

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case Number: 21-61376-CV-MARTINEZ

JILL ABERCROMBIE, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

TD BANK, N.A.,

Defendant.

PRELIMINARY APPROVAL ORDER

THIS CAUSE came before this Court upon Lead Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Incorporated Memorandum of Law, (ECF No. 28). This Court has reviewed the motion and pertinent portions of the record and is otherwise fully advised of the premises.

Plaintiff Jill Abercrombie and Defendant TD Bank, N.A., by their respective counsel, have submitted a Settlement Agreement and Releases (the "Settlement") to this Court, and Plaintiffs have moved under Federal Rule of Civil Procedure 23(e) for an order: (1) finding that the Court will likely be able to approve terms the terms of the Settlement as fair, adequate and reasonable; (2) finding that the Court will likely be able to certify the Settlement Class for settlement purposes only; (3) approving the Notice Program set forth in the Settlement and directing Notice to the Settlement Class; (4) appointing Plaintiff as the Class Representative and her counsel as Class Counsel; and (5) scheduling a final approval hearing to consider final approval of the Settlement

and any application for attorneys' fees, expenses, and Class Representative service award,¹ if any. The Court has considered the terms of the Settlement, the exhibits to the Settlement, the record of proceedings, and all papers and arguments submitted in support. Having considered the issue, it is

ORDERED AND ADJUDGED that Lead Plaintiff's Unopposed Motion for Preliminary Approval and Authorization, (ECF No. 28), is GRANTED as follows:

1. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Plaintiff and Defendant (the "Parties") pursuant to 28 U.S.C. § 1332(d).
2. The Court appoints Plaintiff Jill Abercrombie as Class Representative and her counsel Cohen & Malad, LLP; Kaniel Gold, PLLC; and Kopelowitz Ostrow, P.A. as Class Counsel.
3. Capitalized terms not otherwise defined in this Order have the definitions set forth in the Settlement.

SUMMARY OF THE LITIGATION AND SETTLEMENT

4. On June 3, 2021, Plaintiff filed her Class Action Complaint alleging claims relating to Defendant's practice of charging overdraft fees on checks and Automated Clearing House ("ACH") transactions that were paid by Defendant despite insufficient funds in an Account after having been re-submitted by a merchant or other third party after having been previously returned unpaid by Defendant for insufficient funds. Plaintiff claimed this practice breached her contract with Defendant.
5. On July 6, 2021, Defendant filed a Notice of Removal under 28 U.S.C. § 1146, removing the action to this Court. On August 13, 2021, Defendant filed a Motion to Dismiss Class Action Complaint to which Plaintiff responded on September 10, 2021.

¹ This Court notes that the Eleventh Circuit has prohibited incentive awards in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1260–61 (11th Cir. 2020). At the time of the final approval hearing, this Court will not entertain argument that Lead Plaintiff is entitled to an incentive award unless the Eleventh Circuit has vacated its decision in *Johnson* by that date.

6. The Parties engaged in informal discovery and settlement discussions, and signed a term sheet on September 15, 2021. They then negotiated the detailed Settlement and exhibits that are now before the Court.

7. The Settlement provides, among other things, that as consideration for the release of claims from Settlement Class Members, Defendant will pay \$4,245,000.00 into a Settlement Fund. The Settlement Fund (after deducting Court-approved costs) will be distributed pro rata to Settlement Class Members in accordance with the procedures in the Settlement. Settlement Class Members who have a current account with Defendant will receive their payments by a credit to their accounts, while Settlement Class Members whose accounts are closed will be mailed a check. Settlement Class Members are not required to submit a claim in order to receive any of this relief.

8. The Settlement also provides for emailed and mailed Notice to the Settlement Class and the proposed Notices are included as exhibits to the Settlement.

PRELIMINARY APPROVAL

9. Federal Rule of Civil Procedure 23(e) requires court approval of class action settlements. In general, the approval process involves three stages: (1) notice of the settlement to the class after “preliminary approval” by the Court; (2) an opportunity for class members to opt out of, or object to, the proposed settlement; and (3) a subsequent hearing at which the Court grants “final approval” upon finding that the settlement is “fair, reasonable, and adequate,” after which judgment is entered, class members receive the benefits of the settlement, and the defendant obtains a release from liability. Fed. R. Civ. P. 23(e)(1)–(2), (4)–(5).

10. In deciding whether to grant “preliminary approval” to a proposed settlement, the Court evaluates two issues: (1) whether “the court will likely be able to” grant final approval to the settlement as a “fair, reasonable, and adequate” compromise, so that it makes sense to give

notice to the proposed class members; and (2) whether “the court will likely be able to” certify the class for purposes of entering judgment on the settlement. Fed. R. Civ. P. 23(e)(1)(B).

I. The Court will “likely be able to” grant final approval to the Settlement as “fair, reasonable, and adequate.”

11. Under Rule 23(e), approval should be given so long as the settlement is “fair, adequate and reasonable and is not the product of collusion between the parties.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (internal quotation marks omitted). The Court “should always review the proposed settlement in light of the strong judicial policy that favors settlements.” *Id.* (citations omitted). The Court may rely on the judgment of experienced class counsel and “absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.” *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (citation omitted). Settlement “has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient use of judicial resources, and achieve the speedy resolution of justice[.]” *Turner v. Gen. Elec. Co.*, No. 2:05-CV-186-FTM-99DNF, 2006 WL 2620275, at *2 (M.D. Fla. Sept. 13, 2006). For these reasons, “[p]ublic policy strongly favors the pretrial settlement of class action lawsuits.” *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992).

12. Under Federal Rule of Civil Procedure 23(e)(2), as amended in December 2018, in considering whether a proposed settlement is “fair, reasonable, and adequate,” the Court considers whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

13. Under this standard, the Court finds that it will “likely be able to” grant final approval to the Settlement as “fair, reasonable, and adequate,” such that the Settlement warrants preliminary approval and dissemination of notice to the Settlement Class so that Settlement Class Members may express any objections to the Settlement or decide whether to opt-out of the Settlement or participate in it. The Settlement appears at this preliminary approval stage to be procedurally fair, reasonable, and adequate in that the Class Representative and Class Counsel have adequately represented the Settlement Class in litigating the merits of the dispute and in obtaining a Settlement of significant value through arm's-length negotiations by sophisticated counsel. Fed. R. Civ. P. 23(e)(2)(A)–(B). Likewise, the Settlement appears at this preliminary approval stage to be substantively fair, reasonable, and adequate in that the relief provided is substantial particularly when taking into account the costs, risks, and delays of trial. Fed. R. Civ. P. 23(e)(2)(C). The proposed method of distributing relief to the Settlement Class Members is through direct deposits or direct mailed checks, meaning Settlement Class Members do not need to make a claim and will receive payments. *Id.* Attorneys' fees will be paid only after final approval of the Settlement and only by approval of the Court, which will consider any request for fees in conjunction with final approval. *Id.* Finally, the proposal treats Settlement Class Members

equitably relative to one another because the amount of recovery is based on the amount of alleged Retry OD Fees, meaning Settlement Class Members who allegedly incurred more damages will receive more under the Settlement. Fed. R. Civ. P. 23(e)(2)(D).

II. The Court will “likely be able to” certify the Settlement Class for purposes of entering judgment on the Settlement.

14. In considering whether the Court will “likely be able to” certify the Settlement Class for purposes of entering judgment on the Settlement, the Court must determine whether the Settlement Class likely meets the requirements for class certification under Federal Rule of Civil Procedure 23(a) (numerosity, commonality, typicality, and adequacy) and any one of the subsections of Federal Rule of Civil Procedure 23(b), here subsection 23(b)(3) (predominance and superiority).

15. The Court finds, for settlement purposes only, that it will likely be able to certify the proposed Settlement Class, defined as:

All current and former holders of TD Bank, N.A. consumer checking Accounts who, from June 1, 2015 through and including April 30, 2021, were assessed at least one Retry OD Fee. Excluded from the Settlement Class are Defendant, its parents, subsidiaries, affiliates, officers and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

16. Specifically, the Court finds for settlement purposes that the Settlement Class likely satisfies the following requirements of Federal Rule of Civil Procedure 23:

(a)(1) Numerosity: There are thousands of members of the Settlement Class spread across numerous states. Joinder is therefore impracticable. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 490 (S.D. Fla. 2003) (“The Eleventh Circuit has held that “[g]enerally, less than twenty-one is inadequate, more than forty adequate.”) (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

(a)(2) Commonality: Under Rule 23(a)(2), a party must show that the claims rest on a “common contention.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U. S. 338, 350 (2011). Here, the commonality requirement is satisfied for settlement purposes because there are multiple questions of law and fact that center on Defendant’s class-wide fee policies and practices and are common to the Settlement Class.

(a)(3) Typicality: The Class Representative’s claims are typical of the claims of the Settlement Class. The Class Representative’s claim is that she was allegedly charged multiple Overdraft fees on a single item, which she alleges violated Defendant’s standard form contract. These are the same claims as the claims of the Settlement Class. *Alhassid v. Bank of America, N.A.*, 307 F.R.D. 684, 697 (S.D. Fla. 2015) (“the typicality requirement is permissive: representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.”).

(a)(4) Adequacy: The Class Representative will fairly and adequately protect the interests of the Settlement Class because she shares the same claims as the Settlement Class, has no interests in conflict with the Settlement Class, and Class Counsel is qualified to conduct the litigation. *Justice v. Rheem Mfg. Co.*, 318 F.R.D. 687, 695 (S.D. Fla. 2016) (finding adequacy where “Plaintiffs assert that there are no conflicts between the Plaintiffs and the proposed class” and “[t]he Court has no reason to believe that the Named Plaintiffs and their counsel would not adequately protect the interests of the class.”).

(b)(3) Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement purposes, as well, because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for thousands of members of the Settlement Class in a single, coordinated proceeding is superior to thousands of

individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) requires that the proposed class be sufficiently cohesive to warrant adjudication by representation. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). Rule 23(b)(3) also requires Plaintiffs to demonstrate that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *See Fed. R. Civ. P. 23(b)(3)*. Here, the predominance requirement is satisfied for settlement purposes because common questions present a significant aspect of the case and can be resolved for all members of the Settlement Class in a single common judgment. *Klay v. Humana, Inc.*, 382 F.3d 1241, 1254 (11th Cir. 2004) (holding that for Rule 23(b)(3) predominance, “it is not necessary that all questions of law or fact be common, but only that some questions are common and that they predominate over the individual questions.”). Further, resolving the claims of the members of the Settlement Class in one proceeding is superior to multiple class actions clogging up the Court’s docket. *See Jackson v. Motel 6 Multipurpose Inc.*, 130 F.3d 999, 1006 (11th Cir. 1997) (superiority is satisfied where there will be “increased efficiency” through the class mechanism).

17. Having found that (1) “the court will likely be able to” grant final approval to the settlement as a “fair, reasonable, and adequate” compromise, so that it makes sense to give notice to the proposed Settlement Class members; and (2) “the court will likely be able to” certify the Settlement Class for purposes of entering judgment on the Settlement, the Court hereby GRANTS preliminary approval to the Settlement.

NOTICE TO THE SETTLEMENT CLASS

18. Upon granting preliminary approval under Federal Rule of Civil Procedure 23(e)(1), the Court “must direct to class members the best notice that is practicable under the

circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” Fed. R. Civ. P. 23(c)(2)(B).

19. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

20. There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings. *United States v. Alabama*, 271 Fed. App’x 896, 901 (11th Cir. 2008).

21. The Court finds that the Notice Program, including the forms of Notice attached as Exhibit 1 and 2 to the Settlement and the plan for distribution of the Notice by email and mail, satisfies these requirements and Due Process and constitutes “the best notice that is practicable under the circumstances.” The Court appoints Epiq Systems, Inc. as Settlement Administrator and directs that the Notice Program be implemented as set forth in the Settlement and this Order.

22. Within thirty (30) calendar days of the date of Preliminary Approval, Defendant will provide the Settlement Administrator with the following information, which will be kept strictly confidential between the Administrator and Defendant, for each Settlement Class Member: (i) name; (ii) number of Retry OD Fees per account for the Class Period; (iii) relevant refund information for the Class Period; (iv) last known e-mail address; and (v) last known mailing address. The Settlement Administrator shall use this information solely for the purpose of administering the Settlement and shall keep the information strictly confidential.

23. Within sixty (60) calendar days of the date of Preliminary Approval, the Settlement Administrator shall send Notices in the forms attached to the Settlement to the Settlement Class members. The Settlement Administrator shall send the Email Notice to all Settlement Class members for whom Defendant has provided the Settlement Administrator with an e-mail address. The Settlement Administrator shall send the Postcard Notice to all Settlement Class members for whom Defendant has not provided an email address to the Settlement Administrator and to all Settlement Class members to whom the Settlement Administrator sent Email Notice but for whom the Settlement Administrator receives notice of an undeliverable email. The Postcard Notice shall be mailed after the Settlement Administrator updates mailing addresses provided by Defendant with the National Change of Address database and other commercially feasible means. The Settlement Administrator shall also maintain a website containing the Complaint, the Long Form Notice attached to the Settlement, Plaintiffs' motion seeking Preliminary Approval, this Preliminary Approval Order, Plaintiffs' motion seeking Final Approval, and the Final Approval Order, until at least ninety (90) calendar days after the date of Final Approval. The Settlement Administrator shall send the Long Form Notice by mail to any Settlement Class member who requests a copy.

PROCEDURES FOR OPTING OUT OF OR OBJECTING TO THE SETTLEMENT

24. A member of the Settlement Class may opt-out of the Settlement Class at any time prior to the Opt-Out Deadline, provided the opt-out notice that must be sent to the Settlement Administrator is postmarked no later than the Opt-Out Deadline. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of the Settlement, including the Releases. If an Account has more than one Account Holder, and if one Account Holder excludes himself or herself from the Settlement Class, then all Account Holders on that Account shall be deemed to have opted out of the Settlement with respect to that Account, and no Account Holder shall be entitled to a payment under the Settlement.

25. Except for Class Members who opt out of the Settlement Class in compliance with the foregoing, all Class Members will be deemed to be Settlement Class Members for all purposes under the Settlement, the Final Approval Order, and the releases set forth in the Settlement.

26. Objections to the Settlement, to the application for attorneys' fees and costs, and/or to the Service Award² must be sent to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Objection Deadline, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label. For an objection to be considered by the Court, the objection must also set forth: the name of the Action; the objector's full name, address and telephone number; all grounds for the objection, accompanied

² See *supra* note 1.

by any legal support for the objection known to the objector or objector's counsel; the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years; any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity; the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and the objector's signature (an attorney's signature is not sufficient). Class Counsel and/or Defendant may conduct limited discovery on any objector or objector's counsel consistent with the Federal Rules of Civil Procedure.

27. Except for Settlement Class members who have timely and validly asserted an objection to the Settlement, all Settlement Class Members shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement.

MOTIONS FOR FINAL APPROVAL, FEES, EXPENSES, AND SERVICE AWARD

28. Class Counsel shall file their application for attorney's fees and expenses no later than 60 days from the date of this Order. Plaintiff shall file her Motion for Final Approval of the Settlement no later than 130 days from the date of this Order. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and expenses, for the Service Award for the Class Representatives, if any,³ and for all Settlement Administration Costs.

FINAL APPROVAL HEARING

29. The Court will hold a Final Approval Hearing on **Wednesday, September 7, 2022, at 11:00 a.m.**, at Wilkie D. Ferguson, Jr. United States Courthouse, 400 North Miami Avenue, Room 10-1, Miami, Florida 33128, or by videoconference or teleconference if determined by separate order, to assist the Court in determining whether to grant Final Approval to the Settlement, enter the Final Approval Order and Judgment, and grant any motions for fees, expenses, and service award, if any.⁴

OTHER PROVISIONS

30. Upon entry of Judgment by the Court in accordance with the Settlement, all Settlement Class Members shall be barred from asserting any Released Claims against the

³ See *supra* note 1.

⁴ See *supra* note 1.

Released Parties and any such Settlement Class Member shall be conclusively deemed to have released any and all such Released Claims against the Released Parties.

31. Pending final determination as to whether the Settlement should be approved, the Court hereby asserts jurisdiction over the Settlement Class Members for the purposes of effectuating this Settlement and releasing and dismissing with prejudice their Released Claims.

32. All proceedings are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination as to whether the Settlement should be approved, Plaintiff, all members of the Settlement Class, and persons purporting to act on their behalf, are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) against any of the Released Parties any action or proceeding in any court or other tribunal asserting any of the Released Claims.

33. The Court may finally approve the Settlement at or after the Final Approval Hearing with modifications agreed to by the Parties, and without further notice to the Settlement Class Members.

34. The Settlement does not constitute an admission, concession, or indication by Defendant of the validity of any claims in this Action or of any wrongdoing, liability, or violation of law by Defendant, nor of the appropriateness of certification of a litigation class. To the contrary, Defendant has advised the Court that it believes it is without any liability whatsoever for any of the claims included in the Settlement and is participating in the Settlement to put an end to all such claims and the risks and expense of protracted litigation.

35. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order and Judgment as contemplated in the Settlement, or

any such order is reversed on appeal, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
- b. All of the Parties' respective pre-Settlement claims and defenses will be preserved;
- c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Plaintiff or Defendant on any point of fact or law;
- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Settlement Agreement, the Notice, court filings, orders, and public statements, may be used as evidence in this or any other proceeding. In addition, neither the fact of, nor any documents relating to, any Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence; and
- e. Neither the fact of this Order nor any of its contents, nor the Parties' Settlement Agreement and submissions nor any of their contents, nor the fact of Defendant's willingness to enter into a class action settlement, may be used to support certification of a litigation class in this or any other proceeding.

36. Each and every time period and provision of the Settlement Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

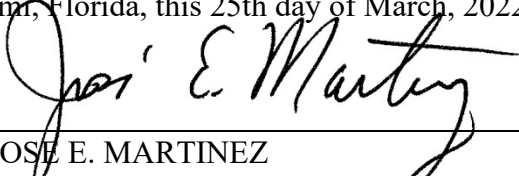
37. All costs incurred in notifying members of the Settlement Class, as well as administering the Settlement, shall be paid as set forth in the Settlement Agreement.

SCHEDULE OF DEADLINES

38. The Court sets the following deadlines:

Event	Date
Deadline for Defendant or Settlement Administrator to serve on the appropriate government officials the notice required by 28 U.S.C. § 1715	10 days after Plaintiff's filing of the motion for preliminary approval of the Settlement
Deadline for Defendant to deposit \$4,245,000.00 with the Settlement Administrator to create the Settlement Fund	14 days from the date of this Order
Deadline for Defendant to provide the Settlement Administrator with the Class Member List	30 days from the date of this Order
Deadline for Settlement Administrator to send E-Mail and Mail Notice to Settlement Class members	60 days from the date of this Order
Deadline for any petition for an award of attorneys' fees and costs	60 days from the date of this Order
Opt-Out Deadline	120 days from the date of this Order
Objection Deadline	120 days from the date of this Order
Deadline for Motion for Final Approval	130 days from the date of this Order
Final Approval Hearing	Wednesday, September 7, 2022, at 11:00 a.m.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of March, 2022.



 JOSE E. MARTINEZ
 UNITED STATES DISTRICT JUDGE

Copies furnished to:
 Magistrate Judge Snow
 All Counsel of Record