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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Matthew Perlow respectfully submits this memorandum in support of his Unopposed Motion for Final Approval of Class Action Settlement. For the reasons set forth below, the Court should grant final approval of the Settlement and order that the Settlement be implemented pursuant to the terms of the Stipulation and Settlement Agreement.

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). Defendants have denied any wrongdoing.

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 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 agree to pay $1,800,000 to settle this putative class action. Plaintiff and Plaintiff's Counsel, Shapiro Haber & Urmy LLP ("Shapiro Haber"), believe that the Settlement of the case on the terms reflected in the 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, Shapiro Haber will request a fee and expense award of $600,000, payment of the costs of the settlement administration, including notice and distribution of

[1] A copy of the High-Low Agreement is attached to the parties' Settlement Agreement as Exhibit 1, which was submitted to the Court in connection with preliminary approval.

the Settlement and payment of a Service Award to Mr. Perlow for his efforts in prosecuting this case and obtaining the Settlement. After the award of these forgoing amounts from the 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. **PRELIMINARY APPROVAL AND NOTICE**

On September 4, 2018, this Court held a hearing on Plaintiff's Unopposed Motion for Entry of Preliminary Approval Order. Following the hearing the Court entered the Preliminary Approval Order, which granted preliminary approval to the Settlement and ordered that the plan of notice set forth in the Settlement Agreement be implemented.

Pursuant to the Settlement Agreement, Defendants produced the Class List (in electronic excel format) that contained with the names and the most recent mailing addresses and, where available, email addresses of members of the Settlement Class. The Class List also includes each date upon which a member of the Settlement Class received an LD0 letter, the 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 Class List ultimately contained contact information for 252,773 Settlement Class Members, with email addresses for 208,385 (or about 82%) of the Settlement Class, and therefore pursuant to paragraph 13, the Settlement Administrator sent the Notice to each of these Settlement Class Members to the email address contained in the Class List. For the remaining 44,388 (or 18%) Settlement Class Members for whom Defendants did not have an email address but only a mailing address, the Settlement Administrator checked for a more current mailing address for each such Settlement Class Member through the National Change of Address database, and if a more recent address was obtained, the Settlement Administrator mailed a copy of the Summary Notice to that address. If a more recent address was not available through the NCOA, the Summary Notice was mailed to the Settlement Class Member's most recent address in Defendants' computer records, which was included on the Class List. The distribution of Notice to the Settlement Class was completed by November 1,[2] 2018.[3] 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 days after being notified that the mailed Summary Notice was undeliverable, re-mail the Summary Notice to such forwarding address.

The Notice and Summary Notice also directed Settlement Class Members to a page on Shapiro Haber's website where they can view and download the Summary Notice, the Notice, a

[2] Due to the volume of emails and postcard mailings, the Settlement Administrator sent the Notice in batches over a period of a couple days with all of the Notices having been emailed or the Summary Notice mailed to all the Settlement Class Members on or before November 1, 2018.

[3] In addition, pursuant to paragraph 28, Shapiro Haber gave notice on October 23, 2018, to the Massachusetts IOLTA Committee of this pending class action settlement and to allow the committee to be heard on whether it ought to be a recipient of any or all residual funds in the event the Court grants final approval to the Settlement and any residual funds remain following distribution.

copy of the Complaint, Plaintiff's Unopposed Motion for Entry of Preliminary Approval Order, the Memorandum in Support of Plaintiff's Motion for Entry of Preliminary Approval and the Preliminary Approval Order entered by the Court. A copy of this memorandum in support of final approval and Shapiro Haber's fee application will also be posted on the website. Lastly, if the Court grants final approval to the Settlement, a copy of the Final Order and Judgment will be posted to the Settlement website as well.

Based on the Notice being sent to all Settlement Class Members by November 1, 2018, the deadline for objections is December 6, 2018. As of the date of this filing, there have been no objections received from any Settlement Class Members.

D. **ARGUMENT**

The Settlement Should Be Approved As Fair, Reasonable and Adequate

In determining whether a settlement deserves final approval, the Court must determine whether it is "fair, reasonable and adequate." *Sniffin v. Prudential Ins. Co.*, 395 Mass. 415, 421 (1985);[4] *Vt. Pure Holdings, Ltd. V. Berry*, 2010 Mass. Super. LEXIS 71, at *28 (Mass. Super. Ct. Feb. 8, 2010) ("Approval of a class action settlement which binds absent class members requires determining that the settlement is 'fair, reasonable, and adequate.'"). The Settlement, which resulted from protracted negotiations between counsel in good faith with the assistance of a mediator, and represents a wonderful result for the Settlement Class Members particularly in light of the Court's ruling on summary judgment, clearly meet this standard.

[4] The Supreme Judicial Court in *Sniffin* looked to Federal law on class action settlements and found it to be persuasive. 395 Mass. at 420-21 ("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)."). For this reason, Plaintiff also cites to Federal cases with respect to the standards to be applied by the Court in considering whether to grant final approval of the Settlement.

1. **The Proposed Settlement Was Reached Following Good Faith, Arm's Length Negotiations and Is Endorsed By Shapiro Haber.**

When "the parties negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable." *Howe v. Townsend (In re Pharm. Indus. Average Wholesale Price Litig.)*, 588 F.3d 24, 32-33 (1st Cir. 2009); *City Pshp. Co. v. Atlantic Acquisition Ltd. Pshp.*, 100 F.3d 1041, 1043 (1st Cir. 1996) ("When sufficient discovery has been provided and the parties have bargained at arm's-length, there is a presumption in favor of the settlement."); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 71-72 (D. Mass. 2005) (same).

The Settlement is the result of good faith, arm's-length negotiations by well-informed and experienced counsel following briefing and rulings on class certification and summary judgment and a mediation with Attorney John Ryan. Indeed, the Settlement was reached as a result of a High-Low Agreement negotiated by the parties and finalized on the eve of the hearing on the motions for summary judgment and class certification. That agreement factored the relative risks faced by both Plaintiff and Defendants and provides timely resolution of this litigation without the need to await a lengthy appeal. Accordingly, the proposed Settlement is procedurally fair and is entitled to a presumption of reasonableness.

The Settlement also provides the Settlement Class Members with an excellent result under the circumstances. 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 also 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 Shapiro Haber were able to obtain any recovery for some of the Settlement Class demonstrates that the Settlement is fair,

reasonable and adequate.

Shapiro Haber, who have extensive experience in consumer class action litigation and were fully informed about the facts and legal issues in this case, strongly believe that this result is in the best interests of the Class in light of the significant risks and certain delay that would have been presented by further litigation. The judgment of experienced and well-informed counsel should be accorded great weight by the Court. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) ("the trial court is entitled to rely upon the judgment of experienced counsel for the parties."); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."); *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) ("The Court's fairness determination also reflects the weight it has placed on the judgment of the parties' respective counsel, who are experienced attorneys and have represented to the Court that they believe the settlement provides to the Class relief that is fair, reasonable and adequate.").

2. **Consideration of All Relevant Factors Supports the Approval of the Settlement.**

"In determining whether the settlement is fair, reasonable, and adequate, a trial judge should consider various factors." *Sniffin*, 395 Mass. at 421.

> The criteria generally utilized in determining whether a settlement is fair, reasonable, and adequate are: 1) likelihood of recovery, or likelihood of success; 2) amount and nature of discovery or evidence; 3) settlement terms and conditions; 4) recommendation and experience of counsel; 5) future expense and likely duration of litigation; 6) recommendation of neutral parties, if any; 7) number of objectors and nature of objections; and 8) the presence of good faith and the absence of collusion.

Vt. Pure Holdings, 2010 Mass. Super. LEXIS 71, at *28-29 (internal citations omitted); *see also Fortin v. Ajinomoto U.S.A., Inc.*, 2005 Mass. Super. LEXIS 670, at *3-4 (Mass. Super. Ct. Dec. 15, 2005) ("In approving the Settlement Agreement, the Court has considered (1) whether the proposed settlement

was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the proposed settlement is fair and reasonable.").

While courts often place the greatest significance on the first factor, balancing the strength of the plaintiff's case against the amount offered in settlement, *Sniffin*, 395 Mass. at 421 (citations omitted) ("The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."), there is "'considerable discretion whether to approve a particular settlement,' and, thus, 'the court need not give greater weight to any particular relevant factor and is not required to consider all factors,'" *Vt. Pure Holdings*, 2010 Mass. Super. LEXIS 71, at *29-30 (citations omitted). In light of the well recognized "public interest favoring settlements [which] is "even stronger in the context of class action litigation ... courts generally view facts in a light favorable to settlement." *Id.* at *32.

a) The Likelihood of Success Counsels in Favor of Approval

Under the Settlement, a substantial portion of the Settlement Class Members (those that made a payment to ABC and who received multiple LD0 letters) will recover some or all of the statutory damages they would have received had this action been successful at trial. In light of the Court's ruling on summary judgment that the claims could not be sustained and that a class could not be certified, the Settlement provides a substantial recovery to the Settlement Class who, but for this Settlement, would have received no recovery at all. The substantial benefits of the Settlement strongly support final approval of the Settlement.

b) The Evidentiary Record in the Case

The Settlement was only reached after extensive discovery followed by briefing and rulings on summary judgment and class certification. Thus, the parties were fully informed with respect to a

proper form of relief to the Settlement Class Members.

c) The Settlement Terms and Conditions

As noted above, the Settlement provides that the Settlement Class Members who made a payment to ABC and who received multiple LD0 letters will receive a considerably portion of the maximum statutory damages they would have been entitled to recover at a trial. Given that the case would have been dismissed but for the Settlement, the terms of the Settlement should be found to be fair and reasonable.

d) The Recommendation and Experience of Counsel

Shapiro Haber strongly believes that the Settlement is fair, reasonable and adequate and is in the best interests of the Settlement Class. Courts have recognized that the opinions of experienced counsel involved in the case who negotiated the compromise are entitled to considerable weight. *See, e.g., Giusti-Bravo v. United States Veterans Admin.*, 853 F. Supp. 34, 40 (D.P.R. 1993). The fact that qualified attorneys endorse the Settlement provides a further reason why this Court should give final approval. *See Hawkins v. Comm'r of the N.H. HHS*, 2004 U.S. Dist. LEXIS 807, at *15 (D.N.H. Jan. 23, 2004) (presumption in favor of a settlement where "counsel have experience in similar cases"); *Rolland*, 191 F.R.D. at 3, 6 (same).

e) The Future Expense and Likely Duration of Litigation

Had the Settlement not been reached, this case would have proceeded to an appeal of the Court's decision granting summary judgment to the Defendants and denial of class certification. This would have resulted in a protracted appeal, which would have resulted in considerable expense for all parties and delayed any resolution for the Settlement Class. Indeed, there would be no guarantee that an appeal would ultimately have resulted in a successful outcome. The Settlement brings immediate and considerable relief to the Settlement Class. For these reasons as well, Plaintiff respectfully submits that the Settlement should be approved.

f) The Reaction of the Class to the Settlement

Under the Settlement, the Settlement Class Members have until December 6, 2018 to object. As of the date of this filing, no objections have been received.

g) The Presumption of Good Faith and the Absence of Collusion

"Courts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered." *In re Packaged Ice Antitrust Litig.*, 2011 U.S. Dist. LEXIS 150427, at *63 (E.D. Mich. Dec. 13, 2011) (internal citations omitted). Here, the Settlement was the result of arm's-length negotiations between well-informed and experienced counsel and with the assistance of well-respected mediator Attorney John Ryan.

* * *

In sum, all relevant factors, including the fact that no recovery would be had but for the Settlement, the arm's-length nature of the settlement negotiations, the recommendation of Shapiro Haber, and the uncertainty and risks associated with continued, protracted litigation, all strongly support a finding that the Settlement is fair, reasonable and adequate.

A Service Award to the Plaintiff Is Fully Justified

Under the Settlement, Plaintiff Matthew Perlow would receive a Service Award in the amount of $10,000 for his representing the Settlement Class. The proposed Service Award is fully justified and should be approved.

Courts "routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *In re Lorazepam & Clorazepate Antitrust Litig. v. Mylan Labs.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (internal citations omitted); *see also In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189 (D. Me. 2003) ("Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit.").

Additionally, "courts consider not only the efforts of the plaintiffs in pursuing the claims, but also the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves." *Bussie v. Allmerica Fin. Corp.*, 1999 U.S. Dist. LEXIS 7793, at *11-12 (D. Mass. May 19, 1999).

Courts in Massachusetts and throughout the country have not hesitated to grant serve awards in amounts even greater than that requested here and many of those were granted to plaintiffs who did not do nearly as much as Mr. Perlow did over the past two plus years.[5] Among other things, Mr. Perlow responded to written discovery, produced emails and documents, sat for his deposition and worked closely with Shapiro Haber to prosecute this litigation. The Service Award is fully justified in this case.

The Notice Plan Fulfilled the Requirements of Massachusetts Law and Due Process

As the Court has previously held:

> The due process standards regarding what constitutes adequate notice depend upon the particular circumstances of each case. *State of West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1090 (2nd Cir. 1971); see *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L. Ed. 865 (1950). "The type of notice to which a class member is entitled depends upon the information available to the parties about that person . . . the name and the last known address of each class member known to the parties or capable of being identified from business or public records available to them must be produced." *In re Nissan*

[5] *See, e.g., Geanacopoulos v. Philip Morris USA, Inc.*, 98-6002-BLS1, Final Order and Judgment at ¶13 (Mass. Super. Ct. Sept. 30, 2016) (granting $25,000 as service awards each to two named plaintiffs); *Mullally v. Waste Mgmt. of Mass., Inc.*, C.A. No. 06-0882, Order and Judgment Granting Final Approval of Settlement, at p. 4 (Mass. Super. Ct. June 24, 2010) (awarding $25,000 as an incentive award to each of the named plaintiffs); *In re Lupron Mktg. & Sales Practices Litig.*, 2005 U.S. Dist. LEXIS 17456, at *24-25 (D. Mass. Aug. 17, 2005) (approving $25,000 incentive award for two named plaintiffs' representatives who gathered and produced documents and sat for depositions); *Commonwealth Care Alliance v. AstraZeneca Pharms. LP.*, 2013 Mass. Super. LEXIS 145, at *2 (2013) (awarding incentive payment of $15,000 to each of the two plaintiffs). *See also In re Auto. Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS 569, at *23 (E.D. Pa. Jan. 3, 2008) (approving a $30,000 award for each class representative); *McBean v. City of New York*, 233 F.R.D. 377, 391-92 (S.D.N.Y. 2006) (stating incentive awards of $25,000-$30,000 are "solidly in the middle of the range"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at *50-52 (D.N.J. Nov. 9, 2005) (approving $60,000 award); *Texas v. Organon USA Inc. (In re Remeron11 End-Ptryor Antitrust Litig.)*, 2005 U.S. Dist. LEXIS 27011, at *33 (D.N.J. Sept. 13, 2005) (approving $30,000 award); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (approving $50,000 award).

> *Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1098 (5th Cir. 1977). Individualized notice is always preferable. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974); *Schroeder v. City of New York*, 371 U.S. 208, 212-13, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962); *Mullane*, 339 U.S. at 317-18. However, if there is no reasonably possible or practicable way to give individualized notice, notice by publication will suffice. *Mullane*, 339 U.S. at 315; see also *Chas. Pfizer & Co.*, 440 F.2d at 1090 (finding notice by publication sufficient where it was not reasonable or practicable to give more adequate warning to consumers in class action against various antibiotics manufacturers for antitrust violations). "Thus it has been recognized that, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights." *Mullane*, 339 U.S. at 315.

Aspinall v. Philip Morris Cos., 2005 Mass. Super. LEXIS 629, at *5-7 (Mass. Super. Ct. Dec. 7, 2005).

As outlined in the Settlement Agreement and required by the Court's Preliminary Approval Order, the Settlement Class was notified of the Settlement by direct notice either to their email address or to their most current mailing address. This was the best practicable notice under the circumstances. Thus, the form of notice "fairly apprise[d] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (internal citations omitted). *See also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997) (settlement notice "need only be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.").

Consistent with these requirements, the Notice and Summary Notice explained to the Settlement Class Members (a) the nature of the action, (b) who is a member of the Settlement Class; (c) the essential terms of the Settlement, (d) the plan relating to the distribution of the fund, (e) where class members could obtain additional information or contact the Settlement Administrator or Shapiro Haber with any questions or concerns, and (f) the deadline for submitting any objection to the Settlement.

CONCLUSION

For all the foregoing reasons the Settlement fully complies with the requirements of Massachusetts law and should be granted final approval as fair, reasonable and adequate.

Dated: November 20, 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 November 20, 2018.

Adam M. Stewart