

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 August 4, 2022, the papers listed in the accompanying List of Documents were served on the Norfolk Superior Court and counsel for all parties.

Dated: August 4, 2022

Respectfully submitted:

/s/ Stephen Taylor
Sergei Lemberg (BBO#650671)
Stephen Taylor (PHV)
Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
Tel: (203) 653-2250
Fax: (203) 653-3424

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2022, I served a true and accurate copy to all counsel of record.

/s/ Stephen Taylor

Stephen Taylor

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
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HIGHER EDUCATION LOAN AUTHORITY
OF THE STATE OF MISSOURI (MOHELA),
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. Rule 9A Declaration of Non-Opposition;
3. Plaintiff's Unopposed Motion for Final Approval of the Parties' Class Action Settlement;
4. Plaintiff's Memorandum of Law in Support of Plaintiff's Unopposed Motion for Final Approval of the Parties' Class Action Settlement;
5. The Declaration of Stephen Taylor; and
6. The Declarations of the Class Administrator.

Dated: August 4, 2022

Respectfully submitted:

/s/ Stephen Taylor
Sergei Lemberg (BBO#650671)
Stephen Taylor (PHV)
Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
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Stephen Taylor

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

**SUPERIOR COURT RULE 9A DECLARATION REGARDING NON-OPPOSITION TO
THE MOTION FOR FINAL APPROVAL OF THE PARTIES' CLASS ACTION
SETTLEMENT AGREEMENT**

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, counsel to Plaintiff and the Settlement Class in
this matter. I have knowledge of the matters asserted herein and could testify to the truth of the same
if called to do so.

2. On Thursday, August 4, 2022, I contacted counsel for Defendant Higher Education
Loan Authority of the State of Missouri ("Defendant" or "MOHELA"), to confirm MOHELA did not
oppose the Motion for Final Approval of the Parties' Class Action Settlement (the "Motion").

3. Counsel for MOHELA confirmed to me that the Motion is unopposed.

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

Dated: August 4, 2022

/s/ Stephen Taylor
Stephen Taylor

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 FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Marie Coughlin hereby moves unopposed for entry of an Order granting final approval of the Class Action Settlement Agreement between Plaintiff and Defendant Higher Education Loan Authority of the State of Missouri (“Defendant” or “MOHELA”).

In support, Plaintiff submits the accompanying Memorandum of Law in Support of Motion to Final Approve Class Action Settlement, the Declaration of Stephen F. Taylor and the Declarations from the Settlement Administrator.

For the reasons set forth in the accompanying memorandum, Plaintiff respectfully requests that the Court enter the Final Approval Order attached as Exhibit A to this motion.

Respectfully Submitted,

Dated: August 4, 2022

Respectfully submitted:

/s/ Stephen Taylor
Sergei Lemberg (BBO#650671)
Stephen Taylor (PHV)
Lemberg Law, LLC
43 Danbury Road

Wilton, CT 06897
Tel: (203) 653-2250
Fax: (203) 653-3424

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2022, I served a true and accurate copy to all counsel of record.

/s/ Stephen Taylor _____
Stephen Taylor

Exhibit A

Final Approval Order

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] FINAL APPROVAL ORDER

WHEREAS, on December 22, 2021, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Class Action Settlement Agreement between plaintiff Marie Coughlin (“Plaintiff”) and defendant Higher Education Loan Authority of the State of Missouri (“MOHELA”), and directing that notice be given to the Settlement Class;

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, a Final Approval Hearing was held on May 3, 2022 and August 8, 2022. Prior to the Final Approval Hearing, declarations of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as prescribed in the Preliminary Approval Order. Class Members were therefore notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of Attorney's Fees and Costs to Class Counsel, and the payment of an Incentive Award.

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and counsel for MOHELA, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate and reasonable, having considered the Attorney's Fees and Cost application made by Class Counsel and the application for an Incentive Award to the Settlement Class Representative, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.
2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.
3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Class Members, within the authority of the parties and the result of extensive arm's-length negotiations. In reaching this conclusion, the Court considered the nine *Grinnell* factors, including: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the

best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, n.8 (D. Mass. Sept. 30, 2016) (“courts in this Circuit frequently employ the Second Circuit’s *Grinnell* factors or some version of it.”).

4. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

5. The Court has considered all objections to the Settlement, including the Day Objection. The Court finds the Day objection does not counsel against Settlement approval and it is overruled in all respects.

6. For purposes of the Settlement and this Final Approval Order, the Court hereby certifies the following 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 the date of preliminary approval.

7. For purposes of Settlement only, Plaintiff is certified as representative of the Settlement Class and Class Counsel is appointed counsel to the Settlement Class. The Court concludes that Class Counsel and the Class Representative have fairly and adequately represented the Settlement Class with respect to the Settlement.

8. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representative for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representative shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the

status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

9. The Court finds that the plan for Notice, set forth in Article III(E) of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and of their right to object and to appear at the Final Approval Hearing.

10. The Settlement Agreement is, in all respects, fair, reasonable and adequate, is in the best interests of the Settlement Class, and is therefore approved.

11. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

12. As set forth in Article III(F)(5) of the Settlement Agreement, the cash distributions provided for in the Settlement Agreement shall be paid to the various Settlement Class members submitting Valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

13. Upon the Effective Date, members of the Settlement Class, by operation of this Final Approval Order, have fully, finally and forever released, relinquished and discharged the Released Parties from the Released Claims as specified in the Release set forth in Article III(G) of the Settlement Agreement.

14. Plaintiff and each Settlement Class Member are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiff and

each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

15. The terms of the Settlement Agreement, this Final Approval Order and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Action or are in any way related to the calls at issue in the Action.

16. The Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or be deemed to be evidence of, an admission by or against MOHELA of any fault, wrongdoing, or liability on the part of MOHELA or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Action. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

17. The above-captioned Action is hereby dismissed in its entirety with prejudice. Without affecting the finality of this Final Order in any way, the Court reserves jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

Let judgment be entered accordingly.

DATED: _____, 2022

By: _____

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 2083CV00381A

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

Plaintiff,

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

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL
APPROVAL OF THE PARTIES' CLASS ACTION SETTLEMENT**

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Plaintiff Marie Coughlin (“Plaintiff”) respectfully submits this Memorandum of Law in Support of her Unopposed Motion for Final Approval of the Parties’ Class Action Settlement.

Pursuant to the Preliminary Approval Order and the May 6, 2022, order allowing an extension of the claim and objection period, notice was sent to the Settlement Class detailing the terms of the Settlement Agreement and inviting members to submit claims.¹ The response from the class has been very positive. There have been 1,220 claims submitted by Settlement Class Members. If the settlement is approved with these claims, each claiming member will recover approximately \$259.25 as their *pro rata* share of the Settlement Fund. (Fait Decl. ¶¶ 7-9; Supp Fait Decl. ¶ 5).²

This is an outstanding result for claims under Mass. Gen. Laws ch. 93A, § 2, and 940 CMR § 7.04(1)(f) (2012) (the “Debt Collection Regulation”), and merits final approval 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;
- Not a penny of the \$600,000.00 fund will revert to the Defendant Higher Education Loan Authority of the State of Missouri (“Defendant” or “MOHELA”); all funds will go to the claimants, to cover fees or costs, or *cy pres* to the Massachusetts IOLTA Committee pursuant to Mass. R. Civ. P. 23(e)(2) “to support activities and programs that promote access to the civil justice system for low-income residents of the Commonwealth of Massachusetts”; and
- The settlement was agreed to only after substantial discovery and motion practice.

¹ The notice and claims process is detailed in the April 19, 2022, Declaration of Mary Jane Fait (“Fait Decl.”) from KCC Class Actions Services, LLC (“KCC”), and the August 2, 2022, Supplemental Declaration from Ms. Fait (the “Supp Fait Decl.”) attached as Exhibits A & B respectively.

² The response represents a 11.2% claims rate (1,220 claims/10,882 class members). The \$259.25 per claimant recovery figure is calculated as follows:

Gross fund:	\$600,000.00
Awards & Admin:	\$283,703.03 (\$200,000.00 (fees and expenses) + \$25,000.00 (incentive award) + \$58,703.03 (estimate of administrative costs))
Net fund:	\$316,296.97 (Gross fund minus Awards & Admin costs)
Claimant Recovery:	\$259.25 (Net fund/1,220 claims)

As set forth herein, Plaintiff respectfully requests the Court (1) approve the Class Action Settlement Agreement (the “Settlement Agreement”) as fair and reasonable; and (2) enter the final approval order in the form submitted as Exhibit A to the Motion for Final Approval of the Parties’ Class Action Settlement Agreement.

BACKGROUND

I. The Regulation and M.G.L. ch. 93A

M.G.L. ch. 93A, the Massachusetts Consumer Protection Law, prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” M.G.L. ch. 93A, § 2(a).

In 2012, the Attorney General of Massachusetts invoked her power to implement rules and regulations interpreting M.G.L. ch. 93A, § 2(a) to provide “‘It shall constitute 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). M.G.L. ch. 93A, § 9(1) provides that any person “who has been injured by another person’s use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder . . . may bring an action in the superior court . . . whether by way of original complaint, counterclaim, cross-claim or third party action, for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.”

Section 9(2) provides that such persons may bring claims as a class action. M.G.L. ch. 93A, § 9(2).

Section 9(3) provides that “if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two” M.G.L. ch. 93A, § 9(3).

II. This Litigation

On or about May 13, 2020, Plaintiff filed her class action complaint in Plymouth Superior Court against MOHELA for violations of Chapter 93A and 940 CMR § 7.04(1)(f) which prohibits “creditors from ‘[i]nitiating 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.’” *Armata v. Target Corp.*, 480 Mass. 14, 15, 99 N.E.3d 788, 790 (2018) (quoting 940 CMR § 7.04(1)(f)). Plaintiff sought to represent a class consisting of “[a]ll consumers residing in the Commonwealth of Massachusetts who, within four years prior to the filing of this action, received in excess of two telephone calls regarding a debt from MOHELA within a seven-day period to their residence, cellular telephone, or other provided telephone number.” (Compl. at ¶ 20).

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.

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 on May 3, 2021.

Thereafter, on June 2, 2021, MOHELA sought interlocutory review of the denial of its Motion for Protective Order. On June 7, 2021, the petition for interlocutory review was denied.

The Parties discussed the merits of the case and potential resolutions throughout the course of the foregoing litigation. In June of 2021, the Parties discussed resolution of the matter on a class-wide basis. (Declaration of Stephen Taylor ¶ 7). Ultimately, the Parties agreed to a set of terms to resolve the matter class-wide. *Id.* The Parties conducted discovery both informally and through deposition testimony into the class size and practices of MOHELA. *Id.* The Parties negotiated and agreed to a comprehensive Settlement Agreement. On December 22, 2021, the Court granted preliminary approval to the Parties’ agreement.

III. Notice Process

I. Notice

On January 10, 2021, KCC received from MOHELA the class list. (Fait Decl. ¶ 2). On January 21, 2022, KCC mailed the Postcard Notice and Claim Form to 10,882 class members. *Id.* ¶ 3. 55 notices were returned as undeliverable by the United States Postal Service (“USPS”) to KCC. *Id.* ¶ 4. Of those, KCC was able to identify updated addresses for 5 members and resent the notice accordingly.

As noted in the Fait Decl. ¶¶ 10-16, and Plaintiff’s April 19, 2022, Unopposed Motion to Extend Notice Period, Schedule Second Final Approval Hearing and Response to Objection, some notices returned by the USPS as undeliverable, or with forwarding addresses, were not properly processed by the administrator due to a reporting error. (Fait Decl. ¶¶ 10-16). Specifically, KCC reported 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. (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.*

Following approval by the Court, the Parties directed the administrator to complete its normal processing for these notices and reissue the notice where possible. Thus, on May 25, 2022, KCC remailed 312 notices to this group with a new deadline to submit a claim or object of July 11, 2022. (Supp Fait Decl. ¶¶ 3-5).

Under the direction of the Parties, KCC established the settlement website, www.coughlinsettlement.com, to provide potential Settlement Class Members with access to the Website Notice and other settlement-related documents, as well as the ability to submit a claim form online. (Fait Decl. ¶ 5). Under the direction of the Parties, KCC also established a toll-free telephone number at which persons could get information regarding the settlement. *Id.* ¶ 6.

II. Claims and Objections

There were 1,199 complete and valid claim forms timely submitted. (Fait Decl. ¶ 9; Supp Fait Decl. ¶ 5).

Additionally, there were 21 claim forms which lacked a signature but KCC matched them to the class list and they were otherwise timely, complete and valid. (Fait Decl. ¶ 9). Because KCC matched these submissions to the class list, the Parties respectfully request that the Court treat them as valid for purposes of this settlement.

Thus, including those 21, there are 1,220 valid claim forms.

There was one objection (the “Day Objection”).³ Plaintiff responded to the objection in her April 19, 2022 Motion and the Court overruled the objection during the May 3, 2022, Final Approval Hearing.

IV. Terms of the Settlement

1. Benefits to the Class

The Settlement Class preliminarily approved is:

(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 the date of Preliminary Approval. Excluded from the Settlement Class are the Judge to whom the Action is assigned and any member of the Judge’s staff and immediate family.

See Settlement Agreement, Art II ¶ 26. Under the terms of the Settlement Agreement, each Class Member can claim an equal share of the \$600,000.00, non-reversionary, Settlement Fund. *See Settlement Agreement, Art III (F)(1).*

Settlement Class Members who submit a valid claim form will receive an equal *pro-rata* distribution from the settlement fund, after Attorneys’ Fees and Costs, an Incentive Award to the

³ Attached as Exhibit A to the declaration of Stephen Taylor.

Named Plaintiff, and Settlement Administration Costs are deducted from the Settlement Fund and the Settlement Administrator reviews all Claim Forms to determine a final number of claimants. *Id.*

As detailed above, there are 1,220 confirmed valid claimants who would each receive an equal share of the \$316,296.97 net fund (the total fund minus the fees, costs and incentive award) or approximately \$259.25 each.

If money remains in the Settlement Fund from un-cashed benefit checks (checks sent to claiming Settlement Class members which the members do not cash or deposit), the Settlement Administrator shall, if doing so would be administratively feasible, make a second distribution of the settlement fund to those who did cash their first check. *Settlement Agreement*, Art III(F)(5).

Any funds remaining in the fund should be directed to the to the Massachusetts IOLTA Committee pursuant to Mass. R. Civ. P. 23(e)(2) as detailed below.

2. Releases

In exchange for the benefits of the Settlement, Plaintiff has agreed to dismiss this litigation with prejudice as to herself and all Settlement Class Members. Plaintiff and all members of the Settlement will release Defendant and the Released Parties (*id.* Art II(20)) from all claims “that arise out of or are based on calls by MOHELA to the Settlement Class Members in excess of two times in a seven day period regarding a debt during the class period” (*id.* Art II(19)).

POINT I **THE SETTLEMENT AGREEMENT** **SHOULD BE GRANTED FINAL APPROVAL**

I. STANDARD FOR FINAL APPROVAL OF APPROVAL OF A CLASS ACTION SETTLEMENTS

A class action may not be “settled or compromised without the approval of the court.” M.G.L. ch. 93A, § 9(2); *accord* Mass. R. Civ. P. 23(c). A court may not grant approval unless it finds that a class action settlement is “fair, reasonable and adequate.” *Sniffin v. Prudential Ins. Co. of America*,

395 Mass. 415, 421 (1985) (quoting *Armstrong v. Board of School Directors of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980)); *accord*, *Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir. 2010).

Public policy favors the settlement of class actions. *See Hill v. State St. Corp.*, No. 09-12146, 2015 WL 127728, at *6 (D. Mass. Jan. 8, 2015) (determination of whether settlement is fair, reasonable and adequate should be conducted “within the context of the public policy favoring settlement”). Final approval of any proposed class settlement ultimately requires the Court to balance “the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.” *Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009).

Neither Chapter 93A nor Rule 23(c) list the considerations the Court must evaluate in the “fair, reasonable and adequate” inquiry. However, courts often consider the so-called *Grinnell* factors. *See Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015) (applying factors set forth in *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974); *New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F.Supp.2d 277, 281 (D. Mass. 2009); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 93-94 (D. Mass. 2005). These factors include: “(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.” *Grinnell*, 495 F.2d at 463.

II. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE PURSUANT TO THE GRINNELL FACTORS

a. The Complexity, Expense, and Likely Duration of the Litigation Favor Approval

This factor weighs in favor of approval. This case involves the allegedly unlawful collection practices of MOHELA, a sophisticated and large entity created by the Missouri legislature,. The claims and defenses, and the certification question, are complex, and expensive and time-consuming to resolve.

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.

Further, despite agreeing to a class settlement, MOHELA maintained that a litigation class could not be certified though, again, Plaintiff disagrees.

The above disputes need not be resolved (or resolved on a final appeal) in light of the settlement. However, the complexity and breadth of the above issues, and the time and expense the litigation and appeals would expend, supports approval of the settlement.

b. The Reaction of the Class to the Settlement Favors Approval

The reaction to the settlement has been overwhelmingly positive. There have been 1,220 valid claims from 10,822 class members, equaling a participation rate of approximately 11.2% and one objection which was overruled. *Forcellati v. Hyland's, Inc.*, 2014 WL 1410264, at *6 (C.D. Cal. Apr. 9, 2014) (“[T]he prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3-5 percent.”); *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).

This high participation and *de minimis* objection demonstrate that the class reacted favorable to the settlement.

c. The Stage of the Proceedings and the Amount of Discovery Completed Favors Approval

This case settled at an appropriate time where Class Counsel has conducted more than sufficient investigation and discovery to recommend settlement. Prior to filing her Complaint, Plaintiff conducted an investigation into the alleged practices at issue. Once the issues were joined, core merits questions and Defendant's defenses were litigated through Defendant's Motion for Judgment on the Pleadings and its Motion for a Protective Order and to Stay Discovery. In discovery, Plaintiff served discovery concerning all her claims in chief and Defendant's defenses, the Parties

exchanged information concerning Plaintiff's individual case, Defendant's practices and Plaintiff deposed a Rule 30(b)(6) witness about the same issues and identification of class members and the search for the same.

As with the competence of counsel, there can be no serious dispute that the Parties engaged in and completed meaningful and serious discovery of core issues and such informed the settlement negotiations. Thus, the stage of the proceedings and the amount of discovery completed favors approval.

d. The Risks of Establishing Liability

"[A] significant element of risk adheres to any litigation taken to binary adjudication." *Lupron*, 228 F.R.D. at 97. Although Plaintiff believes her arguments in support of liability to be strong, Defendant disputed Plaintiff's claims and believed it would prevail on summary judgment and on a motion for class certification. Further, MOHELA is represented by very able counsel, and can and has put forth a vigorous defense. There is, therefore, great risk that the issues on liability and certification will not go in Plaintiff's favor in this Court or on any appeal. Thus, the risks of establishing liability favor approval of the settlement.

e. The Risks of Establishing Damages and the Ability of the Defendant to Withstand a Greater Judgment

MOHELA's ability to pay is a neutral factor here. Its ability to pay was not a factor in settlement discussions or in determining the settlement amount.

There is risk in establishing damages. Damages for violations of Chapter 93A are twenty-five dollars or actual damages, whichever is greater, with the prospect of trebling the same for willful or knowing violations. M.G.L. ch. 93A, § 9(3). Whether Plaintiff could recover the \$25 statutory penalty for each separate violation of the Debt Collection Regulation (*i.e.* for each instance MOHELA called in excess of two times in a seven day period), as opposed to \$25 dollars per action, is an issue. No

court has firmly held either way in the context of the Debt Collection Regulation. However, Courts addressing other claims under Chapter 93A demonstrate the hurdles Plaintiff could face in recovering multiple statutory damages under Chapter 93A. *See Aspinall v. Philip Morris Companies, Inc.*, 2013 WL 7863290, at *8-10 (Mass. Super. Feb. 7, 2013). Further, establishing actual damages on a class or individual basis entails risks both on the merits (how much would this Court or a jury award for actual damages for receipt of too many telephone calls?) and to class certification. To be clear, Plaintiff believes these risks could be dealt with, but MOHELA disagrees, and the risks are real and weigh in favor of approval.

f. The Risks of Maintaining the Class Action through Trial Favor Approval

As noted, Plaintiff faced risks on class certification. Although this Court certified a class for settlement purposes, “[t]he requirements for class certification are more readily satisfied in the settlement context than when a class has been proposed for the actual conduct of the litigation.” *White v. Nat’l Football League*, 822 F. Supp. 1389, 1402 (D. Minn. 1993) (citations omitted); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 303 (3d Cir. 2011) (*en banc*). Thus, there is no guarantee that a class would have been certified for litigation purposes in this case.

If the Court had rejected certification in this case, there would have been no relief for any class member except the named Plaintiff if she prevailed, regardless of the merits of underlying class claims. Because of this risk, this factor also favors approval of the Settlement.

g. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and of all the Attendant Risks of Litigation

The final two factors weigh strongly in favor of approval.

The 1,220 Settlement Class Members who submitted claims would each recover approximately \$260 as their *pro rata* share of the net Settlement Fund. This is an outstanding recovery for violations of Chapter 93A and the Debt Collection Regulation.

Comparison to class action settlements under the Telephone Consumer Protection Act (“TCPA”), the federal statute that prohibits certain robocalls, is instructive. Compared to Chapter 93A, with its minimum award of \$25 which may be limited to just that amount no matter the number of violations, damages under the TCPA are *at least* \$500 per each and every violation of the that act. 47 U.S.C. § 227(c)(5)(B). However, TCPA class settlements worth far less than the settlement here are frequently approved as fair, reasonable, and adequate. *See, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (per claimant recovery of \$34.60 with a participation rate of 7.8%); *In Gehrich v. Chase Bank USA, N.A.*, 2016 WL 806549 (N.D. Ill. Mar. 2, 2016) (per claimant recovery of \$52.50 with participation rate of 1.08%); *Ott v. Mortgage Inv’rs Corp. of Ohio, Inc.*, 2016 WL 54678, (D. Or. Jan. 5, 2016) (per claimant recovery of \$140.86 with participation rate of .08%); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) (\$20.00 to \$40.00 per class member with 3% claims rate). In comparison, the settlement value here is very high and is more than reasonable in light of the best possible recovery and of all the attendant risks of litigation.

For all the foregoing, Plaintiff respectfully requests that the Court grant final approval to the Settlement Agreement.

POINT II
THE COURT SHOULD APPROVE THE MASSACHUSETTS IOLTA COMMITTEE AS
RECIPIENT FOR ANY RESIDUAL FUNDS

Mass. R. Civ. P. 23(e)(2) provides that, as part of “any order, judgment or approved compromise in a class action . . . that establishes a process for identifying and compensating members of the class may provide for the disbursement of residual funds. In matters where the claims process

has been exhausted and residual funds remain, the residual funds shall be disbursed to one or more nonprofit organizations or foundations [. . .] or to the Massachusetts IOLTA Committee to support activities and programs that promote access to the civil justice system for low income residents of the Commonwealth of Massachusetts.”

The expectation in this case is that any *cy pres* distribution of residual funds will be *de minimis*. The entire net settlement fund will be dispersed to claiming Settlement Class Members in the first instance. To the extent Settlement Checks are not cashed, the Settlement Administrator will make a second distribution of unclaimed funds to those that *did* cash their check. Only where the second distribution is not administratively feasible or if amounts remain in the fund after a second distribution, will the residual of the fund go to the *cy pres* recipient. Given the face value of the settlement checks will be substantial, it is not expected that many class members will forgo their claimed share. Nevertheless, it is reasonable to assume that some amount may remain. Rule 23(e) provides for dispersal to the IOLTA committee and the Parties request the Court approve such dispersal.

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully request that the Court enter the proposed Final Approval Order.

Dated: August 4, 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

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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.

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.¹ 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,

27 _____
28 ¹ 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 forms²:

- 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 ²If 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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7 _____
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.

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 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»

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.

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.

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.

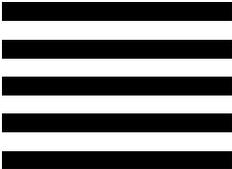
Your Other Rights. If you do not agree with the settlement, you may object to the settlement by March 22, 2022. The Full Notice, located at the website listed below, explains how to object to the settlement. The Court will hold a hearing in this case on May 3, 2022 at 2:00 p.m. to consider whether to 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.

Do not contact the Court, Defendant or its counsel with questions.



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



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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.

CLASS ACTION

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

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

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

8 2. This declaration supplements KCC’s previous declaration for the purpose of
9 updating the Parties and the Court with administration activity.

10 3. As set forth in my declaration of April 19, 2022, during the initial notice phase,
11 1,195 class notices were returned to KCC by the United States Postal Service (“USPS”) as either
12 returned with a forwarding address (258) or which were returned and not searched for an updated
13 mailing address (937) and were not correctly processed by KCC.

14 4. Pursuant to the directions of the Court and the Parties, KCC remailed the notices
15 where a new address was supplied by the USPS or could be found through KCC’s updating
16 process.

17 5. Thus, on May 25, 2022, KCC remailed 312 notices and has received 26 claims
18 forms postmarked or submitted online by the July 11 deadline.² From this group:

- 19 • 17 are timely and valid;
- 20 • 9 are denied because the submission was reviewed and deemed invalid as not
21 submitted by a class member;

22 **OBJECTIONS TO SETTLEMENT**

23 6. The postmark deadline for Class Members to object to the settlement in response to
24 the second mailing was July 11, 2022. KCC has received no objections in response to the second
25 mailing.

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

²If these figures change due to additional submissions, KCC will promptly notify the Parties.

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

Executed on August 2, 2022 at San Rafael, California



Mary Jane Fait

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
FINAL APPROVAL**

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 in the above-captioned matter. I appear in this matter *pro hac vice*. 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. 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 Warranty 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., Horton v. Navient Solutions, Inc.*, 17-1855-BLS2 (Mass. Sup.) (settlement of Ch. 93A and 940 Code Mass. Regs. § 7.06 action on class-wide basis for \$4.5MM); *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. We have litigated this case on behalf of Ms. Coughlin and the proposed class since she contacted my firm in the spring of 2020.

7. During discovery and, following briefing on the motion for judgment on the pleadings and motion for a protective order, the Parties discussed resolution of the case on a class basis. Ultimately, the Parties agreed to a set of terms to resolve the matter class-wide. The Parties conducted discovery both informally and through deposition testimony into the class size and practices of MOHELA. The Parties negotiated and agreed to a comprehensive Settlement Agreement.

8. Attached as Exhibit A for the Court's convenience is a true and correct copy of the Day Objection.

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

Dated: August 4, 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