

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**SABRA RENCH, individually and on  
behalf of all others similarly situated,** )  
 )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
 **TD BANK, N.A., A-1 ALLERGY RELIEF,  
INC., and HMI INDUSTRIES, INC.,** )  
 )  
 )  
 **Defendants.** )

**Case No. 3:13-cv-00922-SMY-RJD**

**AMENDED ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

This matter having come before the Court on Plaintiff’s Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement in the above-captioned action (the "Action") between Plaintiff Sabra Rench (“Plaintiff”) and Defendant HMI Industries, Inc. (“HMI” or “Defendant”), set forth in the Settlement Agreement between Plaintiff and HMI (Doc. 267-1) (the “Settlement Agreement”), and the Court having duly considered the papers and arguments of counsel, hereby finds and orders as follows:

1. Unless defined herein, all capitalized terms in this Order shall have the same meanings as set forth in the Settlement Agreement.
2. The Court has conducted a preliminary evaluation of the settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that there is probable cause to believe that the settlement is fair, reasonable and adequate, and has been negotiated at arms' length between experienced attorneys familiar with the legal and factual issues of this case, who have diligently investigated and prosecuted this matter, and was facilitated and overseen by an experienced mediator, Patrick G.

Murphy, the former Chief Judge of the United States District Court for the Southern District of Illinois. Therefore, the Court grants preliminary approval of the settlement.

3. The Court hereby approves the appointment of Atticus Administration, LLC as the Settlement Administrator responsible for administering the Class Notice and the claims for relief submitted by Class Members in accordance with the terms of the Settlement Agreement. The Court also authorizes the Settlement Administrator to carry out such other responsibilities as are provided for in the Settlement Agreement or may be agreed to by counsel for the Parties. In accordance with the Settlement Agreement, HMI shall contribute up to \$20,000.00 towards the costs of the Settlement Administrator. HMI is directed to deposit the Administration Payment in accordance with the Settlement Agreement.

4. The Court approves the proposed content and method for giving notice to the Class Members. Counsel for the Parties are directed to modify such notices to reflect the dates set by this order prior to publication and dissemination. The proposed method of dissemination of Notice set forth in the Settlement Agreement, is the best notice practicable under the circumstances, is a reasonable manner for notice, and constitutes valid, due, and sufficient notice to the classes in full compliance with the requirements of applicable law, including but not limited to the Due Process Clause of the United States Constitution, and is approved. Therefore, the Settlement Administrator is directed to send notice in accordance with the Settlement Agreement, as follows:

- a. **Mail Notice.** Within thirty (30) days after the date of this Preliminary Approval Order (the “Settlement Notice Date”), the Settlement Administrator will send the Settlement Notice (attached to the Settlement Agreement as Exhibit C) via U.S. mail, postage prepaid, to each person identified in the Class List. Prior to sending the Settlement Notice, the Settlement Administrator will process the

address of each person identified in the Class List through the U.S. Postal Service's National Change of Address database (the "Address Database"). The Settlement Notice will be sent to the last known address reflected in the Class List unless a different address is listed in the Address Database, in which case the Settlement Notice will be sent to the address listed in the Address Database. For up to thirty (30) days following the mailing of the Settlement Notice, the Settlement Administrator will re-mail the Settlement Notice via standard U.S. Mail, postage prepaid, to any updated addresses to the extent that it received address change notifications from the U.S. Postal Service. Neither the Parties nor the Settlement Administrator will have any further obligation to send notice of the Settlement Agreement.

- b. **Settlement Website.** Within seven (7) days following the entry of this Preliminary Approval Order, the Settlement Administrator will create the Settlement Website ([www.HMIsettlement.com](http://www.HMIsettlement.com)) that will include links to the Settlement Notice, the Settlement Agreement, the Claim Form, the Fee Application, applicable deadlines, and orders of the Court pertaining to the settlement. Class Counsel and Defendant's Counsel shall jointly approve any additional content in advance of posting on the Settlement Website. Class Counsel shall provide to the Settlement Administrator, as soon as practicable after filing, Class Counsel's Fee Application and motion for payment of incentive awards to the Class Representative, together with supporting memorandum and papers, which the Settlement Administrator will post on the Settlement Website within 5 days of receipt from Class Counsel. The Court

finds that the posting of the Fee Application on the Settlement Website constitutes a reasonable manner of serving the motion pursuant to Rule 23(h).

5. At or before the Final Approval Hearing (defined below), the Settlement Administrator shall provide the Court with a declaration showing that Notice was disseminated in accordance with this Order and the Settlement Agreement.

6. On August 28, 2019, at 1:30 p.m., this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement and Fee Application, and to determine whether Final Judgment approving the settlement and dismissing with prejudice all claims asserted in the litigation should be entered. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to the Class Members.

#### **Exclusions**

7. Any person on the Class List may request to be excluded (or “opt out”) from the Settlement Agreement. A person who wishes to opt out of the Settlement Agreement must complete and mail to the Settlement Administrator a Request for Exclusion, including a statement that the person desires to be excluded from the Settlement Agreement, which is postmarked no later than sixty (60) days after the Settlement Notice Date. Only in the case of a person who is deceased or incapacitated may the Request for Exclusion be signed by the legally authorized representative of the person. Otherwise, the Request for Exclusion must be personally signed by the person requesting exclusion. No person shall be deemed opted-out of the Class through any purported “mass” or “class” opt-outs. So-called “mass” or “class” opt-outs shall not be allowed. Any person who submits a Claim Form during the Claim Period shall be deemed to have waived

his or her right to opt-out of the Settlement Agreement, regardless of whether the person has also submitted a Request for Exclusion.

8. Except for those persons who have properly and timely submitted Requests for Exclusion, all other persons identified on the Class List will be Class Members for purposes of the Settlement Agreement and will be bound by the Settlement Agreement if finally approved, and the Judgment and Order Approving Settlement, if entered, including the Release contained within the Settlement Agreement.

9. Any person who properly requests to be excluded from the Settlement Agreement shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement Agreement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement.

### **Objections**

10. Only Class Members who do not timely submit a valid Request for Exclusion may object to the Settlement. Any Class Member who objects to the proposed Settlement Agreement or Fee Application must file with the Court, and serve on Class Counsel and Defendant's Counsel at the addresses set forth below, a written statement of objection postmarked no later than sixty (60) days after the Settlement Notice Date. The written statement of objection shall include: (i) the objector's name, address, and telephone number; (ii) the name of this Action and the case number; (iii) a statement of each objection; (iv) a written brief detailing the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection; (v) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any

class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years, and, if the Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection; and (vi) the dates between the time the objection is filed and the date of the Final Approval Hearing when the objector is available for deposition by counsel for the Parties in the Southern District of Illinois. If the objection is made through an attorney, the written objection must also include the identity of the Class Member represented by objector's counsel. No objection may be made on behalf of a group of Class Members.

11. Any Class Member who does not timely file and serve a written objection pursuant to the terms hereof shall be deemed to have waived, and shall be foreclosed from thereafter raising, any objection to the Settlement Agreement. Any objection that is not timely made shall be barred, except for good cause shown.

12. Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing must deliver to Class Counsel and Defendant's Counsel and have file-marked by the Court, on or before the Objection Deadline, a Notice of Intention to Appear. The Notice of Intention to Appear must: (i) state how much time the Class Member anticipates needing to present the objection; (ii) identify, by name, address, telephone number all witnesses the Class Member proposes to have testify; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits. Any Class Member who does not timely file and serve a notice of intention to appear shall not be permitted to appear, except for good cause shown.

13. The procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

**Supplemental Filing Deadlines**

14. Class Counsel shall file their Fee Application within sixty (60) days after the date of this Preliminary Approval Order.

15. The Motion for Final Approval of the Settlement Agreement shall be filed no later than twenty-one (21) days prior to the Final Approval Hearing.

16. The Parties may each file a supplemental brief no longer than twenty (20) pages in length to address any objections filed by Class Members. Said supplemental briefs shall be filed no later than seven (7) calendar days before the Final Approval Hearing.

17. If any deadline set forth in this Order falls on a Saturday, Sunday or federal holiday, then such deadline shall extend to the next Court business day.

18. The Court reserves the right to adjust the date of the Final Approval Hearing and related deadlines. In that event, the revised hearing date and/or deadlines shall be posted on the Settlement Website; the Parties shall not be required to re-send or re-publish the Notice herein.

19. The Court approves and adopts the termination provisions of the Settlement Agreement.

20. The settlement on the terms and conditions of the Settlement Agreement is hereby preliminarily approved, but is not to be deemed an admission of liability or fault by Defendant or by any other party or person, or a finding of the validity of any claims asserted in the litigation or of any wrongdoing or of any violation of law by Defendant or any other party or person. The settlement is not a concession and shall not be used as an admission of any fault or omission by

Defendant or any other party or person. Unless modified in this Order, the Court adopts and directs the parties to comply with all deadlines and obligations requiring action prior to the Final Approval Hearing set forth in the Settlement Agreement, including the funding of the Settlement Accounts.

21. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

22. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other court, the Settlement Agreement shall be deemed null and void and the Action shall proceed as if the settlement had not occurred, and no reference to the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose. In such event, the Parties shall return to their respective positions in this lawsuit as those positions existed immediately before the Parties executed the Settlement Agreement and the Parties shall coordinate with the Court to establish a new case scheduling order with revised case deadlines and a new trial date for the lawsuit.

23. Summary of Major Dates and Deadlines:

Settlement Website goes live	April 24, 2019
Settlement Notice Deadline	May 17, 2019
Class Counsel's Fee Application Deadline	June 17, 2019
Opt-Out Deadline	July 16, 2019
Class Members' Deadline to Submit Claims Form	July 16, 2019
Objection/Notice of Intent to Appear Deadline	July 16, 2019

Motion for Final Approval Due	August 7, 2019
Supplemental Briefs Addressing Objections Due	August 21, 2019
Final Approval Hearing:	August 28, 2019, at 1:30 p.m.

**IT IS SO ORDERED.**

**DATED: April 24, 2019**



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**STACI M. YANDLE**  
**United States District Judge**