

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**PLAINTIFFS' NOTICE OF MOTION TO PERMIT FINAL
DISTRIBUTION OF FUNDS IN THE *ROTHSTEIN* CLASS ACTION SETTLEMENT
(CLAIM NOS. 4074 AND 3966) AND *CY PRES* DESIGNATION**

PLEASE TAKE NOTICE that upon the accompanying memorandum of law and the Affidavit of Jay Geraci dated December 21, 2022, each of which is filed concurrently herewith, and all prior proceedings in this action, the Rothstein Plaintiffs, on behalf of the Class, respectfully move for entry of an Order (the "Final Distribution Order") pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, approving the distribution of the remaining settlements funds to the *cy pres* designee selected by Class Counsel in consultation with the Rothstein Plaintiffs.¹

A proposed Final Distribution Order is filed herewith for the Court's consideration.

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with the Rothstein Plaintiffs, dated December 29, 2015 (the "Stipulation"), attached as Exhibit 1 to the Declaration of Mark A. Strauss dated January 11, 2016, and which was filed with the Court on January 11, 2016 [Doc. 9491-3].



Dated: January 10, 2023
New York, NY

Respectfully Submitted,

KIRBY McINERNEY LLP

By: /s/ Thomas W. Elrod

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

Case No. 12-12020 (MG)

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO PERMIT
FINAL DISTRIBUTION OF FUNDS IN THE *ROTHSTEIN* CLASS ACTION
SETTLEMENT (CLAIM NOS. 4074 AND 3966) AND *CY PRES* DESIGNATION**

Pursuant to Fed. R. Civ. P. 60(b), the Rothstein Plaintiffs, in consultation with Class Counsel and on behalf of the Class,¹ respectfully submit this memorandum of law in support of their motion for an Order authorizing the distribution of the remaining settlement funds—which are in the *de minimis* amount of \$9,166.14—to the *cy pres* designee, The Legal Aid Society, a national not-for-profit 501(c)(3) charitable organization.

I. RELEVANT BACKGROUND

On May 24, 2016, this Court granted final approval to the settlement of a class action brought by Named Plaintiffs Landon Rothstein, Jennifer Davidson, Robert Davidson, and Ihor Kobryn (collectively, the “Rothstein Plaintiffs” or “Plaintiffs”) (Claim Nos. 4074 and 3966) [Doc. 9907]. On May 3, 2019, Plaintiffs filed their Motion and Incorporated Memorandum of Law of the *Rothstein* Plaintiffs (Claim Nos. 4074 and 3966) to Authorize Distribution of the Net Settlement Fund to Eligible Class Members (“Distribution Motion”) [Doc. 10634], which the

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with the Rothstein Plaintiffs, dated December 29, 2015 (the “Stipulation”), attached as Exhibit 1 to the Declaration of Mark A. Strauss dated January 11, 2016, and which was filed with the Court on January 11, 2016 [Doc. 9491-3]. “Class Counsel” refers to the law firm of Kirby McInerney LLP, Plaintiffs’ Counsel, and the law firm of Hogan McDaniel, Plaintiffs’ Special Bankruptcy Counsel is. *See* Doc. 9491-3, Strauss Decl. Ex. 1 at 6.

Court granted in its Order Authorizing Distribution of the Net Settlement Fund in the *Rothstein* Class Action Settlement (Claim Nos. 4074 and 3996) on May 24, 2019 [Doc. 10640], which was subsequently corrected on June 4, 2019 [Doc. 10642] (“Distribution Order”). All citations herein are to the corrected Distribution Order.

Pursuant to the Distribution Order, on June 27, 2019, KCC Class Action Services LLC (“KCC” or “Claims Administrator”) issued a first round of checks to 90,862 class members totaling \$3,833,414.49. *Geraci Aff.*² ¶ 4. In the second round of distribution, KCC, following consultation with Class Counsel and in accordance with the Plan of Allocation, issued 41,233 class member checks on December 1, 2020, totaling \$1,680,865.06. *Id.* ¶ 5. In the third round of distribution, KCC issued 15,577 class member checks on October 20, 2021, totaling \$333,224.47. *Id.* ¶ 6. KCC issued a fourth distribution of funds to 1,196 class member checks on June 21, 2022, totaling \$69,292.78. *Id.* ¶ 7. During the fourth distribution, 167 checks of the 1,196 were not cashed, resulting in \$9,166.14 unclaimed funds. *Id.* ¶ 8. As a result of the Claim Administrator’s efforts, almost 149,000 checks, representing over 99% of the Net Settlement Fund, has been distributed to Authorized Claimants. *Id.* As of December 21, 2022, \$9,166.14 remains in the Settlement Fund. *Id.*

The Stipulation and the Distribution Order provides that any unclaimed funds shall be redistributed among Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such redistribution after the payment of any taxes and unpaid costs or fees incurred in administering the Net Settlement Fund, until it is no longer economically feasible. Stipulation ¶ 29; Distribution Order at 3-4. Given the current balance in

² “Geraci Aff.” refers to the Affidavit of Jay Geraci dated December 21, 2022, filed concurrently herewith.

the Net Settlement Fund and the cost of conducting a fifth distribution, Class Counsel respectfully submits that further redistribution is no longer feasible. *See also* Geraci Aff. ¶ 9.

Under the terms of the Stipulation and Distribution Order, Class Counsel, in consultation with the Named Plaintiffs, “shall donate the remaining funds, if any, to a non-sectarian charitable organization(s) certified under the United States Internal Revenue Code § 501(c)(3)” to be approved by the Court. Stipulation ¶ 29. Class Counsel, in consultation with the Named Plaintiffs, has selected The Legal Aid Society, a non-sectarian charitable organization certified under the United States Internal Revenue Code § 501(c)(3), for the Court’s approval as the *cy pres* designee.

II. ARGUMENT

A. The Court Should Approve the Distribution of the Remaining Net Settlement Funds to Class Counsel’s *Cy Pres* Designee.

“Most class actions result in some unclaimed funds.” *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990); *In re Motorsports Merch. Antitrust Litig.*, 160 F. Supp. 2d 1392, 1393 (N.D. Ga. 2001) (“It is not uncommon in . . . class actions to have funds remaining after payment of all identifiable claims.”). Indeed, “[d]espite best efforts[,] . . . it remains virtually certain—especially when large classes are involved—that not all class members will share in an aggregate class recovery. This situation may or may not result in a residue remaining after individual claim distribution.” *Jones v. Nat’l Distillers*, 56 F. Supp. 2d 355, 356 (S.D.N.Y. 1999) (internal citations omitted); *see also Alaska Elec. Pension Fund v. Bank of Am., Corp.*, Civ. No. 14-7126 (JMF), 2020 WL 916853, at *2 (S.D.N.Y. Feb. 26, 2020) (“[C]ourts routinely approve *cy pres* awards to non-profit organizations when distributions to the class would not be feasible.”).

In such circumstances, “[t]he Court has broad discretion and equitable powers to permit the use of *cy pres* principles.” *Plotz v. NYAT Maint. Corp.*, Civ. No. 98-8860, 2006 WL 298427, at *1 (S.D.N.Y. Feb. 6, 2006) (citing *Jones*, 56 F. Supp. 2d at 359); *see also Coppolino v. Total Call Int’l, Inc.*, 588 F. Supp. 2d 594, 605 n.6 (D.N.J. 2008) (noting that “*cy pres* distributions are permitted in situations where class recovery cannot feasibly be distributed to individual class members or where unclaimed funds remain following distribution to the class”).

B. The Legal Aid Society is an Appropriate *Cy Pres* Designee.

Pursuant to the Stipulation and the Distribution Order, Class Counsel, in consultation with the Named Plaintiffs, designates The Legal Aid Society as the *cy pres* designee. Stipulation ¶ 29; Distribution Order at 4. The Legal Aid Society is a non-sectarian, not-for-profit organization certified under the United States Internal Revenue Code § 501(c)(3), and it is a legitimate and appropriate recipient of the *cy pres* award in this case because of its work serving the public interest. *See Plotz*, 2006 WL 298427 at *2 (“The distribution preference of class counsel should be entitled to deference when it is the only entity with a meaningful and equitable interest in the remaining funds, especially where the designated recipient is a legitimate and appropriate organization.”).

As the Court is aware, the Settlement Class consists of residential mortgage loan borrowers whose loans were serviced by GMACM and from whose payments GMACM recouped or recovered, in whole or in part, charges for Lender-Placed Insurance. Stipulation ¶ (ss). For this reason, Plaintiffs’ Counsel respectfully submits that it is appropriate to designate the *cy pres* award to an organization that focuses on, *inter alia*, housing issues. The Legal Aid Society has, for over 140 years, “protected, defended, and advocated” for impoverished persons

by providing free legal services for clients who cannot afford to pay for counsel.³ As part of its mission to provide comprehensive legal services, The Legal Aid Society provides free legal assistance on housing matters, including but not limited to, preventing foreclosure for homeowners struggling to maintain homeownership. Thus, the Legal Aid Society's commitment to serving the public interest bears a direct relation to the subject matter of this litigation.

For this reason, Plaintiffs respectfully request that the Court approve that the balance of the remaining Net Settlement Funds (*i.e.*, \$9,166.14) be donated to The Legal Aid Society as a *cy pres* award.

III. NOTICE

While limited remaining funds are available and the fact that relief requested should not have prejudicial effect on any creditor and party in interest, service of the Motion included the Special Service List, the Master Service List, and all parties receiving notifications via ECF. Plaintiffs respectfully submit that no other or further notice of the Motion is necessary.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue the accompanying proposed Final Distribution Order granting the relief sought herein.

³ See The Legal Aid Society, <https://www.legalaidnyc.org/> (last visited January 10, 2023).

Dated: January 10, 2023
New York, NY

Respectfully submitted,

KIRBY McINERNEY LLP

By: /s/ Thomas W. Elrod

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Plaintiffs' Special Bankruptcy Counsel

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, et al.,)	AFFIDAVIT OF JAY GERACI
)	
Debtors.)	
)	
)	

I, **JAY GERACI**, being duly sworn, deposes and says:

1. I am a Vice President at KCC Class Action Services LLC (“KCC”), located at 1 McInnis Parkway, Suite 250, San Rafael, CA 94903. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

Distribution of the Net Settlement Fund

2. Pursuant to this Court’s Order Authorizing Distribution of the Net Settlement Fund in the *Rothstein* Class Action Settlement (Claim Nos. 4074 and 3966) dated May 24, 2019 [Doc. 10640], which was subsequently corrected on June 4, 2019 [Doc. 10642] (the “Distribution Order”), KCC was directed to distribute the Net Settlement Fund to Class Members.

3. On May 24, 2019, the Net Settlement Fund balance was \$3,842,364.38. This aggregate amount is comprised of monies remaining: (a) after payment of Court-approved Attorney Fees and Expenses; (b) after payment of the incentive awards to Named Plaintiff; (c) after payment of Escrow Fees to the bank; (d) after payment of the Forensic Accounting Expert; and (e) Payment of Administration Fees; and (f) compounded interest earned on the funds.

4. On June 27, 2019, KCC issued 90,862 class member checks totaling \$3,833,414.49. Class members were given 120 days to cash their checks.

5. Following consultation with Class Counsel and in accordance with the Plan of Allocation, on December 1, 2020, KCC issued 41,233 class member checks totaling \$1,680,865.06 in a second distribution of funds. Class members were given 120 days to cash their checks.

6. Following consultation with Class Counsel and in accordance with the Plan of Allocation, on October 20, 2021, KCC issued 15,577 class member checks totaling \$333,224.47 in a third distribution of funds. Class members were given 120 days to cash their checks.


7. Following consultation with Class Counsel and in accordance with the Plan of Allocation, on June 21, 2022, KCC issued 1,196 class member checks totaling \$69,292.78 in a fourth distribution of funds. Class members were given 120 days to cash their checks.

8. In the fourth distribution of funds, 1,029 of the 1,196 checks cashed and 167 checks totaling \$9,166.14 did not cash. These 167 checks were stopped and the \$9,166.14 was returned to the Settlement Fund.

9. Since the redistribution of the remaining funds is not economically feasible, pursuant to the Distribution Order, the post-distribution residual of \$9,166.14 should be donated to a non-sectarian, not-for-profit 501(c)(3) organization serving the public interest to be designated by Class Counsel and approved by the Court.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

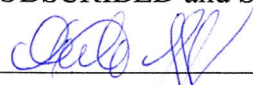
Executed this 21st day of December 2022 at Chico, California.



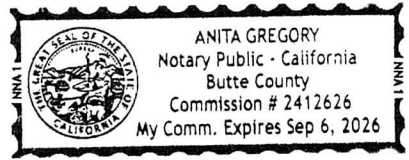
JAY GERACI
Vice President Class Action Services at KCC

State of California)
) SS.
Butte County)

SUBSCRIBED and SWORN before me this 21st day of Dec, 2022.


_____, Notary Public

My commission expires 9/6/26, 2026. AG



JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

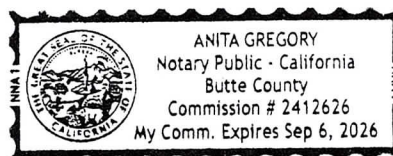
State of California

County of Butte

Subscribed and sworn to (or affirmed) before me on this 21st day of December, 2022 by Jay Geraci

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature [Handwritten Signature] (Seal)



OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of Jay
(Title or description of attached document)

Geraci
(Title or description of attached document continued)

Number of Pages 3 Document Date 12/21/22

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.

Case No. 12-12020 (MG)

Chapter 11

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**[PROPOSED] ORDER AUTHORIZING FINAL DISTRIBUTION OF
FUNDS IN THE *ROTHSTEIN* CLASS ACTION SETTLEMENT (CLAIM NOS. 4074
AND 3966) AND *CY PRES* DESIGNATION**

WHEREAS, by its Final Judgement and Order of Dismissal with Prejudice dated May 24, 2016 [Doc. 9907], this Court approved the terms of the Stipulation¹ and the Plan of Allocation for distributing the settlement proceeds to eligible Class Members; and

WHEREAS, by its Order dated May 24, 2019 [Doc. 10640], which was subsequently corrected on June 4, 2019 [Doc. 10642], the Court authorized the distribution of the Net Settlement Fund; and

WHEREAS, this Court has retained jurisdiction over any further application or matter which may arise in connection with this Action; and

NOW, THEREFORE, upon reading and filing of: (1) Plaintiffs' Notice of Motion to Permit Final Distribution of Funds in the *Rothstein* Class Action Settlement (Claim Nos. 4047 and 3966) and *Cy Pres* Designation and the memorandum of law in support thereof; (2) the Affidavit of Jay Geraci, dated December 21, 2022; and (3) upon all prior proceedings heretofore and herein, and after due deliberation, it is hereby:

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement with the Rothstein Plaintiffs, dated December 29, 2015 (the "Stipulation"), attached as Exhibit 1 to the Declaration of Mark A. Strauss dated January 11, 2016, and which was filed with the Court on January 11, 2016 [Doc. 9491-3].

ORDERED, that the remaining funds in the Settlement Fund are to be donated in a final distribution to The Legal Aid Society, a non-sectarian, not-for-profit 501(c)(3) organization; and it is further

ORDERED, that this Court retains jurisdiction over any further application or matter which may arise in connection with this Action.

IT IS SO ORDERED

this _____ day of _____, 202__

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE