

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

**BYRON JOHNSON, on behalf of himself
and all others similarly situated,**

Plaintiff,

v.

**PHP MANAGEMENT SERVICES d/b/a
CONDOMINIUM ASSOCIATES,**

Defendant.

Case No.: 24-CA-001417

CLASS ACTION

**AMENDED (as to date of hearing) ORDER CERTIFYING SETTLEMENT CLASS
AND GRANTING PRELIMINARY APPROVAL
OF PROPOSED CLASS ACTION SETTLEMENT**

THIS CAUSE came before the Court on the Unopposed Motion, Docket No. 27, filed by Byron Johnson, individually and on behalf of all others similarly situated, (“Johnson” or “Plaintiff”), seeking an order certifying a settlement class and preliminarily approving the terms of the proposed settlement between the parties. The Court has reviewed the pleadings, motion and supporting materials submitted by the parties, and being otherwise advised in the premises, finds and orders as follows:

THE CLASS SETTLEMENT APPROVAL PROCESS

To certify a class action for settlement purposes, a court must first determine that all the requirements for class certification set forth in Rule 1.220(a), Fla. R. Civ. P., and at least one of the requirements of subdivision of Rule 1.220(b), are satisfied. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620-20 (1997) (explaining that a settlement class must satisfy the requirements of numerosity, commonality, typicality, and adequacy of representation, as well as predominance and superiority).

Once the Settlement Class is determined to meet the requirements for class certification pursuant to Rule 1.220, the Court's analysis turns to the terms of the proposed settlement. *Grosso v. Fidelity National Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008). The approval of a class action settlement as fair, adequate, and reasonable is a two-step process. First, the Court must determine whether the proposed settlement terms fall within the range of reasonableness such preliminary approval is warranted. Second, after notice is given to the class, the Court must evaluate whether final approval is warranted. *See Manual for Complex Litigation*, Third, § 30.41, at 236-37 (1995).

I. FACTUAL BACKGROUND

This is a class action for alleged violations of Florida Statutes §720.30851(6) and Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. 501.201, *et. seq.* arising out of estoppel certificate fees charged to sellers of real properties subject to HOA dues, where Plaintiff alleges such fees were unreasonable and/or exceed the statutory cap established in Section 720.30851(6) of the Florida Statutes.

On or around June 6, 2023, Plaintiff sold a home in Thonotosassa, Florida, (the "Property") that was subject to the Stonelake HOA. Because the Property is deed restricted by the Stonelake HOA, Plaintiff's sale required an estoppel certificate pursuant to Section 720.30851(6) of the Florida Statutes. Stonelake HOA hired Condominium Associates to manage the property. Thus, Condominium Associates was, at all relevant times, acting as the agent of the Stonelake HOA for Plaintiff's estoppel certificate. Plaintiff paid a total of \$333.95 for his estoppel certificate and other charges, which exceeded the \$299 cap under § 720.30851(6), Fla. Stat.

Section 720.30851(6) of the Florida Statutes provides:

An association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which

may not exceed \$250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed \$150.

For purposes of Settlement, the Parties have agreed that Florida Statutes §§ 718.116(8)(f), 719.108(6)(f), 720.30851(6) (the “Estoppel Certificate Statutes”) each provide the same relevant statutory cap language:

[A]n association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$250. . .

In addition, Florida Statute §720.30851(9) provides:

The fees specified in this section shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

On July 1, 2022, The Florida Department of Business and Professional Regulations (“DBPR”) evaluated the maximum estoppel certificate fee charged by HOAs and their agents and increased the maximum fee for preparation and delivery of the estoppel certificate to \$299.

Plaintiff alleges that the \$333.95 he paid to sell his property exceeded the \$299 cap by \$34.95, for preparation and delivery of an estoppel certificate. Condominium Associates sets the price at \$297.00 for the price of preparation and delivery of Estoppel Certificates in HomeWise’s Platform for all HOAs it manages in Florida, despite knowing that it will charge an additional \$27.00 HomeWise Platform Fee and \$9.95 Convenience Fee related to the preparation and delivery

of the Estoppel Certificate, which in total equals \$333.95 (\$297.00 + \$27.00 + \$9.95), exceeding § 720.30851 (6) Fla. Stat. (2022)'s \$299.00 limit.

The lawsuit challenges similar charges imposed upon other allegedly similarly situated property owners by Condominium Associates, and seeks a refund of all amounts Plaintiff alleges were paid above the statutory cap.

After confidential discovery and settlement negotiations, at arm's length, the parties reached a proposed class action settlement. (See Exhibit 1). The Settlement Class is defined as follows:

(i) The owner-seller of any property, in a Condominium Associates managed community; (ii) who requested and received an estoppel certificate from Condominium Associates; (iii) paid amounts for the estoppel certificate between February 16, 2020 and March 17, 2024; (iv) and the total paid fees exceeded \$250 between February 16, 2020 to June 30, 2022 or \$299 between July 1, 2022 to March 17, 2024, if Condominium Associates' estoppel certificate fee is added together with the third-party convenience fee and the third-party service charge.

Discovery revealed that the amounts charged during the class period varied among class members based on practices of the Defendant's various companies. Within Defendant is two entities that charged fees in excess of the cap, Condominium Associates and Artemis. The charges during the class period varied somewhat within Condominium Associates (\$29.95-\$31.95) and significantly with Artemis (\$10-\$29). The class definition includes all persons who were charged between \$10 and \$31.95 over the Statutory Cap. Discovery revealed that \$6.95 of the amount charged over the cap was a convenience fee for paying by credit card, a charge that, according to Defendant, the Class could have avoided by paying with a check. The Parties have negotiated to exclude convenience fees from the amount to be refunded. After deducting the convenience fees each Plaintiff will automatically receive a settlement check equal to 72% of the average amount

paid above the statutory cap. The Class is broken down into four categories based upon the average amount paid above the statutory cap. Under the negotiated settlement, each Settlement Class Member will receive a Settlement Payment in the following format:

<u>Payment</u>	<u>Refund</u>	<u>Class members</u>	<u>Total Fund</u>
Condo Ass. \$24	\$17.28	2400	\$41,472
Artemis \$7.55	\$5.40	944	\$5,097.60
Artemis \$15.05	\$10.84	7358	\$79,760.72
Artem is \$22.05	\$15.88	3,822	\$60,693.36
			<u>\$187,024</u>

As of March 17, 2024, Defendant also stopped charging amounts above the limit referenced in the statute, inclusive of HomeWise Fees and Convenience Fees. For these reasons, the Court should find that the settlement amount falls within the “range of reasonableness” such that the class should be certified and notice should be issued to the Class.

The parties have asked this Court to find that the Settlement falls within the “range of reasonableness” such that the class should be certified and notice should be issued to the Class.

II. CONCLUSIONS OF LAW REGARDING CLASS CERTIFICATION

For settlement purposes only, and based upon the Court’s review of the Agreement and Plaintiff’s Unopposed Motion for Preliminary Approval, pursuant to Fla. R. Civ. P. 1.220(a) and (b)(3), the Court hereby certifies the following class (“Settlement Class”):

- (i) The owner-seller of any property, in a Condominium Associates managed community; (ii) who requested and received an estoppel certificate from Condominium Associates; (iii) paid amounts for the estoppel certificate between February 16, 2020 and March 17, 2024; (iv) and the total paid fees exceeded \$250 between February 16, 2020 to June 30, 2022 or \$299 between July 1, 2022 to March 17, 2024, if Condominium Associates’ estoppel certificate fee is added together with the third-party convenience fee and the third-party service charge.

A. Numerosity

Discovery revealed that there are approximately 14,524 Settlement Class Members. For purposes of approving the Settlement Agreement and certifying the Settlement Class only, the Court finds that joinder of approximately 14,524 persons to this action would be impractical. Accordingly, this first requirement is satisfied.

B. Commonality

The Court finds that the commonality requirement is satisfied, for purposes of approving the Settlement Agreement and certifying the Settlement Class only, in that all members of the Class were subject to Condominium Associate's alleged common business practice of (a) allegedly charging an unreasonable fee for preparation and delivery of an estoppel certificate and/or (b) allegedly charging an amount in excess of Florida Statutes §§ 718.116(8)(f), 719.108(6)(f), 720.30851(6) for preparation and delivery of an estoppel certificate. Regardless of whether the Plaintiff or Defendant are ultimately correct, for purposes of approving the Settlement Agreement and certifying the Settlement Class only, the issue is common to all class members.

C. Typicality

The claims alleged by Plaintiff are typical of the claims of the Class Members. All members of the proposed class were harmed by Defendant charging and collecting more than \$250 or \$299 respectively for the preparation and delivery of Estoppel Certificates. There is nothing peculiar about Plaintiff's experience with Defendant that makes him different from other members of the class. Because, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only, Plaintiff possesses the same legal interest and has endured the same alleged legal injury as the other members of the class, the typicality requirement of Rule 1.220(a) is also satisfied.

D. Adequacy

The Court finds that Plaintiff has no interests antagonistic to the class he seeks to represent and that Class Counsel is experienced in litigating class action cases. Accordingly, the adequacy requirement is satisfied for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only.

E. Rule 1.220(b) Requirements

The Court also finds that the requirements of Rule 1.220(b)(3) have been satisfied, for the purposes of approving the Settlement Agreement and certifying the Settlement Class only. In particular, the Court finds that the predominating common issue in this matter is whether Defendant engaged in a common course of conduct, or common practice, of allegedly charging estoppel certificate fees that exceeded the alleged statutory cap and/or are unreasonable. As a result, Plaintiff alleges that Defendant could not legally retain the excess amounts collected. The legality of these common courses of conduct by Defendant is the predominating common question in this litigation. Therefore, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only, the facts of this matter satisfy the predominance requirement of Rule 1.220(b)(3).

The Court also finds, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only, that class treatment via a class-wide settlement is superior to individual litigation of the claims of each putative class member. In particular, the Court notes that the small amounts of individual damages effectively preclude individual actions seeking relief for the alleged overcharges at issue. Even if class members were able to find counsel to represent them, most are wholly unaware that they have claims.

Thus, for purposes of preliminarily approving the Settlement Agreement and certifying the Settlement Class only, this Court finds that all of the requirements for Class Certification pursuant to Rule 1.220(a) and (b)(3) are satisfied and the Motion for Class Certification will be **GRANTED**, for settlement purposes only.

III. CONCLUSIONS OF LAW REGARDING THE FAIRNESS OF THE SETTLEMENT TERMS

When determining whether to grant preliminary approval to a class action settlement, the court must first certify the class for settlement purposes, and then consider the fairness of the settlement. *See e.g., Grosso v. Fidelity Nat'l Title Ins. Co.*, 983 So.2d 1165, 1170 (Fla. 3d DCA 2008). Having certified the class for purposes of this settlement, the Court shall now consider the fairness of the settlement.

To approve a class action settlement, the court must find that the agreement was fair, reasonable, and adequate. *Grosso*, 983 So. 2d at 1173-74 (Fla. Dist. Ct. (*citing* Fed. R. Civ. P. 23(e)(1)(C)), and *Ramos v. Philip Morris Cos.*, 743 So.2d 24, 31 (Fla. 3d DCA 1999)). The factors that should be considered in making this determination include: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risk of establishing liability; (5) the risk of establishing damages; (6) the risk of maintaining a class action; (7) the ability of the defendant to withstand a greater judgment; (8) the reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Id.* (*citing Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir.1984)).

Under the terms of the proposed Settlement, Defendant has agreed to create a Settlement Fund of \$280,000 that will be used to pay attorneys fees, costs and up to a 72% refund in estoppel certificate fees to each class member. There are believed to be approximately 14,524 members of

the Settlement Class. Each Settlement Class Member who does not opt out of the settlement will automatically receive a Settlement Payment in the amount of 72% of their overcharge.

The \$2,500.00 class representative award to Plaintiff Johnson also appears to be reasonable in light of the time and effort expended by the Plaintiff in representing the Settlement Class.

The Attorneys' Fees and Costs of up to 1/3rd of the common fund appear to be reasonable and represents less than the total time and expenses of Plaintiff's counsel at their normal hourly rate.

Therefore, the Court finds that the Settlement Agreement, when viewed in light of the *Bennett* factors, falls within the range of reasonableness such that Preliminary Approval of the Settlement is warranted, and Notice should be issued to the class.

IV. CONCLUSIONS OF LAW REGARDING THE PROPOSED NOTICE TO THE SETTLEMENT CLASS

Notice to the class must be given before entry of judgment in order to allow class members the opportunity to either participate in the proceedings, or to opt out of the proceedings. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974) (notice and opportunity to opt out required by due process). Florida Rule of Civil Procedure 1.220 dictates that, "the notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice." Fla. R. Civ. Pro. 1.220.

The proposed Notice provided to the Court in advance of the hearing on Plaintiff's Unopposed Motion for Preliminary Approval explains the terms of the Settlement, provides instructions for how to opt-out of the Settlement Class, and explains the legal ramifications of

staying a Settlement Class Member. The Notice also allows Settlement Class Members to appear through their own counsel and or to object to the terms of the Settlement. Accordingly, this Court finds that the proposed Notice meets the requirements of Rule 1.220 and due process

Based on the above findings of fact and law, it is, therefore,

ORDERED:

1. This action is certified, as set forth above, pursuant to Florida Rule of Civil Procedure 1.220(a) and (b)(3).

2. The Court hereby appoints Byron Johnson as class representative of the Settlement Class, and appoints Brian W. Warwick, Esq., and Jeffrey Newsome, Esq. of the law firm Varnell & Warwick, P.A., as Counsel for the Settlement Class.

3. A Final Settlement Fairness Hearing is scheduled for November 22nd, 2024, at 9:45 a.m. via Zoom (Zoom ID is 935 0735 6436), and that hearing will address the following issues:

a. whether the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether the Settlement should be finally approved by the Court;

b. whether Final Judgment as provided under the Settlement Agreement should be entered dismissing the Complaint filed in this action with prejudice;

c. whether to approve the awards to Plaintiff Johnson and Class Counsel of the incentive award and attorneys' fees and costs that have been negotiated by the parties; and

d. to rule upon such other matters as the Court may deem appropriate.

4. The Court approves the form, substance, and requirements of the Notice of Settlement (the “Notice”) submitted by the parties. The Settlement Administrator shall cause the Notice to be mailed to the Settlement Class Members as soon as practicable.

5. The form of the Notice, and method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meets the requirements of the Florida Rules of Civil Procedure and due process, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

6. Class Counsel is authorized to represent and act on behalf of the Settlement Class with respect to all acts required by the Settlement Agreement or such other acts which are reasonably necessary to consummate the spirit of the proposed Agreement.

7. All litigation, including discovery, other than further proceedings with respect to the Settlement, is stayed until further order of this Court.

8. Any Settlement Class Member may opt out by utilizing the procedures outlined in the Notice. The parties shall file a list of any Class Members who have timely and properly opted out of the Settlement with the Court prior to the Fairness Hearing.

9. Any Settlement Class Member may appear and show cause why the proposed Settlement of this action embodied in the Settlement Agreement should

not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered thereon, or why the incentive award to the Plaintiff should not be made, or why attorneys' fees or costs should not be awarded as provided in the Settlement Agreement; provided, however, that no Settlement Class Member or any other person, shall be heard or entitled to contest the approval of the proposed Settlement, or, if approved, the Judgment to be entered thereon, unless on or before fourteen (14) days prior to the Fairness Hearing, that person has caused to be filed written objections in the manner and form outlined in the Settlement Agreement, stating all supporting bases and reasons with:

Clerk of the Circuit Court
Circuit Civil
Hillsborough County Courthouse
800 E. Twiggs Street,
Tampa, FL 33602

and has served copies of all such papers at the same time upon the following by first-class mail, in accordance with the requirements of the Settlement Agreement:

Class Counsel

Brian W. Warwick
Jeffrey Newsome
Varnell & Warwick, P.A.
400 N. Shaley Drive, Suite 1900
Tampa, Florida 33602

Counsel for Defendants

Mitch Widom
Blizin Sumberg Baena Price & Axelrod, LLP
1450 Brickell Avenue, Suite 2300
Miami, Florida 33131

Attendance at the Fairness Hearing is not necessary in order for the objection to be considered by the Court; however, persons wishing to be heard orally in opposition to the approval

of the Settlement are required to indicate in their written objection their intention to appear at the hearing. All written objections shall conform to the requirements of the Settlement Agreement and shall indicate the basis upon which the person submitting the objections claims to be a member of the Settlement Class and shall clearly identify any and all witnesses, documents and other evidence of any kind that are to be presented at the Fairness Hearing in connection with such objections and shall further set forth the substance of any testimony to be given by such witnesses.

Any Settlement Class Member who does not make an objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement.

The foregoing certification of the Settlement Class is solely for the purpose of effectuating the Settlement. If the Settlement is not consummated for any reason, the foregoing conditional certification of the Settlement Class and appointment of the Class Representative and Class Counsel shall be void and of no further effect and the parties shall be returned to the positions each occupied prior to entry of this Order without prejudice to any factual or legal argument any party may have asserted in this Action.

This Settlement and all negotiations, proceedings, documents prepared and statements made in connection with this Settlement shall be without prejudice to any party and shall not be admissible into evidence, and shall not be deemed or construed to be an admission or confession by any party, or any member of the Settlement Class, of any fact, matter or proposition of law, and shall not be used in any manner for any purpose.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida this _____ day of _____, 2024.

Nancy L. Jacobs, Circuit Court Judge