

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 March 23, 2023, the papers listed in the accompanying List of Documents were served on the Plymouth Superior Court and counsel for all parties.

Dated: March 23, 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 March 23, 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

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| 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 Final Approval of Class Action Settlement;
3. Plaintiff’s Memorandum of Law in Support;
4. The Declaration of Frank Cordova; and
5. The Declaration of Stephen Taylor.

Dated: March 23, 2023

Respectfully submitted:
/s/ Stephen Taylor
Sergei Lemberg (BBO# 650671)
Stephen Taylor (*phv*)
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/s/ Stephen Taylor
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| | : | |
| Defendant. | : | |

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Mark Bland, Sr., hereby moves for entry of an Order granting final approval of the Class Action Settlement Agreement between Plaintiff and Defendant Great Lakes Educational Loan Services, Inc.

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 Declaration 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.

Dated: March 23, 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 March 23, 2023, I served a true and accurate copy to all counsel of record.

/s/ Stephen Taylor _____
Stephen Taylor

Exhibit A

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

PLYMOUTH, ss.

| | | |
|--|---|----------------------|
| Mark Bland, Sr., <i>on behalf of himself and all</i> |) | |
| <i>others similarly situated,</i> |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 1983CV01151 |
| |) | |
| Great Lakes Educational Loan Services, Inc. |) | |
| |) | |
| |) | |
| Defendant. |) | |

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

WHEREAS, on November 29, 2022, 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 Mark Bland, Sr. and Defendant Great Lakes Educational Loan Services, Inc. (“Great Lakes”) 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 declaration 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 Fee Award to Class Counsel, and the payment of an Incentive Award.

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and Counsel for Great Lakes, 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 Fee Award application made by Class Counsel and the application for 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 and Judgment 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 in light of the complexity, expense and duration of litigation and the risks involved in establishing liability and damages, and in maintaining the class action through trial and appeal. The settlement as set forth in the Settlement Agreement was arrived at as a result of arms-length negotiations conducted in good faith by counsel for the parties and is supported by the Settlement Class Representative. Furthermore, the relief provided under the Settlement Agreement constitutes fair value given in exchange for the Releases of claims against the Released Parties. In approving the Settlement, the Court has also considered the submissions and arguments of the parties.
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 deems as valid: (1) the 14 untimely claims which were otherwise complete and valid, and (2) the 28 unsigned claims which were otherwise timely and valid and which the administrator matched to Settlement Class Members. (*See* March 23, 2023, Declaration of Frank Cordova par. 9).

6. The Settlement Class, which will be bound by the Settlement Agreement and this Final Approval Order and Judgment hereon, shall include all members of the Settlement Class as defined in the Settlement Agreement.

7. In this order, “Class Period” means the period from October 28, 2015, through the date of the Preliminary Approval Order.

8. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby 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.

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Rule 23 set forth in the Preliminary Approval Order and notes again that because this certification of the Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement.

9. 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 Settlement Class Representative have fairly and adequately represented the Settlement Class with respect to the Settlement.

10. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Settlement Class Representative for purposes of effecting the Settlement, if this Final Approval Order and Judgment 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 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 Final Approval Order and Judgment without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

11. The Court finds that the plan for Notice, set forth in Section IV(3) 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, and satisfied the requirements of the Massachusetts Rules of Civil Procedure, the Massachusetts Declaration of Rights, the United States Constitution, due process, and other applicable law.

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

13. 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.

14. Within the time period set forth in Section III(4), 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.

15. Upon the Effective Date, all members of the Settlement Class, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged the Released Parties from the Released Claims as specified in the Release set forth in Section V of the Settlement Agreement.

16. 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 damages, fees, or costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action or 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.

17. The terms of the Settlement Agreement, this Final Approval Order and 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 calls at issue in the Action.

18. The Final Approval Order and 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 Great Lakes of any fault, wrongdoing, or liability on the part of Great Lakes or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Action. This Final Approval Order and Judgment, the Settlement, or any settlement communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other Person has suffered any damage; *provided, however*, that the Settlement, this Final Approval Order and Judgment to be entered hereon may be filed in any action by Great Lakes or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or

counterclaim. 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 Final Approval Order and Judgment that are maintained by, or on behalf of, the Settlement Class Members or any other Person subject to the provisions of this Order.

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

Let judgment be entered accordingly.

DATED: _____, 2023

By: _____

Associate Justice of the Superior Court

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

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

TABLE OF CONTENTS

BACKGROUND.....2

 I. The Regulation and M.G.L. ch. 93A.....2

 II. This Litigation.....3

 III. Notice.....3

 IV. Terms of the Settlement.....5

POINT I - THE SETTLEMENT AGREEMENT SHOULD BE GRANTED FINAL APPROVAL.....6

 I. STANDARD FOR FINAL APPROVAL OF APPROVAL OF A CLASS ACTION SETTLEMENTS.....6

 II. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE PURSUANT TO THE *GRINNELL* FACTORS.....8

 a. The Complexity, Expense, and Likely Duration of the Litigation Favor Approval.....8

 b. The Reaction of the Class to the Settlement Favors Approval.....10

 c. The Stage of the Proceedings and the Amount of Discovery Completed Favors Approval.....11

 d. The Risks of Establishing Liability.....11

 e. The Risks of Establishing Damages and the Ability of the Defendant to Withstand a Greater Judgment.....11

 f. The Risks of Maintaining the Class Action through Trial Favor Approval.....12

 g. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and of all the Attendant Risks of Litigation.....13

POINT II - THE COURT SHOULD APPROVE THE MASSACHUSETTS IOLTA COMMITTEE AS RECIPIENT FOR ANY RESIDUAL FUNDS.....14

CONCLUSION.....15

TABLE OF AUTHORITIES

Cases

Alper v. Select Portfolio Servicing, Inc., 2019 WL 3281129 (D. Mass. July 19, 2019) 8

Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 117 S. Ct. 2231 (1997) 12

Armata v. Target Corp., 480 Mass. 14(2018) 2, 8

Armstrong v. Board of School Directors of Milwaukee, 616 F.2d 305 (7th Cir. 1980) 7

Aspinall v. Philip Morris Companies, Inc., 2013 WL 7863290 (Mass. Super. Feb. 7, 2013) 12

Bezdek v. Vibram USA Inc., 79 F. Supp. 3d 324 (D. Mass. 2015) 7

Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974) 7

Forcellati v. Hyland’s, Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) 10

Harrington v. Wells Fargo Bank, N.A., 2019 WL 3818299 (D. Mass. Aug. 14, 2019) 8

Hill v. State St. Corp., No. 09-12146, 2015 WL 127728 (D. Mass. Jan. 8, 2015) 7

In Gehrlich v. Chase Bank USA, N.A., 2016 WL 806549 (N.D. Ill. Mar. 2, 2016) 13

In re Capital One Tel. Consumer Prot. Act Litig., 80 F. Supp. 3d 781 (N.D. Ill. 2015) 13

In re Lupron Mktg. & Sales Practices Litig., 228 F.R.D. 75 (D. Mass. 2005) 7, 11

In re Relafen Antitrust Litig., 231 F.R.D. 52 (D. Mass. 2005) 7, 10

Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund, 582 F.3d 30 (1st Cir. 2009) 7

New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc., 602 F.Supp.2d 277 (D. Mass. 2009) 7

Ott v. Mortgage Inv’rs Corp. of Ohio, Inc., 2016 WL 54678, (D. Or. Jan. 5, 2016) 13

Rose v. Bank of Am. Corp., 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) 13

Sniffin v. Prudential Ins. Co. of America, 395 Mass. 415 (1985) 7

Sullivan v. DB Investments, Inc., 667 F.3d 273 (3d Cir. 2011) 12

Voss v. Rolland, 592 F.3d 242 (1st Cir. 2010) 7

White v. Nat’l Football League, 822 F. Supp. 1389 (D. Minn. 1993) 12

Statutes

M.G.L. ch. 93A, § 2(a) 2, 8

M.G.L. ch. 93A, § 9(1) 2

M.G.L. ch. 93A, § 9(2) 2, 6

M.G.L. ch. 93A, § 9(3) 3, 12

Rules

Mass. R. Civ. P. 23(c) 6

Mass. R. Civ. P. 23(e)(2) 6, 14

Regulations

940 C.M.R. 7.04(1)(f) 8

Plaintiff Mark Bland, Sr. (“Plaintiff”) respectfully submits this Memorandum of Law in Support of his Unopposed Motion for Final Approval of the Parties’ Class Action Settlement.

Pursuant to the Preliminary Approval Order, notice was sent to the Settlement Class detailing the terms of the Settlement Agreement and inviting members to submit claims.¹ The response from the class has been very positive. There have been 2,819 claims submitted by Settlement Class which the Parties ask the Court to approve and no objections. If the settlement is approved with these claims, each claiming member will recover approximately \$270.06 as their *pro rata* share of the Settlement Fund. (Cordova Decl. ¶¶ 3-9).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 \$1,275,000.00 fund will revert to the Defendant Great Lakes Educational Loan Services, Inc. (“Defendant” or “Great Lakes”); 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, motion practice, and a mediation before a neutral.

¹ The notice and claims process is detailed in the March 23, 2023, Declaration of Frank Cordova (“Cordova Decl.”) from KCC Class Actions Services, LLC (“KCC”) attached as Exhibit A.

² The response represents a 11% claims rate (2,819 claims/25,621 class members). The \$270.06 per claimant recovery figure is calculated as follows:

| | |
|--------------------|--|
| Gross fund: | \$1,275,000.00 |
| Awards & Admin: | \$513,698.22 (\$425,000.00 (fees and expenses) + \$12,000.00 (incentive award) + \$76,968.22 (estimate of administrative costs)) |
| Net fund: | \$761,301.78 (Gross fund minus Awards & Admin costs) |
| Claimant Recovery: | \$270.06 (Net fund/2,819 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] [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 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 October 28, 2019, Plaintiff filed his Class Action Complaint in Plymouth Superior Court. On or about January 9, 2020, Great Lakes filed its Answer denying the material allegations in the Complaint, denying liability, and asserting affirmative defenses.

On January 17, 2020, Plaintiff served his initial written discovery requests. On July 2, 2020, Great Lakes responded to Plaintiff’s discovery requests. On the same day, Great Lakes served a motion for summary judgment and a motion for a protective order asking the Court to block all class discovery. The essence of the motion for summary judgment was that Plaintiff had no claim, Great Lakes argued, because certain collection calls placed to Plaintiff which went unanswered did not count towards the 2-calls in a seven-day period limitation and, therefore, no violation occurred as Great Lakes was “truly unable” to reach Plaintiff and class discovery should be blocked. 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 without prejudice and ordered limited discovery on Defendant’s purported defense to liability. Plaintiff was then deposed and Defendant’s Rule 30(b)(6) designee was deposed on the issue of whether the calls to Plaintiff fell within the “truly unable to reach” exception to liability under the Regulation.

Thereafter, Defendant renewed its motion for summary judgment and Plaintiff opposed. On March 25, 2021, the Court denied the renewed motion holding “[u]nder the facts of this case, there is a genuine issue at least as to whether the defendant was ‘truly unable to reach the debtor or to leave

a message for the debtor’ within the meaning of the Attorney General’s published guidance and the *Armata* holding, and therefore summary judgment is no appropriate.”

Great Lakes moved for reconsideration of the denial of the summary judgment order. The Court denied that motion on June 29, 2021.

As discovery progressed further, Great Lakes again moved for a protective order to essentially strike class allegations because, Great Lakes argued, Plaintiff’s claim was not suitable for class treatment. Plaintiff opposed the motion, and the Court denied it on January 5, 2022.

Before completion of discovery, the Parties agreed to privately mediate their dispute and sought a stay of proceedings for that purpose. On June 27, 2022, the Parties attended an all-day mediation session before the Honorable Stephen Neel (Ret.). Declaration of Stephen Taylor ¶ 8. The Parties provided Judge Neel with detailed mediation briefs addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, alleged damages, and settlement. *Id.* The mediation was adversarial and conducted at arm’s-length and resulted in agreement to a settlement. *Id.*

On November 29, 2022, the Court granted preliminary approval to the Parties’ agreement.

III. Notice Process

I. Notice

On December 19, 2022, KCC received from Great Lakes the class list. (Cordova Decl. ¶ 2). On December 29, 2022, KCC mailed the Postcard Notice and Claim Form to 25,613 class members. *Id.* ¶ 4.

Under the direction of the Parties, KCC established the settlement website, <http://www.blandgreatlakes.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. (Cordova Decl. ¶ 7). Under the direction of the Parties, KCC also established a toll-free

telephone number at which persons could get information regarding the settlement. *Id.* ¶ 8.

II. Claims and Objections

There were 2,777 timely, complete, valid and signed claim forms. *Id.* ¶ 9.

In addition, there were 14 claim forms which were submitted after the February 27, 2023, deadline but which were otherwise complete, valid and signed. Plaintiff respectfully requests that the Court excuse the late submission as in the best interest of Settlement Class Members and accept these 14 claim forms as valid.

Further, there were 28 additional claim forms which lacked a signature but were otherwise complete, timely and KCC matched the persons submitting the claims to persons on the class list. *Id.* As the administrator has matched these claims to persons on the Class List, Plaintiff also requests that the Court accept these 28 claim forms as valid for a total valid claim number of 2,819.³

There were no objections received by KCC at any time. *Id.* ¶ 12.

IV. Terms of the Settlement

1. Benefits to the Class

The Settlement Class preliminarily approved is:

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.

(Preliminary Approval Order ¶ 5).

Under the terms of the Settlement Agreement, each Class Member can claim an equal share of a \$1,275,000.00, non-reversionary, Settlement Fund. *See Settlement Agreement*, Art III(1)(a)&(d). Settlement Class Members who timely submit a valid claim form will receive an equal pro-rata

³ Plaintiff notes for the Court that KCC advises the Parties that its review of claim submissions is ongoing and that these figures are subject to change. Plaintiff will update the Court of any changes in these figures prior to the Final Approval Hearing.

distribution from the Settlement Fund, after the Fee Award to Class Counsel, the Incentive Award to Plaintiff, and Settlement Administration Costs are deducted from the Settlement Fund. *Id.*

As detailed above, there are 2,819 confirmed claims from class members who, if the settlement is approved, will each receive \$270.06.

If money remains in the Settlement Fund from un-cashed benefit checks, 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. *Id.* Art III (1)(f).

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 Action with prejudice as to himself and all Settlement Class Members. As provided in the Settlement Agreement, Plaintiff and all Settlement Class Members shall release Defendant and the Released Parties (*Settlement Agreement* Art V(1) from all claims “(a) arising out of Great Lake’s initiation of a communication via telephone in excess of two times in a seven-day period regarding a debt between October 28, 2015, through the date of the entry of the Preliminary Approval Order; or (b) that arise out of or relate in any way to the administration of the Settlement.” *Settlement Agreement*, Art V(1)(c).

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 Great Lakes, a sophisticated entity. 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, Plaintiff argues, that 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's 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 and 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.⁴ 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

⁴ Defendant had several other defenses in addition to the one discussed here.

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.

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.⁵ 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 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 2,819 claims from 25,613 class members, equaling a participation rate of over 11%, and no objections. *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

⁵ As with defenses to liability, Defendant indicated it would oppose class certification on several additional grounds.

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 strong participation with no objections demonstrates 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 after Parties had conducted more than sufficient discovery and motion practice on key issues to evaluate the strengths and weaknesses of their positions. This includes written and depositional discovery on merits and class issues. 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 his arguments in support of liability to be strong, Defendant disputed Plaintiff’s claims and believed it would prevail on summary judgment, trial and class certification. Further, Great Lakes 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

Great Lakes’ 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 Great Lakes 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 Great Lakes 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, there would have been no relief for any class member except the named Plaintiff if he 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 2,819 class members Settlement Class Members will each recover approximately \$270.06 as their *pro rata* share of the net Settlement Fund. This is a very good result 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: March 23, 2023

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
County of Plymouth
The Superior Court

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

Plaintiff,

vs.

Great Lakes Educational Loan Services,
Inc.,

Defendant.

Case No. 1983CV01151

CLASS ACTION

**DECLARATION OF FRANK CORDOVA
RE: NOTICE PROCEDURES**

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I, FRANK CORDOVA, declare and state as follows:

1. I am a SENIOR CASE MANAGER with KCC Class Action Services, LLC (“KCC”), located at EL SEGUNDO, CA. Pursuant to the Order Preliminary Approving And Directing Notice To The Class (the “Preliminary Approval Order”) dated 11/29/2022, the Court appointed KCC as the Claims Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

CLASS LIST

2. On December 19, 2022, KCC received from Brownstein Hyatt Farber Schreck, LLP a list of 25,621 persons identified as the Class List. The Class List included Random ID’s, names, addresses, and phone numbers. KCC formatted the list for mailing purposes, removed duplicate records, and processed the names and addresses through the National Change of Address Database (“NCOA”) to update any addresses on file with the United States Postal Service (“USPS”). A total of 3,455 addresses were found and updated via NCOA. KCC updated its proprietary database with the Class List.

3. On January 17, 2023, KCC received from Brownstein Hyatt Farber Schreck, LLP a supplemental list of phone numbers.

MAILING OF THE NOTICE

4. On December 29, 2022, KCC caused the Short Form/Postcard (collectively, the “Notice”) to be printed and mailed to the 25,613 names and mailing addresses in the Class List. A true and correct copy of the Short Form/Postcard is attached hereto as Exhibit A.

5. Since mailing the Notice to the Class Members, KCC has received 12 Notices returned by the USPS with forwarding addresses. KCC immediately caused Notice to be re-mailed to the forwarding addresses supplied by the USPS.

6. Since mailing the Notice to the Class Members, KCC has received 2,815 Notices

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement, (the “Stipulation”) and/or the Preliminary Approval Order.

1 returned by the USPS with undeliverable addresses. Through credit bureau and/or other public
2 source databases, KCC performed address searches for these undeliverable Notices and was able
3 to find updated addresses for 305 Class Members. KCC promptly re-mailed Notices to the found
4 new addresses.

5
6 **SETTLEMENT WEBSITE**

7 7. On or about December 29, 2023, KCC established a website
8 www.BlandGreatLakes.com dedicated to this matter to provide information to the Class Members
9 and to answer frequently asked questions. The website URL was set forth in the Long Form Notice,
10 Short Form/Postcard, and Claim Form. Visitors of the website can download copies of the Long
11 Form Notice, Claim Form, and other case-related documents. A true and correct copy of the Long
12 Form Notice and Claim Form is attached hereto as Exhibits B and C. As of March 16, 2023, there
13 have been 10,545 users, 12,913 sessions/hits (active visits to the website), and 44,752 page views
14 of the website.
15

16 **TELEPHONE HOTLINE**

17 8. KCC established and continues to maintain a toll-free telephone number 1-844-787-
18 0184 for potential Class Members to call and obtain information about the Settlement, and/or
19 request a Notice Packet. The automated telephone hotline became operational on December 29,
20 2022, and is accessible 24 hours a day, 7 days a week. As of March 21, 2023, KCC has received a
21 total of 142 calls to the telephone hotline.
22

23 **CLAIM FORMS**

24 9. The postmark deadline for Class Members to file claims in this matter was February
25 27, 2023. To date, KCC has received

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- 27 • 2,777 complete, valid and timely claim forms;
 - 28 • 14 Claims Forms received past the postmark deadline (February 27, 2023),
which are otherwise complete and signed;

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- 28 Claim Forms which lacked a signature but which were otherwise timely and the persons submitting the claims have been matched to Class Members on the class list; and
- 354 forms which were duplicates of the foregoing and therefore invalid.

10. In addition, through the online claim portal, we received a significant number of false claims which did not match or include a unique identifying Claim Number or phone number included in the class list. The settlement website is a public website and class settlement websites may be posted to public forums where non-class members may attempt to submit claims either manually or through an automated process. KCC has extensive experience in monitoring class administration for signs of false claims and rejects the false claims which do not match or include confirming information for consideration here. KCC has also provided detailed information to counsel for the Parties concerning these submissions and the reasons why they are not valid claims.

11. These numbers are subject to change as KCC continues our review of claims to verify only class members part of the class list are being processed. Any updated figures will be immediately provided to counsel for the Parties.

OBJECTIONS TO THE SETTLEMENT

12. The postmark deadline for Class Members to object to the settlement was February 27, 2023. As of the date of this declaration, KCC has received zero objections to the settlement.

ADMINISTRATION COSTS

13. KCC has incurred \$58,401.93 in costs through the end of February 2022. KCC estimates its total cost of administration will be \$76,968.22. This amount includes costs to date as well as through the completion of this matter.

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

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Executed on March 23, 2023 at El SEGUNDO, CA

Frank Cordova

Frank Cordova

Exhibit A

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

Bland v. Great Lakes Settlement Administrator
P.O. Box 6188
Novato, CA 94948-6188

A Settlement Agreement has been reached in a class action lawsuit alleging that Great Lakes Educational Loan Services, Inc. ("Great Lakes") violated Massachusetts law by initiating in excess of two communications via telephone in a seven-day period to Massachusetts consumers to collect a debt. Great Lakes denies any wrongdoing. Nonetheless, Great Lakes' records show that you may be a Settlement Class Member and may be entitled to payment under the Settlement Agreement reached in the case.

A Settlement Fund of \$1,275,000 has been established to pay valid claims, attorneys' fees, costs, any incentive awards to the Settlement Class Representative, and settlement administration costs. Each Class Member is entitled to one equal share of the Settlement Fund. The final payment amount 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.BlandGreatLakes.com.

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

GTB «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 2» «ADDRESS LINE 1»

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

«COUNTRY»

GTB

Claim Form

Claim Number: «Claim Number»

CHANGE OF ADDRESS (ONLY IF DIFFERENT FROM BELOW):

Primary Address:

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Phone Number (optional):

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«FIRST1» «LAST1»
«ADDRESS LINE 2» «ADDRESS LINE 1»
«CITY», «STATE»«PROVINCE»
«POSTALCODE» «COUNTRY»

Email (optional):

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If you wish to recover under the Settlement, you must complete, sign, and return this Claim Form or submit an online Claim Form.

You will be bound by the Settlement whether you submit a claim or not. You must complete and submit a Claim Form by **February 27, 2023**. You may submit a Claim Form online at www.BlandGreatLakes.com or by completing and submitting this Claim Form to receive your equal 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.

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 I wish to claim my share of the Settlement Fund. I also certify and affirm that I am a Settlement Class Member and that I was a resident of or lived in Massachusetts during the Class Period, which began on October 28, 2015.

Signature

Date (mm/dd/yyyy)

«3OF9 BARCODE »

«BARCODE»

In the lawsuit, the Plaintiff alleges that Great Lakes violated the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2, et seq. (“MCPA”), and the Massachusetts Debt Collection Regulations, 940 CMR § 7.00, et seq. (“MDCR”), by initiating in excess of two communications via telephone in a seven-day period to Plaintiff and other Massachusetts consumers regarding a debt. Great Lakes 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, other case documents, and submit a Claim Form at www.BlandGreatLakes.com.

Who’s Included in the 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.

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 payment amount 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 (\$1,275,000), after deductions from the fund for administrative costs, attorneys’ fees and expenses, and any incentive award to the Settlement Class Representative. The final payment amount will depend on the total number of valid and timely claims filed by all Class Members and the fees, costs, and incentive award approved by the Court. The Settlement is explained in detail in the Full Notice and in the Settlement Agreement available at www.BlandGreatLakes.com.

How to Get Money? To qualify for payment, you must submit a Valid Claim Form to *Bland v. Great Lakes* Settlement Administrator, P.O. Box 6188, Novato, CA 94948-6188 or submit an Online Claim Form by **February 27, 2023**.

Your Other Rights. You may object to the Settlement by **February 27, 2023**. 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 **April 6, 2023, at 2:00 p.m.** to consider whether to approve the Settlement, Plan of Allocation, a request for an incentive award of up to \$12,000 for the named Plaintiff and a request by the lawyers representing all Class Members for fees of up to 33% of the Settlement Fund and for reimbursement of expenses for litigating the case. You may attend the hearing and ask to be heard by the Court, but you do not have to. **If you do not take any action, you will be legally bound by the Settlement and any orders or judgments entered in the Action, and will fully, finally, and forever give up any rights to prosecute Released Claims.**

For more information or a Claim Form, call 1-844-787-0184 or visit www.BlandGreatLakes.com.

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

Place
Stamp
Here

Bland v. Great Lakes
Settlement Administrator
P.O. Box 6188
Novato, CA 94948-6188



Exhibit B

COMMONWEALTH OF MASSACHUSETTS
County of Plymouth
The Superior Court

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

**NOTICE REGARDING RIGHT TO BENEFIT FROM
 CLASS ACTION SETTLEMENT**

A Settlement Agreement has been reached in a class action lawsuit alleging that Great Lakes Educational Loan Services, Inc. (“Great Lakes”) violated Massachusetts law by initiating in excess of two communications via telephone in a seven-day period to Massachusetts consumers to collect a debt. If you received a postcard Notice, Great Lakes’ records show that you may be a Class Member under the Settlement Agreement reached in the case.

A Settlement Fund of \$1,275,000 has been established to pay valid claims, attorneys’ fees, costs, any incentive award to the Settlement Class Representative (Mark Bland, Sr.) and settlement administration costs. You may be entitled to receive an equal share of the Settlement Fund. The final payment amount 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.

| YOUR OPTIONS | |
|--|---|
| Option 1: Submit a Claim Form Deadline: February 27, 2023 | Complete and submit a Claim Form and receive an equal share of the Settlement Fund. By completing and submitting a Claim Form, you may recover an equal share of the Settlement Fund. This is the <u>only way to claim and receive from the Fund.</u> |
| Option 2: Object Deadline: February 27, 2023 | Object to the terms of the Settlement Agreement. You may object to the terms of the Settlement Agreement and have your objections heard at the April 6, 2023, Final Approval Hearing. |
| Option 3: Do nothing | Do nothing. If you do not take any action, you will be bound by the Settlement Agreement, but you will not receive any payment under the Settlement Agreement. |

1. What is this lawsuit about?

In the lawsuit, the Plaintiff alleges that Great Lakes violated the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2, *et seq.* (“MCPA”), and the Massachusetts Debt Collection Regulations, 940 CMR § 7.00, *et seq.* (“MDCR”), by initiating a communication via telephone regarding a debt in excess of two such communications in a seven-day period to Plaintiff and other Massachusetts consumers.

Great Lakes denies any wrongdoing and denies that that it violated the MCPA, the MDCR, or any other law.

Both sides have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of further litigation.

You can read Plaintiff’s Complaint, Defendant’s Answer and Affirmative Defenses, the Settlement Agreement, other case documents, and submit a Claim Form at www.BlandGreatLakes.com.

2. Why is this a class action?

In a class action, a class representative (in this case Plaintiff Mark Bland, Sr.) sues on behalf of a group (or a “Class”) of people. Here, the class representative sued on behalf of people who have similar claims regarding allegedly excessive debt collection calls.

3. Why is there a Settlement?

To avoid the cost, risk, and delay of litigation, the Parties reached a settlement agreement as to Plaintiff and the Class claims.

4. How do I know if I am a part of the Settlement?

For settlement purposes only, the Court has certified a Settlement Class consisting of all people who meet the following definition:

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.

If you are included in the Settlement Class, you are part of the Settlement.

5. How do I recover?

Submit a Claim Form. This is the only way to get a payment. You have the right as a member of the Settlement Class to receive an equal share of the Settlement Fund.

The final payment amount 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, after deductions from the fund for settlement administration costs, attorneys' fees and expenses, and any incentive award to the Settlement Class Representative. You can submit a Claim Form online at www.BlandGreatLakes.com. Or, you can download the Claim Form online and mail it to:

Bland v. Great Lakes Settlement Administrator
P.O. Box 6188
Novato, CA 94948-6188

All Claim Forms must be postmarked or filed online no later than **February 27, 2023**.

After all Valid Claim Forms are counted, and the Settlement is given final approval by the Court, the Settlement Administrator will provide (through one or more rounds of Settlement Checks) each claiming Settlement Class Member their share of the Settlement Fund after the deductions above. Any excess Settlement Funds from uncashed Settlement Checks or because of any other reason will be provided to a charitable organization.

6. What am I giving up to receive these benefits?

All of the Court's orders will apply to you, and you give a "release" for any claims covered by the Settlement Agreement, including claims arising from the allegedly excessive telephone calls to you. A release means you cannot sue or be part of any other lawsuit against Great Lakes and the Released Parties about the claims or issues in this lawsuit, and you will be bound by the Settlement Agreement.

7. How much will the Class Representative receive?

The Settlement Class Representative will receive their portion of the Settlement as a Class Member and an incentive award for having pursued this Action. Any incentive payment is subject to Court approval. The Settlement Class Representative will request an incentive award of \$12,000.

8. Do I have a lawyer in this case?

To represent the Class, the Court has appointed attorneys with the law firm of Lemberg Law, LLC, 43 Danbury Road, Wilton, CT 06897 as "Class Counsel."

Class Counsel will request an award of attorneys' fees of up to 33% of the Settlement Fund and for reimbursement of expenses. Any attorneys' fees and expense award is subject to Court approval. You may hire your own attorney, but only at your own expense.

9. How do I object?

Any Settlement Class Member may object to the Settlement. In order to exercise this right, you must submit your objection to the Court by the Objection Deadline. Your 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 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. Any Class Member that fails to 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.

Objections must be filed with the Clerk of the Court and delivered, or postmarked, no later than **February 27, 2023**.

The Court's address is:

*Plymouth County Superior Court
72 Belmont Street, Brockton, MA 02301
Attn: Clerk of the Court*

The Final Approval Hearing

The Court will hold a Final Approval Hearing on **April 6, 2023, at 2:00 p.m.**, in Plymouth County Superior Court, 72 Belmont Street, Brockton, MA 02301. The purpose of the hearing will be for the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Class and to rule on applications for compensation for Class Counsel and an incentive award for the Settlement Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed Settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT. The hearing may be postponed to a later date without notice.

FOR MORE INFORMATION

Additional information and documents, including case documents, are available at www.BlandGreatLakes.com, or you can call 1-844-787-0184.

Exhibit C

Bland v. Great Lakes Settlement Administrator
P.O. Box 6188
Novato, CA 94948-6188



GTB

«3of9 barcode »

«BARCODE»

Postal Service: Please do not mark barcode

GTB «Claim Number»

«FIRST1» «LAST1»

«ADDRESS LINE 2» «ADDRESS LINE 1»

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

«COUNTRY»

*Mark Bland, Sr. v. Great Lakes
Educational Loan Services, Inc.*

PLYMOUTH COUNTY SUPERIOR
COURT COMMONWEALTH
OF MASSACHUSETTS

Case No. 1983CV01151

**Must Be Postmarked
No Later Than
February 27, 2023**

Claim ID: <<Claim Number>>

Claim Form

CHANGE OF ADDRESS (ONLY IF DIFFERENT FROM ABOVE)

Primary Address

Primary Address Continued

City

State

ZIP Code

Foreign Province

Foreign Postal Code

Foreign Country Name/Abbreviation

You will be bound by the Settlement whether you submit a claim or not. If you wish to recover payment from the Settlement, you must complete, sign, and return this **Settlement Claim Form** or submit as an Online Claim Form.

You must complete and submit a Claim Form by **February 27, 2023**. You may submit a Claim Form online at www.BlandGreatLakes.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 Great Lakes Called

Email (optional)

Current Phone Number (optional)

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 I wish to claim my share of the Settlement Fund. I also certify and affirm that I am a Settlement Class Member and that I was a resident of or lived in Massachusetts during the Class Period, which began on October 28, 2015.

Signature: _____

Dated (mm/dd/yyyy): _____

Print Name: _____



| | | | | |
|----------------------------------|-----------------------------|-----------------------------|--|---|
| FOR CLAIMS PROCESSING ONLY | OB <input type="checkbox"/> | CB <input type="checkbox"/> | <input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV | <input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B |
|----------------------------------|-----------------------------|-----------------------------|--|---|

**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
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. My firm has litigated this case on behalf the Plaintiff and the proposed class since he

contacted my firm in October 2019.

7. We have conducted an extensive investigation into the practices and policies of the Defendant. This includes obtaining discovery, written and through deposition, from Great Lakes. In addition, the Parties have briefed substantive issues in the case through both of Defendant's motions for summary judgment and its motion for a protective order which sought to, essentially, strike class claims.

8. On June 27, 2022, we participated in an all-day mediation session before the Honorable Stephen Neel (Ret.). The Parties provided Judge Neel with detailed mediation briefs addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, damages, and settlement. The mediation was adversarial and conducted at arm's-length and resulted in agreement to a settlement.

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

Dated: March 23, 2023

/s/ Stephen Taylor
Stephen Taylor