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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.

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

APR 19 2022

[Signature]
Clerk of Court

** Motion allowed
5/19/22*

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").¹

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

¹ Attached as Exhibit A to the declaration of Stephen Taylor.

*cc: JK
RM
5-6-22*

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.² 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.³ 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.⁴ (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

² 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.

³ 2,002 claims/10,882 class members.

⁴ 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.⁵ 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.

⁵ 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
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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)