IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REBECCA NGUYEN, **TAMICA BREWSTER**, **KYLE STRICKENBERGER**, and **MICHELLE CAYNOR** on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EDUCATIONAL COMPUTER SYSTEMS, INC., d/b/a HEARTLAND ECSI,

Defendant.

Case No. 2:22-cv-01743-PLD

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Hon. Patricia L. Dodge

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I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Rebecca Nguyen, Tamica Brewster, Kyle Strickenberger, and Michelle Caynor, by counsel and on behalf of the conditionally certified class, hereby move for final approval of the Settlement Agreement they and Defendant Educational Computer Systems, Inc. ("ECSI") reached to resolve this case on a class wide basis. This class action lawsuit arises from ECSI's assessment of certain fees to process student borrowers' Perkins loan payments. Plaintiffs and ECSI have agreed on a settlement that provides for a $3.65 million common fund ("Settlement Fund") that will be distributed on a *pro rata* basis to Perkins borrowers who have submitted a claim. There is no reversion; the full net amount of the fund after expenses and attorneys' fees will be distributed to members of the proposed settlement class. The settlement also provides for services awards for the named Plaintiffs and an award of attorneys' fees not to exceed one third of the Settlement Fund.

The proposed settlement is fair, reasonable, and appropriate, and it provides robust relief for the affected student borrowers. It was negotiated at arm's length over the course of a year with the assistance of a retired federal judge serving as a neutral mediator, it is the product of an extensive investigation of the relative strengths and weaknesses by counsel experienced in both consumer class actions and cases involving servicing and/or processing fees like those at issue here, and it is well within the range of reasonableness. Moreover, the Court-approved notice program was designed to reach every class members by employing email and traditional mail notice and indeed reached approximately 99.99% of the Settlement Class. And it provides for claim payments using modern payment methods popularly used by members of the class's age group, rather than expensive and unlikely to be cashed paper checks. Put simply, the agreement is carefully tailored to maximize relief to class members while controlling for the risks of litigation and the expense of notice and claims administration.

Because the agreement meets all the requirements for final approval, Plaintiffs request that the Court enter the Proposed Final Approval Order attached to this motion, which will: (1) Pursuant to Fed. R. Civ. P. 23(e), determine that the Settlement is fair, adequate, and reasonable and grant final approval in all respects of the terms and provisions of the Class Settlement Agreement (D.E. 60-1), which the Court preliminarily approved by Order entered on March 6, 2024 (D.E. 66); (2) finally certify the Settlement Class for settlement purposes only; (3) determine that the Notice provided to the Settlement Class satisfied Due Process requirements; (4) dismiss on the merits and with prejudice the class and individual claims in this action without costs to Defendant; and (5) retain jurisdiction over this action for the purpose of interpretation and enforcement of the Settlement Agreement, including oversight of settlement administration and distribution of Settlement Funds.

For the reasons set forth more particularly below, Plaintiffs respectfully request that the Court grant this Motion, which Defendant does not oppose.

II. CASE BACKGROUND

The history of the case is set forth at section II in Plaintiffs' Motion for Preliminary Approval, and in more detail in Class Counsel's accompanying declaration to that Motion. *See* D.E. 60; *see also* D.E. 60-1 Decl. of Kristen Simplicio in Supp. of Pls.' Mot. for Preliminary Approval ("Simplicio Decl.") at ¶¶ 4-13.

Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement on January 5, 2024. D.E. 60. The Court granted the Motion on March 6, 2024. D.E. 66. The Court has scheduled a Final Approval Hearing before Magistrate Judge Dodge for June 24, 2024. D.E. 67. Plaintiffs have separately moved for attorney's fees, costs, and service awards. D.E. 69.

III. SUMMARY OF SETTLEMENT TERMS

The Settlement Fund of $3.65 million dollars represents 25% of the amount collected in Processing Fees from approximately 552,293 Perkins loans borrowers by ECSI between December 6,

2018 and October 31, 2023. Simplicio Decl. Submitted in Support of Preliminary Approval, D.E. 60-1, ¶ 11. After deducting Administrative Costs,[1] Attorneys' Fees and Costs, and class representative service awards, the entire amount remaining in the Settlement Fund will be distributed pro rata to those Settlement Class Members who submit a timely claim. *See generally* Ex. 1, § 6. The Court has preliminarily approved a robust notice plan which has been developed in conjunction with the Settlement Administrator, Kroll LLC, an experienced provider of class action settlement services. Simplicio Decl. ¶ 32. No amount of the Settlement Fund will revert to ECSI; in the event that any funds remain, a secondary distribution to class members will be made, and if needed, will be distributed to a *cy pres* recipient. D.E. Ex. 1, § 5.5.

IV. NOTICE IS COMPLETE

The Settlement Administrator has provided a Declaration attesting to the Notice process, which is now complete. *See* Exhibit A, Fenwick Decl.. Kroll was appointed as the Settlement Administrator to provide notification and claims administration services in connection with the Settlement Agreement. Kroll Decl. at ¶ 1. Kroll received the data file from Defendant on March 11, 2024 and undertook several steps to reconcile the nearly two million records and compile the eventual Class List for the emailing and mailing of the Initial Notice. This included standardizing address information, de-duping and performing a roll up of records with multiple names, mailing addresses, dates of birth, and the last four digits of Social Security Numbers. As a result of this data cleaning process, Kroll identified 537,769 unique records. *Id.* at ¶ 4. Of these, Kroll identified 531,551 unique records with a provided email address, and 6,218 unique records with a provided physical mailing address but no email address. Additionally, in an effort to ensure that the Postcard Notice would be deliverable to Settlement Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA. *Id.* at ¶ 4.

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[1] Capitalized terms are defined in section III of the Settlement Agreement, which is attached as Exhibit 1 to the Simplicio Declaration.

The Settlement Website, www.PerkinsLoanFeeSettlement.com, "went live" on March 26, 2024, and contains information about the Settlement, copies of the Claim Form, Settlement Complaint, Settlement Agreement, Long Form Notice, and the Preliminary Approval Order, as well as contact information for the Settlement Administrator, answers to frequently asked questions, important dates, including the exclusion deadline, objection deadline, Claim Filing Deadline, and the Final Approval Hearing date, and provided Settlement Class Members the opportunity to file a Claim Form online. *Id.* at ¶ 5. Kroll also established a toll-free telephone number for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response ("IVR") system with a voicemail setup that allows callbacks from a live operator. As of June 4, 2024, the IVR system has received 1,344 calls, and 337 callers have received a returned phone call from a live operator after leaving a voicemail through the IVR system. *Id.* at ¶ 6. Kroll further designated a post office box with the mailing address *Nguyen et al. v. Educational Computer Systems, Inc.*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive opt outs, Claim Forms, objections, and correspondence from Settlement Class Members. *Id.* at ¶ 7.

On March 27, 2024, Kroll caused 6,218 Postcard Notices to be mailed via first-class mail. Kroll Decl. at ¶ 8. On March 27, 2024, Kroll caused the Email Notice to be sent to the 531,551 email addresses on file for Settlement Class Members as noted above. *Id.* at ¶ 9. Of the 531,551 emails attempted for delivery; 104,442 emails were rejected/bounced back as undeliverable. *Id.* On May 7, 2024, Kroll sent Postcard Notices via first class mail to the 104,442 forgoing Settlement Class Members whose Email Notice was rejected/bounced back. *Id.* On May 7, 2024, as required under section 10.4 of the Settlement Agreement, Kroll caused the Supplemental Notice to be sent to Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement, as follows: via email to 414,098 Settlement Class Members with a known email address and via mail to 6,349 Settlement Class Members with no known email address. *Id.* at ¶ 10. On May 17, 2024, at the direction of counsel for the Parties, Kroll caused an additional Supplemental Notice to be sent via

email to 334,072 Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement. *Id.* at ¶ 11. On May 24, 2024, at the direction of counsel for the Parties, Kroll caused a second Supplemental Notice to be sent via email to 326,129 Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement. *Id.* at ¶ 12.

Kroll has reason to believe that Notice likely reached 537,742 of the 537,769 persons to whom Notice was mailed and/or emailed, which equates to a reach rate of the direct notice of approximately 99.99%. *Id.* at ¶ 15. Kroll has stated that this reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches[2] over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign.[3] *Id.*

As to claim activity, the Claim Filing Deadline was May 28, 2024. *Id.* at ¶ 16. As of June 4, 2024, Kroll had received fifty-two (52) Claim Forms through the mail and 40,024 Claim Forms filed electronically through the Settlement Website, for a total of 40,076 Claim Forms received. *Id.* at ¶ 17. Kroll is still in the process of reviewing and validating Claim Forms. Based on the foregoing, Kroll estimates that the claims filing rate is 7.45% of Settlement Class Members who likely received Notice. The exclusion deadline and the objection deadline was June 3, 2024. Kroll has received one (1) timely exclusion request and no objections to the Settlement. *Id.* at ¶ 21.

Although Kroll did not directly receive objections, at the time of this filing there are two objections on the docket. (D.E. 75, 76.) As to the first, the Objector characterizes it as an "objection/response" and acknowledges within the objection is "unique to and applies only to" the particular class member and which complains of debt collection activity unique to that class member,

[2] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%.

[3] Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

seeking to have that activity resolved through this class action settlement. D.E. 75. Plaintiffs note the Objector acknowledges that "counsel for the class plaintiffs have obtained what seems to be a fair resolution for class members in most instances" and is seeking relief from the Court for conduct allegedly directed solely at the objecting/responding class member. The parties agree that the Release does not encompass the activity complained of in the "objection/response" and hope to have this issue resolved in advance of the hearing. If not, the parties will be prepared to further address this issue at the hearing.

The second objection was docketed the day this submission was due and filed with the Court June 7, four days after the June 3, 2024 deadline and is therefore untimely. D.E. 76. The Objector complains that the Settlement and Notice were inadequate. These issues have been considered and addressed by the parties and the Court. The Common Fund established in the Settlement represented 25% of fees paid by Class Members, i.e., 25% of their actual damages, which the Court has found appears to be fair, reasonable and adequate. Moreover, as set forth in Plaintiffs' Motion for Attorneys' Fees, the amount is consistent with common funds awarded in other settlements involving pay-to-pay fees. *See* D.E. 60 at 17 and App'x A. While those settlements were typically automatic distribution settlements, here, to reduce administrative fees, a claims-made process was used, and thus, anyone who made a claim is likely to receive much more than 25% of fees collected. An updated estimate can be provided to the Court in advance of the hearing on final approval. With respect to notice, the Court also found that the proposed form and method of class notice satisfy due process, and indeed through the Settlement Administrator's efforts the various forms of notice achieved a reach rate of 99.99%.

V. ARGUMENT

Plaintiffs and ECSI reached the Settlement Agreement after a year of intense negotiations and with the assistance of a neutral mediator. The Settlement Agreement provides robust relief for student loan borrowers, creates comprehensive and carefully tailored notice and claims-processing programs,

and balances the value of Plaintiffs' and the Settlement Class's claims against the risk of further litigation. It is fair, reasonable, and appropriate. Notice is complete, and only one class member has opted out. The claims rate of 7.4% indicates classwide approval of the Settlement. For all these reasons, the Settlement warrants final approval.

Rule 23 contemplates a sequential process for courts evaluating class action settlements. First, a court must determine whether a class should be certified for settlement purposes. *See, e.g., Sullivan v. D.B. Inv., Inc.*, 667 F.3d 273, 296 (3d Cir. 2011) (en banc). Second, a court must consider whether to approve the settlement preliminarily and order notice be provided to the class. *See, e.g.*, *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liability Litig.* ("*In re General Motors*"), 55 F.3d 768, 787 (3d Cir. 1995). Third, after the class has been notified and has had the opportunity to consider the settlement, the Court must decide whether to grant final approval of the settlement as "fair, reasonable and adequate." *Id.*; Fed. R. Civ. P. 23(e). District courts have broad discretion in determining whether to approve a proposed class action settlement. *See, e.g.*, *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).

The Court of Appeals for the Third Circuit has indicated that courts should consider the *Girsh* factors in determining whether a proposed class action settlement is fair, reasonable, and adequate: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *In re Nat'l Football League Players Concussion Injury Litig.,* 821 F.3d 410, 437 (3d. Cir. 2016, as

amended (3d. Cir. 2016), citing *Girsh v. Jepson,* 521 F.2d 153, 157 (3d. Cir. 1957)). The Settlement meets all of these factors.

A. The Settlement Satisfies the Girsh Factors

First, as far as Plaintiffs can ascertain, this is the first case against a student loan servicer asserting the legal theory that Processing Fees are unlawful under state "1682f" statutes and/or student borrower bill-of-rights statutes. There is scant case law interpreting student borrower bill-of-rights statutes, and none that Plaintiffs have found construing those statutes in a similar factual context. While the case law on state debt-collection statutes is a bit more robust, almost all the factually analogous cases were decided in cases against mortgage servicers whose contracts with consumers were much different than the federal student loan agreements at issue here. And in that regard, Plaintiffs are aware of no court deciding or even hinting at whether the federal MPN governing Perkins loans authorized ECSI to charge Processing Fees. For its part, ECSI believes it has a number of robust defenses to Plaintiffs' various claims and would vigorously defend this matter if it were to proceed with litigation. Balanced with the costs of extensive litigation, the novelty of the claims presented here, and the uncertainty and litigation risk created by such novelty, the recovery provided for in the Settlement Agreement is more than reasonable. And the fact that relief will be provided without further delay is an important factor.

Moreover, Plaintiffs believe that ECSI would have raised defenses to class certification that would have presented additional risks to class certification or recovery for members of the Settlement Class. For example, ECSI may have argued that some Settlement Class members' loans were paid by their parents, and thus that such individuals suffered no damages, and a large number of individual inquiries would be necessary to resolve these questions. To be clear, Plaintiffs believe that they would successfully defeat these arguments and would ultimately prevail on the merits, but Class Counsel well know the uncertainty associated with protracted litigation, and they believe that the relief provided for

in the Settlement Agreement reasonably balances the potential recovery at trial with the potential obstacles and pitfalls that could be experienced along the way.

This complexity factor weighs in favor of final of final approval.

The second *Girsh* factor "attempts to gauge whether members of the class support the settlement." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 282, 318 (3d Cir. 1998). In *Prudential*, the Third Circuit held that the district court did not abuse it discretion in finding that 19,000 opt outs—out of 8 million policyholders to whom Prudential sent the class notice—was "truly insignificant." 148 F.3d at 318; *see also In re Elec. Carbon Prods. Antitrust Litig.*, 447 F. Supp 2d 389, 406 (D.N.J. 2006) ("The absence of objections to a fee request, or the imposition of minimal objections, is seen as an indicator that the fee request is fair."); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, C.A. No. 08-CV-3610 (CLW), 2015 WL 2383358, at *5 (D.N.J. May 18, 2015), aff'd, 639 F. App.'x 880 (3d Cir. 2016) (approving class settlement and stating, "[t]he number of exclusions and objections are thus exceptionally small in relation to the size of the potential and confirmed class. Such a discrepancy weighs in favor of approval of the settlement."). Here, only one class member has opted out and there are two objections. As discussed above, one of the two objections is narrowly tailored to debt collection allegations the class member has that fall outside of the Release language. ECF No. 75.

The other Objector raises issues about the size of the Settlement Fund, which again is well within range of comparable settlements, and complains that the email notice went to her spam folder. Courts have not found this sort of complaint about email notice concerning. *See, e.g. Carter v. Vivendi Ticketing US LLC*, No. 22-01981, 2023 WL 8153712, at *10 (C.D. Cal. Oct. 30, 2023) ("fact that supplemental notice went to Ms. Lau's junk email folder also does not raise concerns sufficient to deny final approval"), citing *In re Apple iPhone/iPod Warranty Litig.*, 2014 WL 12640497, at *9 (N.D. Cal. May 8, 2014) (overruling objection that one of two email notices of the proposed settlement

ended up in the objector's spam folder, explaining that "[c]ourts routinely approve email notice campaigns and, inevitably, some email messages will end up in a spam folder—just as some postal mail will never reach its intended recipient"); *Dover v. British Airways, PLC*, No. 12-cv-5567, 2018 WL 11412431, at *8 (E.D.N.Y. Oct. 9, 2018) (reasoning that courts regularly approve notice by email and that additional efforts to send by email were made, and some people review spam folders periodically to "see if things have been captured that should not have been," and finding that the Class "received the best effective notice practicable under the circumstances.")

And more importantly, 7.4% of the Settlement Class has filed a claim, a very successful rate. *See, e.g.*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (citing evidence that claims rates in class settlements "rarely" exceed seven percent, "even with the most extensive notice campaigns"); *see also Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-CV-1370, 2020 WL 3481458, at *14 (W.D. Pa. June 26, 2020) (finding that a 4% claim rate is not indicative of a negative reaction by the classes overall); *In re Comcast Corp. Set-Top Cable Tele. Box Anti. Litig.*, 333 F.R.D. 364, 386 (E.D. Pa. Sept. 24, 2019) (approving claims made settlement with claims rate of .05%, finding "[a]lthough this is a very low claims rate, an examination of the *Gunter/Prudential* factors demonstrates that the low level of distribution of benefits to the Class does not reflect a failure of Class Counsel to adequately represent the interests of the Class"); *Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954 (E.D. Pa. Sept. 24, 2019) (approving settlement with 2% claims rate). *See also Jackson v. Wells Fargo Bank, N.A.*, 136 F.Supp. 3d 687, 702 (W.D. Pa. 2015) (noting even low response rates are not "in any way abnormal given the relatively small individual payouts" and citing Newberg on Class Actions § 12:17 for that proposition).

Third, while discovery exchanged was informal, proposed Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims. Simplicio Decl. ¶ 8. This case settled early in the litigation process before formal discovery took place, but as part of the extensive negotiation

process, ECSI produced documents showing, *inter alia*, the size of the Settlement Class, the identity of Settlement Class members, and the amount of potential damages involved. *Id.* ¶ 6. Class Counsel has litigated and settled numerous other cases against debt collectors for violations of 1692f(1) Statutes, and is knowledgeable about the legal theories, risks, and discovery required. *Id.* ¶¶ 25-27. *See also* ECF No. 60-1, App'x A (chart summarizing other processing fee settlements).

The "sufficient discovery" factor in *In re Gen. Motors* does not require formal discovery; rather, it focuses on whether proposed class counsel had enough information to allow for negotiation of a fair settlement. "What matters is not the amount or type of discovery class counsel pursued, but whether they had developed enough information about the case to appreciate sufficiently the value of the claims." *In re Nat'l Football League Players Concussion Inj. Litig.* ("*In re NFL*"), 821 F.3d 410, 439 (3d Cir. 2016), *as amended* (May 2, 2016). Indeed, as the Third Circuit explained, "requiring parties to conduct formal discovery before reaching a proposed class settlement would take a valuable bargaining chip—the costs of formal discovery itself—off the table during negotiations. This could deter the early settlement of disputes." *Id.* Here, Class Counsel's experience in successfully litigating and settling similar claims, as well as the records shared in the negotiation process allowed Class Counsel to fully assess the value of the Settlement Class's claims and to negotiate notice and claims-administration programs tailored to maximize relief to Settlement Class members. Simplicio Decl. ¶¶ 7-8. This factor therefore further supports preliminarily approving the Settlement Agreement.

Importantly, Plaintiffs believe that this is not a fact-intensive case that depended on extensive discovery to assess ECSI's potential liability. It is undisputed that ECSI assessed the alleged fees, and Plaintiffs firmly believe that the MPN's governing Plaintiffs' and Settlement Class members' student loans are form contracts the content of which is a matter of public record. Thus, Class Counsel "were aware of the strengths and weaknesses of their case" before engaging in settlement negotiations with

ECSI and without the need for formal discovery. *In re NFL*, 821 F.3d at 436 (internal quotation marks omitted).

Thus, the relevant facts were already known; formal discovery primarily would have shed light on the scope of potential damages, which the parties' informal discovery allowed Proposed Class Counsel to assess. Thus, formal discovery would not have given Plaintiffs or their counsel significantly more information on which to act than what they obtained in the negotiation process. Plaintiffs and their counsel were more than sufficiently informed to appreciate the value of their claims based on the information shared in the negotiation process. *See Douglass v. Optavia LLC*, No. 2:22-CV-00594-CCW, 2022 WL 4281546, at *3 (W.D. Pa. Sept. 14, 2022) ("[A]lthough discovery has not occurred in this case, that fact is insignificant here, where the facts are largely undisputed, and Mr. Douglass's counsel engaged in a substantial investigation into Optavia's digital platforms and their accessibility.").

As to the *fourth, fifth and sixth factors,*, which look to the risks of litigation, the Settlement Agreement reflects the risks Plaintiffs and the Settlement Class would face in litigation. District courts evaluating a proposed class settlement "survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefits of an immediate settlement." *Murphy v. Le Sportsac, Inc.*, No. 1:22-CV-00058-RAL, 2023 WL 375903, at *10 (W.D. Pa. Jan. 24, 2023) (internal quotation marks omitted). However, "a court should not conduct a mini-trial and must, to a certain extent, give credence to the estimation of the probability of success proffered by class counsel." *Id.* (internal quotation marks omitted). Thus, "the Court need not delve into the intricacies of the merits of each side's arguments, but rather may give credence to the estimation of the probability of success proffered by Class Counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action." *Id.* (quoting *Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *6 (E.D. Pa. Sept. 22, 2015)).

This case is settling in its early stages; if the Settlement Agreement is not approved, the parties will likely need to litigate multiple dispositive motions and a motion for class certification. The litigation would likely take years to resolve and involve expensive expert discovery. The Parties would need to resolve discovery disputes and incur the expense and burden of preparing for trial. Even if Plaintiffs succeed at class certification and the merits, any recovery would likely be delayed by appeals. Yet there is no guarantee that lengthy litigation and expensive discovery would lead to greater benefits for the Settlement Class members. Instead, there would be multiple points at which the Settlement Class's claims could be narrowed or dismissed, including trial. *See Weiss v. Mercedes Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (warning that in complex cases, "[t]he risks surrounding a trial on the merits are always considerable").

Class Counsel and Defendant's counsel are experienced in class action litigation, and Class Counsel have litigated and settled numerous pay-to-pay cases arising from the assessment of Processing Fees. Simplicio Decl. ¶¶ 25-29. This, too, supports finding that the Settlement Agreement is fair and reasonable. *See, e.g.*, *In re Gen. Motors*, 55 F.3d at 785-86; *Douglass*, No. 2:22-CV-00594-CCW, 2022 WL 4281546, at *3 (presumption of fairness established in support of preliminary approval in part because "the parties [we]re represented by competent counsel experienced in complex, comparable litigation"); *Klingensmith v. BP Prod. N. Am., Inc.*, No. CIV.A. 07-1065, 2008 WL 4360965, at *5 (W.D. Pa. Sept. 24, 2008) (the fact that the settlement "was reached as a result of arm's-length negotiation between experienced counsel aided by an experienced mediator" supported preliminary approval).

As to the *remaining factors*, which assess Defendant's ability to withstand judgment[4] and the reasonableness of the settlement plan, the proposed allocation plan treats class members fairly. The

[4] In the absence of evidence about a defendant's ability or inability to withstand a greater judgment, courts consider this factor to be neutral. *See Serrano v. Sterling Testing Sys., Inc.*, 711 F.Supp. 2d 402, 416 (E.D. Pa. 2010); *Rescigno v. Statoil USA Onshore Prop. Inc.*, No. 3:16-85, 2023 WL 145008, at *11 (M.D. Pa. Jan. 10, 2023).

Settlement defines a clearly identifiable Settlement Class—one ascertainable by a methodological review of ECSI's business records. The Class definition complies with the requirements of the Third Circuit's decision in *Carrera v. Bayer Corp.*, 727 F.3d 300, 306 (3d Cir. 2013), and *Marcus v. BMW of North America, LLC*, 687 F.3d 583, 593 (3d Cir. 2012). Simply put, this is not a case where "class members are impossible to identify without extensive and individualized factfinding or 'mini-trials.'" *Marcus*, 687 F.2d at 593.

The proposed Settlement treats all Settlement Class equally and does not provide undue preferential treatment to any individual Settlement Class member. Specifically, the plan of allocation in the Settlement—which is discussed in more detail in the Settlement Agreement—divides the Net Settlement Fund (that is, the Settlement amount minus any deductions for notice and administration costs, class representative service award, and attorneys' fees and costs) on a *pro rata* basis based on the number of relevant fees assessed against an account during the Class Period. In short, the higher number of relevant fees a Settlement Class member incurred, the higher his or her distribution will be.

While members of the Settlement Class were required to make a claim to receive a distribution, as discussed in section IV, *infra*, all received notice and the opportunity to make a claim pursuant to the robust plan devised. While direct distribution of cash awards would have provided every Class Member with a payment, it also would have substantially increased costs, and thus, the claims process was chosen for the excellent value it will provide to Settlement Class Members. A claims process allows for the election of electronic payment options, and thus, avoided the need to mail 552,000 people paper checks – an enormous expensive relative to the small amounts of the fees. Indeed, where settlements provide for claims processes, e-payment election rates are often very high, particularly among younger people, who are believed to make up the substantial majority of this class made up of student loan borrowers. Simplicio Decl. ¶ 33. Because no money will revert to ECSI, but rather, the

entire Net Settlement Fund will be distributed to those who made claims, the Settlement Class gets the entire benefit of the cost-savings from this distribution method.

Settlement class members are further treated fairly in the distribution because the plan of allocation rests, entirely, upon accurate, extensive fee data maintained in ECSI's records, which ECSI provided to allow for the administration of this Settlement. *Id.* ¶ 6. Plaintiffs and Class Counsel believe that this plan of allocation is fair and reasonable, and merits final approval. *Id.* ¶ 31.

Additionally, the proposed settlement amount is well within the permissible range in this Circuit and is consistent with settlements in prior similar cases. *See* ECF No. 60-1 App'x A. The relief the Settlement Agreement provides for Class Members is outstanding. ECSI has agreed to create a Settlement Fund of $3.65 million to reimburse Settlement Class members for relevant fees incurred during the Class Period. Plaintiff estimates this amount represents approximately 25% of the maximum amount damages they may have been able to secure at trial. Simplicio Decl. ¶ 11.

That maximum damages amount represents, essentially, all Processing Fees charged on phone or online loan payment transactions. In addition to the risks of litigating the merits, discussed below, there are risks that damages would be significantly reduced even if Plaintiffs prevailed. For example, ECSI would have likely argued that a proper damages valuation should not be all amounts paid, but rather, that its out-of-pocket costs associated with the Processing Fees needed to be deducted from any amounts paid, or that equitable considerations should be given to the fact that the borrowers may have avoided steeper late fees. Given this uncertainty in total damages, this recovery of 25% of best-case scenario damages is appropriate. Indeed, it is well within the range of recovery routinely approved by courts in this Circuit. *See, e.g.*, *Teh Shou Kao v. CardConnect Corp.*, No. 16-CV-5707, 2021 WL 698173, at *7 (E.D. Pa. Feb. 23, 2021) (approving settlement representing approximately 29 percent of the damages the class could have recovered at trial, as calculated by the plaintiff); *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-CV-1370, 2020 WL 3481458, at *17 (W.D. Pa. June 26, 2020) (settlement fund

representing approximately 10-20 percent of the total amount plaintiffs could recover at trial to be reasonable in light of the risk of continued litigation); *Pfeifer v. Wawa, Inc.*, No. CV 16-497, 2018 WL 4203880, at *9 (E.D. Pa. Aug. 31, 2018) (finding settlement representing 25 percent of the maximum amount recoverable at trial to fall "well within the range of reasonableness when considering the risks of continued litigation"); *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 646 (E.D. Pa. 2015) (finding settlement representing approximately 24 percent of estimated actual damages reasonable and noting that the court has "upheld far smaller settlements"); *Nichols v. SmithKline Beecham Corp.,* No. Civ. A. 00-6222, 2005 WL 950616 at *16 (E.D. Pa. Apr. 22, 2005) (approving settlement fund representing between 9.3% and 13.9% of damages estimates as "consistent with those approved in other complex class action cases"); *In re Ravisent Techs., Inc. Secs. Litig.*, No. Civ. A. 00-CV-1014, 2005 WL 906361 at * 9 (E.D. Pa. Apr. 18, 2005) (finding settlement of 12.2% to be "within the range of reasonable recovery for a securities class action"); *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 319, 339 (W.D. Pa. 1997) (approving settlement that "represents only about 5.35% of the estimated damages for the entire class period"). Moreover, 25% of damages is well within the range of the percentage of damages achieved in settlements of other similar cases arising from the assessment of Processing Fees. *See* App'x A.

In light of the novel issues present in this case, as well as the legal complexity entailed in the prosecution and defense of this case and the unpredictability associated with class certification proceedings, a lengthy trial and any appellate proceedings (both under Rule 23(f) and on the merits), Plaintiff submits that the result achieved is excellent under all the circumstances and the *Girsh* factors are satisfied.

B. The Proposed Form and Method of Class Notice Satisfy Due Process.

The Settlement Agreement's notice program was robust and easily satisfies due process. Rule 23(e)(1) ensures that absent class members' due process rights are enforced by entitling class members to reasonable notice of a proposed settlement. *See Manual For Complex Litig.* §§ 21.312, 21.631 (4th ed.

2011). "[T]o satisfy due process, notice to class members must be reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 174 (E.D. Pa. 2000) (internal quotation marks and citation omitted).

In addition, for classes certified under Rule 23(b)(3), courts must ensure that class members receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173 (1974). Specifically, Rule 23(c)(2)(B) requires that the "notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B).

Here, as the Court already found at the preliminary approval stage, the form and content of the proposed Notices satisfy and exceed all these requirements. *See* D.E. 60-1, Ex. 1, Sub-Exs. A1-A3. The Notices informed absent class members of the pendency of the litigation, the Court's preliminary certification of the Settlement Class, the terms of the Settlement Agreement, detailed instructions on how to make a claim, Settlement Class Members' right to opt out or object and the time for doing so, the time and location of the Final Approval Hearing, Class Counsel's expected fee application, the expected request for service awards for the named Plaintiffs, links to the Settlement Website, the toll-free number to call for questions, and other information related to the Settlement Agreement. This content was more than sufficient because it "fairly apprise[s] the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the]

proceedings." *Maywalt v. Parker and Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (internal quotations omitted). And under the Settlement Agreement and the Notice Program, Settlement Class members had 60 days to make a claim, opt out, or object.

Further, the Notice Program was designed to be the best notice practicable, and it is tailored to take advantage of the information ECSI has available about members of the Settlement Class. The Notice Program consisted of two stages, Initial Notice and Supplemental Notice. *See generally* D.E. 60-1 Ex. 1, § 10. The Initial Notice stage was simply a typical notice process; it was intended to provide Settlement Class Members all the information they needed to make a decision about whether to remain in the class, make a claim, file an objection or exercise opt-out rights. During this stage, the Settlement Administrator provided direct e-mail notice substantially in the form of Exhibit 1-A1 to all known Settlement Class members at all known email addresses as indicated in ECSI's business records. For the minority of Settlement Class members for whom ECSI did not have a valid email address, a postcard notice substantially in the form of Exhibit 1-A2 was sent to their last known mailing address. These Notices apprised Class Members of the deadline to make a claim, file an objection, or exclude themselves, as well as refer Class Members to the Settlement Website. There, the Settlement Administrator publised deadlines, a full copy of the Settlement Agreement and other pertinent documents, and provided the long-form notice, which contains frequently asked questions, substantially in the form of Exhibit A3. The Settlement Website also contained a place where Settlement Class Members could submit claims. Class members were also provided with a toll-free telephone line for Settlement Class members to call with settlement and claims-related inquiries.

The Supplemental Notice stage was designed to ensure Settlement Class Members do not miss the opportunity to file a claim. The Settlement Administrator provided additional email reminders during the notice period, encouraging those Settlement Class Members that had not yet made a claim to the Settlement Website to do so. This multi-pronged notice strategy ensured that virtually all

Settlement Class members received Initial Notice, and most received additional reminders. Moreover, it is eminently practicable, as it avoids the high administration costs of mailed notices to all Settlement Class members without sacrificing the reach and effectiveness of the Notice Program. Indeed, based on their significant experience, Class Counsel and the proposed Claims Administrator believe that the supplemental targeted social media advertising provided for in the Notice Program increased the effectiveness of the claims process by providing additional reminders to Class Members beyond the initial notice. Simplicio Decl. ¶ 33.

All of these efforts and safeguards resulted in a near-universal, remarkable reach rate of 99.99%. As the Settlement Administrator attested, this rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches[5] over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign.[6] In sum, the Notice Program exceeds the requirements of Rule 23 and due process, and Plaintiffs are confident it has been the best notice practicable.

VI. CONCLUSION

For all these reasons, the Court should enter the Proposed Final Approval Order: (1) granting Plaintiffs' Motion finally approving the Settlement; (2) finally certifying the Settlement Class; (3) dismissing all class and individual claims on the merit with prejudice and without costs to Defendant; (4) retaining jurisdiction over this action for the purpose of interpretation and enforcement of the Settlement Agreement, including oversight of settlement administration and distribution of settlement funds; and (5) entering final judgment as to these matters.

Respectfully submitted,

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[5] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%.

[6] Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

Dated: June 10, 2024

/s/ Patricia M. Kipnis
Patricia M. Kipnis
BAILEY & GLASSER LLP
925 Haddonfield Rd, Suite 300
Cherry Hill, NJ 08002
Tel: (215) 274-9420
Email: pkipnis@baileyglasser.com

James L. Kauffman (DC 1020720) (PHV)
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, D.C. 20007
Tel: (202) 463-2101
Email: jkauffman@baileyglasser.com

Kristen G. Simplicio
Hassan A. Zavareei
Glenn E. Chappell
TYCKO & ZAVAREEI LLP
2000 Pennsylvania Avenue NW, Suite 1010
Washington, DC 20006
Tel: (202) 973-0900
Email: ksimplicio@tzlegal.com
Email: hzavareei@tzlegal.com
Email: gchappell@tzlegal.com

Counsel for Plaintiffs and the proposed Settlement Class

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REBECCA NGUYEN, TAMICA BREWSTER, KYLE STRICKENBERGER, and MICHELLE CAYNOR, *on behalf of themselves and all other similarly situated*, Plaintiffs, v. EDUCATIONAL COMPUTER SYSTEMS, INC., *d/b/a* HEARTLAND ECSI, Defendant.	Case No.: 2:22-cv-01743-PLD CLASS ACTION **DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT** Date: June 24, 2024 Time: 1:30 P.M. Dept: Courtroom 9A The Hon. Patricia L. Dodge

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC ("Kroll"),[1] the Settlement Administrator[2] appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval of the Settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Settlement Administrator to provide notification and claims administration services in connection with that certain Class Settlement and Release Agreement (the "Settlement Agreement") entered into in this Action. Kroll's duties in connection with the Settlement have and will include (a) receiving and analyzing the Class List from Defendant's counsel; (b) creating a Settlement Website with online claim filing capabilities; (c) establishing a toll-free telephone number; (d) establishing a post office box for the receipt of mail; (e) preparing and sending the Postcard Notice via first-class mail; (f) preparing and sending the Email Notice; (g) receiving and processing mail from the United States Postal Service ("USPS") with forwarding addresses; (h) receiving and processing undeliverable mail, without a

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement as defined below.

[2] The Settlement Agreement and Preliminary Approval Order appoint "Kroll, LLC" as the Settlement Administrator. Kroll, LLC is the parent company of Kroll Settlement Administration LLC, the actual Settlement Administrator in this case.

forwarding address, from the USPS; (i) receiving and processing Claim Forms; (j) receiving and processing opt out requests and objections; and (k) such other tasks as counsel for the Parties or the Court request Kroll to perform.

NOTICE PROGRAM

Data and Case Setup

4. On March 11, 2024, Kroll received one (1) data file from the Defendant. The file contained 1,979,282 records that included school codes, names, SID numbers, fees paid, mailing addresses, email addresses, dates of birth, and the last four digits of Social Security Numbers for Settlement Class Members. Kroll undertook several steps to reconcile the list and compile the eventual Class List for the emailing and mailing of the Initial Notice. This included standardizing address information, de-duping and performing a roll up of records with multiple names, mailing addresses, dates of birth, and the last four digits of Social Security Numbers. As a result of this data cleaning process, Kroll identified 537,769 unique records. Of these, Kroll identified 531,551 unique records with a provided email address, and 6,218 unique records with a provided physical mailing address but no email address. Additionally, in an effort to ensure that the Postcard Notice would be deliverable to Settlement Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

5. On March 7, 2024, Kroll created a dedicated Settlement Website entitled www.PerkinsLoanFeeSettlement.com. The Settlement Website "went live" on March 26, 2024, and contains information about the Settlement, copies of the Claim Form, Settlement Complaint, Settlement Agreement, Long Form Notice, and the Preliminary Approval Order, as well as contact information for the Settlement Administrator, answers to frequently asked questions, important dates, including the exclusion deadline, objection deadline, Claim Filing Deadline, and the Final Approval Hearing date, and provided Settlement Class Members the opportunity to file a Claim Form online.

6. On January 4, 2024, Kroll established a toll-free telephone number, (833) 462-3516, for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response ("IVR") system with a voicemail setup that allows callbacks from a live operator. As of June 4, 2024, the IVR system has received 1,344 calls, and 337 callers have received a returned phone call from a live operator after leaving a voicemail through the IVR system.

7. On January 12, 2024, Kroll designated a post office box with the mailing address *Nguyen et al. v. Educational Computer Systems, Inc.*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive opt outs, Claim Forms, objections, and correspondence from Settlement Class Members.

The Notice Program

8. On March 27, 2024, Kroll caused 6,218 Postcard Notices to be mailed via first-class mail. A true and correct copy of the Postcard Notice, along with the Long Form Notice and Claim Form, are attached hereto as **Exhibits A, B, and C,** respectively.

9. On March 27, 2024, Kroll caused the Email Notice to be sent to the 531,551 email addresses on file for Settlement Class Members as noted above. A true and correct copy of a complete exemplar Email Notice (including the subject line) is attached hereto as **Exhibit D.** Of the 531,551 emails attempted for delivery; 104,442 emails were rejected/bounced back as undeliverable. On May 7, 2024, Kroll sent Postcard Notices via first class mail to the 104,442 forgoing Settlement Class Members whose Email Notice was rejected/bounced back.

10. On May 7, 2024, as required under section 10.4 of the Settlement Agreement, Kroll caused the Supplemental Notice to be sent to Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement, as follows: via email to 414,098 Settlement Class Members with a known email address and via mail to 6,349 Settlement Class Members with no known email address.

11. On May 17, 2024, at the direction of counsel for the Parties, Kroll caused an additional Supplemental Notice to be sent via email to 334,072 Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement.

12. On May 24, 2024, at the direction of counsel for the Parties, Kroll will cause a second Supplemental Notice to be sent via email to 326,129 Settlement Class Members who had not yet filed a Claim Form nor opted out of the Settlement.

NOTICE PROGRAM REACH

13. As of June 4, 2024, forty-two (42) Postcard Notices were returned by USPS with a forwarding address. Of those, forty-two (42) Postcard Notices were automatically re-mailed to the updated addresses provided by USPS.

14. As of June 4, 2024, 335 Postcard Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 335 undeliverable records through an advanced address search. The advanced address search produced 308 updated addresses. Kroll has re-mailed Postcard Notices to the 308 updated addresses obtained from the advanced address search. Kroll will continue to trace and re-mail undeliverable Postcard Notices as they are received.

15. Based on the foregoing, following all Notice re-mailings, Kroll has reason to believe that Notice likely reached 537,742 of the 537,769 persons to whom Notice was mailed and/or emailed, which equates to a reach rate of the direct notice of approximately 99.99%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches[3] over 70% of targeted class members is considered a high percentage and the "norm" of a notice campaign.[4]

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[3] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%.

[4] Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

CLAIM ACTIVITY

16. The Claim Filing Deadline was May 28, 2024.

17. As of June 4, 2024, Kroll has received fifty-two (52) Claim Forms through the mail and 40,024 Claim Forms filed electronically through the Settlement Website, for a total of 40,076 Claim Forms received. Kroll is still in the process of reviewing and validating Claim Forms.

18. Based on the foregoing, Kroll estimates that the claims filing rate is 7.45% of Settlement Class Members who likely received Notice.

19. To prevent Claim Forms from being filed by individuals outside the Settlement Class and to curtail fraud, Settlement Class Members were provided a unique "Class Member ID" on their respective Notices. The Class Member ID is required for Settlement Class Members to file a Claim Form online.

EXCLUSIONS AND OBJECTIONS

20. The exclusion deadline and the objection deadline was June 3, 2024.

21. Kroll has received one (1) timely exclusion request and no objections to the Settlement. A list of the exclusion request received is attached hereto as **Exhibit E**.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on June 6, 2024, in East Palestine, Ohio.

SCOTT M. FENWICK

Exhibit A

Nguyen et al. v. Education Computer Systems, Inc.
P.O. Box 5324
New York, NY 10150-5324

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

CLASS MEMBER
IDENTIFICATION NUMBER:
<<Refnum>>

Legal Notice about a Class Action Settlement

If you were charged a Fee by Educational Computer Systems, Inc., d/b/a/ Heartland ECSI to make a Perkins student loan payment by telephone, IVR, or the internet, you may be eligible for a payment from a class action Settlement.

Read this Notice carefully.

You can also visit:
www.PerkinsLoanFeeSettlement.com or call **(833) 462-3516**

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<FirstName>> <<LastName>>
<<Company>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip>>-<<zip4>>
<<Country>>

If You Were Charged Fees by Educational Computer Systems, Inc., d/b/a/ Heartland ECSI for Making a Perkins Federal Student Loan Payment by Telephone, IVR, or Internet, You May Be Eligible for a Payment from a Class Action Settlement.

Visit www.PerkinsLoanFeeSettlement.com by May 28, 2024, to make a claim to receive a payment or to learn additional details.

A $3,650,000 Settlement has been reached in a class action lawsuit alleging that Educational Computer Systems, Inc., d/b/a/ Heartland ECSI ("ECSI") improperly charged Fees to borrowers who made payments on federal Perkins loans by telephone, IVR (interactive voice response), or the internet ("Fees"). ECSI denies any wrongdoing but has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the Litigation. The Court has not decided who is right.

Who's Included? ECSI's records show you are a member of the Settlement Class. The Settlement Class includes all natural persons (1) within the United States who paid a Fee to ECSI for (2) optional payment services to make a Perkins student loan payment by telephone, IVR, or the internet ("Processing Fee"), between December 6, 2018, through and including October 31, 2023.

What Are the Settlement Terms? ECSI has agreed to establish a Settlement Fund of $3,650,000. The Settlement Fund, net of any Settlement Notice and administration costs, service awards, and Attorneys' Fees and Expenses award by the Court will be distributed to Class Members who file a timely claim. The Net Settlement Fund will be distributed to those who file a timely claim *pro rata* based on the amount of Processing Fees each paid. **To receive a Settlement Payment, Class Members must visit the Settlement Website by May 28, 2024**. When making a claim, you may use the Class Member Identification Number appearing on the front of this card to facilitate processing. Class Members can elect to receive their Settlement Payment via check or by an electronic payment method (PayPal, Zelle, Venmo, etc.) at the website above. Class Counsel may seek up to one third of the Settlement Fund for attorneys' fees plus reimbursement of litigation expenses, and the Class Representatives may each seek $10,000 as service awards.

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by **June 3, 2024**. If you do not exclude yourself, you will release your claims against Heartland ECSI for the claims at issue in the lawsuit. Specifically, you will not be able to sue for any claim relating to Fees paid between December 6, 2018, and October 31, 2023. If you exclude yourself or "opt out" of the Class, you won't get a payment. If you stay in the Settlement Class, you may object to the Settlement in writing by **June 3, 2024**. A more detailed Long Form Notice, available at the website above, contains instructions for how to exclude yourself or object to the Settlement and the full scope of the release to Heartland ECSI.

The Final Approval Hearing. The Court will hold a hearing on **June 24, 2024 at 1:30 p.m**., in the Courtroom of Patricia L. Dodge at 700 Grant Street, Courtroom 9A, Pittsburgh, PA 15219. At the hearing, the Court will consider whether to approve the Settlement and Class Counsel's request for attorneys' fees and expenses, and the Plaintiffs' service awards. Unless you opt-out of the Settlement, you may appear at the hearing, but you do not have to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

How Can I Get More Information? Visit the website above if you have questions or want more information about the lawsuit and your rights. You may also call **(833) 462-3516**, or write to the Settlement Administrator at Nguyen et al. v. Educational Computer Systems, Inc. c/o Kroll Settlement Administration PO Box 5324 New York, NY 10150-5324.

Exhibit B

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

A class action Settlement may affect your rights if you paid Educational Computer Systems, Inc., d/b/a/ Heartland ECSI ("Defendant" or "Heartland ECSI"), a Fee for optional payment services to make a student loan payment by telephone, IVR, or the internet between December 6, 2018, through October 31, 2023.

THIS NOTICE COULD AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A Court authorized this notice. This is not a solicitation from a lawyer.

- Heartland ECSI's records identify you as a Class Member.
- A proposed Settlement requires Heartland ECSI to pay $3,650,000 to make payments to Class Members who file timely claims and to pay other Fees and expenses.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form and Receive a Settlement Payment Deadline: **May 28, 2024**	If you wish to make a claim and receive a Settlement Payment, you must visit the Settlement Website at www.PerkinsLoanFeeSettlement.com and complete a Claim Form online. You may elect to receive your payment via check or electronically by Zelle, PayPal, Venmo, etc. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class (*i.e.*, you do nothing and do not otherwise exclude yourself from the Settlement), **you will only receive a Settlement Payment if you submitted a Claim Form before the deadline**. The Settlement Fund, net of Fees, expenses, and incentive awards, will be distributed to those Class Members who submitted a timely Claim Form *pro rata* based on Fees paid. This option means that you give up your right to bring your own lawsuit against Heartland ECSI about the claims in this case.
Do Nothing	You will not receive a payment under the Settlement. You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the claims this Settlement resolves.
Exclude Yourself from the Settlement Deadline: **June 3, 2024**	You may ask to be excluded from the lawsuit. If you do so, you will receive no benefit from the Settlement, but you retain your right to sue on your own.
Object Deadline: **June 3, 2024**	You may object to the terms of the Settlement Agreement and have your objections heard at the **June 24, 2024,** Final Approval Hearing.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The United States District Court for the Western District of Pennsylvania (the "Court") authorized this notice. The following is a summary of the Settlement and of your rights. A full copy of the Settlement Agreement is available at www.PerkinsLoanFeeSettlement.com.

THIS IS NOT A SUIT AGAINST YOU. The purpose of this notice is to advise you that a Settlement has been reached in a class action lawsuit (the "Lawsuit") against Educational Computer Systems, Inc., d/b/a/ Heartland ECSI ("Defendant" or "Heartland ECSI"). The notice is being sent to you because the parties' records indicate that you are included in the Settlement and entitled to a cash payment.

This notice summarizes the proposed settlement and your rights. The precise terms and conditions of the settlement are set forth in the Settlement Agreement, which may be viewed by accessing the following website www.PerkinsLoanFeeSettlement.com or by contacting the Settlement Administrator at **(833) 462-3516**, contacting Class Counsel at the addresses listed below, or by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at www.pacer.gov.

1. What is This Lawsuit About?

The lawsuit alleges that Defendant violated state debt collection and student borrower protection laws by improperly assessing Fees for payment services when Settlement Class Members made payments on federal Perkins loans over the phone or internet. Defendant denies any and all wrongdoing. Defendant has agreed to the Settlement solely to avoid the burden, expense, risk, and uncertainty of continuing the Lawsuit.

2. Who is Included in the Settlement

The parties' records indicate that you are a Class Member. The Settlement Class is defined as: all natural persons (1) within the United States who paid a Fee to Defendant Heartland ECSI ("Defendant") for (2) optional payment services to make a Perkins student loan payment by telephone, IVR (interactive voice response), or the internet ("Processing Fee"), between December 6, 2018, through and including October 31, 2023.

3. What Does the Settlement Provide?

(1) **Payment to Class Members**. Heartland ECSI will establish a Settlement Fund in the amount of \$3,650,000 from which Class Members will receive payments by check or by electronic payment method. The Settlement Fund, net of any settlement notice and administration costs, service awards, and Attorney's Fees and Expenses awarded by the Court will be distributed to Settlement Class Members who file a timely claim pro rata according to the amount of Processing Fees each Class Member paid.

Class Members must visit the Settlement Website at www.PerkinsLoanFeeSettlement.com to make a claim by completing the Claim Form. They can elect to receive their Settlement Payment via a check or an electronic payment method (PayPal, Zelle, Venmo, etc.).

Class Members who do not elect to receive their Settlement Payment via an electronic payment method will be mailed a check. Checks will be valid for 90 days.

Please understand that these sums may be taxable, that such tax consequences are further described in the Settlement Agreement, and that counsel is not giving you any tax advice. You are encouraged to seek tax advice without delay from a tax professional.

(2) **Service Award**. The Plaintiffs who brought this lawsuit will each request a service award of no more than \$10,000 for serving as Class Representatives.

(3) **Attorney's Fees and Costs**. Class counsel are Bailey Glasser, LLP and Tycko & Zavareei. They will request Attorney's Fees and Expenses of no more than one-third of the total amount of the Settlement Fund, plus their litigation expenses. The Court will determine the appropriate amount of the Attorney's Fees and Expenses and awards to be paid. The Settlement is not conditioned upon approval of any of the Attorney's Fees and Expenses, or service award amounts.

(4) **Opinion of Class Counsel**. Class Counsel considers it to be in the best interest of the class to enter into this Settlement on the terms described in light of the potential recovery, Defendant's defenses, and the uncertainties of continued litigation.

(5) **Release.** In connection with the Settlement, the Final Approval Order shall provide that the Action is dismissed with prejudice as to the Class Representatives and all Settlement Class Members. As of the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have fully, finally, and forever released, resolved, relinquished, and discharged each and all of the Released Parties from the Released Claims. The Releasing Parties further agree that they will not institute any actions or causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency, or with any administrative or advisory body, arising from or reasonably related to the Released Claims. The release does not apply to persons who fall within the definition of the Settlement Class, but who submit a timely opt-out in accordance with the terms of this Agreement.

For purposes of this Settlement Agreement, "Released Parties" means Heartland ECSI; all of Heartland ECSI's acquired entities, predecessors, successors, affiliates, parent companies, and subsidiaries (collectively, "Affiliates"); any person, company, trust, or other entity for which Heartland ECSI services loans, as well as any person, company, trust, or other entity that has any interest in any loan to a Settlement Class Member that Heartland ECSI serviced; and all of the aforementioned' s past or present predecessors, successors, direct or indirect parents, subsidiaries, associates, affiliates, assigns, employers, employees, shareholders, principals, agents, consultants, independent contractors, insurers, directors, officers, partners, attorneys, accountants, financial advisors, legal representatives, and successors in interest, franchisees and persons, firms, trusts, and corporations (each solely in their respective capacity as such).

For purposes of this Settlement Agreement, "Released Claim" or "Released Claims" means all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that relate, concern, arise from, or pertain in any way to the Released Person's conduct, policies, or practices concerning Processing Fees on federal Perkins loans charged by Heartland ECSI, including but not limited to charges for making payments over the phone or internet and claims or causes of action under, without limitation, the federal Fair Debt Collection Practices Act, state debt collection law, state student borrower bill of rights, breach of contract, unjust enrichment, and for violation of any other law. As to the Released Person's conduct, policies, or practices concerning Processing Fees on federal Perkins loans charged by Heartland ECSI, the Releasing Parties waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides:

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

The Releasing Parties agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the aforementioned claims released in the Settlement Agreement and agree that this is an essential term of the Settlement Agreement. The Releasing Parties acknowledge that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, Plaintiffs and the Class Members fully, finally, and forever settle and release the Released Claims.

For purposes of this Action, "Releasing Parties" means the Plaintiffs, all Settlement Class Members and any individual acting on their behalf, including but not limited to, any present, former, and future spouses, dependents, children, parents, as well as the present, former, and future estates, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in interest, assigns, and any other representatives of each of them.

(6) **Binding Effect of Class Judgment.** Upon conclusion of the Settlement, the judgment of the Court will be binding upon all Class Members who do not opt out of the Settlement.

4. The Court's Fairness Hearing

The U.S. District Court for the Western District of Pennsylvania will hold a Final Approval Hearing in this case on **June 24, 2024 at 1:30 p.m.**, in the Courtroom of Patricia L. Dodge at 700 Grant Street, Courtroom 9A, Pittsburgh, PA 15219. Unless you opt-out of the Settlement, you may appear at the Final Approval Hearing, but you do not have to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the Final Approval Hearing. The Final Approval Hearing date and time may be changed without further notice. If you wish to attend the Final Approval Hearing, you should call the Settlement Administrator in advance to confirm the day and time.

5. What Are Your Options?

(1) **Do Nothing**. You will not receive a payment under the Settlement. You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the claims this Settlement resolves.

(2) **Receive a Settlement Payment**. **To receive a Settlement Payment, you must visit the Settlement Website at** www.PerkinsLoanFeeSettlement.com **by May 28, 2024** to submit a Claim Form and select your desired method of payment (paper check, Zelle, Venmo, PayPal., etc.). If the Settlement is approved, you will be bound by all of its terms, and you will be paid pursuant to your desired payment method.

(3) **Exclude Yourself**. You may "opt out" and exclude yourself from the Settlement. If you opt out, you will not receive any cash payment, and you will not release any claims you may have against Defendant. If you opt out, you will be free to pursue whatever legal rights you may have by pursuing your own lawsuit against Defendant at your own risk and expense. To exclude yourself from the Settlement, you must mail a letter to the Settlement Administrator (address below) stating that you wish to do so. Your letter must include your name, address, telephone number, the last four digits of your Social Security Number, and a statement that you are seeking exclusion. You must postmark your letter no later than **June 3, 2024**; OR

(4) **Object to the Settlement**. If you object to the Settlement, you must file with the Court a signed notice of your intention to appear; a statement saying that you object to the Settlement in *Nguyen v. Educational Computer Systems, Inc., d/b/a/ Heartland ECSI*, Civil Action No. 2:22-cv-0173-PLD; submit documentary proof that you are a member of the Settlement Class; provide your name, address and telephone number; specifically state the basis for your objection(s); identify whether the objection applies to the entire Settlement Class, a specific subset of the Settlement Class, or only to the objector; and serve copies of the foregoing and all other papers in support of such objection(s) upon the following:

Court:	**Administrator:**
Joseph F. Weis, Jr. U.S. Courthouse 700 Grant Street Pittsburgh, PA 15219	Nguyen et al. v. Educational Computer Systems, Inc. c/o Kroll Settlement Administration PO Box 5324 New York, NY 10150-5324
Class Counsel:	**Class Counsel:**
James L. Kauffman Bailey Glasser, LLP 1055 Thomas Jefferson Street, NW, Suite 540 Washington, D.C. 20007	Hassan A. Zavareei Kristen Simplicio Tycko & Zavareei LLP 2000 Pennsylvania Avenue NW, Suite 1010 Washington, D.C. 20006

Class Counsel:	Heartland ECSI's counsel:
Patricia Mulvoy Kipnis Bailey Glasser, LLP 923 Haddonfield Road, Suite 300 Cherry Hill, NJ 08002	Allison L. Burdette Saul Ewing LLP One PPG Place, Suite 3010 Pittsburgh, PA 15222

The objection must also state whether you or your own lawyer would like to appear and speak at the Court's Final Approval Hearing, at your own cost. You do not need to appear at the Final Approval Hearing to object to the Settlement. If you intend to call witnesses at the Final Approval Hearing, the objection should list any witnesses you intend to call.

PLEASE DIRECT QUESTIONS TO:

Nguyen et al. v. Educational Computer Systems, Inc.
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324
(833) 462-3516

www.PerkinsLoanFeeSettlement.com

Exhibit C

The DEADLINE to submit or mail this Claim Form is: May 28, 2024

Nguyen, et al. v. Educational Computer Systems, Inc. d/b/a Heartland ECSI
Case No. 2:22-cv-01743-PLD

For Office Use Only

CLASS ACTION SETTLEMENT CLAIM FORM

INSTRUCTIONS

There has been a Settlement in the above lawsuit. If you wish to obtain money from the Settlement, you must complete and submit this Claim Form. All information will be kept private and will be used solely to administer the Settlement. Your information will not be disclosed to anyone other than the Court, the Settlement Administrator, and the settling parties in this case.

This Claim Form may be submitted in one of two ways:

1. Electronically as provided below.
2. By printing and mailing this Claim Form to:

Nguyen et al. v. Educational Computer Systems, Inc.
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

To be effective as a claim under the proposed Settlement, this Claim Form must be completed, signed and sent, as outlined above, **no later than May 28, 2024.** If this Claim Form is not postmarked or received by this date, you will remain a member of the Settlement Class, but will not receive any payment from the Settlement. All submitted Claim Forms are subject to review and verification.

YOUR INFORMATION
* Indicates a required field

______________________________ ____ ______________________________
First Name **MI** **Last Name**

____
Alternative Name(s) associated with your Heartland ECSI account:

____
Address 1

____
Address 2

______________________________________ ____ ____ ____ ____ ____ ____ ____
City **State** **Zip Code**

(____ ____ ____) ____ ____ ____ - ____ ____ ____ ____
Phone Number*

______________________________@______________________________
E-mail*
Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your claim.

Questions? Go to www.PerkinsLoanFeeSettlement.com or call (833) 462-3516.

8 3 0 2 5 0 0 0 0 0 0 0 0

VALIDATION* - YOU MUST CHOOSE ONE

☐ Class Member ID# (if known): 8 3 0 2 5 ____ ____ ____ ____ ____ ____ ____ ____

☐ Date of Birth (mm/dd/yyyy): ____ ____ / ____ ____ / ____ ____ ____ ____

The Class Member ID # can be found on the email or postcard notice sent to you about this Settlement. Please note that Claimants who provide a date of birth instead of their Class Member ID may be subject to additional identity verification measures.

PAYMENT METHOD

If you use this paper Claim Form, a check will be mailed to the address above. If you want to receive an electronic payment, please submit your Claim online.

SIGNATURE

By submitting this Claim Form, I certify that that I am a person within the United States who (1) paid a Fee to Heartland ECSI for (2) optional payment services to make a Perkins student loan payment by telephone, IVR, or the internet, between December 6, 2018, through and including October 31, 2023.

____ ____ ____ / ____ ____ / ____ ____ ____ ____

Signature Date (mm/dd/yyyy)

Exhibit D

From:	Nguyen Settlement Admin
To:	Cardoso, Nuno
Subject:	[EXTERNAL] Educational Computer Systems, Inc., d/b/a/ Heartland ECSI Perkins Loan Fee Class Action Settlement
Date:	Wednesday, March 27, 2024 6:11:38 PM

Class Member ID #: 83025NUNOCARD

A federal Court authorized this notice. This is not a solicitation from a lawyer, and you are not being sued.

You are receiving this notice because you could be affected by the settlement of a class action lawsuit against Educational Computer Systems, Inc., d/b/a/ Heartland ECSI ("Heartland ECSI") involving Heartland ECSI charging Fees to persons to make Perkins student loan payments by telephone, IVR (interactive voice response), or the internet ("Processing Fees"). Heartland ECSI denies any and all wrongdoing. The Court has not decided who is right. Plaintiffs and Heartland ECSI have agreed to settle the lawsuit to avoid the cost and uncertainty of litigation. You can read the Complaints, Settlement Agreement, and other case documents on the Settlement Website:

www.PerkinsLoanFeeSettlement.com

Who's Included? Heartland ECSI's records show you are a member of the Settlement Class. The Settlement Class is defined as all natural persons (1) within the United States who paid a fee to Defendant Heartland ECSI ("Defendant") for (2) optional payment services to make a Perkins student loan payment by telephone, IVR (interactive voice response), or the internet ("Processing Fee"), between December 6, 2018, through and including October 31, 2023.

What are the Settlement terms? Heartland ECSI has agreed to establish a Settlement Fund of $3,650,000 from which Settlement Class Members will receive payments by check, or by digital payment method. The Settlement Fund, net of any Settlement Notice and Administration Costs, service awards, and Attorney's Fees and Expenses award by the Court ("Net Settlement Fund") will be distributed to Settlement Class Members who file a timely claim *pro rata* based on the amount of Processing Fees each Class Member paid.

If you wish to receive a Settlement Payment, you must visit the Settlement Website at www.PerkinsLoanFeeSettlement.com by May 28, 2024, to provide your information to the Settlement Administrator.

When making a claim, you are encouraged to use the Class Member Identification Number appearing at the top of this notice to facilitate processing. Class Members may elect to receive their Settlement Payment via physical check or by an electronic payment method (PayPal, Zelle, Venmo, etc.). Checks will be valid for 90 days.

Please understand that these sums may be taxable, that such tax consequences are further described in the Settlement Agreement, and that counsel is not giving you any tax advice. You are encouraged to seek tax advice without delay from a tax professional.

Your Other Options: If you do not want to be bound by the Settlement, you must exclude yourself by **June 3, 2024**. If you exclude yourself, you cannot get money from the Settlement. If you do not exclude yourself, you will release your claims against Heartland ECSI for the claims at issue in the lawsuit. Specifically, you will not be able to sue for any claim relating to Processing Fees paid between December 6, 2018, and October 31, 2023. A more detailed Long Form Notice, available at **www.PerkinsLoanFeeSettlement.com** contains instructions for how to exclude yourself and the full scope the release to Heartland ECSI.

If you do not exclude yourself, you may object to the Settlement by **June 3, 2024**. The more detailed Long Form Notice available at **www.PerkinsLoanFeeSettlement.com** contains

instructions for how to object.

Final Approval Hearing: The U.S. District Court for the Western District of Pennsylvania will hold a Final Approval Hearing in this case on **June 24, 2024, at 1:30 p.m.**, in the Courtroom of Patricia L. Dodge at 700 Grant Street, Courtroom 9A, Pittsburgh, PA 15219. Class Members do not need to attend the Final Approval Hearing. The Final Approval Hearing date and time may be changed without further notice. If you wish to attend the Final Approval Hearing, you should call the Settlement Administrator in advance to confirm the day and time.

At the Final Approval Hearing, Class Counsel will request Attorney's Fees and Expenses of no more than one-third of the total amount of the Settlement Fund, plus their litigation expenses. Class Counsel will also request Court approval of service awards to the Class Representatives in the amount of $10,000 each. The fee and service award application and all supporting papers will be available for your review on the Settlement Website at **www.PerkinsLoanFeeSettlement.com**. The Court will determine the appropriate amount of the Attorney's Fees and Expenses and awards to be paid. The Settlement is not conditioned upon approval of any of the Attorney's Fees and Expenses or service award amounts.

If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. You may appear at the hearing, but you don't have to. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing. **If you do not take any action, you will be legally bound by the Settlement and any orders or judgments entered in the Action, and will fully, finally, and forever give up any rights to prosecute certain claims against Heartland ECSI.**

This notice provides limited information about the Settlement. For more information call **(833) 462-3516** or visit **www.PerkinsLoanFeeSettlement.com**.

Click here to unsubscribe.

Exhibit E

Exclusion List

Count	Record Identification Number
1	83025CDBTBJ18

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REBECCA NGUYEN, **TAMICA BREWSTER**, **KYLE STRICKENBERGER**, and **MICHELLE CAYNOR** on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EDUCATIONAL COMPUTER SYSTEMS, INC., d/b/a HEARTLAND ECSI,

Defendant.

Case No. 2:22-cv-01743-PLD

[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Hon. Patricia L. Dodge

ORDER GRANTING PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

After considering Plaintiffs' (ECF No ___) Motion for Final Approval of Class Settlement,

IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion is GRANTED;

2. The Parties have completed all settlement notice obligations imposed by the Notice Plan approved by this Court in the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ECF No. 66);

3. The Settlement is fair, adequate and reasonable, and is hereby approved by the Court;

4. The Settlement Class is finally certified for settlement purposes only;

5. The class and individual claims are dismissed on the merits with prejudice in this Action without costs to Defendant;

6. Retaining jurisdiction over this action for the purpose of interpretation and enforcement of the Settlement Agreement, including oversight of settlement administration and distribution of settlement funds.

7. Under Rule 54(b), there being no just reason for delay, the Court directs entry of a final judgment as to the matters determined by this Final Approval Order and Judgment.

DATED:

____
HON. PATRICIA L. DODGE
UNITED STATES MAGISTRATE JUDGE