

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**SIMEON PENTON, on behalf of himself
and all others similarly situated,**

Plaintiff,

v.

Case No. 4:18-cv-450-AW-MAF

CENTENNIAL BANK,

Defendant.

**ORDER PRELIMINARILY APPROVING SETTLEMENT,
CERTIFYING SETTLEMENT CLASS, APPOINTING CLASS COUNSEL
AND CLASS REPRESENTATIVE FOR THE SETTLEMENT CLASS,
AND APPROVING NOTICE AND DISTRIBUTION PLAN**

Plaintiffs have moved for preliminary approval of their class settlement agreement. ECF No. 162. They have also filed supplemental materials in response to the court's inquiries. ECF Nos. 166, 170, 172, 174. This court has jurisdiction. *See* ECF No. 148 at 5-11. The court now enters this order of preliminary approval. This order is substantially in the form the parties proposed, but I have carefully reviewed it and made changes where appropriate.

Plaintiff Simeon Penton and Defendant Centennial Bank (together, the "Settling Parties") entered into a Stipulation and Agreement of Settlement (the "Settlement Agreement"). In full and final settlement of the claims asserted against Centennial in this action, Centennial agreed to pay up to \$730,000 (the "Settlement Funds") on a claims-made basis. Plaintiff made an application, pursuant to Federal

Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement Agreement, which sets forth the terms and conditions of the Settlement of the Action (as defined in the agreement) against Centennial and for dismissal of the Action against Centennial with prejudice upon the terms and conditions set forth in the Settlement Agreement. Plaintiff has sought, and Centennial did not object to, the certification of the Settlement Class (as defined below) solely for settlement purposes.

The Settlement Agreement proposes, solely for settlement purposes, appointment of Scott+Scott, Attorneys at Law, LLP, the Law Office of Greg Davis, LLP, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert (“Class Counsel”) as settlement class counsel for the Settlement Class. The Settlement Agreement also proposes, solely for settlement purposes, appointment of Plaintiff Simeon Penton as class representative of the Settlement Class.

The Settling Parties have agreed to the entry of this Order Preliminarily Approving Settlement Agreement, Certifying the Settlement Class, Appointing Class Counsel and Class Representative for the Settlement Class, and Approving the Notice Plan (the Order). I have read and considered the Settlement Agreement, the exhibits, and other documents submitted in connection with the motion.

IT IS NOW ORDERED AND ADJUDGED that:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise noted or defined herein.

I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

2. Having reviewed the record, the Court preliminarily finds that the Settlement Agreement resulted from arm's-length negotiations between experienced counsel with the participation and assistance of an experienced mediator and falls within the range of possible approval. The Court hereby preliminarily approves the Settlement Agreement, subject to further consideration at the Fairness Hearing described below. The Court preliminarily finds that the Settlement Agreement raises no obvious reasons to doubt its fairness and satisfies the requirements of due process and Federal Rules of Civil Procedure 23(c)(2) and 23(e) so that an appropriate notice of the Settlement Agreement should be given, subject to the Court's approval of a notice plan as provided in this Order.

II. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

3. Pursuant to Federal Rule of Civil Procedure 23, the Court preliminarily certifies, solely for settlement purposes, a Settlement Class defined as follows:

The "Class" includes borrowers who, during the period October 1, 2013 through December 31, 2019 (the "Class Period"), were charged by Centennial or its affiliates, and not fully refunded, for hazard, windstorm, and/or flood insurance policy force-placed on real property

located in the United States and its territories. The Class also includes borrowers that were charged between October 1, 2012 and September 30, 2013 for force-placed insurance on real property located in Alabama. The term “Class Period” is similarly construed to include this additional time period with respect to Alabama properties. For the purpose of this definition, mobile homes are real property when insured under a real-property master insurance policy, meaning that the mobile home was permanently affixed to the land. Excluded from the Class are Defendants, their affiliates, subsidiaries, agents, board members, directors, officers, and/or employees. Also excluded from the Class are:

- (i) the Court, any justice, judge, or magistrate judge of the United States or any State, their spouses, and any immediate family members;
- (ii) borrowers that have a pending case arising under Title 11 of the United States Code or that received a final judgment of discharge or confirmed plan after the date FPI was last placed in any case arising under Title 11;
- (iii) borrowers that either (A) settled or released all claims after the date FPI was last placed, or (B) are subject to a final money or foreclosure judgment, with respect to each FPI loan on which they were borrowers; and,
- (iv) all borrowers who file a timely and proper request to be excluded from the Class.

4. The “Settlement Class Period” or “Class Period” is October 1, 2013 through December 31, 2019.

5. Solely for purposes of the settlement, the Court preliminarily finds that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied:

- a. The Settlement Class consists of approximately 2,712 members.

ECF No. 166-1 ¶ 13. The members of the Settlement Class are thus so

numerous that joinder of all is impracticable. *See* Fed. R. Civ. P. 23(a)(1).

b. Rule 23(a)(2) commonality is satisfied where there is “at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009) (citation omitted). It exists here, where there are common questions of law and fact regarding Centennial’s liability or lack thereof for the alleged force-placed insurance practice.

c. Plaintiff’s claims are typical of the Settlement Class under Rule 23(a)(3) because they concern the same alleged conduct and legal theories that would entitle the members to relief. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality is established “if the claims . . . of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory”).

d. Rule 23(a)(4) requires showing that “both the named plaintiff and counsel” would “fairly and adequately protect the interests of the class.” *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1253 (11th Cir. 2003) (citation omitted); *see also Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314-15 (S.D. Fla. 2001) (recognizing this requirement has

two parts: that the class representative have “no interests antagonistic to the class,” and that class counsel be competent in class action litigation). That requirement is satisfied here, where there is no indication Plaintiff’s interests conflict with the Settlement Class’s interests, Class Counsel is experienced in class litigation, and Class Counsel has already devoted substantial resources to prosecute the Action.

e. Rule 23(b)(3) requires questions of law or fact common to the class predominate over those “affecting only individual members,” and that the coordinated proceeding of a class action be superior to other means of adjudication. *See also Fabricant*, 340 F.3d at 1253. The Court finds here that common questions regarding Defendant’s challenged force-placed insurance practices predominate over individualized concerns, and that resolving those issues in a single judgment is superior to alternative adjudicative means.

6. If the Settlement Agreement does not receive final approval because of the failure of a condition that affects the Settlement Agreement, this conditional certification of the Settlement Class shall be deemed null and void as to the Settling Parties subject to the Settlement Agreement without the need for further action by the Court or any of the Settling Parties. In such circumstances, each of the Settling

Parties shall retain their rights to seek or to object to certification of this litigation as a class action under Rule 23, or under any other state or federal rule, statute, law, or provision thereof, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any other grounds.

III. CLASS COUNSEL, CLASS REPRESENTATIVES, AND FEES AND COSTS

7. The Court appoints Class Counsel for the Settlement Class solely for settlement purposes.

8. Class Counsel will submit any motion for Attorney's Fees and Expenses at least 45 days before the Fairness Hearing. Such a request for fees and expenses shall not exceed \$182,500 in attorney's fees and \$40,000 in litigation expenses, totaling \$222,500 in fees and expenses.

9. All Attorney's Fees and Expenses approved by the Court up to \$222,500 shall be paid by Centennial separate from the Settlement Funds.

10. The Court appoints Simeon Penton as Plaintiff Class Representative for settlement purposes.

IV. PLAN OF DISTRIBUTION, NOTICE, AND FAIRNESS HEARING

11. The Court approves the proposed Notice Plan, as described below.

12. The Court approves the appointment of Analytics Consulting, LLC, as the Claims Administrator. The Claims Administrator shall have such duties and responsibilities as are set forth in the Settlement Agreement.

13. The Court finds that the Settlement Agreement, pursuant to which the Claims Administrator shall calculate the claims submitted by Class Members and distribute payment to authorized claimants, is recommended by experienced counsel and the allocation formula falls within the range of possible approval. Therefore, the Plan of Distribution is preliminarily approved, subject to further consideration thereof at the Fairness Hearing described below.

14. The Court approves, as to form and content, the Notice of Class Action Settlement (Mail and E-Mail Notice) and the Claim Form, each as filed in ECF No. 174-1 at 2-9 and ECF No. 172-2 at 2-4, respectively. The Court acknowledges that the Claim Form contemplates additional certification pages, specific to each loan, for those Class Members with multiple qualifying loans. The Claims Administrator shall make available for download a generic, fillable Claim Form.

15. Notwithstanding any prior ruling in this case, Centennial is authorized to disclose to the Claims Administrator such personally identifiable information that Centennial deems reasonably appropriate for the purposes of class-member identification and claims administration. Such information includes, but is not limited to, names, mailing addresses, mortgaged-property addresses, email addresses, and complete loan numbers. Such information may also include materials from claimant loan files as appropriate to determine the identity of claimants or persons requesting exclusion from the class, the application of the class definition to

any claimant, and the validity and recoverable amount of filed claims. The Claims Administrator shall keep such information confidential, except to the extent necessary to allow Class Counsel to review assertions made by Centennial with respect to any claim or request for exclusion from the Settlement Class. Notwithstanding anything in this paragraph, Centennial may not disclose social security numbers without further order of the Court.

16. The parties' request to file the Settlement Agreement as partially redacted has been approved (ECF No. 164), and the parties have filed under seal the unredacted Settlement Agreement (ECF No.165). The Court intends to release the seal if the Settlement is approved by final judgment.

17. Centennial will make reasonable efforts to identify and provide to the Claims Administrator names and addresses of potential members of the Settlement Class, who can be reasonably identified based on client records that Centennial has in its possession, custody, or control, for purposes of the mailing of the Mail and E-Mail Notice and Claim Form referenced above, to the extent permitted by applicable laws.

18. Provided that names and addresses of potential members of the Settlement Class, who can be reasonably identified based on client records that Centennial has in its respective possession, custody, or control, are provided or compiled by December 19, 2022, the process of disseminating the Mail Notice and

Claim Form shall begin by December 22, 2022 (“Notice Date”). Mail Notice will be mailed by first class mail (or, for Mail Notice conducted within foreign countries, the corresponding class of postal delivery), postage prepaid, to each potential member of the Settlement Class that can be identified through reasonable effort to the extent permitted by applicable laws. E-Mail Notice will be sent by electronic mail.

19. On or before the Notice Date, the Claims Administrator shall cause the Mail Notice and Summary Notice to be published on the Settlement Website.

20. Before the Fairness Hearing, Class Counsel shall file, or cause to be filed, a sworn statement attesting to the Settlement Class’s response to the Notice Plan. The Notices shall be sent not less than 90 days before the date set by the Court for a Fairness Hearing regarding the settlement.

21. Rule 23(e)(1)(B) requires “notice in a reasonable manner to all class members who would be bound,” and Rule 23(c)(2)(B) requires here that the notice be “the best notice . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The Court finds that the sending of the Mail and E-Mail Notices is the best notice practicable under the circumstances and includes individual notice to all members of the Settlement Class who can be identified through reasonable effort. *See also* Fed. R. Civ. P. 23(c)(2)(B) (notice may be by “United States mail” or “electronic means”).

22. All fees, costs, and expenses incurred in identifying and notifying members of the Settlement Class shall be paid as set forth in the Settlement Agreement.

23. Any Person falling within the definition of the Settlement Class may request to be excluded from the Settlement Class in which he, she, or it would otherwise be a member (“Request for Exclusion”). A Request for Exclusion must be: (a) in writing; (b) signed by the Person (defined as the individual or entity holding the claim) or his, her, or its authorized representative; (c) state the name, address, and phone number of that Person; (d) include proof of membership in either the Settlement Class; and (e) a signed statement that “I/we hereby request that I/we be excluded from the Settlement in the *Penton v. Centennial Bank Force Placed Insurance Litigation*” or the substantive equivalent. The request must be mailed to the Claims Administrator and be postmarked no later than the Opt-Out Date set by the Court. Unless the Court orders otherwise, a Request for Exclusion that does not include all of the foregoing information, does not contain the proper signature, is sent to an address other than the one designated in the Mail and E-Mail Notice, or is not sent within the time specified, shall be invalid, and the Person(s) filing such an invalid request shall be a Settlement Class Member and bound by the settlement set forth in the Settlement Agreement, if approved. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall be

excluded from the Settlement Class, have no rights under the Settlement Agreement, not receive payment, and not be bound by the Settlement Agreement or, if approved, any Final Judgment and Order of Dismissal to be entered.

24. Class Counsel shall cause to be provided to counsel for Centennial copies of all Requests for Exclusion, together with all documents and information provided with such requests, and any written revocation of Requests for Exclusion within three business days of receipt by Class Counsel of that exclusion request or revocations thereof.

25. Any member of the Settlement Class who has not submitted a Request for Exclusion may appear and show cause if he, she, or it has any reason why settlement of the Action as set forth in the Settlement Agreement should not be approved as fair, reasonable, and adequate; why a Final Judgment and Order of Dismissal should not be entered thereon; why the Plan of Distribution should not be approved; and/or why attorney's fees and/or costs and expenses should not be awarded to counsel for Class Plaintiff—provided, however, that no member of the Settlement Class or any other Person shall be heard unless written objections are filed with the Clerk of this Court, no later than 30 days before the date set for the Fairness Hearing. Any such written objections must include: (a) the Settlement Class member's name, address, telephone number, and signature and, if applicable, the name, address, and telephone number of the attorney representing the member; (b)

whether the member (or the member's attorney) will appear at the Fairness Hearing; (c) proof of membership in the Settlement Class; and (d) the specific grounds for the objection(s), as well as all documents that the Person wants the Court to consider. The written Notice of Intent to Appear must include: (a) the member of the Settlement Class's name, address, telephone number, and signature and, if applicable, the name, address, and telephone number of the attorney (who must file a Notice of Appearance with the Court) representing the member of the Settlement Class; and (b) state that the class member (or, if applicable, the class member's attorney) intends to appear at the Fairness Hearing for *Penton v. Centennial Bank*, Case No. 4:18-CV-00450-AW-MAF (N.D. Fla.). Any Person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections.

26. Unless the Court orders otherwise, all Claim Forms must be postmarked by or before the Claims Deadline.

27. Any and all distributions to eligible Settlement Class Members shall be made pursuant to the Plan of Distribution, as approved by the Court, to those Settlement Class Members who submit a valid Claim Form. Class Members who wish to participate in the Settlement set forth in the Settlement Agreement must complete and submit a valid Claim Form, in accordance with the instructions contained therein.

28. Any Settlement Class Member who does not timely submit a Claim Form within the time provided shall be barred from sharing in the distribution of the proceeds of the Settlement Funds, unless otherwise ordered by the Court, but shall nevertheless be bound by any Final Judgment and Order of Dismissal entered by the Court regarding the settlement set forth in the Settlement Agreement.

29. Any member of the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of the member's own choice.

30. The Fairness Hearing will be on May 2, 2023 at 9:00 a.m., at the United States District Court for the Northern District of Florida, United States Courthouse, 111 N. Adams Street, Tallahassee, Florida 32301, to determine: (a) whether the Settlement of the Action on the terms and conditions provided for in the Settlement Agreement are fair, reasonable, and adequate to the Settlement Class and should be granted final approval by the Court; (b) whether a Final Judgment and Order of Dismissal, as provided for in the Settlement Agreement, should be entered; (c) whether the Plan of Distribution should be approved; (d) the amount of attorney's fees and/or costs and expenses that should be awarded to counsel for Class Plaintiff; (e) whether the Court should certify the Settlement Class solely for settlement purposes pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3); and (f) such other matters as the Court may deem appropriate.

31. At or after the Fairness Hearing, the Court will determine separately whether the Settlement Agreement should be granted final approval, whether the Plan of Distribution should be granted final approval, and whether to approve the application for attorney's fees and/or expenses by class counsel.

32. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice, and the Court retains jurisdiction to consider all further applications arising out of, or connected with, the Settlement. To the extent practicable, Class Counsel shall cause the Claims Administrator to promptly cause notice of any court-ordered changes of schedule or any modifications of deadlines to be published on the Settlement Website.

33. The Court also approves the Plan of Distribution, as detailed in the Settlement Agreement and set forth below.

34. For those Settlement Class Members who submit a timely, valid, and verified Claim Form, Centennial shall pay to each such Settlement Class Member via check or electronic transfer an amount equal to 9% of the Net Premium charged to the Settlement Class Member during the Class Period for the FPI Loan(s) identified on the Claimant's Claim Form.

- a. If the aggregate value of all claims accepted by the Claims Administrator exceeds the Maximum Payment, then the Claims Administrator shall reduce the payment on all claims on a pro rata basis

such that the total amount to be paid to the Settlement Class by Centennial will not exceed the Maximum Payment

V. CASE SCHEDULE

35. The Court sets the following deadlines:

Event	Date
Notice Date	15 days from entry of this Order and not less than 90 days before the Fairness Hearing
Claims Deadline	30 Days Before Fairness Hearing
Objection/Opt-Out Deadline	30 Days Before Fairness Hearing
Motion for Final Approval of the Settlement	45 Days Before Fairness Hearing
Application for Attorney's Fees and Expenses	45 Days Before Fairness Hearing

VI. OTHER PROVISIONS

36. The parties have complied with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715. *See* ECF No. 170.

37. In the event that the Settlement Agreement is terminated, is vacated, or is not approved, then the Settling Parties shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, such parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, and the Settlement Agreement (including any amendment(s) thereto) and this Order shall be

null and void, of no further force or effect, and without prejudice to any such Settling Parties, and may not be introduced as evidence or referred to in any actions or proceedings by any Person; provided, however, that in the event of termination of the Settlement Agreement, Paragraph 5.1 of the Settlement Agreement shall nonetheless survive and continue to be of effect and have binding force.

38. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any non-settlement class in this Action, and no party may cite or refer to the Court's approval of any Settlement Class as persuasive or binding authority with respect to any motion to certify any non-settlement class or any other dispositive motion filed. Nor shall such preliminary approval prejudice any rights, claims, or defenses.

39. Centennial has denied wrongdoing or liability in connection with the allegations in the Action. Nothing in the Settlement Agreement constitutes an admission by Centennial as to the merits of the allegations made in the Action, the validity of any defenses that could be or have been asserted, or the appropriateness of certification of any class other than the Class under Rule 23 for purposes of settlement only.

40. All proceedings in the Action with respect to Centennial are stayed until further order of the Court. Such stay does not apply, however, to the extent actions are necessary to implement or comply with the terms of the Settlement Agreement,

including but not necessarily limited to the schedule and deadlines imposed by this Order.

41. All Class Members shall be bound by all determinations and judgments in the Action concerning the settlement set forth in the Settlement Agreement, whether favorable or unfavorable to the Settlement Class.

SO ORDERED on December 8, 2022.

s/ Allen Winsor
United States District Judge