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CC-06-2025-C-523

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NOTICE OF FILING

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA
Amanda Stevens v. Nelnet Servicing, LLC
CC-06-2025-C-523

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Michael J. Woelfel
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(304) 526-8622

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CC-06-2025-C-523
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IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

AMANDA STEVENS,
On Behalf of Herself and
All Others Similarly Situated,
Plaintiffs,

v. **Civil Action No. CC-06-2025-C-523**

NELNET SERVICING, LLC,
Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND ENTRY OF SCHEDULING ORDER

I. INTRODUCTION

Plaintiff Amanda Stevens ("Plaintiff"), by counsel and on behalf of the proposed settlement class, hereby respectfully submits this Memorandum in Support of her Unopposed Motion for Preliminary Approval of Settlement, Conditional Certification of Settlement Class and Entry of Scheduling Order. Plaintiff and Defendant Nelnet Servicing LLC ("Nelnet" or "Defendant," and together, the "Parties") reached this settlement after exchanging class data and written discovery and mediating their claims through arms' length negotiations with Mr. Edd McDevitt. The terms of the proposed settlement are fair and will create a common fund of $325,000 in cash for distribution to the settlement class members ("Common Fund"). Upon approval, attorney's fees and expenses, costs of administration, and any service award to the Plaintiff will be paid out of the Common Fund. After deduction for attorney's fees and expenses, costs of administration, and any service award to the Plaintiff, class members will receive a cash payment from the Common Fund allocated on a per letter received basis. The cash payment to class members is estimated to be $319.12 per monthly statement received. In weighing the potential damages award against all the risks of litigation, the relief is fair and equitable and in the best interests of class members. The proposed Class Settlement and Release Agreement is subject to this Court's approval and is attached as **Exhibit 1**.

Plaintiff respectfully requests that the Court enter an Order (1) preliminarily approving the Parties' proposed settlement, embodied in the Class Settlement and Release Agreement (the "Settlement" or "Settlement Agreement") attached as Exhibit 1; (2) provisionally certifying the proposed settlement class for settlement purposes only; (3) appointing Plaintiff as class representatives and Plaintiff's counsel as class counsel; (4) approving the form, manner, and content of the class notice and the procedures for settlement class members to opt out or object; (5) approving Epperly Re:Solutions as the settlement administrator; (6) establishing a schedule to complete the tasks necessary to effectuate the proposed Settlement; and (7) staying the action pending final approval of the Settlement (except the stay of proceedings shall not prevent the filing of any motions, declarations, and other filings necessary to obtain and preserve final judicial approval of the Settlement Agreement). For the reasons set forth more particularly below, Plaintiff respectfully requests that the Court grant this Motion. Defendant has agreed to the proposed order of preliminary approval attached to this motion, for settlement purposes only. While Defendant does not oppose this Motion, solely for purposes of effecting the purposes of the Settlement Agreement, it does not agree that Plaintiff would have been, or would be, able to certify a class were the case to proceed and such motion be contested**.**

II. FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to West Virginia Rules of Civil Procedure Rule 23, Amanda Stevens, on behalf of herself and all others similarly situated, moves for certification of a class defined as follows:

> **All West Virginia borrowers who applied for an Income Driven Repayment plan before 8/31/23, whose applications were eventually approved, and who received a statement from Nelnet in the intervening**

period that stated that there was no current amount due, but that amounts would come due within the next sixty (60) days.

Plaintiff's Complaint alleges that Defendant misstated the monthly amount due for student loan borrowers who had applied for enrollment in an income-driven repayment plan, making it impossible for borrowers to comply with their repayment obligations. Complaint ¶ Introduction. The Complaint alleges that when a student loan borrower applied to be in an income-driven repayment plan, Nelnet was required to place borrowers in a forbearance until the enrollment process in the SAVE plan was complete. Complaint ¶ 19. However, according to the Complaint, Nelnet failed to place Plaintiff in a forbearance and instead represented that Plaintiff owed significantly more on a monthly basis than was accurate. Complaint ¶¶ 11-22. Plaintiff alleges that Defendant's conduct violated West Virginia Code § 46A-2-127, -127(d), and -128, which requires a debt collector to accurately disclose not to make false representations about the extent or amount of a claim against a consumer and not to commit unfair and deceptive acts and practices.

Plaintiff initially filed this claim on behalf of herself and putative class of similarly-situated borrowers in the Southern District of West Virginia, Huntington Division in Case No. 3:24-cv-00280. Defendant Nelnet moved to dismiss the claim on the grounds that Plaintiff lacked Article III standing in federal court on September 26, 2024. Judge Chambers ultimately agreed and dismissed Plaintiff's claim. Plaintiff alleged individual claims arising under the Fair Credit Reporting Act that proceeded in the federal action. The Parties continued to vigorously litigate the remaining individual counts of Plaintiff's federal court claim arising under the Fair Credit Reporting Act, including depositions and extensive written discovery.

Only after extensive discovery, including initial written responses to discovery, numerous meetings of counsel to resolve discovery disputes, multiple supplemental answers and productions, the Parties scheduled a mediation with an experienced mediator, Mr. Edd McDevitt. The parties mediated their claims with Mr. McDevitt on January 9, 2026, and finally resolved Plaintiff's class claims through arms' length negotiations. Nelnet disclosed that it sent 604 statements to consumers who had applied for an Income Driven Repayment plan prior to August 31, 2023 and who, prior to such application being approved, received one or more monthly statement from Nelnet indicating that the current amount due was $0, but that amounts would come due within the next sixty (60) days (which Plaintiff contends should not have occurred had Nelnet properly placed such borrowers' loans in forbearance while processing their applications).

Defendant has denied and continues to deny all allegations and claims asserted against it in this action and denies any and all wrongdoing. Defendant has always maintained, and continues to maintain, that it has acted in accordance with governing law.

III. PROPOSED SETTLEMENT

A. Terms of the Settlement Agreement

The proposed Settlement requires Defendants to contribute a cash payment of $325,000 (the "Total Settlement Amount"). This amount is a lump sum payment inclusive of: (1) payments to settlement class members; (2) class counsel's fees and expenses and court costs, subject to Court approval; (3) costs of the class notice and administrative costs; and (4) any class representative incentive awards, subject to Court approval.

Plaintiff's counsel will apply to the Court for a distribution of no more than one-third of the Total Settlement Amount, which sum (one-third of the Total Settlement Amount) shall include all attorney's fees and expenses incurred by Plaintiff. Plaintiff will also request an incentive award of $7,500 for Plaintiff's service to the class, subject to the Court's approval.

Settlement payments will be distributed on a one check per consumer basis such that settlement class members will receive a single check with a per-monthly statement settlement payment amount as consideration for fully resolving the settled claims. One check shall be issued to co-obligors on a single account, if any. For example, if John and Jane Smith are co-borrowers on a single account, a single check would be issued to "John Smith or Jane Smith." The Settlement Agreement fully protects the rights of class members to make objections to the settlement or to opt out of the settlement.

The Parties have selected Epperly Re:Solutions as the settlement administrator, who will process claims, field calls, and correspondence from settlement class members, and disburse amounts from the Common Fund. David Epperly and his firm, Epperly Re:Solutions have extensive experience in administering class action settlements, including direct mail services, database management, and settlement fund distribution services. The settlement administrator's fees and costs will be paid from the Common Fund.

B. Notice and Administration Provisions

"In the context of a class action, the due process requirements of the Fifth Amendment require '[r]easonable notice combined with an opportunity to be heard and withdraw from the class.'" *Groves v. Roy G. Hildreth & Son, Inc.*, No. 2:08-cv-820, 2011 WL 4382708 *3 (S.D.W. Va. Sept. 20, 2011) (*quoting In re Serzone Prods. Liability Litig.*, 231 F.R.D. 221, 231 (S.D.W. Va. 2005)); *see also Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 472 (W.D. Va. 2011). Rule 23(c)(2) requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." W.V. R. Civ. P. 23(c)(2). The notice must inform potential class members of the nature of the action, that class members may make an appearance through counsel, that class members may exclude themselves from the settlement, and that the class judgment will have a binding effect on class members who are not excluded. *Id*. Silence on the part of potential class members receiving the notice equates to "tacit consent to the court's jurisdiction." *In re Serzone Prods. Liability Litig.*, 231 F.R.D. at 231; *see also Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 306 (3d Cir. 1998).

The type of notice to which a member of a class is entitled depends upon the information available to the parties about that person, and the possible methods of identification. *See In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1098 (5th Cir. 1977) (*citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). In determining the reasonableness of the effort required, the court must look to the "anticipated results, costs, and amount involved." *In re Nissan*, 552 F.2d at 1099. "[D]ue process is satisfied 'where a fully descriptive notice is sent first-class mail to each class member, with an explanation of the right to opt out.'" *Domonoske*, 790 F. Supp. 2d at 472 (*quoting Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)).

Defendant has queried its records to determine the name, last-known address, and pertinent account information for settlement class members. Defendant will provide the settlement administrator with the name and last known address of each settlement class member. With such detailed information, the first-class mailed notice proposed in the Settlement Agreement will provide the best notice to class members. Notices returned with forwarding addresses shall be promptly re-mailed. Any notices returned without a forwarding address shall be re-mailed after the settlement administrator performs a National Change of Address Registry and LexisNexis/Death Records search. These procedures are designed to reach the maximum number of settlement class members at a reasonable expense.

The Parties' proposed Notice of Class Settlement, attached as Exhibit 3 to the Settlement Agreement ("Notice"), provides a full description of the nature of the action, proposed settlement, and requested attorney's fees. *See Domonoske*, 790 F. Supp. 2d at 472. The Notice describes in plain English the terms and operation of the settlement, the considerations that caused class counsel to conclude that the Settlement is fair and adequate, the procedure for objecting to and opting out of the Settlement, and the date of the fairness hearing.

IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

Settlement of class actions must be approved by the Court. W.V. R. Civ. P. 23(e); *Adkins v. Midland Credit Mgmt., Inc.*, No. 5:17-cv-04107, 2022 WL 327739, at *1 (S.D.W. Va. Feb. 3, 2022) (*citing Scardelletti v. Debarr*, 43 Fed. Appx. 525, 528 (4th Cir. 2002)); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991); *Domonoske*, 790 F. Supp. 2d at 472. "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158.

Such approval typically involves a two-step process of "preliminary" and "final" approval. See Manual for Complex Litigation § 21.632, at 414 (4th ed. 2004); *Grice v. PNC Mortgage Corp. of Am.*, No. 97-3804, 1998 WL 350581, at *2 (D. Md. May 21, 1998) (endorsing Manual's two-step process); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1992). In the first stage, the parties submit the proposed settlement to the Court for preliminary approval. In the second stage, following preliminary approval, the settlement class is notified and a fairness hearing is scheduled, at which time the Court will determine whether to approve the settlement. *See Bicking v. Mitchell Rubenstein & Assocs.*, No. 3:11-cv-78, 2011 WL 5325674, at *4 (E.D. Va. Nov. 3, 2011) ("Prior to granting final approval, the court must direct reasonable notice to all potentially affected class members, allow time for objection, and provide a 'fairness hearing.'").

Upon submission to the court of the parties' proposed settlement, a court will undertake a preliminary evaluation to determine whether the proposed settlement "appears to fall within the range of possible approval." Manual for Complex Litigation § 30.41, at 265 (3d ed. 2000); *see also All Bromine Antitrust Plaintiffs v. All Bromine Antitrust Defendants*, 203 F.R.D. 403, 416 (S.D. Ind. 2001). Whether to preliminarily approve a proposed class action settlement lies within the sound discretion of the district court. *See State ex rel. West Virginia University Hospitals, Inc. v. Gaujot,* 829 S.E.2d 54, 242 W.Va. 54 (2019). The WVSCA has noted that:

> Overall, **Rule 23 is a robust procedural tool that permits courts to efficiently resolve complicated questions.** <u>Rule 23 is a magnificent tool</u> for managing complex cases, and while class actions sometimes take a little more elbow grease, they are capable of affording justice for more people than can individual lawsuits.

State ex rel. Dodrill Heating & Cooling, LLC v. Akers, No. 21-0561, 2022 WL 1197831, at *14, *16 (W. Va. Apr. 22, 2022). "[T]here is an overriding public interest in favor of settlement, particularly in class action suits." *Lomascolo v. Parsons Brinckerhoff, Inc*., No. 1:08-cv-1310, 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) (*citing Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). The bar for obtaining preliminary approval is low. *All Bromine Antitrust Plaintiffs*, 203 F.R.D. at 416.

In determining whether a settlement meets the requirements of Rule 23, West Virginia has followed the federal practice of a bifurcated analysis involving inquiries into the fairness and adequacy of the settlement. *Scardelletti*, 43 Fed. Appx. at 528; *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158; *Groves*, 2011 WL 4382708, at *4. Pursuant to Rule 23(e)(2), the district court may approve the settlement "only after a hearing and only on finding that it is fair, reasonable and adequate after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

W.V. R. Civ. P. 23(e)(2). These requirements are consistent with longstanding Fourth Circuit caselaw and law in this district recognizing that a class settlement is fair when it is "reached as a result of good faith bargaining at arm's length, without collusion." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159; *Bicking*, 2011 WL 5325674, at *4. The court should be satisfied that "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." *Samuel v. Equicredit Corp.*, No. 00-6196, 2002 WL 970396, at *1 n.1 (E.D. Pa. 2002); *In re Vitamins Antitrust Litig.,* MDL No. 1285, 2001 U.S. Dist. LEXIS 25071, at *29-30; *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). "Absent evidence to the contrary, the court may presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion." *Muhammad*, 2008 WL 5377783, at *4.

In assessing the fairness of a proposed settlement, the Court must look to the following factors: (1) posture of the case at the time the settlement is proposed; (2) extent of discovery that has been conducted; (3) circumstances surrounding the negotiations; and (4) experience of counsel in the relevant area of class action litigation. *In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practice*, 952 F.3d 471, 484 (4th Cir. 2020); *see also Scardelletti*, 43 Fed. Appx. at 528; I*n re Jiffy Lube Sec. Litig.*, 927 F.2d at 159. In determining the adequacy of the proposed settlement, the Court must consider: (1) relative strength of Plaintiffs' case on the merits; (2) existence of any difficulties of proof or strong defenses Plaintiffs are likely to encounter if the case proceeds to trial; (3) anticipated duration and expense of additional litigation; (4) solvency of defendant and likelihood of recovery of a litigated judgment; and (5) degree of opposition to the settlement. *Id.*; *see also Scardelletti*, 43 Fed. Appx. at 528.

Consideration of the applicable factors reveals that the proposed Settlement Agreement should be preliminarily approved. The Settlement was indeed the product of serious, informed, arms' length, and non-collusive negotiations. Before mediating this matter, the Parties undertook extensive merits-based discovery and advocated for their clients through motion practice in the previously filed federal court action. Prior to mediating this action in January of 2026, the parties also shared substantial informal discovery in the form of class-wide data Defendant assembled through queries of its loan servicing system, which queries were informed by the Complaint and have informed the scope of the proposed settlement class. Additionally, counsel for Plaintiff is experienced in consumer class actions. By the time the parties reached a settlement, Plaintiff's counsel and Defendant's counsel, had "a clear view of the strengths and weaknesses" of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985) aff'd, 798 F.2d 35 (2d Cir. 1986).

The Settlement has no obvious deficiencies and does not grant preferential treatment to the class representatives or any segments of the class. Each settlement class member will receive a significant cash award. The intrinsic value of the net settlement payment to class members is readily apparent when one considers the risks inherent in continued and protracted litigation, the costs and uncertainty of litigation, and the expense and delay that accompany the appeal process. Defendant aggressively defended against the individual and class-wide claims in the federal court action, and was fully prepared to continue a robust defense of the claims asserted in this action, which would necessitate significant class- and merits-based discovery and motion practice concerning class certification, summary judgment, and pretrial matters.

The Settlement is particularly valuable to absent class members who, but for the Settlement, likely would be unaware of the existence of their legal claims. Even if they were aware, given the relatively small amounts of money involved, absent class members and attorneys who may represent them would have little financial incentive to prosecute individual actions. The alternative to bringing this case as a class action is bringing hundreds of individual claims against Nelnet. Realistically, the likely alternative to a class action under the present circumstances is no action at all.

"[C]ompromise and settlement are favored by the law." *Groves*, 2011 WL 4382708, at *4. The proposed settlement serves the overriding public interest in settling litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). The complexity, expense, and duration of class action litigation are factors that mitigate in favor of preliminary approval of a settlement. *In re Corp. Litig.*, 264 F.3d 201, 231, 233 (3d Cir. 2001); *Girsh v. Jepson*, 521 F.3d 153, 157 (3d Cir. 1975); *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974). While the Parties could have litigated the case to judgment and taxed the resources of the litigants and the Court, they chose instead to rationally and reasonably forgo the expense and uncertainty of continued litigation and focus their efforts on achieving a fair and adequate settlement that took the risks of further litigation into account.

Finally, the "opinion of class action counsel, with substantial experience in litigation of similar size and scope, is an important consideration." *Muhammad*, 2008 WL 4382708, at *4. "'When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight.'" *Id*. at *4 (quoting *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000)). In the present case, proposed class counsel, who recommends the Settlement, is skilled and experienced in consumer class actions. See *Teresa Keeling and Kevin Keeling v. The Huntington National Bank*, No. Civ. A. 3:23-cv-00352, (S.D.W. Va. Feb. 11, 2025); *Joe Cox v. Shellpoint*, No. Civ. A. 3:20-cv-00859 (S.D.W. Va. August 3, 2022). In light of the material risk of an unfavorable outcome to the class, Plaintiff's counsel is of the opinion that the settlement reached here is in the best interest of class members

V. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

The Parties' proposed settlement contemplates the certification of a settlement class defined as follows:

> All West Virginia borrowers who applied for an Income Driven Repayment plan before August 31, 2023, whose applications were eventually approved, and who received a statement from Nelnet in the intervening period which stated that stated that there was no current amount due, but that amounts would come due within the next sixty (60) days.

The proposed settlement class must meet the requirements for certification under Rule 23. *See, e.g., In re W Va. Rezulin Litigation, 214 W. Va. 52 (2003); Tabata v. Charleston Area Med. Ctr., Inc., 233 W. Va. 512 (2014).*. The Parties have agreed to the certification of the class for settlement purposes only.

The Opinions of the West Virginia Supreme Court of Appeals reason that class certification is an efficient mechanism utilized for cases that fulfil the requirements of Rule 23(a), as well as at least one of the requirements of 23(b). It is proper, in the instant case, for the Court to grant this motion based upon the proposed class' clear satisfaction of Rule 23 of the West Virginia Rules of Civil Procedure.

West Virginia Rule of Civil Procedure 23(a) provides as follows:

One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) the representative parties will fairly and adequately protect the interests of the class.

See W. Va. R. Civ. P. 23(a).

West Virginia Rule of Civil Procedure 23(b) provides as follows:

An action may be maintained as a class action of the prerequisites of subdivision

(a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or the corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds 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. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

See W. Va. R. Civ. P. 23(a).

The WVSCA recently provided additional guidance in the *Surnaik* Opinion, which again supports certification in this matter. *State of WV ex. rel. Surnaik Holdings v. Bedell, et al,* 244 W.

Va. 248, 852 S.E.2d 748 (2020). *Surnaik* bolsters the position of the proposed consumer class, and in his recent concurring Opinion, Justice Hutchison noted as follows:

> When a trial court or this Court weights a Rule 23 analysis, do not let the trees blind you to the forest: Defendants attempting to avoid class certification will, almost exclusively, overwhelm a circuit judge with the differences between each class member's case. It is akin to a judge being asked to look at a forest of oak trees and being told the difference between each tree: each tree has a different height, a different color, a different number of leaves, a unique number of branches, a wide variation in the number and size of tree rings, and so on. **The test for the judge, though, is to step back and look at the similarities in class members.** Step back and see the forest. No matter the number of branches or leaves, a collection of oak trees has enough similarities to be called a "class" of oak trees.
>
> The guy who actually drafted the rule, and who was in the room when the rules committee debated and tweaked and adopted the rule, says **the words "predominate" and "superior" in Rule 23{b)(3) are "like silly putty that can be molded in any way by a judge in a particular context.**
>
> **My sense, and the sense of my colleagues, is that a class action is probably the best way to address the alleged injuries to the thousands of residents impacted by the warehouse fire.**

State of WV ex. rel. Surnaik Holdings v. Bedell, et al, 244 W. Va. 248, 270-71, 852 S.E.2d 748 (emphasis added). This consumer case, which asserts a single legal theory under the WVCCPA for each proposed class member and relies upon the same form monthly statement utilized by the Defendants, is clearly suitable for class treatment. As illustrated *infra,* this case firmly meets each of the Rule 23 factors in order to be administered as a class action. The law of West Virginia firmly supports class certification in this case.

A. Numerosity is easily established because Defendants sent 604 monthly statements to settlement class members; thus, this case exceeds the threshold for presumed numerosity, which need only be in excess of 40 individuals.

The numerosity factor is easily satisfied in this case because the Defendants have identified six-hundred and four (604) letters that were sent under the same circumstances as Plaintiff's. There is little debate that the proposed class far exceeds the numerosity requirement, which, as discussed *infra,* is presumed if the proposed class exceeds forty (40) members.

Under West Virginia Rule of Civil Procedure 23(a), numerosity only requires "a class be so numerous that joinder of all its members is 'impracticable.' It is not necessary to establish that joinder is impossible; rather, the test is impracticability. The test for impracticability of joining all members does not mean 'impossibility' but only difficulty or inconvenience of joining all members." *Rezulin,* 214 W. Va. at Syl. Pt. 9; *see also Jefferson Cty. Ed. of Educ. v. Jefferson Cty. Educ. Ass'n,.* 183 W. Va. 15, 22 (1990); *Mitchem v. Melton,* 167 W. Va. 21, 33 (1981).

In terms of class size, "the **difficulty inherent in joining as few as 40 class members should raise a <u>presumption that joinder is impracticable,</u> and the plaintiff whose class is that large or larger should <u>meet the test of Rule 23(a)(l) on that fact alone."</u>** 1 Newberg, *Newberg on Class Actions 3d* (1992 ed.), § 3.05 at 3-25 (emphasis added). Here, the consumer class is entitled the presumption for satisfying numerosity as it comprises several hundred individuals, and thus far exceeds forty (40) members. Even if this presumptive figure had not been met, it is important to note how the West Virginia Supreme Court of Appeals has reasoned that class actions could be certified even when there have been as few as seventeen (17) to twenty (20) members of the class. *Rezulin,* 214 W. Va. at 65. In actually determining the size of a proposed class, a court may properly rely on reasonable estimates of the number of members in the proposed class. *Id.* Further, a party seeking class certification is not required to prove the identity of each class member or the specific number of members. *Id.*

Again, in the case at hand, **the threshold for numerosity is <u>presumptively</u> satisfied as the Defendant's conduct involves 604 letters** during the defined class time frame. The number of impacted citizens in this class is most certainly far beyond the seventeen (17) to twenty (20) individuals previously recognized by the Supreme Court of Appeals of West Virginia as sufficient to establish numerosity.

B. Commonality is firmly established as common questions of law or fact are present.

The commonality requirement of Rule 23(a)(2) requires the party seeking class certification show "there are questions of law or fact common to the class." *Rezulin,* 214 W. Va. at Syl. Pt. 11. Here, there are both common questions of law and fact. It is important to note that "[a] common nucleus of operative fact or law is normally enough to satisfy the commonality requirement. The threshold of 'commonality' is not high, and requires only that the resolution of common questions affect all or a substantial number of the class members." *Id.* Commonality requires only that the class members share a single common issue. *Rezulin,* 214 W. Va. at 67. This factor does not require that "every issue in the case must be common to all class members." *Id.* (quoting *O'Connor v. Boeing North Amer. Inc.,* 184 F.R.D. 311,329 (C.D. Cal. 1998)). Finally, the common questions need not be either important or controlling, and **one significant common question of law or fact will satisfy this requirement.** *Id.*

The class representative, Ms. Stevens, has identified numerous common issues among the consumers who had accounts serviced by the Defendants. The Defendant sent monthly statements to each settlement class member while their Income-Driven Repayment plan application was pending, during which time Plaintiff contends those accounts should have been placed in forbearance. Without a doubt, the contention that each settlement class member's loan should have been in continuous forbearance while Defendant reviewed their Income-Driven Repayment Plan application presents a common question and legal issue. Likewise, whether a statement that indicates that amounts will come due within the next sixty (60) days under such circumstances violates W.Va. Code § 46A-2-127 also presents a common question. In these key respects, each of the class members were subject to the same (common) conduct. There is a common factual predicate for the entire class as the action arises out of loan servicing conduct used by the Defendant as a standard business practice across the settlement class.

Commonality is not a high threshold and only requires all members of the proposed class share only **<u>one common issue.</u>** *Rezulin,* 214 W. Va. at 67. Here, all members of the proposed class are West Virginia consumers, all members applied for an Income-Driven Repayment Plan, and all received substantially similar monthly statements from the same Defendant. Likewise, all members of the proposed class share common questions of law, easily satisfying the requirement to present a single question of law or fact.

All of the consumers in this matter were sent the <u>same</u> form monthly statement for the <u>same</u> type of accounts, by the <u>same</u> servicer, in the <u>same</u> State, with allegations that the <u>same</u> WVCCPA laws were violated. This far exceeds the requirement of one common issue of "law or fact." *Rezulin,* 214 W. Va. at Syl. Pt. 11. Thus, all members of this proposed class clearly share common questions of law easily satisfying that requirement of West Virginia Rule of Civil Procedure 23(a)(2) and, as such, a class should proceed.

C. Typicality exists because the defendant has a typical practice of debt collection and the class shares claims based on identical legal theories.

"A representative party's claim or defense is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Rezulin,* 214 W. Va. at Syl. Pt. 12. The applicable standard from Rule 23(a)(3) only requires that the class representatives' claims be typical of the other class members' claims, **not that the claims be identical, as they are in this case.** When the claim arises out of the same legal or remedial theory, the presence of factual variations is normally not sufficient to preclude class action treatment." *Id.*

Here, Ms. Stevens is a West Virginia consumer who was subjected to the same type of conduct by the Defendant as the rest of the putative class members. That is, Ms. Stevens applied to enroll her loans in an Income-Driven Repayment plan and, while the application was pending, received a monthly statement indicating that, although there was no current amount due, amounts would be coming due in the next sixty (60) days; in each of these ways, her experience was the same as the rest of the class members. Moreover, as noted *supra,* Ms. Stevens asserts the same legal theory underpinning her claims as the rest of the class. As such, Ms. Stevens's claims are sufficiently typical of those suffered by the other members of the proposed class. Ms. Stevens suffered from the very same loan servicing practices of the Defendant as the proposed class. As noted in *Rezulin,* fact variations are not sufficient to defeat certification and the named Plaintiff is not required to bring "identical" claims. *Rezulin,* 214 W. Va. at Syl. Pt. 12.

The Defendant's conduct vis-à-vis Plaintiff is typical of its treatment of the class members. It is clear the typicality requirement is satisfied because the very nature of the class is such that its members were uniformly charged by the Defendant in a manner that violated the WVCCPA. This case far exceeds the requirements for typicality and it is clear that this component of Rule 23 is met.

D. Ms. Stevens, as class representative, in addition to class counsel, will fairly and adequately represent the interests of the class.

The adequacy requirement of West Virginia Rule of Civil Procedure 23(a)(4) does not stand as a bar to class representation. It only "requires that the party seeking class action status show that the 'representative parties will fairly and adequately represent the interests of the class.'" *Rezulin,* 214 W. Va. at Syl. Pt. 13. In order to determine if the representation is adequate, the court will first test "the qualifications of the attorneys to represent the class." *Id.* Secondly, the court must then "uncover conflicts of interest between the named parties and the class they seek to represent." *Id.; see also Amchem Prod. Inc. v. Windsor,* 521 U.S. 591, 625 (1997)("The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.").

Here, there are no conflicts between Ms. Stevens and any of the proposed class members. Ms. Stevens, as the named representative, asserts the same claims from the conduct of the Defendant as the proposed Class defined herein and does not have a conflict of interest with the proposed Class. Ms. Stevens agreed to abide by her class obligations and fully understands that he represents and seeks to vindicate the rights of a proposed class. Further, Klein & Sheridan, LC and Bailey Glasser LLP are experienced in the prosecution of class and mass actions and have adequate· resources to prosecute this class action.

The Rule 23(a) requirements are easily met because the proposed class was subjected to the same challenged practices under substantially the same circumstances. The class representative, Ms. Stevens, does not seek damages in excess of any other proposed class members in this class action suit. This, along with their law firm's experience in the prosecution of class and mass actions, satisfies the Rule 23(a) requirements of typicality and adequacy. Again, it is important to note that class certification is to be adjudged by the satisfaction or lack thereof of Rule 23 of the West Virginia Rules of Civil Procedure, which is fully satisfied in this case. *Rezulin,* 21 W. Va. at Syl. Pt. 6; *Tabata* 233 W. Va. at 467.

In addition to satisfying all of the requirements of Rule 23(a), which has been demonstrated, the proposed class must meet at least one of the requirements of Rule 23(b). The instant action is ripe and Rule 23(b)(3) is likewise satisfied because the common questions of law and fact in this instant case predominate over any individual claim arising from the Defendant's debt collection conduct and a class action is inarguably <u>superior</u> to any other method available to effectively adjudicate all these consumers' claims. Again, the Defendant's conduct across the settlement class demonstrates how classwide treatment is proper and Rule 23 maintenance of the claims is superior to individual or one-off litigation.

E. The same factual and legal issues predominate the class because all claims are based upon the Defendants' records and billing practices.

"The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1022 (9th Cir. *l998)(citing Amchem Products v. Windsor,* 521 U.S. 591 (1997)). Predominance is satisfied when adjudication of the common questions of law and fact outweighs adjudication of the questions of law and fact specific to individual class members.

The first and foremost predominant issue in this case includes Plaintiff's claim that Defendant has violated the uniform, statutory consumer rights arising from certain debt collection conduct. Moreover, the claims that bind this class together all factually originate from the Defendant's common practices experienced by every member of the settlement class. The predominant issues in this class involve how the Defendant used similar billing methods that created predominant factual issues and the same questions of law. The defenses to the claims are common and predominate over any individual legal questions. There are multiple predominant legal questions regarding the application of W.Va. Code § 46A-2-127(d), that the proposed class members share identically. In other words, the resolution of the uniform legal claims in this case predominates very much over any individual questions that impact limited numbers of the proposed class members. Thus, this class is cohesive and warrants adjudication by class representation.

F. A Class Action is the superior litigation method for the efficient adjudication of this controversy.

Rule 23(b)(3) requires a showing "that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." In the case at hand, there is no question that the class seeking certification satisfies this requirement. This class action involves the claims of 502 consumers. The West Virginia Supreme Court of Appeals has recognized that:

> While the management of any complex class action is likely to present a challenge, there is a myriad of management devices available to the circuit court under Rule 23. But **forcing numerous plaintiffs to litigate the alleged misconduct of the defendants** in **hundreds or thousands of repeated individual trials, especially where a plaintiff's individual damages may be relatively small, runs counter to the very purpose of a class action:**
>
> It must also be remembered that manageability is only one of the elements that goes into the balance to determine the superiority of a class action in a particular case. Other factors must also be considered, as must the purposes of Rule 23, including: conserving time, effort and expense; providing a forum for small claimants; and deterring illegal activities.

Rezulin, 214 W. Va. at 75-76 (citing 2 Newberg on Class Actions, 4th Ed., § 4.32 at 277-78) (internal quotations omitted)(emphasis added).

Several years after the West Virginia Supreme Court rendered its decision in *Rezulin,* it further clarified Rule 23(b)(3)'s superiority requirement in *Perrine v. E.I duPont de Nemours and Co.,* 225 W.Va. 482, 527 (2010) by noting that "[f]actors that have proven relevant in the superiority determination include the size of the class, anticipated recovery, fairness, efficiency, complexity of the issues and social concerns involved in the case." Ultimately, the Court in *Perrine* upheld the trial court's determination that a "[c]lass action is superior to other methods for adjudicating Plaintiffs' claims. Litigating common issues is far superior to thousands of individual claims." *Id.*

Essentially, the instant litigation is the very reason for the necessity of class actions in the first place. Here is a situation where the size of the class makes it extremely impracticable for any state court to adjudicate each of the 604 individual claims uniformly, effectively, or with the same judicial efficiency as a Rule 23 action. In addition, the damages for many class members sought on an individual level may be so low that an injured consumer would decide pursuing a lawsuit is not worth the time and effort. Therefore, based on each discussion presented *supra,* this matter should clearly be maintained as a class action as it clearly satisfies the very policy underpinning Rule 23 itself.

VI. PROPOSED CLASS COUNSEL ARE QUALIFIED TO REPRESENT THE CLASS

Rule 23(f) requires that the Court appoint class counsel upon certification of the class. Factors for the Court to consider include: the work counsel has done in identifying or investigating potential claims in the action; counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; counsel's knowledge of the applicable law; and the resources counsel will commit to representation of the class. W.V. R. Civ. P. 23(f)(1).

Proposed class counsel, Klein & Sheridan, LC and Bailey Glasser LLP, are qualified and able to represent the class. Proposed class counsel have submitted a declaration outlining their wide-ranging experience litigating consumer protection, class action, and other complex cases attached as **Exhibit 2**. As stated above, Plaintiff's counsel performed substantial work in investigating, prosecuting, and negotiating settlement of the case, and is qualified to serve as class counsel.

VII. PROPOSED SCHEDULE TO COMPLETE SETTLEMENT

The Court's calendar permitting, the Parties propose the following schedule to complete the tasks necessary to effectuate the proposed settlement:

Class Notice Mailed by: thirty (30) days after entry of the Court's order granting preliminary approval of the Settlement.
Objection Deadline: twenty-eight (28) days prior to the final approval hearing.

Opt-Out Deadline: twenty-eight (28) days prior to the final approval hearing.

Final Approval Submissions: fourteen (14) days prior to the final approval hearing.

Fee Application and Request for a Service Award for Plaintiffs: forty-two (42) days prior to the final approval hearing

Final Approval Hearing: at the earliest convenient date of the Court, which will ensure the final approval hearing is no earlier than 112 days after preliminary approval and in compliance with the Class Action Fairness Act, 28 U.S.C. §1715.

VIII. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court grant this Motion and enter the submitted Proposed Order (1) preliminarily approving the Parties' proposed Settlement Agreement attached as Exhibit 1; (2) provisionally certifying the proposed settlement class for settlement purposes only; (3) appointing Plaintiff as class representatives and Plaintiff's counsel as class counsel; (4) approving the form, manner, and content of class notice and the procedures for settlement class members to opt out or object; (5) approving David Epperly and his firm, Epperly Re:Solutions as the settlement administrator; (6) establishing a schedule to complete the tasks necessary to effectuate the proposed Settlement; and (7) staying the action pending final approval of the Settlement (except the stay of proceedings shall not prevent the filing of any motions, declarations, and other filings necessary to obtain and preserve final judicial approval of the Settlement Agreement).

Respectfully submitted,

BY: */s/ Benjamin M. Sheridan*________________________

Benjamin M. Sheridan (# 11296)
Jed Nolan (#10833)
Counsel for Plaintiff

Klein & Sheridan, LC
3566 Teays Valley Road
Hurricane, WV 25526
T: (304) 562-7111
F: (304) 562-7115
E: ben@kleinsheridan.com
E: jed@kleinsheridan.com

Jonathan R. Marshall (WVSB #10580)
Denali S. Hedrick (WVSB #14066)
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555
jmarshall@baileyglasser.com

REVIEWED AND NOT OPPOSED:
Nelnet Servicing LLC

/s/ Zachary J. Rosencrance, with permission
Zachary J. Rosencrance (WVSB #13040)
Joshua A. Lanham (WVSB #13218)
BOWLES RICE LLP
600 Quarrier Street
Charleston, WV 25301
(304) 347-1100
zrosencrance@bowlesrice.com
jlanham@bowlesrice.com
Counsel for Defendant

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

AMANDA STEVENS,
On Behalf of Herself and
All Others Similarly Situated,
Plaintiffs,

v. **Civil Action No. CC-06-2025-C-523**

NELNET SERVICING, LLC,
Defendant.

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that on this 26th day of May, 2026, a true and correct copy of the foregoing "***Memorandum in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Conditional Certification of Settlement Class and Entry of Scheduling Order***" was served upon all counsel of record through the West Virginia E-Filing System.

BY:_*/s/ Benjamin M. Sheridan*___
Benjamin M. Sheridan (# 11296)

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

AMANDA STEVENS,
On Behalf of Herself and
All Others Similarly Situated,
Plaintiffs,

v.

Civil Action No. CC-06-2025-C-523

NELNET SERVICING, LLC,

Defendant.

CLASS SETTLEMENT AND RELEASE AGREEMENT

1. PARTIES

This Class Settlement and Release Agreement (the "Agreement") is made and entered into as of the Effective Date, as defined herein, by and between Plaintiff Amanda Stevens ("Plaintiff") acting individually and as representatives of the Settlement Class, as defined herein (the "Settlement Class" or "Class Members") and Defendant Nelnet Servicing, LLC ("Defendant") (collectively, the "Parties") for the purpose of resolving by compromise and settlement of all claims, controversies and alleged liabilities arising out of the disputes as set forth below.

2. RECITALS

2.1 On June 7, 2024, Plaintiff Amanda Stevens filed a Class Action Complaint alleging individual and class action claims against Defendant, case number 3:24-cv-00280, in the United States District Court for the Southern District of West Virginia.

2.2 Defendant Nelnet moved to dismiss the Class Action Complaint on August 16, 2024.

2.3 Plaintiff filed her First Amended Class Action Complaint on September 5, 2024.

2.4 Defendant Nelnet partially moved to dismiss Count I of the First Amended Class Action Complaint due to lack of Article III standing on September 26, 2024.

2.5 After full briefing, the District Court dismissed Count I of Plaintiff's First Amended Class Action Complaint for lack of Article III standing on May 7, 2025.

2.6 The parties continued to vigorously litigate the remaining individual counts of Plaintiff's federal court claim arising under the Fair Credit Reporting Act, including depositions and extensive written discovery.

2.7 On November 4, 2025, Plaintiff Amanda Stevens filed this Class Action Complaint against Defendant, case number 25-C-523, in the Circuit Court of Cabell County, West Virginia. The Class Action Complaint asserted class claims for violations of the West Virginia Consumer Credit Protection Act ("WVCCPA").

2.8 On December 3, 2025, the parties entered a Joint Stipulation extending Nelnet's response deadline to January 30, 2026.

2.9 The parties thereafter filed a Notice of Mediation on December 30, 2025, with experienced mediator Edd McDevitt.

2.10 The parties mediated their claims with Mr. McDevitt on January 9, 2026. The parties, through counsel, mediated for a full day and finally resolved Plaintiff's class claims through arms' length negotiations.

2.11 Defendant denies any and all allegations and claims asserted against it in the Action and deny any and all wrongdoing. Defendant has always maintained, and continues to maintain, that it has acted in accordance with governing law. Neither the fact nor the terms of this Agreement shall be used, offered or received in evidence against Defendant in any action or proceeding for any purpose, except for purposes of carrying out the Parties' settlement and in an action or proceeding to enforce this Agreement. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant with respect to any claim by any of the Class Members, any fault, liability, wrongdoing or damage. Nor is this Agreement to be construed as, or deemed to be evidence of, a waiver of any defenses Defendant asserted.

2.12 Notwithstanding the above, solely in order to avoid the cost, burden, expense, and uncertainty of further litigation, the Parties desire to compromise and settle the Action and have reached this Agreement to resolve the disputes between them, pending approval of the Court, and to achieve complete peace.

2.13 This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the settlement described are made in compromise of disputed claims. Because the Action is pled as a class action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Putative Class Representatives, as defined below, and Defendant enter into this Agreement and associated settlement on a conditional basis. In the event that Defendant or the Putative Class Representatives exercise a right herein to terminate or rescind this Agreement, the Court does not execute and file the Order Granting Final Approval of Settlement, or the associated Judgment does not become final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, Defendant may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

2.14 The Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason. The Parties agree that they each retain and reserve all rights and agree not to take a position to the contrary. The Putative Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendant could not contest class certification and/or proceeding collectively on any grounds if the Action were to proceed or that this Agreement is evidence of or constitutes an admission that class certification may be appropriate.

3. <u>DEFINITIONS</u>

As used herein, the following terms have the meanings set forth below.

3.1 "Action" means the Amanda Stevens Action, Circuit Court of Cabell County, West Virginia Case No. 25-C-523.

3.2 "Administrative Costs" means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting Settlement Class Members, escrowing funds, and issuing and mailing Settlement Payments.

3.3 “Agreement” or “Settlement Agreement” means this Class Settlement and Release Agreement, including all exhibits thereto, which the Putative Class Representative and Defendant understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that Defendant’s obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

3.4 “Attorney’s Fees and Expenses” means such funds as may be awarded to Class Counsel by the Court to compensate them for their fees and all expenses incurred by Plaintiff or Class Counsel in connection with the Action pursuant to paragraph 8.6 of the Agreement.

3.5 “Cash Settlement Amount” or “Common Fund” means the $325,000.00 in funds to be paid by Defendant pursuant to Section 5 of this Agreement, upon satisfaction of all conditions precedent set forth in this Agreement. The Common Fund constitutes Defendant’s maximum and exclusive payment obligation under this Agreement to settle the Action in full. Under no circumstances will Nelnet be required to pay any additional amounts into the Common Fund or otherwise in connection with the Settlement. All expenses incurred by the Settlement Administrator in connection with opening a bank account to maintain the Common Fund shall be deducted from the Common Fund.

3.6 “Class Accounts” means the federal student loan accounts corresponding to Defendant’s current or former servicing customers identified in discovery consisting of all West Virginia borrowers who applied for an Income Driven

Repayment plan before August 31, 2023, whose applications were eventually approved, and who received a statement from Nelnet in the intervening period which stated that there was no current amount due, but that amounts would come due within the next sixty (60) days.

3.7 "Class Counsel" means the law firms of Klein & Sheridan, LC and Bailey & Glasser LLP.

3.8 "Class List" means the confidential list of individuals who are within the Settlement Class and mailing addresses for such individuals, as defined below, concerning the Class Accounts.

3.9 "Class Notice" or "Notice" means the program of notice described in Section 11 of this Agreement to be provided to potential Settlement Class Members, which will notify potential Settlement Class Members about, among other things, their rights to opt out or object to the Settlement, the preliminary approval of the Settlement, and the scheduling of the Final Approval Hearing.

3.10 "Complaint" means the Class Action Complaint filed in the Action on November 4, 2025, and which is the operative complaint containing putative class claims in this Action.

3.11 "Court" means the Circuit Court of Cabell County, West Virginia.

3.12 "Defendant" or "Nelnet" refers to Nelnet Servicing, LLC.

3.13 "Defense Counsel" means the law firms of Perry, Guthery, Haase & Gessford, P.C., L.L.O., and Bowles Rice LLP.

3.14 "Effective Date" is defined as set forth in Section 4 of this Agreement.

3.15 "Final Approval Hearing" means the hearing at which the Court shall (1) determine whether to grant final approval to this Settlement; (2) consider and rule on any timely objections to this Settlement and all responses thereto; and (3) consider and rule on requests for incentive awards to the Plaintiff and for an award of attorney's fees and expenses.

3.16 "Final Approval Order" means the order prepared and approved by the Parties approving the Settlement and certifying the Settlement Class as final to be entered and filed by the Court entitled "Final Judgment and Order of Dismissal with Prejudice."

3.17 "Lawsuit" or "Litigation" means the Action.

3.18 "Motion for Preliminary Approval" means the Motion that will be filed in accordance with Sections 4.4.1 and 10 of this Agreement and seeking that the Court enter the Order set forth in Subsection 3.21 below.

3.19 "Opt-out Deadline" means the date provided for a Settlement Class Member to opt out of the Class as provided in the Notice attached as **Exhibit A.**

3.20 "Parties" means the Putative Class Representative, on behalf of herself and the Settlement Class Members, and Defendant Nelnet Servicing LLC.

3.21 "Preliminary Order" or "Preliminary Approval Order" means the order entered by the Court preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members, substantially in the form attached hereto as **Exhibit B**.

3.22 "Protective Order" means the Order filed on April 23, 2025 in Case No. 3:24-cv-00280 in the Southern District of West Virginia.

3.23 "Putative Class Representative" or "Plaintiff" means Amanda Stevens, the named plaintiff and proposed class representative in the Action who will remain Putative Class Representative until the Court approves the class and appoints her as class representative.

3.24 "Released Claim" or "Released Claims" means any and all actions, causes of action, claims or demands, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorney's fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, equitable relief, as well as any and all claims for treble damages, penalties, interest, attorney's fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that have been or could have been asserted in any form by Settlement Class Members, including the Plaintiff, against Defendant, whether statutory or regulatory violations, negligence, contractual in nature, equitable, or existing under common law and any damages (as set forth above) proximately caused by or otherwise attributable to, directly or indirectly, whether or not currently known, arising out of, based upon or related to the class claims set forth in the First Amended Class Action Complaint in 3:24-cv-00280 in the Southern District of West Virginia and/or set forth in CC-06-2025-C-523 filed in the Circuit Court of Cabell County, West Virginia and regarding the representation of amounts due and/or the use of administrative forbearances during the pendency of income-driven repayment plan applications, and/or the processing of income-driven repayment plan applications.

3.25 "Releasees" means (1) Nelnet Servicing, LLC; (2) each of Defendant's past, present, or future subsidiaries, parent companies, divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof.

3.26 "Releasors" means the Putative Class Representative, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

3.27 "Request to Opt Out" means the Notice required to be given by a Settlement Class Member who chooses to opt out of the Class as provided in Paragraph 14.2.

3.28 "Settlement" or "Stipulation of Settlement" means the settlement set forth in this Agreement.

3.29 "Settlement Administrator" means a third-party agent or administrator jointly selected by Class Counsel and Defense Counsel.

3.30 "Settlement Class" or "Class" means the collective group of persons that will be certified by the Court for settlement purposes only. This means all persons who do not properly and timely exclude themselves from Settlement, and thus means the collective group of all of the Settlement Class Members who will become bound by the judgment entered by the Court when the Effective Date occurs. The following persons and entities are excluded from the Settlement Class: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, agents, servants or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any member of the Settlement Class who has timely opted out of the Settlement; and (6) Class Counsel and their employees.

3.31 "Settlement Class Member" means any person who falls within the definition of the Settlement Class and who has not opted out of the Settlement Class.

3.32 "Settlement Class Recovery" means the amount of the Common Fund available for distribution to Settlement Class Members after payment of Administrative Costs and any Court-approved Attorney's Fees and Expenses and incentive award.

3.33 "Settlement Payment" means the payment to be made from the Common Fund to Settlement Class Members.

3.34 "Total Settlement Amount" shall consist of the Cash Settlement Amount.

3.35 "Unknown Claims" mean any Released Claims which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the judgment entered by the Court when the Effective Date occurs ("Judgment"), and which, if known by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Putative Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor. Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then 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, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Putative Class Representative acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the settlement of which this release is a part.

3.36 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

3.37 Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the Settlement, capitalized terms shall have the meanings given to them in this Agreement.

4. CONDITIONS AND EFFECTIVENESS OF AGREEMENT.

4.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following actions and events listed in this Section have occurred.

4.2 The Parties have signed the Agreement.

4.3 [This paragraph has been removed]

4.4 Court Approval. The Court approves this Agreement in accordance with each of the following steps:

4.4.1 Motion for Preliminary Approval. After reasonable and good faith consultation with Defense Counsel regarding its form and content, Class Counsel will present a Motion for Preliminary Approval to the Court within twenty (20) days of execution of this Agreement including the Class Notice, in substantially the form of **Exhibit A** (Class Notice) and **Exhibit C** (Motion for Preliminary Approval Order) hereto, and the Preliminary Approval Order, in substantially the form of **Exhibit B** hereto. Defense

Counsel shall have no fewer than ten (10) business days to review proposed final drafts of the foregoing papers and exhibits prior to filing.

4.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Putative Class Representative shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23 of the West Virginia Rules of Civil Procedure for purposes of this Settlement only. Any certification of the Class shall be without prejudice to Defendant's right to oppose class certification on any ground in the event this Settlement does not become final. This Agreement and any orders entered in connection herewith shall not be cited or used as evidence in support of class certification in this or any other proceeding.

4.4.3 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially the form of that attached as **Exhibit B** hereto.

4.5 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement.

4.6 Final Approval Order. The Court shall enter the Final Approval Order in substantially the form of a proposed order prepared by and approved by the Parties and submitted to the Court.

4.7 Finality of Judgment. The Final Approval Order has become final, including expiration of the time for filing any appeal or other form of objection to the Final

Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

5. SETTLEMENT CLASS MEMBERS

5.1 The Settlement Class consists is defined as follows:

> **All West Virginia borrowers who applied for an Income Driven Repayment plan before 8/31/23, whose applications were eventually approved, and who received a statement from Nelnet in the intervening period which stated that there was no current amount due, but that amounts would come due within the next sixty (60) days.**

6. SETTLEMENT AMOUNT

6.1 Within thirty (30) days after the Court's entry of the Final Approval Order and satisfaction of all other conditions precedent to the Effective Date, Defendant, its successors, and assigns will pay three hundred twenty-five thousand dollars ($325,000.00), the Cash Settlement Amount, to a Common Fund in full settlement of all class claims that were asserted or could have been asserted in the Action. In no event shall the Cash Settlement Amount or Common Fund exceed $325,000.00.

6.2 The "Total Settlement Amount" shall consist of the Cash Settlement Amount.

6.3 The Total Settlement Amount is an "all-in" payment. In no event shall Defendant be liable for any payment greater than the Cash Settlement Amount.

6.4 All attorneys' fees and expenses, including but not limited to fees and expenses charged by the Settlement Administrator, shall be paid solely out of the Cash Settlement Amount, and Defendant shall have no responsibility and liability beyond the Cash Settlement Amount.

7. COMMON FUND

7.1 The Common Fund shall be maintained as set forth in Section 6.1 and established by Defendants within thirty (30) days of the Court's entry of the Final Approval Order. The Parties shall have joint control of the Common Fund. No disbursements from the Common Fund shall be made without the prior written consent of both Class Counsel and Defense Counsel, except for (a) distribution to Settlement Class Members in accordance with this Agreement and the Final Approval Order, and (b) Administrative Costs approved by the Court. The Settlement Administrator shall provide monthly accountings to both Class Counsel and Defense Counsel regarding the status of the Common Fund.

7.2 The Court shall retain continuing jurisdiction over the Common Fund sufficient to satisfy the requirements of 26 C.F.R. § 1.468B-1. The Settlement Administrator shall at all times seek to have the Common Fund treated as a "qualified settlement fund" as that term is defined in 26 C.F.R. § 1.468B-1. The Settlement Administrator shall cause any taxes imposed on the earnings of the Common Fund, if any, to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Common Fund under applicable tax laws. The Settlement Administrator shall be the "administrator" of the Common Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3).

7.3 Should the Settlement fail to become effective, in whole or in part, for any reason, including without limitation because the Court fails to approve all or part of it, then all monies placed into the Common Fund shall be returned to Defendant.

7.4 Should the Settlement be approved, and any monies remain in the Common Fund after disbursement of funds in accordance with the terms of this Agreement, the remaining principal funds shall not revert to Defendants. Any such remaining funds shall be donated as a *cy pres* award to one or more nonprofit organization, school, university, college or foundation chosen by Class Counsel and Defense Counsel, subject to Court approval, and in accordance with the West Virginia Rules of Civil Procedure. In the event the Parties cannot agree on a *cy pres* recipient, each Party shall propose one or more candidates for the Court's selection.

8. <u>WAIVER, REFUND, AND DISTRIBUTION OF TOTAL SETTLEMENT AMOUNT</u>

The Total Settlement Amount shall be distributed as follows:

8.1 Each Settlement Class Member shall receive a flat rate distribution on a per letter basis after payment of Plaintiff's Attorney's Fees and Expenses, Administrative Costs, and the incentive awards to the Putative Class Representative, which are tentatively calculated at $319.12, subject to adjustment based on the final number of Settlement Class Members and Court-approved deductions.

8.2 No interest shall be included as an element of, or be payable or paid on, any Settlement Payment.

8.3 Co-account holders (if any) shall be treated as a single Settlement Class Member and receive a single, shared Settlement Payment. Whenever possible, the Settlement Administrator shall issue payment jointly to co-account holders. Settlement Class Members who receive a Settlement Payment shall be solely responsible for distributing or allocating such payment between or among all co-account holders.

8.4 As payment for Attorney's Fees and Expenses, Plaintiff's counsel shall, apply to the Court for a distribution of one third (33.33%) of the Total Settlement Amount, plus expenses, which sum (one-third of the Total Settlement Amount plus expenses) shall include all Attorney's Fees and Expenses incurred by Plaintiff. The amount of Attorney's Fees and Expenses is subject to Court approval and shall not affect the validity or enforceability of this Agreement. Defendant acknowledges that Class Counsel intends to seek an award of Attorney's Fees and Expenses of up to one-third (33.33%) of the Total Settlement Amount. Defendant reserves the right to respond to inquiries from the Court regarding Class Counsel's fee petition and to provide the Court with information relevant to the fee determination, but shall not affirmatively oppose the fee petition, provided that such fee petition complies with this Section 8.4. For the avoidance of doubt, Defendant shall not be liable for payment to the Common Fund other than the Cash Settlement Amount. Attorney's Fees and Expenses will be paid only out of the Cash Settlement Amount.

8.5 Plaintiff will apply for an incentive award of seven thousand five hundred dollars ($7,500), subject to approval by the Court, in addition to her *pro rata* distribution of the Settlement Class Recovery articulated in Section 8 of this Agreement. Plaintiff's incentive award shall be paid out of the Cash Settlement Amount. Defendant will not object to this request. The Parties agree that the Court (and only the Court) shall determine the final amount of Plaintiff's Incentive Award in this Action.

8.6 The Parties agree that the rulings of the Court regarding the amount of the any fee award to Class Counsel and/or incentive award to Plaintiff, 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 embodied in a separate order from the Court. The Parties agree that any order or proceedings relating to the amount of the fee award or the incentive 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 distribution of monies from the Common Fund as set forth in this Section 8 shall not commence until the final resolution of any appeals or modification or reversals of any orders related to the amount of fee award and/or incentive award.

9. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

9.1 The Parties agree that a Settlement Administrator, jointly selected as set forth in Section 3.29, will process claims, field calls and correspondence from Settlement Class Members, and disburse amounts from the Common Fund. The Settlement Administrator will receive the Class List, subject to the protections of the Protective Order.

9.2 All the costs associated with providing notice to the Settlement Class Members and disbursement of the Common Fund ("Administrative Costs"), including all costs and expenses related to class notice, distribution of settlement proceeds, reasonable measures to locate Settlement Class Members, and retaining any class or claims administrator will be paid from the Common Fund. Defendant's only responsibility regarding such costs is to fund the Common Fund pursuant to Section 6.1 with the Cash Settlement Amount.

9.3 Because the information about Settlement Class Members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement and agree to indemnify the parties should any such information be improperly used, disclosed, or maintained. The Settlement Administrator will further agree to take all reasonable steps to ensure that any information provided to it by Defendant will be used solely for the purpose of effecting this Settlement and otherwise shall comply with Defendant's vendor and information security requirements. The Settlement Administrator shall notify Defendant within forty-eight (48) hours of any actual or suspected data breach or unauthorized disclosure of information pertaining to the Class List, and shall destroy or return all confidential data within sixty (60) days after completion of all settlement administration duties. Upon entry by the Court of the Final Approval Order, specific information from the Class List may be disclosed to Class Counsel if and only to the extent strictly necessary to effectuate the terms of this Agreement and facilitate the administration process, provided that Class Counsel first agrees to be bound by all the obligations imposed on the Settlement Administrator pursuant to this Section 9.3.

9.4 The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for mailing the class notice, as defined below, administration of the Common Fund, responding to inquiries from or on behalf of potential Settlement Class Member, and providing all other related support, reporting, and administration as further stated in this Agreement. Class Counsel and Defense Counsel 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 reasonably requests.

9.5 The Parties will coordinate with the Settlement Administrator to provide the class notice to the potential Settlement Class Members, as provided in this Settlement Agreement.

9.6 W-9 Forms. The Settlement Administrator shall complete and provide to Defendant any W-9 forms as to the Common Fund necessary for Defendant to implement this Settlement.

10. PRELIMINARY APPROVAL MOTION

Plaintiff will submit to the Court a Motion for Preliminary Approval of Class Settlement and Entry of Scheduling Order ("Preliminary Approval Motion") no later than twenty (20) days after full execution of this Agreement. The Preliminary Approval Motion will request that the Court:

10.1 Preliminarily certify the proposed Class under Rule 23 of the West Virginia Rules of Civil Procedure for settlement purposes only;

10.2 Find that the Putative Class Representative, and Settlement Class counsel, fairly and adequately represent the interests of the Settlement Class;

10.3 Find preliminarily that the Agreement is fair, reasonable and adequate to the Settlement Class;

10.4 Direct the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Notice to each individual on the Class List by first-class mail;

10.5 Establish a procedure for Members of the Class to exclude themselves and set a date, approximately twenty-eight (28) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;

10.6 Schedule a Final Approval Hearing one hundred twelve (112) days after entry of the Preliminary Approval Order granting the Preliminary Approval Motion;

10.7 Approve the form of notice to be provided to members of the Settlement Class, substantially in the form of **Exhibit A**.

10.8 Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, approximately twenty-eight (28) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;

10.9 Require any attorneys representing Settlement Class Members, at the Settlement Class Member's expense, to file a notice of appearance;

10.10 Stay all proceedings in the Action against the Defendant, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;

10.11 Pending Final Approval, and upon expiration of the Opt-Out Deadline, preliminarily enjoin each Settlement Class Member from maintaining, commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;

10.12 Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and

10.13 Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

11. NOTICE TO CLASS MEMBERS

11.1 If the Court grants the Preliminary Approval Motion, the Administrator will, within thirty (30) days of entry of the Preliminary Approval Order, mail to each Settlement Class Member at his or her last known address a Notice of Proposed Class Settlement ("Notice"), which form is attached as **Exhibit A**. Within fifteen (15) business days of the Court's entry of the Preliminary Approval Order, Defendant shall provide the Administrator with the name and last known address, of each Settlement Class Member subject to and governed by the Protective Order. Defendant's obligation to provide data under this Section shall be limited to one production of the Class List. Any additional data requests shall require Defendant's consent or Court order. Any Notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and LexisNexis/Death Records Search for all Notices returned as undeliverable, without a forwarding address. Such Notices shall be re-mailed upon discovery of a valid mailing address for the Settlement Class Member.

11.2 The Notice shall apprise the potential Settlement Class Members of his/her right to opt out of the Settlement Class, of his/her right to object to the Class Settlement, of the fact that any objections or opt outs must be sent to the Administrator and postmarked no later than twenty-eight (28) days prior to the Final Approval Hearing, and that any failure to object or to opt out in accordance with applicable deadlines for opt outs and objections constitutes a knowing and voluntary waiver of any right to opt out of the Settlement Class or to appeal from the Final Approval Order.

11.3 This Agreement does not impose on any Party or the Administrator an obligation to make extraordinary efforts to locate a potential Settlement Class Member.

12. ATTORNEY'S FEES AND EXPENSES

12.1 Defendant will not object to Class Counsel moving the Court for an award of Attorney's fees and Expenses in the Action as set forth in Paragraph 8.4.

12.2 Class Counsel's application for Attorney's Fees and Expenses shall be filed and served no later than forty-two (42) calendar days prior to the Final Approval Hearing. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action up to and including the date of the Final Approval Order, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment; provided, however, that in the event of any appeal, Class Counsel shall be obligated to defend the settlement at no additional cost to Defendant or the Common Fund, and Class Counsel's fee award shall be deemed to include compensation for such appellate work. In the event the Court awards Class Counsel less than the amount agreed to in Paragraph 8.4 in Attorney's Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or changed.

12.3 Neither Defendant nor the Releasees shall have any responsibility for any application of Attorney's Fees and Expenses submitted by Class Counsel. The procedure for and the grant or denial or disallowance by the Court of the application for Attorney's Fees and Expenses is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorney's Fees and Expenses or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Final Approval Order approving the Agreement and the Settlement.

12.4 Class Counsel and the Putative Class Representative shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this section. No party shall be deemed the prevailing party for any other purposes of the Action.

13. <u>SERVICE OF NOTICE OF OPT OUT</u>

At least fourteen (14) days prior to the Final Approval Hearing, the Administrator shall notify Class Counsel and Defendants' counsel of any persons who have objected to the Class Settlement or opted out of the Settlement Class, and shall serve Defendant's counsel, Plaintiff's counsel, and the Court with copies of all objections, notices of opt out, and supporting documentation.

14. OPT OUT RIGHTS.

14.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

14.2 In order to opt out, the Settlement Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action." Mass or class opt outs shall be void.

14.3 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

14.4 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties. To the extent a separate action is pending against Released Parties for Released Claims by any Settlement Class Member, Class Notice shall also be given to counsel for the Settlement Class Member and such counsel's contact information shall be made available to the Settlement Administrator.

14.5 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

14.6 The Settlement Administrator shall provide Defense Counsel with a list of all timely Requests to Opt Out on an interim, weekly basis, and shall provide Defense Counsel with a final list of all such timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

14.7 Notwithstanding the foregoing, a Settlement Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Settlement Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

15. OBJECTIONS

15.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

15.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court, and mailed (with the requisite postmark) to Class Counsel and Defense Counsel at the following addresses, no later than the Objection Deadline:

15.2.1 Klein & Sheridan, LC
c/o Benjamin Sheridan & Jed R. Nolan
3566 Teays Valley Road
Hurricane, WV 25525

Bailey Glasser LLP
c/o Jonathan Marshall
Denali Hedrick
209 Capitol Street
Charleston, WV 25301

15.2.2
BOWLES RICE LLP
c/o Zachary J. Rosencrance
600 Quarrier Street
Post Office Box 1386
Charleston, West Virginia 25325

PERRY, GUTHERY, HAASE & GESSFORD, P.C., L.L.O.
c/o Charles F. Kaplan
233 South 13th Street, Suite 1400
Lincoln, NE 68508

15.3 The requirements to assert a valid written objection shall be set forth in the Class Notice, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

15.4 Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made.

15.5 Any Settlement Class Member who does not make his or her objection in the manner provided in this section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of Attorney's Fees and Expenses to Class Counsel and the payment of an Incentive Award to the Putative Class Representatives, unless otherwise ordered by the Court.

15.6 Appearance. Subject to approval of the Court, any Settlement Class Member who files and serves a written objection in accordance with this section and the Class Notice may appear, in person or by counsel, at his or her own sole expense, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

15.7 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

15.8 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

16. TERMINATION

16.1 In the event that the Settlement set forth in this Agreement is not approved without changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there is a court order from another court that takes jurisdiction over some or all of the claims in the Action, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by Defendant to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. Reductions in the amount of the requested Attorney's Fees and Expenses or Plaintiff's incentive award shall not be deemed a substantial change necessitating termination of the Settlement.

16.2 Failure of the Court to enter the Preliminary Approval or Final Approval Order in its entirety or in a similar form without material changes thereto as determined by Defendant or the Putative Class Representative will be grounds for Defendant or the Putative Class Representative to terminate the Settlement and the terms of this Agreement. If any material portion of the Agreement or the Order of Final Approval is vacated, modified, or otherwise altered on appeal, Defendant or the Putative Class Representative may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

16.3 In the event that 3% or more Settlement Class Members exclude themselves from the Settlement Class, Defendant shall have the absolute discretionary right to terminate this settlement and Agreement and in such case, each and every one of Defendant's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled. If Defendant exercises this option, the Parties shall return to the *status quo* in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. Defendant must exercise this option pursuant to this paragraph within ten (10) days after receiving the Opt Out List by giving written notice of such exercise to Class Counsel. If Defendant exercises its rights under this Section, the Final Approval Hearing shall be continued or vacated as necessary.

16.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Order of Final Approval, this Agreement, the conditional Class certification provided herein, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated, the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to section 25 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

17. FINAL APPROVAL MOTION

17.1 Prior to the Final Approval Hearing, Plaintiffs will file a Motion for Final Approval of Class Settlement ("Final Approval Motion"). The Final Approval Motion will request that the Court approve the Settlement and enter a Final Order and Judgment that will, among other things:

17.2 Find that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has personal jurisdiction over the claims asserted in the Action, and (iii) venue is proper;

17.3 Finally certify the Settlement Class pursuant to Rule 23 of the West Virginia Rules of Civil Procedure for settlement purposes only;

17.4 Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States

Constitution, and find that the Parties and procedures used complied with West Virginia law so as to give full effect to the Settlement;

17.5 Adjudge and approve in all respects the settlement of the Action on the terms described in this Agreement, including but not limited to, making the Releases in section 24 of this Agreement effective as of the date of the Final Approval Order;

17.6 Permanently bar and enjoin Putative Class Representative and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;

17.7 Permanently bar and enjoin the Putative Class Representative and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action involving Released Claims (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims);

17.8 Find that, by operation of the entry of the Judgment, the Putative Class Representative and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

17.9 Authorize the Parties to implement the terms of the Agreement;

17.10 Dismiss on the merits and with prejudice all class and individual claims in the Action, including without limitation the Released Claims, and enter final judgment;

17.11 Include a description of all relief to be provided as part of this Settlement, including the class release and the payment due to each class member; and

17.12 Retain jurisdiction of all matters relating to the interpretation and enforcement of the Settlement and this Agreement.

18. EFFECT OF DISAPPROVAL/DENIAL OF SETTLEMENT

If the Court disapproves this Agreement or any part thereof for any reason or declines to enter a Final Approval Order as described in this Agreement certifying the proposed Settlement Class as defined in Section 5.1 herein, then this Agreement, including all releases contained within the Agreement, shall become null and void and the Action shall proceed as though no settlement had been negotiated or achieved, unless Plaintiff and Defendant agree otherwise or appeal the order disapproving this Settlement.

19. REVERSAL, VACATION, OR MODIFICATION OF AGREEMENT BY APPELLATE COURT

In the event that a court of appeals or other reviewing court sets aside, reverses, vacates or modifies the Final Approval Order as described in this Agreement in any material way, then this Agreement, including all releases contained within the Agreement, shall become null and void and the Action shall proceed as though no settlement had been negotiated or achieved unless the Parties otherwise agree.

20. PAYMENT OF SETTLEMENT AMOUNT

20.1 As soon as practicable and not more than twenty-one days (21) after the Effective Date, the Administrator shall distribute the Settlement Amount to Settlement Class Members as provided in Section 7 of this Agreement, less that portion of the

Settlement Amount the Court awards as Attorney's Fees and Expenses, Administrative Costs, and the incentive award to Putative Class Representative. Distributions to Settlement Class Members will be made to their last known address by first class mail, postage prepaid.

20.2 Checks made payable to each Settlement Class Member shall become stale and all right to payment on any such check shall end upon expiration of three (3) months from the date of the check (which will be within one calendar week of the date such check is mailed) and shall include a statement to inform the bearer of this validity period.

20.3 Any check that becomes stale may be re-issued one time. Right to payment on any re-issued check shall similarly become stale upon the expiration of two (2) months from the date of the re-issued check (which will be within one calendar week of the date such check is mailed) and shall include a statement again informing the bearer of this validity period. The funds represented by any re-issued checks that become stale shall be applied to Administrative Costs first and, if any sums remain after payment of Administrative Costs, donated as set forth in Paragraph 7.4 of this Agreement. Any such donation will have no effect on the validity of this Agreement, including without limitation the effectiveness of the Final Order and Judgment with regard to the Released Claims, against those Settlement Class Members who do not receive a Settlement Payment following reasonable efforts to deliver a payment to them.

21. <u>COVENANTS NOT TO SUE.</u>

The Putative Class Representative, on behalf of herself and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participating of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

22. <u>FINAL REPORT OF DISTRIBUTION OF SETTLEMENT AMOUNT</u>

Twelve (12) months after the Final Approval Order is entered, or thirty (30) days after distribution of the Settlement Amount is completed, whichever is later, Class Counsel shall prepare a report detailing the distribution of the Settlement Amount and provide a draft to Defense Counsel not fewer than fourteen (14) days before filing such report with the Court. Defense counsel shall have the right to review, comment on, and request corrections to the draft report. Class Counsel shall file a report with the Court, and serve a copy on Defense Counsel.

23. <u>FINAL AND BINDING AGREEMENT</u>

The Parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of Defendant, the Putative Class Representative, the

Settlement Class Members, their counsel, and each of their respective trustees, heirs, executors, administrators, beneficiaries, representatives, agents, successors, and assigns.

24. RELEASE

24.1 Class Release and Released Claims. Class Members who do not opt out of the class will release Defendant and other Releasees from the Released Claims.

24.2 In connection with the Released Claims, each Settlement Class Member is releasing past or currently existing claims that existed up until the Effective Date and is aware that he or she may hereafter discover claims that existed in the past or present that may be unknown or unsuspected but discoverable based on reasonable investigation, or facts in addition to or different from those which he or she now knows or believes to be true with respect to regarding the representation of amounts due, the use (or non-use) of administrative forbearances, and/or the processing of income-driven repayment plan applications, or any other matters, conduct, or claims alleged in the Action. Nevertheless, it is the intention of each Settlement Class Member to fully, finally and forever settle and release all Released Claims against the Releasees, which exist or might have existed (whether or not previously or currently asserted in the Action).

24.3 The Putative Class Representative represents and warrants that she has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that she will not assign or otherwise transfer any interest in any of the Released Claims.

24.4 Each Party to this Agreement understands, acknowledges, and agrees that if any fact now believed to be true is found hereafter to be other than, or different from, that which is now believed, each expressly assumes the risk of such difference in fact and agrees that this Agreement shall be, and will remain, in effect notwithstanding any such difference in fact.

25. NO ADMISSION OF LIABILITY OR CERTIFICATION OF CLASS

25.1 Neither this Agreement nor the fact of settlement nor the payment of the Settlement Amount is, may be construed as, or may be used as, an admission on the part of Defendant of any fault, wrongdoing, or liability whatsoever, or that any class asserted by Plaintiff's merits certification. Defendant expressly denies any wrongdoing under any federal, state, or local statute, public policy, tort law, contract law, in equity, or common law and expressly denies the truth or validity of any claim made against it or the propriety of certification of any class on the merits.

25.2 Further, neither this Agreement nor any drafts hereof nor any documents leading to or relating to the Settlement set forth herein, including, but not limited to, any proposed order, Preliminary Approval Motion, Final Approval Motion, or memoranda in support thereof, constitutes an admission of liability or of any fact by the Plaintiff or Defendant.

25.3 The Parties agree that the foregoing documents will not be offered as or received against Defendant as evidence of, or construed as or deemed to be evidence of any admission or concession of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the Parties to this Agreement in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendant may rely upon or use this Agreement as necessary to effectuate the liability protection granted Defendant hereunder. Notwithstanding the foregoing, Defendant may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding

26. <u>NON-ADMISSIBILITY OF SETTLEMENT NEGOTIATIONS</u>

The settlement negotiations resulting in this Agreement have been undertaken by Plaintiff and Defendant and their respective counsel in good faith and for settlement purposes only pursuant to West Virginia Rule of Evidence 408, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose.

27. <u>NO ORAL MODIFICATION</u>

This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. No amendment, modification, waiver, termination, or discharge of any provision of this Agreement shall be effective unless it is in a written agreement duly executed by all of the Parties hereto.

28. <u>COMPLETE AGREEMENT</u>

This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. This Agreement supersedes all prior negotiations. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

29. COMPETENCY; INDEPENDENT COUNSEL

Each Party to this Agreement represents and warrants that it is competent to enter into the Agreement and in doing so is acting upon its independent judgment and upon the advice of its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the terms set forth in or contemplated by this Agreement.

30. CONSTRUCTION OF AGREEMENT

The language and terms of this Agreement shall be construed as a whole, according to fair and ordinary meaning, as if both Parties jointly prepared it, and shall not be strictly construed for or against any party to this Agreement.

31. STAY OF DISCOVERY AND OTHER PROCEEDINGS.

31.1 To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

31.2 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, Defendants shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Putative Class Representative and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

32. CONTINUING JURISDICTION

The Circuit Court of Cabell County, West Virginia will have continuing jurisdiction over the Action for the purpose of implementing the Settlement until the Action and all appeals are fully resolved, and for enforcement of the Settlement, the Agreement, and the Final Order thereafter. Any dispute regarding the Parties' obligations pursuant to this Agreement or interpretation of the terms of this Agreement or the Final Order will be resolved by the Court.

33. <u>CHOICE OF LAW</u>

This Agreement will be governed by and construed in accordance with the internal laws of the State of West Virginia, including the West Virginia Rules of Civil Procedure and West Virginia Rules of Appellate Procedure, without regard to its choice of law principles.

34. <u>ADDITIONAL ACTS TO EFFECTUATE THE AGREEMENT</u>

The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement and to obtain the benefits of the Agreement.

35. <u>WAIVER</u>

The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

36. <u>PRESERVATION OF PRIVILEGE</u>

Nothing contained in this Agreement or any Order of this Court, and no act required to be performed pursuant to this Agreement or any Order of this Court, is intended to constitute, cause or effect any waiver, in whole or in part, of any attorney client privilege, work product protection, or common interest or joint defense privilege, and each Class Member agrees not to make or cause to be made in any form any assertion to the contrary.

37. AUTHORITY OF CLASS COUNSEL

Class Counsel unconditionally warrant and represent that they are authorized by Plaintiff, for whom they are attorneys of record, and the attorneys of record for Defendant warrant and represent that they are authorized by Defendant to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effectuate the implementation of the Settlement.

38. TAX CONSEQUENCES

38.1 This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the payments set forth in this Agreement reflect the settlement of disputed legal claims and that Defendant makes no representations regarding the Agreement's tax consequences.

38.2 No opinion concerning the tax consequences of the Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto.

38.3 Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

38.4 Each Settlement Class Member specifically agrees that he or she is solely responsible for any and all taxes, interest, and penalties due and owing, if any, should the payments or any portion thereof, be taxable.

39. RELEASE, LIMITATIONS

This Agreement does not release claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement.

40. KNOWING AND VOLUNTARY ASSENT

The Parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of any of them. The Parties further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

41. COUNTERPARTS AND FACSIMILE SIGNATURES

This Agreement may be executed in any number of counterparts and with facsimile signatures, and all such counterparts shall be construed together and constitute a single form of this Agreement.

42. HEADINGS AND CAPTIONS

The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

43. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

44. CLAIMS AGAINST SETTLEMENT BENEFITS

In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to resolve such a claim or to transmit the funds to such third party.

45. NO EFFECT ON OUTSTANDING INDEBTEDNESS.

Nothing in this Settlement Agreement abrogates, supersedes, modifies, or qualifies in any way any of the contractual terms and conditions applicable in the ordinary course to the relationship between Defendants and its affiliates and their customers, or to the products and services provided by Defendant and its affiliates purchased by their customers. The Parties agree and acknowledge that nothing in this Settlement effects the obligation of any borrower to repay any amounts of outstanding student loan debt serviced by Defendant or a subsequent servicer. The Parties further agree and acknowledge that nothing in this Settlement effects the ability of Defendant continue to service outstanding student loan debt in accordance with the law.

46. NON-DISPARAGEMENT

Neither Party nor any of their respective attorneys may make any statement disparaging the other Party or suggesting that Defendant has been found to have violated any law by virtue of this Agreement, or that the Settlement amounts to an admission of liability.

IN WITNESS WHEREOF, counsel for the parties and the named plaintiffs have executed this Class Settlement and Release Agreement as of February _______, 2026.

____
PLAINTIFF AMANDA STEVENS

DEFENDANT NELNET SERVICING, LLC

By: ___________________________________

Its: ___________________________________

____
Counsel for Plaintiff and Settlement Class

____
Counsel for Defendant

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

AMANDA STEVENS,
On Behalf of Herself and
All Others Similarly Situated,
Plaintiffs,

v. **Civil Action No. CC-06-2025-C-523**

NELNET SERVICING, LLC,

Defendant.

DECLARATION OF BENJAMIN M. SHERIDAN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I am submitting this declaration to show, as required by Rule 23(f) of the West Virginia Rules of Civil Procedure, "the work counsel has done in identifying or investigating potential claims in the action; counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; counsel's knowledge of applicable law; and the resources that counsel will commit to representing the class[.]"

Plaintiff asks the Court to appoint the following firms and attorneys as Class Counsel:

Klein & Sheridan, LC	**Bailey Glasser LLP**
Benjamin M. Sheridan, Esq.	Jonathan Marshall, Esq.
Jed Nolan, Esq.	Denali Hedrick, Esq.

BENJAMIN M. SHERIDAN

I graduated from the University of South Carolina in 2002 and received my law degree from the West Virginia University College of Law in 2008. After law school, I obtained an LL.M. from George Washington University in International and Comparative Law.

Thereafter, I returned to work at Legal Aid of West Virginia, where I assisted with client intake, bankruptcy, family law, and consumer protection claims. I worked with Legal Aid of West Virginia from 2010 to 2013, when I entered private practice with Mitchel Klein in the newly formed Klein & Sheridan, LC. I have practiced with Klein & Sheridan for over ten years, focusing on bankruptcy issues, consumer protection claims, and residential construction matters.

I was admitted to the Washington State bar in 2008, the West Virginia State bar in 2010, and the North Carolina State bar in 2017.

My practice is currently dedicated to consumer protection and residential construction law, where I exclusively represent consumers and homeowners. I have represented hundreds of consumers in litigation and have assisted thousands of individuals with filing bankruptcy.

The consumer class actions for which I have served as class counsel include the following:

1. Cox v. New Rez, LLC, No. 3:20-cv-00859 (S.D. W. Va. 2022) (West Virginia consumer class action resulting in $4,500,000 settlement for, inter alia, charging pay-to-pay fees);
2. Keeling v. The Huntington National Bank, No. 3:23-cv-00352 (S.D. W. Va. 2025) (West Virginia consumer class action resulting in over $700,000 in settlement);
3. Pierson v. M&T Bank, No. 2:24-cv-00521 (S.D. W. Va. 2025) (West Virginia consumer class action resulting in $1,900,000 settlement);
4. Baldwin v. Clearfiber, Inc., No. CC-31-2023-C-61 (Cir. Ct. Monongalia Cty., W. Va. 2025) (West Virginia consumer class action resulting in $300,000 settlement for defrauded internet customers); and
5. Pierce v. Statebridge Company, LLC, No. 1:20-cv-00117 (M.D.N.C.) (North Carolina consumer class on pay-to-pay fees resulting in $40,380 distribution to consumers for those fees).

I am a founding member of the Consumer Law division of the West Virginia Association for

Justice and serve on the Association's Board of Directors. I am one of the founding board members of the Marshall University and West Virginia University joint Consumer Law Committee. I have assisted in organizing events for the AARP's Money Smart Week and have spoken at CLEs organized on residential construction law, consumer law, and bankruptcy law.

JED NOLAN

Jed Nolan received a B.A. from Marshall University, magna cum laude, in 2005 and graduated from the West Virginia University College of Law in 2008.

In the summer of 2008, Mr. Nolan began his employment as a judicial law clerk to the Honorable Lawrance Miller in the Circuit Court of Preston County, West Virginia. Thereafter, Mr. Nolan joined Legal Aid of West Virginia, Inc. from 2009 through May 2013. From June 2013 through October 2017, Mr. Nolan was employed by Hamilton Burgess Young & Pollard, PLLC, as an associate and a partial member. From October 2017 through October 2019, Mr. Nolan worked for the non-profit Mountain State Justice, Inc. Mr. Nolan currently works part-time as a Director of the West Virginia University College of Law's Veterans Advocacy Law Clinic. Mr. Nolan was admitted to the West Virginia Bar in October 2008 and the North Carolina Bar in January 2021.

Mr. Nolan concentrates his practice in consumer finance matters and is focused on protecting West Virginia consumers.

Mr. Nolan is a member of the Consumer Law division of the West Virginia Association of Justice, where he also serves on the Board of Directors.

Mr. Nolan has lectured on consumer protection matters during the West Virginia Attorney General's Money Smart Week in April 2011 and April 2012, as well as to the Legal Service Corporation Collaborative Committee on Regional Trainings among West Virginia, Ohio, and Michigan Legal Aid services. Mr. Nolan has been a featured speaker at the National Association of Consumer Advocates in May 2017 and May 2019.

The consumer class actions for which Mr. Nolan has served as class counsel include the following:

1. Cox v. New Rez, LLC, No. 3:20-cv-00859 (S.D. W. Va. 2022) (West Virginia consumer class action resulting in $4,500,000 settlement for, inter alia, charging pay-to-pay fees);
2. Keeling v. The Huntington National Bank, No. 3:23-cv-00352 (S.D. W. Va. 2025) (West Virginia consumer class action resulting in over $700,000 in settlement);
3. Pierson v. M&T Bank, No. 2:24-cv-00521 (S.D. W. Va. 2025) (West Virginia consumer class action resulting in $1,900,000 settlement); and
4. Baldwin v. Clearfiber, Inc., No. CC-31-2023-C-61 (Cir. Ct. Monongalia Cty., W. Va. 2025) (West Virginia consumer class action resulting in $300,000 settlement for defrauded internet customers).

JONATHAN R. MARSHALL

Jonathan R. Marshall received his B.A. from West Virginia University, summa cum laude, in 2003. He is a 2007 graduate, Order of the Coif, of the West Virginia University College of Law.

In the summer of 2007, he began his employment with Bailey Glasser LLP as an associate attorney. He was made a partner in January 2014. He was admitted to the West Virginia Bar in October 2007, the Illinois Bar in 2008, and the California Bar in 2023.

Mr. Marshall concentrates his practice in class and mass actions. He has served as class counsel in many cases, including:

1. Desai v. ADT Sec. Servs, Civil Action No. 1:11-cv-1925 (N.D. Ill.) ($15 million TCPA

class settlement).

2. Mey v. Frontier Communications Corporation, Civil Action No. 3:13-1191 (D. Conn) ($11 million TCPA class action settlement).
3. Mey v. Patriot Payment Group, LLC, et al., Civil Action No. 5:15-cv-00027 (N.D. W.Va.) ($3.7 million TCPA class action settlement).
4. Dijkstra v. Carenbauer, Civil Action No. 5:11-cv-00152 (N.D. W. Va.) (court awarded class more than $2.6 million after granting affirmative summary judgment in mortgage loan case alleging violations of the West Virginia Consumer Credit and Protection Act).
5. Hardwick v. Rent-A-Center, Inc., Civil Action No. 3:06-0901 (S.D. W. Va.) (class action settlement worth more than $5 million; alleging violations of state Consumer Goods Rental Protection Act).
6. Muhammad v. National City Mortgage Co., Civil Action No. 207-0423 (S.D. W. Va.) ($700,000 mortgage loan servicing settlement alleging violations of the West Virginia Consumer Credit and Protection Act).
7. Shonk v. SG Sales Co., Case No. 07-C-1800 (Circuit Court of Kanawha County, West Virginia) ($2.4 million nationwide settlement of class action brought under the Telephone Consumer Protection Act).
8. Triplett v. NationStar Mortgage, LLC, Civil Action No. 3:11-cv-238 (S.D. W. Va.) (loan servicing case settled for $1.5 million).
9. Gillispie v. Rite Aid of West Virginia, Inc., Civil Action No. 11-C-1815 (Circuit Court of Kanawha County, West Virginia) (wage payment class settlement of $410,000).
10. Dunlap v. Wells Fargo, Civil Action No. 04-C-101 (Circuit Court of Lincoln County, West Virginia) (consumer class action resulting in $9 million settlement, not including

interest rate reductions and credit repair provided as part of the settlement).

11. Powers v. Santander Consumer USA, Inc., Civil Action No. 12-cv-11932-TSH (D. Mass.) (consumer class action resulting in the establishment of a $750,000 settlement fund and $20 million in debt relief).
12. Glover v. Bank of America, N.A., Civil Action No. 13-40042-TSH (D. Mass.) (class action settlement for Massachusetts borrowers regarding late fees).
13. Pirillo v. PNC Mortgage Corporation, Civil Action No. 11-C-751 (Circuit Court of Monongalia County, West Virginia) (consumer class action settlement).
14. Morris v. Merck Sharp & Dohme Corp., Civil Action No. 3:11-cv-00882 (S.D. W.Va.) (wage payment class action settlement totaling $750,000).
15. Deem v. Ames True Temper, Inc., Civil Action No. 6:10-cv-01339 (S.D. W.Va.) ($405,000 class action settlement in an ERISA action).
16. Dillon v. Chase, Civil Action No. 03-C-164-W (Circuit Court of Hancock County, West Virginia) ($3.3 million consumer class action settlement).
17. Maureen DiLoretti, et al. v. Countrywide Home Loans, Inc., et al., Civil Action No. 5:14-cv-00076 (S.D. W.Va.) ($1,638,000 class action settlement for alleged abusive appraisals).
18. Shore v. JP Morgan Chase Bank, N.A., et al., Case No. 16-cv-60125 (S.D. Fla.) ($400,000 recovery for borrowers as a result of reinstatement quotes).
19. Doe v. Discover Bank, Civil Action No. 16-C-417(K) (Circuit Court of Raleigh County, W. Va.) (class action settlement for $510,000 for disclosure violations under the West Virginia Consumer Credit and Protection Act).
20. Perez v. Figi's, Civil Action No. 5:15-cv-13559 (S.D. W. Va.) (class action settlement for

$1.7 million in case alleging debt collection violations under the West Virginia Consumer Credit and Protection Act).

21. Snuffer v. Liberty University, Inc., No. 15-c-804(H) (Circuit Court of Raleigh County, W. Va.) (class action settlement for $1,947,500 in case alleging debt collection violations under the West Virginia Consumer Credit and Protection Act).
22. Cox v. BB&T Co., No. 5:17-cv-01982 (S.D. W. Va.) (class action settlement for $861,355 in case alleging debt collection violations under the West Virginia Consumer Credit and Protection Act).
23. Reynolds v. TD Auto Finance LLC (Circuit Court of Mercer County, W. Va.) (class action settlement for $442,200 in case alleging debt collection violations under the West Virginia Consumer Credit and Protection Act).
24. Ellison v. Carrington Mortgage Services, LLC (Circuit Court of Roane County, W. Va.) (class action settlement for $650,000 in case alleging debt collection violations under the West Virginia Consumer Credit and Protection Act).

DENALI HEDRICK

Denali Hedrick received her law degree from West Virginia University College of Law in 2021, where she graduated Order of the Coif, served as an Editor of the *West Virginia Law Review*, and was a student practitioner in the general litigation clinic and the United States Supreme Court clinic. After law school, Ms. Hedrick served as a judicial law clerk to the Honorable Joseph R. Goodwin in the United States District Court for the Southern District of West Virginia from October 2021 to October 2022.

Thereafter, she joined Bailey Glasser LLP as an associate attorney, where she practices in the firm's Morgantown, West Virginia office. She has worked with Mr. Marshall on consumer class actions since her time as a summer associate with the firm in 2019, excluding her time as a law clerk. Ms. Hedrick has been a member of the West Virginia Bar since October 2021. She is also admitted to practice law before the United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Northern and Southern Districts of West Virginia. She was appointed class counsel in *Klare v. Westlake Services, LLC*, No. 2:23-cv-06386-FMO-AGR (C.D. Cal.) and *Johnson v. Marin County Federal Credit Union*, Case No. CGC-23-607251 (San Francisco Cty., Cal.).

Both Bailey & Glasser LLP and Klein & Sheridan, LC have invested many hours investigating Plaintiff's claims and litigating this case and have the resources to effectuate a class notice plan.

I declare under penalty of perjury under the laws of the State of West Virginia that the foregoing is true and correct.

Executed this 26th day of May 2026.

/s/ Benjamin M. Sheridan
Benjamin M. Sheridan
KLEIN & SHERIDAN, LC
Counsel for Plaintiff and the Class