

**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 GRANTING MOTIONS FOR FINAL APPROVAL OF
SETTLEMENT, DISMISSAL WITH PREJUDICE,
AND ATTORNEY’S FEES AND EXPENSES**

Plaintiff Simeon Penton has entered into and executed a Stipulation and Agreement of Settlement (“Settlement Agreement”) with Centennial Bank (“Centennial” or “Defendant” and together with Plaintiff, the “Settling Parties”), which, subject to court approval, will result in the settlement of all claims and bring the Action to an end. Centennial agreed to make available up \$730,000 as set forth in the Settlement Agreement.

Plaintiff moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order granting final approval of the Settlement Agreement, which sets forth the terms and conditions of the Settlement of the Action against Centennial and for dismissal of the Action against Centennial with prejudice upon the terms and conditions set forth in the Settlement Agreement. ECF No. 178. Plaintiff also moved

for an award of attorney's fees and reimbursement of expenses. ECF No. 179. This Order grants both motions.¹

The Court preliminarily certified a settlement class pursuant to Rule 23. ECF No. 175. That order preliminarily appointed Scott+Scott Attorneys at Law, Greg Davis Law, and Kopelowitz Ostrow Ferguson Weiselberg Gilbert as Class Counsel, and Simeon Penton as class representative. The order also directed that notice of the Settlement Agreement be provided to potential Settlement Class members; that class members be given an opportunity to exclude themselves from the Settlement Class; and that they be given an opportunity to object to the Settlement Agreement, the Application for Attorney's Fees and Reimbursement of Costs, and the designations of class counsel and class representative.

The Settling Parties have agreed to the entry of this Final Approval of Settlement Order and Order of Dismissal with Prejudice as to Centennial. By Notice dated December 14, 2022, this Court scheduled a hearing (the "Fairness Hearing") regarding final approval of the Settlement and Application for Attorney's Fees and Costs on May 2, 2023 at 9:00 a.m. in U.S. Courthouse, 111 North Adams Street, Courtroom 5 South, Tallahassee, Florida. ECF No. 176. The Court rescheduled that hearing (at the parties' request) for May 10, 2023 at 10:00 a.m. and ordered that the

¹ While this order borrows from the parties' proposed order, ECF No. 181-1, I carefully reviewed that proposed order and revised as appropriate.

parties (1) directly notify class members of the change and (2) post the new Fairness Hearing date on the settlement website. ECF No. 186.

Due and adequate notice has been given to the Settlement Class. The 90-day period provided by the Class Action Fairness Act, 28 U.S.C. § 1715(d), has expired. The April 3, 2023 deadline to file claims, object, or opt-out of the Settlement has now passed.

The Court conducted the Fairness Hearing on May 10, 2023 to consider, among other things, (a) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against Centennial. The Court has also read and considered the Settlement Agreement and the exhibits annexed thereto and other documents submitted in connection with the Final Approval of Settlement Order and Order of Dismissal with Prejudice as to Centennial. The Court considered Plaintiff's request for \$182,500 in attorney's fees and \$40,000 in litigation expenses. And Plaintiff confirmed compliance with the supplemental notice I directed in ECF No. 186.

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

2. **Jurisdiction**—This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement Agreement, as well as personal jurisdiction over all Parties and each of the Settlement Class Members with respect to such matters. *See* ECF No. 148. The Court will retain continuing jurisdiction for the sole purpose of implementing, administering, and enforcing the Settlement Agreement and this Final Order.

3. **CAFA Notice**—The notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

4. **Incorporation of Settlement Documents**—This Final Order incorporates and makes a part hereof: (a) the Settlement Agreement, ECF No. 165, as later modified to account for Alabama certificates, *see* ECF Nos. 172, 173, 174; and (b) the Mail Notice, ECF No. 178-1 at 10-17, and Claim Form, ECF No. 178-1 at 18-19, which were each approved by the Court in the Preliminary Approval Order.

5. **Class Certification for Settlement Purposes**—Pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and based on the record before the Court, the Court hereby affirms its determinations in the Preliminary Approval Order and certifies, for the purposes of settlement only, the following Settlement Class:

The “Class” includes all borrowers who, during the prior 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 of the Court;
- (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.

6. The Court finds that the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied solely for settlement purposes for the reasons stated in the Court’s order preliminarily approving the settlement, *see* ECF No. 175 ¶ 5, which are incorporated herein.

- a. Pursuant to Rule 23(a)(1), the Court determines that the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.

- b. Pursuant to Rule 23(a)(2), the Court determines that there are one or more questions of fact or law common to the Settlement Class.
- c. Pursuant to Rule 23(a)(3), the Court determines that Plaintiff's claims are typical of the claims of the Settlement Class.
- d. Pursuant to Rule 23(a)(4), the Court determines that Plaintiff will fairly and adequately protect the interests of the Settlement Class. Plaintiff is certified as class representative.
- e. Pursuant to Rule 23(b)(3), the Court determines that common questions of law and fact predominate over questions affecting only individual members of the Settlement Class.
- f. Also pursuant to Rule 23(b)(3), the Court determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action with respect to the Settlement Class.

7. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Class Counsel are certified as settlement class counsel for the Settlement Class.

8. **Notice**—The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) was the best notice practicable under the circumstances; (c) was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's motion for an award of attorney's fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorney's fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class;

and (vi) the right to appear at the Fairness Hearing; and (d) was due, adequate, and sufficient notice under Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause) for all persons and entities entitled to receive notice.

While “[t]here is no single way in which . . . notice must be transmitted,” generally “notice by mail to all of the identified class members . . . will suffice.” *Fla. Educ. Ass’n v. Dep’t of Educ.*, 447 F. Supp. 3d 1269, 1275 (N.D. Fla. 2020) (quoting Wright & Miller, Fed. Prac. & Proc. § 1797.6 (3d ed.)). Here, the notice and claims administrator, Analytics, sent personalized direct notice through First Class Mail to 3,076 identified class members. ECF No. 178-1 ¶¶ 5-7. After the Postal Service identified 277 notices as returned undeliverable, Analytics identified the correct addresses for 133 of those members and successfully remailed notice. *Id.* ¶ 8. Thus, Analytics successfully mailed personalized direct notice to 95.3% of the identifiable Settlement Class.

The Notice Form sufficiently conveyed material facts concerning the settlement, including deadlines; the processes for submitting claims, opting out, or objecting; and the consequences of each action. ECF No. 178-1 at 10-17. The Notice Form also listed a settlement website, which provided information about the case, copies of important documents (including the Settlement Agreement itself), and contact information for assistance. *Cf. Greco v. Ginn Dev. Co., LLC*, 635 F. App’x

628, 634 (11th Cir. 2015) (reasoning that a website with similar information contributed to adequate notice). More than 1,000 unique viewers visited the website. ECF No. 181-3 ¶ 5.

As to all members for which Analytics had email addresses, Analytics sent reminder emails about upcoming deadlines. Analytics sent 1,151 such emails, of which only 195 were not successfully delivered. *Id.* ¶ 4.

I. FINAL APPROVAL OF SETTLEMENT AGREEMENT

9. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby grants final approval of the Settlement Agreement in all respects (including, without limitation: the Settlement Funds amount; the releases; and the dismissal with prejudice of the claims asserted against Centennial in the Action), and finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate to the Settlement Class. In reaching this conclusion, the Court considered (a) the existence of fraud or collusiveness, (b) the complexity, expense, and likely duration of this litigation, (c) the stage of litigation and amount of completed discovery, (d) Plaintiff's likelihood of success on the merits, (e) the range of possible recovery, and (f) the class counsel and representatives' opinions, as well as opposition to the settlement. *Leverso v. Southtrust Bank of Alabama, Nat'l Assoc.*, 18 F.3d 1527, 1530 & n.6 (11th Cir. 1994). The Court concludes that:

- a. The Settlement Agreement was fairly and honestly negotiated by counsel with experience litigating class actions and is the result

of arm's-length negotiations undertaken in good faith under the supervision of an experienced mediator.

- b. The Action involved complex contested issues of law and fact, such that the value of an immediate monetary recovery outweighs the mere possibility of future relief after protracted and expensive litigation.
- c. Success in complex class actions such as this one is inherently uncertain, and there is no guarantee that continued litigation would yield a superior result. Plaintiff initially filed the case more than four years ago and the parties have litigated multiple motions to dismiss. If the case proceeded to a dispositive motion or trial, an appeal causing further delay, plus more fees and expenses to be incurred, would be more likely.
- d. There is no evidence of collusiveness or fraud. The Court agrees with Class Counsel's judgment, and the Class Representative's, that the Settlement Agreement is fair and reasonable. *See Cotton v. Hinton*, 559 F.2d 1316, 1330 (5th Cir. 1977) (noting that absent indicia of collusion, district courts should be hesitant to substitute their own judgment for that of counsel (citation omitted)).
- e. The possible recovery, 9% of total net written FPI premiums, compensates Class Members for a significant part of the alleged harm and is comparable to recoveries approved in other FPI class litigation. *See Saccoccio v. JP Morgan Chase Bank*, 297 F.R.D. 683, 693 (S.D. Fla. 2014) (12.5%); *Hamilton v. SunTrust Mortg. Inc.*, 2014 WL 5419507, at *5 (S.D. Fla. Oct. 24, 2014) (10.5%).
- f. The 12% ratio of claims actually submitted to the number of identifiable class members exceeds rates for settlements typically approved as fair in and out of this Circuit. *See Lee v. Ocwen Loan Serv., LLC*, 2015 WL 5449813, at *22 (S.D. Fla. Sept. 14, 2015) (citing cases).
- g. No timely objections have been made to the Settlement Agreement. *Cf. Fla. Educ. Ass'n*, 447 F. Supp. 3d at 1277-78 (noting that a low number of objections suggests reasonableness).

10. **Dismissal of the Action and Release**—Except as to any claim of the Person identified in ECF No. 181-1 at 17, who has validly and timely requested exclusion from the Settlement Class (“Opt-Out”), the Court orders that the Action and all claims contained therein, as well as all of the Released Claims against any of the Released Parties by Plaintiff, Settlement Class Members, and Releasing Parties are each hereby dismissed with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

11. The Opt-Out is excluded from the Settlement Class pursuant to properly made requests, is not bound by the Settlement Agreement, this Final Order, and the Judgment to be entered separately. The Opt-Out may not make any claim or receive any benefit from the Settlement Agreement, whether monetary or otherwise.

12. The releases set forth in the Settlement Agreement, together with the Definitions contained in the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date.

13. Upon the Effective Date, each of the Releasing Parties: (a) shall be deemed to have, and by operation of this Final Order and the separate Judgment, shall have fully, finally, and forever waived, released, relinquished, and discharged all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release form; (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any

of the Released Parties; and (c) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims.

14. Upon the Effective Date, claims against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid in the Action by way of settlement, judgment, or otherwise, are barred.

15. This Final Order shall not affect, in any way, the right of Plaintiff, Settlement Class Members, or Releasing Parties to pursue claims, if any, outside the scope of the Released Claims.

16. Nothing in this Final Order shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Final Order.

II. OTHER PROVISIONS

18. The Court approves of Plaintiff's designated notice and claims administrator, Analytics. Absent further order of the Court, the Claims Administrator shall have such duties and responsibilities as are set forth in the Settlement Agreement.

19. The Court approves of Plaintiff's designation of Huntington National Bank as Escrow Agent. Absent further order of the Court, the Escrow Agent shall establish the Escrow Account and have such duties and responsibilities in such capacity as are set forth in the Settlement Agreement.

20. The Claims Administrator may process validly submitted claims pursuant to this Court's orders and the Settlement Agreement.

21. All members of the Settlement Class 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.

22. 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 his, her, or its own choice. Any member of the Settlement Class who does not enter an appearance will be represented by Class Counsel.

III. ATTORNEY'S FEES AND LITIGATION EXPENSES

23. Plaintiff's proposed award of attorney's fees is both fair and reasonable in relation to the total relief made available for Class Members, *see Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294-96 (11th Cir. 1999), considering the factors outlined in *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 772 n.3 (11th Cir. 1991), that are relevant to this case.

- a. The \$182,500 request, amounting to 25% of the maximum funds made available to Class Members, is comparable to common fee awards in this Circuit and well below the general 50% upper limit. *See Camden I*, 946 F.2d at 774-75.
- b. Class Counsel is experienced in class litigation, expended several years of labor in prosecuting the case, and obtained a favorable settlement for the Class Members despite the case involving difficult questions of law and fact.

- c. The Notice Form informed class members of the maximum requested fee and expense amount and their ability to object. *See* ECF No. 178-1 at 15-16. There have been no timely objections.

24. Plaintiff's proposed reimbursement of expenses is both fair and reasonable. As outlined by Class Counsel in the Fairness Hearing, the \$40,000 request represents only a partial reimbursement of more than \$70,000 in expenses incurred—including for filing, expert and consultant work, transcripts, and mediation. Those costs were necessarily incurred and paid in furtherance of the prosecution of this Action for the benefit of Class Members. There have been no timely objections.

25. The motion for final settlement approval and dismissal of the case with prejudice (ECF No. 178) is GRANTED. The motion for attorney's fees and expenses (ECF No. 179) is GRANTED. Plaintiff shall recover \$182,500 in attorney's fees and \$40,000 in costs.

26. The clerk will enter a judgment that says, "This case is dismissed with prejudice. Plaintiff's claims against Defendants Overby-Seawell Company and Certain Underwriters of Lloyd's of London were resolved on motions to dismiss for failure to state a claim. The court separately granted Plaintiff's motion for final approval of its settlement with Defendant Centennial Bank."

The clerk will close the file.

SO ORDERED on May 25, 2023.

s/ Allen Winsor
United States District Judge