

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.

**UNOPPOSED MOTION TO EXTEND NOTICE PERIOD, SCHEDULE SECOND FINAL  
APPROVAL HEARING AND RESPONSE TO OBJECTION**

Plaintiff Marie Coughlin (“Plaintiff”) respectfully (1) moves with consent of the Defendant to extend the notice period for certain class members and schedule a second final approval hearing for the Parties’ class action settlement agreement and (2) opposes the sole objection to the settlement submitted by a class member (the “Day Objection”).<sup>1</sup>

**Grounds to Extend the Notice Period and Schedule Second Final Approval Hearing**

As the Court will recall, this matter is a class action brought under the G.L. c. 93A, § 2, where Plaintiff alleges Defendant Higher Education Loan Authority of the State of Missouri (“Defendant” or “MOHELA”), violated c. 93A and 940 Code Mass. Regs. § 7.04(1)(f) (2012) (the “Collection Regulation”) by placing excessive collection calls to Massachusetts consumers. The Court granted preliminary approval to the Parties’ class action settlement agreement on December 22, 2021. The

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<sup>1</sup> Attached as Exhibit A to the declaration of Stephen Taylor.

settlement provides for a total settlement fund of \$600,000.00 to pay Settlement Class Member claims, administration costs and attorneys' fees and costs.

Pursuant to the preliminary approval order, notice was sent to the Settlement Class detailing the terms of the Settlement Agreement and inviting members to submit claims or object.<sup>2</sup> The claim and objection deadlines were on March 22, 2022. The response has been overwhelmingly positive. There have been 2,002 claims submitted by Settlement Class Members and only one objection. (Fait Decl. ¶¶ 7-9 & 17). This represents a high 18% claims rate and significant recovery for these thousands of class members.<sup>3</sup> See, e.g., *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005) (reaction to settlement was positive with 5,489 claims (out of class in the millions), and 10 objections); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005) (reaction to settlement was positive with 10,614 consumer claims (out of class in the tens or hundreds of thousands) and 10 objectors).

*However*, the class administrator advised the Parties this week that some class notices were returned by the United States Postal Service ("USPS") as undeliverable, or with forwarding addresses, but not properly processed due to a reporting error. (Fait Decl. ¶¶ 10-16). Specifically, KCC reports that an automated reporting feature in the settlement database failed. As a result, 258 pieces of mail returned by the USPS with a forwarding address were not forwarded.<sup>4</sup> (Fait Decl. ¶ 11). Further, 937 pieces were returned as simply undeliverable but were not processed under standard procedures and therefore not searched for updated mailing addresses (if any exist). *Id.* As a result, there exist

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<sup>2</sup> The notice and claims process is detailed in the attached declaration of Mary Jane Fait ("Fait Decl.") from KCC Class Actions Services, LLC ("KCC"), the class action administrator.

<sup>3</sup> 2,002 claims/10,882 class members.

<sup>4</sup> Plaintiff notes that all class notices were checked against the National Change of Address database at the outset of the notice program. (Fait. Decl. ¶ 2).

Settlement Class Members who did not receive notice of their rights to submit a claim and/or object but would have had the error not occurred.

This causes two issues. First and foremost, these Settlement Class Members must be treated equitably and provided the notice they would have received had no error occurred.<sup>5</sup> Second, it is not prudent for the Court to assess final approval to the Settlement Agreement until the notice issues are corrected.

To cure these issues and to put these 1,195 Settlement Class Members in the position they would have been absent the error, Plaintiff, with the consent of MOHELA and after consultations with KCC, requests that the Court:

- (1) approve the reissuance of the notice (an example of the notice is attached as Exhibit A to the Fait Decl.) to the 1,195;
- (2) set a time 45-days from issuance of the notice for these members to submit claims and/or object; and
- (3) schedule a second final approval hearing twenty days (or other appropriate time) thereafter to consider final approval of the settlement agreement.

The reissued notice will be identical to the initial notice but for the change in dates for claims, objections and the second hearing. Further, “KCC will not charge the Class, Settlement Fund or counsel any additional cost associated with the re-mail and claim adjudication tasks.” (Fait Decl. ¶ 16).

Finally, this request should not cause a rescheduling of the May 3, 2022, hearing. It should proceed as scheduled to address these issues, set a schedule as requested herein, address the Day Objection and because it is the date provided to the rest of the class in the notice.

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<sup>5</sup> It is not expected that any large percentage of this group will submit claims and objections will most likely remain *de minimis*. Regardless, any member cannot lose their right to reasonable notice due to an error at the administrator.

### **The Day Objection is Baseless and Should Be Overruled**

The Day Objection states it “objects to the terms of the Settlement on the grounds that they are insufficient punishment for MOHELA.” No specific settlement term is addressed. The objection does not state what is insufficient about the settlement, what the objector believes would be sufficient, why it would be sufficient or why this negotiated resolution which provides significant relief for thousands is unfair. “[O]bjectors bear the burden of proving any assertions they raise challenging the reasonableness of [the] class action settlement.” *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (internal citation omitted and collecting cases). The Day Objection does not attempt to meet this burden and offers no grounds to deviate from the findings in the preliminary approval order approving the fairness of the settlement.

The Court has an obligation and duty to absent class members and meritorious objections can be “immense help to a [court] in evaluating the fairness of a settlement.” *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 n.3 (1st Cir. 2015). “Of course, it is also important for [courts] to screen out improper objections.” *Id.* (citing Newberg on Class Actions § 13:21 (5th ed.)). Here, the Day Objection does not raise any substantive issues, stands against the thousands of members who submitted claims, and should be overruled.

Finally, the Day Objection states that the requestor excludes herself from the class and the requestor does not give up any rights to prosecute released claims or the right to sue the Defendant. (Taylor Ex. A). However, “neither G.L. c. 93A, § 9(2), nor Mass. R. Civ. P. 23 [ ] permits a judge to allow individual parties to remove themselves or ‘opt out’ of a class action.” *Moelis v. Berkshire Life Ins. Co.*, 451 Mass. 483, 487, 887 N.E.2d 214, 218 (2008) (citing *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 84, 746 N.E.2d 522 (2001) and *Fletcher v. Cape Cod Gas Co.*, *supra* at 602, 477 N.E.2d 116). Thus, to the extent this is a request for exclusion it must be denied. To the extent Ms. Day seeks

to reserve rights, the legal impact of her doing so is not justiciable here and, instead, that is an issue for a separate proceeding where she asserts actual claims (it is unclear what those claims are or if Ms. Day's concern is with excessive telephone calls).

For these reasons, the Day Objection should be overruled.

**CONCLUSION**

For the reasons set forth above, the Plaintiff respectfully request that the Court (1) authorize notice and extend the notice period for certain class members and schedule a second final approval hearing for the Parties' class action settlement agreement and (2) overrule the Day Objection.

Dated: April 19, 2022

LEMBERG LAW, LLC  
/s/ Stephen Taylor  
Sergei Lemberg (BBO#650671)  
Stephen Taylor (PHV)  
Lemberg Law, LLC  
43 Danbury Road  
Wilton, CT 06897  
Tel: (203) 653-2250  
Attorneys for Plaintiff

**CERTIFICATE OF CONFERENCE**

I HEREBY CERTIFY that I conferred with counsel for the Defendant in this case by telephone and email and Defendant consents to the relief requested herein.

Dated: April 19, 2022

/s/ Stephen Taylor  
Stephen Taylor (PHV)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was served on counsel for the parties today, April 19, 2022.

/s/ Stephen Taylor  
Stephen Taylor (PHV)

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HIGHER EDUCATION LOAN  
AUTHORITY OF THE STATE OF  
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Defendant.

CLASS ACTION

**DECLARATION OF MARY JANE FAIT  
RE: NOTICE PROCEDURES**

1 I, MARY JANE FAIT, declare and state as follows:

2 1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”),  
3 located in San Rafael, California. Pursuant to the Preliminary Approval Order dated December 22,  
4 2021, the Court appointed KCC as the Claims Administrator in connection with the proposed  
5 Settlement of the above-captioned Action.<sup>1</sup> I have personal knowledge of the matters stated herein  
6 and, if called upon, could and would testify thereto.

7 **CLASS LIST**

8 2. On January 10, 2022, KCC received from defense counsel a list of 10,882 persons  
9 identified as the Class List. The Class List included names, addresses, and phone numbers. KCC  
10 formatted the list for mailing purposes, removed duplicate records, and processed the names and  
11 addresses through the National Change of Address Database (“NCOA”) to update any addresses  
12 on file with the United States Postal Service (“USPS”). A total of 1594 addresses were found and  
updated via NCOA.

13 **MAILING OF THE NOTICE PACKET**

14 3. On January 21, 2022, KCC caused the Double Postcard Notice and Claim Form  
15 (collectively, the “Notice Packet”) to be printed and mailed to the 10,882 names and mailing  
16 addresses in the Class List. A true and correct copy of the Notice Packet is attached hereto as  
Exhibit A.

17 4. Since mailing the Notice Packets to the Class Members, KCC has received 55 Notice  
18 Packets returned by the USPS as undeliverable. Through public source databases, KCC performed  
19 address searches for these undeliverable Notice Packets and was able to find updated addresses for  
20 5 Class Members. KCC immediately re-mailed Notice Packets to the found new addresses.

21 **SETTLEMENT WEBSITE**

22 5. On or about January 21, 2022, KCC established a website,  
23 www.coughlinsettlement.com, dedicated to this matter to provide information to the Class  
24 Members and to answer frequently asked questions. The website URL was set forth in the Notice,  
25 Online Claim Form, Double Postcard Claim Form, and the website. Visitors of the website can  
26 download copies of the Notice, Claim Form, and other case-related documents. Up until the claims  
filing deadline of March 22, 2022, visitors could also submit claims online, and, if applicable,

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28 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the  
Settlement Agreement, executed by the parties as of September 1, 2021 (the “Settlement”) and/or  
the Preliminary Approval Order.

1 upload supporting documentation. As of the date of this Declaration, the website has received 2,061  
2 users, 2,551 hits and 12,053 pageviews.

### 3 **TELEPHONE HOTLINE**

4 6. KCC established and continues to maintain a toll-free telephone number (855) 786-  
5 1049 for potential Class Members to call and obtain information about the Settlement, request a  
6 Notice Packets. The telephone hotline became operational on January 21, 2022, and is accessible  
7 24 hours a day, 7 days a week. As of the date of this Declaration, KCC has received a total of 32  
8 calls to the telephone hotline. 3 callers requested Notice Packets, which were promptly mailed by  
9 U.S. Postal Mail.

### 9 **CLASS RESPONSE**

10 7. The deadline for Class Members to file claims in this matter was March 22, 2022.  
11 A claim is considered “timely” if it was postmarked or submitted through the on-line portal by  
12 March 22, 2022.

13 8. As of the date of this Declaration, KCC has received 1,360 timely claim forms and  
14 11 late-filed claims.

15 9. Of the 1,360 timely claims forms<sup>2</sup>:

- 16 • 1,182 are complete and valid;
- 17 • 20 are duplicates of other claims and are therefore invalid;
- 18 • 21 claim forms lacked a signature however each of these claimants have been  
19 matched to the class list and are otherwise complete and valid; and
- 20 • 137 claim form submissions have been denied because the submission was  
21 reviewed and deemed invalid as not submitted by a class member.

### 21 **ADDITIONAL RETURNED MAIL AND CURE PROPOSAL**

22 10. In the process of reviewing claims and the figures on returned and forwarded  
23 mail, KCC discovered that an error occurred which caused some notice packets which were  
24 returned to not be forwarded where possible.

25 11. Specifically, KCC uses ACS (a post mailing service that allows mailers to receive  
26 change of addresses (“COA”) and other reasons for non-delivery electronically (to reduce the

27 \_\_\_\_\_  
28 <sup>2</sup>If these figures change due to additional submissions, KCC will promptly notify the Parties.

1 number of manual address notifications) on mailings over 10,000 pieces. It was discovered that  
2 the automated reporting feature in the settlement database failed and as a result, there were an  
3 additional 258 pieces of mail returned with an updated address from the USPS that were not  
4 remailed. KCC also received an additional 937 returned pieces of mail that did not make it into the  
5 system of record to be searched for updated mailing addresses.

6 12. As noted in paragraph 2 above, all names and addresses were submitted through the  
7 National Change of Address (“NCOA”) prior to the initial notice mailing. Further, KCC has now  
8 resolved the issue with the automated reporting feature that failed.

9 13. However, notice to this group of potentially 1,195 class members, did not go through  
10 the proposed notice plan which would have forwarded, or remailed the notice, where new addresses  
11 were available or found by KCC. As a result, the potential class members may have not been aware  
12 of their rights to submit a claim or object.

13 14. Following discussions with counsel to the Parties, KCC proposes that it re-mail  
14 notice for this group to the forwarding addresses provided by the USPS or found by KCC through  
15 its standard practices. This would require (1) a new deadline for these members to submit claims  
16 or object (2) a new date for a hearing if the Court determines a further hearing is necessary and (3)  
17 authorization from the Parties and the Court.

18 15. KCC is awaiting instructions from counsel or the Court on when to send out the  
19 remails and the pertinent deadlines.

20 16. KCC will not charge the Class, Settlement Fund or counsel any additional cost  
21 associated with the re-mail and claim adjudication tasks.

### 22 **OBJECTIONS TO THE SETTLEMENT**

23 17. The postmark deadline for Class Members to object to the settlement was March 22,  
24 2022. As of the date of this Declaration, KCC has received one correspondence which states it is  
25 an objection and which has been provided to counsel for the parties.

### 26 **ADMINISTRATION COSTS**

27 18. As of the date of this Declaration, KCC estimates its total cost of administration to  
28 be \$58,703.03. This amount includes costs to date as well as through the completion of this matter  
excluding costs of the remailing detailed above.

14. KCC’s estimated fees and charges are based on certain information provided to KCC  
by the parties as well as significant assumptions. Accordingly, the estimate is not intended to limit  
KCC’s actual fees and charges, which may be less or more than estimated due to the scope of actual

1 services or changes to the underlying facts or assumptions.

2 I declare under penalty of perjury under the laws of the United States of America that the  
3 foregoing is true and correct.

4 Executed on April 19, 2022 at San Rafael, California

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8 Mary Jane Fait

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# Exhibit A

NOTICE FROM SUPERIOR COURT OF THE  
COMMONWEALTH OF MASSACHUSETTS  
(not a lawyer solicitation)

*Marie Coughlin v. Higher Education Loan  
Authority of the State of Missouri (MOHELA)*

A settlement has been reached in a class action lawsuit alleging that Higher Education Loan Authority of the State of Missouri ("MOHELA") violated the law by placing in excess of two telephone calls in a seven-day period to Massachusetts consumers to collect a debt. MOHELA's records show that you may be a Class Member and may be entitled to payment under the Settlement Agreement reached in the case. A Settlement Fund of \$600,000 has been established to pay valid claims, attorney's fees, costs, any incentive award to the Class Representative and settlement administration costs. Each Class Member is entitled to one equal share of the fund. The final cash payment for Class Members will depend on the total number of valid and timely claims filed by all Class Members. Your legal rights are affected whether you act or don't act, so read this notice carefully.

This Postcard Notice contains limited information about the settlement. For more information or to submit an online Claim Form, visit [www.coughlinsettlement.com](http://www.coughlinsettlement.com).

*Coughlin v. MOHELA* Settlement Administrator  
P.O. Box 43501  
Providence, RI 02940-3501

«3of9 Barcode»

«BARCODE»

Postal Service: Please do not mark barcode

HGC Claim Number «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

# HGC

## Claim Form

Claim Number: <<Claim Number>>  
PIN: <<PIN>>

If you wish to claim your share of the Settlement Fund, please complete, sign, and return this **Settlement Claim Form** or submit an Online Claim Form.

You must complete and submit a Claim Form postmarked by March 22, 2022. You may submit a Claim Form online at [www.coughlinsettlement.com](http://www.coughlinsettlement.com) or by completing and submitting this Claim Form to receive your share. The final amount per Class Member will depend on the total number of valid Claim Forms received. To complete this form, provide the information below and execute the certification.

Claim ID \_\_\_\_\_

or

Phone Number MOHELA called: \_\_\_\_\_

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Email (optional): \_\_\_\_\_

Current Phone Number (optional): (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

### Certification

By signing and submitting this Claim Form, I certify and affirm that the information I am providing is true and correct to the best of my knowledge and belief, I am over the age of 18, and between May 13, 2016, and December 22, 2021, I am aware of more than two call attempts to my telephone number in a seven-day period regarding a loan serviced by MOHELA.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)

«3OF9 BARCODE»

«Barcode»

Marie Coughlin v. Higher Education Loan Authority of the State of Missouri (MOHELA)  
(Plymouth County Superior Court)  
THIS POSTCARD PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT.  
VISIT [www.coughlinsettlement.com](http://www.coughlinsettlement.com) FOR MORE INFORMATION.

In the lawsuit, Plaintiff alleges that MOHELA violated the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A § 1, *et seq.* (“MCPA”), and the Massachusetts Debt Collection Regulations, 940 Mass. Code Regs. § 7.00, *et seq.* (“MDCR”), by placing in excess of two calls regarding a debt within a seven-day period to Plaintiff and other Massachusetts consumers. MOHELA denies any wrongdoing, and denies that it violated the MCPA, the MDCR or any other law. The Parties have agreed to settle the lawsuit to avoid the cost, delay and uncertainty of further litigation. You can read Plaintiff’s Complaint, the Settlement Agreement and other case documents, and submit a Claim Form at [www.coughlinsettlement.com](http://www.coughlinsettlement.com).

**Who’s Included in the Settlement Class?** (a) consumers associated in MOHELA’s records with addresses in the Commonwealth of Massachusetts; (b) to whom MOHELA directed in excess of two telephone calls within a seven-day period to their residence, cellular telephone or other provided telephone number between May 13, 2016 and December 22, 2021.

**What Can You Get?** Class Members who submit a valid and timely Claim Form are entitled to one share from the Settlement Fund. The final cash payment will depend on the total number of valid and timely claims filed by all Class Members. Each claiming Class Member will be entitled to an equal share of the Settlement Fund (\$600,000.00), after deductions from the fund for administrative costs, attorney’s fees and expenses, and any incentive award to the Class Representative (Marie Coughlin). The final cash payment will depend on the total number of valid and timely claims filed by all Class Members and the fees, costs and incentive awards approved by the Court. The settlement is explained in detail in the Full Notice and in the Settlement Agreement available at [www.coughlinsettlement.com](http://www.coughlinsettlement.com).

**How to Get Money?** To obtain payment, you must submit a valid Claim Form to *Coughlin v. MOHELA* Settlement Administrator, P.O. Box 43501, Providence, RI 02940-3501, or submit an Online Claim Form by March 22, 2022.

**Your Other Rights.** If you do not agree with the settlement, you may object to the settlement by March 22, 2022. The Full Notice, located at the website listed below, explains how to object to the settlement. The Court will hold a hearing in this case on May 3, 2022 at 2:00 p.m. to consider whether to approve the settlement, plan of allocation, and a request by the lawyers representing all Class Members for fees and expenses of up to 33% of the Settlement Fund and for an incentive award to the Class Representative of up to \$25,000. You may attend the hearing and ask to be heard by the Court, but you do not have to.

For more information or a Claim Form, call 1-855-786-1049 or visit [www.coughlinsettlement.com](http://www.coughlinsettlement.com).  
Do not contact the Court, Defendant or its counsel with questions.

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NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

HGC

**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL      PERMIT NO. 1810      PROVIDENCE, RI

POSTAGE WILL BE PAID BY ADDRESSEE

COUGHLIN V MOHELA  
SETTLEMENT ADMINISTRATOR  
PO BOX 43501  
PROVIDENCE, RI 02940-9878



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**

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, counsel for the Plaintiff in the above-captioned matter. 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. As set forth in the accompanying Unopposed Motion to Extend Notice Period, Schedule Second Final Approval Hearing and Response to Objection, I was notified this week by KCC, the class administrator, that caused some class notices returned by the United States Postal Service to be incorrectly processed and not remailed where re mailing was possible.

3. In consultation with the Defendant and KCC, Plaintiff proposes that notice be reissued to those class members (where new addresses are available or found) and they be provided a period of time to submit a claim and/or object. The fair administration of the class notice and

admin process is clearly in the best interests of the Class and comports with counsels' and the Court's duties to absent class members.

4. Attached hereto as Exhibit A is a true and correct copy of a correspondence received by the Parties and the settlement administrator prior to the objection deadline.

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

Dated: April 19, 2022

/s/ Stephen Taylor  
Stephen Taylor

# **Exhibit A**

Margaret J Day



March 14, 2022

Ryan P. McManus  
Hemenway & Barnes LLP  
75 State Street  
Boston, MA 02109

Marie Coughlin v. Higher Education Loan Authority of the State of Missouri  
Commonwealth of Massachusetts Plymouth Superior Court Department  
Civil Action No.: 2083CV00381A  
Plymouth County Superior Court

RE: Request for Exclusion: Coughlin v. MOHELA Lawsuit

To Whom It May Concern:

I, Margaret J Day, certify that I am the legally authorized representative of the above named Requester.

I hereby submit this document, the Request for Exclusion, as evidence that the Requester wants to be excluded from the aboved named Action.

The Requester wants to be excluded from the Settlement Class and objects to the terms of the Settlement on the grounds that they are insufficient punishment for MOHELA.

The Requester waives all rights to the benefits of the Settlement, and does not want to receive money from the Settlement Fund.

The Requester does not want to be legally bound by the Settlement, or any orders or judgements entered in the Action.

The Requester does not give up any rights to prosecute Released Claims.

The Requester does not give up any rights to sue the Defendant for any claims relating to this case.

The Requester intends to appear at the fairness hearing.

Sincerely,

  
Margaret J Day

Requester