

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(SOUTHERN DIVISION)**

TIFFANY JOHNSON,	*	
Plaintiff,	*	
v.	*	Civil Action No. 8:22-cv-02001-PX
	*	(lead)
CONTINENTAL FINANCE COMPANY, LLC, <i>et al.</i> ,	*	
Defendants.	*	
	*	
TRACEY CRIDER,	*	
Plaintiff,	*	
v.	*	Civil Action No. 8:23-cv-00854-PX
	*	(member)
CONTINENTAL FINANCE COMPANY, LLC, <i>et al.</i> ,	*	
Defendants.	*	
	*	

\* \* \* \* \*

**Memorandum of Law in Support of  
Motion to Approve *Cy Pres* Award**

Plaintiffs Tiffany Johnson and Tracey Crider (“Representative Plaintiffs”) submit this Memorandum of Law in Support of their Motion to Approve *Cy Pres* Award.

**I. Introduction**

The Settlement Agreement in this case provides that if the Common Fund is not exhausted after distribution to Settlement Class Members (for example, if settlement checks mailed to some Settlement Class Members are not negotiated), then those remaining funds will be donated, with the approval of the Court, to four (4) not-for-profit charities or institutions (“*Cy Pres* Recipients”). See ECF No. 73-2, Settlement Agreement at ¶¶ 24(b)(iv) & (v). Given the nature of the settlement here, and the general purpose of the equitable *cy pres* remedy (*i.e.*, to benefit members of a class and the public indirectly when provision of a direct benefit is impossible or difficult to attain)

the four proposed *Cy Pres* Recipients in this case – the Maryland Volunteer Lawyers Service (“MVLS”); the CASH Campaign of Maryland (the “CASH Campaign”); the National Association for Consumer Advocates (“NACA”); and, the University of Maryland Francis King Carey School of Law (the “UMD Law School”) – are appropriate recipients of any remaining funds.

## **II. Background of this Case, and the Parties’ *Cy Pres* Agreement**

The Settlement in this case resolves two consumer class action lawsuits – the first filed by Ms. Johnson in June 2022, and the second filed by Ms. Crider in early 2023. Representative Plaintiffs allege, *inter alia*, that Defendants Continental Finance Company, LLC and Continental Purchasing, LLC (“Continental”) made loans without a license in violation of the Maryland Consumer Loan Law, Md. Code Ann., Com. Law. §§ 12-301 *et seq.* (“MCLL”) and the Maryland Credit Services Businesses Act (“MCSBA”), Md. Code Ann. § 14-1901 *et seq.* - which require consumer lenders and brokers making loans of less than \$25,000 to Maryland residents to be licensed.

The parties reached a class-wide settlement of Representative Plaintiffs’ claims. As part of the monetary settlement, the Parties agreed that a \$5.75 million Common Fund would be established for the benefit of the Settlement Class, and also addressed the issue of the allocation of funds from any residue remaining in the Common Fund after distribution to Class Members, including checks that are not negotiated or are returned and remain undeliverable after a date set by the Court. *See* Settlement Agreement ¶¶ 24(b)(iv) & (v).

Under the Settlement Agreement, these undeliverable funds are designated to be paid to not-for-profit organizations and institutions, as follows:

the first \$20,000.00 shall be donated to the Maryland Volunteer Lawyers Service; b) the next \$20,000.00, if any, shall be donated to the CASH Campaign of Maryland; c) the next \$20,000.00, if any, shall be donated to the National Association for Consumer Advocates; and, d) following these distributions, should any additional residual funds remain, they shall all be donated to the University of Maryland Francis King Carey School of Law.

Settlement Agreement ¶ 24(b)(iv) & (v).

Each of these organizations and institutions are appropriate recipients of these funds.

### **The Maryland Volunteer Lawyers Service**

MVLS works to provide free civil legal representation to thousands of Maryland families every year who can't afford to hire an attorney. "The ...MVLS... provides 'pro bono civil legal services to low-income Marylanders,' including by securing representation for 3,353 Marylanders in FY23, with '[a]pproximately 30% of its cases focused upon consumer issues like foreclosure, tax sale, bankruptcy, and debt collection including medical debt collection.'" *Anderson v. Hammerman*, 326 A.3d 35, 42 (Md. App. 2024), *cert. denied sub nom. Innovative Surgery Ctr., P.C. v. Anderson*, 331 A.3d 1283 (Md. 2025).

MVLS uses volunteer professionals in Maryland to provide pro bono services in civil cases across a broad spectrum of matters, and focuses on consumer issues, criminal record relief, estate planning & administration, family law, housing issues, income tax controversy, and special education. MVLS is dedicated to expanding the provision of legal services to individuals facing financial hardship and uses partnerships to affect the laws and policies disproportionately harming those individuals. *See* <https://mvslslaw.org/>.

### **The CASH Campaign of Maryland.**

The CASH Campaign of Maryland (the "CASH Campaign") is a non-profit organization which provides tax preparation services, including access to free tax software to self-file federal and state returns with optional assistance, financial education classes, help with opening bank accounts, finding financial planning services, and more. As Maryland's Appellate Court observed recently, "[t]he CASH Campaign of Maryland (Creating Assets, Savings and Hope) ... 'promotes economic advancement for low-to-moderate-income individuals and families across Maryland ... through direct service programs, building capacity, and leading policy and advocacy initiatives to

strengthen family economic stability.” *Anderson*, 326 A.3d at 42.

For example, in 2024 alone, the CASH Campaign reports that, statewide, using 54 tax sites and 521 volunteers, it filed 17,821 tax returns, resulting in \$28.3 million in refunds and tax credits, \$11.8 million in Earned Income Tax Credits, \$5 million in tax credits for dependents, with \$5.9 million in tax preparation fees saved. *See* <https://cashmd.org/our-impact-at-a-glance/>. The CASH Campaign also “advocates for policies on the local, state, and federal level that protect and grow the financial security of Maryland’s low-to-moderate income residents.” *See* <https://cashmd.org/advocacy-and-policy/>.

### **The National Association of Consumer Advocates**

NACA is a nonprofit association of more than 1,500 attorneys and consumer advocates committed to representing consumers’ interests. NACA’s mission is to promote justice for all consumers, by providing a forum for communication, education, networking, and information-sharing among consumer advocates across the country. *See* <https://www.consumeradvocates.org/about-naca/>. NACA provides training for consumer protection attorneys, annual conferences in partnership with the National Consumer Law Center, and is actively engaged in promoting a fair and open marketplace that protects the rights of consumers, particularly those of modest means. Among other things, NACA works to eliminate forced arbitration clauses from consumer contracts, and serves as a voice for consumers in the ongoing struggle to curb unfair or abusive business practices that harm consumers. *See* <https://www.consumeradvocates.org/advocacy/>.

Unsurprisingly, NACA has repeatedly been approved as a *cy pres* recipient in class action settlements in consumer protection cases, including by this Court. For example, in *Curry v. Money One Fed. Credit Union*, No. CV DKC 19-3467, 2021 WL 5839432, at \*3 (D. Md. Dec. 9, 2021), the Court approved NACA as a *cy pres* recipient, observing that “NACA is dedicated to ‘promoting justice for consumers’ and focuses specifically on lending, debt collection, and credit reporting abuses and errors.” *Id.* In

another case, following a jury trial and judgment in a class action lawsuit under the Telephone Consumer Protection Act, NACA's charitable fund was identified as a worthy *cy pres* recipient by a special master appointed by a sister court in the Fourth Circuit. *See Krakauer v. Dish Network, LLC*, No. 1:14-CV-333, 2021 WL 1699945, at \*3 (M.D.N.C. Apr. 29, 2021); *see also, e.g., Karcauskas v. Regreso Fin. Services LLC*, No. CV159225FMORAOX, 2019 WL 13031925, at \*6 (C.D. Cal. Nov. 12, 2019) (approving NACA as a *cy pres* recipient in a case under the Fair Debt Collection Practices Act); *Zimmerman v. Portfolio Recovery Associates, LLC*, No. 09 CIV. 4602 PGG, 2013 WL 6508813, at \*5 (S.D.N.Y. Dec. 12, 2013) (same); *O'Connor v. AR Res., Inc.*, Civ. No. 3:08CV1703 (VLB), 2012 WL 12743, at \*1–2 (D.Conn. Jan. 4, 2012) (same); *De La Torre v. CashCall, Inc.*, No. 08-CV-03174-MEJ, 2017 WL 5524718, at \*15 (N.D. Cal. Nov. 17, 2017) (approving NACA as a *cy pres* recipient in an Electronic Funds Transfer Act case).

#### **University of Maryland Francis King Carey School of Law**

The UMD Carey Law School was established in 1816.<sup>1</sup> It is the third-oldest law school in the nation. Among other things, the UMD Carey Law School trains lawyers in the practice of consumer protection law. Beginning in the late 1970s Maryland became a pioneer in clinical law education and currently boasts one of the top clinical law programs in the United States. The clinical law program benefits under-represented Maryland consumers by providing them representation, at no cost to them, by law students who are supervised by a barred Maryland attorney.

Recently, as a further demonstration to its commitment to the consumer protection issues, the UMD Carey Law School established the Michael Millemann Professorship in Consumer Law that teaches consumer law as a substantive discipline to

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<sup>1</sup> Class Counsel advise the Court that Class Counsel Richard S. Gordon, is a UMD Law School graduate and a current member of the UMD Law School's Board of Visitors. Benjamin H. Carney also is a graduate of the UMD Law School. Mr. Gordon and Mr. Carney are also members of NACA.

law students (as opposed to in the clinical setting). Professor Jeff Sovern – [www.law.umaryland.edu/faculty--research/directory/profile/index.php?id=1397](http://www.law.umaryland.edu/faculty--research/directory/profile/index.php?id=1397) – is the inaugural Michael Millemann Professor of Consumer Protection Law.

UMD Law School has also previously been approved as a *cy pres* recipient in connection with other consumer class action settlements. For example, Judge Chasanow approved the UMD Law School as a *cy pres* recipient in *Bailey v. Mercury Fin., LLC*, No. CV DKC 23-0827, 2025 WL 3211015, at \*12 (D. Md. Nov. 18, 2025), which asserts similar claims as this case. In *Hall v. HWS, LLC t/a Henry's Wrecker Service*, Civil Action No. 8:22-cv-00996-BAH (D.Md. June 5, 2025) (ECF No. 124), Judge Hurson approved the UMD Carey Law School as a *cy pres* recipient in an action against a towing company that asserted allegedly unlawful possessory liens. In *Edge v. Stillman Law Office, LLC*, 8:21-cv-02813-TDC (D.Md. June 2, 2023) (ECF No. 87), Judge Chuang approved the UMD Carey Law School as a *cy pres* recipient in a consumer class action lawsuit challenging debt collection activity. And Judge Grimm approved the UMD Carey Law School as the recipient of *cy pres* funds in *Thomas, et al. v. Cameron Mericle, P.A., et al.*, Civil Action No. 8:18-cv-03645-PWG (D.Md. Dec. 4, 2020), a consumer class action case challenging allegedly improper use of confessed judgment notes.

Similarly, in *Meredith v. Mid-Atlantic Coca-Cola Bottling Co.*, Nos. 89-00302 and 89-00525, 13 Class Action Rep. 498 (E.D. Va. May 1 and June 18, 1990) a *cy pres* remedy was used to set up an Environmental Symposium Fund at the Law School. See also *Marvin Leaf v. Toyota Motor Distributors, Inc. and Toyota Motor Sales, U.S.A., Inc.*, Case No. BC103065 (N.D. Cal., settled December 1999) (approving \$500,000 *cy pres* to fund student loan repayment program for graduates of the UMD Law School who go to work for public interest law firms).

### **III. Benefit to the Plaintiff Class**

Each of the *Cy Pres* Recipients provide services and resources that benefit under-represented Maryland consumers and will provide a wide range of significant and long-term benefits to the Class and other citizens throughout Maryland. MVLS provides pro

bono legal representation and professional assistance to Marylanders facing financial difficulties. The CASH Campaign provides free financial education, free tax filing software and assistance, and policy advocacy geared to help low and moderate income Maryland residents. NACA provides education to lawyers and consumers on consumer legal rights and works to expand those rights through advocacy. The UMD Carey Law School prepares Maryland's future attorneys to represent consumers like the Class Members in this case.

#### **IV. The Proposed Cy Pres Recipients Are Appropriate**

“A *cy pres* distribution is designed to be a way for a court to put any unclaimed settlement funds to their next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.” *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 476 n. 15 (D. Md. 2014) (quoting *Singleton v. Domino's Pizza, LLC*, CIV.A. DKC 11–1823, 976 F.Supp.2d 665, 673 n. 2, 2013 WL 5506027, at \*2 n. 2 (D.Md. Oct. 2, 2013) (quoting *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 474 (5th Cir.2011) (internal quotation marks omitted)).

“[T]he *cy pres* approach is most frequently used for the purpose of distributing the residue of a class settlement fund,” as is proposed here. *See In re Microsoft Corp. Antitrust Litig.*, 185 F. Supp. 2d 519, 523 (D. Md. 2002) (citing *Powell v. Georgia–Pacific Corp.*, 119 F.3d 703 (8th Cir.1997); *In re Motorsports Merch. Antitrust Litig.*, 160 F.Supp.2d 1392 (N.D.Ga.2001); *Jones v. Nat'l Distillers*, 56 F.Supp.2d 355 (S.D.N.Y.1999)). In the appropriate case, it can even be “utilized as a means for distributing the entirety of a class fund where the proceeds cannot be economically distributed to the class members.” *Id.* (citing *In re Toys “R” Us Antitrust Litig.*, 191 F.R.D. 347 (E.D.N.Y.2000); *New York v. Reebok Int'l Ltd.*, 903 F.Supp. 532 (S.D.N.Y.1995), *aff'd*, 96 F.3d 44 (2d Cir.1996); 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11–20 (3d ed.1992); 7B Charles Alan Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice and Procedure* § 1784, at 84 (2d ed.1986)).

The purpose of the equitable *cy pres* remedy is thus to benefit members of a

class, and the public, indirectly when provision of a direct benefit is impossible or difficult to attain as a practical matter. When the proceeds of a damage award, settlement fund, or penalty cannot be returned directly to individual class members – including when class members fail to cash their settlement checks – it is appropriate for the court to distribute the funds to interested third parties who will advance and promote the interests of the class.

“The term ‘cy pres’ is derived from the Norman French expression *cy pres comme possible*, which means ‘as near as possible.’” *Democratic Cent. Comm.*, 84 F.3d at 455, n.1. The *cy pres* doctrine arose in the law of equity and originated as a rule of construction to save a testamentary charitable gift that would otherwise fail, allowing “the next best use of the funds to satisfy the testator’s intent as near as possible.” *Id.* Courts have also utilized *cy pres* distributions where class members “are difficult to identify or where they change constantly,” or where there are unclaimed funds. *Powell v. Georgia-Pac. Corp.*, 119 F.3d 703, 706 (8<sup>th</sup> Cir. 1997). “In these cases, the court, guided by the parties’ original purpose, directs that the unclaimed funds be distributed ‘for the indirect prospective benefit of the class.’” *Id.* (quoting 2 Newberg, *Newberg on Class Actions*, §§ 10.17 at 10-41 (3rd ed. 1992)). See also Shepard, *Damage Distribution in Class Actions: Cy Pres Remedy*, 39 U. Chi. L. Rev. 448, 452 (1972).

As discussed in *Newberg on Class Actions*, Fourth Ed.:

The *cy pres* approach, then, puts the unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class (*aggregate cy pres distribution*). In such an event, the funds are usually paid to a third party or agency to use for designated purposes.

3 H. Newberg & A Conte, *Newberg on Class Actions* § 10.17 (4th ed.) (footnote omitted). As suggested by *Newberg*, the principles of the *cy pres* doctrine support the four (4) proposed recipients here: MVLS, the CASH Campaign, NACA and the UMD Law School.

The proposed *cy pres* distribution in this case will assist each of these

organizations and institutions to continue their important mission of educating consumer advocates and addressing the systemic problems of the poor and under-represented in the community through increasing access to effective legal services. That mission will benefit the Settlement Class Members here.

**V. CONCLUSION**

For the reasons set forth above, Representative Plaintiff respectfully requests that this Court approve the award of unclaimed settlement payments to the four *cy pres* recipients identified in the Settlement Agreement, ¶24(b)(v) – MVLS, the CASH Campaign, NACA and the UMD Carey Law School – and enter the attached comprehensive proposed Final Order Approving Settlement and Certifying Settlement Class.

Respectfully submitted,

/s/ Benjamin H. Carney

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