UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-21261-ALTMAN/Reid

MICHAEL SIZEMORE *et al.*,
on behalf of themselves and others similarly situated,

Plaintiffs,

v.

CHANGPENG ZHAO *et al.*,

Defendants.
_____/

ORDER APPROVING FIRST TRANCHE OF SETTLEMENTS, PROVISIONALLY CERTIFYING PROPOSED SETTLEMENT CLASS, AND APPROVING THE PROPOSED SCHEDULE

All Class Representatives[1] have agreed to settle their class claims with two of our Defendants: Binance Promoters Ben Armstrong and Jimmy Butler (the "Settling Defendants").

The Settlement Agreements[2] have been filed with the Court, and the Plaintiffs have submitted a Motion for Preliminary Approval of First Tranche of Settlements, for Provisional Certification of Proposed Settlement Class, and for Approval of the Proposed Schedule (the "Motion") [ECF No. 214], which we now **GRANT**.[3] The Settling Defendants have agreed, in two separate settlements, to provide (collectively) $340,000 in monetary relief, which will be held in the Settlement Fund pending further order on distribution to the Binance Class Members.

[1] The named Plaintiffs are Michael Sizemore, Mikey Vongdara, and Gordon Lewis (collectively, the "Plaintiffs").
[2] The capitalized terms used in this Order shall have the meanings given to them in the Settlement Agreements between the Plaintiffs and Defendant Jimmy Butler [ECF No. 214-1] and Defendant Ben Armstrong [ECF No. 214-2].
[3] This Order is *not* an exact reproduction of the Plaintiffs' proposed order [ECF No. 214-6]. Accordingly, we caution the parties to read this *carefully* before proceeding.

The Plaintiffs have also retained the services of legal notice experts JND Legal Administration, LLC ("JND"), which will craft a Notice Plan that provides the best notice practicable to the Class, which is in line with the court-approved program they created for another recent cryptocurrency matter, *In re Ripple Labs Inc. Litig.,* No. 18-cv-06753-PJH, ECF No. 359 (N.D. Cal. Jan. 26, 2024). This Notice Plan not only provides the best notice practicable but is also consistent with the methods and tools employed in other court-approved notice programs to allow Class Members the opportunity to review and understand a plain-language notice and then to learn more about the litigation.

Upon considering the Motion and the exhibits thereto, the Settlement Agreements, the record in these proceedings, the representations and recommendations of counsel, and the requirements of the law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties; (2) the proposed Class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and should be preliminarily certified for settlement purposes only; (3) the proposed Settlements are fair, reasonable, and adequate to warrant sending notice of the Settlements to the Class; (4) the "Class Representatives" defined above should be appointed class representatives; (5) Adam Moskowitz of The Moskowitz Law Firm, PLLC, and David Boies of Boies Schiller Flexner LLP should be appointed as Co-Lead Class Counsel pursuant to FED. R. CIV. P. 23(c)(1)(B) and 23(g); (6) the Settlements are the result of multiple mediations and informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel and are not the result of collusion; (7) the proposed plan of notice to the Class pursuant to FED. R. CIV. P. 23(e) should be approved; (8) JND should be appointed as Notice Administrator to effectuate the plan of notice and then administer the settlement if it is approved; and (9) good cause exists to stay these proceedings pending resolution of the claims against the non-settling Defendants as further explained below.

Accordingly, the Court hereby **ORDERS AND ADJUDGES** as follows:

1. The Court has jurisdiction over the subject matter of this case and the Parties pursuant to 28 U.S.C. §§ 1331 and 1332, including jurisdiction to approve and enforce the Settlements and all orders and decrees that have been entered or which may be entered pursuant thereto.

2. Venue is proper in this District.

Preliminary Class Certification for Settlement Purposes Only and Appointment of Class Representatives and Settlement Class Counsel

3. It is well established that "[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (Cooke, J.) (internal quotation marks omitted). In deciding whether to preliminarily certify a settlement class, a court must consider the same factors it would consult in certifying a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Ibid.*; *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

4. The Court finds, for settlement purposes, that the Rule 23 factors are satisfied, and that preliminary certification of the proposed Class is appropriate under Rule 23. The Court, therefore, preliminarily certifies the following Class:

> All persons and entities who, within the applicable limitations period, A) purchased, held, and/or sold the cryptocurrency tokens BNB and/or BUSD on any platform, B) purchased, held, and/or sold SOL, ADA, MATIC, FIL, ATOM, SAND, MANA, ALGO, AXS, or COTI on Binance.US or Binance.com, or C) participated in the programs BNB Vault, Simple Earn, and/or any staking program through Binance.US or Binance.com.
>
> Excluded from the Settlement Class are Settling Defendants and their officers, directors, affiliates, legal representatives, and employees, the Binance entities and their officers, directors, affiliates, legal representatives, and employees, any governmental entities, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

5. Specifically, for settlement purposes, the Court finds that the Class satisfies the following factors of Rule 23:

a) Numerosity: A case may be certified as a class action only if "the class is so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). While there is no fixed rule, numerosity is generally presumed when the potential number of class members reaches forty. *Cnty. of Monroe, Fla. v. Priceline.com, Inc.*, 265 F.R.D. 659, 667 (S.D. Fla. 2010) (Moore, J.) ("[A]s few as 40 class members should raise a presumption that joinder is impracticable and the plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone." (citing Newberg & Conte, Newberg on Class Actions § 3.5 at 247 (4th ed. 2002))). Here, numerosity is readily satisfied. The Plaintiffs estimate the total number of Class Members to be in the millions. At its peak, Binance reported over 1.47 million registered users on its platform in the U.S. alone.

b) Commonality: Rule 23(a)(2) requires that there be one or more questions of law or fact that are common to the class. *WalMart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Plaintiffs need only show the existence of a common question of law or fact that is significant and capable of class-wide resolution. *In re Fla. Cement & Concrete Antitrust Litig.*, 2012 WL 27668, at *3 (S.D. Fla. Jan. 3, 2012) (unpublished). This case presents common questions of law because all the Class Members' claims require the Court to decide whether tokens and/or Binance earn programs are securities and whether the Settling Defendants' conduct amounts to solicitation such that they should be treated as statutory sellers under the law. Because resolution of these issues will affect all proposed class members, the Settling Parties have satisfied the commonality prong under Rule 23 (a)(2).

c) Typicality: Rule 23(a)(3) requires that "the claims and defenses of the representative parties are typical of the claims or defenses of the class." FED. R. CIV. P. 23(a)(3). "The typicality requirement is met if the claims of the named plaintiffs 'stem from the same event, practice, or course of conduct that forms the basis of the class claims and are based upon the same legal or remedial theory.'" *Gibbs Properties Corp. v. CIGNA Corp.*, 196 F.R.D. 430, 435 (M.D. Fla. 2000) (quoting *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 326 (S.D. Fla. 1996) (Moreno, J.)). "The key inquiry in determining whether a proposed class has 'typicality' is whether the class representative is part of the class and possesses the same interest and suffers the same injury as the class members." *Medine v. Washington Mutual, FA*, 185 F.R.D. 366, 369 (S.D. Fla. 1998) (Middlebrooks, J.). Here, the Class Representatives' claims stem from the same common course of conduct as the claims of the Class Members. The Plaintiffs allege that Binance engaged in a widespread fraudulent scheme and conspiracy, in which Binance sold unregistered securities to the Class, a common course of conduct resulting in injury to all Class Members. Any relief will also apply equally to Class Representatives and Class Members.

d) Adequacy: Rule 23(a)(4) requires that the representative plaintiffs "fairly and adequately" protect the interests of the class. The Eleventh Circuit has outlined the following two-part test for courts to follow in determining adequacy: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharmas., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003). Both prongs are satisfied here. *First*, the Class Representatives and the Settlement Class Members are equally interested in recovering as much of their property as possible from any defendant who

aided, abetted, or was an accomplice or agent in Binance's alleged conspiracy. Accordingly, the Class Representatives will fairly and adequately protect the interests of all Settlement Class Members. Second, Class Counsel have extensive experience litigating and settling class actions, including consumer fraud cases, throughout the United States. Class Counsel are therefore well qualified to represent the Settlement Class.

e) Predominance: For purposes of these Settlements only, the proposed Settlement Class satisfies Rule 23(b)(3), which allows a court to certify a class action if the court finds that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The class claims against the Settling Defendants involve common issues of law and fact that predominate over any individual issues. Specifically, the Plaintiffs (and the Class Members) claim that the Binance tokens (and/or the Binance earn programs) are securities and that the Settling Defendants' conduct amounts to solicitation.

f) Superiority: Rule 23(b)(3)'s other requirement is that class resolution must be "superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The purpose of the superiority requirement is consistent with the overall goals of Rule 23—i.e., to ensure that a class action is the most efficient, effective, and economic means of settling the controversy. *Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 337 (S.D. Fla. 1996) (Moreno, J.). That's plainly the case here, where the Settlements obviate the need for multiple trials with respect to complex issues, like causation and damages. And the relatively low damage each individual class member

sustained supports our view that, without a class action, most of these class members would be unable (or unwilling) to pursue individual actions against the Settling Defendants.

6. The Settlements are contingent on the Court's approval. If the Court does not approve the Settlement terms, then certification of the Class will be voided, and all orders entered in connection with the Settlements, including any order conditionally certifying the Class, will be voided.

7. For Settlement purposes only, and pursuant to the terms of the Settlements, the Court hereby appoints the Class Representatives to serve as Class Representative Plaintiffs and Adam Moskowitz of The Moskowitz Law Firm, PLLC, and David Boies of Boies Schiller Flexner LLP to serve as Co-Lead Class Counsel under Federal Rule of Civil Procedure 23(c).

Preliminary Approval of the Settlement

8. A class action may be settled only with the approval of the Court. *See* FED. R. CIV. P. 23(e)(1). The Rule 23(e) settlement approval procedure has three principal steps: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to all affected class members; and (3) a final approval determination following a fairness hearing at which class members may be heard about the settlement, and at which counsel may introduce evidence and present arguments concerning the fairness, adequacy, and reasonableness of the settlement. *See* 4 William B. Rubenstein, Albert Conte & Herbert Newberg, *Newberg on Class Actions* §§ 13:39 *et seq.* (5th ed. 2014).

9. Preliminary approval of a settlement agreement requires only an "initial evaluation" of the fairness of the proposed settlement based on the written submissions. *Encarnacion v. J.W. Lee, Inc.,* 2015 WL 12550747, at *1 (S.D. Fla. June 30, 2015) (Dimitrouleas, J.). Before granting preliminary approval, the court should determine whether the proposed settlement falls "within the range of possible approval" or reasonableness. *Ibid.*; *see also* 4 Albert Conte & Herbert Newberg, *Newberg on Class Actions* § 11.25 (4th ed. 2002). The Court should approve a proposed class-action settlement only

where it is "fair, adequate and reasonable and is not the product of collusion between the parties." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691 (S.D. Fla. 2014) (Moreno, C.J.) (citing *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). Public policy favors settlements, particularly where complex class-action litigation is concerned. *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). The proposed Settlements here satisfy the standard for preliminary approval because: (1) they are reasonable; (2) they are the product of arm's-length negotiations between the parties; and (3) the Class Representatives and Class Counsel believe they are in the best interest of the Settlement Class.

10. The Settlements are Reasonable: To grant preliminary approval of the proposed Settlements, the Court need only find that they fall within "the range of reasonableness." Alba Conte *et al.*, Newberg on Class Actions § 11.25 at 11–91 (4th ed. 2002); *see also* Manual for Complex Litigation (Fourth) § 21.632 (2004) (characterizing the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement based on written submissions and informal presentation from the settling parties). The Plaintiffs seek class-wide relief from the Settling Defendants, who were paid to promote Binance to the public and to present it to their followers as a safe and legitimate alternative to other cryptocurrency exchanges. In exchange for release of the claims against them, the Settling Defendants have agreed to pay $340,000 in monetary relief. This is a reasonable recovery given the inherent risks of litigation. Those risks were enhanced in this case because the Settling Defendants had filed motions to compel arbitration and dismiss—both of which remain pending. The settlements with the Settling Defendants are therefore reasonable.

11. The Settlements are the Product of Arm's-Length Negotiations: Where a settlement is the product of arm's-length negotiations conducted by capable and experienced counsel, the court begins its analysis with a presumption that the settlement is fair and reasonable. *See* 4 Newberg § 11.41; *see also Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1247 (S.D. Fla. 2016) (Ungaro, J.). Here, the

Settlements were reached after informed, extensive, arm's-length negotiations, and the Butler Settlement was facilitated by an experienced mediator, The Honorable Michael A. Hanzman (Retired). *See Lee v. Ocwen Loan Servicing, LLC,* No. 14-CV-60649, slip op. at 25–26 (S.D. Fla. Sept. 14, 2015) (Goodman, Mag. J.) (approving settlement and noting that the parties' retention of a highly respected mediator supported the conclusion that the settlement was fair and reasonable).

12. Each Settling Defendant was individually represented by experienced counsel. And the monetary relief the Settling Defendants have agreed to pay represents the best possible outcome considering the costs and risks of continued litigation. The Settlements were reached after an extensive investigation into the factual underpinnings of the practices challenged in the civil action, as well as the applicable law. In addition to their pre-filing efforts, Class Counsel engaged in extensive research, including the review of documents, facts, and testimony. These Settlements, in sum, were the result of arm's-length negotiations.

13. The Recommendation of Experienced Counsel Favors Approval: In considering a proposed class settlement, "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Blue Cross Blue Shield Antitrust Litig.*, 2020 WL 8256366, at *26 (N.D. Ala. Nov. 30, 2020). Here, Class Counsel endorses the Settlements as fair, adequate, and reasonable. Class Counsel have extensive experience litigating and settling consumer class actions and other complex matters and have conducted an extensive investigation into the factual and legal issues raised in this action. Class Counsel have weighed the benefits of the Settlements against the inherent risks and expense of continued litigation, and they strongly believe that the proposed Settlements are fair, reasonable, and adequate. That qualified and well-informed counsel endorse the Settlements weighs in favor of approval.

14. The Proposed Stay is Reasonable: Rule 23(e) requires that, prior to final approval of a settlement, notice of that settlement must be distributed to all class members who would be bound

by it. Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Here, the Plaintiffs have asked the Court to defer formal notice of the Settlement Agreements to the Settlement Class until resolution of the claims against the non-settling Defendants. The Court agrees that this is the most practical way forward. Deferring notice could well save the Settlement Class money because the Plaintiffs will be in a position to provide notice of all the settlement classes at once (if indeed there are future settlements). *See* Order Preliminarily Approving Class Settlement in the matter *of Dominik Karnas, et al. v. Mark Cuban, et al.*, Case No.: 1:22-cv-22538-RKA (S.D. Fla. June 10, 2024) (Altman, J.) ("Voyager Litigation"), ECF No. 304; *Brown v. JBS USA Food Co.*, 2024 WL 809895, at *10 (D. Colo. Feb. 27, 2024) (granting preliminary approval and deferring dissemination of notice so that plaintiffs could send notice of multiple settlements at once); *In re Auto. Parts Antitrust Litig.*, 2020 WL 5827347, at *2 (E.D. Mich. Sept. 30, 2020) (noting that the court approved deferred notice so that the plaintiffs could give notice of an appropriate number of settlements at the same time); *In re Refco, Inc. Sec. Litig.*, 2010 WL 11586941, at *3 (S.D.N.Y. May 11, 2010). In our case, the proposed Notice Administrator has informed Class Counsel that providing direct notice to the Settlement Class Members will cost hundreds of thousands of dollars. Therefore, in the interest of efficiency, dissemination of notice should be delayed until resolution of the claims against the remaining non-settling Defendants so that notice can be performed once, thereby avoiding confusion, increasing efficiency, and maximizing the recovery to the Settlement Class.

Approval of Notice and Notice Program and Direction to Effectuate the Notice

15. Should the Court grant preliminary approval, it must also "direct notice in a reasonable manner to all class members who would be bound by the proposal[.]" FED. R. CIV. P. 23(e)(1)(B). This notice must constitute the best notice that's practicable in the circumstances. *See* FED. R. CIV. P. 23(c)(2)(B) ("For any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1)

to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (same). The notice must therefore reach the affected parties *and* convey the required information—including, for instance, an adequate description of the substantive claims and the information a class member might reasonably need to decide whether to remain a class member and to be bound by the final judgment. *See Adams v. Southern Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1286 (11th Cir. 2007). Notice will be transmitted to the Class Members' email addresses as contained in Binance's client records. Notice will also be published on a Settlement Website and via digital notice. That digital notice will appear in several different crypto-related industry publications.

16. We therefore approve the notice plan because it provides the best notice practicable under the circumstances. *See* FED. R. CIV. P. 23(c)(2)(B). The notice plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action, the class certification, the terms of the Settlements, Class Counsel's Fee Application, the Class Members' rights to opt out of the Settlement Class, the Class Members' rights to object to the Settlements, and the Class Members' rights to oppose Class Counsel's Fee Application, and a request for General Release payments for the Class Representatives[4] who will execute general releases of all claims against the Settling Defendants. *Sinkfield v. Persolve Recoveries, LLC*, 2023 WL 511195, at *3 (S.D. Fla. Jan. 26, 2023) (Altman, J.).

[4] In *Johnson v. NPAS Solutions, LLC*, the Eleventh Circuit said the following about incentive awards:

> [W]e hold that *Greenough* and *Pettus* prohibit the type of incentive award that the district court approved here—one that compensates a class representative for his time and rewards him for bringing a lawsuit. Although it's true that such awards are commonplace in modern class-action litigation, that doesn't make them lawful, and it doesn't free us to ignore Supreme Court precedent forbidding them. If the Supreme Court wants to overrule *Greenough* and *Pettus*, thats its prerogative. Likewise, if either the Rules Committee or Congress doesn't like the result we've reached, they are free to amend Rule 23 or to provide for incentive awards by statute. But as matters stand

17. At a time directed by the Court as outlined above, the Plaintiffs will send, or cause to be sent, a Class Notice to each Class Member, in a form to be approved by the Court, that:

(a) contains a short, plain statement of the background of the Action and the Settlements;

(b) describes the settlement relief provided by the Settlements and outlined in this Motion;

(c) states that any relief to Class Members is contingent on the Court's final approval;

(d) informs Class Members of the *exact* amount of attorneys' fees and expenses that Settlement Class Counsel have asked the Court to pay out of the Settlement Fund[5];

(e) informs Class Members that any Final Order and Judgment entered in the Action, whether favorable or unfavorable to the Class, shall include, and be binding on, all Class Members, even if they have objected to the proposed Settlement and even if they have any other claim, lawsuit, or proceeding pending against Settling Defendants;

(f) describes the terms of the Release; and

(g) contains reference and a hyperlink to a dedicated webpage established by JND, which will include relevant documents and information regarding the Class Representatives' claims against Defendants in this Action.

The Court hereby appoints JND as the Notice Administrator. The specific form of the Notice approved by the Court will be disseminated by email in accordance with JND's Notice Plan. JND also proposes Supplemental Digital Notice, Search Engine Optimization, Publication Notice, and a Toll-Free Number and Post Office Box to facilitate dissemination of the Notice. We approve all these methods of notice.

> now, we find ourselves constrained to reverse the district court's approval of Johnson's $6,000 award.

975 F.3d 1244, 1260-61 (11th Cir. 2020). At the Final Approval Hearing, we'll take a closer look at the General Release payments the Parties are here proposing to ensure that they comply with Eleventh Circuit law. If they don't, we won't approve them.

[5] The Plaintiffs had asked that this notice "inform[ ] Class Members that attorneys' fees [and] expenses . . . will be requested at a later time[.]" Motion at 12. This isn't right. As the Eleventh Circuit explained in *Johnson*, "Rule 23(h)'s plain language requires a district court to sequence filings such that class counsel file and serve their attorneys'-fee motion *before* any objection pertaining to fees is due." 975 F.3d at 1252.

18. On a later date (as further ordered by the Court), JND will develop and deploy the informational, case-specific website at which Class Members may obtain more information about the Settlements. The case website will have an easy-to-navigate design that will be formatted to emphasize important information and deadlines and which will provide links to important case documents, including a Long Form Notice. The settlement website will be prominently displayed in all printed notice documents and will be accessible through email and digital notices. The settlement website will also be ADA-compliant and will be optimized for mobile visitors, so that information loads quickly on mobile devices. It will be designed to maximize search-engine optimization through Google and other search engines.

19. With respect to Settling Defendants, JND has already provided the required CAFA Notice [ECF No. 214-5] to the appropriate state and federal officials for the purpose of satisfying the requirements of CAFA.

Settlement Distribution

20. If and when monetary compensation from the Settling Defendants is provided to the Settlement Class through the Action, the Settlement Amounts shall be placed in the Settlement Fund, added to settlement amounts from other non-settling defendants, as such settlements are reached, and distributed in accordance with the Distribution Plan and under the supervision and direction and with the approval of the Court.

21. Courts have regularly delayed allocation plans pending future settlements with non-settling defendants. *See, e.g.*, *In re Domestic Airline Travel Antitrust Litig.*, 378 F. Supp. 3d 10, 21–22 (D.D.C. 2019) ("In a case such as this, involving a large number of Class Members and two Non-Settling Defendants, it would be inefficient to distribute and process claims until the entire case has been resolved through litigation or otherwise and the Total Funds Available for Distribution are known. The Court finds that Settlement Class Counsel has demonstrated the adequacy of the

Settlements with regard to their proposed means of distributing and processing claims, which will be done through a second notice to Class Members, followed by a right to object and/or file a claim."); *In re Packaged Ice Antitrust Litig.*, 2011 WL 717519, at *2 (E.D. Mich. Feb. 22, 2011) (approving settlement even though "the final plan of allocation was not included in the original Notice in part because of the potential for additional settlements with other Defendants which may affect the final plan of allocation").

22. Moreover, allocation plans may be, and often are, deferred until after final settlement approval. *See, e.g.*, *In re Auto. Parts Antitrust Litig.*, 2016 WL 8200511, at *10 (E.D. Mich. Aug. 9, 2016) ("The Court finds no basis for rejecting the settlements because class members are unable to estimate their individual recoveries." (citing 3 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 8.32 (4th ed. 2002)); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155379, at *3 (E.D. Tenn. May 17, 2013) (in order finally approving settlement, "[o]nce the claim processing procedure [for opt outs] is completed, plaintiffs will submit a proposed plan of allocation of the settlement proceeds for the Court's approval"); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 165 n.22 (S.D. Ohio 1992) (approving proposed settlement agreement and finding that it fairly compensated class members where "the exact amount [of individual compensation] will be firmed up [at a later date]" (citing *In re Drexel Burnham Lambert Grp., Inc.*, 130 B.R. 910, 925 (S.D.N.Y. 1991)); *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987) (noting that there's "no absolute requirement that . . . a [distribution] plan be formulated prior to notification of the class")); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 480 (S.D.N.Y. 1998) (observing that "it is appropriate, and often prudent, in massive class actions to follow a two-stage procedure, deferring the Plan of Allocation until after final settlement approval"); *Nellis v. Shugrue*, 165 B.R. 115, 121 (S.D.N.Y. 1994) (finding appellant's objection that "the settlement agreement should not have been approved without a formula or plan for the allocation of funds among claimants" to be "without merit" (citing *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. 499, 505

(S.D.N.Y. 1991))); *accord* MANUAL FOR COMPLEX LITIGATION (Third) § 30.212 (Fed. Jud. Ctr. eds., 1995) ("Often . . . the details of allocation and distribution are not established until after the settlement is approved.").

Opt Outs and Objections

23. A Class Member may object to the Settlements. To object, the Class Member must comply with the procedures and deadlines approved by the Court. Any Class Member who wishes to object to the Settlements must do so in writing by the Objection Deadline, as specified in the Class Notice. The written objection must be filed with the Clerk of Court and mailed (with the requisite postmark) to Class Counsel and Defendants' Counsel at the addresses identified in the settlements by the Objection Deadline. The requirements for asserting a *valid* written objection shall be set forth in the Class Notice.

24. Subject to approval of the Court, any Class Member who files and serves a written objection may appear, in person or by counsel, at the Final Approval Hearing to show cause why the proposed Settlements should *not* be approved as fair, adequate, and reasonable—but only if the objecting Class Member: (a) files with the Clerk of the Court a Notice of Intent to Appear at the Final Approval Hearing by the Objection Deadline; and (b) serves the Notice of Intent to Appear on all counsel designated in the Class Notice by the Objection Deadline. The Notice of Intent to Appear must include copies of any papers, exhibits, or other evidence the objecting Class Member will present to the Court in connection with the Final Approval Hearing.

Effect of Failure to Approve the Settlement or Termination

25. If the Settlement is not approved by the Court, or if for any other reason the Parties fail to obtain a Final Order and Final Judgment as contemplated in the Settlements, or if the Settlements are terminated pursuant to their terms for any reason, then the following shall apply:

(i) All orders and findings entered in connection with the Settlements shall become null and void and shall have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

(ii) All of the Parties' respective pre-Settlement claims and defenses will be preserved, including the Plaintiffs' right to seek class certification and the Settling Defendants' right to oppose class certification;

(iii) Nothing in this Order is, or may be construed as, any admission or concession by or against Settling Defendants or the Plaintiffs on any point of fact or law;

(iv) Neither the Settlements' terms nor any publicly disseminated information regarding the Settlements, including the Notice, court filings, orders, and public statements, may be used as evidence;

(v) Neither the fact of, nor any documents relating to, either party's withdrawal from the Settlements, any failure of the Court to approve the Settlements, and/or any objections or interventions may be used as evidence; and

(vi) The preliminary certification of the Class pursuant to this Order shall be vacated automatically and the Actions shall proceed as though the Class had never been certified.

General Provisions

26. The Court reserves the right to approve the Settlements with or without modification, provided that any modification does not limit the rights of the Class under the Settlements, and with or without further notice to the Class, and the Court may continue or adjourn the Fairness Hearing without further notice to the Class, except that any such continuation or adjournment shall be announced on the Settlement website.

27. Settlement Class Counsel and the Settling Defendants' Counsel are hereby authorized to use all reasonable procedures in connection with the approval and administration of the Settlements that are not materially inconsistent with this Order or the Agreements, including making, without further approval of the Court, minor changes to the Agreements, to the form or content of the Class Notice, or to any other exhibits the Parties jointly agree are reasonable or necessary.

28. The Parties are authorized to take all necessary and appropriate steps to establish the means necessary to implement the Agreements.

29. Any information received by the Settlement Notice Administrator, the Settlement Special Administrator, or any other person in connection with the Settlement Agreements that pertains to personal information about a Class Member (other than objections or requests for exclusion) shall not be disclosed to any other person or entity other than Settlement Class Counsel, the Settling Defendants, Settling Defendants' Counsel, the Court, and as otherwise provided in the Settlement Agreements.

30. This Court shall maintain continuing jurisdiction over these settlement proceedings to ensure their effectuation for the benefit of the Class.

31. Based on the foregoing, the Court **STAYS** these settlement proceedings until further Order of the Court.

DONE AND ORDERED in the Southern District of Florida on September 4, 2024.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record