

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

In re

*Data Security Cases Against NELNET
SERVICING, LLC*

Case No. 4:22-cv-3191

The Honorable John M. Gerrard, U.S.D.J.

The Honorable Jacqueline M. DeLuca, U.S.M.J.

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Ian Scott, Jessica Alexander, Pamela Bump, Bridget Cahill, Lesly Canales, Melissa Charbonneau, Douglas Conley, Noah Helvey, Dallin Iler, Dustin Jones, Kayli Lazarz, Brittini Linn, Delilah Oliveira, Devinne Peterson, Eric Polanco, Justin Randall, Sofia Rodriguez, Joshua Sanchez, Charles Sangmeister, William Spearman, Taylor Vetter, Rachel Woods, Garner J. Kohrell, Olivia Covington, Alexis Luna, MaKayla Nelson, and Mary Traynor (collectively, "Plaintiffs") move for an Order under Federal Rules of Civil Procedure 23(e) for final approval of a class action settlement with Nelnet Servicing, LLC, Edfinancial Services, LLC, and the Oklahoma Student Loan Authority.

In support thereof, Plaintiffs rely upon the accompanying Memorandum of Law in Support; the Joint Declaration of Christian Levis and Ian W. Sloss in Support and Exhibits A – E; the Declaration of Mark Cowen of A.B. Data, Ltd. in Connection with Final Approval of Settlement; and the [Proposed] Final Approval Order and Judgment.¹

Wherefore, Plaintiffs respectfully request that this Court enter an Order finally approving the class action settlement.

¹ Plaintiffs' Motion for Attorneys' Fees, Litigation Costs and Expenses, and Service Awards is the subject of a separate motion filed in conjunction with this motion.

Dated: February 19, 2026

Respectfully submitted,

/s/ Christian Levis

Christian Levis

Amanda G. Fiorilla

LOWEY DANNENBERG, P.C.

44 South Broadway, Suite 1100

White Plains, NY 10601

Tel: (914) 997-0500

Email: clevis@lowey.com

Email: afiorilla@lowey.com

Anthony M. Christina

LOWEY DANNENBERG, P.C.

One Tower Bridge

100 Front Street, Suite 520

West Conshohocken, PA 19428

Email: achristina@lowey.com

Ian W. Sloss

Johnathan Seredynski

Steven L. Bloch

SILVER GOLUB & TEITELL LLP

One Landmark Square, Floor 15

Stamford, CT 06901

Tel: (203) 325-4491

Email: isloss@sgtlaw.com

Email: jeredynski@sgtlaw.com

Email: sbloch@sgtlaw.com

Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, a copy of the foregoing document was filed electronically with the U.S. District Court for the District of Nebraska and served on all counsel of record through the CM/ECF system.

/s/ Christian Levis
Christian Levis

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

In Re:
*Data Security Cases Against NELNET
SERVICING, LLC*

Case No. 4:22-cv-3191

The Honorable John M. Gerrard, S.U.S.D.J.

The Honorable Jacqueline M. DeLuca, U.S.M.J.

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

WHEREAS, on March 31, 2025, a Preliminary Approval Order was entered by the Court, and an Amended Preliminary Approval Order was entered on December 4, 2025, preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement, and directing that Notice be given to the Settlement Class. ECF Nos. 146, 162.

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

WHEREAS, a Fairness Hearing was held on May 5, 2026. Class Members were adequately notified of their right to appear at the Fairness Hearing in support of or in opposition to the proposed Settlement, the award of attorney's fees, costs, and expenses to Class Counsel, and requested Service Awards to Class Representatives.

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and Settling Entities' Counsel, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, reasonable, and adequate, having considered the application for attorney's fees, expenses, and costs made by Class Counsel and the application for Service Awards to the Class Representatives, and having reviewed the materials in support thereof and the record in this Action, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.

3. There are _____ objections and _____ requests for exclusion from the Settlement. [The _____ Class Members who timely and properly opted out from the Settlement are identified in **Exhibit 1** to this Order].

4. Notwithstanding the objections, the Court has independently reviewed and considered all relevant factors and has conducted an independent examination into the propriety of the proposed Settlement. [The Court finds all objections are without merit and they are hereby overruled].

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

6. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby:

a. Certifies the following Settlement Class pursuant to Fed. R. Civ. P. 23: All Persons in the United States whose Personal Information was compromised in the Data Security Incident. The Settlement Class specifically excludes: (i) the Settling Entities, any Person in which the Settling Entities have a controlling interest, and the Settling Entities officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; (iii) any Person that timely and validly opts out of the Settlement and (iv) any Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Security Incident or who pleads guilty or *nolo contendere* to any such charge.

b. Appoints Plaintiffs Ian Scott, Jessica Alexander, Pamela Bump, Bridget Cahill, Lesly Canales, Melissa Charbonneau, Douglas Conley, Noah Helvey, Dallin Iler, Dustin Jones, Kayli Lazarz, Brittini Linn, Delilah Oliveira, Devinne Peterson, Eric Polanco, Justin Randall, Sofia Rodriguez, Joshua Sanchez, Charles Sangmeister, William Spearman, Taylor Vetter, Rachel Woods, Garner J. Kohrell, Olivia Covington, Alexis Luna, MaKayla Nelson, and Mary Traynor, for settlement purposes only, as Class Representatives. The Court finds that the Class Representatives are similarly situated to absent Settlement Class Members and are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

c. Appoints Lowey Dannenberg, P.C. and Silver Golub & Teitell LLP as Class Counsel.

d. Finds that the Notice Plan and the dissemination of Notice to Class Members: (i) was implemented in accordance with the Preliminary Approval Order and

Amended Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (A) the material terms of the Settlement; (B) how to submit a Claim Form; (C) the Settlement Claims Deadline; (D) the deadline for individuals in the Settlement Class to opt-out of the Settlement Class; (E) the deadline for Class Members to object to the Settlement and/or motion for a Fee Award and Costs and Class Representative Service Awards; (F) the Fairness Hearing date; and (G) the Settlement Website address at which Class members may access the Settlement Agreement and other related documents and information; (iv) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Fed. R. Civ. P. 23, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

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

f. finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Federal Rules of Civil Procedure 23(a) and (b)(3), are satisfied in that:

- i. The Settlement Class is so numerous that joinder of all members is impracticable;
- ii. There are questions of law or fact common to the Settlement Class;
- iii. Plaintiffs' claims are typical of those of Settlement Class Members;
- iv. Plaintiffs and Class Counsel fairly and adequately represent the Settlement Class;

- v. Common issues predominate over any individual issues affecting Settlement Class Members; and
- vi. Settlement of the Action on a class action basis is superior to other means of resolving this matter.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally approves the Settlement set forth in the Settlement Agreement. This Court finds that the Settlement meets all requirements of Rule 23(e) of the Federal Rules of Civil Procedure and is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including Plaintiffs.

8. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length, non-collusive negotiations between experienced counsel representing the interests of the Parties with the assistance of a third-party mediator, that Class Counsel and Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement, that the relief provided for the Settlement Class is adequate, that the Settlement Agreement and Distribution Plan treats Class Members equitably relative to each other, and the record is sufficiently developed and complete to have enabled Plaintiffs and the Settling Entities to have adequately evaluated and considered their positions. Accordingly, the Settlement embodied in the Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

9. Within the time periods set forth in the Settlement Agreement, the Settlement Benefits provided for in the Settlement Agreement shall be paid to the Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

10. It is hereby determined that Plaintiffs and the Releasing Parties are bound by the Settlement Agreement and this Final Approval Order and Judgment, and the Action and the Released Claims against any of the Released Parties, as provided under the Settlement Agreement, are hereby dismissed with prejudice and released.

11. All Settlement Class Members and their legally authorized representatives, unless and until they have submitted a timely and valid request to opt out from the Settlement Class are hereby enjoined (i) from filing, commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Settlement Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) from attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims.

12. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum *res judicata*, collateral estoppel, and all other preclusive effects in any court of competent jurisdiction for any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Action or in any third party action.

13. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects, and all acts, statements, documents, or proceedings relating to the

Settlement are not, and shall not be construed as, or used as an admission by or against the Settling Entities of any fault, wrongdoing, or liability on the part of the Settling Entities or of the validity or certifiability for litigation of any claims.

14. The Court finds Service Awards of \$1,500.00 per Class Representative are fair and reasonable. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

15. The Court hereby approves an award of attorney's fees in an amount of \$_____ and, separately, litigation costs and expenses in an amount of \$_____. As to the attorneys' fee award, the percentage requested is reasonable and comparable to other fee awards in the Circuit and for similar cases and is further supported by an analysis of the applicable lodestar, the complexity of this Action and the resources devoted to the prosecution, the skill required to obtain the result and the benefits provided to Settling Class Members. The litigation costs and expenses incurred in prosecuting this Action were reasonable and necessary and are of the type of expenses that are typically reimbursed from a common fund. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

16. The above-captioned Action is hereby dismissed against the Settling Entities in its entirety, with prejudice. Except as otherwise provided in this Final Approval Order and Judgment, the Parties shall bear their own costs and attorney's fees.

17. The Distribution Plan and Settlement Claim Form referenced in the Settlement Agreement are finally approved as fair, reasonable, and adequate.

18. Without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, the Court reserves exclusive jurisdiction over the implementation and enforcement of the Settlement Agreement, the Settlement contemplated thereof, and over the

enforcement of this Final Approval Order and Judgment. The Court also retains exclusive jurisdiction to resolve any disputes that arise out of or relate to the Settlement Agreement, the Settlement, or the Settlement Fund, to consider or approve administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of the Final Approval Order and Judgment, to consider or approve the amounts of distributions to Class Members, and to approve any potential *cy pres* distribution.

19. The Court directs that this and Judgment shall be Final and entered forthwith. The Clerk is directed to **CLOSE** the docket in this Action and all of the Related Actions.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Date: _____, 2026

HONORABLE JOHN M. GERRARD
SENIOR UNITED STATES DISTRICT JUDGE

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

In re

*Data Security Cases Against NELNET
SERVICING, LLC*

Case No. 4:22-cv-3191

The Honorable John M. Gerrard, U.S.D.J.

The Honorable Jacqueline M. DeLuca, U.S.M.J.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

INTRODUCTION 1

BACKGROUND 2

 I. The Litigation..... 2

 II. Settlement Negotiations 4

 III. The Settlement Terms 4

 IV. Preliminary Approval of Settlement and Additional Procedural History..... 5

 V. Implementation of the Notice Plan 6

ARGUMENT..... 7

 I. The Court Has Subject Matter Jurisdiction to Finally Approve the Settlement 7

 II. Final Certification of the Settlement Class is Proper..... 8

 III. The Settlement Merits Final Approval..... 9

 A. The Settlement Is Substantively Fair11

 1. Merits of Plaintiffs’ Case Weighed Against the Terms of the Settlement11

 2. The Defendants’ Financial Condition 17

 3. Complexity and Expense of Further Litigation 18

 4. The Amount of Opposition to the Settlement 18

 B. The Settlement is Procedurally Fair..... 19

 1. The Opinion of Experienced Counsel..... 19

 2. The Settlement is the Product of Arm’s Length Negotiations by Experienced Counsel Aided by a Skilled Mediator 20

 3. The Stage of Proceedings and Amount of Discovery Completed Confirm that the Timing of the Settlement Is Appropriate..... 21

CONCLUSION..... 22

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Balestra v. ATBCOIN LLC</i> , No. 17-cv-10001 (VSB), 2022 WL 950953 (S.D.N.Y. Mar. 29, 2022)	12
<i>Briles v. Tiburon Fin., LLC</i> , No. 8:15CV241, 2016 WL 7115984 (D. Neb. Dec. 6, 2016)	10
<i>Campbell v. Transgenomic, Inc.</i> , No. 4:17-cv-3021, 2020 WL 2946989 (D. Neb. June 3, 2020)	16
<i>Childs v. Unified Life Ins. Co.</i> , No. 10-cv-23-PJC, 2011 WL 6016486 (N.D. Okla. Dec. 2, 2011).....	19
<i>Cullan & Cullan LLC v. M-Qube, Inc.</i> , No. 8:13-cv-172, 2016 WL 5394684 (D. Neb. Sept. 27, 2016)	9, 15, 18, 21
<i>Fulton-Green v. Accolade, Inc.</i> , No. 18-cv-00274, 2019 WL 4677954 (E.D. Pa. Sep. 24, 2019).....	12
<i>Garcia v. Target Corp.</i> , No. 16-cv-02574-MJD-BRT, 2020 WL 416402 (D. Minn. Jan. 27, 2020)	13
<i>Gordon v. Chipotle Mexican Grill, Inc.</i> , No. 17-cv-01415 (CMA) (SKC), 2019 WL 6972701 (D. Colo. Dec. 16, 2019)	11, 18
<i>Green-Cooper v. Brinker Int'l, Inc.</i> , 73 F.4th 883 (11th Cir. 2023).....	13
<i>Hammond v. The Bank of New York Mellon Corp.</i> , No. 08 Civ. 6060 RMB RLE, 2010 WL 2643307 (S.D.N.Y. June 25, 2010)	12
<i>Huyer v. Njema</i> , 847 F.3d 934 (8th Cir. 2017).....	17
<i>In re Facebook, Inc., IPO Sec. & Derivative Litig.</i> , 343 F. Supp. 3d 394 (S.D.N.Y. 2018)	12
<i>In re Glob. Crossing Sec. & ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....	17
<i>In re GSE Bonds Antitrust Litig.</i> , 414 F. Supp. 3d 686 (S.D.N.Y. 2019)	13

In re Herff Jones Data Breach Litig.,
 No. 1:21-cv-1329-TWP-DLP, 2022 WL 474696 (S.D. Ind. Jan. 12, 2022) 14

In re Marriott Int’l, Inc., Customer Data Sec. Breach Litig.,
 341 F.R.D. 128 (D. Md. 2022)..... 13

In re Sonic Corp. Customer Data Breach Litig.,
 No. 17-md-02807, 2020 WL 6701992 (N.D. Ohio Nov. 13, 2020) 14

In re Tyco Int’l, Ltd. Multidistrict Litig.,
 535 F. Supp. 2d 249 (D.N.H. 2007)..... 12

In re Uponor, F1807 Plumbing Fittings Prods. Liab. Litig.,
 716 F.3d 1057 (8th Cir. 2013)..... 9

In re Wawa, Inc. Data Sec. Litig.,
 No. CV 19-6019, 2023 WL 6690705 (E.D. Pa. Oct. 12, 2023)..... 11

In re Wireless Tel. Fed. Cost Recovery Fees Litig.,
 396 F.3d 922 (8th Cir. 2005)..... 9

In re Zurn Pex Plumbing Prod. Liab. Litig.,
 No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810 (D. Minn. Oct. 18, 2012) 14

Jenkins v. Pech,
 No. 8:14-cv-41, 2015 WL 6738624 (D. Neb. Nov. 4, 2015)..... 20

Keil v. Lopez,
 862 F.3d 685 (8th Cir. 2017)..... 11

Kostka v. Dickey’s Barbecue Restaurants, Inc.,
 No. 3:20-cv-03424-K, 2022 WL 16821685 (N.D. Tex. Oct. 14, 2022) 14, 16

Little Rock Sch. Dist. v. Pulaski Cnty. Spec. Sch. Dist. No. 1,
 921 F.2d 1371, 1388 (8th Cir. 1990)..... 9

Marshall v. Nat’l Football League,
 787 F.3d 502 (8th Cir. 2015)..... 9, 11, 17, 19

Petrovic v. Amoco Oil Co.,
 200 F.3d 1140 (8th Cir. 1999)..... 9

PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.,
 No. 4:18-cv-00368 (SMR) (HCA), 2023 WL 8522980 (S.D. Iowa Nov. 30, 2023) 12

Shanahan v. Lee L. Offs.,
 No. 8:18-cv-129, 2019 WL 2603102 (D. Neb. June 25, 2019) 11, 18

Spearman v. Nelnet Servicing, LLC,
 No. 4:22-CV-3191, 2025 WL 974065 (D. Neb. Mar. 31, 2025)..... 6, 7, 8, 19

Walkinshaw v. CommonSpirit Health,
 No. 4:19-cv-3012, 2022 WL 5255287 (D. Neb. Oct. 6, 2022)..... 9, 20

Williams v. Gen. Elec. Cap. Auto Lease, Inc.,
 159 F.3d 266 (7th Cir. 1998)..... 8

Statutes

28 U.S.C. § 1332(d) 7, 8

Cal. Civ. Code § 1798.150(a)(1)(a) 14

Rules

Fed. R. Civ. P. 23(a) 8

Fed. R. Civ. P. 23(b) 8, 13

Fed. R. Civ. P. 23(e) 1, 10

Fed. R. Civ P. 23(e)(1)(B)..... 22

Fed. R. Civ. P. 23(e)(2) 1, 9, 10, 13, 22

Fed. R. Civ. P. 23(e)(2)(C) 11, 15, 16

Fed. R. Civ. P. 23 23(e)(2)(D) 15

Fed. R. Civ P. 23(e)(3) 10, 17

Rule 23(f)..... 13

Other Authorities

2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (20th ed.)..... 20

4 NEWBERG ON CLASS ACTIONS § 13:44 (6th ed.)..... 9

Manual for Complex Litigation § 13.14 (4th ed. 2004)..... 10

INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(e)(2), Plaintiffs Ian Scott, Jessica Alexander, Pamela Bump, Bridget Cahill, Lesly Canales, Melissa Charbonneau, Douglas Conley, Noah Helvey, Dallin Iler, Dustin Jones, Kayli Lazarz, Brittini Linn, Delilah Oliveira, Devinne Peterson, Eric Polanco, Justin Randall, Sofia Rodriguez, Joshua Sanchez, Charles Sangmeister, William Spearman, Taylor Vetter, Rachel Woods, Garner J. Kohrell, Olivia Covington, Alexis Luna, Mary Traynor, and MaKayla Nelson (collectively, “Plaintiffs”) hereby move the Court for an order granting final approval of the \$10,000,000.00 common fund settlement with Defendants in this Action, Nelnet Servicing, LLC (“Nelnet”) and Edfinancial Services, LLC (“Edfinancial”) (collectively, the “Defendants”), and the Oklahoma Student Loan Authority (“OSLA,” and together with Nelnet and Edfinancial, the “Settling Entities”).¹

Pursuant to the Court’s December 4, 2025 Order (ECF No. 162) granting Plaintiffs’ Motion for an Amended Preliminary Approval Order, the approved Notice Plan was implemented. Thus far, there have been no objections to the Settlement, and two Class Members have opted out. The Settlement now comes before the Court for final approval under Rule 23(e). If final approval is granted, this Action will be terminated, and all Settling Class Members will release the Released Claims against the Released Parties; in exchange upon filing a claim, Settling Class Members will receive immediate and significant benefits from the Settlement Fund in the form of identity protection and reimbursement of losses attributable to the Data Security Incident or a *pro rata* payment from the Net Settlement Fund.

¹ Unless otherwise defined, capitalized terms have the same meaning as in the Stipulation and Agreement of Class Action Settlement (“Settlement Agreement” or “SA”), attached as Exhibit 1 to the Declaration of Christian Levis. *See* ECF No. 110-1.

Accordingly, Plaintiffs respectfully move the Court to enter the order filed herewith (the “Final Approval Order and Judgment”) granting final approval of the Settlement.

BACKGROUND

I. The Litigation

Nelnet provides technology services to student loan servicers Edfinancial and OSLA, including a website portal for Edfinancial’s and OSLA’s student loan borrowers to access their online loan accounts. *See* ECF No. 112 (“Prelim. Approval Mot.”) at 2. Beginning in June 2022, an unauthorized third party obtained personal information belonging to Plaintiffs and Class Members on the website portal provided by Nelnet. *Id.* 2–3. The unauthorized third party continued to access this information until July 22, 2022. *Id.* at 3.² On or around August 26, 2022, Nelnet began publicly notifying state Attorneys General and approximately 2,501,324 impacted student borrowers with accounts serviced by OSLA and Edfinancial that their Personal Information had been compromised in the Data Security Incident. *Id.*

On September 7, 2022, Settlement Class Counsel, Lowey Dannenberg, P.C. (“Lowey”) and Silver Golub & Teitell LLP (“SGT,” and collectively with Lowey, “Class Counsel”) initiated a class action against Nelnet in the District of Nebraska on behalf of eight of the Plaintiffs. *See Spearman, et al. v. Nelnet Servicing, LLC*, No. 4:22-cv-3191 (D. Neb.). Class Counsel filed a second class action complaint against Nelnet on September 14, 2022, on behalf of ten additional Plaintiffs. *See Bump, et al. v. Nelnet Servicing, LLC*, No. 4:22-cv-03204 (D. Neb.). In total, twenty-

² Confirmatory discovery provided by Nelnet on a confidential basis included (1) information about the unauthorized third party who committed the Data Security Incident, (2) information regarding the root cause of the incident including the third party’s method of obtaining data, (3) copies of submissions to regulators, (4) information pertaining to an ongoing law enforcement investigation into the incident and the third-party individual, and (5) additional information consistent with the incident being committed by an individual who did not sell the data for posting to the dark web. Prelim Approval Mot. at 3.

three putative class actions against Nelnet and/or Edfinancial asserting claims arising from and/or related to the Data Security Incident were filed in or transferred to the District of Nebraska. *See* Prelim. Approval Mot. at 3–4. On January 30, 2023, this Court consolidated those twenty-three putative class actions against Nelnet and Edfinancial in this District and appointed Lowey and SGT as Interim Co-Lead Class Counsel.³ *Id.*

On March 10, 2023, Plaintiffs filed their Amended Complaint against Nelnet and Edfinancial, which, among other things, asserted claims for negligence, negligence per se, breach of implied contract, unjust enrichment, breach of confidence, invasion of privacy, violations of state consumer protection and notification statutes, and declaratory and injunctive relief. *Id.* Plaintiffs also included Plaintiff Traynor in the Amended Complaint, an OSLA borrower who filed the necessary paperwork with OSLA on May 8, 2023. *Id.* Plaintiff Traynor’s claim was denied via letter on June 9, 2023. *Id.*

Nelnet moved to dismiss Plaintiffs’ Amended Complaint on April 24, 2023. *Id.* at 5. Class Counsel, on behalf of Plaintiffs, proceeded to litigate their claims, opposing Nelnet’s motion to dismiss and Edfinancial’s attempts to stay the litigation in the District of Nebraska. *Id.* The motion to dismiss was fully briefed by July 10, 2023.⁴ *Id.* After nearly a year of litigation, Plaintiffs and the Settling Entities began exploring the potential for a global resolution. *Id.*

³ While the consolidation motion and competing leadership applications were pending, Plaintiff Kathleen Carr initiated an action against OSLA and Nelnet in Oklahoma state court arising out of the same Data Security Incident, which was later removed to the U.S. District Court for the Western District of Oklahoma on January 20, 2023, *Carr*, No. 5:23-cv-00099-R (W.D. Okla.). *See* Prelim. Approval Mot. at 3–4.

⁴ The Court later terminated Nelnet’s motion after the parties indicated they had reached an agreement in principle to resolve the action, subject to reopening after the plaintiffs in Carr moved to intervene in this Action. *See* Prelim. Approval Mot. at n.3.

II. Settlement Negotiations

Class Counsel achieved this Settlement after many months of extensive, hard-fought litigation, and arm's length negotiations between Plaintiffs and the Settling Entities. The Parties exchanged discovery, submitted mediation briefs, and engaged in two full-day mediation sessions on December 8, 2023, and January 26, 2024, supervised by retired federal Magistrate Judge Jay C. Gandhi of JAMS. Prelim. Approval Mot. at 5. During mediation, the Parties provided their assessment of the strengths and weaknesses of the case, the uncertainty and risks of further litigation—including further motion practice, discovery, trial, and any possible appeals—as well as the duration, expense, difficulties, and delays inherent in such litigation. *Id.* The second mediation session concluded with a tentative agreement in principle of the settlement amount among the parties as to certain terms of settlement, but with material issues that remained unresolved. *Id.* Plaintiffs notified the Court of these developments by email on January 29, 2024, and requested a stay of the pending motion to dismiss while they continued their discussions. *Id.* The Parties continued their discussions in the ensuing months, resulting in the execution of a binding settlement term sheet on June 11, 2024, and the Settlement Agreement on August 16, 2024. *Id.* at 5–6.

III. The Settlement Terms

The Settlement Class is defined as “All Persons in the United States whose Personal Information was compromised in the Data Security Incident.” SA § 2.56. Excluded are: (i) the Settling Entities, any Person in which the Settling Entities have a controlling interest, and the Settling Entities officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; (iii) any Person that timely and validly opts out of the Settlement; and

(iv) any Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Security Incident or who pleads guilty or nolo contendere to any such charge. SA § 2.56.

In exchange for the release of the Released Parties, the Settlement provides for a non-reversionary common fund of \$10,000,000. SA §§ 2.54, 4.1. This fund is intended to compensate Settlement Class Members for the potential harm arising from the Data Security Incident. After deducting costs, attorneys' fees, and expenses associated with administration, the Settlement provides Settlement Class Members with two distinct but complementary categories of relief: (i) Credit Monitoring and Identity Theft Protection with \$1,000,000 of identity theft insurance, and (ii) a monetary Settlement Payment equal to either (a) their out-of-pocket expenses and lost time experienced by the eligible Settling Class Member (up to a \$5,000 cap) or (b) a pro rata share of the funds remaining after credit monitoring and reimbursements for out-of-pocket expenses and lost time are paid. SA §§ 2.55, 2.62. The Net Settlement Fund will be fully distributed to all eligible Settling Class Members. SA § 7.1. To receive the Settlement Benefits, all Settlement Class Members will complete a straightforward Settlement Claim Form. SA §§ 2.58; 7.4.1; 7.5.1; 7.5.2; 7.7.1.

IV. Preliminary Approval of Settlement and Additional Procedural History

On August 23, 2024, Plaintiffs moved for Preliminary Approval of the Class Action Settlement (ECF Nos. 109–12), which the Court granted on March 31, 2025 (ECF No. 146). Prior to entry of the Order, plaintiffs from the *Carr* Action, Kathleen Carr, Keegan Killory, and Kelsie Powell (“Intervenors”) filed a renewed motion to intervene in the action to “object[] to the adequacy of the proposed settlement” on September 11, 2024 (ECF Nos. 116–17), and an opposition to Plaintiffs’ Motion for preliminary approval on September 17, 2024 (ECF No. 118).

On March 31, 2025, following significant motion practice that delayed the Settlement proceedings, the Court rejected the Intervenor's arguments and certified the Settlement Class, appointed Lowey and SGT as Class Counsel, appointed the Plaintiffs as Class Representatives for the Settlement Class, appointed A.B. Data, Ltd. as the Claims Administrator, preliminarily approved the Settlement, and approved the forms and plan for class notice. *Spearman v. Nelnet Servicing, LLC*, No. 4:22-CV-3191, 2025 WL 974065 (D. Neb. Mar. 31, 2025).

On September 26, 2025, the Plaintiffs filed an Unopposed Motion for an Amended Preliminary Approval Order (ECF No. 161), which the Court granted on December 4, 2025 (ECF No. 162) (the "Amended Preliminary Approval Order"). Pursuant to that Order, notice of the Settlement was disseminated nationwide in accordance with the Court-approved notice plan.

V. Implementation of the Notice Plan

On December 17, 2025, the dedicated Settlement Website was made live, containing, *inter alia*, a summary of the Settlement, important dates and deadlines, contact information for the Claims Administrator, answers to frequently asked questions, and downloadable copies of relevant documents. *See* Declaration of Mark Cowen of A.B. Data, Ltd. ("Cowen Decl.") ¶ 22. A.B. Data also established a toll-free telephone number for Settlement Class Members to call and obtain additional information regarding the Settlement and designated a post office box in order to receive opt-out requests, Settlement Claim Forms, and correspondence from Settlement Class Members. *Id.* ¶¶ 7–8.

Also on December 17, 2025, A.B. Data commenced direct notice to Settlement Class Members with electronic mailing of the Email Notice to 2,226,500 distinct and valid email addresses associated with Settlement Class Members, of which 1,945,221 emails were delivered. *Id.* ¶¶ 11–12. Those Settlement Class Members for whom no valid email address was available

were sent a Postcard Notice via First-Class Mail. *Id.* ¶ 14. To date, A.B. Data has mailed a total of 539,986 Postcard Notices. *Id.* ¶ 18. To supplement the direct notice provided, A.B. Data implemented a media plan to reach potential Settlement Class Members through targeted ads appearing across desktop, tablet, and mobile devices for 30 days on Google Display Network and YouTube, resulting in 3,352,210 impressions and 1,884 clicks. *Id.* ¶ 20.

The period for Settlement Class Members to submit claims, request exclusion from the Settlement, or file objections remains open and will not close until March 5, 2026. As a result, final participation metrics are not yet available as of the filing of this motion. Notwithstanding that the submission period remains open, administration to date confirms successful dissemination of notice and active participation by Settlement Class Members. As discussed above, a total of 2,226,500 notices have been sent via email (of which 1,945,221 emails were delivered), and a total of 539,986 Postcard Notices have been sent by U.S. Mail to Class Members. *Id.* ¶¶ 11–12, 18.

To date, 737,292 claims have been filed electronically through the Settlement Website, 67 Settlement Claim Forms were received through the mail, and there are only two opt-out requests. *Id.* ¶ 24. The response of the Settlement Class so far indicates that the notice program has been successful.

ARGUMENT

I. The Court Has Subject Matter Jurisdiction to Finally Approve the Settlement

As the Court previously found, it has subject matter jurisdiction to approve the Settlement. *Spearman*, 2025 WL 974065, at *3. This Action and the cases consolidated before this Court were brought pursuant to 28 U.S.C. § 1332(d), which provides:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest

and costs, and is a class action in which--(A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

28 U.S.C. § 1332(d). This Action amply meets this requirement. Plaintiffs represent 17 states, and if found liable, the claims raised in the Complaint would have subjected Settling Entities to well over \$5,000,000 based on the number of borrowers impacted by the Data Security Incident, as reflected by the \$10,000,000 Settlement Fund. Although OSLA is not a defendant in this Action, “a federal court may release claims based on the identical factual predicate as that underlying the claims in the settled class action,” which permits the release of claims against OSLA here. *Spearman*, 2025 WL 974065, at *3 (citing *Williams v. Gen. Elec. Cap. Auto Lease, Inc.*, 159 F.3d 266, 273 (7th Cir. 1998)). As with preliminary approval, the Court has subject matter jurisdiction to finally approve the Settlement.

II. Final Certification of the Settlement Class is Proper

In granting preliminary approval, the Court also certified the Settlement Class for settlement purposes, finding that the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) were satisfied. Specifically, the Court determined that the Settlement Class is sufficiently numerous, presents common questions of law and fact arising from the same data security incident, and that Plaintiffs’ claims are typical of those of the class. *Spearman*, 2025 WL 974065, at *1. The Court further found that Plaintiffs and Class Counsel adequately represent the Settlement Class, and that common issues predominate over any individualized issues such that resolution through a class action is superior to individual litigation. *Id.* at *1–2. Nothing has changed since preliminary approval that would alter that conclusion. Accordingly, final certification of the Settlement Class

for purposes of settlement remains appropriate and should be confirmed in granting final approval.⁵

III. The Settlement Merits Final Approval

The Eighth Circuit has held that “strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) (citing *Little Rock Sch. Dist. v. Pulaski Cnty. Spec. Sch. Dist. No. 1*, 921 F.2d 1371, 1388 (8th Cir. 1990)); see also William Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:44 (6th ed.) (“The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals.”); *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013).

“A district court may approve a class action settlement only after determining that it is ‘fair, reasonable, and adequate.’” *In re Uponor*, 716 F.3d at 1063 (citing Fed. R. Civ. P. 23(e)(2)); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005) (A court’s role in reviewing a negotiated class settlement is to “ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned.”).

With respect to the substantive merits, the court considers the following factors: “(1) the merits of the plaintiff’s case weighed against the terms of the settlement, (2) the defendant’s financial condition, (3) the complexity and expense of further litigation, and (4) the amount of opposition to the settlement.” *Marshall v. Nat’l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) (quoting *In re Uponor*, 716 F.3d at 1063)). Procedural considerations may include “[i] the stage of

⁵ Plaintiffs incorporate by reference the arguments contained in their Preliminary Approval Brief. ECF No. 112 at 9–17.

proceedings and amount of discovery completed, [ii] the opinion of experienced counsel, [iii] whether the settlement was negotiated at arm's length[, and] [iv] the settlement's timing.” *Cullan & Cullan LLC v. M-Qube, Inc.*, No. 8:13-cv-172, 2016 WL 5394684, at *6 (D. Neb. Sept. 27, 2016) (citing *Marshall*, 787 F.3d at 508 and *In re Wireless*, 396 F.3d at 934); *Walkinshaw v. CommonSpirit Health*, No. 4:19-cv-3012, 2022 WL 5255287, at *3 (D. Neb. Oct. 6, 2022). These factors overlap with the requirements for approval under the Federal Rules.⁶

Approval of a class action settlement is a two-step process: “first, a ‘preliminary approval’ order; and second, after notice of the proposed settlement has been provided to the class and a hearing has been held to consider the fairness, reasonableness and adequacy of the proposed settlement, a ‘final approval’ order or judgment.” *Briles v. Tiburon Fin., LLC*, No. 8:15CV241, 2016 WL 7115984, at *2 (D. Neb. Dec. 6, 2016) (citing Manual for Complex Litigation § 13.14 (4th ed. 2004)). The Court previously determined that the relevant factors supported preliminary approval of the Settlement under Rule 23(e), and those considerations largely remain unchanged. The Settlement continues to reflect a fair and reasonable result in light of the risks, expense, and duration of continued litigation, and there have been no developments undermining the Court’s earlier conclusions. The principal change since the Court’s grant of preliminary approval is that notice has now been successfully disseminated pursuant to the Court’s Amended Preliminary Approval Order, affording Settlement Class Members the opportunity to submit claims, object, or

⁶ See Fed. R. Civ. P. 23(e)(2) (settlement approval based on 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.”).

request exclusion. The implementation of the notice program, and the resulting participation by Settlement Class Members to date, provides additional confirmation that the Settlement is fair, reasonable, and adequate, further supporting final approval.

A. The Settlement Is Substantively Fair

1. Merits of Plaintiffs' Case Weighed Against the Terms of the Settlement

“The most important consideration in the [approval] analysis requires balancing the strength of the plaintiffs’ case against the value of the settlement terms to the class.” *Marshall*, 787 F.3d at 514. In performing this analysis, the court “does not try the case;” rather the question a court seeks to resolve is what the likely outcome of a trial may have been, and how does that outcome compare to the relief offered to by the Settlement. *Shanahan v. Lee L. Offs.*, No. 8:18-cv-129, 2019 WL 2603102, at *2 (D. Neb. June 25, 2019); *accord Keil v. Lopez*, 862 F.3d 685, 696 (8th Cir. 2017); *see also* Fed. R. Civ. P. 23(e)(2)(C)(i) (settlement evaluation includes assessing “the costs, risks, and delay of trial and appeal”).

While Plaintiffs believe they would have prevailed had this Action proceeded to trial, there are significant risks and challenges that make the outcome of this litigation far from certain. The factual and legal issues in this Action are complex and expensive to litigate, especially given the multiple parties involved. *See In re Wawa, Inc. Data Sec. Litig.*, No. CV 19-6019, 2023 WL 6690705, at *7 (E.D. Pa. Oct. 12, 2023) (“This is a complex class action lawsuit regarding damages from a data breach, an area of law that has not yet been fully developed”); *see also Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (CMA) (SKC), 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases . . . are particularly risky, expensive, and complex.”).

This case involves complex legal and technical issues concerning Nelnet’s data security systems. Establishing liability would involve obtaining and proving the meaning and significance

of evidence, including source code, third-party discovery, deposition testimony, and other facts collected in discovery. As is always true in cases involving large document productions, the duration of the case will depend on the time the Settling Entities will require to review and produce documents, as well as the time Plaintiffs require to review Settling Entities' and non-party documents.

Had this case continued, the cost of litigation would have been significant for both sides due to the need for technical and damages experts to interpret source code, conduct forensic computer analysis, and create a damages methodology. If this case had progressed towards class certification and summary judgment, the Parties' experts would have added to the cost and duration of the case and likely would have triggered a "battle of the experts" in this Action.⁷ Expert discovery would likely have led to *Daubert* motion practice by both sides, further increasing the cost and risks of the litigation and delaying any resolution. Given the complexities of this litigation and its focus on technical data security issues that would likely be unfamiliar to the average juror, this case presents a significant level of risk and uncertainty.

As data breach litigation is a continuously developing area of law, there are risks that may continue even after the motion to dismiss phase. *See, e.g., Fulton-Green v. Accolade, Inc.*, No. 18-cv-00274, 2019 WL 4677954, at *8 (E.D. Pa. Sep. 24, 2019) ("This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.");

⁷ *See, e.g., PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.*, No. 4:18-cv-00368 (SMR) (HCA), 2023 WL 8522980, at *4 (S.D. Iowa Nov. 30, 2023) ("This case would have been a 'battle of the experts' where it would not be clear how a jury would resolve such issues."); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) (experts "tend[] to increase both the cost and duration of litigation"); *Balestra v. ATBCOIN LLC*, No. 17-cv-10001 (VSB), 2022 WL 950953, at *3 (S.D.N.Y. Mar. 29, 2022) (granting preliminary approval of class action settlement and finding the settlement amount within the range of approval considering the risks, including a costly and confusing "battle of the experts").

In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 260 (D.N.H. 2007) (noting that, because the case “involved a greater risk of non-recovery” due to “still-developing law,” this factor weighed in favor of approval); *Hammond v. The Bank of New York Mellon Corp.*, No. 08 Civ. 6060 RMB RLE, 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the motion to dismiss or summary judgment stages). There are additional complexities caused by the nature of the incident itself, which was perpetrated by a student loan borrower with a valid Nelnet account. This is compounded by law enforcement’s swift involvement and capture of the individual, which raises additional questions and concerns about class members’ standing and potential causation relating to any harms alleged as part of their claims.

The risk of maintaining a class through trial is another important consideration in evaluating the Settlement. Though present in every class action, this risk is significant where defendants are likely to challenge class certification, including by petitioning for an interlocutory appeal under Rule 23(f). *See Garcia v. Target Corp.*, No. 16-cv-02574-MJD-BRT, 2020 WL 416402, at *2 (D. Minn. Jan. 27, 2020) (finding the requirements of Fed. R. Civ. P. 23(e)(2) were met “taking into account the risks that both sides faced with respect to the merits of the claims alleged and remedies requested, the risks of maintaining a class action, and the expense and duration of further litigation”); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019) (the risk of maintaining a class through trial “weighs in favor of settlement . . . where it is likely that defendants would oppose class certification if the case were to be litigated”).

Certifying a litigation class may raise complex legal and factual issues given the data breach issues involved. There have only been a handful of data breach actions that have certified a litigation class. *See, e.g., Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 894 (11th Cir. 2023), *cert. denied sub nom. Brinker Int'l, Inc. v. Steinmetz*, 144 S. Ct. 1457 (2024) (affirming, in part,

decision to certify nationwide class of consumers in data breach action); *In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 172 (D. Md. 2022) (certifying Rule 23(b)(3) class), *vac. on other grounds remand. sub nom. In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023); *In re Sonic Corp. Customer Data Breach Litig.*, No. 17-md-02807, 2020 WL 6701992, at *3-6 (N.D. Ohio Nov. 13, 2020). While Plaintiffs are confident the Court will certify a litigation class should this Action continue, such a motion will be vigorously opposed by Defendants.

Instead of the continued uncertainty of the success of the litigation, the Settlement exchanges those risks for guaranteed relief to Class Members in the form of cash payments for the value for their past harms (reimbursement for out-of-pocket expenses and lost time or alternatively a *pro rata* cash payment) as well as protections from future fall-out from the Data Security Incident by way of prospective facing Credit Monitoring and Identity Theft Protection. In providing these benefits, the Settlement exchanges extensive prosecution costs and a lengthy litigation timeline with the immediacy and certainty of a \$10,000,000.00 recovery. *See In re Zurn Pex Plumbing Prod. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810, at *6 (D. Minn. Oct. 18, 2012) (“[t]he Settlement provides the members of the Settlement Class with an immediate and substantial source of recovery while eliminating the risk that further litigation would yield little or no recovery”). The Settlement is substantial and compares favorably to the terms approved by courts in similar data breach cases. *See, e.g., Kostka v. Dickey’s Barbecue Restaurants, Inc.*, No. 3:20-cv-03424-K, 2022 WL 16821685, at *6 (N.D. Tex. Oct. 14, 2022), *report and recommendation adopted*, No. 3:20-cv-03424-K, 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022) (data breach class action involving “at least 725,000 individuals” that settled for \$2.35 million –

approximately \$3.24 per class member);⁸ *In re Herff Jones Data Breach Litig.*, No. 1:21-cv-1329-TWP-DLP, 2022 WL 474696, at *3 (S.D. Ind. Jan. 12, 2022) (data breach class action involving more than 1 million people that settled for \$4.35 million – approximately \$4.35 per class member); *compare* SA § 2.54 (data breach class action involving 2,501,324 people that is settling for \$10 million – at approximately \$3.99 per class member). Here, the Parties “have also shown that benefits provided under the proposed settlements compare favorably to the terms of other settlements involving similar [] claims.” *Cullan*, 2016 WL 5394684, at *7.

The Settlement is also structured in a manner to ensure that its benefits are fairly allocated. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii), 23(e)(2)(D). All Settlement Class Members would be able to claim for Credit Monitoring and Identity Theft Protection (SA §§ 7.3, 7.4) and would then have the option of (i) selecting reimbursement for lost time and/or out of pocket expenses, up to a cap of \$5,000 (SA §§ 7.3, 7.5, 7.6), or (ii) an alternative *pro rata* cash payment, based on the amount of the Net Settlement Fund remaining after credit monitoring costs and reimbursements are paid. SA §§ 7.37, 7.7. The proposed Class Notice also provides information on how to opt out of the Settlement; absent opting out, each Class Member will be bound by the release. SA §§ 12, 16.

Similar settlement benefits and distribution plans have been approved in other data breach class actions. *See, e.g., In Re Hope College Data Security Breach Litig.*, No. 1:22-cv-01224, ECF Nos. 30-2, 44 (W.D. Mich. May 20, 2024) (settlement benefits include (i) one year of credit

⁸ Similar to the *Dickey’s* settlement, which provided for additional *pro rata* compensation to California residents due to the statutory California Consumer Privacy Act (“CCPA”), Cal. Civ. Code § 1798.150(a)(1)(a) claim, this Settlement also compensates California residents with a 2x multiplier to account for the release of the statutory damages available under the CCPA. SA § 7.7.1; *see also Kostka*, 2022 WL 16821685, at *13 (“The Settling Plaintiffs have adequately demonstrated why this extra recovery for California class members [is] equitable, if not equal. Namely, class members from California could bring California state law claims which provide for \$100-\$750 in statutory damages.”).

monitoring and insurance services; (ii) cash payments of up to \$5,000 per class member for reimbursement of documented losses; or (iii) pro rata cash payments); *Bingaman, et al. v. Avem Health Partners, Inc.*, No. 5:23-cv-00130, ECF Nos. 54-1, 67 (W.D. Okla. May 15, 2024) (settlement provides (i) cash payments of up to \$7,000 per class member for reimbursement of documented losses and reimbursement for lost time of up to five (5) hours at \$25.00 per hour; and (ii) credit monitoring; or (iii) a one-time alternative cash payment of up to \$100); *Kostka v. Dickey's Barbecue Restaurants, Inc.*, No. 3:20-cv-3424 (N.D. Tex. June 6, 2023), ECF Nos. 62-1, 103 (Class members to be eligible to receive (i) reimbursement for out-of-pocket losses up to \$5,000; (ii) a cash payment, with a 2x multiplier for California class members; or (iii) credit monitoring).

While similar to *Hope College, Avem*, and *Dickey's* in terms of the types of benefits offered, here, all Settlement Class Members can also claim Credit Monitoring and Identity Theft Protection *in addition* to (i) Reimbursement of Documented Out-of-Pocket Losses and Cash Payments for Lost Time, or (ii) Pro Rata Cash Payments. The Settlement also does not favor or disfavor Plaintiffs or any Settlement Class Member; nor does it discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. All Settlement Class Members—*i.e.*, whether they are borrowers serviced by OSLA or Edfinancial—would equally release Nelnet, OSLA, and Edfinancial with respect to claims based on the same factual predicate of the Data Security Incident of this Action. SA §§ 12, 16.6.

The Settlement is also designed to ensure sufficient funds are available for distribution to eligible Class Members. *See* Fed. R. Civ. P. 23 (e)(2)(C)(iii). Class Counsel seek one-third of the Settlement Fund in attorneys' fees, which may be paid from the Settlement Fund following the Effective Date. SA §§ 2.32; 4.2; 19.1; 19.2. The proposed fee is reasonable and consistent with others upheld by courts in this Circuit. *See Campbell v. Transgenomic, Inc.*, No. 4:17-cv-3021,

2020 WL 2946989, at *4 (D. Neb. June 3, 2020) (finding that the requested attorneys' fees in the amount of 1/3 of the settlement fund is "well in line with other attorney's fee awards in this circuit."). Class Counsel also seek their reasonably incurred litigation expenses in the amount of \$52,487.62. Finally, Plaintiffs seek a Service Award of \$1,500 for each Settlement Class Representative (for a total of \$40,500). SA § 18.1.⁹ Even after accounting for these awards and the anticipated Claims Administration Costs, a substantial portion of the Settlement will remain for distribution to Settlement Class Members.

Lastly, the substantive fairness of the Settlement can be affected by any additional "agreement[s] made in connection with the proposal," and such agreement should be disclosed during the approval process. Fed. R. Civ. P. 23(e)(3). Here, there are no side agreements made in connection with the proposed Settlement, further confirming the quality of the Settlement. Any information concerning the Settlement, including any termination rights available to the parties, are contained within the Settlement Agreement. Accordingly, this factor weighs in favor of granting final approval.

2. The Defendants' Financial Condition

Nelnet, Edfinancial, and OSLA are all well-capitalized entities and can withstand a judgment greater than the Settlement Amount, rendering this factor neutral. *See Huyer v. Njema*, 847 F.3d 934, 939 (8th Cir. 2017) (noting that the financial condition factor had a neutral impact on the evaluation of the settlement because "Wells Fargo's financial condition was stable"); *Marshall*, 787 F.3d at 512 ("The district court found that the NFL is in good financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited

⁹ Class Counsel are filing contemporaneously herewith their Fee and Expense Application seeking approval of the requested awards.

defense in the litigation. No party disagrees with this finding. As such, we find this factor neutral.”); *see also In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (a defendant’s ability to “pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate”).

3. Complexity and Expense of Further Litigation

As discussed *supra* [Section III\(A\)\(1\)](#), given the complexities, nuances, and technical nature of data breach litigation, serious questions of law and fact are often raised, and the resolution of such issues will undoubtedly require significant time. Here, with the Settlement, the Parties “can deliver a real and substantial remedy without the risk and delay inherent in prosecuting this matter through trial and appeal.” *Cullan*, 2016 WL 5394684, at *7; *see also Gordon*, 2019 WL 6972701, at *1 (“Serious questions of law and fact regarding the merits of Plaintiffs’ claims and Defendant’s defenses place the ultimate outcome of the litigation in doubt. Data breach cases such as the instant case are particularly risky, expensive, and complex, and they present significant challenges to plaintiffs at the class certification stage.”). This factor weighs in favor of final approval.

4. The Amount of Opposition to the Settlement

In the Amended Preliminary Approval Order, the Court approved the proposed Notice Plan contemplated by the parties and A.B. Data, which “informed the class members of the action and their options, accurately characterized all the pertinent terms of the settlement agreement (including attorney fees and expenses), and afforded the class members a reasonable opportunity to object.” *See Shanahan*, 2019 WL 2603102, at *2. Notice was disseminated to the Settlement Class beginning on December 17, 2025. Cowen Decl. ¶ 12. Settlement Class Members have the opportunity to submit claims, opt out, or object to the Settlement on or before March 5, 2026. *Id.* ¶¶ 23-26; *see also* ECF No. 162. Since notice was disseminated, no Settlement Class Member has

submitted an objection to the Settlement.¹⁰ Cowen Decl. ¶ 28. And to date, only two Settlement Class Members have opted out of the Settlement. *See id.* ¶ 27. Thus, since the entry of the Amended Preliminary Approval Order, there has not been any opposition to the settlement.

B. The Settlement is Procedurally Fair

1. The Opinion of Experienced Counsel

As discussed in Plaintiffs' motion for preliminary approval, it is Class Counsel's view that the Settlement is fair and reasonable. As noted above, the benefits available from this Settlement are comparable to recoveries other courts have found to be fair, reasonable, and adequate. Both Lowey and SGT have significant experience litigating class actions, including data breach cases. In negotiating the Settlement with the Settling Entities, Class Counsel relied upon published reports documenting the Data Security Incident and identity theft costs, their own extensive experience in other data breach/data privacy litigation, their prior experience with certain defense counsel, and other class action settlements to ultimately develop the settlement framework negotiated with Settling Entities. *See Childs v. Unified Life Ins. Co.*, No. 10-cv-23-PJC, 2011 WL 6016486, at *14 (N.D. Okla. Dec. 2, 2011) ("Counsel's judgment as to the fairness of the agreement is entitled to considerable weight. As noted, counsel for [plaintiff] has previously settled a similar class action . . . For this reason, their view of the fairness of this settlement is a substantial factor.").

Additionally, the Settling Entities were represented by skilled counsel, who have been fierce advocates for their respective clients' interests and have engaged in principled, hard-fought negotiations that resulted in this Settlement. The fact that Settling Entities' Counsel ultimately

¹⁰ Although the Intervenor initially challenged the Settlement, that need not impact final approval of the Settlement. *See Marshall*, 787 F.3d at 513 (collecting cases and noting "[w]e have previously approved class-action settlements even when almost half the class objected to it" or when "all named plaintiffs opposed it"). And regardless, the Court rejected the Intervenor's arguments. *See, e.g., Spearman*, 2025 WL 974065, at *2–3.

recommended that the Settling Entities accept this Settlement based on their evaluation of the fairness, adequacy, and reasonableness of its terms also lends support to approving its terms.

2. The Settlement is the Product of Arm’s Length Negotiations by Experienced Counsel Aided by a Skilled Mediator

Settlement negotiations before an experienced and “skilled mediator”—like those that occurred here—support a finding that the settlement is arm’s length and reasonable, was reached without collusion, and should therefore be approved. *See, e.g., Walkinshaw*, 2023 WL 1995281, at *2 (finding that settlement was non-collusive where there was “involvement of multiple skilled mediators, including a Magistrate Judge of this Court, in negotiating the Settlement and the vigorous litigation by the parties over a period of years”); *Jenkins v. Pech*, No. 8:14-cv-41, 2015 WL 6738624, at *2 (D. Neb. Nov. 4, 2015) (“The experience and opinion of counsel on both sides may be considered, as well as whether a settlement resulted from arm’s length negotiations, and whether a skilled mediator was involved.”); 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (20th ed.) (“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.”). This Settlement was fairly and honestly negotiated. The extensive arm’s length negotiations between the Parties occurred over several months, beginning in November 2023, and included two separate all-day mediation sessions with the assistance of mediator Judge Gandhi.

In advance of mediation, Plaintiffs sought and received certain discovery that informed the facts underlying the Data Security Incident and allowed them to fairly value the case, including documents that described the scope of Data Security Incident and the number of impacted individuals. After the two mediation sessions were complete, it took additional discussions between the Parties before Plaintiffs and the Settling Entities agreed on a framework for a settlement in principle. The Parties advised the Court on January 29, 2024, of the potential

settlement framework and continued to work to negotiate a term sheet, which was executed on June 11, 2024, before spending more than two months in additional detailed negotiations over the terms of the Settlement Agreement, which was executed on August 16, 2024. *See* Prelim Approval Mot. at 30–31.

The presumption that the Settlement is reasonable should apply here, as the Settlement was negotiated by knowledgeable counsel for Plaintiffs and the Settling Entities, each with a deep understanding of the case’s risks and the Settlement’s benefits, with assistance from an experienced mediator.

3. The Stage of Proceedings and Amount of Discovery Completed Confirm that the Timing of the Settlement Is Appropriate.

This litigation has proceeded to the point where all parties were fully aware of the merits—including the strengths and weaknesses—of the litigation. After the initial class action lawsuits against Nelnet were filed in August 2022, and this Action was consolidated in January 2023, Plaintiffs filed an Amended Complaint, and the Parties fully briefed a motion to dismiss. The Parties engaged in pre-mediation discovery as well as confirmatory discovery, and Class Counsel developed other information throughout their investigation of Plaintiffs’ claims. *See Cullan*, 2016 WL 5394684, at *7 (“[Co-Lead Settlement Class Counsel] have shown they pursued informal discovery targeted at information relevant to the settlement and collected and reviewed publicly-available information regarding the parties and claims at issue and the settlements also provide for confirmatory discovery.”).

Class Counsel believes Plaintiffs’ claims have substantial merit but acknowledge the expense and uncertainty of continued litigation against the Settling Entities, which maintain that they have meritorious defenses. In recommending that the Court approve this Settlement at this stage of the litigation, Class Counsel have accounted for the uncertain outcome, cost, risks, and

delay of further litigation and believe the Settlement confers significant benefits on Plaintiffs and the Class. Given Class Counsel's considerable prior experience in complex class action litigation involving data breach claims (among others), their knowledge of the strengths and weaknesses of Plaintiffs' claims, their assessment of the Settlement Class's likelihood of recovery following trial and appeal, and their experience negotiating with the Settling Entities, the Court should find that it can finally "approve the [Settlement] under Rule 23(e)(2) and [] certify the [Settlement Class] for purposes of judgment on the proposal." Fed. R. Civ P. 23(e)(1)(B).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the Settlement, as set forth in the proposed Final Approval Order and Judgment.

Dated: February 19, 2026

Respectfully submitted,

/s/ Christian Levis

Christian Levis

Amanda G. Fiorilla

LOWEY DANNENBERG, P.C.

44 South Broadway, Suite 1100

White Plains, NY 10601

Tel: (914) 997-0500

Email: clevis@lowey.com

Email: afiorilla@lowey.com

Anthony M. Christina

LOWEY DANNENBERG, P.C.

One Tower Bridge

100 Front Street, Suite 520

West Conshohocken, PA 19428

Email: achristina@lowey.com

Ian W. Sloss

Johnathan Seredynski

Steven L. Bloch

SILVER GOLUB & TEITELL LLP

One Landmark Square, Floor 15

Stamford, CT 06901

Tel: (203) 325-4491

Email: isloss@sgtlaw.com
Email: jeredynski@sgtlaw.com
Email: sbloch@sgtlaw.com

Class Counsel

CERTIFICATE OF COMPLIANCE

I hereby certify that no generative artificial intelligence program was used in drafting the foregoing document.

/s/ Christian Levis
Christian Levis

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(d)(3)

I hereby certify that this memorandum of law (the “Brief”) complies with the word-count limit described of Local Civil Rule 7.1(d)(1)(A). I relied on the word count feature of the word-processing system, Microsoft Word, Version 2308, used to prepare the Brief. The actual number of words in the Brief, including all text (the caption, body, headings, footnotes, and quotations), is 7,865 words.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

/s/ Christian Levis
Christian Levis

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2026, a copy of the foregoing document was filed electronically with the U.S. District Court for the District of Nebraska and served on all counsel of record through the CM/ECF system.

/s/ Christian Levis
Christian Levis