

41

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

PLYMOUTH, ss.

_____)
 Mark Bland, Sr., *on behalf of himself and all*)
others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 Great Lakes Educational Loan Services, Inc.)
)
)
 Defendant.)
 _____)

C.A. No. 1983CV01151

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT;
CERTIFYING SETTLEMENT CLASS; APPROVING NOTICE; AND SETTING
DATE FOR FINAL APPROVAL HEARING**

WHEREAS, Plaintiff Mark Bland, Sr. ("Plaintiff") and Defendant Great Lakes Educational Loan Services, Inc. ("Great Lakes"), have reached a proposed Settlement of the Action, which is set forth in the Settlement Agreement filed with the Court; and

WHEREAS, Plaintiff has applied to the Court for preliminary approval of the proposed Settlement, the terms and conditions of which are set forth in the Settlement Agreement; and

WHEREAS, the Court has fully considered the record of these proceedings, the Settlement Agreement and all exhibits thereto, the representations, arguments and recommendation of counsel for the Parties and the requirements of law; and

WHEREAS, it appears to the Court upon preliminary examination that the proposed Settlement is fair, reasonable and adequate, and that a hearing should be held after notice to the Settlement Class of the proposed Settlement to finally determine whether the proposed Settlement is fair, reasonable and adequate and whether a Final Approval Order and Judgment should be entered in this Action.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court preliminarily approves the Settlement Agreement as fair, reasonable and adequate to the Settlement Class, as falling within the range of possible final approval, and as meriting notice of the Settlement to persons in the Settlement Class for their consideration and a hearing on the approval of the Settlement.

3. The Settlement Agreement was entered into by the Parties, who were represented by experienced counsel, and only after extensive arm's-length negotiations, including a full-day mediation before a former Massachusetts Superior Court Justice.

4. In this order, the term "Class Period" means the period from October 28, 2015, through the date of this order.

5. For purposes of the Settlement only, the Court conditionally certifies the following Settlement Class:

All persons residing or living in the Commonwealth of Massachusetts at any point during the Class Period to whom Great Lakes, within the Class Period, initiated in excess of two communications via telephone in a seven-day period regarding a debt to their residence, cellular telephone, or other provided telephone number.

6. The Court preliminarily finds, for Settlement purposes only, that:

- a. The above-described Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Settlement Class;
- c. The claims of the Settlement Class Representative are typical of the claims of the Settlement Class;
- d. The Settlement Class Representative will fairly and adequately protect the interests of the Settlement Class;

- e. The questions of fact or law common to the members of the Settlement Class predominate over the questions affecting only individual members; and
- f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. The Court notes that, because the litigation is being settled, rather than litigated, it need not consider the manageability issues that would be presented by this litigation. *Amchem Prods. Inc. v. Windsor*, 117 S. Ct. 2231, 2240 (1997).

7. The Court finds that it has personal jurisdiction over all Class Members, including the absent Class Members.

8. The Named Plaintiff, Mark Bland, Sr., shall be the Settlement Class Representative of the Settlement Class. This Court preliminarily finds that he will fairly and adequately represent and protect the interests of the absent Class Members.

9. The Court approves Lemberg Law, LLC, Sergei Lemberg, Stephen F. Taylor, and Joshua Markovits as settlement Class Counsel. This Court preliminarily finds that they are competent, capable of exercising all responsibilities as Class Counsel and will fairly and adequately represent and protect the interests of the absent Class Members.

10. The Court approves the Settlement Administrator to administer class notice and administer the Settlement in this Action.

11. Any information on the Class List shall be provided solely for the purpose of providing Notice to the Settlement Class and informing Settlement Class Members about their rights further to this Settlement, shall be kept in strict confidence by the Settlement Administrator, shall not be disclosed to any third party, shall not be disclosed to Plaintiff or their counsel, except as set forth in the Agreement, unless and until the Court enters the Final Approval Order and Judgment and then only if necessary to effectuate the terms of the Agreement or the administration process, and shall be used for no other purpose.

12. To the extent that any federal or state law governing the disclosure and use of consumers' financial information (including but not limited to "nonpublic personal information" within the meaning of the Graham–Leach–Bliley Act, 15 U.S.C. ch. 94, and its implementing regulations) permits such disclosure only as required by an order of a court, this order—

- (a) qualifies as "judicial process" under 15 U.S.C. § 6802(e)(8), and
- (b) authorizes the production of such information subject to this order's protections, in which case the producing party's production of such information in accordance with this order constitutes compliance with the applicable law's requirements.

To the extent that any such law requires a producing or requesting party to give prior notice to the subject of any consumer financial information before disclosure, the Court finds that the limitations in this order furnish good cause to excuse any such requirement, which the Court hereby excuses.

13. If the Settlement is terminated, or if the Settlement Agreement is not consummated or finally approved by the Court without material change, for any reason, the foregoing conditional certification of the Settlement Class and appointment of the Settlement 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.

14. A Final Approval Hearing shall be held before this Court on April 6, 2023 at 2:00 PM, ~~2023~~, to address: (a) whether the Court should finally certify the Settlement Class and whether the Settlement Class Representative and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed Settlement should be finally approved as fair, reasonable and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class in this Action should be dismissed on the merits and with prejudice; (d) whether Class Counsel's

Attorney's Fees and Costs application and the Incentive Awards for Plaintiff should be approved; and (e) such other matters as the Court may deem necessary or appropriate. Papers in support of final approval of the Settlement, the Incentive Award to Named Plaintiff, and Class Counsel's Attorney's Fees and Costs application shall be filed with the Court according to the schedule set forth in Paragraph 19 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Class Members with respect to the Released Claims being settled. The Court may finally approve the Settlement at or after the Final Approval Hearing with any modifications mutually agreed to by Great Lakes and the Class Representative and without further notice to the Settlement Class.

15. The Court approves, as to form and content, the use of a Claim Form, Long Form Notice and Short Form/Postcard Notice substantially similar to the forms attached as Exhibits A, B and D to the Settlement Agreement, respectively. Written Notice will be provided to members of the Settlement Class by first-class U.S. mail using Great Lakes' records as well as other investigations deemed appropriate by the Settlement Administrator, updated by the Settlement Administrator in the normal course of business. All Notices shall be mailed within 30 days of the date of entry of this Preliminary Approval Order. Prior to the Final Approval Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice provisions.

16. The cost of Notice and settlement administration shall be paid by Great Lakes and from the Settlement Fund, as provided for in the Settlement Agreement.

17. The Notice, as directed in this Order, constitutes the best notice practicable under the unique circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Action and of their right to object to the Settlement. The Court further finds that the Notice program is reasonable, that it constitutes due, adequate and

sufficient notice to all persons entitled to receive such notice and that it meets the requirements of due process and of Massachusetts Rule of Civil Procedure 23.

18. Any Class Member may object to the proposed Settlement. Any such Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such Class Member must file with the Court and mail or hand-deliver to the Settlement Administrator a written notice of intention to appear together with supporting papers, including a detailed statement of the specific objections made, delivered or postmarked no later than the Objection Deadline. Each Objection must (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and factual bases for the Objection; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of their position; and (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing. Any Class Member that fails to do object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this Settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Action.

19. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any Released Claim against any of the Released Parties in any action, arbitration or proceeding in any court, arbitration forum or tribunal.

20. Further settlement proceedings in this matter shall proceed according to the following schedule:

<u>EVENT</u>	<u>SCHEDULED DATE</u>
Notice mailing deadline	30 days after entry of Preliminary Approval Order
Attorney's Fees and Costs application due by	30 days following the Notice mailing deadline
Incentive Award application due by	30 days following the Notice mailing deadline
Last day for Class Members to Object to the Settlement	60 days following the Notice mailing deadline
Last day to submit a Valid Claim Form	60 days following the Notice mailing deadline
Briefs in support of Final Approval due by	14 days prior to the Final Approval Hearing
Final Approval Hearing	On the date set in paragraph 14, but no earlier than 120 days after the Notice mailing deadline

21. Service of all papers on counsel for the parties shall be made as follows: for settlement Class Counsel to Stephen F. Taylor, Lemberg Law, LLC, 43 Danbury Road, Wilton, CT 06897; for Defendant to Christopher O Murray and Matthew C. Arentsen of Brownstein Hyatt Farber Schreck, LLP and Peter J. Pingitore of Pingitore & Fitzpatrick, LLC.

22. In the event that a Final Approval Order and Judgment is not entered by the Court, or the Effective Date of the Settlement does not occur, or the Settlement Agreement otherwise terminates according to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever, including without limitation for any evidentiary purpose (including but not limited to class certification), in this Action or any other action. In such event the Settlement Agreement, exhibits, attachments and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all of the parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

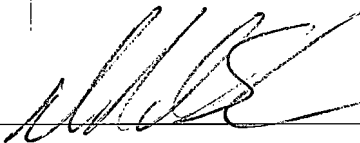
23. The Court may, for good cause, extend all of the deadlines set forth in this Order without further notice to the Settlement Class.

24. All discovery and other litigation activity in this Action is hereby stayed pending final approval of the Settlement.

25. The Settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Action, or of any wrongdoing, liability, or violation by Great Lakes, which vigorously denies all of the claims and allegations raised in the Action.

IT IS SO ORDERED.

DATED: 11/29/, 2022

By: 

Associate Justice of the Superior Court