

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Thomas Cabral and Cheryl Pantano, *on behalf of themselves and all others similarly situated*, :

Plaintiff,

V.

PHH Mortgage Corporation and Ocwen Loan :
Servicing, LLC, :

Defendant.

Civil Action No.: 19-cv-12245-ADB

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Thomas Cabral and Cheryl Pantano, by and through undersigned counsel, hereby move for entry of an Order granting final approval of the Parties' Class Action Settlement Agreement.

In support, Plaintiffs submit the accompanying Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and the Declarations of Alex Thomas of KCC Class Action Services and Stephen Taylor.

Plaintiffs respectfully request that the Court approve the settlement as fair, reasonable and adequate and enter the Final Approval Order in the form attached hereto as Exhibit A.

Dated: November 29, 2021

Respectfully submitted,

By: /s/ Stephen Taylor
Sergei Lemberg (BBO# 650671)
Stephen Taylor (*phv*)
LEMBERG LAW, LLC
43 Danbury Road
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, I served a true and accurate copy of the foregoing to counsel of record through the Court's CM/ECF system which sent notice of such filing to all counsel of record.

/s/ *Sergei Lemberg*
Sergei Lemberg

Exhibit A

therefore notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of Attorney's Fees and Costs to Class Counsel, and the payment of an Incentive Award.

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

THIS COURT FINDS AND ORDERS AS FOLLOWS:

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

2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.

3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Class Members, within the authority of the parties and the result of extensive arm's-length negotiations. In reaching this conclusion, the Court considered the factors set forth in Fed. R. Civ. P. 23(e)(2) and whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

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 Settlement Class, which will be bound by this Final Approval Order and Judgment hereon, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

6. For purposes of the Settlement and this Final Approval Order, the Court hereby certifies the following Settlement Class:

All persons residing in the Commonwealth of Massachusetts to whom, within the Class Period, the PHH Defendants may have made in excess of two telephone calls regarding a debt within a seven-day period to their residence, cellular telephone, or other provided telephone number as reflected on the Class List.

7. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Rules 23(a) and (b)(3) 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.

8. For purposes of Settlement only, Plaintiffs are certified as representatives of the Settlement Class and Class Counsel is appointed counsel to the Settlement Class. The Court concludes that Class Counsel and the Class Representatives have fairly and adequately represented the Settlement Class with respect to the Settlement.

9. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

10. The Court finds that the plan for Notice 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 or to exclude themselves from the Settlement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

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

12. 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.

13. The cash distributions provided for in the Settlement Agreement shall be paid to Settlement Class members, pursuant to the terms and conditions of the Settlement Agreement and Section 4.3 thereof.

14. Upon the Effective Date, members of the Settlement Class who did not validly and timely opt-out shall, by operation of this Final Approval Order, have fully, finally and forever released, relinquished and discharged the Released Parties from the Released Claims as specified in the Release set forth in Section 3 of the Settlement Agreement.

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

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

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

Let judgment be entered accordingly.

DATED: _____, 2021

By: _____
Allison D. Burroughs
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

| | | |
|---|---|-----------------------------------|
| Thomas Cabral and Cheryl Pantano, <i>on behalf</i> | : | |
| <i>of themselves and all others similarly situated,</i> | : | |
| | : | Civil Action No.: 19-cv-12245-ADB |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| PHH Mortgage Corporation and Ocwen Loan | : | |
| Servicing, LLC, | : | |
| | : | |
| Defendant. | : | |

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AGREEMENT**

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This settlement merits final approval. The settlement resolves thousands of claims under Mass. Gen. Laws ch. 93A, § 2, and 940 CMR § 7.04(1)(f) (2012) (the “Debt Collection Regulation”). No class members have objected. None have requested exclusion. If approved, the approximately 10,000 class members will be sent direct equal shares from the \$576,000 Settlement Fund minus costs and any fee and incentive awards. The initial settlement check will be for approximately \$31.95.¹

The settlement here provides easy and direct means for Settlement Class Members to benefit from the Settlement Fund. Funds from initial settlement checks which go uncashed will be redistributed to Settlement Class Members who do cash their first check. If there are funds remaining from uncashed initial checks, a second settlement check consisting of a *pro rata* share of the remaining funds will be sent to those members who did cash their first check.² In exchange, years of costly, uncertain litigation is avoided for class members, this Court, and Defendants PHH Mortgage Corporation (“PHH”), individually and as successor by merger to Ocwen Loan Servicing, LLC (“Ocwen”) (PHH and Ocwen are hereinafter referred to collectively as “PHH Defendants”). The requirements for final approval are easily met.

As set forth herein, Settlement Class Representatives Thomas Cabral and Cheryl Pantano respectfully request the Court (1) approve the Class Action Settlement Agreement (the “Settlement Agreement”) as fair, reasonable and adequate; (2) order dispersal of the Settlement Fund as set forth in the Parties’ Settlement Agreement; and (3) 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.

¹ Assuming the Court approves a 1/3 Fee Award and \$12,000 in aggregate Incentive Awards, dispersal will be as follows:

$$\begin{aligned}\text{Net Fund} &= \$319,630 (\$576,000 (\text{Gross Fund}) - \$192,000.00 (\text{Fee Award}) - \\ &\quad \$52,370 (\text{administrative costs}) - \$12,000 (\text{Incentive Awards})) \\ \text{Initial Settlement Check} &= \$31.95 (\text{Net Fund} / 10,004 (\text{Settlement Class} \\ &\quad \text{Members}))\end{aligned}$$

² If amounts remain in the fund after that second round of checks, those amounts will return to the PHH Defendants.

BACKGROUND

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. c. 93A, § 2(a).

In 2012, the Attorney General of Massachusetts invoked her power to implement rules and regulations interpreting M.G.L. c. 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).

As the Court in *Armata* set forth, the purpose of this prohibition on excess calling is to “prevent[] creditors from harassing, oppressing, or abusing debtors” (*Armata*, 480 Mass. at 15) and to “ensure that the playing field is level for both creditors and consumers so that all parties are better protected” (*Armata*, 480 Mass. at 20 (citing Attorney General, Press Release, Updated Debt Regulations Provide Stronger Protections (Mar. 1, 2012), available at <http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-03-01-debt-collection-regulations.html> [<https://perma.cc/F656-9NE3>])).

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).

A. This Litigation

a. The Cabral Action

On February 15, 2019, Cabral mailed a 93A demand letter to PHH alleging violations of violation of 940 CMR § 7.04(1)(f).

On or about April 23, 2019, Cabral filed a Class Action Complaint in Bristol Superior Court against PHH alleging PHH had a practice and policy of placing more than two calls in a seven-day period to Cabral, and a class of similarly situated Massachusetts residents, in violation of 940 CMR § 7.04(1)(f). *Cabral v. PHH Mortgage Corp.*, No. 1973CV00379 (Mass. Super.).

On May 30, 2019, PHH removed the case to this Court pursuant to 28 U.S.C. § 1332(a). *Cabral v. PHH Mortgage Corp.*, No. 1:19-cv-11207-WGY (D. Mass., May 30, 2019) (ECF No. 1).

On June 6, 2019, PHH moved to dismiss Cabral’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6). In its motion to dismiss, PHH argued that Cabral’s claims were subject to dismissal because Cabral’s Chapter 93A pre-suit letter was allegedly deficient and because Cabral allegedly did not suffer a separate and distinct injury as required under Chapter 93A. On July 2, 2019, Cabral opposed PHH’s motion to dismiss, arguing that his demand letter satisfied the requirements of Chapter 93A and that he suffered a separate and distinct injury under Chapter 93A. *See also Nightingale v. Nat’l Grid USA Serv. Co., Inc.*, 2020 WL 4506167, at *3 (D. Mass. Aug. 4, 2020) (denying motion to dismiss 940 CMR § 7.04(1)(f) putative class action complaint for alleged failure to plead injury under

Chapter 93A).

On June 13, 2019, Cabral moved to remand the action back to Bristol Superior Court for lack of subject matter jurisdiction under 28 U.S.C. § 1447. Cabral argued that PHH had failed to establish an amount in controversy sufficient to meet the requirements of subject matter jurisdiction under 28 U.S.C. § 1332(a). On October 9, 2019, the Honorable William G. Young remanded the case to Bristol Superior Court. *Cabral v. PHH Mortgage Corp.*, No. 1:19-cv-11207-WGY (D. Mass., Oct. 9, 2019) (ECF No. 25). In its Order, Judge Young did not reach the merits of PHH's motion to dismiss. *Id.*

On November 1, 2019, PHH again removed the case to federal court this time invoking the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). (Doc. No. 1). Thereafter, it filed another motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 6), which Cabral opposed (Doc. No. 11).

b. The Pantano action

On January 16, 2019, Pantano mailed a 93A demand letter to Ocwen. (As noted, Ocwen has merged with PHH with PHH being the surviving entity.)

On or about April 8, 2019, Pantano filed her class action complaint in Essex Superior Court against Ocwen alleging Ocwen had a practice and policy of placing more than two calls in a seven-day period to Pantano, and a class of similarly situated Massachusetts residents, in violation of 940 CMR § 7.04(1)(f). *Pantano v. Ocwen Loan Servicing, LLC*, No. 1977CV00530 (Mass. Super.).

On May 24, 2019 Ocwen removed the case to this Court pursuant to 28 U.S.C. § 1332(a). *Pantano v. Ocwen Loan Servicing, LLC*, No. 1:19-cv-11178-DJC (D. Mass., May 24, 2019) (ECF No. 1).

On May 31, 2019, Ocwen moved to dismiss the Class Action Complaint pursuant to Fed. R. Civ. P. 12 (b)(6). Ocwen argued that Pantano's claims were subject to dismissal because her Chapter 93A pre-suit letter was allegedly deficient and because Pantano allegedly did not suffer a separate

and distinct injury. Pantano opposed the motion.

In addition, on June 13, 2019, Pantano moved to remand the Pantano action to Essex Superior Court for lack of subject matter jurisdiction under 28 U.S.C. § 1447. Pantano argued that Ocwen had failed to establish an amount in controversy sufficient to satisfy the requirements for subject matter jurisdiction under 28 U.S.C. § 1332(a). On July 22, 2019, the Honorable Denise Casper held a hearing on Ocwen's motion to dismiss and Pantano's motion to remand and took the motions under advisement.

Thereafter, Ocwen filed a "Supplemental Notice of Removal" arguing that the Court had subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). *Pantano v. Ocwen Loan Servicing, LLC*, No. 1:19-cv-11178-DJC (D. Mass., Aug. 16, 2019) (ECF No. 25). On December 20, 2019, the Judge Casper granted the motion to remand and denied the motion to dismiss as moot. *Pantano v. Ocwen Loan Servicing*, No. 1:19-cv-11178-DJC (D. Mass., Dec. 20, 2019) (ECF No. 33).

On February 13, 2020, Ocwen again moved to dismiss Pantano's Class Action Complaint pursuant to Mass. R. Civ. P. 12(b)(6) in the Superior Court, which Pantano opposed.

On March 9, 2020, the Pantano action was accepted into the Superior Court's Business Litigation Session. *Pantano v. Ocwen Loan Servicing, LLC*, No. 2084CV00908-BLS2

On July 1, 2020, at which point Ocwen's motion to dismiss was still pending, Pantano and Ocwen filed a Joint Motion to Stay Proceedings pending the Parties' attempt to mediate their claims at a September 29, 2020, mediation, which the Business Litigation Session granted on July 16, 2020.

c. Mediation and the Consolidation of the Cabral and Pantano Actions

On September 29, 2020, the Parties to the Cabral and Pantano actions attended an all-day mediation session before the Honorable Stephen E. Neel (Ret.). (Taylor Decl. ¶ 3). 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. *Id.* The mediation was adversarial and conducted at arm's-length through Judge Neel. *Id.* The session resulted in an agreed set of terms to govern a class-wide settlement of the Cabral and Pantano actions, which contain overlapping class action claims. *Id.*

Because Ocwen has merged with PHH with PHH being the surviving entity, the Parties agreed to seek approval of their class action settlement agreement in this proceeding rather than in Pantano. To that end, the Parties filed a Stipulation of Dismissal and Tolling Agreement in the Pantano action (1) agreeing to file an amended complaint in this matter in which Pantano will assert her claims against Ocwen, (2) dismissing the Pantano action without prejudice, and (3) agreeing to toll the accrual of any statute of limitations on Pantano's claims, in her individual or representative capacity, such that the stipulation of dismissal will have no bearing on the accrual of those claims. The Business Litigation so-ordered the Parties' Stipulation on January 13, 2021.

On February 4, 2021, Cabral and Pantano filed the First Amended Class Action Complaint in this action bringing claims on behalf of Cabral, Pantano and the putative classes they seek to represent. (Doc. No. 24).

Over the next several months, the Parties continued to negotiate, draft and revise their Settlement Agreement. (Taylor Decl. ¶ 4). As part of those discussions, the Parties reached a disagreement regarding principal terms of the Settlement, namely the scope of the Releasing Parties and the Released Claims. *Id.* The Parties continued to confer and negotiate through their mediator, Judge Neel, regarding a resolution of their disagreement. *Id.* Ultimately, the Parties resolved their disagreement and finalized a formal settlement agreement. *Id.*

In addition, the Parties engaged in further discovery regarding (1) the PHH Defendants' identification of class members, (2) the means by which the PHH Defendants compiled the Class List,

and (3) what steps the PHH Defendants have taken to ensure that no Massachusetts borrowers will receive in excess of two calls within a seven-day period moving forward. (Taylor Decl. ¶ 5).

d. Preliminary Approval and Notice

The notice program approved by the Court has been, and is continuing to be, implemented by the Settlement Administrator in accordance with the Settlement Agreement and the Court's direction.

B. Notice Process

On August 12, 2021, the Court granted Plaintiff's Motion for Preliminary Approval of the Class Action Settlement. (Doc. No. 45).

On August 24, 2021, the class administrator KCC Class Action Services, LCC ("KCC"), received from Counsel for Defendants a list of 10,125 persons identified as the Class List. (Declaration of Alex Thomas, Senior Project Manager at KCC ("Thomas Decl."), ¶ 2). KCC formatted the list for mailing purposes, removed 121 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"). *Id.*

On September 10, 2021, KCC mailed the class notice. *Id.* ¶ 3. A copy of the mailed notice is attached as Exhibit A to the Thomas Declaration. As of the date of this filing, 88 Notices were returned by the USPS with an undeliverable address. *Id.* ¶ 4. Of those, 9 were re-mailed to new addresses following credit bureau and/or other public database searches. *Id.* Thus, of the 10,004 unique entries on the Class List, 9,925 Settlement Class Members were sent a Notice which was not returned as undeliverable representing approximately 99.2% of the Settlement Class. This is a very high percentage of the class demonstrating a successful notice plan. *See, e.g.,* Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide at 3 (Federal Judicial Center 2010) ("It is reasonable to reach between 70-95%" of the class); *Kaufman v. Am. Express Travel Related*

Servs. Co., Inc., 877 F.3d 276, 287 (7th Cir. 2017) (“[N]otice was provided to this massive class in a reasonable and effective manner, reaching approximately 70% of the members.”).

On September 10, 2021, KCC established the Settlement Website (www.CabralSettlement.com), which provides Class Members information, the Long Form Notice and case documents. (Thomas Decl. ¶ 5).

On September 10, 2021, KCC also established a case-specific toll-free telephone number for Class Members to call to obtain information. *Id.* ¶ 6.

I. Exclusions and Objections

As of November 29, 2021, KCC has received no exclusions and no objections. *Id.* ¶¶ 7&8.

C. Notice Pursuant to the Class Action Fairness Act

In accordance with the Class Action Fairness Act, 28, U.S.C. § 1715, on August 11, 2021, Defendants served serve copies of the Parties’ Class Action Settlement Agreement and other relevant documents on the appropriate Federal and State officials. (Doc. No. 47).

There have been no inquiries from any Federal or State body regarding the Settlement Agreement.

D. Terms of the Settlement

The Settlement Class preliminarily approved is:

All persons residing in the Commonwealth of Massachusetts to whom, within the Class Period, the PHH Defendants may have made in excess of two telephone calls regarding a debt within a seven-day period to their residence, cellular telephone, or other provided telephone number as reflected on the Class List.

See Settlement Agreement, § 1.1.37.

Under the terms of the Settlement Agreement, each Settlement Class Member who does not opt-out of the Settlement will be sent an equal share of the \$576,000.00 Settlement Fund, after deductions for administrative costs, any attorney fee award and incentive awards to the Plaintiffs. *See*

Settlement Agreement, § 4.1-4.3. There is no claims process; Settlement Class Members do not need to do anything to receive their Initial Settlement Check. *Id.*

Following the first distribution, if there are remaining funds from uncashed Individual Allocation checks, such funds will be pooled and distributed on a *pro rata* basis to the Settlement Class Members that received their Individual Allocation and deposited, cashed and/or negotiated the check within the ninety (90) day period. *Settlement Agreement*, § 4.3.4.

If funds remain after the first and second distribution of settlement funds, such funds shall revert back to the PHH Defendants. *Settlement Agreement*, § 4.4. Plaintiffs anticipate that the amount of funds remaining after two separate rounds of distribution will be *de minimis*.

ARGUMENT

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

A district court can approve a class action settlement that is fair, reasonable and adequate. *See* Fed. R. Civ. P. 23(e)(2); *accord Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir. 2010). The Court enjoys “great discretion to ‘balance [a settlement’s] benefits and costs’ and apply this general standard.” *Voss*, 592 F.3d at 251 (*citing Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Ass’n*, 582 F.3d 30, 45 (1st Cir. 2009)). If the parties negotiated at arm’s length and conducted sufficient discovery, a presumption is created that the settlement is reasonable. *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 32-33 (1st Cir. 2009).

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”); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007) (“[P]ublic policy generally favors settlement-particularly in class actions . . .”). While public policy “encourages settlements, the burden remains on the proponents to show that the settlement is

reasonable.” *Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009) (internal citations omitted). The 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.” *Id.* at 44.

On final approval, courts in the First Circuit often apply the so-called *Grinnell* factors set forth by the Second Circuit in *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). *See Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015); *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 COURT SHOULD CERTIFY THE SETTLEMENT CLASS

In connection with preliminary approval, the Court conditionally certified the Settlement Class. (Doc. No. 43 ¶ 4). The Court made preliminary findings that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) were met. (Doc. No. 45 ¶ 5). The requirements of class certification were addressed in Plaintiff’s memorandum in support of preliminary approval. (Doc. No. 41 pp 22-34). No class member or entity has objected to the preliminary certification; Plaintiffs restate their

arguments in support of certification and the Court should enter the Proposed Final Approval Order certifying the Settlement Class. *See* Proposed Final Approval Order ¶ 7.

III. THE SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE UNDER *GRINNELL*

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

This factor weighs in favor of approval. The claims in this action involved complicated issues concerning Defendants' business practices and business records. The claims also involved complicated issues of law, including how damages can be calculated and whether Defendants' violations of the Massachusetts Debt Collection Regulations fell within certain exceptions to liability and whether Defendant's violations could be shown on a class-wide basis. Further, the course of the two separate litigations is and would be complex. The claims of the Plaintiffs were initially brought in the Cabral Action and the Pantano Action. Those actions were removed to federal court, remanded on Plaintiffs' motions, and the Cabral Action was removed a second time to this Court. Absent settlement and the consolidation of the Cabral and Pantano actions in this proceeding, the two litigations would proceed separately.³ To resolve these issues regarding liability and class certification would take years of discovery and further litigation. The settlement here resolves these issues, in favor of the settlement class and these factors weigh in favor of approval.

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

The class's reaction to the settlement has been extremely positive. There have been no objections or exclusions. This positive response to the settlement is evidence of its fairness. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005) (reaction to settlement 140 opt-outs, and 10 objections out of a class of millions); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75,

³ It is conceivable that one, or all, of the Parties would have sought to consolidate the matters or stay one proceeding pending the other. However, that was not a step any Party took nor is it clear if an attempt at consolidation or to stay would be successful in the face of opposition.

96 (D. Mass. 2005) (49 opt-outs, and 10 objectors out of class of tens or hundreds of thousands); *see Wright v. Stern*, 553 F.Supp.2d 337, 345 (S.D.N.Y.2008) (“The fact that the vast majority of class members neither objected nor opted out is a strong indication that the proposed settlement is fair, reasonable, and adequate.”); *see also Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 475 (S.D.N.Y. 2013) (concluding class reaction was positive where none objected and eight of 1,735 members opted out). Further, none of the entities notified of the Settlement Agreement pursuant to the CAFA requirements have voiced any concern with the settlement.

Thus, the second *Grinnell* factor weighs in favor of final approval.

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

This case settled at an appropriate time after more than sufficient development of the legal and factual issues.

In addition to Class Counsel’s own analysis, issues related to the claims and damages were briefed through Plaintiffs’ motions to remand and Defendants’ motions to dismiss. After the pleadings were joined, Plaintiffs took and obtained discovery regarding Defendant’s practices in regard to the Plaintiffs, the Settlement Class, and Defendants’ defenses. Plaintiffs engaged in discovery through Rule 33 & 34 requests regarding their claims in chief and the prerequisites of class certification under Fed. R. Civ. P. 23.

The Parties engaged in an arm’s-length mediation through Judge Stephen Neel (Ret.) at JAMS mediation in Boston. Defendants also provided additional sworn testimony regarding the systems

that it uses and the data that it maintains related to customer accounts to confirm how it compiled the Class List.

Thus, the case was amply developed to permit Class Counsel and this Court to intelligently evaluate the merits of any settlement. Therefore, the third *Grinnell* factor weighs in favor of final 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 Plaintiffs believe their arguments in support of liability to be strong, Defendants disputed Plaintiffs’ claims and believed they would prevail at summary judgment or on a motion for class certification. Plaintiffs disagree but acknowledge that success on the merits is by no means assured. Further, the PHH Defendants were and are represented by very able counsel, who have demonstrated Defendants’ ability to put forth a vigorous defense. There is, therefore, great risk that the issues on liability and certification will not go in Plaintiffs’ favor in this Court or on any appeal. Thus, the risks of establishing liability and maintaining a class action through trial favor approval of the settlement.

E. The Risks of Establishing Damages and the Ability of the Defendants to Withstand a Greater Judgment

The PHH Defendants’ ability to pay is a neutral factor here and 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 Plaintiffs could recover the \$25 statutory penalty for each separate violation of the Debt Collection Regulation (*i.e.* for each instance the PHH Defendants called in excess of two times in a seven day period), as opposed to \$25 dollars per action, is an open 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 Plaintiffs 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, Plaintiffs believe these risks could be overcome but they are real and weigh in favor of approval.

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

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

If the Court had rejected certification in this case, there would have been no relief for any Class Member, regardless of the merits of the underlying 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 Settlement Fund is \$576,000.00 and there are 10,004 unique class members. There is no claim process and members will receive monies directly. That can be broken down several ways

which all demonstrate the high value of the settlement. First, the entire fund equals approximately \$57 per class member. That is over double the minimum statutory award of \$25 available under Chapter 93A. Second, even when based on the net fund (gross fund excluding fees, costs etc.) the fund equals approximately \$31 per class member, an amount still above the statutory award if each and every class member cashes an Initial Settlement Check. Third, assuming less than 100% of class members cash the initial check, the actual recovery for class members will be higher because of the second distribution. Thus, if 50% of Settlement Class Members cash their initial check, each of those will receive an additional \$31. If 25% of Settlement Class Members cash their initial check, each of those will receive an additional \$93.

This is an outstanding recovery for violations of chapter 93A and the Debt Collection Regulation. As noted above, statutory damages under for chapter 93A violations are low where the Act 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). Further, actual damages in a case such as this for receipt of an excessive number of telephone calls is uncertain.

This settlement is line with class action settlements of Chapter 93A actions based on alleged violations of the Regulation. For instance in *O’Neill v. Carrington Mortgage Services, LLC*; No: 1:19-cv-10643-ADB (D. Mass., Aug. 7, 2020 (ECF No. 53), where undersigned counsel represented the class and this Court granted final approval as fair, reasonable, and adequate, the settlement was comprised of a fund of \$237,500 and approximately 3,529 settlement class members (*Id.* at ECF No. 50 at pp. 4-6). That fund equates to a total division of \$67 per class member which is in accord with the \$57 per member figure here. Notably, while the per-member figure was slightly higher in *O’Neill*, in this case (1) the settlement fund is more than double the size of the fund in *O’Neill* and (2) the PHH

Defendants have raised significant and stronger defenses. Indeed, if the PHH Defendants prevailed on any of the arguments raised in their motions to dismiss which were pending at the time of the settlement, e.g., that Plaintiffs failed to satisfy Chapter 93A's pre-suit demand letter requirement or that Plaintiffs failed to please a separate and distinct injury as required under Chapter 93A, one or both of the Plaintiffs' claims could have been dismissed in their entirety and the putative classes would not have been able to recover anything. While Plaintiffs remain confident that they would have prevailed on their claims in this case, the procedural posture and defenses raised in *O'Neill* differed from the present case, informs the difference in the recoveries, and supports final approval here. In addition, *O'Neill* employed a claims process for members to recover and 16% of members recovered. By contrast, here members do not need to submit claims and payments will go directly to class members.

This settlement is also in line with *Carlson v. Target Enterprises, Inc.*, 18-cv-40139 (D. Mass), another settlement of a Chapter 93A action based on alleged violations of the Regulation. That class settlement, where undersigned counsel also represented the class, was comprised of a fund of \$2,275,000 and approximately 43,578 settlement class members. (*Id.* Doc. No. 55 ¶ 3). That equates to a total division of \$52 per class members which is also in accord with the \$57 per member figure here. The Court approved the *Carlson* settlement as fair reasonable and adequate. *Carlson v. Target Enter., Inc.*, 447 F. Supp. 3d 1 (D. Mass. 2020). Like *O'Neill*, *Carlson* also employed a claims process for members to recover and 12.5% of members recovered. Again, here members do not need to submit claims and payments will go directly to members.

Comparison to settlements under the Telephone Consumer Protection Act ("TCPA"), the federal statute that prohibits certain robocalls, is instructive. Compared to Chapter 93A, damages under the TCPA are (i) certain and (ii) far higher where the TCPA has a mandatory penalty of \$500 per *each and every* violation of the 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., Hopkins v. Modernize, Inc.*, Doc. No. 101 & 108, 17-cv-40087(TSH) (D. Mass) (final approval granted of TCPA class settlement with per claimant recovery of \$26 with a participation rate of only 3%); *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, here all Class Members, not some small percent, will be sent an Initial Settlement Check for \$31 and many will receive more through the second distribution. This is an excellent result meriting approval.

Because consideration of all the *Grinnell* factors weighs in favor of approval of the Settlement Agreement, Plaintiffs request the Court grant this motion for final approval.

CONCLUSION

For all these reasons, Plaintiffs respectfully request that this Court: (1) finally approve the Settlement Agreement as fair, reasonable and adequate; (2) order dispersal of the class settlement fund; and (3) 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.

Dated: November 29, 2021

Respectfully submitted,

By: /s/ Stephen Taylor
 Sergei Lemberg (BBO# 650671)
 Stephen Taylor (*phv*)
 LEMBERG LAW, LLC
 43 Danbury Road
 Wilton, CT 06897
 Telephone: (203) 653-2250

Facsimile: (203) 653-3424
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2021, I served a true and accurate copy of the foregoing to counsel of record through the Court's CM/ECF system which sent notice of such filing to all counsel of record.

/s/ Sergei Lemberg
Sergei Lemberg

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Thomas Cabral and Cheryl Pantano, *on behalf of themselves and all others similarly situated,*

Plaintiff,

V.

PHH Mortgage Corporation and Ocwen Loan
Servicing, LLC,

Defendant.

Civil Action No.: 19-cv-12245-ADB

**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. My firm has been retained by the Plaintiffs to represent their interests and the interests of a class of similarly situated consumers in regard to their claims against Defendant PHH Mortgage Corporation (“PHH”), individually and as successor by merger to Defendant Ocwen Loan Servicing, LLC (“Ocwen”) (PHH and Ocwen are hereinafter referred to collectively as “PHH Defendants”). I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

2. My firm has litigated this case on behalf of Plaintiffs Cheryl Pantano (“Pantano”), Thomas Cabral (“Cabral”) and the settlement class since January of 2019.

3. On September 29, 2020, I and my colleagues Sergei Lemberg, Esq. and Joshua Markovits, Esq., attended an all-day mediation with the PHH Defendants before the Honorable Stephen Neel (Ret.) conducted by video-conference. Prior to the mediation we submitted detailed mediation briefs regarding the issues in the case, the strengths and potential weaknesses of our

position, the structure of a potential class-settlement with the PHH Defendants. The mediation session was adversarial, conducted at arm's-length, and resulted in agreement on material terms of a class-wide settlement.

4. Following the mediation, the Parties spent the next several months drafting, revising and agreeing to the Settlement Agreement. As part of those discussions, the Parties reached a disagreement regarding principal terms of the Settlement, namely the scope of the Releasing Parties and the Released Claims. The Parties continued to confer and negotiate through their mediator, Judge Neel (Ret.), regarding a resolution of their disagreement and Plaintiffs threatened to move to enforce the Parties' Settlement Agreement. Ultimately, the Parties resolved their disagreement and finalized a formal settlement agreement.

5. In addition, the Parties engaged in further discovery regarding the PHH Defendants' identification of class members, the means by which the PHH Defendants compiled the Class List, and what steps the PHH Defendants have taken to ensure that no Massachusetts borrowers will receive in excess of two calls within a seven-day period moving forward.

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

Dated: November 29, 2021

/s/ Stephen Taylor
Stephen Taylor

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THOMAS CABRAL AND CHERYL
PANTANO, on behalf of themselves and
all others similarly situated,

Plaintiff,

vs.

PHH MORTGAGE CORPORATION
AND OCWEN LOAN SERVICING, LLC,

Defendant.

Civil Action No. 1:19-cv-12245-ADB

CLASS ACTION

**DECLARATION OF SETTLEMENT
ADMINISTRATOR RE: NOTICE
PROCEDURES**

I, Alex Thomas, declare and state as follows:

1. I am a Senior Project Manager with KCC Class Action Services, LLC (“KCC”), located at Louisville, Ky. Pursuant to the Order Preliminarily Approving Settlement; Certifying Settlement Class; Approving Notice; and Setting Date for Final Approval Hearing (the “Preliminary Approval Order”) dated August 12, 2021, the Court appointed KCC as the Settlement 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 August 24, 2021, KCC received from Counsel for Defendant’s a list of 10,125 persons identified as the Class List. The Class List included names and addresses. KCC formatted the list for mailing purposes, removed 121 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”).

MAILING OF THE NOTICE

3. On September 10, 2021, KCC caused the Class Notice to be printed and mailed via postcard (“Postcard Notice”) to the 10,004 names and mailing addresses in the Class List. A true and correct copy of the Postcard Notice is attached hereto as Exhibit A.

4. Since mailing the Postcard Notices to the Settlement Class Members, KCC has received 88 Postcard Notices returned by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, KCC performed address searches for these undeliverable Notice Packets and was able to find updated addresses for 9 Settlement Class Members to remail to the found new addresses.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement and Release, dated July 30, 2021 (the “Stipulation”) and/or the Preliminary Approval Order.

SETTLEMENT WEBSITE

5. On September 10, 2021, KCC established the Settlement Website www.CabralSettlement.com dedicated to this matter to provide information to the Settlement Class Members and to answer frequently asked questions. The website URL was set forth in the Class Notice. Visitors of the Settlement Website can download copies of the Long Form Notice, Stipulation of Settlement, Preliminary Approval Order, and the Motion for Attorneys' Fees, Expenses, and Service Awards.

TELEPHONE HOTLINE

6. KCC established and continues to maintain a toll-free telephone number 866-247-4923 for potential Settlement Class Members to call and obtain information about the Settlement, request a Class Notice, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on September 10, 2021, and is accessible 24 hours a day, 7 days a week.

REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE

7. The Class Notice informs Settlement Class Members that requests for exclusion from the Settlement Class must be received no later than November 10, 2021. As of the date of this declaration, KCC has received zero requests for exclusion.

OBJECTIONS TO THE SETTLEMENT

8. The postmark deadline for Settlement Class Members to object to the settlement was November 10, 2021. As of the date of this declaration, KCC has received zero objections to the settlement.

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

Executed on 11/29/2021.

Alex Thomas

Alex Thomas

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EXHIBIT A

NOTICE FROM
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS
(not a lawyer solicitation)

Cabral v. PHH Mortgage
Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

A Settlement Agreement has been reached in a class action lawsuit alleging that PHH Mortgage Corporation and Ocwen Loan Servicing, LLC (the “PHH Defendants”), violated the law by placing in excess of two telephone calls in a seven-day period to Massachusetts consumers to collect a debt. The records show that you may be a Class Member and may be entitled to payment under the Settlement Agreement reached in the case.

A Settlement Fund of \$576,500 has been established to pay Settlement Class Members, attorneys’ fees, costs, any incentive awards to the Class Representatives and settlement administration costs. Each Class Member is entitled to an equal share of the fund. If the settlement is approved, Settlement Class Members shall qualify for direct payments from the Settlement Fund. 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, visit www.cabralsettlement.com.



«BARCODE»

Postal Service: Please Do Not Mark Barcode

POB «Claim Number»

«NAME 1A» «NAME 1B»

«ADDRESS LINE 1» «ADDRESS LINE 2»

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

«COUNTRY»

POB

Cabral, et al. v. PHH Mortgage Corp. (Case No. 1:19-cv-12245-ADB)
THIS CARD PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT.
VISIT WWW.CABRALSETTLEMENT.COM FOR MORE INFORMATION.

In the lawsuit, the Plaintiffs allege that the PHH Defendants 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 placing in excess of two calls regarding a debt within a seven-day period to Plaintiffs and other Massachusetts consumers. The PHH Defendants deny any wrongdoing, deny they 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 Plaintiffs’ Amended Complaint, the Settlement Agreement, and other case documents, at www.cabralsettlement.com.

Who’s Included in the Settlement Class? All persons residing in the Commonwealth of Massachusetts to whom, within the Class Period, the PHH Defendants may have made in excess of two telephone calls regarding a debt within a seven-day period to their residence, cellular telephone, or other provided telephone number as reflected on the Class List. There are 10,125 Settlement Class Members on the Class List.

What Can You Get? If the Settlement Agreement is approved, each of the 10,125 Settlement Class Members will be sent an equal share of the \$576,500 Settlement Fund after deductions for administrative costs, attorneys’ fees and costs and any incentive awards to the Class Representatives. Class Counsel will request up to one-third of the Settlement Fund in attorneys’ fees and costs and up to \$6,000 as an incentive award to each of the named Plaintiffs for their services on behalf of the Settlement Class. If some Settlement Class Members do not cash the Initial Settlement Check, those uncashed funds will be distributed equally in a Second Settlement Check to all Settlement Class Members who did cash their first check.

The Settlement is explained in detail in the Full Notice and in the Settlement Agreement available at www.cabralsettlement.com.

How to Get Money? You do not need to do anything to recover. If the Settlement Agreement is approved, payments will be made directly to Settlement Class Members.

Your Other Rights. If you do not want to be legally bound by the settlement, you must exclude yourself by **November 10, 2021**, or you will not be able to sue the Defendants for any claims relating to this case. If you exclude yourself, you cannot get money from this settlement. If you stay in the Settlement Class, you may object to the settlement by **November 10, 2021**. The Full Notice, located at the website listed below, explains how to exclude yourself from, or object to, the settlement. The Court will hold a hearing in this case on **December 14, 2021**, at **10:00 a.m.** to consider whether to approve the settlement, Plan of Allocation, and a request by the lawyers representing all Class Members for fees and for reimbursement of expenses for litigating the case and negotiating the settlement. You may attend the hearing and ask to be heard by the Court, but you do not have to. The hearing will be conducted by video conference. Instructions on how to attend are available at www.cabralsettlement.com. **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, call 866-247-4923 or visit www.cabralsettlement.com.

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