

COMMONWEALTH OF MASSACHUSETTS
County of Plymouth
The Superior Court

Mark Bland, Sr., <i>on behalf of himself and all</i>	:	
<i>others similarly situated,</i>	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Docket #: 1983CV01151
	:	
	:	
Great Lakes Educational Loan Services, Inc.,	:	
	:	
Defendant.	:	

NOTICE OF FILING

Pursuant to Superior Court Rule 9A, Plaintiff Mark Bland, Sr., hereby gives notice to all parties in the above matter that on January 30, 2023, the papers listed in the accompanying List of Documents were served on the Plymouth Superior Court and counsel for all parties.

Dated: January 30, 2023

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 January 30, 2023, I served a true and accurate copy to counsel of record:

Counsel for the Defendant Great Lakes Educational Loan Services, Inc.

Christopher O Murray
Matthew C. Arentsen
Brownstein Hyatt Farber Schreck, LLP

Peter J. Pingitore
Pingitore & Fitzpatrick, LLC.

/s/ Stephen Taylor
Stephen Taylor

COMMONWEALTH OF MASSACHUSETTS
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Great Lakes Educational Loan Services, Inc.,	:	
	:	
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. Plaintiff's Motion for (1) an Award of Attorneys' Fees and Expenses and (2) an Incentive Award to the Named Plaintiff;
3. Plaintiff's Memorandum of Law in Support;
4. The Declaration of Sergei Lemberg; and
5. The Declaration of Stephen Taylor.

Dated: January 30, 2023

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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/s/ Stephen Taylor
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**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF PLYMOUTH
THE SUPERIOR COURT**

Mark Bland, Sr., <i>on behalf of himself and all others similarly situated,</i>	:	
	:	
Plaintiff,	:	Civil Docket #: 1983CV01151
	:	
v.	:	
	:	
Great Lakes Educational Loan Services, Inc.,	:	
	:	
Defendant.	:	

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

Plaintiff and Class Counsel respectfully move this Court for an Order awarding attorneys' fees, costs and expenses of \$425,000.00 (one-third of the \$1,275,000.00 Settlement Fund) and for an incentive award to the Class Representative in the amount of \$12,000.00.

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

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

Dated: January 30, 2023

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 January 30, 2023, a true and accurate copy of the foregoing was served on all counsel of record by email.

/s/ Stephen Taylor _____
Stephen Taylor

Exhibit A

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF PLYMOUTH
THE SUPERIOR COURT**

Mark Bland, Sr., <i>on behalf of himself and all others similarly situated,</i>	:	
	:	
Plaintiff,	:	Civil Docket #: 1983CV01151
	:	
v.	:	
	:	
Great Lakes Educational Loan Services, Inc.,	:	
	:	
Defendant.	:	

PROPOSED ORDER

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court finds and concludes that due and adequate notice was directed to all persons and entities who are Class members, advising them of Class Counsel’s intent to seek attorneys’ fees and expenses, the proposed Incentive Award to the Class Representative and of their right to object thereto.
2. A full and fair opportunity was accorded to all such persons and entities to be heard with respect to the Fee Motion.
3. Any objections to the Fee Motion do not counsel against approval of Plaintiff’s counsels’ requested fees and are hereby overruled.
4. The Court hereby grants Class Counsel’s request for fees and expenses in the combined amount of \$425,000.00 as reasonable and warranted after considering (1) the nature of the

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

5. The Court approves payment of a \$12,000 Incentive Award to Mark Bland, Sr.

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

IT IS SO ORDERED

Dated: _____, 2023

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF PLYMOUTH
THE SUPERIOR COURT**

Mark Bland, Sr., *on behalf of himself and all
others similarly situated,*

Plaintiff,

Civil Docket #: 1983CV01151

v.

Great Lakes Educational Loan Services, Inc.,

Defendant.

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

INTRODUCTION

Pursuant to M.G.L. c. 93A § 9(4) and the Settlement Agreement, Plaintiff Mark Bland, Sr. (“Plaintiff” or “Class Representative”) and Class Counsel respectfully move this Court for an Order awarding attorneys’ fees, costs and expenses of \$425,000.00 (one-third of the \$1,275,000.00 Settlement Fund) and for an incentive award to the Class Representative in the amount of \$12,000.00.

Plaintiff and Class Counsel have vigorously litigated this Chapter 93A consumer protection act case against Defendant Great Lakes Educational Loan Services, Inc. (“Great Lakes” or “Defendant”) and obtained an outstanding result for the class: a total fund of \$1,275,000.00 to be distributed directly, after deductions for costs and awards, to those class members who submit valid claims. Not a penny of the fund reverts to Great Lakes. But for the efforts of Class Counsel

and the Plaintiff, the class would receive nothing, and the alleged violations of Massachusetts law would go unremedied.

On November 29, 2022, the Court granted preliminary approval to the Parties' class action settlement agreement and scheduled the Final Approval Hearing for April 6, 2023.

Because of the efforts of Class Counsel and the Class Representative, the Settlement Class Members can participate in this excellent result and recover a very significant amount in settlement owing to allegedly unlawful debt collection calls. Under the circumstances of this case, an award of \$425,000.00 in fees and costs is abundantly reasonable because:

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

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

ARGUMENT

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

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

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

174-BLS2, 2010 WL 5557444, at *3 (Mass. Super. Dec. 6, 2010). In fashioning a fee award, the lodestar method takes into consideration much more than the total hours worked and counsel's hourly rate; rather, courts consider the following qualitative factors: "(1) the nature of the case and the issues presented, (2) the time and labor required, (3) the amount of damages involved, (4) the result obtained, (5) the experience, reputation, and ability of the attorneys, (6) the usual price charged for similar services by other attorneys in the same area, and (7) the amount of awards in similar cases." *Id.*

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

"The majority of courts, whether state or federal," however, "utilize the percentage method where a common fund is involved, using the lodestar approach, if at all, as a 'cross check.'" *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at *2 & n.3 (Mass. Super. Aug. 5, 2013) (quoting Fitzpatrick, *An Empirical Study of Class Actions Settlements and their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD., 811, 820 (2010)); *see, e.g., Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *11 (D. Mass. Sept. 30, 2016) (Burroughs, J.) (approving 1/3 of the fund with lodestar cross-check); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the fund); *In re Am. Dental Partners, Inc. Sec. Litig.*, 2010 WL 1427404, at *1 (D. Mass. Apr. 9, 2010) ("In common fund cases, the trend increasingly favors the calculation of a fee award by use of the percentage of the fund (POF)

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

Given the overlapping qualitative considerations between the lodestar and percentage of the funds methods, courts will often reach the same result regardless of which method is used. For instance, in *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, another Chapter 93A class action, the court awarded counsel \$6 million in attorney’s fees out of a \$20 million common fund where class counsel asked that court to “apply a multiplier of 2” to award it “30 percent of the common fund.” 2013 WL 6268236, at *2 (Mass. Super. Aug. 5, 2013). In approving the award, the court considered the result achieved by class counsel and the risks counsel undertook taking the case on a contingency basis, acknowledged that “Massachusetts state courts follow the lodestar approach,” but was nonetheless “persuaded that these additional considerations [the above

qualitative factors] warrant the multiplier or upward adjustment of the lodestar amount.” *Id.* & at n.3 (emphasis supplied). Likewise, in *Schiefer v. Bain Capital, LP*, the plaintiff requested an attorney’s fee award in the amount of one-third of the \$3.5 million common fund and “cited a number of cases in which federal courts have approved fee awards based on a percentage of the total settlement.” 2018 WL 6184638, at *2 (Mass. Super. Oct. 3, 2018). While the court noted that “the standard that applies in state court cases remains the lodestar approach” and adopted that approach, it also applied qualitative factors such as the benefits of the settlement to the class and the fact that “the entire fund here will be distributed to class members,” and a result of those factors applied a multiplier to the lodestar and awarded \$1.224 million in fees, or approximately 35% of the common fund. *See id.*, at *1-2. Thus, while the *Schiefer* court opted to apply the lodestar method rather than the percentage of the fund, in the end it awarded the same amount of fees they had requested under the percentage of the fund method.

In this case, the Settlement Agreement here creates a common fund of \$1,275,000.00. Class Counsel requests an award of attorneys’ fees and costs in the amount of \$425,000.00 for their efforts on behalf of the class, which can be calculated as either one-third of the settlement fund, or under the lodestar method with a multiplier of 1.83.

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

As an initial matter, one-third of the settlement fund in a common fund class action is reasonable on its face and Massachusetts courts and others in the First Circuit routinely award a one-third fee. *See Roberts*, 2016 WL 8677312, at *13 (“a one-third fee award, while certainly generous, is not unreasonable in light of the positive results obtained for class members, and the actual time and efforts expended by Class Counsel in this case.”); *Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016) (“the one-third fee requested here

is fair and reasonable”); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at *6 (D.N.H. Dec. 18, 2007) (awarding fees in the amount of 33% of settlement fund); *McCormick v. Festiva Dev. Grp., LLC*, 2011 WL 2457883, at *1 (D. Me. June 20, 2011) (awarding fees in the amount of one third of settlement fund); *Applegate v. Formed Fiber Techs., LLC*, 2013 WL 6162596, at *1 (D. Me. Nov. 21, 2013) (same); *Bennett v. Roark Capital Grp., Inc.*, 2011 WL 1703447, at *2 (D. Me. May 4, 2011) (same); *see also Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016) (awarding 30% of common fund and observing that “as several courts have concluded, 30% is not out of proportion with recovery percentages in large class action litigations.”).

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

At \$1,275,000.00 (far less than a megafund thereby not implicating concerns regarding windfalls to class counsel) the size of the fund here does not justify less than one-third. *See In re Sterling Fin. Corp. Sec. Class Action*, 2009 WL 2914363, at *4 (E.D. Pa. Sept. 10, 2009) (approving 30% in fees of common fund of \$10.25 million and stating “the settlement fund is not

so large as to support a percentage smaller than thirty percent”) (emphasis supplied). Thus, the fee and expense request here is reasonable on its face.

III. THE LODESTAR METHOD SUPPORTS THE REQUESTED FEE AWARD

The requested attorneys’ fees and expenses are also reasonable under the lodestar method. Class Counsel’s lodestar in this action is \$232,653.00 which is based on 391.7 attorney and professional staff hours. (Lemberg Decl. ¶ 13):

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$700	97.2	\$68,040
Stephen Taylor, Esq.	\$650	197.7	\$128,505
Josh Markovits, Esq.	\$400	87.3	\$34,920
Paralegal Time	\$125	9.5	\$1,188
		Total: 391.7	\$232,653

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

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

constitute a lodestar multiplier of 8.9). Consideration of the below qualitative factors weigh strongly in favor of approving the requested fees and expenses and a multiplier of 1.83.

a. THE NATURE OF THE CASE AND THE ISSUES PRESENTED

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

Specifically, this case involves M.G.L. c. 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).

Class Counsels' investigation and discovery showed Great Lakes 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 Great Lakes' defenses);

Plaintiff is typical of the class as Great Lakes 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 his counsel were adequate representatives.

However, Great Lakes hotly disputed Plaintiff's claims and the sufficiency of class adjudication. For example, Defendant argued it did not violate the Debt Collection Regulation because sometimes its calls, though initiated, went unanswered therefore Defendant was truly unable to reach Plaintiff (or class members in such instances) and such calls did not apply to the two-call limitation.¹ Great Lakes relied on a limited exemption from liability grounded in guidance from the Attorney General which provides that “unsuccessful attempts by a creditor to reach a debtor via telephone may not constitute initiation of communication if the creditor is truly unable to reach the debtor or to leave a message for the debtor” *Armata v. Target Corp.*, 480 Mass. 14, 18 (2018). Plaintiff disputed this defense arguing that the exemption applies only where the creditor is truly unable to reach the debtor meaning the debtor has gone completely missing and there is no contact at all between the creditor and debtor. In such a situation, the creditor cannot be initiating a communication with the debtor because *it is not actually in contact* with the debtor.

As the SJC explained:

We need not define all the ways in which a creditor would be “truly unable” to reach a debtor. Target does not contend that it was truly unable to reach Armata. *Nor would such an argument be credible in this case, since Armata did occasionally answer Target's telephone calls.* Additionally, there is no dispute that Target had Armata's correct telephone number, which Target had obtained Armata's prior consent to telephone.

Armata, 480 Mass. at 20, n.8 (emphasis supplied). Plaintiff argued that the exemption did not apply to the Plaintiff and unanswered calls can and do count.

¹ Defendant had several other defenses in addition to the one discussed here.

Regarding class certification, Defendant argued that an individualized review of each account would be required to determine whether the truly unable to reach exemption to liability applied and therefore class certification would be inappropriate.² However, Plaintiff argued that to the extent this ‘truly unable’ to reach exemption existed, it could be dealt with systemically with Defendant’s detailed call records for the Plaintiff and the class.

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

b. THE TIME AND LABOR REQUIRED

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

Before initiating this action, Class Counsel investigated the facts and law relating to Plaintiff’s claims. On October 22, 2019, Plaintiff filed his class action against Great Lakes. On January 6, 2020, Great Lakes filed its Answer denying the material allegations of the Complaint as to the Plaintiff and his putative class. Thereafter the Parties engaged in fact discovery concerning merits and class issues. Plaintiff drafted and served Rule 33 & 34 discovery requests. Ultimately, Defendant produced extensive documentation concerning Plaintiff’s individual case and related to class issues.

Further, on July 2, 2020, Great Lakes served a motion for summary judgment and a motion for a protective order asking the Court to block all class discovery. Plaintiff opposed the motion, arguing that it was premature and, pursuant to Rule 56(f), Plaintiff needed additional discovery on the issue. On September 17, 2020, the Court denied the motion. Following the denial, the Plaintiff

² As with defenses to liability, Defendant indicated it would oppose class certification on several additional grounds.

and Defendant's Rule 30(b)(6) designee were deposed. Thereafter, Plaintiff opposed Defendant's renewed motion for summary judgment and for a protective order which the Court denied. Plaintiff also opposed another motion for a protective order and to essentially strike class allegations because, Great Lakes argued, Plaintiff's claim was not suitable for class treatment. The Court denied that motion on January 5, 2022.

In the litigation, the Parties conferred multiple times about resolution. Ultimately, the Parties agreed to privately mediate their dispute and sought a stay of proceedings for that purpose. On June 27, 2022, Plaintiff's counsel attended an all-day mediation session before the Honorable Stephen Neel (Ret.). Plaintiff provided Judge Neel with a detailed mediation brief addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, alleged damages, and settlement. The mediation was adversarial and conducted at arm's-length and resulted in agreement to a settlement. Plaintiff drafted a comprehensive settlement agreement the Court has preliminarily approved. In addition, Class Counsel will devote further time and effort appearing at the final approval hearing, responding to ongoing inquiries from Class Members going forward, addressing any disputes relating to submitted claims, and monitoring claims processing and the distribution of settlement payments by the Settlement Administrator. (Lemberg Decl. ¶ 12).

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

c. **THE AMOUNT OF DAMAGES INVOLVED AND THE RESULT OBTAINED**

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

First, the fund of \$1,275,000 resolves approximately 25,000 potential claims for violations of the Regulation and Chapter 93A owing to Great Lakes' alleged practice of calling consumers in excess of the permitted amount. Absent a showing of actual provable damages owing to excess phone calls, class members may be entitled to statutory damages (\$25 dollars for their claims, recovery up to \$50 to \$75 dollars if they can establish the violations were "willful or knowing," and the potential to recover per *violation* rather than per claim which can increase the minimum statutory award greatly). Mass. Gen. Laws c. 93A, § 9(3). The fund here represents, in total, approximately \$51 per each class member. It is not possible to know how much each claiming member will receive until the claims process is complete. However, assuming a 5% claims rate, Class Members who submit Valid Claim Forms will recover approximately \$603 each; a 10% claims rate would result in a \$301 recovery per claiming Class Member; and an even higher rate of 20% would result in claiming Class Members receiving \$150 each.

Further, the results obtained are very significant considering the significant hurdles to establishing liability and certifying the class given Great Lakes' defenses. The risks of continued litigation are compounded by the fact that for any plaintiff's firm to bring a class action against a substantial company requires the commitment of time and resources in the face of significant risks of loss and/or delay. Firms of small size face even greater risks in litigating large class actions with no guarantee of payment. *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (finding heightened risk of small firm representation should be rewarded with larger percentage fee for good result); *see also Pennsylvania v. Delaware Valley Citizens' Council*

for Clean Air, 483 U.S. 711, 750 (1987) (Delaware Valley II) (plurality opinion) (“[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work. . . .”); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) (“[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients.”).

This is a pure contingent fee case, which Class Counsel took on with risk concerning not only the result of the case, but also how much time and money would need to be invested to get a result against a well-funded defendant represented by very able counsel. Because hours and resources are limited, the attorneys involved in this case were required to defer or decline other work in order to properly prosecute this case. Had the case been lost, they would have received no compensation whatsoever for their significant investment of time and effort over the years. Accordingly, this factor also weighs in favor of the requested award.

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

The experience, reputation and ability of the attorneys involved also weighs in favor of the requested fees and expenses. Class Counsel are experienced and skilled consumer protection and class action litigators. (Lemberg Decl. ¶¶ 4-5, 16; Taylor Decl. ¶ 5). They have successfully represented classes in both contested and settled proceedings. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act (“FDCPA”) class action settlement); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Lavigne v. First Cmty. Bancshares, Inc.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (“the Court concludes that Lemberg Law, LLC (Stephen Taylor) should be appointed as class counsel.”)

(contested class certification decision in TCPA action); *Duchene v. Westlake Servs., LLC*, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM common fund in TCPA action); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

Class Counsel brought their experience and skill to bear to efficiently investigate, litigate, settle this case, conduct discovery, and oversee the administration of the settlement process. Their skill with Chapter 93A and class action litigation was critical in efficiently identifying the key issues, negotiating the settlement for the class and demonstrates the reasonableness of the one-third fee and the lodestar multiplier.

e. THE AMOUNTS OF AWARDS IN SIMILAR CASES

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

8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (“Accordingly, the Court awards attorney’s fees and costs in the amount of \$1.1 million, or 33% of the \$3.3 million settlement fund ceiling amount.”).

A one-third fee is also reasonable in light of other percentage of the fund cases in the First Circuit and, indeed, class cases under Chapter 93A. *See Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *11 (D. Mass. Sept. 30, 2016) (Burroughs, J.) (approving 1/3 of a \$4.75MM common fund in fees even where a full 39% of the total fund would revert back to the defendant); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the fund); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at *1 & n.3 (Mass. Super. Aug. 5, 2013) (awarding 30% of the fund in fees in Chapter 93A class action).

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

f. PUBLIC POLICY CONSIDERATIONS

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

Further, the Massachusetts legislature encourages litigants to pursue Chapter 93A claims like these via class actions. *See* M.G.L. c. 93A § 9(2) (“Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated person”). Chapter 93A is a broad consumer protection statute which “encompasses claims where a plaintiff’s damages are de minimis” *Ciardi v. F. Hoffmann-*

La Roche, Ltd., 436 Mass. 53, 60 n.14 (2002); *see also* *Murphy v. Charlestown Sav. Bank*, 380 Mass. 738, 743, 405 N.E.2d 954, 957 (1980) (“G.L. c. 93A deserves broad construction.”). And the regulation at issue here – the Massachusetts Debt Collection Regulations – was enacted to “prevent[] creditors from harassing, oppressing, or abusing debtors.” *Armata*, 480 Mass. at 15, 99 N.E.3d at 790; *see also* *Watkins v. Glenn Assocs., Inc.*, 2016 WL 3224784, at *2 (Mass. Super. June 10, 2016) (“Taken as a whole, the Guidance and the state regulation evidence a clear intent by the Attorney General to limit the pressure that debt collectors may exert upon a person who simply owes a debt, to prevent a creditor from intruding upon a debtor’s personal life, and to protect them from harassment, oppression, and abuse.”). Thus, this class action serves important public policy of ensuring that consumers’ rights be protected even where individual damages are minimal. So too, the requested fee here serves an important public policy of ensuring that consumer claims under the regulation and Chapter 93A can be pursued by experienced and skilled counsel.

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

The reasonableness of the fee award to Class Counsel is further demonstrated by the fact that it is inclusive of both attorneys’ fees and expenses. Here, Class Counsel’s expenses total \$6,374.62. (Lemberg Decl. ¶¶ 18-21). The fact that these expenses are included in the amount sought by Class Counsel demonstrates that the requested amount is reasonable and appropriate. *See Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (approving fee award of one third of settlement fund and noting “Class Counsel’s good faith in agreeing to absorb all costs as part of the fee award without seeking separate reimbursement for them.”).

h. THE COURT SHOULD APPROVE THE INCENTIVE AWARD TO MARK BLAND, SR. FOR HIS EFFORTS ON BEHALF OF THE CLASS

Class Counsel requests that the Court approve the payment of an incentive award for Plaintiff Mark Bland, Sr. in the amount of \$12,000.00.

An incentive award for bringing and litigating this case on behalf of the class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Manual for Complex Litigation*, § 21.62 n.971 (4th ed. 2004); *In re Lupron Mktg. & Sales Practices Litig.*, 221.7 F.R.D. 75, 98 (D. Mass. 2005). Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 468 (D.P.R. 2011); *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *7 (D. Mass. Aug. 17, 2005).

Plaintiff has been intimately involved with this case since its inception. He assisted in our investigation, has provided us critical information, sat for his own deposition and has been in contact with and aided his counsel throughout the case. (Taylor Decl. ¶ 7). Mr. Bland also declined early individual settlement offers which would have benefited him but left the class with nothing. *Id.* But for his efforts, and his desire and willingness to stick with this case and get relief for others in addition to himself, the Settlement Class here would have received nothing. An Incentive Award of \$12,000.00 to Plaintiff is reasonable and fair to Plaintiff for his efforts on behalf of the class and is within the range of awards approved in other class actions. *See, e.g., Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (approving award of \$20,000 to each named plaintiff).

CONCLUSION

For the reasons set forth above, Plaintiff and Class Counsel respectfully request that the Court grant this motion and (1) award attorneys' fees and expenses to Class Counsel in the amount of \$425,000.00 and (2) award \$12,000.00 as an incentive award to Plaintiff for his role in representing the class.

Dated: January 30, 2023

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 January 30, 2023, a true and accurate copy of the foregoing was served on all counsel of record by email.

/s/ Stephen Taylor _____
Stephen Taylor

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF PLYMOUTH
THE SUPERIOR COURT**

Mark Bland, Sr., <i>on behalf of himself and all others similarly situated,</i>	:	
	:	
Plaintiff,	:	Civil Docket #: 1983CV01151
	:	
v.	:	
	:	
Great Lakes Educational Loan Services, Inc.,	:	
	:	
Defendant.	:	

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

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

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

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

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

following Federal courts: the District of Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut; the Northern and Middle Districts of Georgia; the Northern, Central and Southern Districts of Illinois; the District of Maryland; the Eastern and Western Districts of Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern, Southern, Eastern and Western Districts of New York; the Northern District of Ohio; the Northern, Eastern and Western Districts of Oklahoma; the Western District of Texas; the Eastern, Middle and Western Districts of Pennsylvania; and the Northern, Middle and Southern Districts of Florida.

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

5. I and my firm have been certified as class counsel, in both contested proceedings and in settlement, in multiple matters. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certification in Telephone

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

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

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

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

OVERVIEW OF EFFORTS ON BEHALF OF PLAINTIFF AND THE CLASS

9. We have litigated this case on behalf of Mr. Bland and the proposed class since August of 2019.

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

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

- 1) Investigated the facts and law relating to Plaintiff's claims before initiating any action;
- 2) Drafted a well-pleaded Complaint and filed the same;
- 3) Analyzed Defendant's response and defenses;
- 4) Devised strategies to overcome Defendant's defenses to the litigation including its arguments on identifying class members, arguments against class certification and against liability;
- 5) Served discovery requests pursuant to Mass. R. Civ. P. 33 & 34 concerning class, merits and damages elements;
- 6) Opposed Defendant's July 2, 2020, motions for summary judgment and for a protective order;

- 7) Opposed Defendant's renewed motion for summary judgment;
- 8) Opposed Defendant's motion for reconsideration following denial of the motion for summary judgment;
- 9) Opposed Defendant's motion for a protective order to strike class allegations;
- 10) Reviewed hundreds of pages of documents including audio recordings concerning Plaintiff's individual claims and class claims;
- 11) Took the Defendant's deposition and defended the Plaintiff's;
- 12) Negotiated the details of a comprehensive Settlement Agreement;
- 13) Prepared the exhibits to the Settlement Agreement (including the Class Notice, Claim Form, and proposed Preliminary Approval Order);
- 14) Prepared a motion for preliminary approval of the Settlement;
- 15) Regularly communicated with the Claims Administrator and monitored the notice program and class response;
- 16) Reviewed the language and content of the settlement website;
- 17) Communicated with the named Plaintiff throughout the litigation; and
- 18) Prepared the present motion.

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

CLASS COUNSEL’S LODESTAR

13. Our lodestar in this matter is \$232,653 representing 391.7 hours expended by three firm attorneys and paralegal staff. The following attorneys contributed significant time towards this case and seek compensation at the following rates.

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$700	97.2	\$68,040
Stephen Taylor, Esq.	\$650	197.7	\$128,505
Josh Markovits, Esq.	\$400	87.3	\$34,920
Paralegal Time	\$125	9.5	\$1,188
		Total: 391.7	\$232,653

14. My billing rate in this matter is \$700 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. In addition, Mr. Taylor’s billing rate is \$600 per hour which is supported by his skill and experience as set forth in his declaration.

15. Further, we are seeking compensation for Mr. Josh Markovits who bills at \$400 per hour and is admitted in the case *pro hac vice*.

16. Mr. Markovits is an associate at Lemberg Law with a focus on consumer protection class actions. Mr. Markovits received his J.D., *cum laude*, from Benjamin N. Cardozo School of Law in 2015 and is admitted to practice in New York. Mr. Markovits is also admitted to practice before the Southern, Eastern and Western Districts of New York, the Northern District of Illinois, and the District of Colorado. During law school, Mr. Markovits served as a legal intern in the chambers of both a federal court and a New York Supreme Court judge. He also served as a legal intern in the U.S. Commodity Futures Trading Commission’s Division of Enforcement. He has been approved as class counsel in consumer protection class actions. *See Pollard v. Windham Professionals, Inc.*, No. 1978CV00033 (Mass. Super., Oct. 18, 2021) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Virgne v. C.R.*

England, Inc., No. 1:19-cv-02011-SEB-MDJ (S.D. Ind. Jan. 13, 2021) (ECF No. 124) (final approval of class action settlement in TCPA action).

17. These rates, (between \$700 and \$400 for attorneys and \$125 for paralegal staff) are within the range of rates charged by attorneys with similar qualifications in complex class action litigation. For instance, in *Davis v. Footbridge Eng'g Servs., LLC*, the Honorable Judge Nancy Gertner set reasonable hourly rates for plaintiff's counsel in a federal Fair Labor Standards Act action. 2011 WL 3678928 (D. Mass. Aug. 22, 2011). Class counsel came from mid-sized firms with national practice with experience in litigating a variety of national class actions. *Id.*, 2011 WL 3678928, at *3-4. The Court – over a decade ago – approved rates for partners of \$565 to \$650 per hour, for associates at rates of \$350 to \$425 per hour and for paralegal staff at \$140 to \$210 per hour. *Id.* Moreover, the court in *Davis* noted that while plaintiff's counsel were not from large firms, “that fact is not dispositive,” explaining that “[w]hile higher rates at the large firms may be justified by their higher overhead, the overhead and transaction costs of a class action litigation practice, particularly a national practice, is similarly high.” *Id.* at *4. Other courts have approved similar rates (*see, e.g., Brenner v. J.C. Penney Co.*, 2013 WL 6865667, at *6 (D. Mass. Dec. 26, 2013) (approving hourly rates of up to \$600 for class counsel in class action alleging defendant violated Massachusetts consumer protection statute by unlawfully gathering and using customer zip codes in connection with credit card purchases); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at *1 (Mass. Super. Aug. 5, 2013) (approving hourly rate of up to \$590 for class counsel in Chapter 93A case) and higher (*Tuli v. Brigham & Women's Hosp., Inc.* 2009 U.S. Dist. LEXIS 129768 at *5–7 (D. Mass. June 8, 2009) (approving rate for partners of \$600 to **\$700**); *Smith v. City of Bos.*, 496 F. Supp. 3d 590, 599 (D. Mass. 2020) (approving rates of \$600-\$700).

EXPENSES

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

19. As reflected in the expense reports attached hereto as Exhibit A, the total costs incurred to date are \$6,374.62.

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

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

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

Dated: January 30, 2023

/s/ Sergei Lemberg
Sergei Lemberg

Exhibit A

LEMBERG LAW LLC
Bland v. Great Lakes

All Transactions

Invoiced Date	Memo	Debit	Credit
09/14/2022	Refund from JAMS		5,012.36
08/03/2022	JAMS Mediation	287.36	
06/29/2022	JAMS Mediation	5,012.36	
06/03/2022	JAMS Mediation	4,725.00	
07/07/2021	Court Reporter	107.56	
11/12/2020	Court Reporter	564.70	
10/19/2020	PHV	355.00	
11/15/2019	Service	55.00	
10/22/2019	Filing Fee	280.00	
Total:		6,374.62	

**COMMONWEALTH OF MASSACHUSETTS
COUNTY OF PLYMOUTH
THE SUPERIOR COURT**

Mark Bland, Sr., <i>on behalf of himself and all others similarly situated,</i>	:	
	:	
Plaintiff,	:	Civil Docket #: 1983CV01151
	:	
v.	:	
	:	
Great Lakes Educational Loan Services, Inc.,	:	
	:	
Defendant.	:	

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

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

1. I am a partner at Lemberg Law, LLC, of Wilton, Connecticut and counsel for the Plaintiff Mark Bland. Unless otherwise stated, I have personal knowledge of the following facts, and if called and sworn as a witness, could and would competently testify thereto.
2. I graduated from Boston College in 2003, from Tulane University School of Law in 2007, I am a former judicial clerk and joined Lemberg Law in 2009.
3. In addition to being licensed to practice law in the states of Connecticut and New York, I am admitted to the following Federal District Courts: the Southern, Eastern, Western and Northern Districts of New York; the Southern, Eastern, and Northern Districts of Texas; the District of Colorado; the Central and Northern Districts of Illinois; the Eastern District of Michigan and the District of Connecticut. I am a member in good standing in both Connecticut and New York and appear in this matter *pro hac vice*.

4. My billing rate in this matter is \$650 which is justified by my experience and qualifications. I have extensive experience in consumer rights litigation including matters brought under the Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”) the Magnuson Moss Federal Act, the Truth in Lending Act, and a variety of state consumer protection statutes including Massachusetts General Law 93A.

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

6. My firm has litigated this case on behalf of Plaintiff and the proposed class since he contacted my firm in August 2019.

7. Mr. Bland has been an exemplary class representative. He has kept in regular contact with my office. He has provided us information and aided us in our investigation. He has sat for his own deposition giving his testimony related to this matter. He has continued to maintain this case as a class action through the past several years. But for his commitment the Class would receive nothing. These efforts and actions of Mr. Bland on behalf of the class deserve to be rewarded and merit the \$12,000 incentive award we seek on his behalf.

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

Dated: January 30, 2023

/s/ Stephen Taylor
Stephen Taylor

Case # 1983CV01151 - 1983CV01151 Mark Bland, Sr. on behalf of Hi

Envelope Information

Envelope Id
1670445

Submitted Date
1/30/2023 3:02 PM EST

Submitted User Name
slemberg@leberglaw.com

Case Information

Location
Superior Court - Plymouth

Category
Torts

Case Type
Other Tortious Action

Case #
1983CV01151

Filings

Filing Type
EFileAndServe

Filing Code
Notice

Filing Description
Notice of Filing and List of Documents

Client Reference Number
27227-002

Filing on Behalf of
Mark Bland

Filing Status
Submitting

Lead Document

File Name	Description	Security	Download
Notice of Filing.pdf	Notice of Filing.pdf	Public	Original File

eService Details

Status	Name	Firm	Served	Date Opened
Not Sent	Sergei Lemberg	Lemberg Law	No	Not Opened



Filing Type

EFileAndServe

Filing Code

Motion – Other

Filing Description

Motion for Fees

Client Reference Number

27227-002

Filing on Behalf of

Mark Bland

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
Motion for Fees Expenses and Incentive Award.pdf	Motion for Fees, Expenses and Incentive Award.pdf	Public	Original File

eService Details

Status	Name	Firm	Served	Date Opened
Not Sent	Sergei Lemberg	Lemberg Law	No	Not Opened

Filing Type

EFileAndServe

Filing Code

Exhibits/Appendix

Filing Description

Exhibit A to Motion

Client Reference Number

27227-002

Filing on Behalf of

Mark Bland

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
Ex. A to Motion - Proposed Order.pdf	Ex. A to Motion - Proposed Order.pdf	Public	Original File

eService Details

Status	Name	Firm	Served	Date Opened
Not Sent	Sergei Lemberg	Lemberg Law	No	Not Opened

Filing Type

EFileAndServe

Filing Code

Memorandum

Filing Description

Memorandum of Law

Client Reference Number

27227-002

Filing on Behalf of

Mark Bland

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
Memo in Support of Fees.pdf	Memo in Support of Fees.pdf	Public	Original File

eService Details

Status	Name	Firm	Served	Date Opened
Not Sent	Sergei Lemberg	Lemberg Law	No	Not Opened

Filing Type

EFile

Filing Code

Statement/Response

Filing Description

Lemberg Declaration

Client Reference Number

27227-002

Filing on Behalf of

Mark Bland

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
Lemberg Decl. Fees w. Ex. A - Costs.pdf	Lemberg Decl. Fees w. Ex. A - Costs.pdf	Public	Original File

Filing Type

EFile

Filing Code

Statement/Response

Filing Description

Taylor Declaration

Client Reference Number

27227-002

Filing on Behalf of

Mark Bland

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
Taylor Decl. Fees.pdf	Taylor Decl. Fees.pdf	Public	Original File

Parties with No eService

Name

Himself and all others similarly situated

Address

Name

Great Lakes Educational Loan Services, Inc.

Address

Fees

Notice

Description

Filing Fee

Amount

\$0.00

Filing Total: \$0.00

Motion – Other

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Exhibits/Appendix

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Memorandum

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Statement/Response

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Statement/Response

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
Envelope Total:	\$0.00

Transaction Amount	\$0.00	
Transaction Id	2484545	
Filing Attorney	Sergei Lemberg	Order Id
Transaction Response	Authorized	