

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
IN AND FOR PINELLAS COUNTY, FLORIDA**

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HEIDI L. GATHEN, on behalf of herself and others similarly situated,	:	<b>Case No. 22-00284-CI</b>
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CIANFRONE, NIKOLOFF, GRANT & GREENBERG, P.A.,	:	
	:	
Defendant.	:	

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**AGREED ORDER OF PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

WHEREAS, this Court has been advised that the parties to this action, Heidi L. Gathen ( “ P l a i n t i f f ” or “ C l a s s m e m b e r ” ) , a n d C i a n f r o n e , N i k o l o f f , G r a n t & G r e e n b e r g , P . A . ( “ D e f e n d a n t ” ) , t h r o u g h t h e i r r e s p e c t i v e c o u n s e l , h a v e a p p e a r e d b e f o r e t h e C o u r t f o r a c l a s s n o t i c e a n d a h e a r i n g , t o s e t t l e t h e a b o v e - c a p t i o n e d l a w s u i t ( “ L a w s u i t ” ) u n d e r t h e c o n d i t i o n s s e t f o r t h i n t h e C l a s s A c t i o n S e t t l e m e n t A g r e e m e n t ( “ S e t t l e m e n t A g r e e m e n t ” ) , w h i c h h a s b e e n f i l e d w i t h t h e C o u r t , a n d t h e C o u r t d e e m i n g t h a t t h e d e f i n i t i o n s s e t f o r t h i n t h e S e t t l e m e n t A g r e e m e n t a r e h e r e b y i n c o r p o r a t e d b y r e f e r e n c e h e r e i n ( w i t h c a p i t a l i z e d t e r m s a s s e t f o r t h i n t h e S e t t l e m e n t A g r e e m e n t ) ;

NOW, THEREFORE, based upon the Settlement Agreement and all of the files, records, and proceedings herein, and it appearing to this Court that, upon preliminary examination, the proposed settlement appears fair, reasonable, and adequate, and that a hearing should and will be held on **June 29, 2023 at 11:00 a.m.**, after notice to the Class Members, to confirm that the

proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Approval Order should be entered in this Lawsuit:

IT IS HEREBY ORDERED:

This Court has jurisdiction over the subject matter of the Lawsuit and over all settling parties hereto.

Pursuant to Rule 1.220(b)(3) of the Florida Rules of Civil Procedure, the Lawsuit is hereby preliminarily certified, for settlement purposes only, as a class action on behalf of the following two classes of plaintiffs with respect to the claims asserted in the Lawsuit:

**Overshadowing Class:** All persons (a) with a Florida address, (b) to whom Cianfrone, Nikoloff, Grant & Greenberg, P.A. mailed an initial debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt, (d) between January 20, 2021 and January 19, 2022, (e) which dispute the amount due, we would appreciate your submitting any documentation or evidence that you have in support of your contention that the amounts due are not correct by mail or facsimile. ”

**Countryside North Class:** All persons (a) with a Florida address, (b) to whom Cianfrone, Nikoloff, Grant & Greenberg, P.A. mailed a debt collection communication not known to be returned as undeliverable, (c) in connection with the collection of a consumer debt on behalf of Countryside North Community Association, Inc., (d) between January 20, 2020 and January 19, 2022, (e) which attempted to collect assessments owed to Countryside North Community Association, Inc. in the amount of \$125 for 2019, 2020, or 2021.

Defendant represents that there are approximately 673 potential Overshadowing Class Members and 84 potential Countryside North Class Members, including Plaintiff.

Pursuant to Rule 1.220(a)(4), the Court appoints Heidi L. Gathen as the Class Representative for both classes. The Court also appoints James L. Davidson and Jesse S. Johnson of Greenwald Davidson Radbil PLLC as Class Counsel for both classes. *See Denning v. Mankin Law Grp., P.A.*, No. 21-2822, 2022 WL 16956527 (M.D. Fla. Nov. 15, 2022) (appointing

Greenwald Davidson Rabbil PLLC class counsel); *Brockman v. Mankin Law Grp., P.A.*, No. 20-893, 2020 WL 6106890 (M.D. Fla. Oct. 14, 2020) (same); *Claxton v. Alliance CAS, LLC, et al.*, No. 19-61002, 2020 WL 2759826 (S.D. Fla. May 26, 2020) (same); *Williams v. Bluestem Brands, Inc.*, No. 17-1971, 2019 WL 1450090 (M.D. Fla. Apr. 2, 2019) (same); *Dickens v. GC Servs. Ltd. P's*, 2018 WL 3361 (M.D. Fla. 2018) (same); *Roundtree v. Bush Ross, P.A.*, 304 F.R.D 644 (M.D. Fla. 2015) (same).

This Court preliminarily finds that the Lawsuit satisfies the applicable prerequisites for class action treatment, namely:

- A. The Overshadowing Class Members and Countryside North Class Members are so numerous that joinder of all of them in the Lawsuit is impracticable;
- B. There are questions of law and fact common to both classes, which predominate over any individual questions;
- C. The claims of the Plaintiff are typical of the claims of the members of each class;
- D. Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of all Class Members; and
- E. Class treatment of these claims will be an appreciable measure of justice compared to other available methods for a fair and efficient adjudication of this controversy.

*Denning*, 2022 WL 16956527, at \*1-2 (certifying for settlement purposes class and subclass under the Fair Debt Collection and Florida Consumer Collection Practices (“FDCPA”) (“FCCPA”))

This Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Settlement Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of (i) the benefits to the Class Members; (ii) the structure of the settlement compared to the terms of the settlement.

proposed settlement; (iii) the anticipated duration, complexity, and expense of additional litigation; (iv) the risk and delay inherent in such additional litigation and possible appeals; (v) the limited amount of any potential total recovery for the classes, given the cap on statutory damages for claims brought pursuant to the FDCPA and FCCPA; and (vi) the opinion of Class Counsel, who are highly experienced in this area of class action litigation.

A third-party class administrator acceptable to the parties will administer the settlement and notification to Class Members. The class administrator will be responsible for mailing the approved class action notice and settlement checks to the Class Members. The costs of administration will be paid by Defendant separate and apart from the Settlement Funds. Upon the recommendation of the parties, this Court hereby appoints the following class administrator: Class-Settlement.com. *See, e.g., Denning*, 2022 WL 16956527, at \*2 (appointing Class-Settlement.com to administer FDCPA/FCCPA class settlement); *Acuna v. Medical-Commercial Audit, Inc.*, No. 21-81256, 2022 WL 404674, at \*2 (S.D. Fla. Feb. 9, 2022) (same for FDCPA).

This Court approves the form and substance of the direct mail class notice, attached to the Settlement Agreement as Exhibit C. The proposed form and method for notifying the Class Members of the settlement and its terms and conditions meet the requirements of Rule 1.220(d)(2) and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons and entities entitled to the notice. *See Family Med. Pharmacy, LLC v. Trxade Grp., Inc.*, No. 15-0590, 2016 WL 6573981, at \*9 (S.D. Ala. Nov. 4, 2016) ( “ T h e Notice contains a summary of the class action settlement and directs the recipient to the website, the toll free number, or an address for the Settlement Administrator to obtain a copy of the Settlement Agreement and release as well as o t h e r i n f o r m a t i o n . . . . A c c o r d i n g

the email notice, post card notice, and other forms of class notice are reasonable, adequate and sufficient notice to the class members and me

This Court finds that the proposed notice is clearly designed to advise the Class Members of their rights. In accordance with the Settlement Agreement, the class administrator will mail the notice to the Class Members as expeditiously as possible, but in no event later than 21 days after the Court's e The class administrator will confirm and, if necessary, update the addresses for the Class Members through the standard methodology that the class administrator currently uses to update addresses.

Plaintiff's petition for an award of attorneys' must be filed with the Court no later than 30 days after the Court's entry

Any Class Member who desires to be excluded from the class must send a written request for exclusion to the class administrator with a postmark date no later than 60 days after the entry of this order. To be effective, the written request for full name, address, telephone number, and email address (if available), include a statement that the Class Member wishes to be excluded, and be signed by the Class Member. No request for exclusion will be valid unless all of the information described above is included. Any Class Member who submits a valid and timely request for exclusion will not be bound by the terms of the Settlement Agreement.

No Class Member, or any person acting on behalf of or in concert or participation with any Class Member, may exclude any other Class Member from either class. A Class Member may exclude himself or herself on an individual whether submitted by third parties on behalf

multiple Class Members, where no personal statement has been signed by each individual Class Member, are not allowed.

Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court within 60 days after the Court's entry of this order. Furthermore, such Class Member must, within the same time period, provide a copy of the written objection to Class Counsel, attention: Jesse S. Johnson, Greenwald Davidson Radbil PLLC, 5550 Glades Road, Suite 500, Boca Raton, FL 33431; and to counsel for Defendant, Sheena D. Smith, Cole, Scott & Kissane P.A., 222 Lakeview Avenue, Suite 120, West Palm Beach, Florida 33401.

To be effective, a notice of intent to object to the settlement must:

- (a) Contain a heading which includes the name of the case and case number;
- (b) Provide the name, address, telephone number, and email address (if available) of the Class Member filing the objection;
- (c) Be filed with the Clerk of the Court no later than 60 days after entry of this order;
- (d) Be sent to Class Counsel and counsel for Defendant at the addresses above by first-class mail, postmarked no later than 60 after entry of this order;
- (e) Contain the name, address, bar number, and telephone number of the objecting Class Member's counsel, as well as a statement whether he or she intends to appear at the fairness hearing on his or her own behalf or through counsel. If the Class Member is represented by an attorney, he/she must comply with all applicable laws and rules for filing pleadings and documents in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida;
- (f) Contain a statement of the specific basis for each objection, and provide evidence that the objector is a member of his or her applicable class(es); and
- (g) Include the signature of the objecting Class Member.

Any Class Member who has timely filed an objection and notified the Court of his or her intent to speak at the final fairness hearing may appear at the final fairness hearing, in person or

by counsel, to be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for a n a w a r d o f , c o s t s , a n d e x p e n s e s ' f e e s

Any objection that includes a request for exclusion will be treated as an exclusion.

If the Court grants final approval to the settlement, the class administrator will mail a settlement check to each participating Class Member who did not exclude himself or herself. Each participating Overshadowing Class Member will receive a pro-rata portion of the \$5,000 Overshadowing Settlement Fund. Each participating Countryside North Class Member will receive a pro-rata portion of the \$12,560 Countryside North Settlement Fund.

Additionally, Defendant will pay to the Class Representative the total sum of \$2,000, which includes statutory damages of \$1,000 pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(2)(B)(i), and statutory damages of \$1,000 pursuant to the FCCPA, Fla. Stat. § 559.77(2).

The Court will conduct a final fairness hearing at the St. Petersburg Judicial Building, 545 1st Avenue North, St. Petersburg, Florida 33701, to review and rule upon the following issues:

- A. Whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes under Rule 1.220;
- B. Whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;
- C. Whether a Final Approval Order, as provided under the Settlement Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the Released Claims against the Released Parties; and
- D. To discuss and review other issues as the Court deems appropriate.

Attendance by Class Members at the final fairness hearing is not necessary. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action settlement. Class Members wishing to be heard are, however, required to appear at the

final fairness hearing. The final fairness hearing may be postponed, adjourned, transferred, or continued without further notice to the Class Members.

Submissions by the Parties in support of the settlement, including memoranda in support of final approval of the proposed settlement, and responses to any objections, must be filed with the Court no later than 28 days prior to the final fairness hearing. Opposition briefs to any of the foregoing must be filed no later than 14 days prior to the final fairness hearing. Reply briefs to any of the foregoing must be filed no later than 7 days prior to the final fairness hearing.

This Order will be null and void if any of the following occur:

- A. Any specified material condition to the settlement set forth in the Settlement Agreement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties; or
- B. The Court approves the Settlement Agreement, including any amendment thereto approved by the Parties, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise.

The events described above, however, provide grounds for terminating the Settlement Agreement only after the Parties have attempted and completed good faith negotiations to salvage the settlement but were unable to do so.

If the Settlement Agreement and/or this order are voided, then the Settlement Agreement will be of no force and effect, and the Parties will be restored, without prejudice, to their respective positions as if the Settlement Agreement had never been executed and this order never entered.



The Court retains continuing and exclusive jurisdiction over the action to consider all further matters arising out of or connected with the settlement, including the administration and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated:

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HONORABLE THOMAS M. RAMSBERGER  
CIRCUIT COURT JUDGE