

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

IN RE HEALTH INSURANCE  
INNOVATIONS SECURITIES  
LITIGATION

Case No. 8:17-cv-2186-T-60SPF

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

This matter is before the Court on the report and recommendation of Sean P. Flynn, United States Magistrate Judge. (Doc. 161). Lead Plaintiff Robert Rector alleges, among other things, that Defendants Health Insurance Innovations, Inc. (“HIIQ” or the “Company”) and its Chief Financial Officer Michael D. Hershberger (collectively, “Defendants”) violated federal securities laws by failing to disclose facts regarding the Company’s unsuccessful application for its third-party administrator license with the Florida Office of Insurance Regulation and the risks these facts posed to the Company’s business, prospects, and operations. Lead Plaintiff further alleges that these material misstatements or omissions in HIIQ’s public filings, press releases, or other public statements resulted in the prices of HIIQ securities to be artificially inflated, causing investors to suffer damages.

The parties reached a settlement and now move for preliminary approval of their settlement agreement, certification of the putative class for the purpose of settlement, approval of the form and manner of their proposed notice to the class, and a fairness hearing for the final consideration and approval of their settlement

agreement. *See* (Doc. 150). Judge Flynn recommends the motion be granted.<sup>1</sup> (Doc. 161). No party has filed an objection, and the time to object has expired.

Under the Federal Magistrates Act, Congress vested Article III judges with the power to “designate a magistrate judge to hear and determine any pretrial matter pending before the court,” subject to various exceptions. 28 U.S.C. § 636(b)(1)(A). The Act further vests magistrate judges with authority to submit proposed findings of fact and recommendations for disposition by an Article III judge. 28 U.S.C. § 636(b)(1)(B). After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982).

In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993). However, the district judge reviews legal conclusions *de novo*, even in the absence of an objection. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Castro Bobadilla v. Reno*, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), *aff’d*, 28 F.3d 116 (11th Cir. 1994) (table). When no timely and specific objections are filed, case law indicates the district judge should review the magistrate judge’s proposed findings and recommendations using a clearly

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<sup>1</sup> Judge Flynn found that the proposed Summary Notice was deficient. As such, he recommended that it not be approved as proposed, and that a revised Summary Notice be submitted for the Court’s consideration and approval. (Doc. 161). The Court directed the parties to file an amended Summary Notice. (Doc. 162). The notice was submitted on November 6, 2020, and it corrects the deficiencies identified by Judge Flynn in his report and recommendation. (Doc. 163).

erroneous standard. *See Gropp v. United Airlines, Inc.*, 817 F. Supp. 1558, 1562 (M.D. Fla. 1993).

After careful consideration of the record, including Judge Flynn's report and recommendation, the Court adopts the report and recommendation. The Court agrees with Judge Flynn's detailed and well-reasoned factual findings and legal conclusions, including that the joint stipulation of class settlement should be approved on a preliminary basis as fair, reasonable, and adequate.

Accordingly, it is

**ORDERED, ADJUDGED, and DECREED:**

1. The report and recommendation (Doc. 161) is **AFFIRMED** and **ADOPTED** and **INCORPORATED BY REFERENCE** into this Order for all purposes, including appellate review.
2. "Lead Plaintiff's Unopposed Motion for (i) Preliminary Approval of Settlement; (ii) Approval of Notice to the Class; (iii) Setting Deadlines for Final Approval" (Doc. 150) is granted. The parties' settlement agreement (Doc. 150-1) is preliminarily approved as fair, reasonable, and adequate.
3. This Order (the "Preliminary Approval Order") incorporates by reference the definitions in the Stipulation and all terms used herein shall have the same meanings as set forth in the Stipulation.
4. The putative class is conditionally certified for settlement purposes. The class consists of all Persons or entities who purchased or otherwise acquired HIIQ Class A Common Stock (trading symbol HIIQ) or exchange-traded Call Options on HIIQ Class A Common Stock, an all persons who

- sold (wrote) exchange-traded Put Options on HIIQ Class A Common Stock between August 4, 2017, and September 11, 2017, inclusive (the “Settlement Class”). Excluded from the Settlement Class are Defendants, all current and former directors and officers of Health Insurance Innovations, Inc., each of their respective family members, and any affiliates controlled or owned by any of these excluded individuals and/or entities. Also excluded from the Settlement Class are those Persons who timely and validly request exclusion from the Settlement Class pursuant to the Notice sent to potential Settlement Class Members.
5. Pursuant to Rule 23 and for purposes of settlement only, the Court preliminarily certifies Lead Plaintiff Robert Rector as Settlement Class Representative for the Settlement Class, and appoints Kahn Swick & Foti, LLC as Lead Counsel for the Settlement Class (“Settlement Class Lead Counsel”). Settlement Class Counsel is authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be undertaken, pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.
  6. With respect to the Settlement Class, the Court preliminarily finds, solely for purposes of effectuating the Settlement, that the prerequisites for a class action under Rules 23(a) and (b)(3) have been satisfied.
  7. The Court preliminarily approves: (i) the Settlement of the Litigation as set forth in the Stipulation, including the releases contained therein, and

- (ii) the proposed Plan of Allocation described in the Notice, subject to the right of any Settlement Class Member to challenge the fairness, reasonableness, and adequacy of the Settlement, the Stipulation or the proposed Plan of Allocation, and to show cause, if any exists, why a final judgment dismissing the Litigation based on the Stipulation should not be ordered herein after due and adequate notice to the Settlement Class has been given in conformity with this Order.
8. Settlement Class Counsel is hereby authorized to retain Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator in connection with the Settlement to supervise and administer the notice and claims procedures as well as the processing of claims at a cost that is estimated to be no more than \$175,000.00 as more fully set forth below:

- i. No later than twenty calendar days after entry of this Preliminary Approval Order (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and Proof of Claim and Release form (“Claim Form”), substantially in the forms previously filed as Exhibits A-1 and A-3, to be mailed by first class mail, postage prepaid, to all members of the Settlement Class who may be identified through reasonable effort, including through the cooperation of HIIQ and/or its transfer agents to provide security holder lists as set forth in the Stipulation.

- ii. Settlement Class Counsel shall cause a summary notice (the “Summary Notice”), substantially in the form filed at Doc. 163, to be published twice no later than ten calendar days after the Notice Date: once in the national edition of *Investor’s Business Weekly* and once over the *NPR Newswire*.
  - iii. Settlement Class Counsel shall serve on Defendants’ Counsel and file with the Court proof by affidavit or declaration of mailing and publication not later than seven calendar days before the Settlement Fairness Hearing.
  - iv. Settlement Class Counsel shall cause the Notice, the Summary Notice, and the Claim Form to be placed on the Claims Administrator’s website, on or before the Notice date.
9. Not later than ten days after the submission of the Stipulation to the Court, Defendants shall notify the appropriate State and Federal officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. Defendants shall file proof of compliance with the Class Action Fairness Act of 2005 with the Court at least thirty-five days prior to the Final Approval Hearing.
10. The Court hereby approves the form of Notice and Summary Notice<sup>2</sup> (together, the “Notices”) and the Claim Form, and finds that the procedures established for publication, mailing and distribution of such Notices substantially in the manner and form set forth in this Preliminary

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<sup>2</sup> The Court approves the Summary Notice filed at Doc. 163.

Approval Order meet the requirements of Rule 23, the Exchange Act and Securities Act, as amended by the Private Securities Litigation Reform Act of 1995, the Constitution of the United States, and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

11. The Claims Administrator shall use reasonable efforts to give notice to brokers and other nominees who purchased or otherwise acquired certain publicly traded HIIQ Securities for the benefit of another Person during the Class Period. Those brokers and other nominees are directed to either: (i) send the Notice and Claim Form to all such beneficial owners, postmarked within ten calendar days of receipt of the Notice; or (ii) send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten calendar days after receipt of the Notice, in which event the Claims Administrator shall mail the Notice and Claim Form to such beneficial owners within ten calendar days after receipt thereof.

12. Upon full compliance with this Preliminary Approval Order, including the timely mailing of the Notice and Claim Form to beneficial owners, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Preliminary Approval Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought and reflecting compliance with these instructions, including timely mailing of the Notice and Claim

Form. Such properly documented expenses incurred by nominees in compliance with the terms of this Preliminary Approval Order shall be paid from the Settlement Fund in accordance with the provisions of the Stipulation, subject to further order of this Court with respect to any dispute concerning such compensation.

13. Pursuant to Fed. R. Civ. P. 23(e), a fairness hearing will be scheduled before Judge Flynn. Counsel are directed to contact Judge Flynn's chambers for further instruction. All motions and papers in support of the Settlement, the Plan of Allocation, Settlement Class Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses and/or a request for reimbursement of costs and expenses (including lost wages) by any Lead Plaintiff in connection with his representation of the Settlement Class, shall be filed and served no later than thirty-five calendar days before the date scheduled for the Settlement Fairness Hearing, and all reply briefs in support of said motions shall be filed and served no later than seven calendar days prior to the Settlement Fairness Hearing.
14. The Court reserves the right to adjourn the Settlement Fairness Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees and reimbursement of litigation expenses or with such modification as may be consented to by the Parties to the Stipulation and without further notice to the Settlement Class.



15. Any member of the Settlement Class who wishes to object to the Settlement must, at least twenty-one calendar days prior to the Settlement Fairness Hearing, file with the Court and serve on counsel (listed below) a written statement of objection to the Settlement, the Plan of Allocation, Settlement Class Counsel's request for attorneys' fees and reimbursement of litigation expenses and/or a request for reimbursement of costs and expenses (including lost wages) by Lead Plaintiff in connection with his representation of the Settlement Class.
16. Any member of the Settlement Class who timely objects to the Settlement, the Plan of Allocation, Settlement Class Counsel's request for attorneys' fees and reimbursement of litigation expenses and/or a request for reimbursement of costs and expenses (including lost wages) by Lead Plaintiff in connection with his representation of the Settlement Class, or who otherwise wishes to be heard, may appear in person or by his, her, or its attorney, at his, her, or its own expense, at the Settlement Fairness Hearing and present evidence or argument that may be proper or relevant. They may do so provided that no Person other than the Parties and their counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Person shall be considered by the Court, unless within twenty-one calendar days prior to the Settlement Fairness Hearing, such Person files with the Court and serves upon counsel listed below:

- 1) a statement of such Person's objections to any matters before the Court concerning the Settlement;
- 2) the grounds therefore or the reasons that such Person desires to appear and be heard, as well as all documents or writings such Person desires the Court to consider;
- 3) whether that Person intends to present any witnesses; and
- 4) proof of the Person's membership in the Settlement Class, which proof shall include the Person's purchases/acquisitions/transactions of certain publicly traded HIIQ Securities during the Class Period and any sales thereof, including the dates, the number of shares and price(s) paid and received for each such purchase, acquisition and sale. Such filings shall be served upon the Court and the following counsel:

CLERK OF THE COURT  
MIDDLE DISTRICT OF FLORIDA  
Sam M. Gibbons U.S. Courthouse  
801 North Florida Avenue  
Tampa, Florida 33602

Lead Counsel for Lead Plaintiff and the Settlement Class:  
Ramzi Abadou  
Kahn Swick & Foti, LLC  
1100 Poydras Street, Suite 3200  
New Orleans, LA 70163  
Telephone: (504) 455-1400  
Facsimile: (504) 455-1498

Counsel for Defendants:  
Robert F. Serio Gibson, Dunn & Crutcher LLP  
200 Park Avenue New York, NY 10166-0193  
Telephone: (212) 351-4000

Any Person who does not make his, her, or its objection in the manner provided in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Stipulation, unless otherwise ordered by the Court. Any papers, in response to any such objections, in further support of the above-noted motions shall be served and filed no later than seven days prior to the Settlement Hearing.

17. All Settlement Class Members shall be bound by all determinations and judgments in this Litigation concerning the settlement, including but not limited to the releases provided for in the Stipulation, whether favorable or unfavorable, except those who are found by the Court to have previously timely and validly requested exclusion from the Settlement Class. The persons and entities who request exclusion from the Settlement Class will be excluded from the Settlement Class and shall have no rights under the Stipulation, shall not be entitled to submit any Proof of Claim forms, shall not share in the distribution of the Net Settlement Fund as described in the Stipulation and in the Notice, and shall not be bound by the Stipulation or the Judgment entered as to Defendants in the Litigation.

18. Any Person falling within the definition of the Settlement Class may upon request be excluded from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”) at least twenty-one calendar days prior to the date of the

Settlement Fairness Hearing. To be valid, a Request for Exclusion must state: (1) the name, address, and telephone number of the Person requesting exclusion; (2) the Person's purchases/acquisitions/transactions of HIIQ publicly traded securities during the Class Period and any sales thereof, including the dates, the number of shares and price(s) paid and received for each such purchase, acquisition and sale; (3) a clear and unambiguous statement that the Person wishes to be excluded from the Settlement Class; and (4) must include the Person's signature. No further opportunity to request exclusion will be given in this Litigation. Requests for Exclusion may not be submitted by e-mail, unless otherwise ordered by the Court.

19. Any Settlement Class Member who wishes to be eligible to participate in the Net Settlement Fund must timely submit a valid Claim Form to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than one hundred and twenty calendar days following the Notice Date. Such deadline may be extended further by Court order. If the Notice Date is extended by order of the Court, then all Proof of Claim and Release forms must be submitted by the date specified in that order. A Claim Form shall be deemed to have been submitted when postmarked, if mailed by first class, or registered or certified mail, postage prepaid, addressed in accordance with the instructions given in the Claim Form. All other Claim Forms shall be deemed to have been submitted at the time they are actually received by the Claims

Administrator. To be valid, a Claim Form must: (i) be completed in a manner that permits the Claims Administrator to determine the eligibility of the claim as set forth in the Claim Form; (ii) include the release by the claimant of all Released Parties as set forth in the Stipulation; and (iii) be signed with an affirmation that the information is true and correct. As part of the Claim Form, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to the effectuation of the Settlement reflected in the Stipulation) agree and enter into the release as provided in the Stipulation. All Settlement Class Members who do not submit a valid and timely Claim Form shall be barred forever from receiving any payments from the Net Settlement Fund, but will, in all other respects, be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered, whether favorable or unfavorable and whether or not they submit a Claim Form, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as provided herein.

20. If this Settlement, including any amendment made in accordance with the Stipulation, is not approved by the Court or shall not become effective for any reason whatsoever, the Settlement (including any modification thereof) made with the consent of the Parties as provided for in the Stipulation, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be

terminated and shall become void and of no further force and effect except as set forth in the Stipulation, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity. Each party shall be restored *nunc pro tunc* to their respective positions in the Litigation as of April 30, 2020. In such circumstances, each of the Settling Parties shall retain its currently existing rights to seek or to object to the certification of this litigation as a class action under Fed. R. Civ. P. 23, or any state or federal rule, statute, law, or provision, and to contest and appeal any grant or denial of certification in this litigation or in any other litigation on any other grounds.

21. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination whether the Settlement should be approved, Lead Plaintiff, Settlement Class Counsel, and all members of the Settlement Class are barred and enjoined from commencing, instituting, intervening in or participating in, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind or character (whether brought directly, in a representative capacity, derivatively, or in any other capacity), that asserts any of the Released Claims against any of the Released Persons, as defined in the Stipulation.

22. The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the contents of those funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. Settlement Class Counsel, or an agent thereof, is authorized and directed to prepare any tax returns and any other tax reporting for or in respect of the Settlement Fund and to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court. The Court authorizes payment out of the Settlement Fund of notice and administration expenses in accordance with the Stipulation.

24. This Preliminary Approval Order, the Settlement, the Stipulation, and all negotiations, statements, discussions, and proceedings in connection therewith shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of Lead Plaintiff, any Defendant or the other Released Persons, any member of the Settlement Class, or any other Person, of any liability or wrongdoing whatsoever by them, or any of them, and shall not be deemed to create any inference that there is any liability on the part of Lead Plaintiff, any Defendant or the other Released

Persons, any member of the Settlement Class, or any other Person. This Preliminary Approval Order, the Settlement, the Stipulation, and all negotiations, statements, discussions, and proceedings in connection therewith shall not be used, offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration tribunal, or other forum of any kind or character in the United States or any other country (except an action to enforce the Stipulation and Settlement contemplated thereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Lead Plaintiff, any member of the Settlement Class, or any other Person, has or has not suffered any damage.

25. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Order or the Stipulation.

26. The Court further retains jurisdiction over this Litigation to consider all further matters arising out of or connected with the Settlement reflected in the Stipulation, including enforcement of the releases provided for in the Stipulation. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to Settlement Class Members, and may approve the Settlement, with such modifications as may be



agreed to by Plaintiff and Defendants, if appropriate, without further notice to the Settlement Class.

**DONE** and **ORDERED** in Chambers, in Tampa, Florida, this 19th day of November, 2020.



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**TOM BARBER**  
**UNITED STATES DISTRICT JUDGE**