

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2022-010719-CA-01

SECTION: CA44

JUDGE: Alan Fine

ERIC VILLANUEVA et al

Plaintiff(s)

vs.

EMPIRES X CORP et al

Defendant(s)

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF THE
SETTLEMENT CLASS**

Plaintiffs/Class Representatives Eric Villanueva and Francisco Gonzalez (collectively, "Plaintiffs"), on behalf of themselves and on behalf of all those similarly situated, agree with all of the requested relief, as part of this proposed Settlement, and they are not aware of any third party and/or class members that have expressed any objections at this time.

In accordance with Rule 1.220 of the Florida Rules of Civil Procedure, the Court has considered the Settlement Agreement executed on behalf of the Plaintiffs and Joshua David Nicholas ("Defendant"). Upon review of the Settlement Agreement and Plaintiffs' Unopposed Motion for Preliminary Approval, the Motion for Preliminary Approval is hereby **GRANTED**.^[1]

1. The terms of the settlement are within the range of reasonableness and accordingly are preliminarily approved. In addition, this Court finds that certification of the Settlement Class satisfies the requirements of Florida Rule of Civil Procedure 1.220, and the Class Representative Plaintiffs Eric Villanueva and Francisco Gonzalez (collectively, "Plaintiffs"), fairly and adequately represent the interests of the Settlement Class. The Motion for Preliminary Approval of Settlement is therefore **GRANTED**. This preliminary approval is

subject to further consideration at the Final Approval Hearing.

2. For the reasons set forth below, subject to final approval, this Court hereby preliminarily certifies the following Settlement Class:

All persons who, from June 10, 2018 to the date of this order, invested the EmpiresX investment platform.

Excluded from the Settlement Class are counsel of record (and their respective law firms) for the Parties; Defendant and his successors, personal representatives, heirs and assigns, Nonsettling Defendants and any of their parents, affiliates, subsidiaries, and all of their respective employees, officers, and directors, successors, personal representatives, heirs and assigns; and the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff.

3. The Court hereby appoints The Moskowitz Law Firm and Meyer & Nuñez, P.A. as Settlement Class Counsel.
4. The Court finds that, for purposes of this agreed settlement class only, the class certification prerequisites set forth in Florida Rule of Civil Procedure 1.220 have been met for the purpose of the certification of a settlement class. By so doing, the Court does not take a position as to whether the class is appropriate for class certification in the event that the settlement does not become final and the issue of class certification is contested. This finding is without prejudice to the Defendant's right to contest class certification in the event that this Settlement does not become final.
5. At the Final Approval Hearing, the Court will consider whether the terms of the Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether final orders and judgments in accordance with the terms of the Settlement Agreement should be entered.
6. The Court preliminarily finds that the Settlement Agreement: (1) was reached after arm's-length negotiations, and after substantial factual and legal analyses by the parties; and (2) provides substantial benefits to all class members, especially in light of the risks associated

with this litigation.

7. The Court approves, as to form and content, the Notice submitted by the parties (Exhibit A to the Settlement Agreement attached to Plaintiffs' Motion for Preliminary Approval) and finds that the procedures described therein meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure and due process and provide the best notice practicable under the circumstances. The proposed Class Notice is reasonably calculated to reach a substantial percentage, if not all, of the Class Members. Class Counsel is directed to publish Notice of the Settlement within 5 business days of the date of this order (in English and in Spanish) to the dedicated website Class Counsel created and maintained for this Action, located at <https://moskowitz-law.com/empiresx-crypto-ponzi-scheme> and to send Notice via email to any Class Members whose email addresses are reasonably available to Class Counsel. The website address will be included in all Notices. Relevant documents, including the Notice (in English and Spanish), Complaint, Court Orders, and other important documents are posted on the website to allow Class Members to review and download the documents. The website also includes relevant dates, contact information, and other case-related information.
8. Pursuant to Florida Rule of Civil Procedure 1.220(d)(1), "If the court rules that the claim or defense shall be maintained on behalf of a class under subdivision (b)(1) or subdivision (b)(2), the order shall also provide for the notice required by subdivision (d)(2), except when a showing is made that the notice is not required, the court may provide for another kind of notice to the class as is appropriate." The Court finds that this class action Settlement is such that the Court should not require a right for Settlement Class Members to request to be excluded from the Settlement as to Defendant, given (1) the Defendant's showing to Class Counsel as to indigent status, which may be provided to the Court *in camera* for review, (2) that this Settlement does not provide for monetary relief against Defendant for the Settlement Class, but solely the injunctive relief in obtaining Defendant's cooperation in investigating and prosecuting the Class claims against the Nonsettling Defendants, and (3) Defendant is

already being required to make restitutionary payments to the Settlement Class through his plea agreement with the United States Department of Justice, which is not before this Court. Thus, while the Court agrees and finds that notice of this Settlement should be published to the Settlement Class as set forth in this Order, no ability to opt out of the Settlement is allowed.

9. Prior to the Final Approval Hearing, proof shall be filed of the Notice and publication.
10. All objections must be filed no later than twenty-one (21) calendar days prior to the “Final Approval Hearing” as set by the Court (the “Objection Deadline”) with the Clerk of Court, Eleventh Judicial Circuit Court, 73 W. Flagler Street, Suite 242, Miami, Florida 33130, and served at that same time by email to Settlement Class Counsel at adam@moskowitz-law.com, joseph@moskowitz-law.com, barbara@moskowitz-law.com, rejane@moskowitz-law.com, info@moskowitz-law.com, and david@nunez-law.com; and Defendant’s Counsel, John (Jack) Scarola, at jsx@searcylaw.com and mmccann@searcylaw.com. The objection must contain (a) the full name, address, telephone number, the signature of the objecting Class Member (the objector's counsel's signature is not sufficient), the signature of counsel, if the objecting Class Member is represented by counsel, and a statement under penalty of perjury that the Class Member is a member of the Class and the information required on the claim form is true and correct; (b) the specific reasons for the objecting Class Member's objection to the Settlement, a detailed statement of the legal basis for such objections, and produce and attach to the objection copies of all evidence such objecting Class Member may offer at the Final Approval Hearing; (c) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; (d) a statement whether the objecting Class Member and/or his/her attorney(s) intend to appear at the Final Approval

Hearing. Any attorney of an objecting Settlement Class Member who intends to appear at the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the date set by the Court in its Preliminary Approval Order and shall include the full caption and case number of each previous class action case in which such counsel has represented an objector; and (e) proposed dates of availability for the Parties to depose the objecting Class Member. The Parties shall have the right to depose or seek discovery from any objecting Class Member to assess whether the objector has standing. Any objection that does not meet all of these requirements will be deemed invalid and will be overruled.

11. Subject to approval of the Court, any objecting Settlement Class Member may appear, personally or through counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable. The objecting Class Member must file with the Clerk of the Court and serve upon Class Counsel and Defendants' Counsel a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before the Objection Deadline.
12. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or her/his/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice will not be allowed to speak or otherwise present any views at the Final Approval Hearing.
13. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the counsel for the Parties within two (2) calendar days of

the Objection Deadline.

14. Class Counsel shall, at least seven (7) days before the Final Approval Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.
15. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement.
16. The Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement and to determine whether the settlement should be finally approved, will be held before this Court at the Miami County Courthouse, on **October 27, 2022** at **11:30a.m.** in Courtroom 414, located at 73 West Flagler Street, Miami, FL 33130, or via Zoom at the following virtual location:

JUDGE ALAN FINE is inviting you to a scheduled Zoom meeting.

Judge Fine's Virtual Courtroom

<https://zoom.us/j/9786278502>

Meeting ID: 978 627 8502

+1 786 635 1003 US (Miami)

17. The Court retains jurisdiction of this action for all purposes.

^[1] Proposed Class Counsel have cited cases that where “preliminary approval” has been granted without the necessity for a hearing, unlike the hearing for final approval.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 30th day of August, 2022.

2022-010719-CA-01 08-30-2022 4:51 PM


2022-010719-CA-01 08-30-2022 4:51 PM

Hon. Alan Fine

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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