

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Vikram Bhatia, D.D.S., et al., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

3M Company,

Defendant.

Case No. 0:16-cv-01304-DWF-DTS

**PLAINTIFFS' UNOPPOSED
MOTION FOR APPROVAL OF
CY PRES DISBURSEMENT OF
RESIDUAL SETTLEMENT
FUNDS**

Plaintiffs' Co-Lead Counsel respectfully move the Court to enter an Order for the *cy pres* disbursement of residual settlement funds as set forth in the supporting Declarations of Justin Wind and Daniel Hedlund.

This motion is based upon the pleadings, files, and records herein, including Plaintiffs' Co-Lead Counsel's Memorandum of Law for Approval of *Cy Pres* Disbursement of Residual Settlement Funds, Declarations of Justin Wind and Daniel Hedlund, and supporting documents.

Dated: November 21, 2023

Respectfully submitted,

/s/ Daniel C. Hedlund

Daniel C. Hedlund (#258337)

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Plaintiffs' Co-Lead Counsel

**UNITED STATES DISTRICT COURT
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**NOTICE OF HEARING ON
PLAINTIFFS' UNOPPOSED
MOTION FOR APPROVAL OF
CY PRES DISBURSEMENT OF
RESIDUAL SETTLEMENT
FUNDS**

PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned Co-Lead counsel, will bring Plaintiffs' Unopposed Motion for Approval of *Cy Pres* Disbursement of Residual Settlement Funds, before The Honorable Donovan W. Frank, in Courtroom 7C, United States Courthouse, 724 Federal Building, 316 N. Roberts Street, St. Paul, MN 55101, on December 12, 2023, at 1:30 PM, or as soon thereafter as counsel may be heard.

Dated: November 21, 2023

Respectfully submitted,

/s/ Daniel C. Hedlund

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**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
APPROVAL OF *CY PRES*
DISBURSEMENT OF RESIDUAL
SETTLEMENT FUNDS**

INTRODUCTION

After several years of litigation and claims administration, this case has reached its end. Through multiple rounds of distribution, \$20,877,194.02 has been distributed to 468 class members. Only \$9,248.80 plus any interest remains in the fund as a residual due to a) the inability to locate a small number of claimants and b) uncashed checks which is equivalent to .04% of the total distribution to claimants. Due to the small amount of remaining funds, Plaintiffs' Lead Counsel has determined that it is not cost-effective to undertake an additional distribution and moves this Court to order a fifth and final disbursement of the residual settlement funds to the Federal *Pro Se* Project. No open issues remain with regard to any claims submitted during either claim period.

3M does not oppose Plaintiffs' motion for a *cy pres* disbursement of the residual funds.

FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to the Plan of Distribution, there were two claim periods: 1) the initial “Claim Period” covering debonds repaired on or before May 10, 2019, and 2) the “Supplemental Claim Period”, as amended, covering claims accrued between May 10, 2019, and on or before September 7, 2020. Doc. No. 131-1; Doc No. 169. Each Class Member could claim either a Fixed Amount, a Documented Amount, or a combination of both. Wind Dec. ¶ 3. Regardless of documentation shown, a valid Documented Amount claim would not receive less than \$250.00. To date, the Claims Administrator has issued \$20,886,541.44, as approved by the Court. All but three of these checks have been cashed by claimants.¹

On June 23, 2020, the Court granted Plaintiffs’ first Motion for Early Disbursement of Settlement Funds to Some Claimants, Acceptance and Timely Certain Claims Filed After the Deadline, and for Extension of the Supplemental Claim Period, authorizing the disbursement of \$4,278,500.00 to pay the 249 approved Fixed Amount Claims. Doc No. 169.

For the claims requiring additional review, BrownGreer, Lead Counsel, and 3M developed a list of four (4) considerations to ensure that claimants were appropriately

¹ Three claimants have not cashed their checks totaling \$9,347.42. The Claims Administrator has been unable to get in contact with two of these claimants – Claimant ID 175365992 and Claimant ID 281160027 – as their phone numbers are out of service and emails have been returned as undeliverable. The third claimant – Claimant ID 346411667 – did not respond to phone calls, voicemails, or email messages from the Claims Administrator. Upon further review, it appears this claimant may have retired, as his dental license expired and shows a status of “cancelled.” The Claims Administrator has exhausted all means of contacting these claimants regarding their awards.

compensated for debonds that are compensable under the settlement. Wind Dec. ¶ 4. Beginning in August 2020, the Claims Administrator sent communications and conducted a calling campaign to Claimants that warranted further review under these criteria seeking an explanation, further supporting materials, or both. After receiving responses to these communications and the calling campaign, Plaintiffs filed a second motion.

On February 9, 2021, the Court granted Plaintiffs' Motion for Second Disbursement of Settlement Funds to Claimants, approving disbursement of \$3,689,553.52 to Fixed Only Claimants, Documented only Claimants, and Mixed Claimants. Doc No. 180. This included \$2,086,000 to pay Fixed Claim Class Members, \$502,449.72 to pay Documented Claim Class Members, and \$1,101,103.80 to pay Documented Claim Class Members eligible to receive at least 90% of their requested amounts.

On September 9, 2021, the Court granted Plaintiffs' Motion for Third Disbursement of Settlement Funds to Claimants, approving disbursement of \$1,936,993.25 to Initial Claim Period Class Members, \$122,060.00 to pay approved Supplemental Claim Period Class Members, and \$947,104.45 to pay Class Members that submitted claims during the Initial Claim Period and Supplemental Claim Period and had not yet received any award. Doc. No. 189.

On June 30, 2022, the Court granted Plaintiffs' Motion for Fourth Disbursement of Funds to Claimants, Payment of Fees and Expenses for the Claims Administrator, and Proposal for Distribution of Remaining Funds. Doc. No. 200. This order authorized the payments of \$727,250.00 to pay the approved Fixed-Amount claims during the Supplemental Claim Period, \$139,875 to pay certain Claimants, their full awards, who

were previously approved for partial awards, and \$647,060.11 to BrownGreer for its past, current, and future fees and costs.

Plaintiffs' Lead Counsel now moves to order a fifth and final disbursement of the remainder of the Settlement Fund to the Federal *Pro Se* Project. Aside from three uncashed checks, as outlined in footnote 1, no open issues remain with regard to any claims submitted during either claim period.

ALLOCATION OF UNCLAIMED SETTLEMENT FUNDS

Pursuant to the Plan of Distribution, if monies remain in the Net Settlement Fund after the distributions, Class Counsel is to make a proposal to the Court for what to do with Remaining Funds. Doc. No. 131-1 ¶ 13. If it is not cost-effective to distribute additional funds to Class Members, Class Counsel will propose that remaining funds be distributed to non-profit *cy pres* recipients focused on dental health and/or consumer protection. *Id.* There is a remaining balance of \$9,248.80 plus any interest available for distribution. It is not cost-effective to distribute these funds to the 442 eligible Claimants, as the administrative costs of such a distribution exceeds the total balance. Wind Dec. ¶ 23.

Class Counsel proposes the remaining balance be disbursed via *cy pres* to the Federal *Pro Se* Project. "A *cy pres* distribution occurs when money funding a class-action settlement has been distributed to class members, and yet some remains." *Hashw v. Department Stores National Bank*, 182 F.Supp.3d 935, 947 (D. Minn. 2016). *Cy pres* distributions "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." *Caligiuri v.*

Symantec Corp., 855 F.3d 860, 867 (8th Cir. 2017) (quoting *In re BankAmerica Corp. Sec. Litig.*, 775 F.3d 1060, 1067 (8th Cir. 2015)) (quotations and alterations omitted).

The Federal *Pro Se* Project “is a partnership between the United States District Court for the District of Minnesota and the Minnesota Chapter of the Federal Bar Association that is intended to increase access to the federal court system while at the same time addressing the unique challenges of *pro se* litigation.” *Svensen v. G4S Secure Sols. (USA) Inc.*, No. 16-cv-0583 (PJSFLN), 2017 WL 9885027, at *1 n.2 (D. Minn. July 14, 2017). Furthermore, it “assist[s] *pro se* litigants in gaining access to the legal system, regardless of their financial situation.”²

Participation in the *Pro Se* project requires a judge presiding over a case involving a *pro se* litigant to issue a referral letter. Once the referral letter is docketed, the *Pro Se* project coordinator receives a notice and contacts the *pro se* litigant to explain how the *Pro Se* Project works, determine whether the *pro se* litigant wishes to participate, and if so, gains an understanding of the case and what the litigant seeks to accomplish. After this discussion, the *Pro Se* Project coordinator summarizes the case, downloads case filings, and contacts a volunteer attorney on the *pro se* litigant’s behalf.³

² Tricia Pepin, More Help for Pro Se Litigants, Bar Talk (Minnesota Chapter of the Federal Bar Association, Minneapolis, M.N.), March 17, 2010, at 8, <https://www.fedbar.org/minnesota-chapter/wp-content/uploads/sites/54/2019/10/March-2010-Bar-Talk-pdf.pdf>.

³ Tiffany A. Sanders, 10 Years of Enhancing Access to Justice, February 2021, <https://files.constantcontact.com/5cdd3e68401/663dd4bb-b318-400d-b2ad-fb71a924c021.pdf>.

The Federal *Pro Se* Project has connected volunteer attorneys with litigants involved in cases involving, like this case, breach of warranty, design defects, and manufacturing defects. *See e.g. In re: Mirapex Products Liability Litigation*, Civil No. 15-cv-3005 (MJD/FLN), 2016 WL 4217758 (D. Minn. June 16, 2016). Disbursement of the remaining balance to the Federal *Pro Se* Project—which assists *pro se* plaintiffs—is consistent with consumer protection and the nature of this case. Furthermore, providing individuals with representation grants them access to justice and is consistent with judicial function.

Defendants do not object to this *cy pres* distribution.

CONCLUSION

Lead Counsel respectfully moves the Court to authorize BrownGreer to authorize disbursement of \$9,248.80 plus any interest to the Federal *Pro Se* Project. With this payment, all funds in connection with the Settlement will have been distributed.

Dated: November 21, 2023

Respectfully submitted,

/s/ Daniel C. Hedlund

Daniel C. Hedlund (#258337)

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Plaintiffs' Co-Lead Counsel

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**PLAINTIFFS' RULE 7.1(f)
COMPLIANCE CERTIFICATE**

The undersigned hereby certifies that, pursuant to Local Rule 7.1(f), Plaintiffs' Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Approval of *Cy Pres* Disbursement of Residual Settlement Funds, contains 1,352 words, as determined through the word count feature of the Microsoft Office Word 2016 word processing software used to prepare the memorandum. The word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The memorandum was prepared in 13-point font in accordance with the type size limitation of Local Rule 7.1(h).

Dated: November 21, 2023

/s/ Daniel C. Hedlund

Daniel C. Hedlund (#258337)

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Plaintiffs' Interim Co-Lead Counsel

UNITED STATES DISTRICT COURT
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**DECLARATION OF
DANIEL C. HEDLUND IN SUPPORT
OF PLAINTIFFS' UNOPPOSED
MOTION FOR APPROVAL OF *CY
PRES* DISBURSEMENT OF
RESIDUAL SETTLEMENT FUNDS**

I, Daniel C. Hedlund, hereby declare and state as follows:

1. I am a partner in the law firm of Gustafson Gluek PLLC (“Gustafson Gluek”), one of the Co-Lead Counsel firms appointed by the Court. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Approval of *Cy Pres* Disbursement of Residual Settlement Funds.

2. I make this declaration based on personal knowledge and if called as a witness, I could and would competently testify to the matters stated herein.

3. In conferring with the Claims Administrator, Plaintiffs’ Lead Counsel has determined that it is not cost-effective to undertake an additional distribution.

4. Pursuant to the Plan of Distribution ¶ 13 (Doc. No. 131-1), Class Counsel proposes the remaining funds, which total \$9,248.80 plus any interest, be distributed to the Federal *Pro Se* Project.

I, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and under the laws of the United States of America that the foregoing and the attached are true and correct to the best of my knowledge. Executed on this 21st day of November 2023, in Minneapolis, Minnesota.

/s/ Daniel C. Hedlund
Daniel C. Hedlund

UNITED STATES DISTRICT COURT
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**DECLARATION OF
JUSTIN L. WIND IN SUPPORT
OF PLAINTIFFS’ UNOPPOSED
MOTION FOR APPROVAL OF
CY PRES DISBURSEMENT OF
RESIDUAL SETTLEMENT
FUNDS**

I, Justin L. Wind, hereby declare and state as follows:

DECLARATION

1. **Personal Information.** My name is Justin L. Wind. I am Senior Counsel at BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231 (“BrownGreer”), the Claims Administrator in this matter.

2. **The Capacity and Basis of this Declaration.** I am over the age of 21. Unless otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge, information received from the parties in this proceeding, and information provided by my colleagues at BrownGreer.

3. **Background.** BrownGreer provided Court-approved notice to the class and accepted and reviewed claim submissions for the initial Claim Period covering full or partial debonds that Class Members repaired or paid to have repaired on or before May 10, 2019 (the “Initial Claim Period”). BrownGreer also reviewed claim submissions for the

supplemental Claim Period covering full or partial debonds that Class Members repaired or paid to have repaired from May 11, 2019, to September 7, 2020 (the “Supplemental Claim Period”). Class Members could submit claims electronically through the Settlement Website or by completing and mailing a hard copy claim form to the mailing address established by the Claims Administrator. Class Members had the option to submit three types of claims: (1) a Fixed Amount claim of \$250 per debond, requiring no documentation; (2) a Documented Amount claim whereby the Class Member must submit documented proof of unreimbursed out-of-pocket loss caused; or (3) a “mixed” claim for Fixed Amount debonds and Documented Amount debonds (“Mixed Amount Claims”).

4. *Claims Review Process.* Counsel for the Parties established review guidelines in consultation with BrownGreer for the evaluation of Fixed Amount debonds (the “Review Criteria”). The Review Criteria included, among other triggering factors, (1) whether a claimant’s reported count of purchased Lava Ultimate blocks exceeded materially the sales information provided by 3M distributors and 3M product return data (the “Class Data”); (2) whether a claimant asserted that it seated more Lava Ultimate crowns from those purchased blocks than the Class Data showed were available to be seated; (3) whether a claimant asserted that it repaired more Lava Ultimate crown debonds than it claimed to have seated; and (4) whether a claimant asserted an excessive rate at which the Lava Ultimate crowns debonded compared to the total number of crowns seated.

5. *First Disbursement of Settlement Funds.* In the Initial Claim Period, BrownGreer, in consultation with Plaintiff’s Lead Counsel (“Lead Counsel”), reviewed 450 timely claims with at least one Fixed Amount debond. Of those, BrownGreer

determined that 249 claims valued at \$4,278,500.00 satisfied the Review Criteria and could be paid immediately. On June 23, 2020, the Court approved Lead Counsel's request for disbursement of settlement funds to pay the 249 eligible claimants. BrownGreer mailed settlement checks to these claimants on August 4.

6. *Second Disbursement of Settlement Funds.* In August 2020, BrownGreer sent communications to claimants with Fixed Amount debonds whose claims triggered at least one of the review issues set out in Paragraph 4 above. These communications consisted of messages through the settlement website portal and direct emails. The communications explained the triggering factor, requested an explanation and/or further supporting materials to address these factors, and explained the discounted amount a claimant would receive if they did not respond to the communications. BrownGreer also conducted a follow-up calling campaign in an attempt to reach any claimant with Fixed Amount debonds who did not respond to the above-referenced communications.

7. Following the outreach, several claimants responded to these communications electronically through the online portal or by email to the Claims Administrator's inbox, as well as through hard copy correspondence sent by regular mail. BrownGreer evaluated these responses and coordinated with the Parties to arrive at final outcomes for deficient claims and claims requiring secondary assessments. Based on those outcomes, BrownGreer recommended payments for 105 Fixed Amount debond claims totaling \$2,089,750.00.

8. BrownGreer also reviewed the Fixed Amount portions of 32 Mixed Amount Claims timely submitted in the Initial Claim Period. Using the same Review Criteria

defined above, BrownGreer determined that 17 Mixed Amount claims satisfied the conditions for eligibility without any additional claimant communication. Applying the fixed amount of \$250 per debond, combined with the Documented Amount debond award determined by Lead Counsel and the Settlement Counsel Review Committee (the “SCRC”), the 17 eligible claims totaled \$1,204,153.92 in settlement award values.

9. BrownGreer received 26 timely claims in the Initial Claim Period with Documented Amount debonds only. In accordance with the Plan of Distribution approved by the Court, the SCRC examined these claims and recommended that 12 claimants receive payments, amounting to \$403,649.60.

10. On February 9, 2021, the Court granted Plaintiff’s Motion for Second Disbursement of Settlement Funds to the 134 claimants identified in Paragraphs 7-9 described above. BrownGreer mailed settlement checks to these claimants on February 17, 2021 and all checks cleared the settlement account.

11. *Third Disbursement of Settlement Funds.* Following the first two disbursements, 28 claims from the Initial Claim Period for which a claim outcome had not been reached remained. BrownGreer, Lead Counsel, and the SCRC reviewed these 28 claims extensively and conducted multiple rounds of outreach to the claimants to gain the clarity necessary to arrive at a final determination.

12. Of the 28 Initial Claim Period claims referenced above, five are Fixed Amount-only claims. These claims covered a total of 5,934 Fixed Amount debonds, which, under the \$250 per debond model, represent \$1,483,500.00. After scrutinizing the claimants’ assertions regarding the number of Lava Ultimate blocks purchased, crowns

seated from those blocks, and the debond rate, as well as contacting the claimants to validate those assertions, BrownGreer determined that the five Fixed Amount claims are eligible for compensation amounting to \$809,250.00.

13. From the remaining initial claims, there were seven Mixed Debond claims containing Fixed Amount and Documented Amount components. As with other mixed claims, BrownGreer reviewed the Fixed Amount portion while Lead Counsel and the SCRC reviewed the Documented Amount debonds claimed. These seven mixed claims sought awards for 337 Fixed Amount debonds and 132 Documented Amount debonds, the values for which amount to \$84,250.00 and \$193,171.70, respectively. Applying the same review standard as before, BrownGreer, in collaboration with Lead Counsel and the SCRC, recommended a total award of \$138,369.50 for these claims.

14. There were 11 Documented Amount claims out of the 28 remaining that Lead Counsel and the SCRC evaluated as required by the Plan of Distribution. The SCRC recommended awards totaling \$989,373.75.

15. There were five claimants that submitted Mixed or Documented Amount claims in the Initial Claim Period that subsequently filed claims in the Supplemental Claim Period. All told, the five dual-period claims requested compensation for 293 Fixed Amount debonds and 737 Documented Amount debonds, amounting to \$73,250.00 and \$2,696,101.48, respectively. BrownGreer assessed the Fixed Amount portions of these claims for both periods and determined the claims eligible for \$73,250.00. Correspondingly, the SCRC reviewed the Documented Amount components and advised BrownGreer of its determinations and the associated award amounts. The final, combined

awards for these claims covering the Initial and Supplemental Claim Periods equal \$947,104.45.

16. Finally, BrownGreer received nine Mixed Amount claims and nine Documented Amount claims during the Supplemental Claim Period. BrownGreer denied half of those claims as untimely or because the claimant could not be verified as a class member under the definition outlined in the Settlement Agreement. Of the other nine claims, we detailed the outcomes of five in Paragraph 15 stemming from the claimants submitting claims in both periods. For the remaining four, the claimants requested compensation for 167 Fixed Amount debonds valued at \$41,750.00 and 67 Documented Amount debonds valued at \$86,582.00. As with the claims in the Initial Claim Period, BrownGreer examined the Fixed Amount debonds and the SCRC reviewed the Documented Amount debonds. BrownGreer determined that these four claims satisfied all review criteria and merit full payments totaling \$41,750.00 for the Fixed Amount debonds. The SCRC has provided its recommendations as well, advocating for payments totaling \$80,310.00 for the Documented Amount debonds.

17. On September 9, 2021, the Court granted Plaintiffs' Motion for Third Disbursement of Settlement Funds to the claimants identified in Paragraphs 11-16 described above. BrownGreer mailed settlement checks to these claimants on February 17, 2021.

18. Pursuant to the Court's Order Granting Plaintiffs' Motion for Fourth and Final Disbursement of Settlement Funds (Doc. No. 200), BrownGreer issued

\$9,155,805.22 – the funds remaining in the settlement – on a pro rata basis to claimants who submitted approved Fixed-Amount debond claims (the “Residual Distribution”).

19. To date, three claimants to whom BrownGreer issued payments in the Residual Distribution have not cashed or deposited their settlement check. The amount of the three outstanding payments total \$9,347.42, and range in amount from \$274.92 to \$8,247.73.

20. BrownGreer performed extensive outreach to attempt to contact the three claimants whose payments had not cleared the settlement account in an effort to confirm receipt of the payment and coordinate a reissuance of the check, if necessary. Using the telephone number listed on the Claim Form submitted by the claimant, BrownGreer called each claimant and, where possible, left a voicemail message explaining the purpose of the outreach and inviting a callback so that BrownGreer could assist the claimant in cashing their payment or obtaining a new one. For two of the three claimants, the telephone number given on the Claim Form had been disconnected or was out of service; the third claimant did not answer any calls or call BrownGreer back.

21. In addition to phone calls, BrownGreer sent email notifications to the email address provided by the claimant on the Claim Form. The email message explained that the Residual Distribution check issued to the claimant had not yet cleared the settlement account and offered instructions on requesting a reissued payment. As with the phone calls, two of the three claimants’ email messages returned as undeliverable and the third claimant did not respond to the email notification.

22. Finally, BrownGreer made supplemental efforts to identify alternative contact information for each of the three claimants using internet searches directed at the claimants' names, mailing addresses, and phone numbers. BrownGreer was unable to obtain reliable secondary phone numbers or email addresses for the claimants and, after consulting with Class Counsel, ceased further outreach attempts.

23. ***Remaining Funds.*** The remaining balance in the Settlement Fund after deducting applicable account fees is \$9,248.80 plus any interest. Disbursement of these funds could go to 442 eligible claimants totaling 33,269 eligible debonds. Thus, the amount per debond amounts to roughly \$0.27. The administrative cost of such a distribution, however, would exceed the amount remaining in the settlement fund.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing and the attached are true and correct to the best of my knowledge. Executed on this 21st day of November 2023.

s/ Justin L. Wind
Justin L. Wind

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**MEET AND CONFER
STATEMENT**

Pursuant to Local Rule 7.1(a), Plaintiffs certify that Co-Lead counsel for Plaintiffs met and conferred with counsel for Defendant 3M Company via email, on October 26, 2023, regarding Plaintiffs' Motion for Approval of *Cy Pres* Disbursement of Residual Settlement Funds. 3M does not oppose Plaintiffs' Motion for a *cy pres* disbursement of the residual funds.

Dated: November 21, 2023

Respectfully submitted,

/s/ Daniel C. Hedlund

Daniel C. Hedlund (#258337)

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[PROPOSED] ORDER

Pursuant to Plaintiffs' Unopposed Motion for Approval of *Cy Pres* Disbursement of Residual Settlement Funds (ECF No. 201), and supporting documents:

IT IS HEREBY ORDERED that:

1. Plaintiffs' Co-Lead Counsel and the Claims Administrator is authorized to disburse the residual balance of \$9,248.80 plus any interest to the Federal *Pro Se* Project, as outlined in the Declarations of Justin L. Wind and Daniel C. Hedlund, from Associated Bank.

IT IS SO ORDERED.

Dated: _____, 2023

Donovan W. Frank
United States District Judge