

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

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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.	:	

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**MOTION FOR (1) AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
(2) INCENTIVE AWARDS TO THE NAMED PLAINTIFFS**

Pursuant to Fed. R. Civ. P. 23(h), Settlement Class Representatives Thomas Cabral (“Cabral”), Cheryl Pantano (“Pantano” and together with Cabral, “Plaintiffs”) and Class Counsel respectfully move this Court for an Order of attorneys’ fees and expenses of \$192,000 (one-third of the \$576,000 Settlement Fund) and for incentive awards to the Plaintiffs in the amount of \$6,000 each.

In support, Plaintiffs and Class Counsel submit the accompanying memorandum of law and the Declarations of Sergei Lemberg and Stephen F. Taylor.

For the reasons set forth in the accompanying memorandum, Plaintiffs and Class Counsel respectfully request that the Court grant this motion and award the requested fees, expenses and incentive award.

Dated: October 11, 2021

Respectfully submitted,

By:           /s/ Sergei Lemberg            
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 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

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

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Settlement Class Representatives Thomas Cabral (“Cabral”), Cheryl Pantano (“Pantano” and together with Cabral, “Plaintiffs” or “Class Representatives”), by and through their undersigned counsel, respectfully submit this Memorandum of Law in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to the Named Plaintiffs.

### **INTRODUCTION**

Pursuant to Fed. R. Civ. P. 23(h), Plaintiffs and Class Counsel respectfully move this Court for an Order of attorneys’ fees and expenses of \$192,000 (one-third of the \$576,000 Settlement Fund<sup>1</sup>) and for incentive awards to the Plaintiffs in the amount of \$6,000 each. Plaintiffs and Class Counsel have efficiently and successfully litigated this case which sought relief under Mass. Gen. Laws ch. 93A for violations of 940 Code Mass. Regs. § 7.04(1)(f) (2012) (the “Regulation”) which prohibits creditors from “[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.”

On August 12, 2021, the Court preliminarily approved the class action settlement agreement between Plaintiffs 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”). (Doc. No. 45). In accordance with the Preliminary Approval Order, on September 10, 2021, Notice detailing the terms of the settlement was mailed to the Settlement Class and the Settlement Website, [www.cabralsettlement.com](http://www.cabralsettlement.com), was established. (Declaration of Stephen Taylor (“Taylor Decl.”), ¶ 8).

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<sup>1</sup> Capitalized terms used herein have the same meaning that they have in the Class Action Settlement Agreement.



The settlement here provides easy and direct means for Settlement Class Members to benefit from the Settlement Fund. All 10,125 Settlement Class Members who do not opt out<sup>2</sup> will be sent an initial settlement check for approximately \$31.56.<sup>3</sup> 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.<sup>4</sup> The benefits here are excellent and very broad-based.

But for Class Counsel and the Class Representatives, these 10,125 persons would receive nothing and likely not even be aware of their legal rights. Instead, Settlement Class Members can participate in this excellent result or opt-out if they so choose. Under the circumstances of this case, an award of one-third of the fund is abundantly reasonable because:

- This is an excellent settlement aiming to provide benefits to the entire class;
- The settlement was agreed only extensive motion practice, discovery regarding key issues, and an arm's length mediation before a neutral; and
- A one-third contingent fee is consistent with Massachusetts cases as well as common-fund cases throughout the nation.

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

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<sup>2</sup> The Settlement Administrator reports no opt-outs as of September 28, 2021. (Taylor Decl. ¶ 8). The opt-out deadline is November 10, 2021. (Doc. 45 ¶ 23).

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

$$\text{Net Fund} = \$319,630 (\$576,000 (\text{Gross Fund}) - \$192,000.00 (\text{Fee Award}) - \$52,370 (\text{administrative costs}) - \$12,000 (\text{Incentive Awards}))$$

$$\text{Initial Settlement Check} = \$31.56 (\text{Net Fund} / 10,125 (\text{Settlement Class}))$$

<sup>4</sup> If amounts remain in the fund after that second round of checks, those amounts will return to the PHH Defendants.

## ARGUMENT

### **I. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND EXPENSES FOR THEIR SERVICE TO THE CLASS UNDER THE PERCENTAGE-OF-RECOVERY METHOD**

Where a party maintains a suit that results in the creation of a fund for the benefit of a class, the costs of the litigation, including an award of reasonable attorneys' fees, should be recovered from the fund created by the litigation. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970). Fed. R. Civ. P. 23 further states that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the Parties' agreement." Fed. R. Civ. P. 23(h). Likewise, Chapter 93A provides for attorneys' fees and costs. *See* M.G.L. c. 93A § 9(4).

The "common-fund" doctrine allows counsel to draw a reasonable fee as a percentage of the fund created by a settlement for the benefit of the class. *Boeing Co. v. VanGemert*, 444 U.S. 472, 478, 100 S.Ct. 745, 62 L.Ed.2d 676 (1980). As held by the First Circuit, the "percentage of fund" approach offers distinctive advantages including: (1) it is less burdensome to administer; (2) it reduces the possibility of collateral disputes; (3) it enhances the efficiency throughout the litigation; (4) it is less taxing on judicial resources; and (5) it better approximates the workings of the marketplace. *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995).

For these reasons, the First Circuit has stated that the "use of the [percentage of fund] method in common fund cases is the prevailing praxis." *Id.*; *see also Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at \*11 (D. Mass. Sept. 30, 2016) (approving 1/3 of the fund with lodestar cross-check); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the fund); *In re Am. Dental Partners, Inc. Sec. Litig.*, 2010 WL 1427404, at \*1 (D.

Mass. Apr. 9, 2010) (“In common fund cases, the trend increasingly favors the calculation of a fee award by use of the percentage of the fund (POF) method.”).

In weighing an appropriate attorney fee award under a common fund request, the First Circuit has not set forth a fixed set of factors, however, courts generally consider the *Goldberger* factors: “(1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations.” *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014) (citing *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at \*3 (D. Mass. Aug. 17, 2005), citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir.2000); Third Circuit Task Force, Court Awarded Attorney’s Fees, 108 F.R.D. 237, 255–56 (1985)).

The Settlement Agreement here creates a common fund of \$576,000. Class Counsel requests an award of attorneys’ fees and costs in the amount of one-third of the fund (\$192,000) for their efforts on behalf of the class. This amount is reasonable, fair, and fully justified.

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

As an initial matter, one-third of the settlement fund is reasonable on its face and awarded in the First Circuit. *See O’Neill v. Carrington Mortgage Services, LLC*; No: 1:19-cv-10643-ADB, No. 52 (D. Mass., Aug. 7, 2020) (approving one-third fee and expense request); *Roberts*, 2016 WL 8677312 at \*9; *Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at \*2 (D. Mass. Nov. 3, 2016) (“the one-third fee requested here is fair and reasonable”); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at \*6 (D.N.H. Dec. 18, 2007) (awarding fees in the amount of 33% of settlement fund); *McCormick v. Festiva Dev. Grp., LLC*, 2011 WL 2457883, at \*1 (D. Me. June 20, 2011) (awarding fees in the amount of one third of settlement fund); *Applegate v. Formed Fiber*

*Techs., LLC*, 2013 WL 6162596, at \*1 (D. Me. Nov. 21, 2013) (same); *Bennett v. Roark Capital Grp., Inc.*, 2011 WL 1703447, at \*2 (D. Me. May 4, 2011) (same); *see also Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at \*9 (D.R.I. Feb. 17, 2016) (awarding 30% of common fund and observing that “as several courts have concluded, 30% is not out of proportion with recovery percentages in large class action litigations.”).

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

At \$576,000, the size of the fund here is not so large as to justify less than one-third. *See In re Sterling Fin. Corp. Sec. Class Action*, 2009 WL 2914363, at \*4 (E.D. Pa. Sept. 10, 2009) (approving 30% in fees of common fund of \$10.25 million and stating “the settlement fund is not so large as to support a percentage smaller than thirty percent”) (emphasis supplied). Thus, the fee and expense request here is reasonable on its face.

### **III. THE GOLDBERGER FACTORS SUPPORT THE REQUESTED FEE AWARD**

Consideration of the *Goldberger* factors weigh strongly in favor of approving the requested fees and expenses.

**A. THE SIZE OF THE FUND CREATED AND THE NUMBER OF PERSONS BENEFITTED**

The size of the fund here and the number of persons benefited support the requested fee.

The fund of \$576,000 resolves 10,125 potential claims for violations of the Regulation and Chapter 93A owing to the PHH Defendants' alleged practice of calling consumers more than two times in a seven-day period. Absent a showing of actual provable damages owing to excess phone calls, class members would be entitled to \$25 dollars for their claims with recovery for up to \$50 to \$75 dollars if Plaintiffs established the violations were "willful or knowing." Mass. Gen. Laws ch. 93A, § 9(3). Whether someone may recover \$25 for each violation of the collection Regulation is a question which has not been decided by Massachusetts courts. In other contexts, statutory damages for claims under Chapter 93A are per claim rather than each unfair or deceptive occurrence. *See Aspinall v. Philip Morris Companies, Inc.*, 2013 WL 7863290, at \*9 (Mass. Super. Feb. 7, 2013) (the \$25 in damages is per claim and not per sale of each misleading cigarette packaging). The \$576,000 fund here represents, in total, approximately \$56 per each class member, more than the statutory recovery under Chapter 93A. This is an excellent result.<sup>5</sup>

In addition, the settlement benefits the entire Class where members who do not opt-out will receive money directly. When based on the net fund (gross fund excluding fees, costs etc.) the initial settlement checks will equal approximately \$31 per class member, an amount still above the statutory award if each and every Settlement Class Member cashes their Initial Settlement Check. If members choose not to cash the initial check, those remaining funds will be redistributed to those who did.

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<sup>5</sup> Indeed, cases under the Telephone Consumer Protection Act, which provide for at least \$500 dollars for each and every unlawful communication, settle for far less per class member or even claiming class member than what has been achieved here. *See, e.g., Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) (total recovery is \$1 per member and \$52 per claiming member (collecting cases on claimant recovery)).

Thus, if 50% of Settlement Class Members cash their initial check, each of those will receive \$62 in total. If 25% of Settlement Class Members cash their initial check, each of those will receive \$124 in total.

This is an outstanding recovery for violations of chapter 93A and the Debt Collection Regulation which provides very substantial recovery for all Settlement Class Members.

#### **B. THE SKILL AND EFFICIENCY OF THE ATTORNEYS INVOLVED**

The skill and efficiency of the attorneys involved also weighs in favor of the requested fees and expenses. Class Counsel are experienced and skilled consumer protection and class action litigators. (Declaration of Sergei Lemberg (“Lemberg Decl.”) ¶¶ 4-8). They have successfully represented classes in both contested and settled proceedings. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act (“FDCPA”) class action settlement); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at \*1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, 2017 WL 1021025, at \*1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Duchene v. Westlake Servs., LLC*, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement in TCPA action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

Class Counsel brought their experience and skill to bear to litigate and settle this case and oversee the administration of the settlement process.

### **C. THE COMPLEXITY AND DURATION OF THE LITIGATION**

The complexity and duration of the litigation also weighs in favor of the requested fees and expenses.

The claims in this action involved complicated issues concerning Defendant's business practices and business records. The claims also involved complicated issues of law, including how damages can be calculated and whether Defendant's 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 two separate proceedings. Cabral initiated *Cabral v. PHH Mortgage Corp.*, No. 1973CV00379 (Mass. Super.) (the "Cabral Action"), and Pantano initiated *Pantano v. Ocwen Loan Servicing, LLC*, No. 1977CV00530 (Mass. Super.) (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.<sup>6</sup> The complexity of these issues amply supports the requested award, particularly considering the skillful and efficient manner in which Class Counsel handled those issues and brought the case to a successful resolution on behalf of the Settlement Class.

### **D. THE RISKS OF THE LITIGATION**

The risks of litigation support the requested award. For any firm to bring a class action against a substantial entity like the PHH Defendants requires commitment of time and resources in the face of significant risks of loss and/or delay. In this case, Class Counsel is comprised of one small firm.

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<sup>6</sup> 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.

Firms of small size face even greater risks in litigating large class actions with no guarantee of payment. *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at \*10 (C.D. Cal. Nov. 18, 2014) (finding heightened risk of small firm representation should be rewarded with larger percentage fee for good result); *see also Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 750 (1987) (Delaware Valley II) (plurality opinion) (“[C]ontingent litigation may pose greater risks to a small firm or a solo practitioner because the risk of nonpayment may not be offset so easily by the presence of paying work. . . .”); *Davis v. Mutual Life Ins. Co.*, 6 F.3d 367, 382 (6th Cir. 1993) (“[T]he maintenance of comparatively large pieces of litigation prevents small firms from diversifying risk by taking on additional clients.”).

This is a pure contingent fee case, which Class Counsel took on with risk concerning not only the result of the case, but also how much time and money would need to be invested to get a result against Defendants who are well able to devote the resources to litigate these types of cases. Had the case been lost, they would have received no compensation whatsoever for their significant investment of time and effort. Accordingly, this factor also weighs in favor of the requested award.

#### **E. THE AMOUNT OF TIME DEVOTED TO THE CASE BY PLAINTIFF’S COUNSEL**

Class Counsel have invested significant time and effort in this action. Class Counsel (1) investigated Plaintiffs claims against PHH and Ocwen and each entities’ business practices; (2) drafted and served on each Defendant a demand letter pursuant to M.G.L. Chapter 93A, Section 9, for relief on behalf of each Plaintiff and a class of similarly situated persons; (3) drafted and filed Plaintiffs’ class action complaints in Bristol and Essex Superior Court; (4) filed, in the separate Cabral and Pantano proceedings, motions to remand and opposed motions to dismiss; (5) engaged in formal and informal discovery throughout the litigation, including multiple conferrals with defense counsel; (6) participated in a full day mediation and submitted detailed mediation briefs to the mediator; (7)



negotiated and drafted a comprehensive Settlement Agreement; (8) drafted the Stipulation of Dismissal and Tolling Agreement in the Pantano action and the First Amended Complaint in this action which consolidated Plaintiffs' claims; (9) prepared a motion for preliminary approval of the Settlement; (10) regularly communicated with the Settlement Administrator to ensure a smooth notice and claims process following the Court's preliminary approval order; (11) reviewed the language and content of the settlement website; (12) and communicated with the named Plaintiffs throughout the case. (Declaration of Sergei Lemberg ¶ 11).

In addition, Class Counsel will devote further time and effort appearing at the final approval hearing, responding to inquiries from Class Members going forward, addressing any objections that could arise and monitoring the distribution of settlement payments by the Settlement Administrator until the fund is expended and closed. (Lemberg Decl. ¶ 12).

These combined efforts, taken with the risk of no recovery to counsel whatsoever, support the requested award in this case, and demonstrate that the fees and expenses requested here have been well earned.

#### **F. AWARDS IN SIMILAR CASES**

Awards in similar cases support the requested fee. Indeed, the fee requested in this case is in accord with awards in other class action cases involving similar consumer protections statutes, including the Telephone Consumer Protection Act, which like the Massachusetts Debt Collection Regulations, seeks to protect consumers from harassing phone calls. *See, e.g., O'Neill*, No: 1:19-cv-10643-ADB, No. 52 (D. Mass., Aug. 7, 2020) (approving one-third fee of \$237,500 fund); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, 639 F. App'x 880 (3d Cir. 2016) (affirming award of one-third of a reversionary settlement fund in TCPA class action); *Vandervort v Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (fee of one-third awarded in TCPA case); *Bridgeview Health Care Ctr., Ltd. v. Jerryclark*, 2015 WL 4498741, at \*2 (N.D. Ill. July 23, 2015) (awarding one-third

of common fund in TCPA class action); *Hageman v. AT & T Mobility LLC*, No. CV 13-50-BLG-RWA, 2015 WL 9855925, at \*4 (D. Mont. Feb. 11, 2015) (approving fee award of “\$15 million, or one-third of the common fund recovery” in TCPA class action settlement against AT&T); *Saf-T-Gard Int'l, Inc. v. Seiko Corp. of Am.*, No. 09 C 0776 (N.D. Ill. Jan. 14, 2011) (awarding one-third of common fund in multimillion dollar TCPA class action); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (“Accordingly, the Court awards attorney’s fees and costs in the amount of \$1.1 million, or 33% of the \$3.3 million settlement fund ceiling amount.”); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass. 2005) (approving 33 1/3% fee as a percentage of the fund); *Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236, at \*1 & n.3 (Mass. Super. Aug. 5, 2013) (awarding 30% of the fund in fees in Chapter 93A class action).

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

## **G. PUBLIC POLICY CONSIDERATIONS**

“Class action plaintiffs’ attorneys provide an invaluable service by aggregating the seemingly insignificant harms endured by a large multitude into a distinct sum where the collective injury can then become apparent” *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 463 (D.P.R. 2011). Here, given the risk and expense in pursuing class members’ Chapter 93A claims, “it would likely not be economical for an individual Class Member to pursue such litigation on their own.” *Id.*

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

which “encompasses claims where a plaintiff’s damages are de minimis” *Ciardi v. F. Hoffmann-La Roche, Ltd.*, 436 Mass. 53, 60 n.14 (2002); *see also* *Murphy v. Charlestown Sav. Bank*, 380 Mass. 738, 743, 405 N.E.2d 954, 957 (1980) (“G.L. c. 93A deserves broad construction.”). And the regulation at issue here – the Massachusetts Debt Collection Regulations – was enacted to “prevent[ ] creditors from harassing, oppressing, or abusing debtors.” *Armata v. Target Corp.*, 480 Mass. 14, 15, 99 N.E.3d 788, 790 (2018); *see also* *Watkins v. Glenn Assocs., Inc.*, 2016 WL 3224784, at \*2 (Mass. Super. June 10, 2016) (“Taken as a whole, the Guidance and the state regulation evidence a clear intent by the Attorney General to limit the pressure that debt collectors may exert upon a person who simply owes a debt, to prevent a creditor from intruding upon a debtor’s personal life, and to protect them from harassment, oppression, and abuse.”). Thus, this class action serves important public policy of ensuring that consumers’ rights be protected even where individual damages are minimal. So too, the requested fee here serves an important public policy of ensuring that consumer claims under the regulation and Chapter 93A can be pursued by experienced and competent counsel.

#### **H. A LODESTAR CROSS-CHECK SUPPORTS THE REQUESTED AWARD**

The requested attorneys’ fees and expenses are reasonable under the lodestar method. “The First Circuit does not require a court to cross check the percentage of fund against the lodestar in its determination of the reasonableness of the requested fee.” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 81 (D. Mass. 2005). Nonetheless, courts often consider the lodestar when determining the reasonableness of a fee calculated as a percentage of the fund. *See id.* In addition, multipliers of lodestar amounts is “an accepted means of enhancing a lodestar appropriately to reflect, for example, the scale of the results achieved by prevailing counsel or the risks counsel took in pursuing contingent fees.” *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 165 (D. Mass. 2015) (collecting cases).

Class Counsel's lodestar in this action is \$154,175 which is based on 298 attorney and professional staff hours. (Lemberg Decl., ¶ 13):

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Sergei Lemberg, Esq.	\$650	94	\$61,100
Stephen Taylor, Esq.	\$600	78	\$46,800
Josh Markovits, Esq.	\$400	111	\$44,400
Paralegal Time	\$125	15	\$1,875
		298	\$154,175

These rates are fully supported by the skill and experience of Plaintiff's counsel and well within the market rate for their services. (Lemberg Decl. ¶¶ 14-16; Taylor Decl. ¶¶ 2-7). The lodestar does not include additional work associated with final approval and Class Counsel's oversight of the settlement administration process. (Lemberg Decl. ¶ 12).

Based on the lodestar to date, the lodestar crosscheck results in a multiplier of 1.25. This multiplier is well within the range of what other Courts have approved. *See Roberts*, 2016 WL 8677312, at \*13 (court approved a multiplier of 1.96); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at \*2 (D. Mass. Aug. 3, 2009) (court approved lodestar multiplier of about 8.3); *In re AMICAS, Inc. S'holder Litig.*, 2010 WL 5557444, at \*4 (Mass. Super. Dec. 6, 2010), *judgment entered sub nom. In re Amicas, Inc. S'holder Litig.* (Mass. Super. 2010) (court approved lodestar multiplier of 5).

Accordingly, the lodestar cross-check demonstrates that a fee and cost award of one-third of the common fund here is fair and reasonable and reasonable compensation to Class Counsel for their efforts on achieving an excellent result for the Settlement Class.

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

The reasonableness of the fee award to Class Counsel is further demonstrated by the fact that it is inclusive of both attorneys' fees and expenses. Here, Class Counsel's expenses total \$7,128.87.

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

**V. THE COURT SHOULD APPROVE INCENTIVE AWARDS TO THE PLAINTIFFS FOR THEIR EFFORTS ON BEHALF OF THE CLASS**

Class Counsel requests that the Court approve the payment of incentive awards to the two Plaintiffs in the amount of \$6,000 each.

An incentive award for bringing and litigating this case on behalf of the class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *Manual for Complex Litigation*, § 21.62 n.971 (4th ed. 2004); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005). Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 468 (D.P.R. 2011); *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at \*7 (D. Mass. Aug. 17, 2005).

Both Plaintiffs have been engaged with their cases from the outset, they have been in regularly contact with their counsel and aided their investigation. (Lemberg Decl. ¶ 10). But for their efforts, and their desire and willingness to stick with this case and get relief for others, the Settlement Class here would have received nothing. An incentive award of \$6,000 to each is reasonable and fair and within the range of awards approved in other class actions. *See, e.g., Carlson*, 2020 WL 1332839, at \*3 (approving an incentive award of \$7,500 to named plaintiff); *Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at \*3 (D. Mass. Nov. 3, 2016) (approving award of \$20,000 to each

named plaintiff); *Lees v. Anthem Ins. Companies Inc.*, 2015 WL 3645208, at \*4 (E.D. Mo. June 10, 2015) (approving \$10,000.00 incentive award and collecting cases).

### CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court grant this motion and (1) award attorneys' fees and expenses to Class Counsel in the amount of \$192,000.00 and (2) award \$6,000 as an incentive award to each of the Plaintiffs for their role in representing the class.

Dated: October 11, 2021

Respectfully submitted,

By:           /s/ Sergei Lemberg            
Sergei Lemberg (BBO# 650671)  
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 October 11, 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**

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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.	:	

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**DECLARATION OF SERGEI LEMBERG IN SUPPORT OF MOTION FOR  
(1) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND  
(2) INCENTIVE AWARDS TO THE NAMED PLAINTIFFS**

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

1. I am the principal of Lemberg Law, LLC. I am a consumer rights attorney experienced in prosecuting actions under various Federal and State consumer protection statutes. I am a 1997 graduate of Brandeis University with a degree in Economics and a Minor in Accounting, a 2001 graduate of University of Pennsylvania School of Law and now the principal of Lemberg Law L.L.C.
2. Prior to starting my own law firm, I held positions in the New York offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and practiced corporate bankruptcy and reorganization law at Andrews Kurth LLP and Day Pitney LLP. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.
3. I am a member in good standing of the bars of Massachusetts, Connecticut, Georgia, New York, Pennsylvania and Florida. I am also admitted to practice before the First, Second, Third, Fifth, Seventh, an Ninth Circuit Courts of Appeal. I am admitted to practice before the following



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

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

5. I and my firm have been certified as class counsel, in both contested proceedings and in settlement. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at \*5 (D.N.M. June 5, 2018) (certification in Telephone Consumer Protection Act ("TCPA") action); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017

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

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

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

8. I am also the former Chair of the Consumer Law Section of the Connecticut Bar Association. I held that position from 2014 to 2015. I have been a guest speaker at the Professional Association for Customer Engagement conference in 2014 and the National Debt Collection Forum

in 2016. In both instances I spoke about best practices that should be or are adopted in the debt collection profession from the perspective of a consumer advocate.

### **OVERVIEW OF EFFORTS ON BEHALF OF PLAINTIFFS AND THE CLASS**

9. We have litigated the claims of Plaintiffs Cheryl Pantano (“Pantano”), Thomas Cabral (“Cabral”) and the settlement class since January of 2019.

10. Both Pantano and Cabral have been exemplary Class Representatives. They have both been engaged with this case since first contacting my office, they have provided us information, provided documents, discussed settlement terms and ultimately approved the settlement agreement submitted to the Court.

11. This matter required Class Counsel to spend substantial time on this litigation that could have been spent on other matters.

- (1) We investigated Cabral’s claims against PHH Mortgage Corporation (“PHH”), Pantano’s claims against Ocwen Loan Servicing, LLC (“Ocwen”), and their respective collection activities in the Commonwealth.
- (2) At the outset, these were treated as two separate lawsuits against two separate entities. That the relationship between PHH and Ocwen made litigation in one proceeding possible did not become known until subsequent proceedings and disclosures.
- (3) Thus, we drafted and sent demand letters pursuant to M.G.L. Chapter 93A, Section 9, for individual and class relief, to Ocwen and PHH on January 16, 2019, and February 15, 2019, respectively. After conferrals, both entities responded to the demand letters, however, the responses did not resolve the claims.

#### **The Cabral Action**

- (4) We drafted and, on April 23, 2019, filed Cabral’s class action complaint in Bristol Superior Court alleging PHH had a practice and policy of placing more than two calls

in a seven-day period to Cabral and a class in violation of Massachusetts law. PHH removed the matter which was docketed as *Cabral v. PHH Mortgage Corp.*, No. 1:19-cv-11207-WGY (D. Mass., May 30, 2019).

- (5) We moved to remand the matter to Bristol Superior Court for lack of subject matter jurisdiction under 28 U.S.C. § 1447 and such motion was granted.
- (6) We opposed PHH's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).
- (7) We opposed PHH's second motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), which was filed after PHH removed a second time.

*The Pantano Action*

- (8) We drafted and, on April 8, 2019, filed Pantano's class action complaint in Essex Superior Court alleging Ocwen had a practice and policy of placing more than two calls in a seven-day period to Cabral and a class in violation of Massachusetts law. Ocwen removed the matter to federal court which was docketed as *Pantano v. Ocwen Loan Servicing, LLC*, No. 1:19-cv-11178-DJC (D. Mass., May 24, 2019).
- (9) We moved to remand the matter to Essex Superior Court for lack of subject matter jurisdiction under 28 U.S.C. § 1447. This motion was granted.
- (10) We opposed Ocwen's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).
- (11) We opposed Ocwen's second motion to dismiss filed in the Superior Court following remand.
- (12) We engaged in numerous conferrals with counsel for both Defendants throughout the litigations.

- (13) On September 29, 2020, we attended an all-day mediation before the Honorable Stephen E. Neel (Ret.) to resolve both actions. We provided Judge Neel with detailed mediation briefs addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, damages, and settlement. The mediation was adversarial and conducted at arm's-length through Judge Neel. 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.
- (14) We drafted the Stipulation of Dismissal and Tolling Agreement in the Pantano action and the First Amended Complaint in this action which consolidated both Plaintiffs' claims.
- (15) We continued settlement negotiations with the Defendants, including additional conferrals with Judge Neel to resolve the Parties' impasse, and negotiated and drafted the settlement agreement.
- (16) We prepared the Motion for Preliminary Approval of the Class Action Settlement Agreement.
- (17) We regularly communicate with the Settlement Administrator to ensure a smooth notice process following the Court's preliminary approval order.
- (18) We reviewed the language and content of the settlement website.

12. Additionally, I anticipate a significant amount of work and hours will be expended after the filing of this fee application related to final approval and oversight of the administrator. We will also assist class members with individual inquiries and will oversee the fund. Judging by previous experiences, these responsibilities will require the expenditure of significant time and efforts for at least the next year or until the settlement fund is expended and closed.

**CLASS COUNSEL’S LODESTAR**

13. Our lodestar in this matter is \$154,175 which is based on 298 hours expended by three firm attorneys and paralegal staff. The following attorneys contributed significant time towards this case and seek compensation at the following rates.

<b><u>Professional</u></b>	<b><u>Rate</u></b>	<b><u>Hours</u></b>	<b><u>Lodestar</u></b>
Sergei Lemberg, Esq.	\$650	94	\$61,100
Stephen Taylor, Esq.	\$600	78	\$46,800
Josh Markovits, Esq.	\$400	111	\$44,400
Paralegal Time	\$125	15	\$1,875
		Total: 298	Total: \$154,175

14. I seek compensation for my time is \$650 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation. In addition, Mr. Taylor’s rate is \$600 per hour which is supported by his skill and experience as set forth in his declaration.

15. Further, we are seeking compensation for another firm attorney in addition to myself and Mr. Taylor, Mr. Josh Markovits at \$400 per hour. Mr. Markovits is an associate at Lemberg Law with a focus on consumer protection class actions. Mr. Markovits received his J.D., *cum laude*, from Benjamin N. Cardozo School of Law in 2015 and is admitted to practice in New York. Mr. Markovits is also admitted to practice before the Southern, Eastern and Western Districts of New York, the Northern District of Illinois and the District of Colorado. During law school, Mr. Markovits served as a legal intern in the chambers of both a federal court and a New York Supreme Court judge. He also served as a legal intern in the U.S. Commodity Futures Trading Commission’s Division of Enforcement. He has been approved as class counsel in consumer protection class actions. *See Virgne v. C.R. England, Inc.*, Case No. 1:19-cv-02011-SEB-MDJ (S.D. Ind. Jan. 13, 2021) (ECF No. 124) (final approval of class settlement in TCPA action); *McRobie v. Credit Protection Association*; Case No.: 5:18-cv-00566-JFL (E.D. Pa. July 20, 2021) (ECF No. 101) (final approval of FDCPA action).

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

### **EXPENSES**

17. Lemberg Law has incurred costs, including court costs and deposition expenses in connection with these proceedings.

18. As reflected in the expense reports attached hereto as Exhibit A & B for the Cabral and Pantano actions, the total costs incurred to date are \$7,128.87, in filing fees, process server fees, pro hac vice fees, travel costs and mediation costs.

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

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

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

Dated: October 11, 2021

/s/ Sergei Lemberg  
Sergei Lemberg



# **Exhibit A**

LEMBERG LAW LLC  
Cabral v. PHH Mortgage Corporation

<b>Date</b>	<b>Memo</b>	<b>Debit</b>	<b>Credit</b>	<b>Balance</b>
02/04/2021	Pro hac vice fee	100.00		100.00
10/16/2019	Travel expense	310.00		410.00
10/08/2019	Travel expense	34.78		444.78
10/08/2019	Travel expense	29.37		474.15
05/01/2019	Process server fee	55.00		529.15
04/17/2019	Court filing fee	280.00		809.15
		<b>809.15</b>	<b>0.00</b>	<b>809.15</b>

# **Exhibit B**

LEMBERG LAW LLC  
Pantano v. Ocwen Loan Servicing LLC

				Accrual Basis
Date	Memo	Debit	Credit	Balance
06/30/2021	JAMS mediation fee	800.80		800.80
04/30/2021	JAMS mediation fee	723.80		1,524.60
03/17/2021	JAMS mediation fee	770.00		2,294.60
11/19/2020	Refund from JAMS		4,000.00	-1,705.40
10/01/2020	JAMS mediation fee	3,345.12		1,639.72
10/01/2020	JAMS mediation fee	4,000.00		5,639.72
10/08/2019	Travel expense	7.50		5,647.22
07/26/2019	Travel expense	237.50		5,884.72
07/16/2019	Pro hac vice fee	100.00		5,984.72
04/25/2019	Process server fee	55.00		6,039.72
04/03/2019	Court filing fee	280.00		6,319.72
		<b>10,319.72</b>	<b>4,000.00</b>	<b>6,319.72</b>

**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.	:	

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**DECLARATION OF STEPHEN TAYLOR IN SUPPORT OF MOTION FOR  
(1) AN AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
(2) INCENTIVE AWARDS TO THE NAMED PLAINTIFFS**

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. I am a 2003 graduate of Boston College and a 2007 graduate of Tulane University School of Law. I am a former Judicial Clerk and worked for the Connecticut firm the Law Office of Norman Pattis before joining Lemberg Law in 2009.

3. In addition to being licensed to practice law in the states of Connecticut and New York, I am admitted to the Federal District Courts for the Southern, Eastern, Western and Northern Districts

of New York, the Southern, Eastern, and Northern Districts of Texas, the District of Colorado, the Central and Northern Districts of Illinois, the Eastern District of Michigan and the District of Connecticut. I am a member in good standing in both Connecticut and New York.

4. I have extensive experience in consumer rights litigation including matters brought under the Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”) the Magnuson Moss Warranty Act, the Truth in Lending Act, and a variety of state consumer protection statutes including Chapter 93A.

5. I have extensive experience in class action litigation and have been certified as class counsel in numerous cases. *See, e.g., Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (FDCPA class action settlement); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at \*1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at \*5 (D.N.M. June 5, 2018) (certifying TCPA class action and appointing undersigned as class counsel); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at \*1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Vinas v. Credit Bureau of Napa County Inc.*, Dkt. No. 112, 14-cv-3270 (D. Md. February 22, 2017) (order granting final approval of FDCPA class action settlement); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (order granting final approval of FDCPA class action settlement); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013)

(certifying FDCPA class action); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

6. I have presented at the New England Collector's Association Annual Meeting regarding consumer rights with a focus on collection procedures and practices from the perspective of the Plaintiff's bar.

7. My rate in this matter is \$600 per hour which is a reasonable rate given my experience and expertise in consumer rights class action litigation.

8. Following preliminary approval of the Settlement Agreement, my firm has overseen the Settlement Administrator, KCC, as the notice plan is implemented. Pursuant to the Preliminary Approval Order, on September 10, 2021, Notice detailing the terms of the settlement was mailed to the Settlement Class and the Settlement Website, [www.cabralsettlement.com](http://www.cabralsettlement.com), was established. The Settlement Administrator reports, as of September 28, 2021, that it has received no opt-outs to the class settlement.

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

Dated: October 11, 2021

/s/ Stephen Taylor  
Stephen Taylor