STATE OF MINNESOTA | **DISTRICT COURT**

COUNTY OF ISANTI | **TENTH JUDICIAL DISTRICT**
CASE TYPE: CIVIL OTHER

DANIEL J. KENNEDY, DAVID MILLER, and PETER GEPSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EFS ADVISORS, LLC and EDUCATORS BENEFIT CONSULTANTS, LLC d/b/a AVIBEN,

Defendants.

Case No. 30-cv-24-649

SETTLEMENT AGREEMENT

This Settlement Agreement[1] is entered into between Plaintiffs Daniel J. Kennedy, David Miller, and Peter Gipson, on behalf of themselves and the Settlement Class, and Defendants EFS Advisors, LLC ("EFS") and Educators Benefit Consultants, LLC d/b/a Aviben ("Aviben"). The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Procedural History

1. EFS is an investment advisory firm based in Cambridge, Minnesota.

2. Aviben is a third-party administrator that contracts with employers to administer employee benefit programs and is based in Cambridge, Minnesota.

3. EFS and Aviben are sister companies that share a computer network.

[1] All capitalized terms herein shall have the same meanings as those defined in Section II below.

4. On or about February 22, 2024, Defendants detected a data security incident where an unauthorized third party attempted to infiltrate Defendants' computer network during which the unauthorized actor may have acquired impacted individuals' Private Information (the "Data Security Incident").

5. Following the Data Security Incident, two cases were filed in Isanti District Court alleging claims stemming from the Data Security Incident: *Kennedy v. EFS Advisors, LLC*, Case No. 30-cv-24-649, and *Miller, et al., v. Educators Benefit Consultants, LLC d/b/a Aviben*, Case No. 30-cv-24-659. Both cases asserted causes of action for negligence/negligence *per se*, breach of implied contract, and unjust enrichment against Defendants.

6. On January 29, 2025, both cases were consolidated into the first-filed case, subsequently captioned *Kennedy, et al. v. EFS Advisors, LLC, et al.*, Case No. 30-cv-24-649. On March 12, 2025, the Plaintiffs filed their Consolidated Class Action Complaint.

7. Shortly thereafter, in an effort to conserve resources for the benefit of those impacted in the Data Security Incident, the Parties began discussing a potential settlement.

8. In connection with settlement discussions, Defendants provided Plaintiffs with information related to, among other things, the nature and cause of the Data Security Incident, the number and geographic location of individuals impacted by the Data Security Incident, and the specific type of information potentially accessed. The information enabled the Parties to assess the size and scope of the Data Security Incident and the potentially impacted individuals, and confirm that venue is appropriate in Isanti District Court.

9. The Parties attended a full-day virtual mediation on July 31, 2025, with experienced mediator Michael Ungar of UB Greensfelder LLP, which was ultimately unsuccessful.

10. In the months that followed mediation, the parties continued settlement discussions and were able to reach an agreement in principle on January 28, 2025.

11. The Parties now agree to settle the Action in its entirety, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendants have entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Defendants do not in any way acknowledge, admit to, or concede any of the allegations made in any of the complaints or in the Complaint, and expressly disclaim and deny any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendants, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

12. "**Action**" means the class action lawsuit entitled: *Kennedy, et al. v. EFS Advisors, LLC, et al.*, Case No. 30-cv-24-649, pending in the Isanti County (Minnesota) District Court.

13. "**Agreement**" or "**Settlement**" or "**Settlement Agreement**" means this agreement, and all exhibits attached hereto, between the Plaintiffs and Defendants.

14. "**Application for Attorneys' Fees, Costs, and Service Award**" means the application filed contemporaneously with the Motion for Final Approval seeking Class Counsel's attorneys' fees, reimbursement for costs, and for Service Award for the Class Representatives.

15. "**Cash Payment**" means the cash compensation paid to Settlement Class Members who submit Valid Claims for Settlement Class Benefits under Section IV herein.

16. "**Claim**" means the submission of a Claim Form by a Claimant for Settlement Class Member Benefits.

17. "**Claimant**" means an individual who submits a Claim Form for Settlement Class Member Benefits to the Settlement Administrator.

18. "**Claim Form**" means the proof of claim, substantially in the form attached hereto as ***Exhibit 1***, which may be modified, subject to the Parties' approval, to meet the requirements of the Settlement Administrator.

19. "**Claim Form Deadline**" shall be sixty (60) days after commencement of the Notice Program and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment and/or Credit Monitoring.

20. "**Claim Process**" means the process by which Claimants submit Claims to the Settlement Administrator, including the procedure to approve or reject claims.

21. "**Class Counsel**" means: Philip Krzeski of Chestnut Cambronne PA; Mariya Weekes of Milberg, PLLC; Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP; and Scott Edward Cole of Cole & Van Note.

22. "**Class List**" means the list of Settlement Class Members provided to the Settlement Administrator by the Defendants for the purpose of effectuating Notice. Defendants shall prepare and provide the Class List to the Settlement Administrator using information in Defendants'

records. The Class List shall include the Settlement Class Members' full names and last known addresses.

23. "**Class Representative**" means the Plaintiffs Daniel Kennedy, David Miller, and Peter Gepson.

24. "**Complaint**" means the Consolidated Class Action Complaint filed by Plaintiffs on March 12, 2025.

25. "**Court**" means the Isanti County (Minnesota) District Court, and the Judge(s) assigned to the Action.

26. "**Credit Monitoring**" means one year of credit monitoring through three bureaus, including at least $1,000,000.00 in theft protection insurance.

27. "**Defendants**" means EFS Advisors, LLC and Educators Benefit Consultants, LLC d/b/a Aviben.

28. "**Defendants' Counsel**" means Daniel Mirarchi and Brian Middlebrook of Gordon Rees Scully Mansukhani, LLP.

29. "**Effective Date**" means ten (10) days after all of the following have occurred: (1) the Final Approval Order has been entered on the docket; (2) the time to appeal from such order has expired and no appeal has been timely filed; (3) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order without any material modification and is no longer subject to judicial review; or (4) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either the time to further appeal from such order has expired and no further appeal is taken from such order(s) or any such appeal has been finally resolved and results in affirmation of such order(s). Notwithstanding the above, any order modifying or reversing any attorneys' fee

award or service award made in this case shall not affect whether the Final Approval Order is "Final" as defined herein.

30. "**Final Approval**" means the final approval of the Settlement, which occurs when the Court enters an order that finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of the Minnesota Rules of Civil Procedure, and is consistent with all material provisions of this Agreement.

31. "**Final Approval Hearing**" means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys' Fees, Costs, and Service Award.

32. "**Final Approval Order**" means the final order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amounts of attorneys' fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representative.

33. "**Long Form Notice**" means the long form notice of the Settlement, substantially in the form attached hereto as ***Exhibit 3*** that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

34. "**Motion for Final Approval**" means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement, including Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.

35. "**Motion for Preliminary Approval**" means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

36. "**Notice**" means the Postcard Notice and Long Form Notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

37. "**Notice Program**" means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Postcard Notice, Long Form Notice, Settlement Website, and toll-free Settlement phone number.

38. "**Notice of Deficiency**" means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

39. "**Objection Deadline**" means sixty (60) days after commencement of the Notice Program.

40. "**Opt-Out Deadline**" means sixty (60) days after commencement of the Notice Program.

41. "**Party**" means either Plaintiffs or Defendants, and "**Parties**" means Plaintiffs and Defendants collectively.

42. "**PII**" means personally identifiably information, including names, Social Security numbers, and dates of birth.

43. "**Plaintiffs**" means Daniel Kennedy, David Miller, and Peter Gepson.

44. "**Postcard Notice**" means the postcard notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that the Settlement Administrator shall disseminate to Settlement Class Members by mail.

45. "**Preliminary Approval**" means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order.

46. "**Preliminary Approval Order**" means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as ***Exhibit 4***.

47. "**Private Information**" means PII and financial account/payment card information.

48. "**Releases**" means the releases and waiver set forth in Section XI of this Agreement.

49. "**Released Claims**" means any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, against the Released Parties, that result from, arise out of, are based upon, or relate to the Data Security Incident under any theory and/or the Litigation, and conduct that was alleged or could have been alleged in the Action, the initial complaints, Plaintiffs' First Amended Complaint, and/or any subsequent operative complaints, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of the from the Data Security Incident, Defendants' information security policies and practices, or Defendants' maintenance or storage of PII.

50. "**Released Parties**" means Defendants and each and every of their respective past, present, and future direct and indirect heirs, assigns, partners, associates, corporations, investors, owners, parents, subsidiaries, affiliates, departments, members, divisions, affiliated companies, predecessors, successors, directors, officers, employees, agents, vendors, insurers, reinsurers, benefit plans, managers, administrators, executors, trustees, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, predecessors, successors, service providers, retailers, and subrogees and assigns of any of the foregoing.

51. "**Releasing Parties**" means Plaintiffs and Settlement Class Members and their respective past, present, and future heirs, devisees, beneficiaries, conservators, executors, estates,

administrators, attorneys, assigns, trustees, receivers, and any other representatives of any of these persons and entities.

52. "**Service Award**" means the payment the Court may award the Plaintiffs for serving as Class Representatives, which is in addition to any Settlement Class Member Benefit due to Plaintiffs as a Settlement Class Member. The Service Awards shall be paid by Defendants separate from the Settlement Class Member Benefits.

53. "**Settlement Administrator**" means Angeion Group, the third-party notice and claims administrator jointly selected by the Parties.

54. "**Settlement Administration Costs**" means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration, for which Defendants shall be solely responsible for payment.

55. "**Settlement Class**" means all living individuals in the United States whose Private Information was potentially compromised in the Data Security Incident. Excluded from the Settlement Class are (a) all persons who are directors, officers, and agents of Defendant; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

56. "**Settlement Class Member**" means any member of the Settlement Class who has not opted-out of the Settlement.

57. "**Settlement Class Member Benefits**" means the Cash Payment and/or Credit Monitoring that Settlement Class Members may elect in the Settlement.

58. "**Settlement Website**" means the website the Settlement Administrator will establish as a means for the Settlement Class Members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval,

Application for Attorneys' Fees, Costs, and Service Award, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for at least ninety (90) days after the Effective Date.

59. "**Valid Claim**" means a Claim Form submitted by a Settlement Class member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Central time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

60. "**Unknown Claims**" means claims that could have been raised in the Action and/or related to the Released Claims and that Plaintiffs, any Settlement Class Members or any Releasing Party, do not know or suspect to exist which, if known by him, her, or it, might affect his, her, or its agreement to release the Released Parties or the Released Claims or might affect his, her, or its decision to agree, object, or not to object to the Settlement.

III. Certification of the Settlement Class

61. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the Court that the Settlement Class be certified for Settlement purposes. Defendants agree solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval

Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendants shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

IV. Settlement Consideration

62. **Settlement Class Member Benefits**

Settlement Class Members must submit a Valid Claim to the Settlement Administrator to receive Settlement Class Member Benefits. Settlement Class Members may submit claims for a Cash Payment and/or Credit Monitoring. If a Settlement Class Member does not submit a Valid Claim, or submit a timely and valid request to opt out of the Settlement Class, the Settlement Class Member will release his or her claims against the Released Parties without receiving a Settlement Class Member Benefit. Under no circumstances shall Defendants be obligated to pay more than $850,000, inclusive of settlement benefits, administration costs, attorneys' fees and expenses, and service awards. This amount represents the maximum total liability of Defendant and the Parties agree that any Valid Claims that would cause the total amount of Cash Payments paid by Defendants to exceed $850,000.00 shall be subject to a *pro rata* reduction as necessary to ensure that Defendants' total Cash Payment obligation does not exceed this cap.

63. **Cash Payments:** Defendants shall pay each Settlement Class Member who submits a Valid Claim either compensation for out-of-pocket losses or a flat cash payment as set forth below.

a. **Compensation for Documented Out-of-Pocket Losses**: Settlement Class Members may submit a claim for a documented, out-of-pocket unreimbursed losses up to a total of $2,500.00 per claimant that are fairly traceable to the Data Security Incident. Settlement Class Members must submit reasonable documentation supporting their

Claims for ordinary losses. Reasonable documentation may include receipts, credit card statements, bank statements, invoices, and telephone records, or other documentation not "self-prepared" by the claimant that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source. These losses may include the following:

i. ***Out of pocket expenses incurred*** as a result of the Data Security Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;

ii. ***Fees for credit reports, credit monitoring, or other identity theft insurance product*** purchased between December 6, 2024 and the Claim Form Deadline; and

iii. ***Monetary losses due to fraud or identity theft*** that are (ii) fairly traceable to the Data Security Incident; (iii) occurred after the Data Security Incident and before the Claim Form Deadline; and (iv) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

b. **Alternative Cash Payment**: As an alternative to Claims for Documented Out-of-Pocket Losses, Class Members may elect to receive a one-time cash payment of Fifty Dollars ($50.00). This payment is intended as an alternative remedy and is available to individuals who do not submit claims for documented out-of-pocket losses. Individuals who elect an Alternative Cash Payment, however, are still eligible to elect Credit Monitoring. To receive this payment, individuals must submit a valid and timely claim affirming that they experienced disruption or concern as a result of the Data Security Incident but are not pursuing compensation for other losses under this Agreement.

64. **Credit Monitoring**

Settlement Class Members may make a Claim for Credit Monitoring for one year with three bureau credit monitoring, including at least $1,000,000.00 in theft protection insurance.

65. **Aggregate Cap on Defendant's Liability**

Notwithstanding any other provision of this Agreement, the total amount payable by Defendant under this Settlement Agreement shall not exceed Eight Hundred and Fifty Thousand Dollars ($850,000) ("Aggregate Cap"). This Aggregate Cap includes all payments to Class Members, attorneys' fees, costs, incentive awards, notice and administration expenses, credit monitoring, and any other payments required under this Agreement. In the event that the total value of Approved Claims, plus all other costs and payments under this Agreement, exceeds the Aggregate Cap, each Class Member's individual award shall be reduced *pro rata* so that the total payments do not exceed the Aggregate Cap.

66. **Settlement Administration Costs**

Defendants shall be solely responsible for the payment of all Settlement Administration Costs. The Settlement Administrator and the Defendants will enter into a separate agreement related to the payment of the Settlement Administration Costs. Plaintiffs, Class Counsel, and the Settlement Class will have no liability for the payment of the Settlement Administration Costs.

67. **Business Practice Changes & Confirmatory Discovery**

Plaintiffs have received assurances that Defendants either have undertaken or will undertake reasonable steps to further secure their systems and environments. Defendants have provided confidential discovery regarding the number of individuals in the Settlement Class broken down by state of residence, the facts and circumstances of the Data Security Incident and Defendants' response thereto, and the changes and improvements that have been made or are being made to protect Settlement Class Members' Private Information. Defendants will provide a confidential declaration to Class Counsel describing its security improvements since the Data Security Incident and estimating the cost of those improvements.

V. Preliminary Settlement Approval

68. Within ten (10) days of signing this Agreement, Class Counsel shall file a Motion for Preliminary Approval, which shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim Process; (5) approve the procedures for Settlement Class Members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint Philip Krzeski, Mariya Weekes, Nickolas J. Hagman, and Scott Edward Cole as Class Counsel; (7) appoint the Plaintiffs as the Class Representative; (8) appoint Angeion Group as the Settlement Administrator; (9) stay the Action pending Final Approval of the Settlement; and (10) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendants' Counsel, no earlier than 135 days after entry of the Preliminary Approval Order. Settlement Class Counsel shall provide Defendants' counsel with a

draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Defendants are addressed.

VI. Settlement Administrator

69. The Parties agree that, subject to Court approval, Angeion Group shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator's administration of the Settlement. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution and the state of Minnesota.

70. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims Process, assessing Claim Forms and determining whether they are supported by reasonable documentation, and distributing the Alternative Cash Payments to Settlement Class Members who submit Valid Claims.

71. The Settlement Administrator's duties include:

a. Completing the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice and sending out Long Form Notices and Claim Forms on request from Settlement Class Members, reviewing Claim Forms and supporting documentation, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims;

b. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;

c. Establishing and maintaining the Settlement Website to provide important information and to receive electronic Claim Forms;

d. Establishing and maintaining an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class Members who call with or otherwise communicate such inquiries;

e. Responding to any mailed Settlement Class Member inquiries;

f. Processing all opt-out requests from the Settlement Class;

g. Providing weekly reports to Class Counsel and Defendants' Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;

h. Providing to Class Counsel and Defendants' Counsel copies of Requests for Exclusion / Opt-Outs and Objections from Settlement Class Members no later than ten (10) days after the Objection Deadline and Opt-Out Deadline.

i. Providing to Class Counsel and Defendants' Counsel a list of initially approved claims and a list of deficient claims no later fifteen (15) days following the Claim Form Deadline.

j. In advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, the value of the Valid Claims submitted to date, providing the names of each Settlement Class member who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

k. Reviewing Claim Forms submitted by Settlement Class Members to determine whether they are eligible for a Cash Payment and/or Credit Monitoring;

l. Collecting from Defendants and/or their insurer(s) the cash necessary to pay Valid Claims for Cash Payments;

m. Distributing Cash Payments to Settlement Class Members who submit Valid Claims;

n. Sending an email to Settlement Class Members with Valid Claims that elected Credit Monitoring with information on how to enroll in the Credit Monitoring, including the activation code; and

o. Any other Settlement administration function at the instruction of Class Counsel and Defendants, including, but not limited to, verifying that the Cash Payments and Credit Monitoring codes have been properly distributed.

VII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures

72. Defendants will make available to the Settlement Administrator the Class List no later than ten (10) days after entry of the Preliminary Approval Order. To the extent necessary, Defendants will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

73. Within thirty (30) days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court.

74. Settlement Class Members shall be sent a Postcard Notice.

75. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. The Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class Members whose new addresses were identified through address traces no later than forty-five (45) days after commencement of the Notice Program.

76. Postcard Notice, including the re-sending of Postcard Notices that were initially undeliverable, shall be completed no later than sixty (60) days after commencement of the Notice Program.

77. The Postcard Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the Opt-Out Deadline or Settlement Class Members to opt-out of the Settlement Class; the Objection Deadline or Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Class Counsel and Defendants' Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes. Before Notices are mailed or emailed, Settlement Class Counsel and Defendant's Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court. In addition, the Long Form Notice

and Claim Form approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Parties, as may be reasonable and necessary and consistent with such approval.

78. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

79. The Long Form Notice also shall include a procedure for Settlement Class Members to opt-out of the Settlement Class, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may opt-out of the Settlement Class at any time prior to the Opt-Out Deadline by mailing a request to opt-out to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim. All persons who Opt Out shall not receive any benefits or be bound by the terms of this Agreement. All persons falling within the definition of the Settlement Class who do not Opt Out shall be bound by the terms of this Agreement and the Final Approval Order and Judgment.

80. No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt out more than one Settlement Class Member

on a single paper, or as an agent or representative. Any such purported Requests for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Opt Out shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Opt Out.

81. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the objection instructions. Objections must be filed with the Court, and sent by U.S. Mail to Class Counsel, Defendants' Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the relevant Settlement Class Member must submit the objection no later than the last day of the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member must not have excluded themselves from the Settlement Class. An objection submitted via mail will be deemed submitted on the postmark date indicated on the envelope, as long as it is addressed in accordance with the instructions. If an objection is submitted via private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label, as long as it is addressed in accordance with the instructions.

82. For an objection to be considered by the Court, the objection must also set forth:

a. the objector's full name, mailing address, telephone number, and email address (if any);

b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;

c. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award;

e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

f. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;

g. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

i. the objector's signature (an attorney's signature is not sufficient).

83. Class Counsel and/or Defendants' Counsel may conduct limited discovery on any objector or objector's counsel.

84. Any Settlement Class Member who does not file a timely and adequate objection in accordance with this Section waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Agreement shall be through the provisions of this Paragraph. Within seven (7) days after the Objection Deadline, the Claims Administrator shall provide the Parties with all objections submitted.

85. Challenges to any claims by Settlement Class Members shall be submitted within fourteen (14) days from receipt by the Parties of a list from the Settlement Administrator of initially approved claims and a list of initially rejected claims.

VIII. Claim Form Process and Disbursement of Cash Payments

86. The Notices and the Settlement Website will explain to Settlement Class Members that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

87. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

88. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

89. In determining whether claimed Documented Out-of-Pocket Losses are more likely than not caused by the Data Security Incident, the Settlement Administrator will consider (i) the timing of the alleged loss and whether it occurred on or after February 22, 2024; (ii) whether the alleged loss involved the types of information that may have been affected in the Data Security Incident; (iii) the explanation of the Settlement Class Member as to why the alleged loss was caused by the Data Security Incident; and (iv) any other factor the Settlement Administrator reasonably finds to be relevant.

90. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class member. If the Settlement Administrator identifies any Claim Form that appears to be a duplication, the Settlement Administrator shall contact the Settlement Class member in an effort to determine which Claim Form is the appropriate one for consideration.

91. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

92. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator shall send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or fifteen (15) days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendants and Class Counsel otherwise agree.

93. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

a. Failure to fully complete and/or sign the Claim Form;

b. Illegible Claim Form;

c. The Claim Form is fraudulent;

d. The Claim Form is duplicative of another Claim Form;

e. The Claimant is not a Settlement Class member;

f. The Claimant submitted a timely and valid request to opt out of the Settlement Class.

g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;

h. Failure to submit a Claim Form by the Claim Form Deadline; and/or

i. The Claim Form otherwise does not comply with the requirements of this Settlement.

94. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

a. The Settlement Administrator shall have thirty (30) days from the Claim Form Deadline to approve or reject Claims.

b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph.

c. If a Claim is rejected, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendants' Counsel shall be provided with copies of all such notifications to Claimants.

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

95. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendants' Counsel. Additionally, Class Counsel and

Defendants' Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

96. No person or entity shall have any claim against Defendants, Defendants' Counsel, Defendant's insurers and reinsurers, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on or related to any eligibility determinations, distributions, or awards made in accordance with this Settlement.

97. After the Effective Date, and after final determinations have been made with respect to all claims submitted during the Claims Period pursuant to the Claims Review Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims for Credit Monitoring Services, Documented Out-of-Pocket Losses, or Alternative Cash Payment elections and also provide payment instructions to Defendant or its insurer. Within thirty (30) days of receiving this accounting, Defendant or its insurer shall transmit the funds needed to pay Approved Claims.

98. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. Paper checks must be negotiated within ninety (90) days of issuance. In the event of any complications arising in connection with the issuance of an electronic payment, the Settlement Administrator shall provide written notice to Class Counsel and Defendants' Counsel. Absent specific instructions from Class Counsel and Defendants' Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall revert to Defendants, and the Settlement Class Member shall forfeit their right to the funds.

99. For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed in by the Participating Settlement Class Members within that time.

100. In the event a Settlement Check becomes void, the Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to payment and will not be entitled to payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Settlement Class Member. No later than one hundred and twenty (120) days after the issuance of the last Settlement Check, the Settlement Administrator shall take all steps necessary to stop payment on any Settlement Checks that remain uncashed.

101. If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof that the Participating Settlement Class Member is deceased and after consultation with Settlement Class Counsel and Defendants' Counsel.

102. All Settlement Class Members who fail to submit a valid Claim Form for any benefits under this Agreement within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant

to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order.

103. No decision of the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendants as to any matter of fact, law, or evidence having any collateral effect on any proceedings in any forum or before any authority.

IX. Final Approval Order and Final Judgment

104. Plaintiffs shall file a Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Award, no later than forty-five (45) days after commencement of the Notice Program. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs and Service Award. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Award, provided the objectors submitted timely objections that meet all of the requirements listed in this Agreement.

105. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Award. Such proposed Final Approval Order shall, among other things:

a. Determine that the Settlement is fair, adequate and reasonable;

b. Finally certify the Settlement Class for settlement purposes only;

c. Determine that the Notice Program satisfies Due Process requirements;

d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;

e. Release Defendants and the other Released Parties from the Released Claims; and

f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Service Award, Attorneys' Fees, and Costs

106. **Service Award.** The Class Representative may seek a Service Award of up to $2,500.00, subject to Court approval. The Service Award shall be payable separate from the Settlement Class Member Benefits. Defendants shall pay or cause to be paid the Court-approved Service Award by wire transfer to an account designated by Class Counsel within twenty-one (21) days of the Effective Date.

107. **Attorneys' Fees and Costs.** Settlement Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses to be paid by Defendant not to exceed Three Hundred and Twenty-Five Thousand Dollars and Zero Cents ($325,000.00), subject to Court approval. Defendants shall pay the Court-approved attorneys' fees and expenses to an account established by Settlement Class Counsel within twenty-one (21) days of the Effective Date. The attorneys' fees and expenses will be allocated by the Settlement Class Counsel. Defendants' obligations with respect to the Court-approved attorneys' fees and expenses shall be fully satisfied upon receipt of the funds into the account established by Settlement Class Counsel. Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of attorneys' fees or expenses. Nor shall Defendants be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement

Class Counsel. To the extent the Effective Date does not occur, Defendants shall have no obligation to pay any attorneys' fees or expenses.

108. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Award, and if the Court denies the request or grants amounts less than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Award were not negotiated until after all material terms of the Settlement.

XI. <u>Releases</u>

109. Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have completely and unconditionally released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims, including Unknown Claims.

110. The Parties acknowledge that they may discover facts in addition to or different from those now known or believed to be true, but that it is their intention to fully, finally, and forever settle and release all Released Claims, including any Unknown Claims. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, against any of the Released Parties based on any of the Released Claims.

111. Settlement Class Members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their individual claims and will not obtain any benefits, including any Settlement Class Member Benefit, under the Settlement.

112. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

113. The power to enforce any term of this Settlement Agreement is not affected by the releases in this Section.

XII. Modification and Termination of Settlement

114. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

a. Court approval of the Settlement consideration and releases set forth herein;

b. The Court has entered the Preliminary Approval Order;

c. The Court has entered the Final Approval Order, and all objections, if any,

d. are overruled, and all appeals taken from the Final Approval Order are

e. resolved in favor of Final Approval; and

f. The Effective Date has occurred.

115. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition to approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

116. Defendants shall have the sole option to terminate this Agreement if more than 100 Settlement Class Members opt-out of the Settlement. Defendants shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period and receipt of the list of Requests for Exclusion from the Settlement Administrator.

117. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

118. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents

(including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

XIII. Effect of Termination

119. The grounds upon which this Agreement may be terminated are set forth in Section XII. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendants', Defendants' Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

120. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XIV. No Admission of Liability

121. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendants have denied and continue to deny each of the claims and contentions alleged in the Complaint. Defendants specifically deny that a class could or should be certified in the Action for litigation purposes. Defendants do not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendants have agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted

litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

122. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, conducted informal discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

123. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

124. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

125. In addition to any other defenses Defendants or the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action,

suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XV. Miscellaneous Provisions

126. ***Confidentiality***. To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement. The Parties will not make any public statement about the Settlement that has not been approved by the other side, except as required or authorized by law. Approval of any proposed public statement of the other side will not be unreasonably withheld. The Parties will cooperate with each other regarding public statements about the Settlement and may issue a joint statement/press release if they mutually agree to do so. This paragraph shall not be construed to limit or impede the Notice requirements contained in this Settlement Agreement, nor shall this paragraph be construed to prevent Class Counsel or Defendants' Counsel from notifying or explaining that the Action has settled or limit the representations that the Parties or their counsel may make to the Court to assist in the Court's evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the Settlement's terms. Defendants may also provide information about the Settlement Agreement to its attorneys, members, partners, insurers, reinsurers, brokers, agents, and other persons or entities as required by securities laws or other applicable laws and regulations.

127. ***Gender and Plurals***. As used in this Agreement, the masculine, feminine or gender neutral, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

128. ***Binding Effect***. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

129. ***Cooperation of Parties***. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

130. ***Obligation to Meet and Confer***. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

131. ***Integration and No Reliance***. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

132. ***No Conflict Intended***. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

133. ***Governing Law***. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Minnesota, without regard to the principles thereof regarding choice of law.

134. ***Counterparts***. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of a PDF shall be deemed an original.

135. ***Jurisdiction***. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any

suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

136. ***Notices***. All notices provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

Philip Krzeski
Chestnut Cambronne PA
100 Washinton Ave. S., Suite 1700
Minneapolis, MN 55401
Pkrzeski@chestnutcambronne.com

If to Defendants or Defendants' Counsel:

Daniel Mirarchi
Three Logan Square
1717 Arch Street, Suite 610
Philadelphia, PA 19103
dmirarchi@grsm.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

137. ***No Waiver***. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

138. ***Authority***. Class Counsel (for the Plaintiffs and the Settlement Class Members), and Defendants' Counsel, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendants respectively to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

139. ***Agreement Mutually Prepared***. Neither Plaintiffs nor Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

140. ***Entire Agreement.*** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications, and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing, signed by all Parties or their successors in interest. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Notice to the Settlement Class.

141. ***Independent Investigation and Decision to Settle***. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and

law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

142. ***Receipt of Advice of Counsel***. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Signature Page to Follow

PLAINTIFFS

Daniel Kennedy

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DANIEL KENNEDY

____

DAVID MILLER

Peter Gepson

ID gknape5DiwTEa2Rw8SC8fQyf

____

PETER GEPSON

CLASS COUNSEL

DocuSigned by:

Phil Krzeski

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PHILIP KRZESKI
CHESTNUT CAMBRONNE PA

____

MARIYA WEEKES
MILBERG PLLC

Nickolas J. Hagman

____

NICKOLAS J. HAGMAN
CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

____

SCOTT EDWARD COLE
COLE & VAN NOTE

DEFENDANT

EDUCATORS BENEFIT CONSULTANTS, LLC d/b/a AVIBEN,

____

By: ______________________________
Its ______________________________

EFS Advisors, LLC,

____

By: ______________________________
Its ______________________________

Filed in District Court
State of Minnesota
5/29/2026 11:40 AM

COUNSEL FOR DEFENDANT

____

DANIEL MIRACHI
GORDON REES SCULLY MANSUKHANI, LLP