

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:21-cv-61749-SINGHAL

GILMER BAUTISTA, *et al.*,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

THIS CAUSE is before the Court on the motion of Plaintiffs Gilmer Bautista, Gilmer's Enterprise LLC, Juan Mendoza, Alejandro Diaz, and Tyler Witter ("Plaintiffs"), for themselves and the Settlement Class Members, to preliminarily approve a Settlement Agreement entered into with Defendant, Wells Fargo Bank, N.A., to approve the form and method of providing notice to the Settlement Class of the proposed Settlement, and to set a date for a fairness hearing on the proposed Settlement.

WHEREAS, the Court has reviewed the Settlement Agreement, together with its exhibits;

WHEREAS, the Settlement Agreement provides that the Defendant shall pay a total of Twenty-Six Million Six Hundred Twenty-Five Thousand Dollars (\$26,625,000) to settle all claims in this Action;

WHEREAS, the Settlement appears to be the product of informed, arms-length settlement negotiations between Class Counsel, Defendant and the court-appointed Receiver over MJ Capital Funding, LLC over a period of months with the assistance of mediator Hunter R. Hughes III;

WHEREAS, the Court is familiar with and has reviewed the record, the Settlement Agreement, and Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and has found good cause for entering this Order.

NOW THEREFORE, it is **ORDERED** and **ADJUDGED** as follows:

The Settlement Class and Class Counsel

1. The Court finds upon preliminary evaluation that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court finds that giving notice of the Settlement is justified pursuant to Federal Rule of Civil Procedure 23(e)(1). The Settlement Agreement provides for a Settlement Class defined as "all persons and entities who invested money in the MJ Capital Scheme and suffered damages." Excluded from the Settlement Class are the Judge to whom this Action is assigned and any member of the Judge's staff and immediate family, Defendant and its directors and officers, and "WELLS FARGO EMPLOYEE 1" and "WELLS FARGO EMPLOYEE 2" as alleged in the Amended Class Action Complaint filed in the Action. Capitalized terms not defined herein shall have the definitions provided for in the Settlement Agreement.

2. The Court determines for settlement purposes that the proposed Settlement Class meets all of the requirements of Rule 23(a) and (b)(3).

3. The Court appoints Plaintiffs Gilmer Bautista, Gilmer's Enterprise LLC, Juan

Mendoza, Alejandro Diaz, and Tyler Witter as representatives of the proposed Settlement Class going forward.

4. The following lawyers, who were appointed interim Class Counsel in an Order dated July 25, 2022, are designated as class counsel for the Settlement Class pursuant to Rule 23(g): Jason Kellogg and Jeffrey C. Schneider of Levine Kellogg Lehman Schneider + Grossman LLP; Curtis B. Miner of Colson Hicks Eidson, P.A.; and Francisco R. Maderal, Jr. of Maderal Byrne PLLC. The Court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Settlement

5. The Court preliminarily finds that the Settlement is the product of non-collusive, arm's-length negotiations between experienced class action attorneys who were well informed of the strengths and weaknesses of the Action, and whose settlement negotiations were supervised by an experienced mediator, Hunter R. Hughes III. The Settlement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial and/or appeal. The Settlement falls within the range of possible recovery, compares favorably with the potential recovery when balanced against the risks of continued prosecution of the claims in the Action, and does not grant preferential treatment to Plaintiffs or their counsel.

6. The Court preliminarily approves the Settlement as fair, reasonable, and adequate and in the best interest of Plaintiffs and the other Settlement Class Members, subject to further consideration at the Final Approval Hearing to be conducted as described below.

7. In the manner and time set forth more fully in the Settlement Agreement,

the Consideration shall be paid to and managed by the Receiver, as the Settlement Administrator and as detailed in the Settlement Agreement. All funds constituting the Consideration held by the Settlement Administrator shall be deemed and considered to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds are distributed pursuant to the Settlement Agreement.

Manner and Form of Notice

8. The Court approves the Notice substantially in the form attached as Exhibit A of the Settlement Agreement. The proposed notice plan, which provides for notice via email to all Settlement Class Members for whom the Receiver has an e-mail address (and for those whose email is returned as undeliverable, notice via an alternative email or mailing address if located), and mail notice to the most recent mailing address reflected in the Receiver's records to all Settlement Class Members for whom the Receiver has a mailing address, but not an associated e-mail address, and to those whose e-mails are returned as undeliverable, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action; the effect of the proposed Settlement (including on the Released Claims and Receiver's Released Claims); how to submit completed Claim Forms in the case of Additional Claimants; the anticipated motion for attorneys' fees, reimbursement of litigation expenses and service awards; and their rights to participate in, opt-out of, or object to any aspect of the proposed Settlement. The plan and the Notice constitute due, adequate, and sufficient notice to Settlement Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process and all other applicable laws and

rules. The date and time of the Final Approval Hearing shall be included in the Notice before dissemination. Non-material modifications to the Notice may be made without further order of the Court.

9. The Claim Form attached as Exhibit B to the Settlement Agreement is approved.

Non-material modifications to the Claim Form may be made without further order of the Court.

10. The Court hereby appoints the Receiver, Corali Lopez-Castro, or any successor receiver(s) that may be appointed in the SEC Action as Settlement Administrator to carry out the Notice program, review Claim Forms, provide distributions to Settlement Class Members who hold Allowed Claims, and otherwise perform all administrative tasks set forth in the Settlement Agreement, including, but not limited to, engaging professionals and service providers to assist with her duties.

11. As soon as reasonably practicable after entry of this Order (“Preliminary Approval”), the Settlement Administrator shall establish the Settlement Website on which will be posted the Notice, the Settlement Agreement, motions for approval of the Settlement and for attorneys’ fees and expenses and supporting documents, the Preliminary Approval Order, and the Final Order and Judgment. The Notice shall direct recipients to the Settlement Website via a hyperlink. The Settlement Website shall provide for online submission of Claim Forms by Additional Claimants.

12. Within 45 days of Preliminary Approval, Notice shall be sent by e-mail to all Settlement Class Members for whom the Receiver has an e-mail address. Emails sent shall have a “return receipt” or other such function that permits the Settlement Administrator to reasonably determine whether emails have been delivered and/or

opened. Emails shall have a hyperlink that class member recipients may click and be taken to a landing page on the Settlement Website. For any Notice that is returned as undeliverable, the Settlement Administrator or its sending agent shall attempt to locate an alternative email or mailing address for the Settlement Class Member and resend the Notice promptly. As soon as reasonably practicable, the Settlement Administrator shall cause a readily identifiable section or page to the Receiver's website (<https://kttlaw.com/mjcapital/>) on which will be the link to the Settlement Website.

13. For Settlement Class Members for whom the Receiver has a mailing address, but not an associated email address, and to those Settlement Class Members whose emails are returned as undeliverable, the Notice shall be sent to the most recent mailing address as reflected in the Receiver's records. Skip tracing shall be performed for all returned mail. All costs of skip tracing will be considered Notice and Administrative Expenses.

14. All costs, fees, and expenses incurred in connection with providing Notice, reviewing opt-out requests and addressing inquiries regarding the Settlement, and otherwise constituting Notice and Administration Expenses under the Settlement Agreement shall be paid from the Settlement Fund. The Settlement Administrator is authorized and allowed to incur, and obtain reimbursement and pay, Notice and Administration Expenses and Taxes from the Settlement Fund, without leave of Court.

15. The Settlement Administrator will not require Settlement Class Members who previously returned a proof of claim form to the Receiver by July 19, 2022, the Receiver's Bar Date, to submit a Claim Form. However, with respect to Additional Claimants, the Settlement Administrator will require Settlement Class Members to timely

submit the Claim Form, as required by the terms of the Settlement Agreement, in order to verify a Settlement Class Member's status as a Settlement Class Member and establish their eligibility for any benefits under the Settlement, in addition to any other purposes consistent with the Settlement Administrator's responsibilities under the Settlement Agreement.

16. The dates provided for herein may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class.

The Final Approval Hearing

17. The Court will conduct a Final Approval Hearing on **June 30, 2023, at 11:00am** in **Courtroom 110 at the United States Courthouse, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301**, which is not less than 120 days from today, to determine whether: (a) the proposed Settlement Class should be certified for settlement purposes pursuant to Rule 23; (b) the Settlement should be approved as fair, reasonable, and adequate; (c) full effect should be given to the releases contained in the Settlement Agreement and those provisions finally approved as contained therein; (d) this matter should be dismissed with prejudice; (e) Class Counsel's application for attorneys' fees and expenses should be approved; and (f) whether the application for the Settlement Class Representatives to receive Service Awards should be approved, as well as (g) any other matters the Court deems necessary and appropriate.

18. Any Settlement Class Member who has not timely and properly excluded themselves from the Settlement Class in the manner described below may appear at the approval hearing in person or through counsel and be heard, as allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member

who excluded themselves from the Settlement Class shall be entitled to object or otherwise appear at the approval hearing, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

19. Papers in support of Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards shall be filed within 45 days after Preliminary Approval.

20. Class Counsel's motion for final approval of the Settlement shall be filed no less than 30 days before the Final Approval Hearing.

Objections and Appearances at the Final Approval Hearing

21. Any member of the Settlement Class may appear at the Final Approval Hearing and show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate, or why judgment should or should not be entered, or to comment on or oppose Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards. No person shall be heard or entitled to contest the approval of the Settlement or, if approved, the judgment to be entered approving the Settlement, Class Counsel's application for an award of attorneys' fees, reimbursement of litigation expenses, and Service Awards, unless that person filed a written objection with the Clerk of the United States District Court for the Southern District of Florida electronically, in person, or by first-class mail postmarked within 90 days after the date of this Order (the "Objection and Opt-Out Deadline"). Absent leave of this Court, objections shall not exceed 20, double-spaced pages in length.

22. For the objection to be considered by the Court, the objection must be in writing and set forth:

(a) The name of this proceeding (*Bautista, eta al. v. Wells Fargo Bank, N.A.*, Case No. 0:21-cv-61749, or similar identifying words such as “MJ Capital Lawsuit”);

(b) the Settlement Class Member’s full name, address, email address, and telephone number;

(c) an explanation of the basis upon which the objector claims to be a Settlement Class Member;

(d) whether the objection applies only to the objector, or to the Settlement Class as a whole, and the reasons for his, her or its objection, accompanied by any legal or factual support for the objection;

(e) the name of counsel for the objector (if any), including any current or former counsel who may seek or receive compensation for any reason related to the objection;

(f) the case name and civil action number of any other objections the objector or his or her or its counsel have made in any other class action cases in the last 5 years; and

(g) whether the objector intends to appear at the Final Approval Hearing on his or her or its own behalf or through counsel.

Any Settlement Class Member who timely and properly objects may appear at the Final Approval Hearing, either in person or through an attorney hired at the Settlement Class Member’s own expense.

23. Any Settlement Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights they may have to object to the Settlement, may have their objection stricken from the record and may lose their rights to appeal from approval of the Settlement. Any such Settlement Class Member shall also be bound by all the terms of the Settlement Agreement, this Order and by all proceedings, orders and

judgments, including, but not limited to, the releases in the Settlement Agreement if final judgment is entered.

24. Counsel for any objector must enter a Notice of Appearance no later than 14 days before the Final Approval Hearing.

25. Attendance at the Final Approval Hearing is not necessary, but persons wishing to be heard orally in connection with approval of the approval of the Settlement and/or the application for an award of attorneys' fees, reimbursement of expenses, and Service Awards must indicate in their written objection their intention to appear at the hearing.

Exclusions from the Settlement Class

26. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of his or her intent to be excluded to the parties at the addresses provided in the approved notice attached to the Settlement Agreement postmarked no later than May 25, 2023 (the "Opt-out Deadline"). Each written request for exclusion must be signed by the Settlement Class Member seeking exclusion, can only request exclusion for that one Settlement Class Member and must contain the following information:

(a) The name of this proceeding (*Bautista, eta al. v. Wells Fargo Bank, N.A.*, Case No. 0:21-cv-61749, or similar identifying words such as "MJ Capital Lawsuit");

(b) their full name;

(c) their current address;

(d) their telephone number;

(e) their e-mail address;

(f) a statement that the Settlement Class Member is a member of the Settlement Class but does not wish to participate in the Settlement; and

(g) their personal signature.

27. Any Settlement Class Member who does not timely and validly exclude themselves from the Settlement shall be bound by the terms of the Settlement. If Final Approval is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all subsequent proceedings, orders and judgments in this matter, including but not limited to the releases set forth in the Settlement Agreement and Final Order and Judgment.

28. The Settlement Administrator shall provide the Class Counsel and counsel for Defendant with copies of all opt-out notifications received and, within 14 days after the Opt-out Deadline, shall provide counsel with a final list of all who have timely and validly excluded themselves from the Settlement Class. All those Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

Action is Stayed

29. The stay in the Action will remain in effect until the entry of a Final Order and Judgment, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement.

Settlement Class Members and Receiver Enjoined

30. Pending entry of a Final Order and Judgment, and upon expiration of the Opt-Out Deadline, Settlement Class Members are preliminary enjoined from filing,

commencing, maintaining, prosecuting, intervening in, participating in (as class members or otherwise), or pursuing directly, representatively, or in any other capacity any Released Claim in any court or arbitration forum.

31. Pending entry of a Final Order and Judgment, Receiver is preliminary enjoined from filing, commencing, maintaining, prosecuting, intervening in, participating in (as a class member or otherwise), or pursuing directly, representatively, or in any other capacity any Receiver's Released Claim against the Receiver's Released Parties in any court or arbitration forum.

32. The Global Parties are authorized to take all necessary and appropriate steps to implement the terms of this Settlement Agreement.

SEC Action

33. Receiver shall move the Court for entry of an Order in the SEC Action:

(a) approving this Settlement Agreement, subject to the Court's final approval of the Settlement Agreement in the Action and entry of the Final Order and Judgment in the Action, (b) approving the Receiver serving as the Settlement Administrator under the Settlement Agreement and authorizing her to take all reasonable steps to comply with the terms of the Settlement Agreement, including, but not limited to, engaging professionals and service providers to assist with her duties and providing the Distributions as described in this Settlement Agreement, (c) authorizing the Settlement Administrator to incur and pay Notice and Administration Expenses and Taxes with funds from the Settlement Fund without the need for further court approval, and (d) approving the procedure described herein to allow Additional Claimants to submit Claim Forms to the Settlement Administrator.

Termination of the Settlement and Use of this Order

34. This Order shall become null and void and shall be without prejudice to the rights of the parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not approved by the Court or is terminated in accordance with the terms of the Settlement Agreement (except as to the payment of all incurred or outstanding Notice and Administration Expenses and Taxes described herein and in the Settlement Agreement). In such event, the Settlement and Settlement Agreement, and all rights and obligations thereunder, including any releases, shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever by any person or entity (except as to the payment of all incurred or outstanding Notice and Administration Expenses and Taxes described herein and in the Settlement Agreement).

35. This Order shall be of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date under the terms of the Settlement Agreement (except as to the payment of all incurred or outstanding Notice and Administration Expenses and Taxes described herein and in the Settlement Agreement); shall not be construed or used as an admission, concession or declaration by or against any party of any fault, wrongdoing, breach or liability; shall not be construed or used as an admission, concession or declaration by or against any Settlement Class Representative or any other Settlement Class Member that its claims lack merit or that the relief requested is inappropriate, improper or unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this litigation or in any other lawsuit.

36. Plaintiffs, Defendants, the Receiver, the Settlement Administrator, the foregoing parties’ counsel, the Receiver and Settlement Administrator’s other professionals or agents, the receivership estate of the MJ Capital Receivership Entities, and any other agent designated pursuant to this Settlement Agreement shall have no liability to any Settlement Class Member for any action taken substantially in accordance with the terms of this Order and Settlement Agreement.

Reservation of Jurisdiction

37. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

38. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website by the Settlement Administrator.


Summary of Deadlines

39. The Settlement Agreement shall be administered according to its terms pending the final approval hearing. Deadlines arising under the Settlement Agreement and this Order include, but are not limited to, the following:

<u>EVENT</u>	<u>TIMING</u>
Deadline for Settlement Administrator to provide list of names and addresses for all Settlement Class Members’ to whom Notice was sent to Defendant pursuant to section 7.3.1(e) of the Settlement Agreement	30 days after Effective Date.
Deadline for Settlement Administrator to establish Settlement Website pursuant to	As soon as reasonably practicable.

section 7.3.2 of the Settlement Agreement	
Deadline for Receiver to add section or page to Receiver’s website on which will the link to the Settlement Website	As soon as reasonably practicable after the Settlement Administrator establishes the Settlement Website.
Deadline for Settlement Administrator to send Notice to Settlement Class Members	April 10, 2023
Deadline to file Class Counsel’s motion for attorneys’ fees, costs, expenses and service awards	April 10, 2023
Objection deadline	May 25, 2023
Opt-out deadline	May 25, 2023
Deadline for Settlement Class Members to submit Claim Forms to Settlement Administrator	June 9, 2023
Deadline for Class Counsel to file motion for final approval of settlement	May 31, 2023
Deadline for Settlement Administrator to submit Affidavit or Declaration stating that the Notice has been given	June 9, 2023
Deadline for the Defendant to submit Affidavit or Declaration stating that the CAFA Notice has been given	June 9, 2023
Deadline for counsel for any objector to file a Notice of Appearance	June 16, 2023
Final Approval Hearing	June 30, 2023

DONE AND ORDERED in Ft. Lauderdale, Florida, this 28th day of February 2023.



 RAAG SINGHAL
 UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF