

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

OMAR ENCARNACION, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

Case No: 2:17-cv-566-FtM-38CM

FINANCIAL CORPORATION OF
AMERICA,

Defendant.

ORDER

This matter comes before the Court upon review of the Motion for Approval of the Parties' Class Notice and Plan for Dissemination of the Class Notice filed on December 21, 2018. Doc. 51. Plaintiff seeks an order approving the proposed class notice to be disseminated to class members. *Id.* The parties agree on the form and substance of all but one sentence in the proposed class notice. *See id.* at 2.

The parties dispute whether the following sentence should be included: "Plaintiff is seeking a Class Recovery of up to \$48,264.00, which would entitle each Class Member to approximately \$13.96." *Id.* (quoting Doc. 51-1 at 2); *compare* Doc. 51-1 at 2, *with* Doc. 51-2 at 2. None of the cases cited by Plaintiff demonstrate an approximation of potential recovery is necessary or appropriate for class members to make an intelligent decision about whether to remain in a class action. *See* Doc. 51 at 2-3 (citing *Klewinowski v. MFP, Inc.*, No. 8:13-cv-1204-T-33TBM, 2013 WL 12157853, at *2 (M.D. Fla. Dec. 5, 2013); *In re CP Ships, Ltd., Sec. Litig.*, No. 8:05-

MD-1656-T-27TBM, 2008 WL 4663363, at *2 (M.D. Fla. Oct. 21, 2008)). The Court finds all the other information in the notice—without the approximation of potential recovery—provides sufficient information for class members to make an intelligent decision about whether to stay in the class. Additionally, the Court has adjusted the proposed deadlines to ensure prompt notice in light of the upcoming deadlines in the Case Management and Scheduling Order. *See* Doc. 29.

ACCORDINGLY, it is

ORDERED:

1. The Motion for Approval of the Parties' Class Notice and Plan for Dissemination of the Class Notice (Doc. 51) is **GRANTED in part and DENIED in part**.

2. The Court approves the form and substance of the class notice attached as Exhibit B to the Motion (Doc. 51-2). The approved class notice also is attached to this Order.

3. The class administrator shall mail the notice to the class members by First Class mail on or before **February 8, 2019**.

4. Any Class Member who wishes to be excluded from the class must send a written request for exclusion to the Class Administrator with a postmark date on or before **March 15, 2019**.

5. Any Class Member who wishes to be represented by his or her own attorney must have an attorney file a notice of appearance on or before **March 15, 2019**.

DONE and **ORDERED** in Fort Myers, Florida on this 4th day of January, 2019.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record