Distribution Amounts (the "Contingency Amount"), pursuant to paragraph 47 of my May 13, 2021 declaration submitted in support of final approval. See May 13, 2021 Declaration of T. Chiango (Doc. #: 34-2) at ¶ 47. RG/2 used \$1,500 of the Contingency Amount to pay for an approved adjustment to the distribution amount for a Qualified Settlement Class Member, which amount is included in the total amount distributed to Qualified Settlement Class Members in paragraph 8 above.

³ Pursuant to the Settlement Agreement, the distribution amounts to Qualified Settlement Class Members were already increased *pro rata* prior to the mailing of settlement checks, which increase was calculated based on the amount remaining in the Class Settlement Fund after setting aside amounts sufficient to cover the initial distribution amounts to Qualified Settlement Class Members, the estimated amount for Settlement Administration Fees and Costs, and any Tax and Tax-Related Expenses associated with the Class Settlement Fund, of which there were none. (See Settlement Agreement (Doc. #: 34-1) at ¶ 75.)

Class Settlement Fund was distributed to RG/2 to cover all of its costs, fees, and expenses for providing notice to the Settlement Class, administering the Settlement, in accordance with the terms and conditions of the Settlement Agreement, and providing the first distribution to Class Members, leaving no amount in RG/2's costs, fees, and expense remaining unpaid.

10. After the April 29, 2022 date on which the last remaining outstanding first distribution checks to Qualified Settlement Class Members became void by their terms, if not cashed before then, approximately \$1,322,024.38 remained in the Class Settlement Fund, consisting of: (i) the \$8,500 remaining of the Contingency Amount referenced above; and (ii) the total amount in settlement checks issued and mailed to Qualified Settlement Class Members that were either returned as undeliverable and for which RG/2 was unable to locate new addresses after attempts to do so, or that were successfully mailed to Qualified Settlement Class Members but not cashed, all of which checks became void 90 days after issuance.

11. Pursuant to the Court's Order dated January 13, 2023, (Doc. #52.), RG/2 made a second round of distributions to the class. Pursuant to the Court's Order of August 24, 2023 (Doc. #59), stale or uncashed first distribution checks were also reissued upon request. Also Pursuant to this Court's August 24, 2023 Order, the final date for any outstanding first or second distribution checks to be cashed was November 28, 2023. A total of 120,098 checks were issued and mailed as part of the second distribution (the second distribution checks themselves, reissued second distribution checks, and backup withholding checks) and including eight additional first distribution checks which were reissued. Of that total, 77,933 checks have now cleared totaling \$937,998.35, and 42,165 checks totaling \$250,758.10 were not cashed.

12. After all second distribution checks and first distribution reissuances have cleared, \$248,214.45 remains in the Class Settlement Fund. (*Id.* at ¶ 11.)

13. RG/2 estimated the second distribution costs to be \$132,150.00, and it has completed the second distribution within that budget. Any third distribution would cost at least the

same \$132,150.00 amount and would leave only \$116,064.45 to distribute to Class Members. A third distribution would thus average less than \$1.50 each for the approximately 80,000 Class Members who cashed their second distribution checks; *pro rata* would result in some Class Members' third distributions being less than 20 cents.

14. RG/2 has posted to the settlement website all Court Orders and Status Updates, and the Joint Motion to Approve Final Status Report, Cy Pres Distribution, and Distribution of Fee Set Aside to Class Counsel will also be promptly posted after filing.

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

Dated: December 20, 2023


Tina Chiango

EXHIBIT 2

**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.)

DECLARATION OF THOMAS V. BENDER

I, Thomas V. Bender, declare as follows:

1. I am an attorney licensed to practice in the state of Missouri and in the United States District Court for the Western District of Missouri.

2. I am lead counsel in the above-captioned litigation, and I make this Declaration in support of the Parties' Joint Motion to Approve Final Status Report, *Cy Pres* Distribution, and Distribution of Class Counsel Fee Set Aside. I have actively participated in all aspect of this litigation, and I make this Declaration based on my personal knowledge.

3. This is a consumer-oriented action with a nationwide scope. The claims arise from the purchase and use of O'Reilly 303 Tractor Hydraulic Fluid in the United States, excluding Missouri. The Complaint alleges that product was deceptively labeled, marketed, and manufactured, and that purchase and use of such product damaged Settlement Class Members' tractors and other equipment. (*See* Compl. (Doc. #: 1) at ¶¶ 41-53, 72-81.) The Complaint asserts claims for breach of warranty, fraud, unjust enrichment, violation of applicable consumer-protection statutes, and personal property damage. (*See generally id.*)

4. The Parties had originally proposed Legal Aid of Western Missouri as the *cy pres* recipient. In light of the Court's December 5, 2022 Order (Doc. #: 48), the nature and scope of the asserted claims, and applicable precedent regarding *cy pres* awards, Class Counsel conferred with Legal Aid of Western Missouri regarding the nature and scope of their operations and requirements governing *cy pres* awards. In those communications and because it operates solely in Missouri, Legal Aid of Western Missouri agreed it was not the most appropriate *cy pres* recipient for this class settlement which is nationwide in scope but does not include Missouri. Also in those communications, Legal Aid of Western Missouri recommended the National Legal Aid and Defender Association ("NLADA") as an appropriate *cy pres* recipient because it provides support to Legal Aid groups in various states across the nation.

5. The NLADA is the largest national legal aid organization, with more than 700 program members nationwide dedicated to ensuring access to justice for the poor through the nation's civil legal aid and defender programs. Attached as Exhibit A is information regarding the NLADA.

6. Class Counsel researched the NLADA and other potential *cy pres* recipients and has shared information with Defendants' counsel. The Parties have determined it would be appropriate to request Court approval for the remaining amount from the Class Settlement Fund to be split equally between the NLADA and the National Consumer Law Center ("NCLC"). The missions and reach of both the NLADA and NCLC are commensurate with the nature and scope of the asserted claims.

7. The NCLC is a nonprofit that works on a number of issues facing consumers and works for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. Attached as Exhibit B is information regarding the NCLC.

8. Class Counsel has notified Legal Aid of Western Missouri of the intention to request Court approval for substituting NLADA and NCLC as *cy pres* recipients in place of Legal Aid of Western Missouri. Legal Aid of Western Missouri has informed Class Counsel that they do not object to that substitution.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12/20/2023

/s/ Thomas V. Bender

EXHIBIT 2-A

National Legal Aid and Defender Association (NLADA)

Equal Justice Excellence

Our Mission

Because the quality of justice in America should not depend on how much money a person has, NLADA leads a broad network of advocates on the frontlines to advance justice and expand opportunity for all by promoting excellence in the delivery of legal services for people who cannot afford counsel.

Our Work

Effective local advocacy requires a strong national advocate. NLADA is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. We provide advocacy, guidance, information, training and technical assistance for members of the equal justice community, especially those working in public defense and civil legal aid. For more than a century, we have connected and supported people across the country committed to justice for all.

Our Values

- Diversity
- Engagement
- Equality
- Excellence
- Fairness
- Human Dignity
- Inclusion
- Opportunity
- Responsiveness
- Self-determination

Civil Legal Aid Initiative

Through our Civil Legal Aid Initiative, supported by the Kresge and Public Welfare Foundations, NLADA increases civil legal aid's capacity to apply for, receive, and manage federal grant programs that target low-income populations and allow legal services to fulfill program goals. It builds upon the efforts of the Legal Aid Interagency Roundtable and the US Department of

Justice Office for Access to Justice to demonstrate to federal agencies how civil legal aid can help meet program goals and improve delivery of services in areas such as health care, housing, and veterans' affairs.

Our work includes helping civil legal aid programs build strong partnerships with community organizations and state and regional government entities to deliver services. We also advocate with federal agencies to eliminate barriers to the use of federal funds for civil legal aid and with Congress to expand opportunities for non-LSC funding for civil legal services.

To help build civil legal aid's capacity to secure federal grants, we have developed LegalAidResources.org, which features federal grant opportunities for legal aid programs with easy-to-find information on:

- Deadlines, eligibility requirements, and grant priorities
- Whether there is specific language on legal aid
- Relevant regulations and policies
- Sample successful grant applications, memoranda of understanding, and other helpful documents

We have several dedicated listservs to help answer questions about and support strategies for specific opportunities. The listservs currently focus on Supportive Services for Veteran's Families (SSVF), reentry grant programs, and the Victims of Crime Act (VOCA).

NLADA staff also provides technical assistance, training, and support for obtaining federal funding. We host webinars throughout the year and in 2016 will be organizing regional trainings for legal aid programs and current or potential partners to show how to incorporate legal aid as part of a holistic model to serve low-income people.

If you are a legal aid organization and have questions about applying for or administering federal grant programs, or would like to join one of our listservs, please contact our team at resourcedesk@nlada.org.

NLADA and the **Justice in Government Project** are working together to unlock funding opportunities for civil legal aid across the United States. Learn how this work connects to Global Activity on Access to Justice & the United Nations Sustainable Development Goal 16 by [clicking here!](#)

Civil Legal Aid Funding

Funding for civil legal aid comes from a range of sources, including:

- **The Legal Services Corporation.** The single largest source of funding is the Legal Services Corporation (LSC), which each year receives an appropriation from

Congress. LSC is a private nonprofit established by Congress to support access to justice, particularly by offering grants to organizations that provide legal assistance in non-criminal matters to low-income individuals. NLADA is one of the leading advocates (link to federal advocacy page) for increased LSC funding.

- **State-based Interest on Lawyers' Trust Accounts (IOLTA).** IOLTA funds distributed by state-based programs are another significant means through which to fund civil legal aid. NLADA regularly advocates for continued support for IOLTA programs.
- **Cy Pres.** Cy pres distributions from class action settlements also are a source of funding for civil legal aid. Often, the work done and clients served by legal aid organizations relate to the purpose of the case, making civil legal aid an appropriate recipient. NLADA supports and defends the cy pres doctrine on the state and federal levels.
- **State bar foundations, foundations and charitable organizations, businesses, and individual donors.** These all offer critical support to civil legal aid across the country.
- **Federal, state and local government.** Legal aid organizations play a critical role in advancing the purpose of government-supported social services and a particularly significant source of funding for civil legal aid is provided by government entities. Learn more about how NLADA is supporting efforts to generate federal resources for legal aid organizations.

Civil Conferences and Training

May 9th, 2024

2024 Equal Justice Conference

The ABA/NLADA Equal Justice Conference is an annual gathering of legal services and pro bono advocates to share and learn about developments and innovations in providing legal services to low-income persons.

November 13th, 2024

2024 NLADA Annual Conference

The NLADA Annual Conference is the premier skills-building and knowledge-sharing event for the civil legal aid, public defense, and public interest law communities.

EXHIBIT 2-B

NATIONAL CONSUMER LAW CENTER (NCLC)

OUR WORK

Working for Consumer Justice & Economic Security

NCLC works across a number of issues facing consumers to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

About Us

NCLC uses the tools of advocacy, education, and litigation to fight for economic justice for low-income and other vulnerable people who have been abused, deceived, discriminated against, or left behind in our economy.

Mission


Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

History

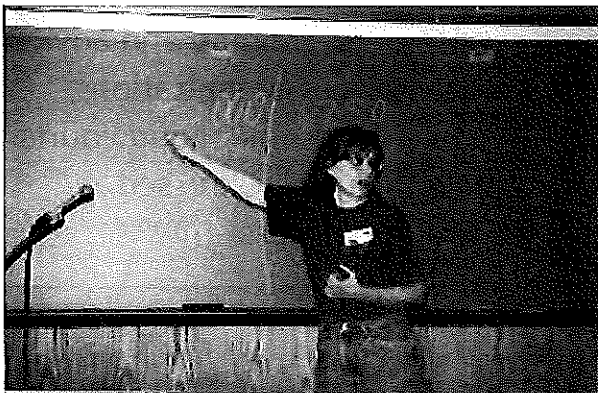
For over 50 years, NCLC has worked to build and strengthen a national community of consumer attorneys, advocates, and activists, while fighting for better laws, rules, and regulations to protect vulnerable consumers and expand economic opportunity.

NCLC proudly traces our roots to the 1960s "War on Poverty," which began funding legal services for low-income people with two main goals: improving access to the legal system for all people and enabling advocates to seek justice wherever justice for low-income people is needed.



Our first role was to serve as a support center for legal services offices, building and sharing expertise in the complex field of consumer law, and as a national leader in consumer law reform. Our initial application for funding stated that NCLC would serve "as the nation's leading advocate of the rights of poor consumers," and for the last 50 years we've worked to live up to that promise.

From our first days to the present, we've shared our expertise with on-the-ground attorneys and advocates who directly represent low-income people, providing essential support to front-line legal aid lawyers and helping develop a strong and growing group of private attorneys who represent consumers in every corner of the nation.



Kathleen Keest, a former NCLC attorney

Since 1982, NCLC has published **comprehensive, authoritative, and indispensable legal treatises** widely considered to be the nation's preeminent source of consumer law expertise, and regularly cited in judicial opinions by courts across the country, including the U.S. Supreme Court. The 21-volume Consumer Law Practice Series and the NCLC Digital Library serve as a resource for more than 4,000 current subscribers and are used over 35,000 times each month by attorneys working to detect and remedy auto fraud, challenge arbitration clauses, stop threatened foreclosures, and so much more—making a real difference in the lives of real people.

NCLC conferences and trainings, starting with our first National Consumer Law Specialist Conference in 1976 and continuing with the annual Consumer Rights Litigation Conference (CRLC) since 1992, provide expert training to thousands of consumer champions each year, and facilitate the building of relationships that serve as a source of support, ideas, co-counseling arrangements, and long-term partnerships that help consumer attorneys effectively represent their clients.

In addition to our Boston headquarters, NCLC has maintained an office in Washington, D.C., for over 40 years, to ensure a strong pro-consumer voice in our nation's capital. In 2017, our D.C. office was named the **Spanogle**

Institute for Consumer Advocacy, in honor of John Andrew (Andy) Spanogle Jr., a longtime consumer advocate, NCLC Partners Council member, and co-chair of NCLC's Campaign for the Future.

In 2019, NCLC and its network was profiled on PBS stations across the country in the 23rd season of *Visionaries*, the award-winning public television series hosted by acclaimed actor Sam Waterston. National Consumer Law Center: Americans Fighting for Consumer Rights profiles our attorneys and civil legal aid partners on location in Atlanta, Boston, Detroit, and Washington, D.C., highlighting our work to protect low-income families from wrongful eviction, foreclosure, and other unfair and deceptive consumer abuses.

NCLC is proud to receive the **highest ratings from charity watchdogs**, including four consecutive 4-star ratings from Charity Navigator, the country's largest independent charity evaluator, attesting to our commitment to fiscal responsibility and accountability, and GuideStar's 2021 Platinum Seal of Transparency, the organization's highest distinction for nonprofit transparency and accountability.

From our first day to the present day, we are proud to support consumer advocates across the nation – and we depend on the support of those who benefit from our work. **NCLC is a non-profit, non-partisan organization, and we hope you'll consider making a tax-deductible gift to help us fight for economic justice.**

Accomplishments

Every consumer who buys a house or a car, uses a credit card, opens a banking account, incurs a medical debt or criminal justice fine or fee, obtains utility services, or takes out a student loan benefits from NCLC's work to protect consumers from unfair, abusive, and deceptive financial practices.

NCLC's Year in Consumer Justice: 2022

December 20, 2022 — Article

Advocates worked on multiple fronts to protect low-income consumers and fight for racial justice and equity

In courts, legislatures, and agencies, advocates at the National Consumer Law Center (NCLC) made strides in 2022 to preserve homeownership and access to utilities; combat damaging credit reports, wage garnishment, and predatory loans; reduce medical debt and student loan burdens and their consequences; protect consumers from scam robocalls and risky fintech credit projects; and help low-income people who are disproportionately burdened by excessive criminal fees and fines. Our policy experts delivered testimony and comments, wrote model laws, engaged with members of the media, and armed consumer law attorneys in government, legal aid, and the private sector with persuasive advocacy tools.

Here are some highlights of NCLC's significant advocacy and progress in 2022 on behalf of low-income and vulnerable consumers:

Access to Justice/Arbitration

NCLC called on Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra to exercise the Bureau's authority to limit forced arbitration clauses commonly buried in the fine print of consumer financial contracts. Advocates cheered passage of the Forced Arbitration Injustice Repeal (FAIR) Act of 2022 in the U.S. House, a sign that the bill is gaining traction in Congress. It would restore access to the courts for consumers, servicemembers, workers, and small business owners harmed when they shop at, bank with, borrow from, work for, or do other business with companies that violate the law.

Bankruptcy

After advocating for years that student borrowers should be able to more easily discharge their debts in bankruptcy, NCLC praised the Departments of Justice and Education for new guidance on when a student loan borrower who has filed bankruptcy may be relieved of a federal student loan debt.

Cars

Transportation expenses are a significant household expense for most families, and NCLC campaigned to make electric vehicles available to lower income households so they can save money and decrease reliance on fossil fuels. Advocates outlined a range of policies and incentives to ensure that EVs can be within reach for families with low and moderate incomes.

Enforcement actions by federal and state consumer protection agencies, as well as private litigation, continue to highlight auto dealer practices that exploit the inherent power imbalance in vehicle sales, effectively driving up the cost of many vehicles. We worked with coalition partners to submit significant comments to the FTC urging the agency to address unfair and deceptive practices, including misleading advertising that conceals the vehicle price, deceptive inclusion of add-on products or services at inflated prices, and yo-yo sales transactions in which dealers trick consumers into financing agreements with more expensive terms.

Credit Reports

Years of advocacy to counteract the damaging effects of credit reporting showed significant progress this year, with credit bureaus committing to eliminate up to 70% of medical debt from credit reports.

Medical debt disproportionately burdens Black families, and NCLC continues to advocate for the removal of all medical debt from credit reports and to urge the CFPB to go further to protect consumers with medical debts. An NCLC advocate testified before the U.S. Senate, underscoring the economic impact of the growing burden of medical debt, and urging the legislature to work on ways to prevent medical debt in the first place and to protect people from harmful debt collection and credit reporting practices.

After long advocating for new credit scoring models from the Federal Housing Finance Agency (FHFA), NCLC applauded the validation and approval of two updated scoring models that do

not consider paid debt collection items and that reduce the impact of unpaid medical debt – greatly lessening the harmful effects of these items on consumers’ creditworthiness, as calculated for Fannie and Freddie-backed mortgages. NCLC has been advocating since 2014 for the adoption of new scoring models, and this development will significantly expand access to sustainable homeownership opportunities.

Criminal and Consumer Justice

In a compelling report, NCLC advocates demonstrated the extent to which court debt is a barrier to record clearing that prevents poor and low-income people from getting a job or a place to live and from participating in their community or civic affairs. The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing found that, in almost every jurisdiction, outstanding court debt is a barrier to record clearing.

Advocates also demonstrated how incarcerated federal student loan borrowers are systematically denied access to student loan relief and recommended policies and practices to remove these extraordinary barriers.

Debt Collection

NCLC led a successful effort to persuade the California legislature and governor to protect workers by passing a new law that will completely protect a worker who earns \$20 per hour from wage seizure for old debt and will reduce the amount that can be seized from workers who earn more.

NCLC is also supporting federal legislation to protect consumers wages, lifting up Rep. Alma Adams’ (D-NC) introduction of the Protecting Wages of Essential Workers Act of 2022.

Advocates produced an analysis of Regulation F debt collection regulations six months after their implementation and offered key policy recommendations the CFPB should implement to enforce and improve Regulation F.

Energy, Telecom, and Robocalls

Along with the National Resources Defense Council, NCLC created the Water Affordability Advocacy Toolkit, a menu of state- and local-level policy solutions that directly address household-level affordability for people served by centralized drinking water or wastewater systems. The toolkit is aimed at protecting lower-income households and households of color, which are most likely to suffer serious consequences if they lose access to essential water services, including spiraling debt and economic hardship, loss of housing, loss of parental custody of children, and grave risks to both individual and community health.

NCLC continued meeting and filing comments with the Federal Communications Commission (FCC) urging meaningful changes to rules governing telecom providers that transmit illegal robocalls and texts. In June, NCLC and the Electronic Privacy Information Center (EPIC) published a report finding that tens of millions of daily scam robocalls designed to steal money from unsuspecting consumers translate into revenue for telephone providers. The report outlines strategies to reduce the fraudulent calls.

On the subject of ringless voicemail, the FCC issued a declaratory ruling, noting that it agreed with NCLC and making it “crystal clear” that ringless voicemail is subject to the Telephone Consumer Protection Act (TCPA).

In Maryland, NCLC helped shape new regulations to protect low-income energy consumers from deceptive and overpriced energy supply contracts.

In Illinois, the Illinois Commerce Commission approved a new metric proposed by NCLC that has the potential to reduce electricity disconnections in some of the most economically disadvantaged Illinois communities by 34% or more between 2024-2027. The new metric for Illinois’ two major electric utilities will financially reward or penalize the companies based on a requirement that the utility reduce disconnections by 10% annually in the 20 zip codes with the highest disconnection rates within their respective service territories.

Equity and Racial Justice

A focus on equity and racial justice is embedded in all aspects of NCLC’s advocacy. NCLC advocates urged the Biden-Harris administration to take key steps to combat systemic racism in credit, housing, and financial services. NCLC’s roadmap for equitable economic recovery in 2022 contains a slate of policy proposals to build wealth and economic opportunity for consumers of color.

Among the many proposals are suggestions to reduce the racial wealth and homeownership gaps. The gap between the Black and white homeownership rates in the United States is at its highest level in 50 years. Advocates held a series of high-level meetings with influential policy makers to emphasize practices and policies that can reduce the racial wealth and homeownership gaps for consumers of color. This complemented the ongoing push to reform the appraisal process, promote the use of Special Purpose Credit Programs and to preserve existing supplies of affordable housing by opening up financing channels for lower dollar mortgages. NCLC will leverage the recent promising uptick of the Black homeownership rate to continue to push for substantial reform and equitable access to homeownership opportunities for all consumers.

With the Center for Law and Social Policy (CLASP), NCLC published a report exposing the disproportionate impact student debt has on Black borrowers. Arguing that without broadbased cancellation and reforms to the student loan and federal student aid systems, the U.S. higher education system will continue to hinder, rather than support, Black Americans’ economic mobility, the report outlines steps to address the dual student loan and college affordability crisis through federal policies and executive action.

FinTech Credit Products

With the growing popularity of Buy Now, Pay Later (BNPL) lending, NCLC joined more than 75 allied organizations in comments to the CFPB recommending it view BNPL products as credit cards covered by the Truth in Lending Act (TILA), enact a larger participant rule to supervise this market, and look out for practices that harm consumers. NCLC advocates also participated in a number of roundtable discussions with U.S. and international regulators and academics on the consumer impact of BNPL.

In coalition comments, NCLC urged the CFPB to address junk fees, including so-called “tips” and inflated “instant access” fees used to disguise interest on banking app cash advance products and earned wage advances.

Housing

NCLC has worked to stem troubling foreclosure trends that threaten sustainable homeownership, especially in Black and Latino communities, by ensuring that Homeowner Assistance Fund (HAF) programs are more accessible and obtaining a whole-government foreclosure for federally backed mortgage borrowers who have applied for HAF assistance. We also worked to improve loss mitigation rules for federally backed mortgages, pushing for changes to enable greater payment relief for FHA homeowners in particular. We obtained a new repayment plan option for reverse mortgage borrowers impacted by the pandemic. Most recently, we made comprehensive recommendations to the CFPB on how to update hardship assistance procedures for mortgage borrowers based on the lessons from COVID programs.

We’ve made strides on language access issues: applications for mortgages eligible for purchase by Fannie Mae and Freddie Mac (which set policies that influence the whole market) must, as of March, ask about the borrower’s language preference. Advocates continue to push for reforms to help borrowers with limited English proficiency, including requiring servicers to ask about language preference for existing borrowers now.

Seeing a growing risk for borrowers who still owe debt from second mortgages with predatory terms taken out more than a decade ago, NCLC created a playbook for homeowners to avoid “zombie second mortgages” that have been reawakening and threatening home equity. We have also urged the CFPB to act on these abuses.

To protect renters, NCLC advocates continue to work on the state and federal levels to reduce the reporting of rental debt on credit reports, ban the use of credit scores from tenant screening, and prohibit the use of eviction records in cases that didn’t result in a judgment from being used for tenant screening. NCLC also was part of a team filing a lawsuit against SafeRent Solutions, alleging that the national tenant screening provider has been violating the Fair Housing Act for years by giving lower scores to Black and Latino/Hispanic rental applicants who use federally funded housing vouchers to pay the vast majority of their rent, causing them to be denied housing.

High-Cost Loans

Caps on interest rates and loan fees are the primary vehicle by which states protect consumers from predatory lending. NCLC’s annual report, Payday Installment Lending in the States, found progress in some states and setbacks in others, with 34 states and the District of Columbia now capping the APR on a \$2,000, two-year installment loan at 36% or less.

But in some states, “rent-a-bank” schemes are being used to evade rate caps. NCLC, together with coalition partners, urged the FDIC to crack down on banks that facilitate predatory lending, issued a report about predatory puppy loans for purchases at pet stores, often for puppies sourced from inhumane puppy mills, and called on major auto repair chains to stop offering rent-a-bank loans.

NCLC also cheered DC's \$4 million settlement that chased out predatory lender Elevate, and California's suit against OppFi. NCLC maintains a High-Cost Rent-a-Bank Watch List highlighting banks and lenders that team up to issue triple-digit interest, debt-trap loans to purchase products and services, including furniture and auto repairs, in states that do not allow high-cost loans.

Payment Fraud

NCLC submitted testimony to Congress urging fraud protection for person-to-person payment apps, pushed the Federal Reserve to improve protections in its coming FedNow instant payments services, and highlighted the risks to consumers associated with a Central Bank Digital Currency. Advocates led a coalition in urging the U.S. Treasury and regulators to "do as much as possible" to discourage expanding use of crypto-assets, the "latest in a long line of devices used to strip wealth from communities of color and push them further behind."

Student Loans

While borrowers are still awaiting word on whether the U.S. Supreme Court will allow President Biden's student debt cancellation plan to provide transformational relief to tens of millions of Americans, we saw measurable progress for people whose financial well-being has been impeded by the broken student loan system. This year, the Department of Education took long overdue action to discharge loans for borrowers at several predatory for-profit schools, including granting relief to over half a million former Corinthian students as NCLC had petitioned and long advocated for, and to roughly 79,000 former students at the former Westwood College. NCLC, along with Student Defense and the Lawyer's Committee for Civil Rights Under Law, had filed a lawsuit against the Department seeking relief for defrauded Westwood students. New rules will reduce loan costs by limiting interest capitalization and improve federal student loan cancellation programs for borrowers harmed by predatory school conduct or school closures as well as for public service workers and disabled borrowers. As advocated for by NCLC, legal aid organizations, AGs, and other state entities will be able to file group borrower defense claims on behalf of groups of borrowers harmed by their school's predatory conduct. The new "Fresh Start" program, which NCLC and our allies pushed for, will provide borrowers who were in default before the COVID crisis with an opportunity to get out of default and access lower cost repayment plans and other relief. And the IDR (income driven repayment) Account Adjustment and PSLF Temporary Waiver are allowing millions of borrowers who have been failed by poor servicing, lack of record-keeping, and program complexity to get credit toward eventually being debt free. These fixes followed years of NCLC's efforts to shed light upon errors and broken promises in the IDR program, and NCLC's advocacy with partner organizations to restore credit in this way.

NCLC 2022: By the Numbers

December 28, 2022 — Article

The National Consumer Law Center advanced consumer justice in many ways in 2022. In addition to **direct advocacy** on behalf of low-income consumers, we provided training to the consumer law community through in-person conferences, digital articles and publications, online resources, and in the media. **Here's a look at NCLC in numbers in 2022.**

Conferences

In-person conferences: **3**

- Consumer Rights Litigation Conference
- Fair Debt Collection Conference
- Mortgage Conference

In-person conference attendees: **962**

Websites

Websites redesigned: **2**

NCLC.org

Library.NCLC.org

Publications/Digital Library

Free Articles Published: **28**

Most Popular Articles by Reads:

- Consumer Law Rights Taking Effect in 2022: **43,400 reads**
- "Comprehensive New FDCPA Regulation F Takes Effect: **26,500 reads**

Print Revisions: **5**

- Fair Credit Reporting, 10th Edition
- Fair Debt Collection, 10th Edition
- Automobile Fraud, 7th Edition
- Consumer Bankruptcy Law and Practice, 13th Edition
- Credit Discrimination, 8th Edition

Digital Subsection Updates: **325 chapters updated**

Digital Library Usage:

User sessions: **480,000 user sessions**

Digital library visitors: **360,600**

New subscriber accounts: **620**

NCLC.org

NCLC.org resources indexed and added to new website: **1,600+**

User sessions: **286,000** (up from 274,000 in 2021)

Increase in monthly sessions after the new NCLC.org launched in Fall 2022: **50%**

Most visited pages:

- Consumer Rights Litigation Conference
- High-Cost Rent-a-Bank Loan Watch List
- Predatory Installment Lending in the States (2022)

Media Mentions

Number of unique mentions of the National Consumer Law Center in national, state, and local media: **5,000+**

Social Media

Number of social media page visits:

Twitter: **104,800+**

Facebook: **3,275+**

LinkedIn: **2,600+**

Over the last five decades, NCLC has played a leading role in crafting the bedrock laws and regulations that protect consumers in the marketplace.

Every consumer who buys a house or a car, uses a credit card, opens a banking account, incurs a medical debt or criminal justice fine or fee, obtains utility services, or takes out a student loan benefits from NCLC's work to protect consumers from unfair, abusive, and deceptive financial practices.

NCLC's advocacy has initiated, improved, and defended significant consumer protections:

- the Truth in Lending Act (TILA)
- the Fair Credit Reporting Act (FCRA)
- the Equal Credit Opportunity Act (ECOA)
- the Fair Debt Collection Practices Act (FDCPA)
- the Electronic Fund Transfer Act • the Used Car Rule
- the Telephone Consumer Protection Act (TCPA)
- the Home Ownership & Equity Protection Act (HOEPA)
- the Fair and Accurate Credit Transactions Act (FACTA)
- the Home Affordable Modification Program (HAMP)
- the Credit CARD Act
- the Dodd-Frank Act which included the creation of the Consumer Financial Protection Bureau (CFPB)
- the Military Lending Act, and many more.

Our greatest successes are the consumers who *haven't* been deceived or exploited—because of the laws and regulations NCLC has helped create and strengthen.