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

**Case Number: 21-cv-61179-RUIZ-STRAUSS**

**FANNY B. MILLSTEIN,**

**Plaintiff,**

**v.**

**MARSHAL SEEMAN, et al.,**

**Defendants.**
_____/

**THE CLASS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW**

The Class respectfully moves for final approval of the Settlement set forth in the Settlement Agreement attached as Exhibit 1 ("Settlement" or "Agreement"), on an unopposed basis, which will resolve all claims against Defendant Seeman Holtz Property And Casualty, LLC f/k/a Seeman Holtz Property Casualty, Inc. ("SHPC") in this Action.[1] "The compromise of complex litigation is encouraged by the courts and favored by public policy." 4 *Newberg on Class Actions* § 11:41 (4th ed.). The "strong judicial policy" in favor of settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length." *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988) *aff'd sub nom Behrens v. Wometco Enterprises*, 899 F.2d 21 (11th Cir. 1990). "Moreover, where, as here, the [settlement] previously has been preliminarily approved, the [settlement] is 'presumptively reasonable.'" *Ass'n for Disabled Ams. Inc. v. Amoco Oil, Co.,* 211 F.R.D. 457, 467 (S.D. Fla. 2002).

[1] All capitalized defined terms used herein have the same meanings ascribed in the Agreement and/or the Amended Complaint filed in this action (DE 55).

The Parties' Settlement comports with these principles and deserves final approval. The Class maintained Eric Holtz, Marshal Seeman and Brian J. Schwartz created and opened the PL Entities as part of a scheme and racketeering enterprise (the "SH Enterprise"), which included SHPC, to defraud Plaintiff and all others similarly situated. The Plaintiff alleged that the conduct of the SH Enterprise, its principals and co-conspirators violated, among others, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), the Florida Securities and Investor Protection Act, and Florida RICO. SHPC denied the Plaintiff's claims. Absent the Settlement, SHPC could have utilized its substantial resources to protract the dispute through years of trial, post-trial, and appellate litigation before the Class could enjoy any recovery, if at all.

The Settlement received an overwhelmingly positive response from the Class. Despite 1,489 claims from 998 individualized claimants, only 22 individual claimants opted out of the class. (Decl. of Daniel Stermer ¶8 (hereinafter referred to as the "Stermer Declaration ¶ __".) A copy of the Stermer Declaration is attached as **Exhibit 1**. This positive response further compels final approval. Class Counsel, therefore, respectfully request that this Court grant final approval of the Settlement.

## I. HISTORY OF THE LITIGATION

### A. FACTUAL BACKGROUND

#### 1. Procedural History

The Plaintiff brought this lawsuit seeking monetary damages based on its claim that SHPC was an instrumentality of, or participated in, a RICO enterprise executed by SH&S. The Plaintiff alleged that as a result of this participation, the SH Enterprise transferred more than $5,000,000.00 away from the SH Enterprise to SHPC, whose ownership was transferred from the control of the SH Enterprise to a third party. SHPC vigorously denied the Class' allegations of wrongdoing in discussions with Plaintiff's counsel, claiming that its owners foreclosed on SHPC as pledged

collateral for certain extensions of credit made to SH&S for the acquisition of insurance companies by SHPC Holdings I, LLC, which owned SHPC.

**2. Settlement Negotiations**

The Parties engaged in direct negotiation, including an in-person meeting with counsel for SHPC and other Defendants prior to filing the Complaint in this action. Subsequent to that meeting, the Parties have had numerous discussions on issues concerning liability and the amount of damages, based on the amount transferred to SHPC. The Parties agreed to extend deadlines for SHPC to respond to the Complaint in order to try and reach a suitable settlement. On July 20, 2022, the Parties agreed to basic terms of a settlement and have executed the proposed Settlement Agreement, attached as **Exhibit 1**.

**B. SUMMARY OF THE SETTLEMENT TERMS**

The Settlement's terms are detailed in the Settlement Agreement attached as **Exhibit 2**. The following is a summary of the material terms of the Settlement.

**1. The Settlement Class**

The Settlement Class is an opt-out class under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The Settlement Class is defined as:

> All persons who purchased or held a beneficial interest in one or more of the Notes within the applicable limitations period. Excluded from the Class are Defendants, any entity in which any Defendant had a controlling interest, Defendants' officers, directors, legal representatives, successors, and assigns, and Defendants' immediate family members.

(DE 55 at 25).

**2. Monetary Relief for the Benefit of the Class**

The Settlement creates a common fund of $650,000.00 ("Settlement Fund") for the Settlement Class. The Settlement Fund will, with Court approval, be used to pay Settlement Class

Members' damages in individual Settlement Awards, the Class' costs and attorneys' fees, and the costs of notice and claims administration. All Settlement Class Members had until October 31, 2022, to object to, or opt out of, the Settlement.

Thus, all Settlement Class Members who did not opt out of the Settlement will be eligible to receive a distribution from the Settlement Fund. As discussed below, Class Counsel has recommended through this Motion that the Court authorize distributing net settlement funds through the Settlement Administrator, Daniel J. Stermer, who is the Corporate Monitor in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida in Case No. 50-2021-CA-008718-XXX-MB (the "Settlement Administrator" or "Corporate Monitor"), to save costs from the administration of the Settlement Funds. The Settlement Administrator has already established a claims process through the Corporate Monitorship, and the net settlement proceeds from this action will be added to the funds that will be distributed to the Class Members through the Corporate Monitorship. The Settlement Administrator has indicated that each investor will receive a pro rata share, based on principal losses in the Notes, of the net settlement proceeds from this action, which will be added to any funds used for distribution from the Corporate Monitorship. Each Settlement Class Members' Settlement Award will be determined by the Settlement Administrator who will be responsible to approve claims and distribute proceeds from the Settlement along with all amounts recovered by the Corporate Monitor.

### 3. Releases

In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will release the Defendant and its past, current and future owners, directors, officers, affiliates, independent contractors, secured lenders, Lender Parties, and professionals, and their employees, officers, directors, independent contractors, and professionals of any and all past, present or future claims, liabilities, demands, causes of action, obligations, controversies,

executions, or lawsuits of the Settlement Class Members as of the date of Final Approval, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, whether known or unknown, whether brought or could have been brought in the Litigation, and whether brought in an individual, representative, or any other capacity. Released Parties do not include Marshal Seeman, Eric Holtz and the Estate of Eric Holtz, or Brian Schwartz, and this Settlement Agreement and Release provides no benefits to any of them.

**4. Settlement Class Notice**

Pursuant to the Preliminary Approval Order [D.E. 119], the Settlement Administrator implemented the Notice Program, utilizing the contact information the Corporate Monitor already had about Settlement Class Members. Stermer Declaration ¶4. The Notice Program provided notice via direct notice by E-Mailed Notice ("E-Mailed Notice") to Settlement Class Members including the "Long Form" notice with details about the litigation and Settlement ("Long Form Notice,") [D.E. 113-2], that was also be available on the Corporate Monitorship website (https://nationalseniormonitorship.com) from September 22, 2022. Stermer Declaration ¶5. For those persons with whom the Settlement Administrator had no e-mail connection, the Notice Program provided direct notice by First Class U.S. Mail, postage prepaid, to Settlement Class Members with the same "Long Form" notice (the "Mailed Notice"). *Id.* ¶6. The Settlement Administrator sent the E-Mailed Notices and Mailed Notices on September 22, 2022. *Id.* ¶7.

**5. Opt Outs And Objections**

Settlement Class Members were given until October 31, 2022 to either opt out or object to the Settlement. The opt out and objection procedures were included on the website https://nationalseniormonitorship.com and objections were required to be filed with the Court on or before October 31, 2022. https://706883.p3cdn1.secureserver.net/wp-content/uploads/2022/09/2022_9_20-Long-Form-Notice.pdf. No Settlement Class Member

objected to the Settlement, and 22 Settlement Class members opted out. (*Id.*)

**6. Attorneys' Fees and Costs**

Class Counsel filed their Unopposed Motion for Attorneys' Fees on October 17, 2022, requesting 30% of the Settlement Fund or $195,000. [D.E. 123]. SHPC does not object to this fee request nor does SHPC object to Class Counsel's request for reimbursement of $3,663.23 in documented litigation expenses. *Id.* The Parties negotiated attorneys' fees and costs only after reaching agreement on all other material terms of the Settlement.

## II. ARGUMENT

### A. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for the compromise of claims brought on a class basis. "Although class action settlements require court approval, such approval is committed to the sound discretion of the district court." *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising that discretion, courts are mindful of the "strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) ("There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.") (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also* 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases).

"A class action settlement [] should be approved so long as it is fair, adequate and

reasonable and is not the product of collusion between the parties." *Access Now, Inc. v. Claire's Stores, Inc.*, 2002 WL 1162422, at *4 (S.D. Fla. May 7, 2002) (internal quotation omitted). When determining whether a settlement is ultimately fair, adequate and reasonable, courts in this circuit look to six factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and the substance and amount of opposition to the settlement. *In re Checking Account Overdraft Litig.*, 830 F.Supp.2d 1330, 1345 (S.D. Fla. 2011) (citing *Leverso v. South Trust Bank of Al., Nat. Assoc.*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994); *Bennett,* 737 F.2d at 986).

"In evaluating these considerations, the Court must not try the case on the merits." *Access Now, Inc.*, 2002 WL 1162422, at *4 (citing *Cotton*, 559 F.2d at 1330). "Rather, the Court must rely upon the judgment of experienced counsel and, absent fraud, 'should be hesitant to substitute its own judgment for that of counsel.'" *Id.* (quoting *Cotton*, 559 F.2d at 1330). Also, "[i]n evaluating a settlement's fairness, 'it should not be forgotten that compromise is the essence of a settlement. The trial court should not make a proponent of a proposed settlement 'justify each term of the settlement against a hypothetical or speculative measure of what concessions might [be] gained.'" *Amoco*, 211 F.R.D. at 467 (quoting *Cotton*, 559 F.2d at 1330). "Above all, the court must be mindful that inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *Id.* (internal quotation omitted). As demonstrated below, this Settlement fully meets these standards for final approval.[2]

[2] In addition to the *Bennett* factors, in December 2018, Fed. R. Civ. P. 23 was amended to include new factors that Courts may consider in the final approval process. This Motion addresses those factors below, and all of those factors weigh in favor of granting final approval of the Settlement.

**1. The Settlement Is Free From Fraud And Collusion (*Bennett Factor*), Is The Product of Good Faith, Informed And Arm's Length Negotiations (Rule 23(e)(2)(B)), And The Class Representative Adequately Represented The Class' Interests (Rule 23(e)(2)(A)).**

"Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Braynen v. Nationstar Mortgage*, 2015 WL 6872519, at *10 (S.D. Fla. Nov. 9, 2015) (internal quotation omitted). The Settlement here is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this lawsuit. There are no indications that the Settlement involves any fraud or collusion, and there was none. Throughout the litigation, the Parties were in diametric opposition. The Class believed strongly that the claims against SHPC were strong, and SHPC denied any liability and exhibited a willingness to litigate this case vigorously. This record of salient adversity confirms that the Parties negotiated the Settlement at arms-length and negates any finding of fraud or collusion.

In negotiating this Settlement, Class Counsel conducted a thorough investigation and analysis of the Class' claims. Class Counsel's review of that investigation, including the limited amount of transfers made to SHPC by the SH Enterprise, made counsel's settlement negotiations well informed. *See Francisco v. Numismatic Guaranty Corp. of America*, 2008 WL 649124, *11 (S.D. Fla. Jan. 31, 2008) ("Class Counsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation"). Class Counsel was also well-positioned to evaluate the strengths and weaknesses of the Class' claims, as well as the appropriate basis upon which to settle them, as a result of work on this case from inception.

**2. The Complexity, Expense, And Likely Duration Of The Litigation (*Bennett* Factor) And The Costs, Risks, Delay Of Trial And Appeal Support Final Approval Of The Settlement (Rule 23(e)(2)(C)(i).**

Courts have found this factor weighs in favor of settlement approval where the litigation

involves numerous class members and significant time and expense. *See, e.g., Hall v. Bank of Am., N.A.*, 2014 WL 7184039, at *4 (S.D. Fla. Dec. 17, 2014) (holding this factor favored settlement approval where "[c]ontinuing to litigate the[] claims would have been time-consuming and expensive" and "even in plaintiffs were to prevail, class certification proceedings, a class trial and the appellate process could go on for years."); *see also In re Checking Account Overdraft Litig.,* 830 F.Supp.2d at 1345 ("The claims and defenses are complex; litigating them has been difficult and time consuming. Although this litigation has been pending for more than two years, recovery by any means other than settlement would require additional years of litigation in this Court and the appellate courts.").

The Class was confident in the strength of its case, but also pragmatic in its awareness of the various defenses available to SHPC, and the risks inherent in trying this lawsuit. First, Class Counsel filed this action with the understanding that the SH Enterprise transferred several million dollars to SHPC, which is the basis for liability. Second, SHPC was owned by SHPC Holdings and was the collateral used by its principals, SH&S, for the acquisition of insurance companies for the "Seeman Holtz Family of Companies." SHPC was in default, and the current owner of SHPC foreclosed on the loan. Third, the Corporate Monitor was also pursuing the funds transferred to SHPC and resolved that claim with SHPCs' current owner. Based on these issues, Class Counsel determined that the Settlement reached with SHPC outweighs the potential benefits from continued litigation of this lawsuit, given the risks and the relatively modest amount of transferred funds. Even if the Class did prevail at trial, after expending significant resources in discovery and litigation, it is likely that the payment of such expenses would significantly reduce the net recovery for members of the Class. *Lipuma*, 406 F. Supp. 2d at 1322 (likelihood that appellate proceedings could delay class recovery "strongly favor[s]" approval of a settlement). This Settlement provides

relief to Settlement Class Members without any further delay.

Furthermore, the traditional means for individually handling claims like those at issue here would tax the court system and require a massive expenditure of public and private resources. Thus, the Settlement is the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner. The costs and expenses associated with a trial would have been enormous, including the costs and fees associated with the Class' experts and the presentation of evidence. These considerations militate heavily in favor of the Settlement. *See Behrens*, 118 F.R.D. at 542.

**3. The Stage Of The Proceedings And The Amount Of Discovery Completed Weigh In Favor Of Final Approval Of The Settlement (*Bennett* Factor).**

Courts consider the stage of proceedings at which settlement is achieved "to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma*, 406 F. Supp. 2d at 1324. The claims against SHPC (and only SHPC) were resolved before SHPC filed a motion to dismiss or answer. However, the resolution was the product of negotiations between extremely experienced counsel on both sides, and Class Counsel was informed by information received from the Corporate Monitor. As a result, Class Counsel was extremely well-positioned to evaluate the strengths and weaknesses of the Class' claims and prospects for success at trial and on appeal.

**4. The Probability Of Success On The Merits Weighs In Favor Of Final Approval Of The Settlement (*Bennett* Factor).**

Under this factor, the Court considers "the likelihood and extent of any recovery from the defendants absent . . . settlement." *In re Checking Account Overdraft Litig.,* 830 F.Supp.2d at 1349 (internal quotation omitted). "[T]he Plaintiff's likelihood of success at trial is weighed against the amount and form of relief contained in the settlement." *Saccoccio v. JP Morgan Chase*

*Bank, N.A.,* 297 F.R.D. 683, 692 (S.D. Fla. 2014) (internal quotation omitted).

Although Class Counsel was confident about the merits of the case, there were substantial hurdles in prosecuting this case through trial and appeal. The Class' chances for success at trial turned on many factors, including the Court finding: (1) SHPC participated in a RICO enterprise; and (2) the Class satisfied RICO's proximate cause element. SHPC was prepared to litigate these issues, which exposed the Class to the risk of losing any recovery, as well as the additional expenses invested in time and resources. Even if the Class prevailed at trial, moreover, the prospect of an appeal posed an additional risk to the Class' ultimate success on the merits. Under those circumstances, the Class would have expended significant time and expense only to obtain no recovery.

On the other hand, this Settlement guarantees some relief for the Class without any further delay. Given the facts discussed above, including the relatively modest amount of transfers to SHPC, the prospect of recovering more than the Settlement Amount here after prolonged litigation and an unpredictable trial and appeal, did not outweigh these benefits. *See, e.g., In re Soderstrom*, 477 B.R. 249, 256 (Bankr. M.D. Fla. 2012) ("In this case, under these circumstances, a bird in the hand is worth two in the bush.") Accordingly, this factor weighs in favor of final approval.

**5. The Range Of Possible Recovery Weighs In Favor Of Final Approval Of The Settlement (*Bennett* Factor).**

"In determining whether a settlement is fair in light of the potential range of recovery, the Court is guided by the important maxim [] that the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *In re Checking Account Overdraft Litig.,* 830 F.Supp.2d at 1350 (internal quotations omitted) (approving settlement that provided recovery of 9% to 45% of potential recovery that could have been obtained through trial). Indeed, "[a] settlement can be satisfying even if it amounts to a

hundredth or even a thousandth of a single percent of the potential recovery." *Behrens*, 118 F.R.D. at 542; *see also Perez v. Asurion Corp.,* 501 F.Supp.2d 1360, 1380-81 (S.D. Fla. 2007) ("The existence of strong defenses to the claims presented makes the possibility of a low recovery quite reasonable."). It is important to weigh the benefits Settlement Class Members will receive from the settlement against the risks of moving forward and recovering nothing. *Perez,* 501 F.Supp.2d at 1381 ("These benefits to Defendants approximately 40 million customers – when viewed against the backdrop of all of the uncertainties, risks, and problems that have surfaced in this litigation . . . and the reasonable possibility that Plaintiffs would not have recovered anything if they had proceeded to trial – weigh heavily in favor of approving this Settlement.").

The Settlement is reasonable. In fact, the Court has already found that the Settlement was "within the range of reasonableness and possible judicial approval." [D.E. 119 at 7.] Given the Parties' respective positions, the limited amount of transfers to SHPC, SHPC's settlement with the Corporate Monitor for a significant portion of the allegedly commingled funds SHPC held and the expenses and time required to prove disputed liability and damages, the Settlement represents an outstanding result for the Class, without the attendant risk of trial and appeals and the associated delay of both, and weighs heavily in favor of final approval of the Settlement.

**6. Class Counsel Have Evaluated The Strengths And Weaknesses Of Their Claims And Support Approval Of This Settlement And There Is No Opposition From The Class (*Bennett* Factor).**

The endorsement of well informed, experienced class action attorneys is strong support for the final approval of a settlement. *Warrant v. City of Tampa,* 693 F.Supp. 1051, 1060 (M.D. Fla. 1988). A court should give great weight to the recommendations of counsel for the parties, given their considerable experience in the litigation. *Id.*; *see also In re Domestic Air Trasp.*, 148 F.R.D. 297, 312-13 (N.D. Ga. 1993) ("In determining whether to approve a proposed settlement, the Court is entitled to rely upon the judgment of the parties' experienced counsel. The trial judge, absent

fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.") (internal quotations omitted); *Mashburn v. Nat'l Healthcare, Inc.*, 684 F.Supp. 660, 672 (M.D. Ala. 1988) ("If plaintiffs' counsel did not believe that these factors all pointed substantially in favor of this settlement as presently structured, this Court is certain that they would not have signed their names to the settlement agreement"). Class Counsel is well apprised of the strengths and weaknesses of the Class' claims. Relying on their knowledge of the strengths and weaknesses of this litigation, Class Counsel collectively and unequivocally believe that this Settlement is in the best interests of the Class.

Furthermore, "in determining whether a proposed settlement is fair, reasonable and adequate, the reaction of the class is an important factor." *Lipuma*, 406 F.Supp.2d 1324. "Obviously, a low number of objections suggests that the settlement is reasonable, while a high number of objections would provide a basis for finding the settlement was unreasonable." *Lee v. Ocwen Loan Servs.,* 2015 WL 5449813, at *5 (S.D. Fla. Sept. 14, 2015) (internal quotations omitted); *Gavaerts v. TD Bank, N.A.,* 2015 WL 6751061, at *8 (S.D. Fla. Nov. 5, 2015) ("[T]he Court also finds it telling that of the 1,122 Settlement Class Members, none objected to, or opted out of, the Settlement."). Here, no Settlement Class Member objected to the Settlement and only 22 opted out of it. (Ex. 1 ¶¶7-8). The reactions of Settlement Class Members, therefore, confirm that the Settlement is fair, adequate, and reasonable.

**7. The Effectiveness Of Any Proposed Method Of Distributing Relief To The Class, Including The Method Of Processing Class Member Claims (Rule 23(e)(2)(C)(ii)) And The Proposal Treats Class Members Equitably Relative To Each Other (Rule 23 (e)(2)(D)) And Support Final Approval.**

Courts have concluded that where the settlement terms apply equally to all Class members the "method of distributing relief to the class" will effectively benefit every member of the Class and treat them equitably relative to each other. *Gumm v. Ford*, 2019 WL 479506, at *6 (M.D. Ga.

Jan. 17, 2019). Here, each Settlement Class Member is able to receive a pro rata share of the Settlement Fund, based on each Class Member's investment, which damages and liability Defendants dispute. All Settlement Class Members are, therefore, treated substantially equally and these factors weigh in favor of a finding that the Agreement is fair to and adequate for all Settlement Class Members.

**8. The Terms Of Any Proposed Award Of Attorney's Fees, Including Timing of Payment (Rule 23(e)(2)(C)(iii)), Favor Granting Final Approval.[3]**

Rule 23 requires a district court to assess "the terms of any proposed award of attorney's fees, including timing or payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). There are no "rigid limits" on attorney's fees but "the relief actually delivered to the Class can be a significant factor in determining the appropriate fee award." Fed. R. Civ. P. 23 Advisory Comm.'s Note, 2018 amend. "[A]ttorneys' Fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the Class." *Camden I Condo. Ass'n v. Dunkle,* 946 F.2d 768, 774 (11th Cir. 1991). "There is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *Id.* Therefore, "[t]he district court has wide discretion to award attorneys' fees based on its own expertise and judgment because of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Waters v. Cook's Pest Control, Inc.* 2012 WL 2923542, at *15 (N.D. Ala. July 17, 2012) (internal quotations omitted). Nevertheless, "[t]o avoid depleting the funds available for distribution to the class, an upper limit of 50% of the fund may be stated as

[3] Class counsel filed its Unopposed Motion for Attorneys' Fees, Costs, and Incentive Award on June 3, 2019, which it hereby incorporates by reference. [D.E.309].

a general rule, although even larger percentages have been awarded." *Id.*

Here, Class Counsel requested $195,000.00 or 30% of the Settlement Fund for attorneys' fees, an amount to which SHPC does not object. The Parties negotiated attorneys' fees only after reaching agreement on all other material terms of the Settlement. The payment of those fees is contingent upon the Court's granting final approval of the Settlement. The Settlement Agreement in this case provides some relief to the Settlement Class Members, and Class Counsel is entitled to attorneys' fees under RICO and applicable case law. *Camden I*, 946 F.2d at 774. Furthermore, considering the effort spent and risk taken by Class Counsel, an award of 30% of the common fund is below other attorneys' fees awards in this jurisdiction. *See Morgan v. Public Storage*, 301 F.Supp.3d 1237, 1257-58 (S.D. Fla. 2016) (awarding 33% attorneys' fees); *In re Managed Care Litig. v. Aetna,* 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding 35.5% attorneys' fees); *Cook's Pest Control*, 2012 WL 2923542, at 18 (awarding 35% attorneys' fees). Accordingly, Class Counsel's request for attorneys' fees weighs in favor of a finding that the Settlement Agreement is fair to and adequate for the Settlement Class Members.

**9. Agreements Made In Connection With The Proposed Settlement (Rule 23(e)(2)(C)(iv)).**

Rule 23 requires the parties to file with the Court "a statement identifying any agreement made in connection with" a proposed settlement. Fed. R. Civ. P. 23(e)(3). There are no other agreements with SHPC other than the Settlement, which weighs in favor of a finding that the Settlement Agreement is fair and adequate.

## III. CONCLUSION

WHEREFORE, for the foregoing reasons, Class Counsel respectfully request that the Court: (1) finally certify the Settlement Class; and (2) grant final approval of the Settlement.

**LOCAL RULE 7.1 CERTIFICATION**

Undersigned counsel certifies, as required by S.D. Fla. Local Rule 7.1, that moving counsel conferred with counsel for Defendant SHPC regarding the relief sought in this motion. Defendant SHPC does not oppose the relief sought in this motion.

Dated: December 13, 2022

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 13, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system.

/s/ David M. Buckner
David M. Buckner, Florida Bar No. 0060550
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# EXHIBIT 1

***Declaration of the Settlement Administrator, Daniel Stermer***

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

**Case Number: 21-cv-61179-RUIZ-STRAUSS**

**FANNY B. MILLSTEIN,**

**Plaintiff,**

**v.**

**MARSHAL SEEMAN, et al.,**

**Defendants.**
_____/

**DECLARATION OF THE SETTLEMENT ADMINISTRATOR, DANIEL STERMER**

DANIEL STERMER, pursuant to 28 U.S.C. § 1746, does hereby declare:

1. My name is Daniel Stermer, and I am making this Declaration based on my personal knowledge.

2. I am the Corporate Monitor in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida in Case No. 50-2021-CA-008718-XXX-MB.

3. I was appointed as the Settlement Administrator in the above-captioned action, as set forth in this Court's Preliminary Approval Order.

4. I implemented the Notice Program, utilizing the contact information I already had, as Corporate Monitor, about the Settlement Class Members.

5. In implementing the Notice Program, I provided notice via direct notice by E-Mailed Notice ("E-Mailed Notice") to Settlement Class Members including the "Long Form" notice with details about the litigation and Settlement, that was also available on the Corporate Monitorship website (https://nationalseniormonitorship.com) from September 22, 2022.

6. For those persons with whom I had no e-mail connection, I implemented the Notice Program by providing direct notice by First Class U.S. Mail, postage prepaid, to Settlement Class Members with the same "Long Form" notice (the "Mailed Notice").

7. I caused the E-Mailed Notices and Mailed Notices to be sent on September 22, 2022.

8. I have received 1,489 claims from a total of 998 individualized claimants. A total of 22 individual claimants opted their claims out of the settlement.

I do hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2022.

Daniel Stermer

# EXHIBIT 2

***Copy of Settlement Agreement***

# SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement," "Agreement," or "Settlement")[1] is entered into between Plaintiff Fanny B. Millstein, on behalf of herself and as the representative of a class of Persons defined below ("Plaintiff"), and Defendant SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC f/k/a SEEMAN HOLTZ PROPERTY CASUALTY, INC., a Delaware limited liability company ("SHPC" or "Defendant"). Plaintiff and Defendant are collectively referred to in this Agreement as the "Parties."

## RECITALS

**WHEREAS,** on June 7, 2021, Plaintiff filed a putative class action lawsuit, and on August 24, 2021, filed a First Amended Class Action Complaint, in the United States District Court for the Southern District of Florida, captioned *Fanny B. Millstein v. Marshal Seeman, et al.*, Case No. 21-CV-61179–RAR (the "Litigation");

**WHEREAS,** in the Litigation, Plaintiff contends that Defendant (among other entities and individuals) defrauded her and the members of the Class and was unjustly enriched through a racketeering enterprise premised on life insurance viaticals (the "Enterprise");

**WHEREAS,** the Parties have engaged in settlement discussions to determine whether they could reach a consensual resolution of the Litigation;

**WHEREAS,** the Parties have reached an agreement to resolve the Litigation as to this Defendant only, subject to the terms set forth in this Settlement Agreement;

**WHEREAS,** Defendant specifically denies all wrongdoing or liability and asserts that its actions have at all times been lawful and proper, but, solely as a compromise and for the purpose

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[1] Unless otherwise stated, capitalized terms shall have the meanings ascribed to them in Section I of this Settlement Agreement.

of avoiding the inconvenience, expense, and risk of further litigation, Defendant agreed to settle all claims, demands, and liabilities between Defendant, on the one hand, and Plaintiff and the Settlement Class, on the other, including all claims that have been and that could have been asserted in the Litigation; and

**WHEREAS,** Plaintiff and its counsel believe that the claims asserted in the Litigation have merit but have concluded that the terms and conditions set forth in this Settlement Agreement are fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class as a means of resolving the Litigation, considering (1) the benefits to Plaintiff and the Settlement Class under this Settlement, (2) Defendant's demonstrated willingness to vigorously defend the merits of Plaintiff's claims, and (3) the attendant risks, costs, uncertainties, and delays of proceeding with the Litigation.

**NOW, THEREFORE,** it is agreed, by and among the undersigned, that the Litigation shall be settled on the terms and conditions set forth herein, subject to judicial approval.

## I. DEFINITIONS

"Administration Costs" shall mean the costs and expenses (i) associated with the production and dissemination of the Class Notice, and (ii) of the Settlement Administrator in carrying out its responsibilities as set forth in this Agreement.

"Attorneys' Fee Order" shall mean the Court's Order on the Fee and Expense Application, as contemplated in Section VI.

"Class Counsel" shall mean the attorneys for the Settlement Class: David M. Buckner, of Buckner + Miles; James D. Sallah of Sallah, Astarita, and Cox, LLP, and Scott L. Silver of the Silver Law Group.

"Class Notice" shall mean the Long Form Class Notice and the Settlement Website, collectively.

"Class Representative" shall mean the named Plaintiff in the Litigation: Fanny B. Millstein.

"Common Fund" shall mean the total value of the Settlement, which shall be six hundred fifty thousand Dollars ($650,000.00).

"Corporate Monitor" shall mean Daniel J. Stermer, Esq., Managing Director, DSI Consulting Group, whom, pursuant to an Order dated September 14, 2021 entered by the Florida Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, FL, was appointed corporate monitor over 27 corporate-entity defendants claimed to be unjustly enriched through the racketeering enterprise alleged in the Litigation.

"Court" shall mean the United States District Court for the Southern District of Florida, where the Litigation is pending.

"Defendant" shall mean SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC f/k/a SEEMAN HOLTZ PROPERTY CASUALTY, INC., a Delaware limited liability company.

"Defendant's Counsel" shall mean Andrew C. Lourie of Kobre & Kim LLP.

"Effective Date" shall mean the date five (5) business days after the date upon which the Final Approval Order becomes final and all times to appeal or otherwise seek review or reconsideration of the Final Approval Order have expired, whether by exhaustion of any possible appeal, lapse of time, or otherwise.

"Final Approval Hearing" shall mean the hearing to be held before the Court where Plaintiff will request that the Settlement Agreement receive Final Approval and that the Court approve the Fee and Expense Application.

"Fee and Expense Application" shall mean the petition to be filed by Class Counsel requesting an award of attorneys' fees and expenses from the Common Fund.

"Final Approval" shall mean the entry of the Final Order and Judgment.

"Final Order and Judgment" shall mean a final order entered by the Court that grants approval of the Settlement following the Final Approval Hearing.

"Lender Parties" shall mean HSCM Bermuda Fund Ltd. ("Hudson"), a Bermuda corporation, Hamilton HM 11 Bermuda, HSCM F1 Master Fund Ltd., a Bermuda corporation, HS Select I, LLC, a Georgia limited liability company, and Consumers United, Inc. d/b/a Goji Insurance.

"Litigation" shall mean *Fanny B. Millstein v. Marshal Seeman, et al.*, Case No. 21-CV-61179–RAR.

"Long Form Class Notice" shall mean the non-summary notice that will be e-mailed or mailed by the Settlement Administrator on request from a Settlement Class Member and made available on the Settlement Website to all Settlement Class Members.

"Notice Date" shall mean the date by which the Notice Plan has been completely carried out.

"Notice Plan" shall mean the plan for disseminating notice of the proposed Settlement and of the Final Approval Hearing.

"Objection/Exclusion Deadline" shall mean (i) for objections, the date by which Class members must file with the Court a written objection to this Settlement Agreement, and (ii) for exclusions, the date by which any Requests for Exclusion must be postmarked. The Objection/Exclusion Deadline shall be the date thirty (30) days after the Notice Date, or such other date as ordered by the Court.

"Parties" shall mean Plaintiff and Defendant, collectively.

"Plaintiff" shall mean Fanny B. Millstein.

"Preliminary Approval Order" shall mean an Order entered by the Court that grants

preliminary approval to the Settlement, certifies the Settlement Class, and approves the Notice Plan.

"Released Claims" shall mean any and all past, present or future claims, liabilities, demands, causes of action, obligations, controversies, executions, or lawsuits of the Settlement Class Members as of the date of Final Approval, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, whether known or unknown, whether brought or could have been brought in the Litigation, and whether brought in an individual, representative, or any other capacity..

"Released Parties" shall mean the SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC f/k/a SEEMAN HOLTZ PROPERTY CASUALTY, INC., a Delaware limited liability company, and the Defendant's past, current and future owners, directors, officers, affiliates, independent contractors, secured lenders, Lender Parties, and professionals, and their employees, officers, directors, independent contractors, and professionals. Released Parties do not include Marshal Seeman, Eric Holtz and the Estate of Eric Holtz, or Brian Schwartz, and this Settlement Agreement and Release provides no benefits to any of them.

"Request for Exclusion" shall mean a request that complies with provisions related to exclusion in the Long Form Class Notice.

"Settlement" shall mean the compromise and settlement agreement embodied in this Settlement Agreement.

"Settlement Class" shall mean all persons who purchased or held a beneficial interest in one or more of the promissory notes purportedly collateralized by life insurance policies issued to third parties (the "Notes") marketed and sold through the Enterprise within the applicable limitations period. Excluded from the Class are Defendant, any entity in which Defendant had a

controlling interest, Defendant's officers, directors, legal representatives, successors, and assignees, and Defendant's immediate family members.

"Settlement Class Member" shall mean a person falling within the definition of the Settlement Class that has not submitted a valid and timely Request for Exclusion from the Settlement Class.

"Tax Identification Number" shall mean the Social Security Number or other form of tax identification of the Class Member.

## II. SETTLEMENT RELIEF

### 2.1. Common Fund

The Parties agree that the total value of this Settlement is Six Hundred Fifty Thousand Dollars ($650,000.00), to be paid within ten (10) business days of the Effective Date.

## III. NOTICE TO THE CLASS

### 3.1. Identification of Settlement Class Members

Class Counsel with work with the Corporate Monitor to identify Class Members.

### 3.2. Notice to the Class

Upon entry of the Preliminary Approval Order, Class Counsel will be responsible for implementing the Notice Plan and represents and warrants that the Corporate Monitor has undertaken or will undertake to assist Corporate Counsel with such implementation. The Notice Plan shall comport with due process and shall include the following components:

#### 3.2.1. *Direct Notice*

By the date ordered by the Court, Class Counsel shall (itself or through the undertaking by the Corporate Monitor, which remains Class Counsel's obligation for purposes of this Agreement) disseminate by electronic mail the Long Form Class Notice to the individuals and entities identified in the Notice List. The Class Counsel shall (itself or through the undertaking by the

Corporate Monitor)re-send by electronic mail the Long Form Class Notice once for any returned emails, after confirming the address of the Class Member.

#### 3.2.2. *Settlement Website*

By the date ordered by the Court, the Long Form Class Notice shall be published on a website to be maintained by the Corporate Monitor (the "Settlement Website"). The Settlement Website shall include pertinent case information and documents (including, but not limited to, all relevant pleadings and motions and this Settlement Agreement), as well as the ability to download the Long Form Notice.

### 3.3. Exclusions

The Class Notice shall advise the Settlement Class Members of their right to exclude themselves from the Settlement Class. Settlement Class Members shall be permitted to exclude themselves from the Settlement Class by complying with the requirements set forth in the Preliminary Approval Order and the Class Notice. A Request for Exclusion must be postmarked on or before the Objection/Exclusion Deadline.

Any individual or entity in the Settlement Class who successfully submits a Request for Exclusion shall not: (i) be bound by any orders or the Final Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. So-called "mass" or "class" opt-outs shall not be allowed.

### 3.4. Objections

Settlement Class Members shall be permitted to object to the Settlement, provided that they comply with the requirements for filing an objection as set forth in the Preliminary Approval Order and the Class Notice. The Class Notice shall advise the Settlement Class Members of their rights

to object to the Settlement Agreement. Any objections must be filed on or before the Objection/Exclusion Deadline approved by the Court and specified in the Class Notice. The Parties will request that the Court order that all objections must be in writing, signed by the objecting individual or entity, and must include:

(a) The full legal name(s) of the objecting individual(s), their address(es), email address(es), and telephone number(s);

(b) The approximate dates of their investment(s) with National Senior Insurance, Inc. d/b/a Seeman Holtz ("Seeman Holtz") or any other defendant in the Litigation, and the amount of each investment;

(c) A written statement of all objection(s) to the settlement, as well as the specific reason for each objection, and any legal or factual support for each objection;

(d) A description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented (which evidence must be attached to the objection);

(e) The identity of all counsel who represent the objecting individual(s) or entity(ies), the fee application, or the application for service awards;

(f) A statement regarding whether the objecting individual(s) or entity(ies), or their counsel, intend to appear and argue at the Final Approval Hearing, identifying the person(s) who will appear;

(g) Four dates at least ten (10) days before the Final Approval Hearing on which the objecting individual(s) or entity(ies) will be available to be deposed by lawyers for the Parties;

(h) The number of times in which the objecting individual's or entity's counsel and the counsel's law firm have objected to a class action settlement within the five years preceding the date of the filing of the objection in this case, the caption of each case in which counsel or the firm made such objection, and a copy of all orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial or appellate courts in each case; and

(i) All agreements that relate to the objection in this case or the process of objecting, whether written or verbal, between or among the objecting individual or entity, their counsel, and/or any other person or entity.

A Settlement Class Member may not both opt out of the Settlement and object. If a Settlement Class Member submits both a Request for Exclusion and objects, the Request for Exclusion will control. Although an objector's attendance at the Final Approval Hearing is not mandatory, an objector who intends to attend the Final Approval Hearing must so indicate in its written objection.

## IV. PRELIMINARY APPROVAL, FINAL APPROVAL, AND CERTIFICATION OF SETTLEMENT CLASS

### 4.1. Motion for Preliminary Approval and Preliminary Certification of the Settlement Class

As soon as practicable after execution of this Agreement (but no more than fourteen (14) days after execution), Plaintiff shall move for (i) preliminary approval of the Settlement, (ii) preliminary appointment of the Class Representative and Class Counsel, and (iii) preliminary and conditional certification of the Settlement Class. Plaintiff will also request a Final Approval Hearing date.

### 4.2. Motion for Final Approval and Final Certification of the Settlement Class

Prior to the Final Approval Hearing, Plaintiff will move for (i) final approval of the

Settlement, (ii) final appointment of the Class Representative and Class Counsel, and (iii) final certification of the Settlement Class, and file a memorandum in support of the motion for final approval.

### 4.3. Certification for Settlement Purposes Only

Defendant agrees not to oppose certification of the Settlement Class for settlement purposes only.

### 4.4. Vacating Settlement Certification and Reservation of Rights

The certification of the Settlement Class shall be binding only with respect to the settlement of the Litigation. If the Settlement Agreement is not approved, the Settlement is terminated, or the Settlement is reversed or vacated, the certification of the Settlement Class shall be vacated, the Litigation shall proceed as though the Settlement Class had never been certified.

## V. RELEASE

### 5.1. Released Claims and Parties

Upon entry of the Final Approval Order, the Settlement Class Members shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged the Released Parties from and for any and all liability for the Released Claims, and shall be forever enjoined from the prosecution of each and every Released Claim against any and all of the Released Parties, provided, however, that nothing herein is meant to bar any claim seeking enforcement of this Agreement or court orders relating to it.

## VI. ATTORNEYS' FEES & EXPENSES

Class Counsel will submit to the Court its Fee and Expense Application seeking attorneys' fees of no more than thirty percent (30%) of the Common Fund, plus case-related expenses, to be paid from the Common Fund. Defendant agrees not to object to the Fee and Expense Application; and, for avoidance of doubt, any and all sums sought in the Fee and Expense Application will be

taken exclusively from the Common Fund and Defendant has no obligation whatsoever to make any payments or take any actions under this Agreement aside from remitting the Common Fund payment as set forth herein.

## VII. CONTINGENCIES & RIGHT TO TERMINATE AGREEMENT

### 7.1. Option to Terminate

If the Court or, in the event of an appeal, any appellate court, refuses to approve this Agreement, any Party may elect to terminate this Agreement and the Settlement, as stated below. In addition, if ten percent (10%) of class members (calculated either by quantum of value of claims or by member number compared to total class size) exclude themselves from the Settlement under Section 3.3, above, Defendant may elect in its sole discretion to terminate this Agreement and the Settlement, as stated below.

### 7.2. Events Giving Rise to Option to Terminate

This Agreement and the Settlement shall terminate and be cancelled upon delivery by any Party of written notification in accordance with Section 9.5 of this Agreement of its election of a right to terminate within ten (10) business days after the Court's Final Order and Judgment is vacated or reversed on any appeal or other review or in a collateral proceeding occurring prior to the Effective Date or within ten (10) business days after the Objection/Exclusion Deadline. Notwithstanding anything to the contrary, the option of any party to terminate this Agreement shall expire upon the Effective Date.

### 7.3. Effect of Termination

If, for any reason, this Agreement is terminated or fails to become effective, then the Parties shall be deemed to have reverted to their respective status in the Litigation before the Settlement Agreement was signed, and Plaintiff and Defendant shall proceed in all respects as if this Agreement and any related Orders had not been entered. Further, neither this Agreement, nor any

Order issued by the Court in furtherance of this Agreement, shall have any effect if this Agreement is terminated.

## VIII. NO ADMISSION OF WRONGDOING

### 8.1. No Admission of Liability

Defendant has vigorously denied, and continues to deny, that it committed any violation of state or federal laws, and has vigorously denied, and continues to deny, all allegations of wrongdoing or liability whatsoever with respect to the Released Claims, including any and all claims of wrongdoing or liability alleged or asserted in the Litigation. Defendant agrees to this Settlement solely as a compromise to avoid the cost and expense of further litigation and because it provides substantial and meaningful benefits to the Settlement Class and will eliminate the substantial burden, expense, and future uncertainties along with the concomitant use of resources and efforts.

### 8.2. Agreement Not to be Construed as Evidence of Admission

This Agreement and any of its terms, any agreement or Order relating thereto, and any payment or consideration provided for herein, is not and shall not be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever.

### 8.3. Exceptions

Nothing contained in this Section shall prevent this Agreement (or any agreement, Order, or notice relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or Order relating thereto) or the Final Order and Judgment. This Agreement may be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement.

## IX. MISCELLANEOUS

### 9.1. Duty to Cooperate

The Parties promise to cooperate in good faith and to take all actions reasonably necessary to effectuate this Agreement.

**9.2. Entire Agreement**

This Agreement is the entire agreement between the Parties regarding the subject matter covered by the terms of this Agreement and it supersedes any prior agreements, written or oral, including any term sheet and any written settlement offers or emails exchanged between the Parties regarding the subject matter covered by the terms of this Agreement. This Settlement Agreement cannot be altered, modified, or amended, except through a writing executed by all Parties.

**9.3. Construction of Agreement**

This Settlement Agreement shall be construed to effectuate the intent of the Parties to resolve all disputes encompassed by the Agreement. All Parties have participated in the drafting of this Agreement, and any ambiguity should not be resolved by virtue of a presumption in favor of any Party. The Settlement Agreement was reached at arm's-length by Parties represented by counsel.

**9.4. Executed in Counterparts**

This Settlement Agreement may be executed by exchange of executed signature pages by facsimile or Portable Document Format ("PDF") as an electronic mail attachment, and any signature transmitted by facsimile or PDF via electronic mail for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

**9.5. Non-Disparagement**

Each party agrees that, following the approval of this Settlement Agreement, such party will not make any statements which materially disparage the other party.

**9.6. Notices**

Unless otherwise provided herein, any notice, request, instruction, application for Court approval, or application for Court Order sought in connection with the Agreement, other than documents electronically filed with the Court, shall be in writing and delivered personally or sent by certified mail or overnight delivery service, postage pre-paid, with copies by e-mail to the attention of Class Counsel and Defendant's Counsel (as well as to any other recipients that a court may specify). As of the date hereof, the respective representatives are as follows:

For the Defendant:

Andrew C. Lourie
KOBRE & KIM LLP
201 South Biscayne Boulevard, Suite 1900
Miami, Florida 33131
Tel: (305) 967-6107
Email: andrew.lourie@kobrekim.com

For the Settlement Class:

David M. Buckner
BUCKNER + MILES
2020 Salzedo Street, Suite 302
Miami, FL 33134
Tel: 305.964.8003
david@bucknermiles.com

James D. Sallah
SALLAH ASTARITA & COX, LLC
One Boca Place
2255 Glades Rd., Ste. 300E
Boca Raton, FL 33431
Tel.: (561) 989-9080
Email: jds@sallahlaw.com

Scott L. Silver
SILVER LAW GROUP
11780 W. Sample Road
Coral Springs, FL 33065

Tel.: (954) 755-4799
Email: ssilver@silverlaw.com

**9.7. Extensions of Time**

The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

**9.8. Recitals**

The Parties hereby agree that each of the Recitals set forth above is true and correct. Each of the Definitions and Recitals set forth above is expressly incorporated into the remainder of this Agreement.

**9.9. Expenses**

Except as specified in Section VI or as otherwise expressly set forth herein, each Party hereto will pay all of its own fees, costs, and expenses incurred in connection with the Litigation, including the negotiation, preparation, or compliance with this Agreement, and including any fees, expenses, and disbursements of counsel, accountants, and other advisors.

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

**ON BEHALF OF CLASS REPRESENTATIVE AND SETTLEMENT CLASS:**

_____

**FANNY B. MILLSTEIN**

Date: _____

**ON BEHALF OF DEFENDANT SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC f/k/a SEEMAN HOLTZ PROPERTY CASUALTY, INC., a Delaware limited liability company**

_____

Name:

Title: TREASURER

Date: 8/5/2022

**ON BEHALF OF CLASS REPRESENTATIVE AND SETTLEMENT CLASS:**

**FANNY B. MILLSTEIN**

Date: 7-23-2022

**ON BEHALF OF DEFENDANT SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC f/k/a SEEMAN HOLTZ PROPERTY CASUALTY, INC., a Delaware limited liability company**

Name:

Title:

Date: