

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Ely Gemborys, *on behalf of himself and all
others similarly situated,*

Plaintiff,

v.

Cenlar Agency, Inc.,

Defendant.

Civil Action No.: 4:20-cv-40006-TSH

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff Ely Gemborys (“Plaintiff”), by and through undersigned counsel, hereby moves for entry of an Order granting final approval of the Parties’ Class Action Settlement Agreement.

In support, Plaintiff submits the accompanying Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and the declaration of Bernella Osterlund, Director with KCC Class Action Services, LLC, the class action administrator.

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

Dated: June 9, 2021

Respectfully Submitted,

/s/ Stephen Taylor

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 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/ Stephen Taylor
Stephen Taylor

Exhibit A

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**ELY GEMBORYS, *on behalf of himself
and all others similarly situated,***

Plaintiff,

V.

CENLAR AGENCY, INC.,

Defendant.

CIVIL ACTION NO. 4:20-cv-40006

[PROPOSED] FINAL APPROVAL ORDER

WHEREAS, on January 20, 2021, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Class Action Settlement Agreement between Plaintiff Ely Gemborys and Defendant Cenlar Agency, Inc., and directing that notice be given to the Settlement Class (Doc. No. 45);

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, a Final Approval Hearing was held on June 23, 2021. Prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as prescribed in the Preliminary Approval Order. Class Members were therefore notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of

Attorney's Fees and Costs to Class Counsel, and the payment of an Incentive Award.

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

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.
2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.
3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Class Members, within the authority of the parties and the result of extensive arm's-length negotiations. In reaching this conclusion, the Court considered the nine *Grinnell* factors, including: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, n.8 (D. Mass. Sept. 30, 2016) ("[courts in this Circuit frequently employ the Second Circuit's *Grinnell* factors or some version of it.>").

4. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

5. There have been no objections to approval of the Settlement Agreement or requests by Settlement Class Members for exclusion.

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

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

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

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Rules 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement.

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

9. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representative for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representative shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the

status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

10. The Court finds that the plan for Notice, as set forth in Article IV, section 3 of the Settlement Agreement with the additional email notice to the Settlement Class, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and of their right to object and to appear at the Final Approval Hearing or to exclude themselves from the Settlement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

11. The Court finds that Cenlar has fully complied with CAFA's notice requirements.

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

13. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

14. Within the time period set forth in Article III, Section 4, of the Settlement Agreement, the cash distributions provided for in the Settlement Agreement shall be paid to the various Settlement Class members submitting Valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

15. Upon the Effective Date, members of the Settlement Class shall, by operation of this Final Approval Order, have fully, finally and forever released, relinquished and discharged the Released Parties from the Released Claims as specified in the Release set forth in Article V, Section 1, of the Settlement Agreement.

16. Plaintiff and each Settlement Class Member are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any

court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiff and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

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

18. The Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or be deemed to be evidence of, an admission by or against Cenlar of any fault, wrongdoing, or liability on the part of Cenlar or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Action. This Order, the Settlement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Settlement, this Order and the Judgment to be entered hereon may be filed in any action by Cenlar or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement's terms shall be forever binding on, and shall

have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

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

Let judgment be entered accordingly.

DATED: _____, 2021

By: _____
Timothy S. Hillman
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Ely Gemborys, *on behalf of himself and all
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL
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INTRODUCTION

Plaintiff Ely Gemborys (“Plaintiff”) respectfully submits this Memorandum in Support of Plaintiff’s Motion for Final Approval of the Parties’ Class Action Settlement.

Pursuant to the Preliminary Approval Order, notice was sent to the Settlement Class detailing the terms of the Settlement Agreement and inviting members to submit claims or object.¹ The response from the class has been very positive. There have been 1,428 claims from Settlement Class Members, no objections and no requests for exclusions. (Osterlund Decl. ¶¶ 8-16). If the settlement is approved with these claims, each claiming member will recover approximately \$292 as their *pro rata* share of the Settlement Fund.²

This is an outstanding result for claims under Mass. Gen. Laws ch. 93A, § 2, and 940 CMR § 7.04(1)(f) (the “Regulation”), and merits final approval because:

- This is an excellent settlement to the Class, providing substantial benefits to the Class, particularly in light of the available damages and the risks of further litigation;
- Not a penny of the \$612,500.00 fund will revert to the Defendant; all funds will go to the claimants, to cover fees or costs, or *cy pres* to the United Way of Massachusetts Bay and Merrimack Valley (the “United Way of Massachusetts”); and
- The settlement was agreed to only after significant discovery and negotiated at arms-length before the Honorable David H. Hennessy.

¹ The notice and claims process is detailed in the declaration of Bernella Osterlund (“Osterlund Decl.”), Director with KCC Class Action Services, LLC (“KCC”), the class action administrator.

² The response represents a claims rate of approximately 12% (1,428 claims/11,693 class members). The \$292 per claimant recover figure is calculated as follows:

Gross fund:	\$612,500.00
Awards & Admin:	\$194,455.00 (\$140,875.00 (fees and expenses) + \$10,000 (incentive award) + \$43,580 (estimate of administrative costs))
Net fund:	\$418,045.00 (Gross fund minus Awards & Admin costs)
Claimant Recovery:	\$292.74 (Net fund/1,428 claims)

As set forth herein, Plaintiff respectfully requests the Court (1) approve the Class Action Settlement Agreement (the “Settlement Agreement”) as fair and reasonable; and (2) enter the final approval order in the form submitted as Exhibit A to the Motion for Final Approval of the Parties’ Class Action Settlement Agreement.

BACKGROUND

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

M.G.L. ch. 93A, the Massachusetts Consumer Protection Law, prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” M.G.L. c. 93A, § 2(a).

In 2012, the Attorney General of Massachusetts invoked her power to implement rules and regulations interpreting M.G.L. c. 93A, § 2(a) to provide ““It shall constitute an unfair or deceptive act or practice for a creditor to contact a debtor . . . [by] [i]nitiating a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number”” *Armata v. Target Corp.*, 480 Mass. 14, 17-18 (2018) (quoting 940 C.M.R. 7.04(1)(f)) (emphasis in original).

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

M.G.L. ch. 93A, § 9(1) provides that any person “who has been injured by another person’s use or employment of any method, act or practice declared to be unlawful by section two or any rule or regulation issued thereunder . . . may bring an action in the superior court . . . whether by way of original complaint, counterclaim, cross-claim or third party action, for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.”

Section 9(2) provides that such persons may bring claims as a class action. M.G.L. ch. 93A, § 9(2).

Section 9(3) provides that “if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two” M.G.L. ch. 93A, § 9(3).

B. This Litigation

On November 21, 2019, Plaintiff filed his class action complaint in Superior Court for the County of Worcester. (Doc. No. 1-2 (the Complaint)). Plaintiff alleged that, throughout 2017, Defendant Cenlar Agency, Inc. (“Cenlar Agency”), a mortgage loan servicer, called Plaintiff’s cellular telephone approximately four times each seven-day period in an attempt to collect a debt. *Id.* ¶ 15. Plaintiff alleged that he had advised Cenlar Agency that he was disabled, could not afford to pay the Debt and requested that Cenlar Agency cease calling him. *Id.* ¶ 16. Plaintiff asserted claims under Chapter 93A and 940 CMR § 7.04(1)(f) on his own behalf and on behalf of a class of similarly situated consumers. *Id.* ¶¶ 19-20 & 35-40.

On January 10, 2020, Cenlar Agency removed the case to the United States District Court for the District of Massachusetts. (Doc. No. 1). On January 24, 2020, Cenlar Agency filed its Answer. (Doc. No. 7). Therein, Cenlar Agency denied Plaintiff’s allegations as to the communications with

the Plaintiff specifically. *Id.* ¶¶ 15 & 16. Cenlar Agency denied that the elements for class certification (numerosity, commonality, typicality, adequacy and superiority) were met. *Id.* ¶¶ 21-34.

On April 20, 2020, Plaintiff served requests for the production of documents seeking, *inter alia*, outbound dial lists, call reports, logs or memoranda of communications reflecting calls placed by Cenlar Agency or another entity on its behalf, to consumers with a Massachusetts address or a Massachusetts area code during the Class Period. (Declaration of Sergei Lemberg in Support of Preliminary Approval (Doc. No. 41-3 and hereinafter “Lemberg Decl.”) ¶ 13). After responding to discovery and through meet and conferrals, Cenlar Agency advised that its related entity, Cenlar FSB (collectively, Cenlar Agency Inc. and Cenlar FSB are referred to herein as “Cenlar”), placed the telephone calls at issue. *Id.* ¶ 14. On June 17, 2020, Cenlar produced over 135,000 lines of data detailing the date, time and outcome of calls Cenlar placed to Massachusetts borrowers during the Class Period. *Id.* ¶ 15. Plaintiff consulted with a data specialist to examine the data and calculate the number of putative class members in the dataset and the number of separate instances during the Class Period where Cenlar placed more than two calls to a given debtor within a seven-day period, on a rolling basis. *Id.* ¶ 16. Through this process and subsequent discovery, the Parties identified 11,699 class members who constitute the Settlement Class Members in the Class List. *Settlement Agreement* Art II, ¶ 5.

On July 10, 2020, the Parties attended a settlement conference before the Honorable David H. Hennessy following referral to the ADR program by this Court. (Doc. No. 31). The Parties provided Judge Hennessy with detailed mediation statements addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, damages, and settlement. (Lemberg Decl. ¶ 17; Declaration of Stephen Taylor in Support of Preliminary Approval (Doc. No. 41-2 and hereinafter “Taylor Decl.”) ¶ 6). The mediation was adversarial and conducted at arm’s-

length. *Id.* The session resulted in an agreed set of terms to govern a class-wide settlement subject to additional discovery on the class size and Cenlar's class data. (Taylor Decl. ¶ 6).

Over the next several months, the Parties engaged in drafting and revising a settlement agreement. (Taylor Decl. ¶ 8). Further, Plaintiff deposed a Fed. R. Civ. P. 30(b)(6) designee concerning the class size, Cenlar's class data and its current practices of calling Massachusetts consumers concerning debt in excess of twice in a seven-day period. *Id.* ¶ 7.

On January 20, 2021, the Court granted preliminary approval to the Parties' Class Action Settlement Agreement. (Doc. No. 45).

C. Notice Process

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

On February 2, 2021, counsel for Cenlar sent KCC a list containing names, mailing addresses, telephone numbers, and e-mail addresses, to the extent available, belonging to 11,698 records identified as the Class list. (Osterlund Decl. ¶ 2). KCC updated the contact information for records using data from the National Change of Address (NCOA) database. *Id.*

On February 19, 2021, KCC mailed the Notice to 11,693 class members who had a valid mailing address. *Id.* ¶ 3. A copy of the mailed Notice is attached as Exhibit A to the Osterlund Declaration. 620 Notices were returned by the USPS with an undeliverable address. *Id.* ¶ 4. Of those, 215 were re-mailed to new addresses identified through KCC's reverse look up search. *Id.*

In addition, on February 19, 2021, KCC caused the Email Notice to be emailed to the 11,351 class members who had email addresses available from the Class List. *Id.* ¶ 5. A copy of the emailed Notice is attached as Exhibit B to the Osterlund Declaration.

On February 19, 2021, KCC established the Settlement Website (www.gemborysclass.com), which provides Class Members with information, the Long Form Notice, case documents, and permits members to file claims online. (Osterlund Decl. ¶ 6).

On February 19, 2021, KCC also established a case-specific toll-free telephone number for Class Members to call to obtain information or request a notice packet. *Id.* ¶ 7.

D. Objections, Exclusions, Claims

KCC has received no objections or exclusion requests. *Id.* ¶¶ 15-16.

In total, KCC received 1,458 claim forms. *Id.* ¶ 8. The Parties request that the Court accept 1,428 of these claims as valid. As set forth in the Osterlund Declaration:

- 1,335 claims were timely and fully completed (¶ 9);
- 24 claims were postmarked after the filing deadline. Of these, 17 were otherwise complete. The remaining 7 did not contain either the claim id number or the telephone number called by Cenlar. However, KCC matched these 7 by name and address against the class list and confirmed they were submitted by Settlement Class Members (¶ 10);
- 58 claims were postmarked on or before the filing deadline but did not contain either the claim id number or the telephone number called by Cenlar. However, KCC matched these 58 by name and address against the class list and confirmed they were submitted by Settlement Class Members (¶ 11); and
- 11 claims were complete but unsigned, however, as above, KCC matched these unsigned claims to actual Settlement Class Members on the class list (¶ 12).³

The Parties have conferred and request that the Court accept all these 1,428 claims as valid. Regarding the unsigned claims and claims missing some information, the administrator advises they have been matched to actual Settlement Class Members through name, address and/or internal claim id. Therefore they should be approved despite the lack of some information in the claim form or the

³The remaining 30 claims were either duplicative of other claims or were invalid as they did not come from persons on the class list and did not otherwise provide a valid phone number called or a claim id. (Osterlund Decl. ¶¶ 13-14).

lack of signature. Regarding the untimely claims, they are low in number and Plaintiff respectfully requests that the Court excuse the untimeliness and permit these members to recover.

E. Notice Pursuant to the Class Action Fairness Act

On June 9, 2021, and in accordance with the Preliminary Approval Order, Cenlar filed with the Court a Notice of Compliance with 28 U.S.C. § 1715, setting forth Cenlar’s compliance with the provisions of the Class Action Fairness Act. (Doc. No. 49).

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

TERMS OF THE SETTLEMENT

The Settlement Class preliminarily approved is:

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

(Doc. No. 45 ¶ 4).

Under the terms of the Settlement Agreement, each Class Member can claim an equal share of a \$612,500.00, non-reversionary, Settlement Fund. *See Settlement Agreement*, Art III ¶ 1.a. Settlement Class Members who timely submit a valid claim form will receive an equal pro-rata distribution from the Settlement Fund, after Attorneys’ Fees and Costs, any Incentive Award to the Named Plaintiff, and Settlement Administration Costs are deducted from the Settlement Fund and the Settlement Administrator reviews all Claim Forms to determine a final number of claimants. *Id.* ¶ 1.d. If money remains in the Settlement Fund from un-cashed benefit checks (checks sent to claiming Settlement Class members which the members do not cash or deposit), the Settlement Administrator shall, if administratively feasible, make a second distribution of the Settlement Fund to those who did claim their checks. *Id.* ¶ 1.f. If the cost of such distribution is not feasible, the remaining amounts in

the fund will go to a *cy pres* recipient nominated by the Parties and approved by the Court. *Id.* The Parties nominate the United Way of Massachusetts as an appropriate *cy pres* recipient.

ARGUMENT

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

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

Public policy favors the settlement of class actions. *See Hill v. State St. Corp.*, No. 09-12146, 2015 WL 127728, at *6 (D. Mass. Jan. 8, 2015) (determination of whether settlement is fair, reasonable and adequate should be conducted “within the context of the public policy favoring settlement”); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007) (“[P]ublic policy generally favors settlement-particularly in class actions . . .”). While public policy “encourages settlements, the burden remains on the proponents to show that the settlement is reasonable.” *Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009) (internal citations omitted). The final approval of any proposed class settlement ultimately requires the Court to balance “the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.” *Id.* at 44.

On final approval, courts in the First Circuit often apply the so-called *Grinnell* factors set forth by the Second Circuit in *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). See *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015); *New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F.Supp.2d 277, 281 (D. Mass. 2009); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 93-94 (D. Mass. 2005). These factors include: “(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.” *Grinnell*, 495 F.2d at 463.

II. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

In connection with preliminary approval, the Court conditionally certified the Settlement Class. (Doc. No. 45 ¶¶ 4-5). The Court made preliminary findings that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) were met. *Id.* The requirements of class certification were addressed in Plaintiff’s memorandum in support of preliminary approval. (Doc. No. 42 at 21-26). No class member or entity has objected to the preliminary certification; Plaintiff restates his arguments in support of certification and the Court should enter the Proposed Final Approval Order certifying the Settlement Class. See Proposed Final Approval Order ¶ 7.

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

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

This factor weighs in favor of approval. This case involves Cenlar's, a national loan servicing company, allegedly unlawful collection practices. The claims and defenses, and the certification question, are complex, expensive and time-consuming to resolve.

Specifically, this case involves M.G.L. ch. 93A, the Massachusetts Consumer Protection Law, which prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." M.G.L. c. 93A, § 2(a). Deceptive acts or practices include conduct in contravention of the Massachusetts Debt Collection Regulations. *Armata v. Target Corp.*, 480 Mass. 14, 17-18 (2018).

Class Counsel's investigation and discovery showed Cenlar was attempting to contact non-debtors like the Plaintiff and others and at times called more than the Regulation's two-call per week limitation. Moreover, Class Counsel believes that the evidence supported certification of a class under Chapter 93A and Rule 23: the size of the class is in the thousands; there are questions of law and fact common to all members of the class; Plaintiff is typical of the class as Cenlar placed more than two calls in a seven day period to him; Plaintiff and the class were damaged in the same way based on uniform conduct; and Plaintiff and his counsel were adequate representatives.

However, Cenlar maintained that all of Plaintiff's and class claims were invalid. Amongst other arguments, Cenlar disputed whether Plaintiff's claims of excessive calling occurred. Cenlar disputed that the class as pled was capable of being certified. Cenlar asserted that determining whether a call to a class member was for the purpose of collections, and therefore within the scope of the Regulation and c. 93A, could not be determined on a class-wide basis. Plaintiff vehemently disagreed and disagrees with Cenlar's arguments.

Because of the settlement, these disputes need not be resolved. However, the complexity and breadth of the above issues, and the time and expense the litigation and appeals would expend, supports approval of the settlement.

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

The reaction to the settlement has been overwhelmingly positive. There are no objections or exclusions and 1,428 Settlement Class Members submitted claim forms equaling a participation rate of approximately 12%. *Forcellati v. Hyland's, Inc.*, 2014 WL 1410264, *6 (C.D. Cal. Apr. 9, 2014) (“[T]he prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3-5 percent.”); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005) (reaction to settlement was positive with 5,489 claims (out of class in the millions), and 10 objections); *In re Lupron Mktg.*, 228 F.R.D. at 96 (reaction to settlement was positive with 10,614 consumer claims (out of class in the tens or hundreds of thousands) and 10 objectors).

The high participation and lack of objections or exclusions demonstrates that the class reacted favorable to the settlement.

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

The stage of proceedings and the amount of discovery completed favors approval.

Before initiating this action, Class Counsel investigated the facts and law relating to Plaintiff's claims. Following Cenlar's Answer, the Parties engaged in several meet and confers regarding the claims in the case, Cenlar's defenses, and the class size. Written discovery was taken regarding outbound dial lists, call reports, logs or memoranda of communications reflecting calls placed by Cenlar or another entity on its behalf, to consumers with a Massachusetts address or a Massachusetts area code during the Class Period. Cenlar produced over 135,000 lines of data detailing the date, time and outcome of calls Cenlar placed to Massachusetts borrowers during the Class Period. Plaintiff

consulted with a data specialist to examine the data and calculate the number of putative class members.

On July 10, 2020, the Parties attended a settlement conference before the Honorable David H. Hennessy following referral to the ADR program by this Court. The Parties provided Judge Hennessy with detailed mediation statements. The session resulted in an agreed set of terms to govern a class-wide settlement subject to additional discovery on the class size and Cenlar's class data. Thereafter, Plaintiff deposed a Fed. R. Civ. P. 30(b)(6) designee concerning the class size, Cenlar's class data and its current practices of calling Massachusetts consumers concerning debt more than twice in a seven-day period.

While the case settled before summary judgment or trial, settlement was not premature. Thus, the stage of proceedings and amount of discovery both support approval of the settlement.

D. The Risks of Establishing Liability

"[A] significant element of risk adheres to any litigation taken to binary adjudication." *Lupron*, 228 F.R.D. at 97. Although Plaintiff believes his arguments in support of liability to be strong, Defendant disputed Plaintiff's claims and believed it would prevail on summary judgment and on a motion for class certification. Further, Cenlar is represented by very able counsel, and can and has put forth a vigorous defense. There is, therefore, great risk that the issues on liability and certification will not go in Plaintiff's favor in this Court or on any appeal. Thus, the risks of establishing liability favor approval of the settlement.

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

Cenlar's ability to pay is a neutral factor here. Its ability to pay was not a factor in settlement discussions or in determining the settlement amount.

There is risk in establishing damages. Damages for violations of Chapter 93A are twenty-five dollars or actual damages, whichever is greater, with the prospect of trebling the same for willful or knowing violations. M.G.L. ch. 93A, § 9(3). Whether Plaintiff could recover the \$25 statutory penalty for each separate violation of the Regulation (*i.e.* for each instance Cenlar called more than two times in a seven-day period), as opposed to \$25 dollars per action, is an issue. No court has firmly held either way in the context of the Regulation. However, Courts addressing other claims under Chapter 93A demonstrate the hurdles Plaintiff could face in recovering multiple statutory damages under Chapter 93A. *See Aspinall v. Philip Morris Companies, Inc.*, 2013 WL 7863290, at *8-10 (Mass. Super. Feb. 7, 2013). Further, establishing actual damages on a class or individual basis entails risks both on the merits (how much would this Court or a jury award for actual damages for receipt of too many telephone calls?) and to class certification. To be clear, Plaintiff believes these risks could be dealt with but Cenlar disagrees, the risks are real and weigh in favor of approval.

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

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

If the Court had rejected certification in this case, there would have been no relief for any class member except the named Plaintiff if he prevailed, regardless of the merits of underlying class claims. Because of this risk, this factor also favors approval of the Settlement.

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

The final two factors weigh strongly in favor of approval.

The 1,428 Settlement Class Members who submitted claims will each recover approximately \$292 as their *pro rata* share of the net Settlement Fund. This is an outstanding recovery for violations of Chapter 93A and the Regulation. This amount compares favorably with *Carlson v. Target Enterprise, Inc.*, a class action grounded in the same Debt Collection Regulation, where each claimant received \$260.23. *Carlson v. Target Enterprise, Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020).

Comparison to class action settlements under the Telephone Consumer Protection Act (“TCPA”), the federal statute that prohibits certain robocalls, is also instructive. Compared to Chapter 93A, with its minimum award of \$25 which may be limited to just that amount no matter the number of violations, damages under the TCPA are *at least* \$500 per each and every violation of the that act. 47 U.S.C. § 227(c)(5)(B). However, TCPA class settlements worth far less than the settlement here are frequently approved as fair, reasonable, and adequate. *See, e.g., In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (per claimant recovery of \$34.60 with a participation rate of 7.8%); *In Gehrich v. Chase Bank USA, N.A.*, 2016 WL 806549 (N.D. Ill. Mar. 2, 2016) (per claimant recovery of \$52.50 with participation rate of 1.08%); *Ott v. Mortgage Inv’rs Corp. of Ohio, Inc.*, 2016 WL 54678 (D. Or. Jan. 5, 2016) (per claimant recovery of \$140.86 with participation rate of .08%); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) (\$20.00 to \$40.00 per class member with 3% claims rate). In comparison, the settlement value here

is very high and is more than reasonable in light of the best possible recovery and of all the attendant risks of litigation.

For all the foregoing, Plaintiff respectfully requests that the Court grant final approval to the Settlement Agreement.

IV. THE COURT SHOULD APPROVE THE UNITED WAY OF MASSACHUSETTS AS AN APPROPRIATE *CY PRES* RECIPIENT

Plaintiff with Defendant nominate the United Way of Massachusetts as an appropriate *cy pres* recipient in this action.

A *cy pres* distribution of unclaimed funds may be made to an entity with interests reasonably approximate to the class. *In re Lupron Mktg.*, 677 F.3d at 33 (“As to whether distributions reasonably approximate the interests of the class members, we consider a number of factors, which are not exclusive. These include the purposes of the underlying statutes claimed to have been violated, the nature of the injury to the class members, the characteristics and interests of the class members, the geographical scope of the class, the reasons why the settlement funds have gone unclaimed, and the closeness of the fit between the class and the *cy pres* recipient.”).

The expectation here is that any *cy pres* distribution will be low. The entire net settlement fund will be dispersed to Settlement Class Members in the first instance. To the extent Settlement Checks are not cashed, the Settlement Administrator will make the second distribution. Only where the second distribution is not administratively feasible or if amounts remain in the fund after a second distribution, will the residual of the fund go to the *cy pres* recipient.

The purpose of the Debt Collection Regulation and Chapter 93A is to protect Massachusetts consumers from invasive debt collection calls. The Settlement Class here consists of Massachusetts residents subject to debt collection calls and it can reasonably be assumed that many, if not the

majority of, members may be in some sort of financial difficulty. The United Way of Massachusetts serves citizens of Massachusetts:

United Way is providing leadership to a network of nonprofits who serve families across our region. Together, we are creating solutions that work. We help families in need set reachable goals such as cleaning up their credit so they can rent a home, sending a child to college, or getting a job that will pay a living wage.⁴

It is geographically linked to the class here, it serves persons meeting the characteristics of the class (persons in financial distress), and the reason any funds will go unclaimed is because a member did not cash their check. These factors show a *cy pres* distribution to the United Way of Massachusetts reasonably approximates the interests of the class and should be approved.

CONCLUSION

For all these reasons, Plaintiff respectfully requests that this Court: (1) finally approve the Settlement Agreement as fair, reasonable and adequate; (2) order dispersal of the class settlement fund, (3) enter the final approval order in the form submitted as Exhibit A to the Motion for Final Approval of the Parties' Class Action Settlement Agreement; and (4) approve the United Way of Massachusetts as the *cy pres* recipient in this action.

Dated: June 9, 2021

Respectfully Submitted,

/s/ Stephen Taylor

Sergei Lemberg
Stephen Taylor
Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
Tel: (203) 653-2250
Fax: (203) 653-3424
Counsel for Plaintiff

⁴ <https://unitedwaymassbay.org/our-impact/moving-families-out-of-poverty/>

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 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/ Stephen Taylor
Stephen Taylor

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELY GEMBORYS, *on behalf of himself
and all others similarly situated,*

Plaintiff,

vs.

CENLAR AGENCY, INC.,

Defendant.

Civil Action No. 4:20-cv-40006

CLASS ACTION

**DECLARATION OF BERNELLA
OSTERLUND RE: NOTICE
PROCEDURES**

I, BERNELLA OSTERLUND, declare and state as follows:

1. I am a Director with KCC Class Action Services, LLC (“KCC”), located at 250 McInnis Parkway, San Rafael, CA. Pursuant to the ORDER PRELIMINARILY APPROVING SETTLEMENT; CERTIFYING SETTLEMENT CLASS; APPROVING NOTICE; AND SETTING DATE FOR FINAL APPROVAL HEARING] (the “Preliminary Approval Order”) dated January 20, 2021, the Court appointed KCC as the Settlement Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

CLASS LIST

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Preliminary Approval Order.

1 8859 for potential Class Members to call and obtain information about the Settlement, and request
2 a Notice Packet. The telephone hotline became operational on February 19, 2021, and is accessible
3 24 hours a day, 7 days a week.

4 **CLAIM FORMS**

5
6 8. The deadline for Class Members to file claims in this matter was April 20, 2021.
7 To date, KCC has received 1,458 claim forms.

8 9. 1,335 claims were received by the claim deadline and fully completed.

9 10. 24 claims were postmarked after the filing deadline. Of these, 17 were otherwise
10 complete. The remaining 7 did not contain either the claim id number or the telephone number
11 called by Cenlar. However, KCC matched these 7 by name and address against the class list and
12 confirmed they were submitted by Settlement Class Members.

13
14 11. 58 claims were postmarked before or on the filing deadline but did not contain either
15 the claim id number or the telephone number called by Cenlar. However, KCC matched these 58
16 by name and address against the class list and confirmed they were submitted by Settlement Class
17 Members.

18 12. 11 claims are incomplete as the class members failed to sign their claim forms.
19 However, KCC matched these 11 by name and address against the class list and confirmed they
20 were submitted by Settlement Class Members.

21
22 13. 7 claims are invalid as they came from persons not on the original class list and
23 otherwise did not provide a valid phone number or a claim id.

24 14. 23 claims were duplicative of other claims mentioned above.

25 **REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE**

26 15. The Notice informs Class Members that requests for exclusion from the Class must
27 be postmarked no later than April 20, 2021. As of the date of this declaration, KCC has received 0
28

1 requests for exclusion.

2 **OBJECTIONS TO THE SETTLEMENT**

3 16. The deadline for Class Members to object to the settlement was April 20, 2021. As
4 of the date of this declaration, KCC has received 0 objections to the settlement.

5 **ADMINISTRATION COSTS**

6 17. KCC estimates its total cost of administration to be \$43,580. This amount includes
7 costs to date as well as through the completion of this matter.

8 18. KCC's estimated fees and charges are based on certain information provided to KCC
9 by the parties as well as significant assumptions. Accordingly, the estimate is not intended to limit
10 KCC's actual fees and charges, which may be less or more than estimated due to the scope of actual
11 services or changes to the underlying facts or assumptions.
12

13
14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct.

16 Executed on June 9, 2021.

17 
18 BERNELLA OSTERLUND

EXHIBIT A

THIS CARD PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT
VISIT WWW.GEMBORYSCLASS.COM FOR MORE INFORMATION

In the lawsuit, the Plaintiff alleges that Cenlar violated the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2, et seq. (“MCPA”), and the Massachusetts Debt Collection Regulations, 940 CMR § 7.00, et seq. (“MDCR”), by placing in excess of two calls regarding a debt within a seven-day period to Plaintiff and other Massachusetts consumers. Cenlar denies any wrongdoing, denies that it violated the MCPA, the MDCR or any other law. The Parties have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of further litigation. You can read Plaintiff’s Complaint, the Settlement Agreement, other case documents, and submit a Claim Form at www.GemborysClass.com.

Who’s Included in the Settlement Class? All persons residing in the Commonwealth of Massachusetts to whom, within the Class Period, Cenlar made in excess of two telephone calls regarding a debt within a seven-day period to their residence, cellular telephone, or other provided telephone number as reflected on the Class List. “Class List” means a list produced by Cenlar consisting of the names, last known addresses and telephone numbers of the 11,699 Settlement Class Members.

What Can You Get? Class Members who submit a valid and timely Claim Form are entitled to one share from the Settlement Fund. The final cash payment will depend on the total number of valid and timely claims filed by all Class Members. Each claiming Class Member will be entitled to an equal share of the Settlement Fund (\$612,500), after deductions from the fund for administrative costs, attorneys’ fees and expenses, any incentive award to the Class Representative. The final cash payment will depend on the total number of valid and timely claims filed by all Class Members and the fees, costs and incentive awards approved by the Court. The settlement is explained in detail in the Full Notice and in the Settlement Agreement available at www.GemborysClass.com.

How to Get Money? To qualify for payment, you must submit a valid Claim Form to *Gemborys v. Cenlar Agency* Settlement Administrator, P.O. Box 43501, Providence, RI 02940-3501 or submit an online Claim Form by **April 20, 2021**.

Your Other Rights. If you do not want to be legally bound by the settlement, you must exclude yourself by **April 20, 2021** or you will not be able to sue the Defendant for any claims relating to this case. If you exclude yourself, you cannot get money from this settlement. If you stay in the Settlement Class, you may object to the settlement by **April 20, 2021**. The Full Notice, located at the website listed below, explains how to exclude yourself from, or object to, the settlement. The Court will hold a hearing in this case on **June 23, 2021 at 3:00 p.m.** to consider whether to approve the settlement, Plan of Allocation, a request for an incentive award of up to \$10,000 for the named Plaintiff and a request by the lawyers representing all Class Members for fees of up to 33% of the Settlement Fund and for reimbursement of expenses for litigating the case. You may attend the hearing and ask to be heard by the Court, but you do not have to. The Settlement Website will advise if the hearing is to be held virtually. If you do not take any action, you will be legally bound by the settlement and any orders or Judgments entered in the Action, and will fully, finally, and forever give up any rights to prosecute Released Claims.

For more information or a Claim Form, call 866-753-8859 or visit www.GemborysClass.com.

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



PLACE
STAMP
HERE

GEMBORYS V CENLAR AGENCY
SETTLEMENT ADMINISTRATOR
PO BOX 43501
PROVIDENCE RI 02940-3501



EXHIBIT B

Alex Thomas

From: KCC Class Action Services <donotreply@gemborysclass.com>
Sent: Friday, February 19, 2021 8:00 PM
To: Alex Thomas
Subject: Notice regarding right to benefit from Class Action Settlement

Alex Thomas
Claim ID: KCC01242
PIN: KCC662

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

-----X

ELY GEMBORYS, *on behalf of himself and all others
similarly situated,*

Plaintiff,

V.

CENLAR AGENCY, INC.,

Defendant.

-----X



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

A Settlement Agreement has been reached in a class action lawsuit contending that Cenlar Agency, Inc. (“Cenlar”) violated the law by placing in excess of two telephone calls in a seven-day period to Massachusetts consumers to collect a debt. Cenlar’s records show that you may be a Class Member under the Settlement Agreement reached in the case.

A Settlement Fund of \$612,500 has been established to pay valid claims, attorneys’ fees, costs, any incentive award to the Class Representative (Ely Gemborys) and settlement administration costs. You may be entitled to receive an equal share of the fund. The final cash payment will depend on the total number of valid and timely claims filed by all Class Members. Your legal rights are affected whether you act or don’t act so read this Notice carefully.

Your Options	
Option 1: Submit a Claim Form Deadline: April 20, 2021	Complete and submit a Claim Form and receive an equal share of the Settlement Fund. By completing and submitting a Claim Form you may recover an equal share of the Settlement Fund. This is the only way to claim and receive from the Fund.
Option 2:	Get out of this lawsuit and get no benefits from it.

Ask to be Excluded Deadline: April 20, 2021	You may ask to be excluded from the lawsuit. By excluding yourself, you cannot recover as part of this settlement and you keep a right to sue on your own.
Option 3: Object Deadline: April 20, 2021	Object to the terms of the Settlement Agreement. You may object to the terms of the Settlement Agreement and have your objections heard at the June 23, 2021 Fairness Hearing.

1. What is this lawsuit about?

The lawsuit is called *Ely Gemborys v. Cenlar Agency, Inc.*, 4:20-cv-40006, and it is pending in United States District Court for the District of Massachusetts. In the lawsuit, Ely Gemborys, the Plaintiff, alleges that Cenlar, the Defendant, violated the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2, *et seq.* (“MCPA”), and the Massachusetts Debt Collection Regulations, 940 CMR § 7.00, *et seq.* (“MDCR”), by placing in excess of two calls regarding a debt within a seven-day period to Plaintiff and other Massachusetts consumers.

Cenlar contends that it did not make any calls to Plaintiff as alleged in the Complaint, and that any calls to Plaintiff were in fact made by Cenlar FSB. Cenlar denies any wrongdoing, denies that it violated the MCPA, the MDCR or any other law.

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

You can read Plaintiff’s Complaint, the Settlement Agreement, other case documents, and submit a Claim Form at www.GemborysClass.com.

2. Why is this a class action?

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

3. Why is there a settlement?

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

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

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

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

“Class List” means a list produced by Cenlar consisting of the names, last known addresses and telephone numbers of the 11,699 Settlement Class Members.

5. How do I recover?

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

The final cash payment will depend on the total number of valid and timely claims filed by all Class Members. Each claiming Class Member will be entitled to an equal share of the Settlement Fund, after deductions from the fund for administrative costs, attorneys' fees and expenses, and any incentive award to the Plaintiff.

You can submit a Claim Form online at www.GemborysClass.com.

Or, you can download the Claim Form online and mail it to:

Gemborys v. Cenlar Agency Settlement Administrator
P.O. Box 43501
Providence, RI 02940-3501

All Claim Forms must be mailed or filed online no later than April 20, 2021.

After all valid Claim Forms are counted, and the settlement is given final approval by the Court, the Settlement Administrator will provide each claiming Settlement Class Member their share of the Settlement Fund after the deductions above. Any excess settlement funds or benefit checks not cashed by Settlement Class Members may be provided to a charitable organization approved by the Court.

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

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

7. How much will the Class Representative receive?

The Class Representative will receive his portion of the settlement as a Class Member and an incentive award for having pursued this action. Any incentive payment is subject to Court Approval. The Class Representative will request an incentive award of up to \$10,000.

8. Do I have a lawyer in this case?

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

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

9. I don't want to be part of this case, how do I ask to be excluded?

Answer: Send a Request to Be Excluded.

If you don't want a payment from this settlement, but you want to keep the right to individually sue the Defendant about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself, or "opting out," of the Settlement Class. To request to exclude yourself, you must send a letter by mail with (a) the Requester's full name, address, and the name of the Action and telephone number; (b) the Requester's personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or

person acting under a valid power of attorney, to act on behalf of the Requester; and (c) a statement that the Requester unequivocally desires to be excluded from the Settlement Class, to be excluded from the settlement, not to participate in the settlement, and/or to waive all rights to the benefits of the settlement.

You must mail your exclusion request postmarked no later than April 20, 2021 to *Gemborys v. Cenlar Agency* Settlement Administrator, P.O. Box 43501, Providence, RI 02940-3501.

10. How do I object?

Any Settlement Class Member who has not requested to be excluded from the Settlement Class may object to the settlement and/or any fee or incentive award petition. In order to exercise this right, you must submit your objection to the Court by the Objection Deadline. Your objection must: (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member; (iii) state that the settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and factual bases for the Objection; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) state whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, which may be held virtually due to the Covid-19 pandemic, either *pro se* or through counsel and whether the objecting Settlement Class Member plans to offer testimony at the Fairness Hearing. Any Class Member that fails to object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Action.

Objections must be filed with the Clerk of the Court, and delivered or postmarked no later than April 20, 2021.

The Court's address is: *Clerk of the Court, District of Massachusetts, 595 Main St., Worcester, MA 01608.*

The Fairness Hearing

The Court will hold a Fairness Hearing on **June 23, 2021 at 3:00 p.m.**, in the courtroom of the Honorable Timothy S. Hillman, United States Courthouse, *District of Massachusetts, 595 Main St., Worcester, MA 01608.* The hearing may be held virtually due to the Covid-19 pandemic. Check the main page of the settlement website for information regarding how the hearing will be conducted. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Class, and to rule on applications for compensation for Class Counsel and an incentive award for the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement.

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

FOR MORE INFORMATION

Additional information and documents, including case documents, are available at www.GemborysClass.com, or you can call 866-753-8859.

This message was intended for: alex.thomas@kccllc.com
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