

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO.1684-CV-03611-BLS2

MATTHEW PERLOW, on behalf of himself
and others similarly situated,

Plaintiff,

v.

ABC FINANCIAL SERVICES, INC. and
SEAS & ASSOCIATES, LLC,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR ENTRY OF PRELIMINARY APPROVAL ORDER**

Plaintiff Matthew Perlow respectfully submits this memorandum in support of his Unopposed Motion for Entry of Preliminary Approval Order.

A. BACKGROUND

This Action was brought by Plaintiff on November 22, 2016, alleging that Defendants ABC Financial Services, Inc. ("ABC") and Seas & Associates LLC ("Seas") violated G.L. c. 93A by engaging in unlawful debt collection practices in Massachusetts, including allegations that (i) Seas attempted to collect alleged debts from him and other Massachusetts consumers without a debt collection license between May 1, 2013 through August 5, 2014 and from January 1, 2016 through December 31, 2016 in violation of G.L. c. 93, §24A, (ii) ABC facilitated and participated in Seas' unlicensed debt collection activities, and (iii) ABC separately attempted to collect the alleged debts from him and other consumers in Massachusetts without making the mandatory disclosures required by 940 C.M.R. §7.08(1) and/or 209 C.M.R. §18.18(1).

The parties agreed to bifurcate discovery into class certification discovery and merits discovery. The operative Rule 16 conference agenda and tracking order provided that following the completion of class certification discovery, Plaintiff would move for class certification. The tracking order also sets a coterminous schedule for briefing on Defendants' motion for summary judgment as to whether Plaintiff could demonstrate an injury under c. 93A.

Beginning in May 2017, the Parties conducted discovery relating to the issue of class certification as well as Defendants' motion for summary judgment. Defendants' produced, among other things, documents regarding their policies and procedures, their form communications with consumers in Massachusetts and over a thousand Excel spreadsheets containing data regarding their communications with Massachusetts' consumers. Plaintiff conducted a deposition of ABC and Seas' respective Rule 30(b)(6) corporate representatives, and Defendants took Mr. Perlow's deposition. Mr. Perlow also responded to Defendants' interrogatories and produced documents.

On March 23, 2018, Plaintiff served his motion for class certification and Defendants served their motion for summary judgment. The Parties exchanged opposition briefs on April 17, 2018. The Parties' served their reply briefs and filed the Rule 9A packets with the Court on May 11, 2018. A hearing on the Parties' motions was held on June 7, 2018.

On June 15, 2018, the Court issued its Memorandum and Order, allowing Defendants' motion for summary judgment, denying Plaintiff's motion for class certification and dismissing the claims with prejudice. Paper No. 16.

B. MEDIATION AND THE PROPOSED SETTLEMENT

On May 9, 2018, in advance of the hearing on the motions for class certification and summary judgment, the parties participated in a mediation with Attorney John Ryan. Although the parties were unable to reach a settlement during the mediation session, they continued to engage in negotiations with the assistance of Attorney Ryan. The parties subsequently reached an agreement in

principle to resolve this action using a High-Low Agreement that would determine the amount of the Settlement based upon the Court's rulings on Plaintiff's motion for class certification and Defendants' motion for summary judgment. On June 6, 2018, the evening before the hearing on the parties' respective motions, the parties executed the High-Low Agreement, setting forth their agreement to resolve this action based on the Court's resolution of the motion for class certification and the motion for summary judgment.¹

Under the parties' agreement and based upon the Court's Memorandum and Order dated June 15, 2018, Defendants will pay \$1,800,000 to settle this putative class action. Plaintiff and Class Counsel believe that the Settlement of the case on the terms reflected in the accompanying Settlement Agreement is fair, reasonable, adequate and in the best interest of the putative Settlement Class, and Defendants, without admitting any liability, have concluded that it is desirable that the claims against them be settled and dismissed on the terms reflected in this Settlement Agreement. The parties reached this agreement based on the risks relating to the pending motions as well as the time and cost that would be associated with any further litigation, including appeals, following the Court's ruling. In light of the Court's order denying class certification and granting summary judgment for Defendants and dismissing the claims in this Action with prejudice, the Settlement represents a considerable recovery for the Settlement Class, who otherwise would not have received any recovery in this case.

From the Settlement Amount, Class Counsel will request a fee and expense award of no more than \$600,000, payment of the costs of the settlement administration, including notice and distribution of the Settlement and payment of a Service Award to Mr. Perlow for his efforts in bringing this case and obtaining the Settlement. After the award of these forgoing amounts from the

¹ A copy of the High-Low Agreement is attached to the parties' Settlement Agreement as Exhibit 1, which is submitted herewith for the Court's review.

Settlement Amount, as approved by the Court, the remaining Net Settlement Amount will be distributed to the Settlement Class Members in a manner such that each Settlement Class Member who made a payment to ABC and received an LD0 letter will be entitled to receive a pro rata share of the Net Settlement Amount in proportion to the number of LD0 letters they received in relation to the total number of LD0 letters received by all Settlement Class Members.

There will be a *de minimis* threshold of \$10 for any payments to the Settlement Class Members under the Settlement. Any Settlement Class Member whose pro rata share results in a distribution amount from the Net Settlement Amount of less than \$10, shall not receive a Settlement payment because the cost of administration and processing of such payments would not be economical.

The distribution of the Net Settlement Amount will be paid without the Settlement Class Members having to submit a claim form. Each Settlement Class Member's portion of the Net Settlement Amount, if any, will be distributed by check to their most recent mailing address.

C. THE NOTICE PLAN

The Settlement provides that, if the Court grants Preliminary Approval of the Settlement, Defendants will provide Class Counsel and the Settlement Administrator (in electronic excel format) with the names and the most recent mailing addresses and email addresses of all members of the Settlement Class. The Class List shall also include each date upon which a member of the Settlement Class received an LD0 letter, each date of each payment a member made after receiving an LD0 letter, and the amount of each payment a member made after receiving an LD0 Letter. The Settlement Administrator will check to determine whether a more current address for each Settlement Class Member is available through the National Change of Address database. For each Settlement Class Member for whom an email address is provided, the Settlement Administrator will send the Notice by email. For each Settlement Class Member for whom only a mailing address is

provided, the Settlement Administrator will send the Summary Notice by first-class mail. The Summary Notice will direct Settlement Class Members to a website page where they can view the full Notice. Copies of the proposed Notice and Summary Notice to be sent to the Settlement Class are attached as Exhibit 1-A and 1-B, respectively, to the Parties' Joint Motion for Preliminary Approval.

If a mailed Summary Notice is returned as undeliverable, and a forwarding address is provided by the U.S. Postal Service, the Settlement Administrator will, within seven (7) days after being notified that the mailed Summary Notice was undeliverable, re-mail the Summary Notice to such forwarding address.

D. THE SETTLEMENT SHOULD BE GRANTED PRELIMINARY APPROVAL

“Settlement agreements enjoy great favor with the courts as a preferred alternative to costly, time-consuming litigation.” *Fid. & Guar. Ins. Co. v. Star Equip Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) (quotation omitted). Indeed, in Massachusetts there is a “well-established public policy favoring the private settlement of disputes.” *Cabot Corp. v. AVX Corp.*, 448 Mass. 629, 638 (2007). While the proponent of a class action settlement must demonstrate that the settlement is fair, reasonable and adequate, usually “there is a presumption in favor of the settlement” where, as here, “discovery has been adequate and the parties have bargained at arms length.” *Nat’l Ass’n of Chain Drug Stores v. New Eng. Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009) (quotation omitted).²

Approval of a class action settlement is a two-step process: first, a “preliminary approval” order issues; and, second, after notice of the proposed settlement has been provided to the settlement class and the court has reviewed the fairness, reasonableness, and adequacy of the

² The Supreme Judicial Court has looked to federal law on class action settlements and found it to be persuasive. *See, e.g., Sniffin v. The Prudential Ins. Co. of Am.*, 395 Mass. 415, 420-21 (1985) (“The standard applied by the [trial] Court in its order is similar to that adopted by the Federal courts when reviewing proposed settlements of class actions under Fed. R. Civ. P. 23 (e), the Federal provision analogous to Mass. R. Civ. P. 23 (c).”).

settlement, “final approval” is considered. MANUAL FOR COMPLEX LITIGATION § 13.14 (4th ed. 2004).

At the preliminary approval stage, the Court “need not make a final determination regarding the fairness, reasonableness and adequateness of a proposed settlement; rather, the Court need only determine whether it falls within the range of possible approval.” *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. 125, 140 (D.P.R. 2010) (citing *Scott v. First Am. Title Ins. Co.*, No. 06-286, 2008 U.S. Dist. LEXIS 117205, at *3 (D.N.H. 2008)). The Court need only “make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and [then] direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 (2008). “[T]he standard for preliminary approval is less stringent than for final approval, because preliminary approval means simply that notice of the proposed settlement will be sent to class members, who will then be given a chance to be heard at the hearing regarding final approval.” *In re Mass. Smokeless Tobacco Litig.*, 2008 Mass. Super. LEXIS 126, *7 (April 9, 2008).

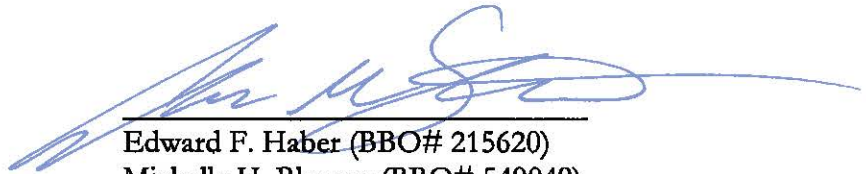
The Settlement warrants preliminary approval and the authorization to send notice to the Settlement Class. This action sought the recovery of statutory damages of \$25 for each class member, and therefore the Settlement will provide a substantial portion of the Settlement Class Members (those that made a payment to ABC and who received multiple LD0 letters) with recovery of some or all of the statutory damages they would have received had this action been successful at trial. The Settlement avoids the very time-consuming and costly process of appeal, and instead provides the Settlement Class with an immediate recovery. In light of the Court’s rulings finding that the claims at issue could not be sustained, the fact that Plaintiff and Class Counsel were able to obtain any recovery for some of the Settlement Class demonstrates that the Settlement is fair, reasonable and adequate.

CONCLUSION

For the forgoing reasons, the Court should grant the Plaintiff's Unopposed Motion for Preliminary Approval of Settlement, authorize the sending of the Notice and Summary Notice to the Settlement Class and schedule a hearing to consider final approval of the Settlement.

Dated: July 25, 2018

Respectfully submitted,



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Certificate of Service

I hereby certify that a true copy of the above document was served upon counsel of record for Defendants by e-mail on July 25, 2018.



Adam M. Stewart