

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION

MOIRA GILLEY, on behalf of herself
and all others similarly situated.

Plaintiff,

CASE NO.: 02-8101

-vs-

DIVISION: I

ERNIE HAIRE FORD, INC.,

CLASS REPRESENTATION

Defendant.

MOTION AND MEMORADUM OF LAW
FOR FINAL DISTRIBUTION OF UNCLAIMED FUNDS AND CY PRES

MOIRA GILLEY, on behalf of the GILLEY CLASS (the "Class"), by and through her undersigned attorney, and files this Motion and Memorandum of Law for Final Distribution of Unclaimed Funds and Cy Pres and in support thereof states as follows:

Background

1. The Class obtained a Final Judgment against Ernie Haire Ford, Inc. ("EHF") for the principal amount of \$6,922,493.46, on October 7, 2008, (the "Judgment").
2. The Class began post judgment collection against EHF when it failed to pay the Judgment.
3. On November 24, 2008, the EHF filed a Voluntary Petition for Relief under Chapter 11 of Title 11 of the Bankruptcy Code.
4. The insurance carrier that represented and defended EHF, pursuant to its contract of insurance, from the Class claims was Zurich / Universal (the "Carrier"). Following the Judgment, but prior to EHF filing for bankruptcy protection, the Carrier tendered a total of \$1,893,422.97 directly to the Class on November 21, 2008, and those funds were held in an

interest bearing account following payment of partial attorney's fees pursuant to this Court's Order Granting Plaintiff's Unopposed Motion for Approval of Distribution of Partial Class Recovery dated October 15, 2008.

5. Thereafter, during the pendency of EHF's bankruptcy, substantial efforts were made on behalf of the Class to obtain an assignment of EHF's bad faith claims against the Carrier, which resulted in a Settlement Agreement dated March 16, 2009 ("**Settlement Agreement**"), that was granted with the Order Granting Joint Motion for Order Approving Settlement Agreement with Creditor, The Gilley Class, dated April 14, 2009.

6. The Settlement Agreement provided for the Class, in the name of EHF, to initiate litigation against the Carrier. The Class did file suit against the Carrier in the case styled *Ernie Haire Ford, Inc. v. Universal Underwriters Insurance Company*, Case No. 8-09-CV-1545-T-26 MAP, in the United States District Court, Middle District of Florida ("**bad faith case**").

7. Following substantial efforts and litigation by the Class, an agreement to settle the claims in the bad faith case against the Carrier was finalized on October 1, 2010, and thereafter was approved by the Order Granting Unopposed Motion for Order Approving Settlement of Bad Faith Claim dated October 10, 2010.

8. The settlement of the bad faith case yielded another \$3,060,000.00 in recovery for the Class, making the gross proceeds, less interest earned for the funds held pursuant to this Court's Order dated October 15, 2008, recovered on behalf of the Class \$4,953,422.97 ("**Settlement Fund**").

9. Pursuant to this Court's Order Approving Disbursement of Settlement Funds, class counsel, voluntarily and without prejudice to seek the balance should it later be available, reduced their attorney's fees distribution *pro rata* to the same percentage reduction in

distribution to the Class.

10. Thereafter, the Court approved class administrator, A.B. Data, Inc. (**'A.B. Data'**), began the process of making distribution to the Class as is more detailed on the affidavit filed in support of this Motion.

11. A total of 13,804 checks were issued by A.B. Data; 11,558 initial issuance checks and 2,156 reissued checks following additional research and effort to distribute funds to the Class.

12. Of the checks issued, 7,505 were cashed for a total of \$1,881,897.95. The balance of the issued checks, with the exception of those few identified on the affidavit filed in support of this Motion, either went un-cashed and are now void or were returned as undeliverable despite best efforts to find an updated address.

13. As of September 16, 2011, \$1,020,723.98 remains in the Settlement Fund.

Motion - Unpaid Attorney's Fees and Additional Administrative Costs

14. As a result of the extra efforts to update as many addresses as possible A.B. Data's initial budget of \$50,000 was exceeded for the overall administrative costs to handle the distribution of funds in this case.

15. There are additional administrative costs in the amount of \$7,336.79 that remain outstanding for A.B. Data's handling of this case, as is identified and confirmed in the affidavit filed in support of this motion.

16. There remains \$184,461.30 in unpaid attorney's fees in this case as a result of the voluntary reduction identified in paragraph 9 above.

17. Class counsel respectfully request approval to make final distribution of their unpaid fees according to the following schedule:

Final Payment – Attorney’s Fees

Clark & Martino, P.A.	(20.86%)	\$38,478.62
Rothburd, P.A.	(21.79%)	\$40,194.12
Jeeves Law Group	(18.93%)	\$34,918.52
Weakland, P.A.	(17.07%)	\$31,487.54
Takacs, P.A.	(13.55%)	\$24,994.51
De la Parte & Gilbert	(07.80%)	\$14,387.99

18. After deduction of the outstanding checks noted in Paragraph 12 that may still cash, the additional administration costs being requested in Paragraph 15 and the unpaid attorney’s fees being requested in Paragraph 17, \$827,902.84, plus any additional interest that may be earned thereon, remains as the residual balance available in the Settlement Fund.

19. Class counsel request approval to make *cy pres* distributions according to the following schedule:

Final Distribution – *Cy Pres*

Bay Area Legal Services (“BALS”)	\$575,000.00
Gulf Coast Legal Services (“GCLS”)	\$ 32,903.84
Junior Achievement of West Central Florida, Inc. (“JA”)	\$ 20,000.00
National Consumer Law Center (“NCLC”)	\$100,000.00
National Association of Consumer Advocates (“NACA”)	\$100,000.00

Memorandum of Law in Support of *Cy Pres*

I. The purpose of the consumer protection statutes underlying this litigation is best served by distribution of unclaimed class action funds under the *cy pres* doctrine.

Consumer protection laws are meant to ensure that the choices given to consumers in the marketplace are unimpaired by fraud or withholding of material information, and that the power differential between consumers and commercial enterprises is equalized. *See Averitt & Lande, Article: Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law*, 65 Antitrust L.J. 713 (1997). They seek to improve the functioning of the marketplace by making it unprofitable to operate dishonestly. *Id.* Thus, when attempting to vindicate rights set forth in a

consumer protection statutes, like those at issue in the underlying case here, a court should focus on the policies of fundamental fairness in the marketplace, deterrence of fraud, and disgorgement of illegally obtained profits, which is exactly what guided this Court in granting the Class's Motions for Summary Judgment and Final Judgment.

The class action method of litigation often has been used in order to fully effectuate the above objectives, as well as to compensate all injured parties. Class actions ensure that consumers will be protected even when many, if not most, injured parties will not actively participate in the court proceedings, either because they cannot be located, or because their injury is too small to make participation desirable. As the National Association of Consumer Advocates stated in the introduction to its *Standards and Guidelines for Litigating and Settling Consumer Class Actions*, 176 F.R.D. 375, 377 (1997):

Consumer class actions serve an important function in our judicial system and can be a major force for economic justice. They often provide the only effective means for challenging wrongful business conduct, stopping that conduct, and obtaining recovery of damages caused to the individual consumers in the class. Frequently, many consumers are harmed by the same wrongful practice, yet individual actions are usually impracticable because the individual recovery would be insufficient to justify the expense of bringing a separate lawsuit. Without class actions, wrongdoing businesses would be able to profit from their misconduct and retain their ill-gotten gains. Class actions by consumers aggregate their power, enable them to take on economically powerful institutions, and make wrongful conduct less profitable.

Fulfillment of these policy goals means that damage awards should not be confined to the claiming class members. *See also, Pray v. Lockheed Aircraft Corp.*, 644 F.Supp. 1289, 1302 (D.C. 1986)(stating that punitive damages arising from a class action would be more appropriately disbursed to charitable organizations rather than class members, as these organizations would benefit the public “on whose behalf [the wrongdoer] is punished.”) (internal quotation omitted).

The four options usually considered for distribution of residual funds in consumer class action cases are: (i) reversion to the defendant, (ii) distribution to existing claimants, (iii) escheat to the state, and (iv) *cy pres* distribution. See H. Newberg, *2 Newberg on Class Actions* §§ 10.13 – 10.25; also Kevin Forde, *What Can a Court Do with Leftover Class Action Funds? Almost Anything!*, *The Judges' Journal*, Summer 1996, p. 20. Although any one of the alternate methods may be most appropriate in special limited circumstances, *cy pres* distribution is most appropriate in this case because it satisfies the deterrence and disgorgement goals of the consumer protection statutes underlying this case, and it benefits the absent class members and consumers as a whole.

Reversion to the defendant is inappropriate because it neither satisfies consumer protection goals nor compensates class members. Rather it allows the defendant, the alleged wrongdoer, to keep the fruits of its wrongdoing. *In re Motorsports Merch. Antitrust Lit.*, 160 F.Supp.2d at 1394, see also, *In re Wells Fargo Secs. Litigation*, 991 F.Supp. at 1196. Allowing the defendant to keep these ill-gotten gains would be particularly inappropriate where, as here, the defendant “conceded its potential out-of-pocket exposure for the entire potential recovery fund as part of the settlement,” and was released from plaintiffs' individual claims. *Id.* Reversion is only appropriate in limited cases where the defendant acted in good faith, and/or when punitive damages are disallowed pursuant to statute. See, e.g. *Wilson v. Southwest Airlines, Inc.*, 880 F.2d 807 (5th Cir. 1989) (an example of appropriate reversion in a Title VII action). The court should therefore hold that once the defendant entered into the settlement agreement, it obtained the benefit of its bargain and its interest in the settlement fund was extinguished.

Distribution to existing claimants is also inappropriate because, although it may satisfy the goals of deterrence and disgorgement, it does not benefit absent class members or consumers

as a group. Instead, it provides a windfall to class members who have already been fully compensated. *See Wilson*, 880 F.2d at 811-12; *Folding Carton*, 557 F.Supp at 1107. The courts have also expressed concern that the interests of the claiming class members will be at odds with the absent class members, whom they are supposed to represent, and that such a method may encourage bringing class actions particularly likely to result in uncollected damages. *Van Gemert v. Boeing Co.*, 553 F.2d 812, 815 (2nd Cir. 1977). Distribution to existing claimants has only been found to be appropriate in special circumstances, such as where claimants with non-economic damages had originally accepted overly conservative awards due to the court's uncertainty regarding the number of economic claims. *In re Miamisburg Train Derailment Litigation*, 92 Ohio App. 3d 304 (1993). Since these circumstances are not at issue in this case, the court should not approve distribution of unclaimed funds to those class members who already received a distribution.

The third option, escheat, or deliverance of abandoned property to the state, can be broken into two categories: earmarked and general. Earmarked escheat refers to an award of the funds toward a specific government agency in a position to assist citizens similar to the injured class. If used properly, this option can benefit consumers greatly and satisfy the deterrence and disgorgement goals with low administrative costs. It has been looked on favorably, but has rarely been applied. *See, e.g. Market St. Ry Co. v. Railroad Commission*, 28 Cal.2d 363 (1946) (an example of earmarked escheat). The reluctance of courts to rely upon earmarked escheats apparently stems from concerns that the funds will be used for agency purposes unrelated to the subject of the lawsuit and, therefore, not benefit class members or members of the public similar to them at all. *See, McCall, Sturdevant, Kaplan and Hillebrand, Greater Representation for California Consumers – Fluid Recovery, Consumer Trust Funds, and Representative Actions*, 46

Hastings L.J. 797, 809 (1995).

The California Supreme Court has described general escheat, meaning application of the funds to the general treasury, as “the least focused compensation to the class”. *State of California v. Levi Strauss & Co.*, 41 Cal.3d 460, 475 (1986).¹ This option holds little promise of benefiting the absent class members or those similarly situated, as the funds may be used for virtually any governmental purpose, with no attempt to realize the objectives of the underlying substantive law. *Id.* “The only advantage of general escheat is ease of administration...[and, it] is usually regarded as a last resort.” *Id.* General escheat is also considered lacking in deterrent power. Seligman and Larkin, *supra*.

The final option, *cy pres* distribution, originated in the field of trusts as a way of preventing the failure of a testamentary charitable gift by allowing “the next best use of the funds to satisfy the testator’s intent as near as possible.” *Democratic Central Comm. v. Washington Metro. Area Transit Comm’n*, 84 F.3d 451, 455 n.1 (D.C.Cir. 1996), *see also Chistian Hereald Associations v. First National Bank of Tampa*, 40 S.2d 563 (Fla. 1949). The equitable *cy pres* doctrine grants the court discretion to shape remedies that direct excess settlement funds to their “next best use.” 2 *Newberg on Class Actions*, § 11.20 at 11-26 (3d ed. 1992). In the context of a class action in which provision of a direct benefit to class members is impossible or impracticable because members of the class cannot be identified or located, members of the class failed to submit claims, the value of the distributions would be consumed by the costs of claim administration, *cy pres* recovery is ideal because it provides a mechanism through which to provide an indirect benefit to non-claiming class members. *Mace v. VanRu Credit Corp.*, 109 F.3d 338, 345 (7th Cir. 1997); *see also, Mirfasihi v. Fleet Mortgage Corp.*, 356 F.3d 781, 784

¹ *State of California* provides an exhaustive analysis of the various forms of “fluid recovery” distribution, their pros and cons, and the circumstances in which each would be appropriate.

(7th Cir.2004) (noting that the *cy pres* doctrine is utilized to prevent defendants “from walking away from the litigation scot-free because of the infeasibility of distributing the proceeds of the settlement ... to the class members.”).

Application of the *cy pres* doctrine is appropriate in this case not only because members of the class cannot be identified or failed to timely cash checks mailed directly to them and the value of further distributions would be consumed by the costs of administration, but also the fact that the proposed recipients – Bay Area Legal Services, Gulf Coast Legal Services, Junior Achievement of West Central Florida, Inc., the National Consumer Law Center and the National Association of Consumer Advocates – are focused on combating and educating against injustices similar to those that injured the consumer class members in this case.

Federal courts frequently rely upon *cy pres* principles to distribute unclaimed damages and settlement funds to organizations focused on “combating harms similar to those that injured the class members.” *Jones v. National Distillers*, 56 F.Supp.2d 355, 358 (S.D.N.Y.1999). For example, in *Jones v. National Distillers*, a securities fraud class action, the District Court approved class counsel’s request to donate unclaimed class funds to the Legal Aid Society Civil Division, 56 F.Supp.2d at 358. Noting that the intent of the settlement fund was to help those claiming injury by securities fraud and that the Legal Aid Society’s Civil Division “help[ed] those needing legal assistance for various civil matters,” the court found the donation “entirely proper.” *Id.* Similarly, in *Purdie v. Ace Cash Express, Inc.*, F.Supp.2d, 2003 WL 22976611 (N.D.Tex. 2003) (unreported), a consumer class action against payday lenders, the district court approved a settlement agreement that provided for *cy pres* payment of surplus funds to unspecified consumer advocacy organizations. In *In re Wells Fargo Secs. Litigation*, 991 F.Supp. 1193 (N.D.Ca. 1998), a securities class action, the District Court ordered class counsel to give

money to a law school clearinghouse, which qualified as an organization that would serve the interests of future class members in similar litigation because it distributed information on similar pending class actions via the Internet. *See, also, In re Relafen Antitrust Litigation*, 231 F.R.D. 52 (D. Mass. 2005) (approving *cy pres* distribution of a portion of settlement with drug manufacturers to a local hospital where a significant portion of plaintiff class would not be receiving any direct payments from settlement fund due to a \$20 minimum claim requirement; *Cavalier v. Mobil Oil Corp.*, 898 So.2d 584 (4th Cir. 2005) (upholding *cy pres* distributions to community service projects that provided services to people living in the affected areas in a class action settlement involving chemical releases into areas in New Orleans and St. Bernard); *Powell v. Georgia-Pacific Corp.*, 843 F.Supp. 491 (W.D.Ark., 1994) (approving distribution of residual settlement funds from race discrimination suit to tax-exempt foundation for administration of a scholarship fund to provide educational opportunities for African-Americans); *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 179, 183-85 (2d Cir. 1987) (holding that the “district court may in the exercise of its discretion and after consultation with veterans’ groups undertake to use portions of the [settlement] fund for class assistance programs that are consistent with the nature of the underlying action and with the judicial function.”). State courts² have also utilized *cy pres*... to ensure that wrongdoers do not “retain ill gotten gain.” *See, e.g., State of California v. Levi Strauss & Co.*, 41 Cal.3d 460 (1986) (noting that damage distribution poses special problems in consumer class actions where proof of individual damages is often not feasible, individual recoveries may be too small to make traditional methods of proof worthwhile, and consumers are not likely to retain records of small purchases for long periods of time).

Federal courts have become increasingly flexible in their application of the *cy pres*

² **Note:** Several states limit the application of the *cy pres* doctrine by law. For example, California law requires that *cy pres* awards awarded in that state be used to benefit California citizens, Texas law requires that *cy pres* awards be made to the bar association, and Oregon prevents them altogether. No such limits exist under Florida law.

doctrine, sometimes approving uses of funds that are unrelated to the underlying litigation. “The doctrine of *cy pres* and courts' broad equitable powers now permit use of funds for other public interest purposes by educational, charitable, and other public service organizations, both for current programs or, where appropriate, to constitute an endowment and source of future income for long-range programs to be used in conjunction with other funds raised contemporaneously.” *Superior Beverage Co. v. Owens-Illinois, Inc.*, 827 F.Supp. 477, 478-79 (N.D.Ill.1993). In *Superior Beverage Co.*, a case involving residual funds from an anti-trust settlement, the court granted *cy pres* distribution of unclaimed settlement funds to fifteen organizations among them not only law schools, legal services providers, and public interest law organizations, but also a public television station and a religious group. *Id.* More recently, in *In re Motorsports Merch. Antitrust Lit.*, 160 F.Supp.2d 1392, 1394 (N.D.Ga.2001), a class action price-fixing suit against vendors of NASCAR race souvenirs, a District Court approved *cy pres* distributions to a diverse group of public interest recipients including the American Red Cross, Atlanta Legal Aid, Children’s Healthcare of Atlanta, Georgia Legal Services Program, the Lawyers Foundation and the Susan G. Komen Breast Cancer Foundation. *Id.* In light of the increased discretion that federal courts have exercised in the context of *cy pres* awards and in light of the fact that the *cy pres* awards proposed in this case *do* indirectly benefit class members, the court would be well within its discretion to approve the proposed *cy pres* grants.

While there has been broad discretion in the award of *cy pres*, some courts have reversed *cy pres* awards based on findings that they related too indirectly to the underlying litigation. For example, In *In re Airline Ticket Commission Antitrust Litigation*, 307 F.3d 679 (8th Cir. 2002), an antitrust class action suit brought by travel agents against airlines, the 8th Circuit reversed the District Court’s *cy pres* award to the National Association for Public Interest Law as an abuse of

discretion, concluding that the award was too indirectly related to the underlying litigation. Instead, it found that a *cy pres* award to travel agencies in Puerto Rico and the U.S. Virgin Islands, although not class members, would relate more directly to the antitrust injury alleged and settled. *See also, Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990) (reversing District Court's *cy pres* award because it benefited a group "far too remote" from the plaintiff class and because it did not provide adequate supervision over distribution, but not disapproving of the *cy pres* doctrine generally). This line of cases should not impede approval of the proposed *cy pres* awards since the proposed recipients are both local legal aid and national consumer advocacy organizations whose work *is* directly related to the underlying litigation as well as an organization focused on consumer financial education.

Several court decisions have limited the application of *cy pres* doctrine under circumstances distinct from those at issue in this case. For example, courts have declined to certify classes (in litigated actions which, absent reliance on the theory, would not have been "manageable" for purposes of F.R.C.P. 23. *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973)(rev'd on other grounds) (holding that fluid recovery was inadmissible as a solution of the manageability problems of class actions and wholly improper in anti-trust class action); *Windham v. American Brands, Inc.* 565 F.2d 59 (4th Cir. 1977) (same). These cases are inapposite since the class at issue in this case has already been certified, affirmed on appeal and concluded through summary and final judgment. Thus, manageability is not at issue. In *In re Matzo Food Prods. Litig.*, 156 F.R.D. 600, 605 (D.N.J. 1994), a price-fixing suit against a seller of matzo products, the District Court declined to approve a *cy pres* distribution of the entire settlement fund because the actual parties in interest did not wish to pursue their claims, a fact which is not at issue in this case. Since plaintiffs are not relying on the *cy pres* doctrine to certify

the class, and since the class has been fully adjudicated, none of these decisions precludes the application of the *cy pres* doctrine in this case.

II. Conclusion

In the current atmosphere of cutbacks in funding for legal advocacy for the poor, the role of the *cy pres* remedy in consumer class actions has now become critical. It provides a court with an indispensable framework for serving the public interests of disgorgement and deterrence underlying this litigation and enhancing the fundamental fairness of the marketplace. *State of California v. Levi Strauss & Co.*, 41 Cal.3d 460, 475 (1986); *Simer v. Rios*, 661 F.2d 655, 676 (7thCir. 1981). Although the goal of deterrence can be achieved simply through a punitive damage award in some cases, the distribution of a fund to charitable or public service organizations serving consumers goes one step further by helping to prevent the same harms from being perpetrated on future, similarly situated consumers. The proposed *cy pres* recipients, BALS, GCLS, JA, NCLC and NACA, will provide a wide range of significant and long-term benefits to the plaintiff class. These organizations will address issues related to those underlying this litigation as well as a myriad of other consumer issues, mostly those affecting the rights of low-income consumers. In addition, the *cy pres* recipients will create a framework to which future contributions could be added, thus providing an ongoing source of support for the class and similarly situated members of the public as is more fully outlined regarding each organization below:

Bay Area Legal Services

Bay Area Legal Services is a regional, nonprofit public interest law firm providing the highest quality legal counsel by:

- Assisting individuals and nonprofit groups with limited access to legal services;
- Resolving the legal problems of our clients; and
- Preserving the independence, hope, and dignity of those we serve.

Bay Area Legal Services aims to eliminate barriers to justice through high quality legal services, education, and community partnerships.

Bay Area Legal Services' Team ABLE (Advocates for Basic Legal Equality) and its branch offices and partners help eligible applicants under 60 years of age with legal issues related to housing, consumer, employment, public benefits, and veteran benefits.

Housing: Preserving housing and prevention of homelessness. They assist with landlord/tenant problems, including eviction, whether in federally subsidized or private housing. They assist homeowners facing foreclosure, including advising them about modifying loans and other foreclosure alternatives.

Consumer: Helping protect consumer's income and property from creditors by advising or defending them in collection lawsuits when they have a legal defense or are the victim of consumer fraud or fraudulent practices; preserving consumer's income from garnishment; and in some cases referring consumers for help with bankruptcy.

Employment: Helping maintain income after a client has lost his or her job by advising or representing them if they have been denied unemployment compensation benefits.

Public Benefits: Helping clients obtain, preserve or reinstate public benefits such as food stamps, Medicaid or cash assistance (TANF) by advising or representing them if they are denied or lose these benefits.

Veteran Benefits: Helping veterans obtain or preserve their veterans benefits. Their staff is accredited for representation of veterans seeking disability, pension, or other available benefits.

Gulf Coast Legal Services

Gulfcoast Legal Services is a regional, non-profit organization dedicated to providing energetic, comprehensive, direct legal advocacy, counseling and education for vulnerable and/or low income individuals.

As Gulfcoast Legal Services grows in prominence and scope, it remains committed to the promise of equal access to justice for all by zealously championing the rights of vulnerable persons through advocacy, education and a secure sustainable financial support from both public and private sources.

Gulfcoast Legal Services responds appropriately and timely to the needs of clients and treats all with respect and dignity and will strive to empower individuals through legal education and advocacy.

Gulfcoast Legal Services provides legal services for persons who face the deprivation of critical human needs, such as food, shelter, income, health care, family stability or personal safety.

Gulfcoast Legal Services fosters collaboration and cooperation with regional partners, community, local bar associations, the Judiciary and stakeholders, for the benefit of all.

Gulfcoast Legal Services provides leadership, public advocacy on behalf of clients and the community.

Junior Achievement of West Central Florida, Inc.

The core purpose of Junior Achievement of West Central Florida, Inc., is to inspire and prepare young people to succeed in a global economy. By bringing business people into the classrooms, Junior Achievement helps today's students learn from individuals who can relate economic theory to their lives, who care enough to listen to them, and who can provide real-life examples of how obstacles can be overcome and success achieved. This learning experience establishes the foundation upon which students can acquire and build upon the skills and attitudes necessary to continue learning.

Junior Achievement has partnered with the Tampa Bay area school boards since 1965 serving hundreds of thousands of students. Junior Achievement Economic Education programs are made available in high school classrooms throughout the Bay area partnering business with our schools and educators. After the completion of the 2010-2011 school year, Junior Achievement has classroom programs in every county in their twelve county footprint. Junior Achievement served over 75,000 students last school year representing 40.02 percent of the student market share. This ranks JA in the top 15 areas in the nation out of 128 offices nationwide. During the 2011-12 school year, they plan to serve 80,000 students.

The National Consumer Law Center

The National Consumer Law Center ("NCLC") is a national research and advocacy organization focusing on the legal needs of consumers, especially low income and elderly consumers. For over 30 years the NCLC has been the consumer law resource center to which legal services and private lawyers, state and federal consumer protection officials, public policy makers, consumer and business reporters, and consumer and low-income community organizations across the nation have turned for legal answers, policy analysis, and technical and legal support.

The NCLC staff provides a wide range of direct assistance to consumer law attorneys, including consultation on legal issues, co-counseling, expert testimony, legal research, continuing legal education, widely respected treatises, and technical support. NCLC gives priority to providing case assistance and training targeted at legal aid and *pro bono* attorneys representing low-income clients.

NCLC is a nonprofit corporation founded in 1969 at Boston College School of Law. Under IRS laws, the Center is a 501(c)(3) and legal aid organization. Its staff of 16 attorneys combines over 160 cumulative years of specialized consumer law expertise. It addresses the legal problems faced daily by low-income and financially distressed families ranging from illicit contract terms and charges, home improvement frauds, repossessions, debt collection abuses,

usury, mortgage equity scams, and bankruptcy to utility terminations, fuel assistance benefit programs, and utility rate structures, as well as many subjects in between.

NCLC is author of the widely praised sixteen-volume Consumer Credit and Sales Legal Practice Series. These treatises on consumer law are sent to most legal aid offices throughout the country, are widely used by the private bar, and are available by subscription. They are supplemented by NCLC Reports, issued twenty-four times each year in four separate editions.

NCLC was the Federal Trade Commission's designated consumer representative in promulgating its Trade Regulation Rules on Creditor Remedies, 16 C.F.R. 444, and Preservation of Consumers' Claims and Defenses, 16 C.F.R. 433. The Center's Model Consumer Credit Code was the foundation for the federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*

NCLC staff has served on a number of committees of the National Conference of Commissioners on Uniform State Laws, the American Bar Association Business Law Section, and on the Energy and Transportation Task Force of the President's Council on Sustainable Development. More NCLC staff has been appointed by the Board of Governors of the Federal Reserve System to their statutory Consumer-Industry Advisory Committee than any two other organizations combined. Present and former NCLC Staff have held or hold public, appointed positions of authority.

The National Association of Consumer Advocates

The National Association of Consumer Advocates (NACA) is a nationwide organization of more than 1,500 attorneys who represent and have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

NACA's mission is to ensure justice for consumers and promote a fair and open marketplace for all Americans, particularly those of modest means. Founded in 1995, by 12 consumer attorneys who saw a need to link advocates working in all disciplines of consumer law, NACA is run by an active Board of Directors, representing the full spectrum of consumer advocates including states attorneys general, legal service attorneys, private practitioners and law students.

NACA has been a leader in promoting the ethical practice of consumer class action law, among other areas of law. Class Actions that are responsibly filed, afford everyday consumers a vital opportunity to access the rights and remedies enshrined in our legal system. As the creator of the "Standards and Guidelines for Litigating and Settling Consumer Class Actions" 255 F.R.D. 215 (2009). NACA has drawn on its considerable collective expertise in this area to provide extensive guidance on current developments on class action law and to support and assist advocates seeking justice for consumers in consumer class action cases.

NACA provides training; technical assistance and litigation support to advocates nationwide in subject matters that include: Credit Reporting and Identity Theft; Fair Debt

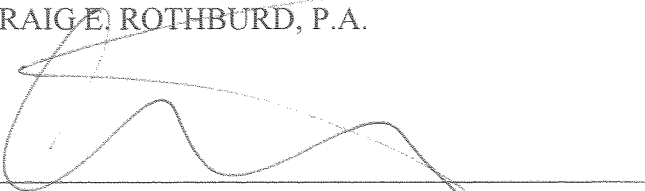
Collection Practices, Foreclosure Defense, Forced Arbitration, Auto Fraud and Unfair Lending Practices. NACA also spearheads initiatives that champion consumer interests before the courts, Congress, state legislatures, administrative agencies and the media. NACA is funded through cy pres awards, donations and membership contributions from the 1,500 advocates that make up its national network.

WHEREFORE, the Class prays that this Honorable Court grant this Motion for Final Distribution of Funds and *Cy Pres*, and enter an Order approving the proposed distributions and *cy pres* awards and to grant any such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via U.S. Mail this 21st day of September 2011 to: **Thomas McCausland**, 3440 Hollywood Blvd., 2nd Floor, Hollywood, FL 33021; **Geoffrey T. Hodges**, 905 Shaded Water Way, Lutz, FL 33549; **Scott R. Jeeves**, 954 1st Avenue North, St. Petersburg, FL 33705; **Brian Weakland**, 3420 Pump Rd., No. 201, Richmond, VA 23233; **Gary Takacs**, 6344 Roosevelt Blvd., Clearwater, FL 33760; **Scott R. Jeeves**, THE JEEVES LAW GROUP, P.A., 954 First Avenue North, St. Petersburg, Florida 33705 and **J. Daniel Clark**, 3407 West Kennedy Blvd., Tampa, FL 33609.

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