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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
02 FEB -1 PM 5:39 EASTERN DIVISION

**FILED**

FEB 08 2002

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

CLERK  
U.S. DISTRICT COURT  
HELENE ORLOWSKI MELBAUR KOCH, )  
MARGARET MROZOWSKI, CAROL ANN )  
SCHMALL, ALMA L. AGUIRRE, ROANN D. )  
KEATY, GEORGINE ARVANITES, JANET M. )  
TRIPP, and MAUREEN GLEIXNER, )  
on behalf of themselves and all )  
other persons similarly situated, )

No. 95 C 1666

Plaintiffs,

The Honorable Elaine C. Bucklo

v.

DOMINICK'S FINER FOODS, INC.,

**DOCKETED**

FEB 13 2002

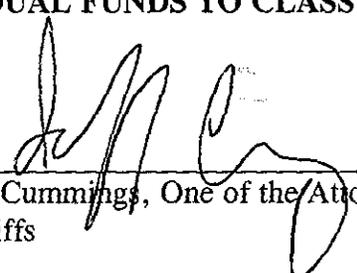
Defendant.

NOTICE OF MOTION

TO: John Lynch  
Latham & Watkins  
233 South Wacker Drive  
Suite 5800, Sears Tower  
Chicago, IL 60606

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U.S. DISTRICT COURT

PLEASE TAKE NOTICE that on February 8, 2002 at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Elaine C. Bucklo, or any judge sitting in her stead in the courtroom 1725 in the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present **CLASS COUNSEL'S FINAL ACCOUNTING REGARDING THE CLASS ACTON SETTLEMENT FUND AN REQUEST FOR DISTRIBUTION OF THE RESIDUAL FUNDS TO CLASS COUNSEL**, a copy of which is attached hereto.

  
Jeffrey I. Cummings, One of the Attorneys  
for Plaintiffs

Judson H. Miner  
Jeffrey I. Cummings  
MINER, BARNHILL & GALLAND, P.C.  
14 West Erie Street  
Chicago, Illinois 60610  
(312) 751-1170

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EASTERN DIVISION

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CLASS COUNSEL'S FINAL ACCOUNTING REGARDING THE  
CLASS ACTION SETTLEMENT FUND AND REQUEST FOR  
DISTRIBUTION OF THE RESIDUAL FUNDS TO CLASS COUNSEL

The entry of the settlement agreement resulted in the creation of a settlement fund in the amount of \$7,650,000 to satisfy and settle the claims of the named plaintiffs, class member deponents, class member declarants, and all class member claims. The distribution of the proceeds from the settlement fund is now complete, all costs associated with the distribution of the proceeds have been paid, and approximately \$15,757 of the settlement fund remains. Class counsel (Miner, Barnhill & Galland) present this final accounting regarding the settlement fund and they request that this Court enter an order allowing for the distribution of the residual funds to class counsel. In support of their request, class counsel state as follows:

A. The Settlement Fund And Distributions Of Proceeds

1. The First Distribution

On May 2, 2000, class counsel made the first distribution from the settlement fund. The sum of \$137,297.25 was paid to the nine named plaintiffs, \$35,595.56 was paid to 14 class member deponents, and \$50,342.49 was paid to 31 class member declarants. The above sums include the pro rata share of the interest (in the amount of \$3,735.30) that accumulated on the settlement fund between the time that the funds were deposited into the account and the first distribution.

2. The Classwide Distribution

Beginning in June 2000, class counsel commenced the classwide claims distribution process. This process involved (a) sending claim forms to all known class members; (b) fielding hundreds of phone inquiries from class members regarding the settlement process; (c) doing searches to find correct addresses for class members whose claim forms were returned as undeliverable; (d) re-sending claim forms to corrected addresses; (e) correcting hundreds of claim forms which contained inaccurate information as to class members' dates of employment and sending those revised claim forms to class members; and (f) interfacing with Dominick's representatives regarding questions raised by class members. Once the claims forms were received, class counsel had to calculate each class members' share of the settlement proceeds pursuant to the formula outlined in the settlement agreement. This calculation involved a consideration of each class members' seniority (which translated into "points"). Class counsel and their paralegals have devoted hundreds of hours to this process for which they are not seeking compensation. The expenses incurred to actually distribute the settlement proceeds to

class members (which will be described in further detail below) were paid from a portion of the interest generated from the principal of the settlement fund.

The distribution process began in early June 2000, when Dominick's mailed approximately 19,340 claim forms to the last known addresses of all women who were members of the settlement class. Approximately 2,400 of these claim forms were returned as undeliverable. On September 13, 2000, after a search was conducted to update these addresses, approximately 2,100 claim forms were re-sent by Settlement Services, Inc.<sup>1</sup> (Class counsel retained Settlement Services to do searches to find updated addresses for missing class members, to physically prepare the settlement checks and tax forms, and to mail out the checks.) On September 26, 2000, Settlement Services sent out approximately 430 additional claim forms. Finally, class counsel's paralegals sent out approximately 740 additional claim forms in response to class member inquiries between June and early October 2000. The vast majority of these claim forms were claim forms that had been revised in response to inquiries from class members.

Having thus completed diligent efforts to locate all known class members, class counsel set about determining each claiming class member's share of the settlement fund according to the formula established by the settlement agreement. Class counsel received approximately 12,520 claim forms by October 27, 2000 postmark deadline (which was more than 30 days after the last batch of claim forms were sent out). Four hundred and ninety-three of these claims were ineligible for an award of settlement proceeds because they concerned Dominick's

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<sup>1</sup> Settlement Services was unable to find alternative addresses for approximately 300 class members.

employees who had less than 90 days of employment service to their credit. After calculating the settlement shares, class counsel distributed by mail 12,027 settlement checks to class members at the end of December 2000. A total of \$7,400,617.98 was distributed from the principal in the settlement fund. This sum is broken down as follows: \$6,345,607.70 was distributed to the class members by first class mail; \$866,294.52 was withheld to pay federal and state income taxes; \$188,715.76 was withheld to pay FICA and Medicare taxes from the employer matching portion of the settlement proceeds that were deemed to be back wages; and (as required by the settlement agreement) \$30,000 was retained in the account as a reserve fund for payment of inadvertently excluded class member claims. Between the time of the first distribution and the second distribution, \$390,345.90 of interest was earned on the principal in the settlement account. Of the interest generated on the settlement fund, \$151,764.60 was distributed to class members on a pro rata basis, \$154,708.46 was withheld to pay taxes due and owing on the accrued interest, and \$83,872.84 was used to pay expenses associated with distributing the funds to the class members.

Of the 12,027 class members to whom settlement checks were mailed in this classwide distribution, all but 49 (.4%) ultimately cashed their checks and received their settlement proceeds.

### 3. The Replacement Check Distribution

After the classwide distribution, a number of eligible class members contacted class counsel and indicated that they had not yet received their settlement checks in the mail. After verifying that the class members had not cashed their checks, class counsel cancelled out the initial checks and wrote replacement checks for these class member. This "replacement

check” distribution took place in April 2001. Every one of the 61 replacement checks sent to class members was cashed by them.

4. The Undeliverable Check Distribution

After the classwide distribution, class counsel received back from the United States Postal Service a number of checks that were deemed “undeliverable.” Class counsel engaged Settlement Services to perform tracing services in an effort to find up-dated addresses for these class members. Class counsel received up-dated addresses for 159 class members and mailed new checks to them. Of the 156 checks that were sent to new addresses, 116 were cashed by class members.

5. The Latecomers Check Distribution

Following the deadline for submission of timely claims (October 27, 2000), a number of class members submitted claims for relief against the settlement fund. The “latecomers” claims were divided into ten categories. At the March 31, 2001 status hearing before this Court, class counsel presented recommendations as to which of these latecomers claims should be paid in full, paid pro rata, or not paid at all. This Court, with some modification, approved of class counsel’s recommendations. Between late April and early June 2001, class counsel wrote to each one of the class members whose claims had been denied to inform them of the basis and date of this Court’s denial of their claims. In August 2001, a total of 178 checks were mailed out to class members in this “latecomers” distribution and all but 2 of these checks were cashed by class members.

B. Expenses Incurred In Distributing The Settlement Proceeds

Expenses in the amount of \$109,944.43 were incurred to distribute the settlement proceeds to class members. The vast majority of this sum (\$84,548.67) was paid to Settlement Services, Inc. for its work to prepare the settlement checks and associated tax forms, to mail the majority of the settlement checks to class members, and to do skip tracing to find correct addresses for over two thousand class members whose claim funds had been returned as undeliverable and to find addresses for class members whose checks had been returned as undeliverable. The other expenses are as follows: (1) telephone/fax charges for 800 number (\$7,735.13); (2) payment to consultant who calculated the class members' "points" which were used to calculate settlement shares (\$4,920); (3) temporary employees needed to process the over 12,500 claim forms (\$4,103.83); (4) payment to accountants to do tax returns for the settlement fund (\$2,495); (5) check cancellation charges incurred when replacement checks were issued (\$1,317.25); (6) miscellaneous bank charges incurred in administering the class action settlement fund account (\$1,287.15); (7) in-house duplicating charges (\$787); (8) messenger/Federal Express expenses (\$752.45); (9) rental of personal computer equipment in conjunction with the processing of class member claim forms (\$682); (10) Record Copy duplication services (\$498.50); (11) postage charges (\$247.50); (12) envelope purchases (\$217.75); (13) post office box rental (\$211); (14) local transportation (\$71); and (15) transcript fees (\$70.20). *See Exhibit A (Declaration of Jeffrey I. Cummings).*

C. The Settlement Fund At Present

After a payment of approved claims and of distribution expenses, approximately \$15,757 of the settlement fund remains.

D. Class counsel's Entitlement To The Residual Funds

When the parties presented their joint motion for final approval of the settlement agreement, they agreed that class counsel Miner, Barnhill & Galland should receive up to \$25,000 of any unclaimed funds after the settlement fund distribution had taken place. On March 31, 2000, this Court granted the parties' joint motion for final approval of the settlement and it also "approve[d] the distribution of attorneys' fees as set forth in the Settlement Agreement, as amended by the counsels' agreement." In light of this, class counsel – who have incurred substantial uncompensated attorney and paralegal fees in distributing the settlement proceeds<sup>2</sup> – requests that this Court authorize the distribution of the residual funds (\$15,757) to Miner, Barnhill & Galland.

Conclusion

For all of the above reasons, class counsel respectfully requests that this Court enter an order approving the final accounting regarding the settlement fund and authorizing the distribution of the residual funds to Miner, Barnhill & Galland.

Respectfully submitted,

  
\_\_\_\_\_  
Jeffrey I. Cummings.

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<sup>2</sup> Class counsel's paralegals have devoted approximately 2,151 hours of time (at a value of approximately \$172,080) toward the administration of the settlement between April 1, 2000 and December 31, 2001. Class counsel have devoted over 305 hours to this matter during this time, of which at least 123 hours (at a value of over \$33,000) were devoted to administering the class settlement. Exhibit A.

Judson H. Miner  
Jeffrey I. Cummings  
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Chicago, IL 60610  
(312) 751-1170

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KEATY, GEORGINE ARVANITES, JANET M. )  
TRIPP, and MAUREEN GLEIXNER, )  
on behalf of themselves and all )  
other persons similarly situated, ) No. 95 C 1666  
)  
Plaintiffs, ) The Honorable Elaine C. Bucklo  
)  
v. )  
)  
DOMINICK'S FINER FOODS, INC., )  
)  
Defendant. )

DECLARATION OF JEFFREY I. CUMMINGS

JEFFREY I. CUMMINGS states as follows:

1. I am one of the attorneys for the class. I am submitting this declaration in support of class counsel's final accounting regarding the class action settlement and request for distribution of the residual funds to class counsel.

2. I had the primary responsibility to oversee the distribution of the settlement fund and supervise the paralegals in my firm, temporary employees who helped process claim forms, and the outside professionals we engaged to implement the distribution.

3. I am familiar with and approved for payment the costs my firm incurred to distribute the proceeds to class members. The following costs (totaling \$109,944.43) were reasonable and necessary to effect the distribution of the settlement fund.

- (a) \$84,548.67 to Settlement Services, Inc.
- (b) \$7,735.13 for telephone/fax charges for 800 number.

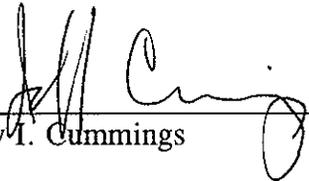
- (c) \$4,920 to Whitman T. Soule, the consultant who calculated the class members' "points" which were used to calculate settlement shares.
- (d) \$4,103.83 to Loftus & O'Meara, who provided temporary employees needed to process the over 12,500 claim forms.
- (e) \$2,495 to Weltman Katz Mikell & Nechtow, the accountants who did tax returns for the settlement fund.
- (f) \$1,317.25 to Midtown Bank, for check cancellation charges incurred when replacement checks were issued.
- (g) \$1,287.15 to Midtown Bank, for miscellaneous bank charges incurred in administering the class action settlement fund account.
- (h) \$787 for in-house duplicating charges.
- (i) \$752.45 for messenger/Federal Express expenses.
- (j) \$682 to PCR Personal Computer Rentals, for rental of personal computer equipment in conjunction with the processing of class member claim forms.
- (k) \$498.50 to Record Copy Services, for duplication services.
- (l) \$247.50 for postage incurred in sending mailings to class members.
- (m) \$217.75 to Allstar for envelope purchases for mailings to class members.
- (n) \$211 for rental of a post office box.
- (o) \$71 for local transportation; and
- (p) \$70.20 to Michael P. Snyder for transcript of the March 23, 2001 status hearing.

Documentation of these expenses is attached as exhibits to this declaration.

4. I have reviewed a summary of the time records of Miner, Barnhill & Galland's paralegals and attorneys. MBG's paralegals have devoted approximately 2,151 hours of time (at a value of approximately \$172,080) toward the administration of the settlement between April 1, 2000 and December 31, 2001. MBG's attorneys have devoted over 305 hours to this matter during this time, of which at least 123 hours (at a value of over \$33,000) were devoted

to administering the class settlement.

The undersigned states, under penalty of perjury and the laws of the United States, that the foregoing is true and correct to the best of his knowledge. Executed in Chicago, Illinois, on

  
\_\_\_\_\_  
Jeffrey I. Cummings

28 U.S.C. §1746.

CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury, certifies that on February 1, 2002, a copy of the foregoing Notice of Motion and Motion were served on the above attorneys by messenger.

Austin E. Murre