

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
Civil Action No.: 1981CV02424

ZAGLOUL AYAD, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF THE PARTIES' CLASS ACTION SETTLEMENT**

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Plaintiff Zagloul Ayad (“Plaintiff”) respectfully submits this Memorandum of Law in Support of his Motion for Preliminary Approval of the Parties’ Class Action Settlement.

Approval of a class action settlement is, generally, a three-step process: (1) preliminary approval of the settlement; (2) notice to class members to permit objections to the settlement or to submit claims; and (3) a final approval determination as to whether the settlement is “fair, reasonable and adequate.” *See, e.g. Juliard v. Stanley Servs., Inc.*, 2019 WL 2235874, at *1 (Mass. Super. Apr. 9, 2019) (a court may grant final approval of a settlement as fair, reasonable and adequate after a preliminary approval determination and notice to the class).

Plaintiff asks that the Court enter the Preliminary Approval Order attached as Exhibit A to his motion and (i) conditionally certify the Class for purposes of settlement; (ii) appoint Plaintiff as the Class Representative; (iii) appoint Lemberg Law, LLC, as Class Counsel; (iv) preliminarily approve the terms of the Settlement Agreement¹; (v) approve the form, content and method of delivering notice to the Class as set out in the Settlement Agreement; and (vi) schedule the Notice Mailing Deadline and the Final Approval Hearing² in accordance with the deadlines proposed in the Settlement Agreement and set forth on the following page:

¹ The executed Settlement Agreement is attached to this memorandum as Exhibit A. The agreement contains the following exhibits:

Exhibit A – the Direct-Mail Notice

Exhibit B – the Final Order and Judgment

Exhibit C – the Full Notice

Exhibit D – the Preliminary Approval Order

² There is a blank space for the date of the Final Approval Hearing on page 4, ¶ 8(e), in the proposed Preliminary Approval Order attached to Plaintiff’s motion. The Parties request the court select a date no earlier than 120 days after entry of the Preliminary Approval Order which will permit sufficient time for the notice process.

EVENT	SCHEDULED DATE
Notice Mailing Deadline	30 days after entry of Preliminary Approval Order
Last day for Class Members to Object to the Settlement (the “Objection Deadline”)	60 days following the Notice Mailing Deadline
Attorney’s Fees and Costs application due by	30 days before the Objection Deadline
Incentive Award application due by	30 days before the Objection Deadline
Briefs in support of Final Approval and Regarding Distribution of Unclaimed Funds	No later than 15 days before the Fairness Hearing
Fairness Hearing	No earlier than 120 days after entry of the preliminary approval order

This settlement resolves Plaintiff’s class claims against the Defendant JPMorgan Chase Bank, N.A. (“Defendant” or “JPMC”). Plaintiff and the Class assert that Defendant violated G.L. c. 93A, §§ 2, 9, as to Plaintiff and the Class by allegedly engaging in the unfair practices set forth in 940 CMR § 7.04(1)(f) (2012) (the “Collection 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.” 940 CMR § 7.04(1)(f). JPMC denies that it violated any provision of law, but nevertheless has agreed to settle the matter to avoid the costs of continued litigation and any potential liability.

The Settlement Agreement provides for a non-reversionary Settlement Fund of \$1,750,000.00 to pay (1) an equal share to the 45,470 Class Members; (2) Notice and Administration Costs; (3) approved Attorneys’ Fees and Costs; and (4) an approved incentive award for the Plaintiff. This is an excellent settlement, merits preliminary approval, and Plaintiff respectfully requests that the Court grant this motion.

BACKGROUND

I. The Regulation and G.L. c. 93A

G.L. c. 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.” G.L. c. 93A, § 2(a).

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

G.L. c. 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. G.L. c. 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” G.L. c. 93A, § 9(3).

II. This Litigation

On June 24, 2019, Plaintiff, on behalf of himself and a putative class and through his counsel, made a written demand for relief to JPMC, pursuant to M.G.L ch. 93A § 9, owing to JPMC's alleged violations of the Debt Collection Regulation.

On August 16, 2019, Plaintiff filed his Class Action Complaint against Defendant on behalf of himself and a class of similarly situated Massachusetts residents. Plaintiff alleged that he incurred an alleged debt to Defendant arising out of a JPMC personal credit card (Compl. ¶¶ 7-8, 10); Defendant attempted to collect the debt from him, *id.* at ¶ 9; and as part of Defendant's collection efforts to collect the Debt Defendant called Plaintiff's residential telephone in excess of two times in each seven-day period, *id.* at ¶¶ 11-14. On March 6, 2020, JPMC filed its Answer.

On March 25, 2020, Plaintiff served interrogatories and requests for the production of documents seeking, *inter alia*, outbound dial lists, call reports, logs or memoranda of communications reflecting calls placed by JPMC to Plaintiff and consumers with a Massachusetts address or a Massachusetts area code during the Class Period. (Lemberg Decl. ¶ 10). In response, JPMC produced call data detailing the date, time and outcome of each call JPMC placed to a Massachusetts borrower during the Class Period, *i.e.*, the four-year period prior to Plaintiff's filing of the Complaint. (Lemberg Decl. ¶ 11).

On October 22, 2020, the Parties attended a mediation before the Hon. Stephen E. Neel (Ret.). (Lemberg Decl. ¶ 12). The Parties provided Judge Neel with detailed mediation briefs addressing all aspects of this case: claims in chief, defenses, class certification and the defenses or objections thereto, damages, and settlement. *Id.* The mediation was adversarial and conducted at arm's-length through Judge Neel. *Id.* Though productive, the session did not result in settlement that day.

Following the mediation session, discovery resumed and JPMC moved for partial summary judgment regarding the remedies and the calculation of actual versus statutory damages available to

Plaintiff and the putative class for their claims under Chapter 93A. JPMC argued that a plaintiff bringing claims under Section 9 of Chapter 93A and 940 CMR § 7.04(1)(f) who cannot prove “actual damages” in excess of \$25.00 is entitled to only one award of the \$25.00 in statutory minimum damages no matter how many separate and discrete violations of Chapter 93A have occurred. Second, JPMC argued the minimum \$25.00 statutory award may not be subject to trebling upon a showing that Defendant’s violations were willful or knowing.

Plaintiff opposed the motion arguing that, first, Courts consider the facts of the case and the nature of the unfair or deceptive act or practice at issue in determining whether multiple or singular statutory awards are available under Chapter 93A and that there is no sweeping rule as JPMC posited. Second, Plaintiff argued, the language of Chapter 93A itself permits trebling of the minimum statutory award.

While the issue was pending, the Parties continued settlement discussions and ultimately agreed to the principal terms of a class-wide settlement. (Lemberg Decl. ¶ 14). Over the next several months, the Parties engaged in drafting, revising and agreeing to the Settlement Agreement. (Lemberg Decl. ¶ 15; Declaration of Stephen Taylor ¶¶ 7-8). The Parties negotiated and agreed to a comprehensive Settlement Agreement which Plaintiff submits to the Court for preliminary approval.

TERMS OF THE SETTLEMENT

1. Class Definition

The Class is:

The 45,470 current or former JPMC customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020. The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

Settlement Agreement ¶ 2.1. There are 45,470 Class Members. *Id.*

2. Benefits to Class Members

Under the terms of the Settlement Agreement, each of the 45,470 Class Members will be sent an equal share of the \$1,750,000, non-reversionary Settlement Fund, after deductions for administrative costs, any attorney's fee award and incentive award to the Plaintiff. *Settlement Agreement* ¶¶ 3.1 & 5.3. There is no claims process; Class Members do not need to do anything to be sent a settlement check.³ *Id.*

Regarding unclaimed funds, checks that are not cashed by Class Members, the Parties have different proposals they will submit to the Court for approval. *Settlement Agreement* ¶¶ 5.4. Plaintiff believes uncashed checks should, if feasible, be redistributed to class members who cashed their initial check and any remainder thereafter should go to a charity. JPMC believes funds from uncashed checks should be deposited with the Commonwealth of Massachusetts under the laws of escheat. The Parties will brief the issue for the Court to resolve at the Fairness Hearing.

³ Assuming the Court approves a 1/3 Fee Award, a \$10,00 Incentive Award, and, as mentioned herein decides to follow Defendant's approach for resolution of uncashed checks (which will cost approximately \$10,000 more than Plaintiff's approach), the fund will be distributed as follows:

Net Fund = \$1,017,256.66 (\$1,750,000 (Gross Fund) - \$583,333.33 (Fee Award) - \$139,410 (maximum estimated administrative costs) - \$10,000 (Incentive Award))

Check to Class Members = \$22.37 (Net Fund / 45,470 class members).

3. Class Representative and Class Counsel; Attorneys' Fees and Incentive Award

The Settlement Agreement provides that Plaintiff may apply to the Court for an Incentive Award for his efforts on behalf of the settlement class and class counsel may apply for an award of attorneys' fees and costs from the Settlement Fund. *Settlement Agreement* ¶¶ 4.2 & 4.4.

Class Counsel will apply for an Incentive Award of up to \$10,000 for the Class Representative and of up to 1/3 of the Settlement Fund (\$583,333.33) in Class Counsel Fees and Expenses. *Id.* For both, the Court and only the Court shall determine the final amount of the Incentive Award and the Fee Award in this action. *Id.*

Applications for fees and an incentive award shall be filed no later than 30 days prior to the Objection Deadline. *Id.* These applications will also be posted online for members to review.

4. Releases

In exchange for the benefits of the Settlement, Plaintiff has agreed to dismiss this litigation with prejudice as to himself and all Class Members. Plaintiff and all members of the Settlement will release Defendant and the Released Parties from all claims "that arise out of, relate to, or are based on, debt collection calls made by or on behalf of JPMC that did or could surpass any and all frequency limitations of 940 C.M.R. 7.04(1)(f) to the 45,470 Class Members for the period from August 15, 2015, to May 26, 2020." (*Settlement Agreement* ¶ 10.1).

5. Notice

Written notice of the proposed settlement will be provided to the Class via mail and e-mail, sent no later than thirty (30) days after the Court's entry of an order granting preliminary approval of the settlement. *Id.* ¶¶ 2.12 & 7.4(b); *Settlement Agreement* Exhibit A.

The Settlement Administrator will also maintain a (1) Settlement Website with case information and documents and (2) a toll-free number to provide automated information to Class Members. *Id.* ¶¶ 7.4(a & c).

6. Objection Rights

Members of the Class have the right to object to the settlement. *Id.* ¶ 8.1. The rights to object and the methods to do so will be set forth in the Short Form/Postcard Notice and the Long Form Notice. *Settlement Agreement Exhibits A & C.*

7. Proposed Deadlines

The following table sets forth the important deadlines proposed in the Settlement Agreement as structured in the proposed Preliminary Approval Order submitted to the Court:

EVENT	SCHEDULED DATE
Notice Mailing Deadline	30 days after entry of Preliminary Approval Order
Last day for Class Members to Object to the Settlement (the “Objection Deadline”)	60 days following the Notice Mailing Deadline
Attorney’s Fees and Costs application due by	30 days before the Objection Deadline
Incentive Award application due by	30 days before the Objection Deadline
Briefs in support of Final Approval and Regarding Distribution of Unclaimed Funds	No later than 15 days before the Fairness Hearing
Fairness Hearing	No earlier than 120 days after entry of the preliminary approval order

The Settlement Agreement represents the Parties’ best efforts to settle this litigation on terms that are fair and reasonable under the circumstances and that adequately protect the interests of the Class Members. Accordingly, the Settlement Agreement meets the threshold requirements for preliminary approval and the Class should be preliminary certified.

POINT I
THE SETTLEMENT AGREEMENT
SHOULD BE PRELIMINARILY APPROVED

I. STANDARD FOR PRELIMINARY APPROVAL OF A CLASS ACTION SETTLEMENT

A class action may not be “settled or compromised without the approval of the court.” G.L. c. 93A, § 9(2); *accord* Mass. R. Civ. P. 23(c). A court may not grant final approval unless it finds that a class action settlement is “fair, reasonable and adequate.” *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415, 421 (1985) (quoting *Armstrong v. Board of School Directors of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980)); *accord*, *Voss v. Rolland*, 592 F.3d 242, 251 (1st Cir. 2010).

At the “preliminary approval” stage, the Court “must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.” *Manual for Complex Litigation (Fourth)* §21.632 (2004). Generally stated, “[i]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing.” *Manual for Complex Litigation (Fifth)*. § 13:13 (2011). Thus, ““when the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected,’ a presumption of fairness attaches to the court’s determination” and preliminary approval is warranted. *In re Lupron Mktg. and Sales Practices Litig.*, 345 F. Supp. 2d 135, 137 (D. Mass. 2004) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995)). “Ultimately, the more fully informed examination required for final approval will occur in connection with the Final Fairness Hearing, where arguments for and against the proposed settlement will be presented after notice and an opportunity to consider any response

provided by the potential class members.” *In re M3 Power Razor Sys. Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 62 (D. Mass. 2010).

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.

II. THE SETTLEMENT AGREEMENT WARRANTS PRELIMINARY APPROVAL

The Settlement Agreement is the product of serious and informed arm’s-length negotiations, held at the same time as contentious litigation and merits approval.

A. The Settlement Agreement is the Result of Engaged, Arm’s-Length Negotiations Overseen by an Experienced Jurist and Mediator

This Settlement is the product of extensive arm’s-length facilitated by a well-respected neutral, the Honorable Stephen R. Neel (Ret.). Such arm’s-length negotiations weigh in favor of preliminary approval. *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 473 (E.D. Pa. 2007); *In re AMF Bowling*, 334 F. Supp. 2d 462, 465 (S.D.N.Y. 2004) (the participation of a respected mediator “gives [the court] confidence that [the negotiations] were conducted in an arm’s-length, non-collusive manner”); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y., Oct. 18, 2004)

(fact that “[a] respected and dedicated judicial officer presided over the lengthy discussions from which this settlement emerged” belied any suggestion of collusion in the negotiating process).

Further, “[a] presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel.” *Manual for Complex Litigation (Third)* § 30.42 (1995). Here, Plaintiff’s counsel, Lemberg Law, LLC, has extensive experience in litigating complex class actions. *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*, 14-cv-30014 (D. Ma. Feb. 23, 2016) (approved as class counsel in Fair Debt Collection Practices Act class 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) (approved as class counsel 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) (approved as class counsel in TCPA class action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (approved as class counsel in TCPA class action); *Duchene v. Westlake Servs., LLC*, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (approved as class counsel in TCPA action); *In Re: Convergent Telephone Consumer Protection Act Litigation*, ECF No. 268, 3:13-md-02478 (D. Conn., November 10, 2016) (approved as class counsel in TCPA action); *Seekamp v. It’s Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action).

Thus, because the negotiations occurred before a neutral respected mediator and the class was represented by experienced counsel, a presumption of fairness attaches to the settlement.

B. Discovery and Merits Development Amply Support the Settlement

The presumption is buttressed by the stage of proceedings and discovery conducted. HERBERT B. NEWBERG & ALBA CONTE, *NEWBERG ON CLASS ACTIONS* § 11:41, 92-93 (4th ed. 2002) (initial presumption of fairness where “sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently”).

Here, prior to filing his Complaint, Plaintiff conducted an investigation into the alleged practices at issue. Once the issues were joined, extensive discovery was taken. Plaintiff served discovery concerning all facets of his claims including JPMC’s policies and procedures, its calls to the Plaintiff and its calls to the Class. Following several meet and conferrals, JPMC produced extensive class data detailing calls to putative class members. (Lemberg Dec. ¶ 11). Plaintiff consulted with a data specialist and conducted an extensive analysis of the data. *Id.* Further, JPMC served extensive discovery requests on Plaintiff concerning his claims. In addition, JPMC moved, pursuant to Mass. R. Civ. P. 56, for partial summary judgment regarding the remedies and the calculation of actual versus statutory damages available to Plaintiff and the putative class for their claims under Chapter 93A. At the time of settlement, that motion was fully briefed and before the Court. (See JPMC Motion for Partial Summary Judgment Rule 9A package dated February 18, 2021).

Thus, the Parties’ agreement to settle this litigation reflects well-informed and engaged arm’s-length bargaining by Parties with an understanding of the strengths and weaknesses of their respective claims or defenses. For these reasons, the standards for preliminary approval are met and notice to the class should be approved.

C. There are No Obvious Deficiencies to the Settlement Agreement

There are no obvious deficiencies to the Settlement Agreement. The settlement creates a non-reversionary common fund of \$1,750,000. Each of the 45,470 Class Members is entitled to receive an equal share of the net-settlement fund. *Settlement Agreement* ¶¶ 3.1 & 5.3. There is no claims

process; Class Members do not need to do anything to be sent a settlement check. *Id.* Payment of attorneys' fees, costs, an incentive award and administrative costs are to be paid from the fund. *Id.* ¶¶ 4.2 & 4.4. Settlement is not conditioned on any particular amount of a fee or incentive award with such amounts left approval by the Court. *Id.*

The Settlement Agreement and direct mail and e-mail notice plan provide means to alert members of the class to their rights to object. All pertinent documents and a claim portal will be made available on a dedicated settlement website.

The settlement provides substantial, equal and fair relief. Class Members will be notified directly of its existence and how they can review important documents and, if they so choose, object to the terms of the Agreement.

D. The Settlement Agreement Provides a Substantial Benefit to Class Members and Falls Within a Range of Possible Approval

Here, the Settlement Fund is \$1,750,000 and there are a set number of 45,470 Class Members. There is no claim process and members will receive monies directly. That can be broken down several ways which all demonstrate the high value of the settlement. First, the entire fund equals approximately \$38.48 per class member. That's above the minimum statutory award of \$25.00 available under Chapter 93A. Second, even when based on the net fund (gross fund excluding fees, costs etc.) the fund equals approximately \$22 per class member, an amount which is comparable to the statutory award.⁴

⁴ While the Parties disagree on how to dispose of unclaimed funds, either of their proposals will deliver substantial benefit to the Class. It is almost a certainty that not all class members will cash their settlement. Plaintiff's proposal to redistribute uncashed checks to members who *did* cash their initial check will mean Class Members will receive substantially more than the \$22 initial check. Alternatively, Defendant's proposal to send uncashed checks to the Commonwealth to hold and disperse through the laws of escheat, ensures that the funds at issue are made available to the Class.

This is an outstanding recovery for violations of Chapter 93A and the Debt Collection Regulation. As noted above, “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” G.L. c. 93A, § 9(3). Whether a plaintiff could recover the \$25 statutory penalty for each separate violation of the Debt Collection Regulation (*i.e.* for each instance JPMC called in excess of two times in a seven day period), as opposed to \$25 dollars per action, is contested by the Parties and no court has firmly held either way in the context of the Debt Collection Regulation.

Comparison to settlements under the Telephone Consumer Protection Act (“TCPA”), the federal statute that prohibits certain robocalls, is instructive. Compared to Chapter 93A, damages under the TCPA are (i) certain and (ii) far higher where the TCPA has a mandatory penalty of \$500 per each and every violation of the Act. 47 U.S.C. § 227(c)(5)(B). However, TCPA class settlements worth far less than the settlement here are frequently approved as fair, reasonable, and adequate. *See, e.g., Hopkins v. Modernize, Inc.*, Doc. No. 101 & 108, 17-cv-40087(TSH) (D. Mass) (final approval granted of TCPA class settlement with where 3% of the class received \$26 each); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 789 (N.D. Ill. 2015) (7.8% of the class received \$34.60 each); *In Gehrlich v. Chase Bank USA, N.A.*, 2016 WL 806549 (N.D. Ill. Mar. 2, 2016) (1.08% of the class received \$52.50 each); *Rose v. Bank of Am. Corp.*, 2014 WL 4273358 (N.D. Cal. Aug. 29, 2014) (3% of the class received \$20.00 to \$40.00 each). In comparison, the claims here are worth far less per member but all Class Members, not some small percent, will be sent a settlement check for *at least* \$22.00. This is an excellent result meriting approval.

POINT II
THE SETTLEMENT CLASS SHOULD BE CERTIFIED

I. LEGAL STANDARD FOR CONDITIONAL CERTIFICATION OF CLASS ACTION FOR SETTLEMENT PURPOSES

The Massachusetts Consumer Protection Law, M.G.L. 93A, § 9(2), explicitly provides for the prosecution of claims via class action lawsuits:

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 persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs.

G.L. c. 93A, § 9(2). Thus, there are three requirements for class certification under G.L. c. 93A, § 9(2): (1) “the use or employment of [an] unfair or deceptive act or practice [that] has caused similar injury to numerous other persons similarly situated”; (2) the putative class representative must “adequately and fairly represents such other persons”; and (3) the putative class representative brings “the action on behalf of himself and such other similarly injured and situated persons. *See id.*

Notably, the above “statutory language differs in significant respects from that of Mass. R. Civ. P. 23.” *Aspinall v. Philip Morris Companies, Inc.*, 442 Mass. 381, 391 (2004). Indeed, while Section 9(2) “expressly incorporates numerosity and adequacy requirements that parallel those of Rule 23,” and caselaw has implied “the requirements of commonality and typicality,” caselaw has additionally “eschewed importing the highly discretionary element[s] of predominance and superiority.” *Holzman v. Gen. Motors Corp.*, No. 021368, 2007 WL 4098913, at *12 (Mass. Super. Nov. 6, 2007) (internal citations and quotation marks omitted); *see also Moelis v. Berkshire Life Ins. Co.*, 451 Mass. 483, 489–90 (2008) (“Unlike rule 23, however, § 9(2) does not require that common issues predominate over individual ones, or that a class action be superior to other methods of

litigation.”); *Aspinall*, 442 Mass. at 407 n.8 (“Because the plaintiff class in this case does not need to demonstrate the predominance of common issues of fact or law, the necessity of individual proof concerning smoking behavior would not foreclose certification.”). Regardless, the class here easily satisfies the additional elements of predominance and superiority found in Mass. R. Civ. P. 23.

The Class is:

The 45,470 current or former JPMC customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020. The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

Settlement Agreement ¶ 2.1.

II. THE REQUIREMENTS FOR CLASS CERTIFICATION ARE MET FOR THE CLASS

Plaintiff has established each of the requirements under G.L. c. 93A, § 9(2): (1) there is a common allegedly unfair or deceptive act or practice, *i.e.*, the placing of more than two calls within a seven-day period to persons with a Massachusetts number regarding their delinquent debt in violation of 940 CMR § 7.04(1)(f), that affects numerous other Massachusetts residents similarly situated to the Plaintiff; (2) Plaintiff will adequately and fairly represent those other Massachusetts residents; and (3) Plaintiff brings this action “on behalf of himself and such other similarly injured and situated persons.”

Further, additional elements found in Mass. R. Civ. P. 23(b) are satisfied in that common questions of law and fact predominate over individual questions and a class action is superior to other methods of adjudication.

A. The Class is Sufficiently Numerous

G.L. c. 93A, § 9(2) requires that the unfair or deceptive act or practice at issue in a putative class action must cause a similar injury to “numerous other persons.” When examining numerosity,

courts “may make ‘common sense assumptions in order to support a finding of numerosity.’” *Weld v. CVS Pharmacy, Inc.*, No. 98-0897, 1999 WL 1565175, at *4 (Mass. Super. Nov. 19, 1999) (quoting *Kirby v. Cullinet Software*, 116 F.R.D. 303, 306 (D. Mass. 1987)). Moreover, “[w]here joinder is impracticable, a class of 50 or 60 has been found sufficiently large to satisfy the numerosity requirement.” *Id.*, 1999 WL 1565175, at *4; *see also Delgado v. Arbor Homecare Servs., LLC*, 2016 WL 3368735, at *2 (Mass. Super. May 10, 2016) (numerosity met where defendant “admitted liability for failure to pay overtime wages to 376 employees”); *Woodruff v. Niles Co.*, 2007 WL 1537705, at *2 (Mass. Super. May 9, 2007) (numerosity established where “the class will be comprised of at least fifty-six persons who may or may not be living in the Commonwealth at this time.”).

There are 45,470 Class Members. *Settlement Agreement* ¶ 2.1. Joinder of these claims is impracticable and, therefore, numerosity is established.

B. There are Questions of Law and Fact Common to the Class

“To establish commonality, the plaintiffs seeking certification of the class must show that all the persons whom they profess to represent have a common interest in the subject matter of the suit and a right and interest to ask for the same relief against the defendants.” *Weld v. CVS Pharmacy, Inc.*, 1999 WL 1565175, at *4 (Mass. Super. Nov. 19, 1999) (internal citations and quotation marks omitted). “The requirement for commonality is met if there is only one issue common to the entire class.” *Schrier v. Banknorth, N.A. Massachusetts*, 2004 WL 3152399, at *3 (Mass. Super. Dec. 30, 2004) (citing *Margaret Hall Found., Inc. v. Atlantic Fin. Mgmt.*, 1987 WL 15884, at *2 (D. Mass. 1987) & *Fletcher*, 394 Mass. at 595). Thus, where the issue of “whether [defendant] acted unfairly or deceptively in violation of G.L.c. 93A” is common to all class members, commonality is satisfied. *Id.*

Whether Defendant violated 940 C.M.R. 7.04(1)(f) and M.G.L. c. 93A, §§2, 9, by calling Plaintiff and the Class Members more than 2 times in a 7-day period, is a common question of law

and fact to the settlement class. Whether JPMC’s alleged violations of those laws was willful and knowing is a common question. Whether Plaintiff and the Class are entitled to multiple or singular statutory damages is likewise a common question. Therefore, commonality is satisfied.

C. Plaintiff’s Claims and Injuries are Typical of the Claims and Injuries of the Class

Typicality is established when there is “‘a sufficient relationship . . . between the injury to the named plaintiff and the conduct affecting the class,’ and the claims of the named plaintiff and those of the class ‘are based on the same legal theory.’” *Weld v. Glaxo Wellcome Inc.*, 434 Mass. 81, 87, 746 N.E.2d 522, 528 (2001) (quoting 1 H. Newberg, *Class Actions* § 3.13, at 3–76 (3d ed.1992)). “The alignment of claims and legal theories ensures that the named plaintiff; in pursuing his or her own self-interest, will actually advance the interests of the class members.” *Reynolds v. City Exp., Inc.*, 2014 WL 1758301, at *13 (Mass. Super. Jan. 8, 2014). “The representative plaintiff satisfies the typicality requirement when [his or her] injuries arise from the same events or course of conduct as do the injuries of the class and when plaintiff’s claims and those of the class are based on the same legal theory.” *In re Credit Suisse–AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D. Mass. 2008).

In this case, Defendant placed more than two calls in a seven-day period to Plaintiff regarding an allegedly delinquent debt, and evidence shows Defendant did the same to Class Members. Plaintiff, like the class, seeks relief from the same law, M.G.L. c. 93A, §§ 2, 9 and 940 C.M.R.. 7.04(1)(f). Thus, he is typical of the class and this requirement is satisfied.

D. Plaintiff will Adequately and Fairly Protect the Interests of the Class

The party seeking class certification “must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed

litigation.” *Woodruff v. Niles Co.*, 2007 WL 1537705, at *3 (Mass. Super. May 9, 2007) (quoting *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985)).

Here, Plaintiff’s interests will not conflict with those of the class. Plaintiff has vigorously participated in this case, has provided information to his counsel, his claims are typical of Class Members and he has no known conflicts with the class. (Lemberg Decl. ¶ 19).

In addition, Plaintiff’s counsel has and will fairly, responsibly, vigorously, and adequately represent the interests of the class members whose rights were allegedly violated by Defendant. Lemberg Law has ample experience acting as class counsel in both contested and uncontested consumer protection class actions. (Lemberg Decl. ¶¶ 4-5; Taylor Decl. ¶ 5). Based on counsel’s experience and track record, Plaintiff’s counsel is clearly adequate to represent the class.

E. Rule 23(b)(3)’s Requirements Are Satisfied

Mass. R. Civ. P. 23(b) requires that “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Here, the central issue in this case is whether or not JPMC had a policy and practice of calling consumers in excess of two times in a seven-day period regarding consumer debt. That issue predominates Plaintiff’s and absent class members’ claims under Regulation 7.04(1)(f) and ch. 93A. Similarly, whether Defendant’s alleged violations were intentional and the amount of statutory damages available are common questions which predominate individual ones.

A class action is the superior method of resolution if it will “achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615, 117 S. Ct. 2231 (1997). The superiority considerations weigh in favor of certification. “Certification allows the plaintiffs to pool claims which would be uneconomical to

litigate individually.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). It is neither economically feasible, nor judicially efficient, for the tens of thousands of Class Members to pursue their claims against JPMC on an individual basis. *Grace v. Perception Tech., Inc.*, 128 F.R.D. 165, 171 (D. Mass. 1989); *Randle v. SpecTran*, 129 F.R.D. 386 (D. Mass. 1988). Finally, the difficulties of managing a class action are vitiated by the fact of this Agreement. When “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.” *Amchem*, 521 U.S. at 620.

POINT III
THE PROPOSED NOTICE TO CLASS MEMBERS MERITS APPROVAL

Class members are entitled to notice of any proposed settlement before it is finally approved by the Court. *Manual for Complex Litigation* (Third) §30.212 (1995). The Settlement Agreement proposes notice of the Settlement be provided by direct mail and e-mail to all class members from their addresses (1) as contained within Defendant’s records and (2) as updated by the Settlement Administrator.

Notice of the proposed settlement will be provided to the Class via mail and e-mail no later than 30 days after the Court’s entry of an order granting preliminary approval of the settlement. JPMC will provide the Settlement Administrator with the class list consisting of the names, addresses and last known e-mail addresses (if any) associated with Class Members.

The Settlement Administrator will also maintain (1) a Settlement Website with case information and documents and (2) a toll-free number to provide information to Class Members.

The Post Card Notice attached as Exhibit A to the Settlement Agreement describes this case and Class Member’s rights to recover or to object. Further, the Long Form Notice, attached as Exhibit

C to the Settlement Agreement, which supplies additional information on the same matters, will be posted on the settlement website.

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully requests that the Court enter the proposed Preliminary Approval Order:

1. Preliminarily approving the terms of the Parties' Settlement Agreement;
2. Conditionally certifying the Class for the purpose of settlement;
3. Appointing Plaintiff as Class Representative;
4. Appointing Lemberg Law, LLC, as Class Counsel;
5. Approving the form, content and method of delivering Notice to the Class set forth in the Parties' Settlement Agreement and in the exhibits thereto; and
6. Scheduling a Final Approval hearing in accordance with the deadlines provided in the Settlement Agreement.

Dated: September 27, 2021

Respectfully submitted:

/s/ Sergei Lemberg
Sergei Lemberg (BBO# 650671)
Lemberg Law, LLC
43 Danbury Road
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Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Settlement Agreement**”) is entered into between Zagloul Ayad (“**Named Plaintiff**”), individually and in his putative capacity as representative plaintiff on behalf of the putative Class Members (defined below) and JPMorgan Chase Bank, N.A. (“**JPMC**”) (Named Plaintiff and JPMC together, “**Parties**,” and each individually a “**Party**”), Greenberg Traurig, LLP, counsel for JPMC, and Lemberg Law LLC, counsel for the Named Plaintiff and putative Class Members.

SECTION I – RECITALS

1.1 WHEREAS, on or about August 16, 2019, Named Plaintiff filed a “Class Action Complaint and Demand for Jury Trial” in the Superior Court Department of the Trial Court for the Commonwealth of Massachusetts for Middlesex County (“**Court**”), which bears the caption *Zagloul Ayad v. JPMorgan Chase Bank, N.A.*, Case No. 1981-cv-02424 (“**Litigation**”).

1.2 WHEREAS, Named Plaintiff contends the claims asserted in the Litigation have merit and he has engaged in a thorough investigation of the facts and the law supporting those claims. Based on this evaluation and extensive arm’s-length negotiations between the Parties’ counsel, as facilitated through mediation with the Honorable Stephen Neel (ret.), the Named Plaintiff and his counsel have determined that this Settlement Agreement and the proposed settlement described herein are fair and reasonable as well as in the best interests of the putative Class Members.

1.3 WHEREAS, JPMC has vigorously denied and continues to deny all of the claims and contentions alleged in the Litigation, denies any wrongdoing on its part, and denies any liability to the Named Plaintiff and the putative Class Members. JPMC has also conducted a thorough investigation and evaluated the risks and potential cost of litigating the issues raised in the Litigation and the benefits of the Settlement Agreement and proposed settlement described herein. Based on its evaluation, JPMC desires to settle the Parties’ dispute and the Litigation pursuant to the terms and conditions in the Settlement Agreement.

1.4 WHEREAS, JPMC has conducted a thorough audit of its accounts, the methodology and results of which were reviewed with Named Plaintiff’s counsel, and identified 45,470 current and former customers who may have received a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.00 *et seq.* and Massachusetts General Laws Chapter 93A, which formed the basis of the Litigation.

1.5 NOW, WHEREFORE, for adequate consideration as set forth herein, it is hereby stipulated and agreed, by and among the Parties, by and through their respective counsel, that: (i) the Parties desire to fully and finally resolve their dispute and the Litigation and shall seek Court approval of their settlement, as required by Massachusetts Rule of Civil Procedure 23(c); and (ii) upon such approval by the Court, a final order and judgment shall be entered fully and finally resolving the dispute and the Litigation upon the terms and conditions set forth herein, or as modified by the Court and approved by the Parties as provided herein.

SECTION II – DEFINITIONS

In addition to terms defined in the preamble and Section I, as well as in other sections of this Settlement Agreement, the following terms shall have the following meanings. Some definitions include capitalized terms that are defined later in this section:

2.1 “Class” and “Class Member(s)” mean the 45,470 JPMC current or former customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020. The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

2.2 “Class Counsel” means Lemberg Law, LLC.

2.3 “Court” means the Superior Court Department of the Trial Court for the Commonwealth of Massachusetts for the County of Middlesex.

2.4 “Direct-Mail Notice” means the “short form” legal notice summarizing the Settlement terms contained herein, as approved by the Court, to be sent to Class Members as set forth herein by regular mail. The Direct-Mail Notice must be substantially similar to the form attached hereto as **Exhibit A**.

2.5 “Effective Date” means the later of: (a) the expiration of the time to file or notice any appeal from the Court’s Final Order and Judgment; or (b) the date of final affirmance of any appeal from the entry of the Final Order and Judgment, without any material change by any court as provided herein.

2.6 “E-mail Notice” means the “short form” legal notice summarizing the Settlement terms contained herein, as approved by the Court, to be sent by electronic mail to Class Members. The E-mail Notice must be substantially similar to the form attached hereto as **Exhibit A**. For those such Class Members, the Settlement Administrator will request—by email—a current mailing address with the E-mail Notice for the purposes of distributing the Individual Net Settlement Amounts set forth herein.

2.7 “Fairness Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and Notice Date for purposes of, among other things: (a) entering the Final Order and Judgment fully and finally resolving the Litigation; (b) determining whether the Settlement should be approved as fair, reasonable, and adequate; and (c) ruling upon an application by Class Counsel for an award of attorneys’ fees, costs, and expenses and the Named Plaintiff’s service award.

2.8 “Final Order and Judgment” means the final judgment of the Court approving the Settlement, including Class Counsel’s application(s) for an award of attorneys’ fees, costs, and expenses and any service award for the Named Plaintiff. The Final Order and Judgment must be substantially similar to the form attached hereto as **Exhibit B**.

2.9 “**Full Notice**” means the long-form notice to be made available on the Settlement Website describing the terms of this Settlement Agreement, as approved by the Court. The Full Notice must be substantially similar to the form attached hereto as **Exhibit C**.

2.10 “**JPMC’s Counsel**” means Greenberg Traurig, LLP.

2.11 “**Notice**” refers collectively to the Direct-Mail Notice, E-mail Notice, and Full Notice.

2.12 “**Notice Date**” means the date that the Notice is sent to the Class Members, as provided herein. The Notice Date shall be no later than thirty (30) calendar days after the Preliminary Approval Order, unless otherwise provided by the Court.

2.13 “**Objection Deadline**” means the final date on which Class Members may object to the proposed Settlement, which shall be sixty (60) calendar days from the Notice Date, unless otherwise provided by the Court.

2.14 “**Preliminary Approval Order**” means the order preliminarily approving the Settlement and conditionally certifying the Class, as approved by the Court. This order must be substantially similar to the form attached hereto as **Exhibit D**.

2.15 “**Settlement**” means the settlement into which the Parties have entered to resolve the Litigation. The terms of the Settlement are set forth in the Settlement Agreement.

2.16 “**Settlement Administrator**” means Kurtzman Carson Consultants, LLC.

2.17 “**Settlement Website**” means a website established by the Settlement Administrator for the purposes of providing the Class Members with the Full Notice and other information as provided herein, which shall be located at a URL mutually agreed to by the parties and described in the Notice.

2.18 All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

2.19 All references to “his,” “her,” and similar terms are intended to be gender-neutral and apply equally to persons who are businesses, organizations, or other non-natural Persons.

2.20 Other terms are defined in the text of this Settlement Agreement and shall have the meaning given to those terms in the text. It is the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement, unless otherwise specified.

**SECTION III – SETTLEMENT AMOUNT;
COST OF SETTLEMENT ADMINISTRATION**

3.1 Settlement Amount. JPMC shall pay One Million, Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) in consideration for this Settlement (“**Settlement Amount**”). The Settlement Amount includes the total amount of consideration to the Class Members including Named Plaintiff’s service award, all attorneys’ fees, costs, and expenses awarded to Class Counsel, and all fees, costs and expenses of the Settlement Administrator in administering the Settlement. Under no circumstances will any portion of the Settlement Fund revert to JPMC. The Settlement Amount will be deposited in a bank account controlled by the Settlement Administrator to be distributed as described in Section V.

3.2 Settlement Fund. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall open a non-interest-bearing account with a non-JPMC institution for the purpose of paying the Final Fee Award and distributing the Net Settlement Amount as provided in Section V (“**Settlement Fund**”). Within five (5) calendar days of the Settlement Fund being established and JPMC’s receipt of the Settlement Administrator’s properly completed and executed IRS Form W-9 and any other tax information requested by JPMC, JPMC shall transfer the Settlement Amount into the Settlement Fund. The Settlement Administrator shall not invest any funds from the Settlement Fund or take any action to generate income from the Settlement Fund, and JPMC shall have no right, entitlement, responsibility, financial obligation, or liability with respect to the use, administration, or distribution of the Settlement Amount or with respect to the Settlement Fund, except as otherwise expressly provided herein or as required by law.

3.3 Tax Treatment/Withholding/Reporting. The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of United States Treasury Regulation § 1.468B-1 (“**QSF**”). Neither the Parties nor the Settlement Administrator shall take a position in any filing or before any tax authority that is inconsistent with treating the Settlement Fund as a QSF. JPMC shall be the “transferor” and the Settlement Administrator shall be the “administrator” of the Settlement Fund within the meaning of United States Treasury Regulations §§ 1.468B-1(j)(2) and 1.468B-2(k)(3), respectively. As a result, the Settlement Administrator will be responsible for all tax withholding and reporting obligations of any payments made from the Settlement Fund, including any reporting required on IRS Form 1099, if any, for distributions made from the Settlement Fund as provided in Section V. The Parties agree to take all necessary and reasonable actions to qualify the Settlement Fund as a QSF. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon Class Counsel, JPMC, or JPMC’s counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “**Taxes**”), shall be paid out of the Settlement Fund Account. Plaintiff and Class Counsel, and JPMC and its counsel, shall have no liability or responsibility for any Taxes. The Settlement Fund shall indemnify and hold Plaintiff and Class Counsel, and JPMC and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

**SECTION IV– ATTORNEYS’ FEES,
COSTS, AND EXPENSES; NAMED PLAINTIFF’S SERVICE AWARD**

4.1 Arm’s-Length and Separate Negotiations. The Parties negotiated and reached full agreement on the material terms of the Settlement before reaching agreement regarding Class Counsel’s attorneys’ fees, costs, and expenses and any service award for Named Plaintiff. At no time did the Parties condition the relief afforded herein to Class Members on payment of any fees, costs, or expenses to Class Counsel or a service award to Named Plaintiff.

4.2 Attorneys’ Fees and Costs. No later than thirty (30) days prior to the Objection Deadline, Class Counsel may make written application to the Court for an award of attorneys’ fees and expense of up to one-third of the Settlement Fund, which in no event shall exceed \$583,333.33 (“**Fee Award**”). JPMC agrees not to oppose such application in an amount not to exceed one-third of the Settlement Fund. The Parties agree that the Court (and only the Court) shall determine the final amount of the Fee Award in this Action. Any such award shall be paid exclusively out of the Settlement Fund. Class Counsel will not seek any amount in excess of the Agreed Fees and, in any event, Class Counsel agrees that JPMC and the Settlement Administrator shall not pay, or be obligated to pay, in excess of the Agreed Fees from the Settlement Fund. If the Agreed Fees are reduced by the Court or any appellate court, the Settlement Administrator will pay Class Counsel the reduced amount as provided herein from the Settlement Fund. Payment of the Agreed Fees (in the full amount or as reduced) shall be made to Class Counsel by the Settlement Administrator as directed by Class Counsel.

4.3 Release by Class Counsel. Upon payment of the fees set forth in Paragraph 4.2, the Released Persons (defined in Paragraph 10.1(a)) will forever and finally have satisfied any and all of their obligations to Class Counsel or any other person, if any, concerning payment of attorneys’ fees, costs, and expenses in the Litigation and with respect to the Settlement, and the Released Persons will forever and finally be absolved, released, and discharged of any liability whatsoever to Class Counsel or any other person, if any, concerning attorneys’ fees, costs, and expenses in the Litigation and with respect to the Settlement. Under no circumstances will Class Counsel or any other person bring any claims against the Released Persons for, because of, relating to, concerning, or as a result of any payment or allocation of attorneys’ fees, costs, and expenses made in accordance with this Settlement Agreement, and Class Counsel releases the Released Persons from any and all claims because of, relating to, concerning, or as a result of any payment or allocation of attorneys’ fees, costs, and expenses made in accordance with this Settlement Agreement.

4.4 Service Award. JPMC agrees not to oppose Named Plaintiff’s application for a service award in the amount of \$10,000 (“**Service Award**”), which shall be subject to Court approval. Any such award shall be paid exclusively out of the Settlement Fund. Named Plaintiff agrees that he shall not petition the Court for more than \$10,000.00 in total for a service award. If the Service Award is reduced by the Court or any appellate court, the Settlement Administrator will pay the reduced amount as provided herein from the Settlement Fund. Payment of the Agreed Service Award (in the full amount or as reduced) shall be made to Named Plaintiff by the Settlement Administrator as directed by Class Counsel.

4.5 Effect on Settlement. The Parties agree that the rulings of the Court regarding the amount of the Fee Award and Service Award, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Approval Hearing as provided for in this Settlement Agreement and that any determination in that regard may be, but is not required to be, embodied in a separate order from the Court. Any order or proceedings relating to the amount of the Fee Award or the Service Award, including any appeals from or modifications or reversals of any orders related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval Order and Judgment becomes final as defined herein except that the Distributions From the Settlement Fund as set forth in Section V *supra* shall not commence until the final resolution of any appeals or modification or reversals of any orders related to the amount of the Fee Award and Service Award.

SECTION V – DISTRIBUTIONS FROM THE SETTLEMENT FUND

5.1 Types of Distributions. The Settlement Administrator shall be authorized to make the following distributions from the Settlement Fund:

- (a) Payments by check to Class Members as provided in Paragraph 5.3;
- (b) Payment of the Attorneys' Fees and Costs as provided in Paragraph 4.2;
- (c) Payment of the Service Award as provided in Paragraph 4.4;
- (d) Payment of any taxes for which the Settlement Fund is liable; and
- (e) Payments of the remainder of the Settlement Fund, if any, as directed by the Court.

5.2 Net Settlement Amount. Within ten (10) business days after approval of the Attorneys' Fees and Costs and Service Award ("**Final Fee and Service Award**"), the Parties and the Settlement Administrator shall jointly determine the net pro rata Settlement Amount due to Class Members by: (a) subtracting (i) the Final Attorneys' Fees and Cost and Service Award and (ii) the fees, costs, and expenses of the Settlement Administrator from the Settlement Amount to determine the gross, net Settlement Amount available for Class Members ("**Gross Net Settlement Amount**") and (b) dividing the Gross Net Settlement Amount by 45,470 to determine each Class Member's pro rata share ("**Individual Net Settlement Amounts**").

5.3 Distribution of the Individual Net Settlement Amounts to the Class Members. The Settlement Administrator shall distribute the Individual Net Settlement Amounts to Class Members by issuing and mailing a check to each Class Member within forty-five (45) calendar days after the Effective Date. Checks will be mailed by the Settlement Administrator to the last known mailing address as identified in the list provided by JPMC pursuant to paragraph 7.4 below or as updated by the Settlement Administrator through its standard practices when sending Notice or as updated by a Class Member. Checks shall be valid for 180 days. If the Settlement Administrator receives any checks returned as undeliverable by the United States Postal Service, the Settlement Administrator will use reasonable efforts to locate the current address of the Class

Member and re-mail the check accordingly. The Settlement Administrator shall not be required to send a check by mail to any Class Member whose last known street address, as updated through the National Change of Address registry, is determined to be undeliverable pursuant to one of the following mailing codes: F (foreign move, no new address available), G (postal box closed, no new address available), or K (move, left no forwarding address). The Parties recognize that one purpose of sending Notice to Class Members of the Settlement is to inform Class Members that they will be receiving a portion of the Net Settlement Amount through the Settlement. Therefore, no additional notice or an explanation of why Class Members are receiving a portion of the Net Settlement Amount is required.

5.4 Unclaimed Monies. The Parties shall submit to the Court for determination at the Fairness Hearing their separate views concerning what the Settlement Administrator shall do with any settlement checks that are not negotiated by the Class Members. Such submissions shall be filed with the Court no later than fourteen calendar days before the Fairness Hearing.

SECTION VI—VERIFICATION OF CLASS MEMBERS

6.1 JPMC’s Investigation/Customer Information. The Parties acknowledge that JPMC has expended significant time and resources in determining the identity of Class Members described above in Paragraphs 2.1. In doing so, JPMC reviewed, analyzed, and created proprietary financial and other information in anticipation of litigation and settlement, which information is deemed strictly confidential and privileged, as well as protected by Massachusetts Rule of Evidence 408, the attorney-client privilege, the internal investigative privilege, the work-product doctrine, and mediation privilege (“**Customer Information**”). Should the Court request any Customer Information, the Parties agree that it should be impounded and submitted only for the Court’s *in camera* review pursuant to the Court’s Rules of Impoundment Procedure, and the Parties agree to submit a joint motion seeking such relief from the Court, if necessary. It shall be the responsibility of the Settlement Administrator to respond to all inquiries from or on behalf of potential Class Members with respect to the Settlement. Class Counsel and Counsel for JPMC must both approve any FAQs or other material the Settlement Administrator may use to answer inquiries and shall confer and assist the Settlement Administrator as it requests.

SECTION VII—PRELIMINARY APPROVAL, SETTLEMENT ADMINISTRATION, AND NOTICE

7.1 Cooperation to Obtain Court Approval. The Parties will jointly take all reasonable steps necessary to secure the Court’s approval of this Settlement Agreement and the Settlement.

7.2 Preliminary Approval. As soon as practicable after this Settlement Agreement is fully executed, for settlement purposes only, the Parties agree that Named Plaintiff and Class Counsel should request the Court to make preliminary findings, enter the Preliminary Approval Order granting conditional certification of the Class, subject to final findings and ratification in the Final Order and Judgment, and appoint the Named Plaintiff as class representative and Class Counsel as counsel for the Class. Neither JPMC nor JPMC’s Counsel will object to such requests for the purposes of effectuating the Settlement. Such agreement not to object to class certification

shall extend only as necessary to effectuate the Settlement. As set forth in the draft Preliminary Approval Order, Named Plaintiff shall request the Court to enter an order:

- (a) preliminarily approving and finding the Settlement Agreement and Settlement as being fair, reasonable, and adequate;
- (b) conditionally certifying the Litigation as a settlement class action under Rule 23(c) of the Massachusetts Rules of Civil Procedure;
- (c) appointing Named Plaintiff as class representative and Class Counsel as counsel for the Class Members;
- (d) preliminarily approving the form, manner, and content of the Direct-Mail Notice, E-mail Notice, and Full Notice, as provided herein, and finding that Notice is fair, reasonable, and the best notice practicable under the circumstances in connection with notifying the Class Members of their rights and responsibilities under the Settlement Agreement and satisfying due process and Rule 23 of the Massachusetts Rules of Civil Procedure;
- (e) directing Class Counsel to submit an application for payment of the Agreed Fees and Agreed Service Award no later than thirty (30) calendar days before the Objection Deadline, as provided herein;
- (f) appointing the Settlement Administrator to send Notice and administer the Settlement;
- (g) providing that Class Members will have until the Objection Deadline to object to the Settlement, as provided herein;
- (h) establishing dates by which all papers in support of the motion for final approval of the Settlement and/or any response to any valid and timely objections shall be filed and served;
- (i) staying all proceedings against JPMC until the Court renders a final decision on approval of the Settlement;
- (j) enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims (as defined in Paragraph 10.1(a)); and
- (k) setting the date and time of the Fairness Hearing, subject to the availability of the Court, Class Counsel, and JPMC's Counsel, which date may be continued without necessity of further notice to Class Members.

Unless otherwise agreed to by the Parties in writing, Class Counsel shall provide JPMC's Counsel with drafts of the moving papers requesting preliminary approval for review at least five (5)

business days before the papers are filed. JPMC shall be permitted, but not required, to file its own memorandum in support of preliminary approval.

7.3 Settlement Administrator. The Settlement Administrator shall administer the Settlement as described herein and as approved by the Court, and perform such other functions as ordered by the Court or approved by mutual agreement of the Parties, including the following: (i) sending Notice; (ii) establishing and maintaining the settlement website (as described below in Paragraph 7.4(a)); (iii) establishing and maintaining an automated toll-free telephone line for Class Members to call with settlement-related inquires and answering questions Class Members may have about the Settlement administration or directing questions to Class Counsel, as appropriate; (iv) responding to mailed inquiries about the Settlement administration or directing inquiries to Class Counsel for a response, as appropriate; (v) providing JPMC with properly completed and executed tax forms or other appropriate tax information; (vi) timely making all necessary elections, withholdings, and reporting to qualify the Settlement as a QSF or otherwise complying with any federal or state law governing taxes or unclaimed property; and (vii) performing any other or additional functions as set forth herein or as requested by the mutual agreement of the Parties. Any additional functions that do not materially alter the administration of the Settlement, as approved by the Court in the Preliminary Approval Order or Final Order and Judgment, need not be approved by the Court or explained to Class Members through additional notice.

7.4 Notice. The Parties will provide Notice using the most recent e-mail address and mailing address in JPMC's records for each Class Member (mailing addresses shall be updated by reasonable methods by the Settlement Administrator prior to mailing as described herein). Within no less than ten (10) business days before the Notice Date, JPMC shall provide the Settlement Administrator with a list identifying the names and last known e-mail (if any) and last known physical mailing addresses of the Class Members. The Settlement Administrator will maintain this information pursuant to Paragraph 6.1 above. Also, the Settlement Administrator shall conduct a National Change of Address Update to verify the physical mailing addresses for the Class Members. Thereafter, the Settlement Administrator will provide the Class Members with notice of the Settlement as follows:

- (a) Settlement Website. No later than thirty (30) days following the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Full Notice, this Settlement Agreement, the Complaint, the Preliminary Approval Order, and any other relevant documents to be made available on the Settlement Website to be administered by the Settlement Administrator. When available, the Settlement Administrator shall make available on the Settlement Website Class Counsel's application for a Fee Award and any motion seeking approval of any Service Award as well as Class Counsel's Motion for Final Approval. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by Class Counsel and JPMC's Counsel. Such approvals shall not be unreasonably withheld. The Settlement Website shall be disabled no sooner than sixty (60) calendar days after the payments are made to Class Members, as set forth in Paragraph 5.3 above. The Settlement Website shall not include any

advertising, and it shall not bear or include any JPMC logos or any JPMC trademarks.

- (b) E-mail and Direct-Mail Notice. On the Notice Date, the Settlement Administrator will send the E-Mail Notice and Direct-Mail Notice. The Settlement Administrator shall not be required to send such Direct-Mail Notice to any Class Member whose last known street address, as updated through the National Change of Address registry, is determined to be undeliverable pursuant to one of the following mailing codes: F (foreign move, no new address available), G (postal box closed, no new address available), or K (move, left no forwarding address). The Notice shall not bear or include any JPMC logos or JPMC trademarks, or JPMC's return address, or otherwise be styled to appear to originate from JPMC. To the extent deemed necessary by the Settlement Administrator, the last known address of Persons in the Settlement Class will be subject to confirmation or updating as follows: (a) the Settlement Administrator may conduct a reasonable search to locate an updated address for any Person in the Settlement Class; (b) the Settlement Administrator shall update addresses based on any forwarding information received from the United States Post Office; and (c) the Settlement Administrator shall update addresses based on information it receives and through any requests received from Class Members. If any Direct Notice sent under this Section is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Direct Notice once to the forwarding address, if any, provided by the Postal Service on the face of the returned mail.

The Settlement Administrator shall have discretion to format the Direct-Mail Notice in a reasonable manner to minimize mailing or administrative costs. Before the Direct-Mail Notice is mailed, Class Counsel and Counsel for Defendant shall first be provided with a proof copy of all forms of Notice (including what the items will look like in their final form), and shall have the right to inspect the same for compliance with the Settlement Agreement and with any orders by the Court.

The Settlement Administrator shall send the E-Mail Notice to those Class Members for which JPMC has an email address, regardless of whether any Class Members have notified JPMC that they no longer wish to receive e-mails from JPMC pursuant to the CAN-SPAM Act of 2003. The Parties agree that e-mailing this notice is not intended to be a "commercial" e-mail message under the provisions of CAN-SPAM, but, rather, is intended to be a "transaction or relationship" e-mail message to the extent CAN-SPAM applies. Should the Direct-Mail Notice be returned as undeliverable, that Class Member's Individual Net Settlement Amount will be distributed pro rata to those Class Members for which the Settlement Administrator has a valid, current mailing address.

- (c) Toll-Free Number. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall set up a toll-free telephone number that will provide automated information about the Settlement, the Class Members'

rights, important deadlines, and instructions as to how Class Members may request and obtain hard-copy Settlement documents. That telephone number shall be maintained until the Objection Deadline. After that time, and through the date the Final Approval Order is entered, a recording will advise any caller to the toll free telephone number that the Objection Deadline has passed and that details regarding the Settlement may be reviewed on the Settlement Website.

SECTION VIII—OBJECTIONS

8.1 Objections. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, Fee Award, or Service Award must file on or before the Objection Deadline a written objection with the Court and deliver the objection to the Settlement Administrator as follows:

- (a) **Form and Notice.** A written objection must include: (i) the name and case number of the Litigation; (ii) the full name, address, and telephone number of the person objecting; (iii) a statement of each objection; (iv) a written statement detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court’s attention and any evidence the objector wishes to introduce in support of the objection(s); (v) the identity of all counsel who represent the objector and who may appear at the Fairness Hearing; (vi) a list of all persons who will be called to testify in support of the objection at the Fairness Hearing; (vii) a list of all other putative class actions to which the objector has submitted an objection over the last ten (10) years; and (viii) a statement of whether the objector and/or his or her counsel intends to attend the Fairness Hearing.
- (b) **Appearance at Fairness Hearing.** Any Class Member who submits a timely objection as set forth above in Paragraph 8.1(a) may appear at the Fairness Hearing with or without counsel at the Class Member’s own expense. If a Class Member is represented by counsel, such counsel must file a Notice of Appearance with the Court and serve a copy of the Notice of Appearance on the Settlement Administrator, Class Counsel, and JPMC’s Counsel no later than fifteen (15) calendar days before the Fairness Hearing.
- (c) **Waiver.** Any Class Member who fails to comply with the provisions of Paragraph 8.1(a) and (b) will not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

SECTION IX – FINAL APPROVAL

9.1 Motion for Final Approval. Named Plaintiff must apply for Court approval of the Final Order and Judgment no later than fifteen (15) calendar days before the Fairness Hearing, which application shall request final approval of the Settlement Agreement. Unless otherwise agreed to by the Parties in writing, Class Counsel shall provide JPMC’s Counsel with drafts of the moving papers requesting final approval for review at least five (5) business days before the

motion is filed. JPMC shall be permitted, but not required, to file its own memorandum in support of final approval.

9.2 Final Order and Judgment. Among other terms mutually agreed by the Parties and approved by the Court, the Final Order and Judgment shall enter a final judgment:

- (a) determining that the Settlement is fair, reasonable, and adequate;
- (b) certifying the Litigation as a settlement class action under Rule 23(c) of the Massachusetts Rules of Civil Procedure;
- (c) determining that the Notice provided by the Settlement Administrator satisfied due process and Rule 23 of the Massachusetts Rules of Civil Procedure so as to bind the Class Members and fully and finally resolve the Litigation;
- (d) permanently enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims as defined in Paragraph 10.1; and
- (e) retaining exclusive jurisdiction over the Parties, the Settlement Fund, the Class Members, and all objectors to enforce the Settlement Agreement and Final Order and Judgment according to their terms.

9.3 Litigation Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Judgment on any material modifications of this Settlement Agreement that are not acceptable to JPMC and/or to Named Plaintiff, if the Court does not approve the Settlement or enter the Final Order and Judgment without material modifications, or if the Effective Date does not occur for any reason (including any reversal of the Final Order and Judgment by an appellate court or remand wherein the material terms herein are not reinstated), then this Settlement Agreement and the Settlement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, Final Order and Judgment, and any other order post-dating preliminary approval of the Settlement and all of their provisions will be vacated (“**Denial Date**”), including, but not limited to, the conditional certification of the Class, conditional appointment of Named Plaintiff as Class Representative, and conditional appointment of the Named Plaintiff’s counsel as Class Counsel; (b) the Litigation will revert to the status that existed before the Settlement Agreement’s execution date and the Parties shall not have waived any of their claims or defenses; (c) no term or draft of this Settlement Agreement or any part of the Parties’ settlement discussions, negotiations, or documentation will have any effect, be admissible into evidence, or be subject to discovery for any purpose in the Litigation or any other proceeding; (d) JPMC shall retain all of its rights to object to the maintenance of the Litigation as a class action; and (e) all amounts provided by JPMC to the Settlement Administrator to create the Settlement Fund will be returned to JPMC within five (5) calendar days of the Denial Date. Should the Court determine that it does not have sufficient information to preliminarily approve the Settlement based on the submission by Class Counsel, Class Counsel will use

reasonable efforts to submit a revised submission to the Court for the purposes of obtaining preliminary approval.

**SECTION X – RELEASES,
ACKNOWLEDGMENTS, AND WAIVERS**

10.1 Releases and Acknowledgments. Upon entry of the Final Order and Judgment, Named Plaintiff and Class Members, and each of their respective heirs, legatees, next-of-kin, representatives, beneficiaries, successors, and assigns (“**Releasing Parties**”) hereby:

- (a) release, acquit, and forever discharge JPMC, and each of its respective present, future, and former administrators, advisors, agents (alleged, apparent, or actual), affiliates, assigns, attorneys, directors (whether acting in such capacity or individually), consultants, conservators, contractors, co-venturers, creditors, departments, directors, divisions, distributors, employees, independent contractors, insurers, joint ventures, co-venturers, managers, members, nominees, officers, parents (including but not limited to JPMorgan Chase & Co.), partners, personal representatives, predecessors (including but not limited to Chase Bank USA, N.A.), predecessors-in-interest, principles, privities, related entities, representatives, resellers, shareholders, subdivisions, subsidiaries (including but not limited to Chase Bankcard Services, Inc.), successors, successors-in-interest, retailers, wholesalers and each person or entity acting or purporting to act for them or on their behalf (“**Released Persons**”), from any and all manner of accounts, actions, agreements, attorneys’ fees, bills, bonds, causes of action, charges, claims, contracts, controversies, costs, covenants, damages, debts, demands, dues, executions, expenses, extents, interest, issues, judgments, losses, liabilities, obligations, penalties, promises, reckonings, remedies, rights, suits, sums of money, trespasses, and variances, of any nature whatsoever, known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, in law or equity, fixed or contingent, common law or statutory (the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.04(1)(f) and Massachusetts General Laws Chapter 93A) which they have or may have from the beginning of the world to the Effective Date that arise out of, relate to, or are based on, debt collection calls made by or on behalf of JPMC that did or could surpass any and all frequency limitations of 940 C.M.R. 7.04(1)(f) to the 45,470 Class Members for the period from August 15, 2015, to May 26, 2020 (“**Released Claims**” or “**JPMC Release**”);
- (b) acknowledge, represent, covenant, and warrant that the obligations imposed by the JPMC Release shall be forever binding, and that the JPMC Release may not be modified, amended, annulled, rescinded, or otherwise changed unless in writing signed and notarized by duly authorized representative of JPMC to which the modification, amendment, annulment, rescission, or change applies, and which writing expressly refers to the JPMC Release and this Settlement Agreement;

- (c) acknowledge, represent, covenant, and warrant that they have not made any assignment of any right, claim, or cause of action covered by the JPMC Release to any individual, corporation, or any other legal entity whatsoever;
- (d) acknowledge, represent, covenant, and warrant that they have full power, competence, and authority to execute and deliver the JPMC Release; and
- (e) acknowledge, represent, covenant, and warrant, to the extent the JPMC Release may be deemed a general release, that the Releasing Parties waive and release any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code which provides that “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING A RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR” or any other similar federal or state law. Thus, subject to and in accordance with this Settlement Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Plaintiffs and each Class Member, upon entry of Final Approval of the Settlement, shall be deemed to have and by operation of the Final Approval Order shall have fully, finally, and forever settled and released all of the Released Claims. This is true whether such Claims are known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, which now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

10.2 Acknowledgment and Waiver of Unknown or Different Facts. Upon entry of the Final Order and Judgment, the Releasing Parties acknowledge, represent, covenant, and warrant that (i) they fully understand the facts on which the Settlement Agreement is executed may be different from the facts now believed by them and their counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts that later may be discovered; and (ii) they hereby waive any right or ability to challenge the Settlement upon the discovery of any new facts, any additional Released Claims, or a change in the law regardless of why or how such facts, claims, or law was/were not otherwise known to them prior to executing and agreeing to this Settlement Agreement.

10.3 Anti-Waiver/Release. Nothing contained herein shall in any way affect any debt or obligation owed by Named Plaintiff or Class Members to JPMC pursuant to the terms and conditions of any existing or prior account(s) maintained by Named Plaintiff or the Class Members with JPMC.

SECTION XI – BEST EFFORTS

11.1 The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement and administration of the claims hereunder, including, without limitation, by seeking or not objecting to preliminary and final Court approval of this Settlement Agreement and the Settlement embodied herein, by carrying out the terms of this Settlement Agreement, and by promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

11.2 The Parties and their counsel understand and agree that the administration of a class action lawsuit can be complex and that, from time to time after the entry of the Final Order and Judgment, unique, non-material issues with respect to individual Class Members may arise that are not directly covered by the terms of this Settlement Agreement. In the event any such non-material issues arise, the Parties and their counsel agree to cooperate fully with one another and to use their respective best efforts to come to agreement, which agreement shall not be unreasonably withheld.

11.3 Any requests for cooperation shall be narrowly-tailored and reasonably necessary for the requesting party to recommend the Settlement to the Court and to carry out its terms.

SECTION XII – ADDITIONAL PROVISIONS

12.1 Compromise of Disputed Claims; JPMC’s Denial of Wrongdoing. This Settlement Agreement reflects the Parties’ compromise and settlement of disputed claims. Its provisions and all related drafts, communications, discussions, and any material provided by JPMC during the Parties’ negotiations cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person or entity and cannot be offered or received into evidence in any other action or proceeding as evidence of an admission or concession, except as necessary to enforce the Settlement Agreement. JPMC expressly denies (a) any and all liability, culpability, and wrongdoing with respect to the Litigation and matters alleged therein and (b) that the Litigation could be certified and maintained as a class action under Massachusetts Rule of Civil Procedure 23 or other state rule of procedure or law other than by way of settlement.

12.2 Confidentiality of Litigation Materials. Under no circumstance shall Plaintiff or Class Counsel disclose to any third party any confidentially designated discovery obtained from JPMC in the Action, except as may be otherwise permitted in this Agreement. Specifically, this Section does not alter the scope of any confidentiality provisions or provisions regarding the use of non-public information set forth in this Agreement or in the Parties’ protective orders in this Action.

12.3 Confidentiality of Settlement Negotiations. Information contained within this Agreement shall be considered public, as well as any information requested by the Court in the approval process and other such information necessary to implement this Settlement, provided such information is filed (and is not impounded) and/or is not considered to be confidential under the Parties’ protective orders in this Action. Beyond the information that the plaintiff believes is required by the Court to approve this Settlement, with JPMC’s consent, which will not be

unreasonably withheld, the Parties agree to keep strictly confidential and not disclose to any third party any non-public information regarding the Parties' negotiation of this Settlement and/or this Agreement.

12.4 Change of Time Periods. All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class Members.

12.5 Real Parties-in-Interest. In executing this Settlement Agreement, the Parties warrant and represent that they, including the Named Plaintiff in their representative capacity on behalf of the Class Members, and, to the best of their knowledge, Class Members, are the only persons having any interest in the claims asserted in the Litigation, including the Released Claims.

12.6 Voluntary Agreement. The Parties execute this Settlement Agreement voluntarily and without duress or undue influence. All of the Parties warrant and represent that they are agreeing to the terms of this Settlement Agreement based upon the legal advice of their respective counsel, that they have been afforded the opportunity to discuss the contents of this Settlement Agreement with their counsel, and that the terms and conditions of this document are fully understood and voluntarily accepted.

12.7 Entire Agreement. This Settlement Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Litigation. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

12.8 Construction and Interpretation. Neither Party nor any of the Parties' respective counsel will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

12.9 Headings and Formatting of Definitions. The various headings used in this Settlement Agreement are solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or with respect to the scope of this Settlement Agreement.

12.10 Exhibits. The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and the Settlement and are incorporated into this Settlement Agreement as though fully set forth in the Settlement Agreement.

12.11 Modifications and Amendments. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed by the Parties or their respective counsel.

12.12 Further Assurances. The Parties must execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

12.13 Agreement Constitutes a Complete Defense. To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement or the Final Order and Judgment entered in the Litigation.

12.14 No Waiver. The waiver by a Party of any breach of this Agreement by the other Party shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with the execution of this Settlement Agreement or during administration of the Settlement, as approved by the Court.

12.15 Change in Law. No change in law will affect this Settlement Agreement or the obligations of any Party thereto.

12.16 Execution Date. This Settlement Agreement is deemed executed on the last date the Settlement Agreement is signed by all of the undersigned.

12.17 Counterparts. This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or electronic versions of executed copies of this Settlement Agreement may be treated as originals.

12.18 Recitals. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

12.19 Severability. If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt in good faith to renegotiate the Settlement Agreement or, if that proves unavailing, either Party may terminate the Settlement Agreement without prejudice to any Party.

12.20 No Conflict Intended. Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

12.21 Class Counsel Warranties. Class Counsel represents and warrants that they (a) have no current client with a claim against JPMC or any of the Released Persons of the type alleged in the Litigation that has not already been filed and served on JPMC and (b) have no present intention to seek out or solicit former or current borrowers with obligations with JPMC, to pursue individual or class claims against JPMC with respect to matters within the scope of the Settlement Agreement. The Parties understand and agree that nothing in this Section imposes or shall be construed to prohibit or restrict Class Counsel from representing persons who seek representation for such claims subsequent to the Effective Date.

12.22 Press Release. Parties will not issue press releases, contact the media, or otherwise seek to publicize the case or the terms of the Settlement beyond what is required to effectuate the Settlement, e.g., providing Notice to the Class Members. Class Counsel and JPMC's counsel do not presently intend to issue press releases, contact the media, or otherwise seek to publicize the case or the terms of the Settlement beyond what is required to effectuate the Settlement, e.g., providing Class Notices to the Class Members. Nothing in this Section, or elsewhere in this Agreement, shall prevent Class Counsel from: discharging their duties to Class Members; discussing the Settlement with Named Plaintiff, Class Members, or the Court; disclosing public information about the case on a resume, curriculum vitae, firm website, in other promotional materials, or in future legal filings; or responding to government inquiries.

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12.23 Regular Course of Business. The Parties agree that nothing in this Settlement Agreement shall be construed to prohibit communications between JPMC and Released Persons, on the one hand, and Class Members, on the other hand, in the regular course of business.

ZAGLOUL AYAD



09/24/2021

Printed Name:

Dated: September __, 2021

LEMBERG LAW, LLC



09/23/2021

By: Sergei Lemberg, Esq.

Its: Managing Member

Dated: September __, 2021

JPMORGAN CHASE BANK, N.A.

By: Christopher A. Reagan

Its: Chief Financial Officer

Dated: September 1, 2021

GREENBERG TRAURIG, LLP

By: David G. Thomas, Esq.

Its: Shareholder

Dated: September 1, 2021

12.23 Regular Course of Business. The Parties agree that nothing in this Settlement Agreement shall be construed to prohibit communications between JPMC and Released Persons, on the one hand, and Class Members, on the other hand, in the regular course of business.

ZAGLOUL AYAD

Printed Name:
Dated: September ____, 2021

LEMBERG LAW, LLC

By: Sergei Lemberg, Esq.
Its: Managing Member
Dated: September ____, 2021

JPMORGAN CHASE BANK, N.A.

E-SIGNED by Christopher Reagan
on 2021-09-01 13:04:44 GMT

By: Christopher A. Reagan
Its: Chief Financial Officer
Dated: September 1, 2021

GREENBERG TRAURIG, LLP



By: David G. Thomas, Esq.
Its: Shareholder
Dated: September 24, 2021

EXHIBIT A

ATTENTION CURRENT OR FORMER JPMORGAN CHASE BANK, N.A. MASSACHUSETTS ACCOUNT HOLDERS WHO RECEIVED MORE THAN TWO DEBT COLLECTION CALLS FROM JPMC DURING A SEVEN-DAY PERIOD BETWEEN AUGUST 15, 2015 AND MAY 26, 2020

THIS NOTICE IS AN ABBREVIATED SUMMARY OF A PROPOSED CLASS ACTION SETTLEMENT. FOR A COPY OF THE FULL NOTICE OF SETTLEMENT AND OTHER RELATED DOCUMENTS, PLEASE ACCESS [HTTP://WWW._____.COM](http://www._____.com) OR CONTACT THE SETTLEMENT ADMINISTRATOR

You have been identified as a Class Member in a lawsuit entitled *Zagloul Ayad v. JPMorgan Chase Bank, N.A.*, Case No. 1981-cv-02424 (“**Action**”), which is pending in Massachusetts Superior Court (“**Court**”). You are a Class Member because, during the period between August 15, 2015 and May 26, 2020 (“**Class Period**”), you received in excess of two debt collection calls in a seven-day period (“**Class**” and “**Class Member**”) from JPMorgan Chase Bank, N.A. (“**JPMC**”). The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

A proposed settlement (“**Settlement**”) of the Action has been reached, which will affect your legal rights. In the Action, Plaintiff Zagloul Ayad (“**Named Plaintiff**”) alleges that JPMC violated the Massachusetts Debt Collection Regulations, 940 C.M.R. § 7.00 and Mass. Gen. Laws ch. 93A, § 9 by initiating communications with the Class more than two times in a seven-day period. JPMC denies any wrongdoing and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. The parties, however, have decided to avoid further litigation and determined that the Settlement is in the best interests of the parties and the Class. The Settlement, this notice, and a more detailed notice (“**Notice of Class Action Settlement**”) containing other important information have been preliminarily approved by the Court. Provided that the Settlement becomes a Final Order and Judgment, JPMC has agreed to pay \$1,750,000 (“**Settlement Fund**”) to settle the Action as set forth in the Parties’ Settlement Agreement. The Settlement Fund will be used to pay Settlement Class Members, to pay the costs associated with administration of the Settlement, Class Counsel’s fees, costs and expenses (“**Class Counsel Fees**”), and a service award to the Named Plaintiff (“**Service Award**”). The amount of Class Counsel Fees and the Service Award are subject to Court approval. Class Counsel will request up to one-third of the Settlement Fund in attorneys’ fees and costs and up to \$10,000 as an incentive award to the named Plaintiff for his services on behalf of the Settlement Class. Class Members will receive a pro rata (meaning equal) share of the Settlement after all costs associated with the Settlement administration, Class Counsel Fees, and Service Award are deducted from the Settlement Fund.

If you believe the Settlement is unsatisfactory, you may file a written objection with the Office of the Clerk of the Court, Middlesex County Superior Court, 200 Tradecenter Dr., Woburn, Massachusetts 01801, and sending copies to the following: (1) Class Counsel: Sergei Lemberg, Esq., Lemberg Law, LLC, 43 Danbury Rd., Wilton, CT 06897; and (2) JPMC’s Counsel: David G. Thomas, Esq., Greenberg Traurig LLP, One International Place, Suite 2000, Boston, MA 02110. Objections must be postmarked by _____, 2021, and must contain the information specified in the Notice of Class Action Settlement. Subject to final approval by the Court, you will be bound by the terms of the Settlement, including a release of JPMC and others of various claims. The Court will hold a Fairness Hearing on XXX in Courtroom XX, Middlesex County Superior Court, 200 Tradecenter Dr., Woburn, Massachusetts 01801.

To obtain a copy of the Settlement Agreement and Release, the Notice of Class Action Settlement, and other related documents, you may: (1) call Kurtzman Carson Consultants, LLC at 877.449.8589, (2) mail a written request for such information, including your name and address to: Settlement Administrator, JPMC Collection Call Settlement, Kurtzman Carson Consultants, LLC, P.O. Box 43447, Providence, RI 02940-3447, or (3) download the information at www.XXX.com. Please do not contact JPMC or JPMC’s Counsel.

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
C.A. No.: 1981-cv-02424

ZAGLOUL AYAD, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

THIS MATTER comes before the Court on (i) Named Plaintiff's¹ Motion for Final Approval of Class Action Settlement and for Entry of a Final Order and Judgment, and (ii) the Court's Preliminary Approval Order, dated _____, 2021, which conditionally certified the following Class for settlement purposes:

the 45,470 JPMC current or former customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. § 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020. The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

The Court, having (i) directed that Notice be given to the Class Members of the Settlement and of the Fairness Hearing; (ii) considered the Settlement Agreement and the exhibits attached thereto; (iii) considered all of the submissions and arguments with respect to the motions; and (iv) held the Fairness Hearing and considered the submissions and arguments made in connection therewith, hereby makes the following FINDINGS:

¹ The Court adopts the terms defined in the Settlement Agreement for the purpose of this Final Order and Judgment. Capitalized terms used in this Final Order and Judgment shall have the meanings ascribed to them in the Settlement Agreement unless otherwise stated.

1. That the Notice to the Class Members has been given in an adequate and sufficient manner and constitutes the best notice practicable, complying in all respects with the requirements of Mass. R. Civ. P. 23 and due process.

2. That, for purposes of final approval of the Settlement Agreement, pursuant to Mass. R. Civ. P. 23, and for purposes of this settlement only:

- (a) The Class is ascertainable and so numerous that joinder of all members is impracticable. The Class consists of tens of thousands of class members and the members of the Class have been determined by an objective means; namely, from JPMC's business records;
- (b) There are questions of law or fact common to the Class, including whether defendant possibly made debt collection telephone calls to the Class Members in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. § 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020;
- (c) The claims of the Named Plaintiff and class representative are typical of the claims of the Class Members. The Named Plaintiff and each member of the Class are alleged to have suffered damages based on the same course of conduct;
- (d) The Named Plaintiff has fairly and adequately represented and protected the interests of the Class and is a member of the Class. Neither the Named Plaintiff or Class Counsel have any conflicts of interest with the other Class Members, and Class Counsel have demonstrated that they have adequately represented the Class;
- (e) The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members;
- (f) A class action is superior to other available methods for the fair and efficient adjudication of the controversy as the settlement substantially benefits both the litigants and the Court, and there are few manageability issues as settlement is proposed rather than a further trial; and
- (g) The Class is certified for purposes of settlement only.

4. That extensive arms' length negotiations took place in good faith between and among Class Counsel and JPMC's Counsel, with the assistance of Hon. Stephen Neel (ret.) as mediator, and such negotiations have resulted in the Settlement, as provided in the Settlement

Agreement. There is no evidence of any collusion occurring during the settlement negotiations, and negotiations over Class Counsel's fees and expenses began only after the Parties had reached agreement on the substantive terms of the settlement.

5. That Class Counsel are experienced in similar litigation.

6. [That _____ objections to the Settlement were filed] or [That no objections to the Settlement were filed].

7. [That the Court has held a hearing to consider the fairness, reasonableness and adequacy of the Settlement.] or [That the Court has held a hearing to consider the fairness, reasonableness and adequacy of the Settlement has been advised of all objections to the Settlement, and has given fair consideration to such objections.]

8. The Court has considered the Parties proposals for distribution of uncashed settlement checks and orders that _____.

9. That the Settlement, as detailed in the Settlement Agreement, is in all respects fair, reasonable, adequate and proper and in the best interests of the Class.

10. That, accordingly, the Court hereby finally approves the Settlement as reflected in the Settlement Agreement, the respective terms of which, including but not limited to the releases, are hereby incorporated by reference as though fully set forth herein.

Based on the specific FINDINGS above, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Immediately upon entry of this Final Order and Judgment by the Clerk, this Action shall be closed, with each party and the respective members of the Class bearing their own costs and/or attorneys' fees, except as specifically provided herein.

2. The Parties are hereby directed to take all of the actions required under the terms and provisions of the Settlement Agreement to effectuate the Settlement.

3. To the extent permitted by law and without affecting the other provisions of this Final Order and Judgment, this Final Order and Judgment is intended by the Parties and the Court to be res judicata, and to prohibit and preclude any prior, concurrent or subsequent litigation brought individually, or in the name of, and/or otherwise on behalf of any member of the Class with respect to the Released Claims.

5. All Class Members are bound by this Final Order and Judgment and are enjoined from instituting, maintaining, prosecuting, or enforcing, either directly or indirectly, any of the Released Claims.

6. The provisions of this Final Order and Judgment are entered as a result of an agreement of the Parties. The Settlement Agreement and this Final Order and Judgment are not intended to be, and shall not be construed as, any admission, express or implied, of any fault, liability or wrongdoing by defendant.

7. The Court shall retain exclusive jurisdiction over this action as to the following matters: (i) enforcement of the terms of the Settlement Agreement; (ii) issues relating to settlement administration; (iii) enforcement of this Final Order and Judgment, and (iv) the Released Claims.

8. No just reason exists for delay in entering this Final Order and Judgment.

SO ORDERED this ____ day of _____, 2021.

Superior Court Judge

EXHIBIT C

NOTICE OF CLASS ACTION SETTLEMENT

ATTENTION: IF YOU ARE ONE OF THE 45,470 JPMORGAN CHASE BANK, N.A., CUSTOMERS IDENTIFIED AS POSSIBLY RECEIVING A DEBT COLLECTION TELEPHONE CALL IN VIOLATION OF THE MASSACHUSETTS DEBT COLLECTION REGULATIONS, 940 C.M.R. § 7.00 AND MASSACHUSETTS GENERAL LAWS CHAPTER 93A DURING THE PERIOD FROM AUGUST 15, 2015 TO MAY 26, 2020, THIS NOTICE INFORMS YOU OF A PROPOSED CLASS ACTION SETTLEMENT THAT COULD AFFECT YOUR LEGAL RIGHTS. PLEASE REVIEW THIS NOTICE FULLY AND CAREFULLY.

What is the Notice about?

There is a putative class action lawsuit entitled *Zagloul Ayad v. JPMorgan Chase Bank, N.A.*, Case No. 1981-cv-02424 (the “**Action**”), pending in the Superior Court Department of the Trial Court for the Commonwealth of Massachusetts (the “**Court**”) that may affect your legal rights. The Action alleges that defendant JPMorgan Chase Bank, N.A., (“**JPMC**” or “**defendant**”) called account holders residing in Massachusetts who owed a debt more than 2 times in a seven-day period in violation of the Massachusetts Debt Collection Regulations and Massachusetts General Laws Chapter 93A. JPMC denies any wrongdoing or any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. The Parties, however, have reached a proposed settlement of the Action (the “**Settlement**”) and believe that the Settlement is in the best interests of the Parties and Class Members (as defined below). The Settlement and this Notice have been preliminarily approved by the Court. The purpose of this Notice is to provide the Class Members with a summary of the Settlement and advise them of their legal rights.

Who is a Class Member?

Class Members are the 45,470 current or former JPMC customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. § 7.00 *et seq.* and Massachusetts General Laws Chapter 93A during the period from August 15, 2015 to May 26, 2020. The following persons are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court. *If you received a postcard or email notice, then JPMC’s records reflect that you are a Class Member and may be eligible for payment if the Settlement is finally approved by the Court.*

How can I benefit from the proposed settlement?

Subject to the Court’s approval, JPMC has agreed to resolve the Action as set forth in the Parties’ Settlement Agreement for One Million, Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) (“**Settlement Amount**”). The Settlement Amount will be used to pay Class Members, to pay the costs associated with administration of the Settlement, and to pay Class Counsel’s fees, costs and expenses (“**Class Counsel Fees**”), and a service award to the Named Plaintiff (“**Service Award**”). The amount of Class Counsel Fees and the Service Award are subject to Court approval. JPMC has agreed not to oppose an application for Class Counsel Fees of \$**583,333.33** and a Service Award of \$10,000. Class Members will receive a pro rata share (meaning equal) of the Settlement after all costs associated with the Settlement administration, Class Counsel Fees, and Service Award are deducted from the Settlement Fund.

The Parties disagree on how settlement checks uncashed by Class Members should be treated. Plaintiff believes uncashed checks should, if feasible, be redistributed to class members who cashed their initial check and any remainder thereafter should go to a charity. JPMC believes funds from uncashed checks should be submitted to the Unclaimed Property Division for the Commonwealth of Massachusetts through which division the Class Members who did not cash their checks may contact to claim their checks, The Court will resolve this issue.

Who represents the Class Members and the Defendants?

The Court appointed Sergei Lemberg, Esq. of Lemberg Law LLC, located at 43 Danbury Rd., Wilton, CT 06897 (203-653-2250) to represent Class Members as Class Counsel. You do not have to pay Class Counsel, or anyone else, to receive

QUESTIONS: CALL THE ASSISTANCE LINE AT 1-XXX-XXX-XXXX

the benefits of the Settlement beyond Class Counsel's Fees and the Service Award being paid from the Settlement Fund. JPMC is represented by David G. Thomas, Esq. of Greenberg Traurig, LLP, One International Place, Suite 2000, Boston, MA 02110. If you have questions about the Settlement and want to speak to counsel, you should contact Mr. Lemberg, who has been appointed by the Court to represent you.

What are my rights and options for participating or not participating in the Settlement?

Option 1:

You may do nothing if you do not object to the Settlement.

There is no ability under the Massachusetts Rules of Civil Procedure for you to "opt out" of the Settlement. If you do not object to the Settlement, you need not do anything. Subject to the Court's final approval of the Settlement, you will automatically receive the benefits of the Settlement due to you. You will be considered a Class Member, you will be bound by the Court's decisions and judgment, and you will lose the right to bring any action against the Released Persons on your own concerning the claims being released pursuant to the Settlement (*see* "**What claims are being released?**" below).

Option 2:

You may object to the Settlement.

You may object to the Settlement. To do so, you must file a written objection with the Court (Middlesex County Superior Court, 200 Tradecenter Dr., Woburn, MA 01801) before _____, 2021, as follows:

- (a) **Form and Notice.** A written objection must include: (i) the name and case number of the Litigation; (ii) the full name, address, and telephone number of the person objecting; (iii) a statement of each objection; (iv) a written statement detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s); (v) the identity of all counsel who represent the objector and who may appear at the Fairness Hearing; (vi) a list of all persons who will be called to testify in support of the objection at the Fairness Hearing; (vii) a list of all other putative class actions to which the objector has submitted an objection over the last ten (10) years; and (viii) a statement of whether the objector and/or his or her counsel intends to attend the Fairness Hearing.
- (b) **Appearance at Fairness Hearing.** Any Class Member who submits a timely objection as set forth above may appear at the Fairness Hearing with or without counsel at the Class Member's own expense. If a Class Member is represented by counsel, such counsel must file a Notice of Appearance with the Court and serve a copy of the Notice of Appearance on the Settlement Administrator, Class Counsel, and JPMC's Counsel no later than fifteen (15) calendar days before the Fairness Hearing.

Objections will be heard by the Court at the Fairness Hearing, which is the hearing during which the Court will be asked to consider and finally approve the Settlement. You do not need to appear at the hearing for your objection to be heard by the Court.

What claims are the Class Members releasing?

Upon final approval of the Settlement by the Court at the Fairness Hearing, the Action will be fully and finally resolved and the Named Plaintiff and Class Members, and each of their respective heirs, legatees, next-of-kin, representatives, beneficiaries, successors, and assigns will:

release, acquit, and forever discharge JPMC, and each of its respective present, future, and former administrators, advisors, agents (alleged, apparent, or actual),

QUESTIONS: CALL THE ASSISTANCE LINE AT 1-XXX-XXX-XXXX

affiliates, assigns, attorneys, directors (whether acting in such capacity or individually), consultants, conservators, contractors, co-venturers, creditors, departments, directors, divisions, distributors, employees, independent contractors, insurers, joint ventures, co-venturers, managers, members, nominees, officers, parents (including but not limited to JPMorgan Chase & Co.), partners, personal representatives, predecessors (including but not limited to Chase Bank USA, N.A.), predecessors-in-interest, principles, privities, related entities, representatives, resellers, shareholders, subdivisions, subsidiaries (including but not limited to Chase Bankcard Services, Inc.), successors, successors-in-interest, retailers, wholesalers and each person or entity acting or purporting to act for them or on their behalf (“Released Persons”), from any and all manner of accounts, actions, agreements, attorneys’ fees, bills, bonds, causes of action, charges, claims, contracts, controversies, costs, covenants, damages, debts, demands, dues, executions, expenses, extents, interest, issues, judgments, losses, liabilities, obligations, penalties, promises, reckonings, remedies, rights, suits, sums of money, trespasses, and variances, of any nature whatsoever, known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, in law or equity, fixed or contingent, common law or statutory (the Massachusetts Debt Collection Regulations, 940 C.M.R. 7.04(1)(f) and Massachusetts General Laws Chapter 93A) which they have or may have from the beginning of the world to the Effective Date that arise out of, relate to, or are based on, debt collection calls made by or on behalf of JPMC that did or could surpass any and all frequency limitations of 940 C.M.R. 7.04(1)(f) to the 45,470 Class Members for the period from August 15, 2015, to May 26, 2020 (“Released Claims”)

In addition, Class Members will be bound by the Final Order and Judgment and will be enjoined from pursuing any of the Released Claims. For a full version of the all Releases, Acknowledgments, and Waivers by the Named Plaintiff and Class Members, please see the Settlement Agreement, Section X.

When and where is the Fairness Hearing?

The Court will hold a Fairness Hearing to consider if the Settlement is fair, reasonable, and adequate, and should be granted final approval, on _____, 201_, at _____m. in Courtroom ____, of Middlesex County Superior Court, 200 Tradecenter Dr., Woburn, MA 01801.

Where can I find additional information?

You may find more information about the Settlement at [www.\[____\].COM](http://www.[____].COM) by contacting the Settlement Administrator at 877.449.8589 or sending a request for information to the Settlement Administrator, JPMC Collection Calls Settlement, Kurtzman Carson Consultants, LLC, P.O. Box 43447, Providence, RI 02940-3447. A more complete collection of information, including copies of the pleadings, records and other papers on file in the Action, is also available during regular business hours at the Office of the Clerk, Middlesex County Superior Court, 200 Tradecenter Dr., Woburn, MA 01801. **PLEASE DO NOT CALL THE COURT, JPMC, OR JPMC’S COUNSEL FOR ADDITIONAL INFORMATION.**

QUESTIONS: CALL THE ASSISTANCE LINE AT 1-XXX-XXX-XXXX

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
C.A. No.: 1981-cv-02424

ZAGLOUL AYAD, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Zagloul Ayad (“**Named Plaintiff**”), in his putative representative capacity as plaintiff on behalf of the Class Members, and defendant JPMorgan Chase Bank, N.A., (“**JPMC**” and collectively with Named Plaintiff, the “**Parties**”), by and through their respective counsel, have advised the Court that they have agreed to a settlement (“**Settlement**”) of this action (“**Action**”) upon the terms and conditions set forth in the Parties’ Settlement Agreement and Release (“**Settlement Agreement**”). Named Plaintiff’s counsel filed the Settlement Agreement as an exhibit to the motion requesting the Court to preliminarily approve the Settlement, send notice of the Settlement to the Class Members, and schedule a hearing to determine the ultimate fairness, reasonableness, and adequacy of the Settlement (“**Fairness Hearing**”).

The Court has reviewed and considered the Settlement embodied in the Settlement Agreement, the exhibits thereto, Named Plaintiff’s motion for preliminary approval, Named Plaintiff’s supporting memorandum, and the affidavit from Named Plaintiff’s counsel. Based on that review and consideration, the Court makes the following findings and, furthermore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Court adopts the terms defined in the Settlement Agreement for the purpose of this Preliminary Approval Order. Capitalized terms used in this Preliminary Approval Order shall have the meanings ascribed to them in the Settlement Agreement unless otherwise stated.

2. The Settlement appears to have resulted from arm's-length negotiations between the Parties' counsel and after the Parties' counsel conducted a reasonable investigation and analysis of the facts and law concerning the claims asserted in this Action. Accordingly, the Court preliminarily finds and concludes that the Settlement is within the range of fairness, reasonableness, and adequacy such that (a) Notice should be sent to the Class Members for the purposes of determining whether any Class Member has any objections to the Settlement, and (b) after Notice and a ruling on any timely and valid objections, the Court will finally consider and determine whether the Settlement is fair, reasonable, and adequate as to the Class Members at the Fairness Hearing.

3. The Court, in its discretion and for Settlement purposes only, conditionally certifies the Class as:

The 45,470 current or former JPMC customers identified by the Parties as possibly receiving a debt collection telephone call in violation of the Massachusetts Debt Collection Regulations, 940 C.M.R. § 7.00 *et seq.* and Massachusetts General Laws Chapters 93A during the period from August 15, 2015 to May 26, 2020. The following person are excluded from the Class: all persons who are officers or directors of JPMC or any of its subsidiaries, as well as Judges of the Court.

4. Pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, the Court, in its discretion and for settlement purposes only, conditionally finds that:

- (a) the Class is so numerous that joinder is impracticable;
- (b) there are questions of law or fact common to the Class;
- (c) the claims of the Named Plaintiff are typical of the claims of the Class;
- (d) the Named Plaintiff and Class Counsel are capable of fairly and adequately

protecting the interests of the Class and there does not appear to exist any conflicts of interest among them and the Class Members;

(e) common questions of law and fact predominate over questions affecting only individual Class Members; accordingly, the Class is sufficiently cohesive to warrant adjudication through settlement by representation; and

(f) the Settlement is superior to other available methods for the fair and efficient resolution of the claims of the Class.

5. The forms of Notice attached to the Settlement Agreement, and the manner in which Notice is to be distributed to the Class Members, appears to be fair and reasonable and the best notice that is practicable under the circumstances as well as to comply with due process because the Notice and manner are reasonably calculated to adequately apprise Class Members of the factors set forth in Mass. R. Civ. P. 23(c), including, without limitation, (i) the pendency of the action, (ii) the proposed settlement, and (iii) notice to the absent persons that they may come in and present objections if they so desire.

6. Kurtzman Carson Consultants, LLC is appointed as the Settlement Administrator to send Notice and administer the Settlement.

7. Named Plaintiff is conditionally appointed as the Class Representative. Lemberg Law, LLC is conditionally appointed as Class Counsel.

8. As provided in the Settlement Agreement:

(a) the Settlement Administrator will send Notice to the Class, pursuant to the terms and conditions of Paragraph 7.4 of the Settlement Agreement, within thirty (30) calendar days after the date of this Preliminary Approval Order (“**Notice Date**”).

(b) All objections must be submitted pursuant to the Settlement Agreement

Paragraph 8.1 within sixty (60) calendar days from the Notice Date (“**Objection Deadline**”).

(c) Class Counsel shall submit an application for payment of the Agreed Fees and Agreed Service Award no later than thirty (30) calendar days before the Objection Deadline.

(d) Any Class Member who fails to comply with the provisions of Paragraph 8.1(a) and (b) of the Settlement Agreement when submitting an objection will not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

(e) A Fairness Hearing shall be held on _____, _____, at _____
____.m. Class Counsel shall file a motion for final approval of the class action settlement, as set forth the Settlement Agreement, no later than fifteen (15) calendar days before the Fairness Hearing.

(f) The form of Final Order and Judgment attached to the Settlement Agreement is preliminarily approved and all Class Members will be bound by the Final Order and Judgment and the terms of the Settlement Agreement if the Final Order and Judgment is approved at or after the Fairness Hearing.

9. Pursuant to Section 6.1 of the Settlement Agreement, the Parties shall treat the information conveyed by JPMC to Class Counsel as strictly confidential and for use in this proceeding only. To the extent the Court requests any such information in this proceeding, the Parties shall follow Trial Court Rule VIII: Uniform Rules on Impoundment Procedure and submit a joint motion seeking to impound that information, if necessary.

10. If the Settlement Agreement terminates for any reason or is not approved by the Court, or for any reason the Parties fail to obtain a Final Order and Judgment as contemplated by

Paragraph 9.3 of the Settlement Agreement, or the Settlement is terminated pursuant to the terms of the Settlement Agreement or for any other reason:

(a) All orders and findings entered in connection with the Settlement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

(b) This Preliminary Approval Order shall be vacated automatically, the Action shall proceed as though the Class had never been certified pursuant to the Settlement and such findings had never been made, and the Action shall return to the procedural status quo before entry of this Preliminary Approval Order;

(c) Nothing contained in this Preliminary Approval Order is, or may be construed as, any admission or concession by or against JPMC or Named Plaintiff, on behalf of themselves or the Class Members, on any point of fact or law, including, but not limited to, factual or legal matters relating to any effort to certify this Action as a class action; and

(d) Nothing contained in this Preliminary Approval Order or pertaining to the Settlement Agreement shall be used as evidence in any further proceeding in this Action, including, but not limited to, motions or proceedings seeking treatment of this Action as a class action.

11. Pending final determination of whether the Settlement should be approved, no Class Member directly or indirectly, derivatively, in a representative capacity, or in any other capacity, shall commence any action against any of the Released Persons in any court, tribunal, or other adjudicatory body asserting any of the Released Claims. All Class Members shall be bound by the Final Order and Judgment should it be entered.

12. Nothing contained in this Preliminary Approval Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

13. All discovery, pretrial proceedings, and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Preliminary Approval Order.

14. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with any non-material modifications that may be agreed to by the Parties and Court without further notice to the Class.

SO ORDERED this ___ day of _____, 2021.

Superior Court Judge