

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),
Defendant.

NOTICE OF FILING

Pursuant to Superior Court Rule 9A, Plaintiff Marie Coughlin hereby gives notice to all parties in the above matter that on February 22, 2022, the papers listed in the accompanying List of Documents were filed with Plymouth Superior Court and sent to counsel for all parties.

Dated: February 22, 2022

Respectfully submitted,

By: /s/ Sergei Lemberg

Sergei Lemberg (BBO# 650671)

Stephen Taylor (*phv*)

LEMBERG LAW LLC

43 Danbury Road

Wilton, CT 06897

Telephone: (203) 653-2250

Facsimile: (203) 653-3424

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, a true and accurate copy of the foregoing was served on all counsel of record by email.

/s/ Sergei Lemberg
Sergei Lemberg

COMMONWEALTH OF MASSACHUSETTS

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Defendant.

LIST OF DOCUMENTS

Pursuant to Superior Court Rule 9A, the following documents are hereby submitted for filing by the Plaintiff.

1. Notice of Filing;
2. Motion for an Award of (1) Attorneys' Fees and Expenses and (2) an Incentive Award to the Named Plaintiff;
3. Plaintiff's Memorandum of Law in Support of Motion for an Award of (1) Attorneys' Fees and Expenses and (2) an Incentive Award to the Named Plaintiff;
4. The Declaration of Sergei Lemberg; and
5. The Declaration of Stephen Taylor.

Dated: February 22, 2022

Respectfully submitted,
By: /s/ Sergei Lemberg

Sergei Lemberg (BBO# 650671)

Stephen Taylor (*phv*)

LEMBERG LAW LLC

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/s/ Sergei Lemberg
Sergei Lemberg

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Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),

Defendant.

**MOTION FOR (1) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND (2) AN
INCENTIVE AWARD TO THE NAMED PLAINTIFF**

Plaintiff Marie Coughlin and Class Counsel respectfully move this Court for an Order awarding attorneys' fees, costs and expenses of \$200,000 (one-third of the \$600,000.00 Settlement Fund) and for an incentive award to the Class Representative in the amount of \$25,000.00.

In support, Plaintiff respectfully submits the accompanying memorandum of law and declarations of counsel.

Plaintiff respectfully requests that the Court enter the Proposed Order attached hereto as Exhibit A.

Dated: February 22, 2022

Respectfully submitted,

By: /s/ Sergei Lemberg
Sergei Lemberg (BBO# 650671)
Stephen Taylor (*phv*)
LEMBERG LAW LLC
43 Danbury Road

Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, a true and accurate copy of the foregoing was served on all counsel of record by email.

/s/ Sergei Lemberg _____
Sergei Lemberg

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),

Defendant.

[PROPOSED] ORDER

Plaintiff's Motion for Attorneys' Fees and Expenses and an Incentive Award to the Named Plaintiff (the "Fee Motion") having come before the Court. The Court has read and considered the Fee Motion, all supporting declarations and other materials relating to the Fee Motion,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court finds and concludes that due and adequate notice was directed to all persons and entities who are Class members, advising them of Class Counsel's intent to seek attorneys' fees and expenses, the proposed Incentive Award to the Class Representative and of their right to object thereto.
2. A full and fair opportunity was accorded to all such persons and entities to be heard with respect to the Fee Motion.
3. Any objections to the Fee Motion do not counsel against approval of Plaintiff's counsel's requested fees and are hereby overruled.
4. The Court hereby grants Class Counsel's request for fees and expenses in the

combined amount of \$200,000 as reasonable and warranted after considering (1) the nature of the case and the issues presented, (2) the time and labor required, (3) the amount of damages involved, (4) the result obtained, (5) the experience, reputation, and ability of the attorneys, (6) the usual price charged for similar services by other attorneys in the same area, (7) the amount of awards in similar cases. *See In re AMICAS, Inc. S'holder Litig.*, No. 10-174-BLS2, 2010 WL 5557444, at *4 (Mass. Super. Dec. 6, 2010).

5. The Court approves payment of a \$25,000 Incentive Payment to Marie Coughlin.

6. The awarded attorneys' fees and expenses shall be paid pursuant to the terms, conditions and obligations of the Settlement Agreement.

IT IS SO ORDERED

Dated: _____, 2022

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR (1) AN AWARD OF
ATTORNEYS' FEES AND EXPENSES AND
(2) AN INCENTIVE AWARD TO THE NAMED PLAINTIFF**

INTRODUCTION

Pursuant to M.G.L. c. 93A § 9(4) and the Settlement Agreement, Plaintiff Marie Coughlin and Class Counsel respectfully move this Court for an Order awarding attorneys' fees, costs and expenses of \$200,000 (one-third of the \$600,000.00 Settlement Fund) and for an incentive award to the Class Representative in the amount of \$25,000.00.

Plaintiff and Class Counsel have vigorously litigated this Chapter 93A consumer protection act case against Defendant Higher Education Loan Authority of the State of Missouri ("MOHELA" or "Defendant") and obtained an outstanding result for the class: a total fund of \$600,000.00 to be distributed *directly*, after deductions for costs and awards, to those class members who submit valid claims. Not a penny of the fund reverts back to MOHELA. But for the efforts of Class Counsel and the Plaintiff, the class would receive nothing, and the alleged violations of Massachusetts law would go unremedied. Their efforts included extensive written discovery and motion practice regarding

Plaintiff and class member claims in chief, the prerequisites of class certification and Defendant's defenses to merits and class certification.

On December 22, 2021, the Court granted preliminary approval to the Parties' class action settlement agreement and scheduled the Final Approval Hearing for May 3, 2022.

Because of the efforts of Class Counsel and the Class Representative, the Settlement Class Members can participate in this excellent result and recover a very significant amount in settlement owing to allegedly unlawful debt collection calls. Under the circumstances of this case, an award of \$200,000 in fees and costs is abundantly reasonable because:

- This is an excellent settlement to the Class, providing substantial benefits to the Class, particularly in light of the available damages and the risks of further litigation;
- No portion of the fund will revert to the Defendant; all funds will go to the claimants, to cover fees or costs, or to an appropriate *cy pres* recipient approved by the Court; and
- The settlement was agreed to only after discovery into the key issues in the case and extensive briefing and rulings which developed the law of the case.

For the reasons stated herein, Class Counsel and Plaintiff respectfully request that the Court approve the incentive and attorneys' fees and expenses awards.

ARGUMENT

I. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND EXPENSES FOR THEIR SERVICE TO THE CLASS

Where a party maintains a suit that results in the creation of a fund for the benefit of a class, the costs of the litigation, including an award of reasonable attorneys' fees, should be recovered from the fund created by the litigation. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970). Moreover, Chapter 93A explicitly provides for an award of attorneys' fees and costs. *See* M.G.L. c. 93A § 9(4).

To determine a reasonable attorney's fee award in a common fund class action, Massachusetts courts often use the lodestar method. *See In re AMICAS, Inc. S'holder Litig.*, 10-174-BLS2, 2010 WL

5557444, at *3 (Mass. Super. Dec. 6, 2010). In fashioning a fee award, the lodestar method takes into consideration much more than the total hours worked and counsel’s hourly rate; rather, courts consider the following qualitative factors: “(1) the nature of the case and the issues presented, (2) the time and labor required, (3) the amount of damages involved, (4) the result obtained, (5) the experience, reputation, and ability of the attorneys, (6) the usual price charged for similar services by other attorneys in the same area, and (7) the amount of awards in similar cases.” *Id.* at 3.

Notably, “[b]ecause the result obtained is one factor to be considered in determining a reasonable fee [under the lodestar method], even under the lodestar method the Court may take into consideration the amount of the fund and its relation to the amount of the requested fee.” *In re AMICAS, Inc.*, 2010 WL 5557444, at *3-4 (emphasis supplied). In addition, in statutory fee award cases, such as this one, fee awards are often enhanced to compensate for the risk of litigation. *See id.* (citing *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 324, 613 N.E.2d 881, 891 (1993)).

“The majority of courts, whether state or federal,” however, “utilize the percentage method where a common fund is involved, using the lodestar approach, if at all, as a ‘cross check.’” *Commonwealth Care All.*, 2013 WL 6268236, at *1 n.3 (quoting Fitzpatrick, *An Empirical Study of Class Actions Settlements and their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD., 811, 820 (2010)); *see, e.g., Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *11 (D. Mass. Sept. 30, 2016) (Burroughs, J.) (approving 1/3 of the fund with lodestar cross-check); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the fund); *In re Am. Dental Partners, Inc. Sec. Litig.*, 2010 WL 1427404, at *1 (D. Mass. Apr. 9, 2010) (“In common fund cases, the trend increasingly favors the calculation of a fee award by use of the percentage of the fund (POF) method.”). The First Circuit has found that utilizing the percentage of the fund method offers distinctive advantages: (1) it is less burdensome to administer; (2) it reduces the possibility of collateral disputes; (3) it enhances the efficiency throughout the litigation; (4) it is less taxing on

judicial resources; and (5) it better approximates the workings of the marketplace. *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995). Courts applying this method consider near-identical considerations as the lodestar factors: “(1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations.” *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) (citing *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005), citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir.2000); Third Circuit Task Force, Court Awarded Attorneys Fees, 108 F.R.D. 237, 255–56 (1985)).

Given the overlapping qualitative considerations between the lodestar and percentage of the funds methods, courts will often reach the same result regardless of which method is used. For instance, in *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, another Chapter 93A class action, the court awarded counsel \$6 million in attorney’s fees out of a \$20 million common fund where class counsel asked that court to “apply a multiplier of 2” to award it “30 percent of the common fund.” 2013 WL 6268236, at *2 (Mass. Super. Aug. 5, 2013). In approving the award, the court considered the result achieved by class counsel and the risks counsel undertook taking the case on a contingency basis, acknowledged that “Massachusetts state courts follow the lodestar approach,” but was nonetheless “persuaded that these additional considerations [the above qualitative factors] warrant the multiplier or upward adjustment of the lodestar amount.” *Id.* & at n.3 (emphasis supplied). Likewise, in *Schiefer v. Bain Capital, LP*, the plaintiff requested an attorney’s fee award in the amount of one-third of the \$3.5 million common fund and “cited a number of cases in which federal courts have approved fee awards based on a percentage of the total settlement.” 2018 WL 6184638, at *2. While the court noted that “the standard that applies in state court cases remains the lodestar

approach” and adopted that approach, it also applied qualitative factors such as the benefits of the settlement to the class and the fact that “the entire fund here will be distributed to class members,” and as a result of those factors applied a multiplier to the lodestar and awarded \$1.224 million in fees, or approximately 35% of the common fund. *See id.*, at *1-2. Thus, while the *Schiefer* court opted to apply the lodestar method rather than the percentage of the fund, in the end it awarded the same amount of fees they had requested under the percentage of the fund method.

In this case, the Settlement Agreement here creates a common fund of \$600,000.00. Class Counsel requests an award of attorneys’ fees and costs in the amount of \$200,000.00 for their efforts on behalf of the class, which can be calculated as either one-third of the settlement fund, or under the lodestar method with a 1.62 multiplier.

II. ONE-THIRD OF THE SETTLEMENT FUND IN FEES AND EXPENSES IS REASONABLE ON ITS FACE

As an initial matter, one-third of the settlement fund in a common fund class action is reasonable on its face and Massachusetts courts and others in the First Circuit routinely award a one-third fee. *See Roberts*, 2016 WL 8677312, at *13 (“a one-third fee award, while certainly generous, is not unreasonable in light of the positive results obtained for class members, and the actual time and efforts expended by Class Counsel in this case.”); *Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016) (“the one-third fee requested here is fair and reasonable”); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at *6 (D.N.H. Dec. 18, 2007) (awarding fees in the amount of 33% of settlement fund); *McCormick v. Festiva Dev. Grp., LLC*, 2011 WL 2457883, at *1 (D. Me. June 20, 2011) (awarding fees in the amount of one third of settlement fund); *Applegate v. Formed Fiber Techs., LLC*, 2013 WL 6162596, at *1 (D. Me. Nov. 21, 2013) (same); *Bennett v. Roark Capital Grp., Inc.*, 2011 WL 1703447, at *2 (D. Me. May 4, 2011) (same); *see also Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016)

(awarding 30% of common fund and observing that “as several courts have concluded, 30% is not out of proportion with recovery percentages in large class action litigations.”).

“In most instances, [the determination] will involve a sliding scale dependent upon the ultimate recovery, the expectation being that, absent unusual circumstances, the percentage will decrease as the size of the fund increases.” *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001); *see also In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 81 (D. Mass. 2005) (“There are also several cases that suggest that the standard percentage is generally lower as the common fund increases.”); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 187 (D. Mass. 1998). It is the “mega funds,” those in excess of \$50 million, which tend to be at the low end of this sliding scale. *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 188 (D. Mass. 1998) (“District courts have awarded fees of 4 to 16 percent as the so-called megafund baseline.”); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 513 (W.D. Pa. 2003) (citing cases) (awarding 25% of \$25 million common fund).

At \$600,000.00 (far less than a megafund thereby not implicating concerns regarding windfalls to class counsel) the size of the fund here does not justify less than one-third. *See In re Sterling Fin. Corp. Sec. Class Action*, 2009 WL 2914363, at *4 (E.D. Pa. Sept. 10, 2009) (approving 30% in fees of common fund of \$10.25 million and stating “the settlement fund is not so large as to support a percentage smaller than thirty percent”) (emphasis supplied). Thus, the fee and expense request here is reasonable on its face.

III. THE LODESTAR METHOD SUPPORTS THE REQUESTED FEE AWARD

The requested attorneys’ fees and expenses are also reasonable under the lodestar method. Class Counsel’s lodestar in this action is \$122,988 which is based on 228 attorney and professional staff hours. (Lemberg Decl. ¶ 13):

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$650	84	\$54,600

Stephen Taylor, Esq.	\$600	74.7	\$44,820
Josh Markovits, Esq.	\$400	54.2	\$21,680
Paralegal Time	\$125	15.1	\$1,888
		Total: 228	\$122,988

These rates are fully supported by the skill and experience of Plaintiff’s counsel and are well within the market rate for their services. (Lemberg Decl. ¶¶ 3-8, 14-17; Taylor Decl. ¶¶ 2-5). The lodestar does not include additional work associated with final approval and Class Counsel’s oversight of the claims resolution process. (Lemberg Decl. ¶ 12).

As noted, multipliers of lodestar amounts are “an accepted means of enhancing a lodestar appropriately to reflect, for example, the scale of the results achieved by prevailing counsel or the risks counsel took in pursuing contingent fees.” *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 165 (D. Mass. 2015) (collecting cases); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (applying multiplier of about 8.3); *In re AMICAS, Inc. S'holder Litig.*, 2010 WL 5557444, at *4 (Mass. Super. Dec. 6, 2010), (court approved lodestar multiplier of 5); *Roberts*, 2016 WL 8677312, at *13 (“Multipliers of 2 and more have been found reasonable in common fund cases”); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D.Mass.1998) (approving attorneys’ fees that would constitute a lodestar multiplier of 8.9). Consideration of the below qualitative factors weigh strongly in favor of approving the requested fees and expenses and a multiplier of 1.62.

a. THE NATURE OF THE CASE AND THE ISSUES PRESENTED

This case involves MOHELA’s allegedly unlawful collection practices. But for the efforts of Class Counsel there would be no remedy for any class member. The nature of this case and the issues presented, including MOHELA’s significant defenses to liability and class certification, more than support the requested fee award.

Specifically, this case involves M.G.L. ch. 93A, the Massachusetts Consumer Protection Law, which prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” M.G.L. c. 93A, § 2(a). Deceptive acts or practices include conduct in contravention of the Massachusetts Debt Collection Regulations. Those regulations were amended in 2012 to make it “an unfair or deceptive act or practice for a creditor to contact a debtor . . . [by] initiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number” *Armata v. Target Corp.*, 480 Mass. 14, 17-18 (2018) (quoting 940 C.M.R. 7.04(1)(f)) (emphasis in original).

The regulation defines “communication” as “conveying information directly or indirectly to any person through any medium. . . .” 940 C.M.R. § 7.03. A creditor is liable under M.G.L. c. 93A, § 2 and 940 C.M.R. 7.04(1)(f) if it initiates more than two calls within a seven-day period to a debtor so long as the creditor is either able to reach the debtor or able to leave a voicemail message, regardless of whether the creditor actually does so. *See Armata*, 480 Mass. at 25; *see also Harrington v. Wells Fargo Bank, N.A.*, 2019 WL 3818299, at *3 (D. Mass. Aug. 14, 2019); *Alper v. Select Portfolio Servicing, Inc.*, 2019 WL 3281129, at *4 (D. Mass. July 19, 2019).

Class Counsels’ investigation and discovery showed MOHELA was attempting to collect debt from Plaintiff and others and at times called more than two times within a seven-day period to collect payment. Moreover, Class Counsel believes that the evidence supported certification of a class under the Chapter 93A: the size of the class is in the thousands; there are questions of law and fact common to all members of the class (including whether the practice of calling Massachusetts consumers more than twice within a seven-day period regarding delinquent debt violates 940 C.M.R. 7.04(1)(f) and M.G.L. c. 93A, § 2, and the validity of MOHELA’s defenses); Plaintiff is typical of the class as

MOHELA placed more than two calls in a seven-day period to Plaintiff and the class regarding debts and Plaintiff and the class were damaged in the same way based on this alleged uniform conduct; and Plaintiff and her counsel were adequate representatives.

However, MOHELA maintained that all of Plaintiff's and class claims were invalid. Indeed, in its Motion for Judgment on the Pleadings, Defendant asserted four separate grounds for judgment in its favor: (1) MOHELA is not a "creditor" as defined by 940 CMR § 7.00, *et seq.*, therefore the Debt Collection Regulation does not apply to it; (2) MOHELA is not a "person" under G.L. c. 93A, § 9(1), therefore c. 93A does not apply to it; (3) MOHELA was not engaged in "trade or commerce" under G.L. c. 93A, § 2, therefore the c. 93A claim failed; and (4) as an arm of a sovereign state (Missouri), MOHELA is immune from suit pursuant to the Eleventh Amendment to the U.S. Constitution and the doctrine of sovereign immunity. Plaintiff opposed the motion arguing, *inter alia*, (1) MOHELA was a "creditor" under the Debt Collection Regulation as the definition is broad and includes entities collecting on behalf of others; (2) it was a "person" under Chapter 93A as that definition included "legal entities" which MOHELA was; (3) Defendant was engaged in "trade or commerce" as it had inserted itself into the marketplace of the Commonwealth; and (4) MOHELA was not entitled to the sovereign immunity defense.

The complexity and breadth of these issues amply supports the requested award, particularly considering the skillful manner in which Class Counsel handled those issues and brought the case to a successful resolution on behalf of the Settlement Class.

b. THE TIME AND LABOR REQUIRED

Class Counsel has invested significant time and effort in this action which support the requested fee award. (Lemberg Decl. ¶¶ 9-12).

Before initiating this action, Class Counsel investigated the facts and law relating to Plaintiff's claims. On or about May 13, 2020, Plaintiff filed her class action complaint in Plymouth Superior

Court against MOHELA. On or about July 21, 2020, MOHELA served its Answer denying the material allegations of the Complaint as to the Plaintiff and her putative class. At the same time, Defendant served its Motion for Judgment on the Pleadings. (*See* Defendant’s Motion for Judgment on the Pleadings Rule 9(a) package submitted on September 8, 2020). Defendant asserted four separate grounds for judgment in its favor: (1) MOHELA is not a “creditor” as defined by 940 CMR § 7.00, *et seq.*, therefore the Debt Collection Regulation does not apply to it; (2) MOHELA is not a “person” under G.L. c. 93A, § 9(1), therefore c. 93A does not apply to it; (3) MOHELA was not engaged in “trade or commerce” under G.L. c. 93A, § 2, therefore the c. 93A claim failed; and (4) as an arm of a sovereign state (Missouri), MOHELA is immune from suit pursuant to the Eleventh Amendment to the U.S. Constitution and the doctrine of sovereign immunity.

Plaintiff opposed the motion arguing, *inter alia*, (1) MOHELA was a “creditor” under the Debt Collection Regulation as the definition is broad and includes entities collecting on behalf of others; (2) it was a “person” under Chapter 93A as that definition included “legal entities” which MOHELA was; (3) Defendant was engaged in “trade or commerce” as it had inserted itself into the marketplace of the Commonwealth; and (4) MOHELA was not entitled to the sovereign immunity defense.

On December 21, 2020, the Honorable Daniel J. O’Shea denied the Motion for Judgment on the Pleadings. On January 15, 2021, Defendant filed a Notice of Appeal.

At the same time, discovery commenced. On January 11, 2021, Plaintiff served discovery requests pursuant to Mass. R. Civ. P. 33 & 34. On February 9, 2021, MOHELA served Plaintiff with a Motion for Protective Order to Stay Discovery Pending Appeal (*See* Defendant’s Motion for Protective Order Rule 9(a) package submitted on March 8, 2021). Plaintiff opposed the motion and, following a hearing on April 20, 2021, the Honorable William F. Sullivan denied the motion.

Through myriad meets and conferrals, the Parties discussed the merits of the case and

potential resolutions. Ultimately, the Parties agreed to a set of terms to resolve the matter class-wide. (Lemberg Decl. ¶ 11). Plaintiff conducted discovery both informally and through deposition testimony into the class size and practices of MOHELA. (*Id.*). Plaintiff negotiated and drafted a comprehensive Settlement Agreement which was preliminarily approved by the Court.

In addition, Class Counsel will devote further time and effort appearing at the final approval hearing, responding to ongoing inquiries from Class Members going forward, addressing any disputes relating to submitted claims, and monitoring claims processing and the distribution of settlement payments by the Settlement Administrator. (Lemberg Decl. ¶ 12).

Class Counsel has expended significant efforts and resources prosecuting this action on behalf of Plaintiff and the Class. These combined efforts, taken with the risk of no recovery to counsel whatsoever and against highly competent defense counsel, amply support the requested award in this case, and demonstrate that the fees and expenses requested here have been well earned.

c. THE AMOUNT OF DAMAGES INVOLVED AND THE RESULT OBTAINED

The size of the fund here and the number of persons benefited under the settlement establish that Class Counsel achieved an excellent result in light of the available damages.

First, the fund of \$600,000 resolves approximately 10,880 potential claims for violations of the Regulation and Chapter 93A owing to MOHELA's alleged practice of calling consumers in excess of the permitted amount. Absent a showing of actual provable damages owing to excess phone calls, class members may be entitled to statutory damages (\$25 dollars for their claims, recovery up to \$50 to \$75 dollars if they can establish the violations were "willful or knowing," and the potential to recover per *violation* rather than per claim which can increase the minimum statutory award greatly). Mass. Gen. Laws ch. 93A, § 9(3). The fund here represents, in total, approximately \$55 per each class member. From the net fund of \$321,129, and if *every* member submitted a valid claim, each would receive approximately \$29.50, more than the baseline statutory award. It is not expected that

anywhere near all class members will submit claims to recover and individual recovery for members will exceed this figure. The final amount of cash paid to class members will be known after completion of the claims process and reported to the Court at final approval. However, given the value of the claims and the relief obtained, this is an outstanding result.¹

Further, the results obtained are very significant considering the significant hurdles to establishing liability and certifying the class given MOHELA's defenses. The risks of continued litigation are compounded by the fact that for any plaintiff's firm to bring a class action against a substantial company requires the commitment of time and resources in the face of significant risks of loss and/or delay. Firms of small size face even greater risks in litigating large class actions with no guarantee of payment. *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (finding heightened risk of small firm representation should be rewarded with larger percentage fee for good result); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 750 (1987) (Delaware Valley II) (plurality opinion) (“[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work. . . .”); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) (“[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients.”).

This is a pure contingent fee case, which Class Counsel took on with risk concerning not only the result of the case, but also how much time and money would need to be invested to get a result against a well-funded defendant represented by very able counsel. Because hours and resources are

¹ Indeed, cases under the Telephone Consumer Protection Act, which provide for at least \$500 dollars for each and every unlawful communication, settle for far less per class member or even claiming class member than what has been achieved here. *See, e.g., Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) (total recovery is \$1 per member and \$52 per claiming member (collecting cases on claimant recovery)).

limited, the attorneys involved in this case were required to defer or decline other work in order to properly prosecute this case. Had the case been lost, they would have received no compensation whatsoever for their significant investment of time and effort over the year. Accordingly, this factor also weighs in favor of the requested award.

d. THE EXPERIENCE, REPUTATION, AND ABILITY OF THE ATTORNEYS

The experience, reputation and ability of the attorneys involved also weighs in favor of the requested fees and expenses. Class Counsel are experienced and skilled consumer protection and class action litigators. (Lemberg Decl. ¶¶ 4 & 5; Taylor Decl. ¶ 5). They have successfully represented classes in both contested and settled proceedings. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act (“FDCPA”) class action settlement); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Lavigne v. First Cmty. Bancshares, Inc.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (“the Court concludes that Lemberg Law, LLC (Stephen Taylor) should be appointed as class counsel.”) (contested class certification decision in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Duchene v. Westlake Servs., LLC*, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM common fund in TCPA action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

Class Counsel brought their experience and skill to bear to efficiently investigate, litigate, settle this case, conduct discovery, and oversee the administration of the settlement process. Their skill with Chapter 93A and class action litigation was critical in efficiently identifying the key issues,

negotiating the settlement for the class and demonstrates the reasonableness of the one-third fee and the lodestar multiplier.

e. THE AMOUNTS OF AWARDS IN SIMILAR CASES

Awards in similar cases support the requested fee. Indeed, the fee requested in this case is in accord with awards in other class action cases involving similar consumer protections statutes, including the Telephone Consumer Protection Act (“TCPA”), which like the Massachusetts Debt Collection Regulations, seeks to protect consumers from harassing phone calls. *See, e.g., Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App’x 880 (3d Cir. 2016) (affirming award of one-third of a reversionary settlement fund in TCPA class action); *Vandervort v Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (fee of one-third awarded in TCPA case); *Bridgeview Health Care Ctr., Ltd. v. Jerryclark*, 2015 WL 4498741, at *2 (N.D. Ill. July 23, 2015) (awarding one-third of common fund in TCPA class action); *Hageman v. AT & T Mobility LLC*, 2015 WL 9855925, at *4 (D. Mont. Feb. 11, 2015) (approving fee award of “\$15 million, or one-third of the common fund recovery” in TCPA class action settlement against AT&T); *Saf-T-Gard Int’l, Inc. v. Seiko Corp. of Am.*, No. 09 C 0776 (N.D. Ill. Jan. 14, 2011) (awarding one-third of common fund in multimillion dollar TCPA class action); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (“Accordingly, the Court awards attorney’s fees and costs in the amount of \$1.1 million, or 33% of the \$3.3 million settlement fund ceiling amount.”).

A one-third fee is also reasonable in light of other percentage of the fund cases in the First Circuit and, indeed, class cases under Chapter 93A. *Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *11 (D. Mass. Sept. 30, 2016) (Burroughs, J.) (approving 1/3 of a \$4.75MM common fund in fees even where a full 39% of the total fund would revert back to the defendant); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the

fund); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at *1 & n.3 (Mass. Super. Aug. 5, 2013) (awarding 30% of the fund in fees in Chapter 93A class action).

In light of the foregoing, the fee and expense request here is largely in-line with awards in similar cases. Thus, this factor weighs in support of the requested award.

f. PUBLIC POLICY CONSIDERATIONS

The Defendant was allegedly violating Massachusetts law and violating the rights of citizens of the Commonwealth for years. *But for* the efforts of Class Counsel, taken at expenditure of time, resources and with no promise of remuneration, class members would have received no resolution to their alleged claims.

Further, the Massachusetts legislature encourages litigants to pursue Chapter 93A claims like these via class actions. *See* M.G.L. c. 93A § 9(2) (“Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated person”). Chapter 93A is a broad consumer protection statute which “encompasses claims where a plaintiff’s damages are de minimis” *Ciardi v. F. Hoffmann-La Roche, Ltd.*, 436 Mass. 53, 60 n.14 (2002); *see also* *Murphy v. Charlestown Sav. Bank*, 380 Mass. 738, 743, 405 N.E.2d 954, 957 (1980) (“G.L. c. 93A deserves broad construction.”). And the regulation at issue here – the Massachusetts Debt Collection Regulations – was enacted to “prevent[] creditors from harassing, oppressing, or abusing debtors.” *Armata*, 480 Mass. at 15, 99 N.E.3d at 790; *see also* *Watkins v. Glenn Assocs., Inc.*, 2016 WL 3224784, at *2 (Mass. Super. June 10, 2016) (“Taken as a whole, the Guidance and the state regulation evidence a clear intent by the Attorney General to limit the pressure that debt collectors may exert upon a person who simply owes a debt, to prevent a creditor from intruding upon a debtor’s personal life, and to protect them from harassment, oppression, and

abuse.”). Thus, this class action serves important public policy of ensuring that consumers’ rights be protected even where individual damages are minimal. So too, the requested fee here serves an important public policy of ensuring that consumer claims under the regulation and Chapter 93A can be pursued by experienced and skilled counsel.

g. THE REASONABLENESS OF THE REQUESTED AWARD IS FURTHER DEMONSTRATED BY THE FACT THAT IT IS INCLUSIVE OF EXPENSES

The reasonableness of the fee award to Class Counsel is further demonstrated by the fact that it is inclusive of both attorneys’ fees and expenses. Here, Class Counsel’s expenses total \$381. (Lemberg Decl. ¶¶ 18-21). The fact that these expenses are included in the amount sought by Class Counsel demonstrates that the requested amount is reasonable and appropriate. *See Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (approving fee award of one third of settlement fund and noting “Class Counsel’s good faith in agreeing to absorb all costs as part of the fee award without seeking separate reimbursement for them.”).

h. THE COURT SHOULD APPROVE THE INCENTIVE AWARD TO MARIE COUGHLIN FOR HER EFFORTS ON BEHALF OF THE CLASS

Class Counsel requests that the Court approve the payment of an incentive award for Plaintiff Marie Coughlin in the amount of \$25,000.00.

An incentive award for bringing and litigating this case on behalf of the class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Manual for Complex Litigation*, § 21.62 n.971 (4th ed. 2004); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005). Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 468 (D.P.R. 2011); *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *7 (D. Mass. Aug. 17, 2005).

Ms. Coughlin has been intimately involved with this case since its inception. She assisted in our investigation and has been in contact with and aided her counsel throughout the case. (Taylor Decl. ¶ 7). But for her efforts, and her desire and willingness to stick with this case and get relief for others in addition to herself, the Settlement Class here would have received nothing. An Incentive Award of \$25,000.00 to Plaintiff is reasonable and fair to Plaintiff for her efforts on behalf of the class and is within the range of awards approved in other class actions. *See, e.g., Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (approving award of \$20,000 to each named plaintiff).

CONCLUSION

For the reasons set forth above, Plaintiff and Class Counsel respectfully request that the Court grant this motion and (1) award attorneys' fees and expenses to Class Counsel in the amount of \$200,000.00 and (2) award \$25,000.00 as an incentive award to Plaintiff for her role in representing the class.

Dated: February 22, 2022

Respectfully submitted,

By: /s/ Sergei Lemberg
Sergei Lemberg (BBO# 650671)
Stephen Taylor (*phv*)
LEMBERG LAW LLC
43 Danbury Road
Wilton, CT 06897
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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),

Defendant.

**DECLARATION OF SERGEI LEMBERG IN SUPPORT OF MOTION FOR ATTORNEY
FEES AND EXPENSES AND INCENTIVE AWARD**

I, Sergei Lemberg, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am the principal of Lemberg Law, LLC. I am a consumer rights attorney experienced in prosecuting actions under various Federal and State consumer protection statutes. I am a 1997 graduate of Brandeis University with a degree in Economics and a Minor in Accounting, a 2001 graduate of University of Pennsylvania School of Law and now the principal of Lemberg Law L.L.C.

2. Prior to starting my own law firm, I held positions in the New York offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and practiced corporate bankruptcy and reorganization law at Andrews Kurth LLP and Day Pitney LLP. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

3. I am a member in good standing of the bars of Massachusetts, Connecticut, Georgia, New York, Pennsylvania, and Florida. I am also admitted to practice before the First, Second,

Third, Fifth, Seventh, and Ninth Circuit Courts of Appeal. I am admitted to practice before the following Federal courts: the District of Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut; the Northern and Middle Districts of Georgia; the Northern, Central and Southern Districts of Illinois; the District of Maryland; the Eastern and Western Districts of Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern, Southern, Eastern and Western Districts of New York; the Northern District of Ohio; the Northern, Eastern and Western Districts of Oklahoma; the Western District of Texas; the Eastern, Middle and Western Districts of Pennsylvania

4. My firm's decisions on consumer right's matters include but are not limited to: *Manuel v. NRA Grp. LLC*, 722 F. App'x 141, 142 (3d Cir. 2018); *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98 (1st Cir. 2014); *Scott v. Westlake Servs. LLC*, 2014 WL 250251 (7th Cir. Jan. 23, 2014); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012); *LaVigne v. First Cmty. Bancshares, Inc.*, No. 1:15-CV-00934-WJ-LF, 2016 WL 6305992 (D.N.M. Oct. 19, 2016); *Butto v. Collecto, Inc.*, 290 F.R.D. 372, 395-396 (E.D.N.Y. 2013); *Cerrato v. Solomon & Solomon*, 909 F.Supp.2d 139 (D. Conn. 2012); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011); *Davis v. Diversified Consultants, Inc.*, 2014 WL 2944864 (D. Mass. June 27, 2014); *Hudak v. The Berkley Grp., Inc.*, 2014 WL 354666 (D. Conn. Jan. 23, 2014); *Zimmerman v. Portfolio Recovery Assocs., LLC*, 2013 WL 6508813 (S.D.N.Y. Dec. 12, 2013); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012).

5. I and my firm have been certified as class counsel, in both contested proceedings and in settlement, in multiple matters. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Lavigne v. First Community*

Bancshares, Inc., et al., 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certification in Telephone Consumer Protection Act (“TCPA”) action); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM common fund in TCPA action); *In Re: Convergent Telephone Consumer Protection Act Litigation*, ECF No. 268, 3:13-md-02478 (D. Conn., November 10, 2016) (final approval of class settlement consisting of \$5.5MM common fund in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act (“FDCPA”) class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012) (FDCPA class action); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Douma v. Law Offices of Mitchell N. Kay P.C.*, 09-cv-9957 (S.D.N.Y.) (FDCPA class action); *Walters v. Collection Tech., Inc.*, 10-cv-02514 (S.D.N.Y.) (FDCPA class action).

6. I have been interviewed and asked to contribute on multiple occasions by the media regarding various matters that I worked on, such as the Boston Herald, NorthJersey.com, Newsweek, The Leader Herald, PatriotLedger.com, Law360, Texas Lawyer, ABC News, Chanel 7 in Boston, McClatchy, AOL Autos, Connecticut Law Tribune, Philly.com, the Los Angeles Times, Consumer Reports.org, Syracuse.com, Daily News, Harford Advocate.com and the Boston Herald.

7. I have co-authored the definitive compilation of form complaints in Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form complaints for the Lemon Law and Auto Fraud sections.

8. I am also the former Chair of the Consumer Law Section of the Connecticut Bar Association. I held that position from 2014 to 2015. I have been a guest speaker at the Professional Association for Customer Engagement conference in 2014 and the National Debt Collection Forum in 2016. In both instances I spoke about best practices that should be or are adopted in the debt collection profession from the perspective of a consumer advocate.

OVERVIEW OF EFFORTS ON BEHALF OF PLAINTIFF AND THE CLASS

9. We have litigated this case on behalf of Ms. Coughlin and the proposed class since April 2020.

10. This matter required Class Counsel to spend substantial time on this litigation that could have been spent on other matters. My firm has not been paid anything for our work on this case was filed.

11. To provide the Court with an overview of the work done by Lemberg Law in this case, I divide my firm's work into specific phases or tasks that track the progress of the case. Thus, my firm:

- 1) Investigated the facts and law relating to Plaintiff's claims before initiating any action;
- 2) Drafted a well-pleaded Complaint and filed the same;
- 3) Analyzed Defendant's response;
- 4) Analyzed, and successfully opposed, Defendant's Motion for Judgment on the Pleadings;

- 5) Devised strategies to overcome Defendant's defenses to the litigation including its arguments on identifying class members, arguments against class certification and against liability;
- 6) On January 11, 2021, served discovery requests pursuant to Mass. R. Civ. P. 33 & 34 concerning class, merits and damages elements.
- 7) Analyzed, and successfully opposed, Defendant's Motion for a Protective Order to Stay Discovery Pending Appeal;
- 8) Took deposition testimony concerning the class size, composition, how the class size was determined and steps taken to avoid reoccurrence of the alleged violation of Massachusetts Debt Collection Regulation;
- 9) Negotiated the details of a comprehensive Settlement Agreement;
- 10) Prepared the exhibits to the Settlement Agreement (including the Class Notice, Claim Form, and proposed Preliminary Approval Order);
- 11) Prepared a motion for preliminary approval of the Settlement;
- 12) Regularly communicated with the Claims Administrator;
- 13) Reviewed the language and content of the settlement website;
- 14) Communicated with the named Plaintiff throughout the litigation; and
- 15) Prepared the present motion.

12. Additionally, I anticipate a significant amount of work and hours will be expended after the filing of the fee application related to final approval and oversight of the administrator. We will also continue to assist class members with individual inquiries, will oversee the claims resolution process, and Class Counsel will help resolve Class member challenges to the result of their claims submissions. Judging by previous experiences, these responsibilities will require hundreds of hours of work by Class Counsel over the coming months.

CLASS COUNSEL’S LODESTAR

13. Our lodestar in this matter is \$122,988 representing 228 hours expended by four firm attorneys and paralegal staff. The following attorneys contributed significant time towards this case and seek compensation at the following rates.

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$650	84	\$54,600
Stephen Taylor, Esq.	\$600	74.7	\$44,820
Josh Markovits, Esq.	\$400	54.2	\$21,680
Paralegal Time	\$125	15.1	\$1,888
		Total: 228	\$122,988

14. My billing rate in this matter is \$650 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. In addition, Mr. Taylor’s billing rate is \$600 per hour which is supported by his skill and experience as set forth in his declaration.

15. Further, we are seeking compensation for Mr. Josh Markovits who bills at \$400 per hour.

16. Mr. Markovits is an associate at Lemberg Law with a focus on consumer protection class actions. Mr. Markovits received his J.D., *cum laude*, from Benjamin N. Cardozo School of Law in 2015 and is admitted to practice in New York. Mr. Markovits is also admitted to practice before the Southern, Eastern and Western Districts of New York, the Northern District of Illinois, and the District of Colorado. During law school, Mr. Markovits served as a legal intern in the chambers of both a federal court and a New York Supreme Court judge. He also served as a legal intern in the U.S. Commodity Futures Trading Commission’s Division of Enforcement. He has been approved as class counsel in consumer protection class actions. *See, e.g., Virgne v. C.R. England, Inc.*, Case No. 1:19-cv-02011-SEB-MDJ (S.D. Ind. Jan. 13, 2021) (ECF No. 124) (final approval of class settlement in TCPA action)

17. These rates, (between \$650 and \$400 for attorneys and \$125 for paralegal staff) are within the range of rates charged by attorneys with similar qualifications in complex class action litigation. For instance, in *Davis v. Footbridge Eng'g Servs., LLC*, the Honorable Judge Nancy Gertner set reasonable hourly rates for plaintiff's counsel in a federal Fair Labor Standards Act action. 2011 WL 3678928 (D. Mass. Aug. 22, 2011). Class counsel came from mid-sized firms with national practice with experience in litigating a variety of national class actions. *Id.*, 2011 WL 3678928, at *3-4. The Court approved rates for partners of \$565 to \$650 per hour, for associates at rates of \$350 to \$425 per hour and for paralegal staff at \$140 to \$210 per hour. *Id.* Moreover, the court in *Davis* noted that while plaintiff's counsel were not from large firms, "that fact is not dispositive," explaining that "[w]hile higher rates at the large firms may be justified by their higher overhead, the overhead and transaction costs of a class action litigation practice, particularly a national practice, is similarly high." *Id.* at *4. Other courts have approved similar rates. *See, e.g., Brenner v. J.C. Penney Co.*, 2013 WL 6865667, at *6 (D. Mass. Dec. 26, 2013) (approving hourly rates of up to \$600 for class counsel in class action alleging defendant violated Massachusetts consumer protection statute by unlawfully gathering and using customer zip codes in connection with credit card purchases); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at *1 (Mass. Super. Aug. 5, 2013) (approving hourly rate of up to \$590 for class counsel in Chapter 93A case).

EXPENSES

18. Lemberg Law has incurred court costs and filing fees in connection with this action.

19. As reflected in the expense reports attached hereto as Exhibit A, the total costs incurred to date are \$381.

20. All of these costs and expenses are reflected in the books and records of the firm, and are supported by invoices, receipts, expense vouchers, check records, or other documentation.

21. In my professional opinion, and based on my experience prosecuting the action and overseeing the conduct of the litigation, all of these expenses were reasonable and necessarily incurred in connection with the action.

I declare under penalty of perjury that the above is true and correct.

Dated: February 22, 2022

/s/ Sergei Lemberg
Sergei Lemberg

Exhibit A

LEMBERG LAW LLC
Coughlin v. MOHELA

All Transactions

Invoiced Date	Memo	Debit	Credit	Balance
07/21/2021	PHV fee	101.00		101.00
04/27/2020	Court filing fee	280.00		381.00
		381.00	0.00	381.00

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

MARIE COUGHLIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),

Defendant.

**DECLARATION OF STEPHEN TAYLOR IN SUPPORT OF MOTION FOR ATTORNEY
FEES AND EXPENSES AND INCENTIVE AWARD**

I, Stephen Taylor, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am a partner at Lemberg Law, LLC, of Wilton, Connecticut and counsel for the Plaintiff Marie Coughlin. Unless otherwise stated, I have personal knowledge of the following facts, and if called and sworn as a witness, could and would competently testify thereto.

2. I graduated from Boston College in 2003, from Tulane University School of Law in 2007, I am a former judicial clerk and joined Lemberg Law in 2009.

3. In addition to being licensed to practice law in the states of Connecticut and New York, I am admitted to the following Federal District Courts: the Southern, Eastern, Western and Northern Districts of New York; the Southern, Eastern, and Northern Districts of Texas; the District of Colorado; the Central and Northern Districts of Illinois; the Eastern District of Michigan and the District of Connecticut. I am a member in good standing in both Connecticut and New York and appear in this matter *pro hac vice*.

4. My billing rate in this matter is \$600 which is justified by my experience and qualifications. I have extensive experience in consumer rights litigation including matters brought under the Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”) the Magnuson Moss Federal Act, the Truth in Lending Act, and a variety of state consumer protection statutes including Massachusetts General Law 93A.

5. I have extensive experience in class action litigation and have been certified as class counsel in numerous cases. *See, e.g., Johnson v. Comodo Grp., Inc.*, 2020 WL 525898 (D.N.J. Jan. 31, 2020); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certifying TCPA class action and appointing undersigned as class counsel); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Vinas v. Credit Bureau of Napa County Inc.*, Dkt. No. 112, 14-cv-3270 (D. Md. February 22, 2017) (order granting final approval of FDCPA class action settlement); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (order granting final approval of FDCPA class action settlement); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

6. My firm has litigated this case on behalf of Plaintiff and the proposed class since she contacted my firm in April 2020.

7. Ms. Coughlin has been an exemplary class representative. She has kept in regular contact with my office. She has provided us information and aided us in our investigation. She has continued to maintain this case as a class action through the past several years. But for her commitment the Class would receive nothing. These efforts and actions of Ms. Coughlin on behalf of the class deserve to be rewarded and merit the \$25,000 incentive award we seek on her behalf.

I declare under penalty of perjury that the above is true and correct.

Dated: February 22, 2022

/s/ Stephen Taylor
Stephen Taylor