**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M.S., D.H., C.C. and Nicole Tokarski, individually and on behalf of all others similarly situated,	Case No. 4:22-cv-00187
Plaintiffs,	Hon. Charles Eskridge
v.	
MED-DATA, Inc.,	
Defendant.	

**PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND MEMORANDUM OF LAW IN SUPPORT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

I.   INTRODUCTION

On February 6, 2024, this Court preliminarily approved a proposed class action

settlement between   Plaintiffs M.S., D.H., C.C., and Nicole Tokarski, on behalf of

themselves and all other persons similarly situated (collectively, "Class Representatives"),

and Defendant Med-Data, Inc. ("Med-Data" or "Defendant") (and together with Class

Representatives, the "Settling Parties"), conditionally certified a Settlement Class, and

authorized the implementation of the Notice Plan described in the Motion for Preliminary

Approval of Class Action Settlement. Notice of the Settlement was disseminated, and it is

clear the Class overwhelmingly supports the settlement, with zero objections and six timely

opt-outs out of approximately 140,908 class members. Declaration of William B.

Federman in Support of Plaintiffs' Unopposed Mot. for Final Approval of Class Action

Settlement (hereinafter "Federman Decl."), attached hereto as Ex. 1, ¶ 11.

Class Representatives, by and through their undersigned counsel, respectfully

request this Court grant final approval of this Settlement so that the Settlement

Administrator may begin the process of distributing benefits to those members of the

Settlement Class who have submitted valid claims. Because the Settlement Class satisfies

all the requirements of Rule 23 and the proposed Settlement is fair, reasonable, and

adequate, the Court should finally certify the Settlement Class and grant final approval.

II.   FACTUAL AND PROCEDURAL BACKGROUND

In the interest of judicial efficiency, for factual and procedural background on this

case, Class Representatives refer this Court to and hereby incorporate Plaintiffs' Motion

for Preliminary Approval of Class Action Settlement and Plaintiffs' Brief in Support (ECF

No. 82) filed on November 16, 2023, and the accompanying Exhibits, including the proposed Settlement Agreement, filed in conjunction therewith (ECF No. 82-2). On February 6, 2024, after considering the terms of the Settlement Agreement in light of the issues presented in this case, the stage and complexity of the proceedings, the expense of further litigation, the range of possible discovery, the absence of any evidence of collusion between the Parties, and the experience of Class Counsel, and finding the Settlement Agreement to be preliminarily "fair, reasonable and adequate," this Court granted Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. ECF No. 88. Nothing has changed that would alter this Court's preliminary finding.

III.   THE TERMS OF THE SETTLEMENT

A.   The Settlement Class.

In its Preliminary Approval Order, the Court conditionally certified the following class for settlement purposes:

> All residents of the United States whose personal information was included in the data uploaded to GitHub.com by a Med-Data employee and announced by Med-Data in March 2021.

Order, ECF No. 88 (hereinafter "Prelim. Approval Order"), ¶¶ 3–4; *see also* Settlement Agreement, ECF No. 82-2 (hereinafter "SA"), ¶ III.1.

B.   Settlement Benefits.

The Settlement Agreement provides significant monetary relief. The Settlement creates a $7,000,000.00 non-reversionary common Settlement Fund in exchange for a release of claims against Defendant by Settlement Class Members. SA, ¶ IV. From the $7,000,000.00 Settlement Fund, all Settlement Class Members are eligible for the

following monetary benefits:

      1.   Tier One Claims.

Settlement Class Members were eligible to submit a claim for reimbursement of up to $5,000 for documented Out-of- Pocket Losses attributable to the Security Incident. *Id.* ¶ IV.1.a. Claims under Out-of-Pocket Losses could also include a claim for up to five (5) hours of time spent dealing with issues related to the Data Incident, compensated at $25 per hour. *Id*. ¶ IV.1.c.

      2.   Tier Two Claims.

In the alternative to filing a claim for Out-of-Pocket Losses and Time Spent, Settlement Class Members had the option to submit a claim for a cash payment of up to $500. *Id.* IV.2.

      3.   Automatic Health Data/Fraud Monitoring Services.

A significant benefit of the Settlement is that all Class Members will receive 36 months of health data/fraud monitoring services, including $1 million of identity theft insurance coverage, without needing to file a claim. *Id.* ¶ IV.3.

      4.   Business Practices Changes/Injunctive Relief.

In addition to providing monetary benefits, the Settlement requires Med-Data to implement certain specified business practice changes that substantially lessens the risk of similar harm to Settlement Class Members in the future. *Id.* ¶ IV.4. In general, these business practice changes, which Med-Data must maintain for at least two (2) years, include:

- Annual cybersecurity testing by a qualified cybersecurity firm and Board presentations by an internal security auditor;

- regular updates to internal security policies and procedures;

- robust monitoring and auditing for data security issues;

- encryption of PII/PHI and data access controls;

- annual data systems penetration testing and training;

- a monitored internal whistleblowing mechanism; and

- maintenance of a legally compliant data deletion policy.

Id.[1] Further, Med-Data has agreed to work with GitHub to ensure that no PHI/PII of class members associated with Med-Data remains accessible on that public platform. *Id*

C. Notice Effectively Reached Settlement Class Members.

In its Preliminary Approval Order, the Court appointed Postlethwaite & Netterville ("P&N" or "Settlement Administrator") as the Settlement Administrator. Prelim. Approval Order, ¶ 7. The Settlement Administrator, in accordance with the Court's Preliminary Approval Order, provided notice to the Class in the manner set forth below.

The Settlement Administrator sent Postcard Notice to 136,641 Settlement Class Members, using the most recent address in Med-Data's records or identified through address correction services. *See* Declaration of Elena MacFarland Regarding Status of Settlement Notice Program, attached hereto as Ex. 2 ("Admin Decl."), ¶ 8. P&N also executed supplemental mailing for 8,415 Settlement Class Members for whom an initial Postcard Notice was not deliverable but for whom P&N was able to obtain an alternative

---

[1] Specific details regarding the business practice changes are set forth In the Settlement Agreement, ¶ IV.4.

mailing address. *Id*. The Settlement Administrator created a publicly available website and toll-free hotline devoted to providing relevant information related to the case and settlement and assistance to Class Members. *Id*. ¶¶ 10, 12.

The Settlement Agreement and The Notice Plan approved by the Court contained a provision allowing for Class Counsel to request a second round of notices—a reminder notice—be sent to class members who had not submitted claims. *Id*. ¶ 9. At the request of Class Counsel, a reminder Postcard Notice was mailed to 121,030 Settlement Class Members who had not yet submitted a claim. *Id*. This reminder Notice was mailed on April 23, 2024, a month prior to the Claims Deadline of May 21, 2024. *Id*.

Through the initial direct Notice, including the supplemental mailing, and the reminder Notice, the Notice Program reached 86.92% of Settlement Class Members. *Id*. ¶ 14.

Prior to granting final approval, this Court must consider whether the members of the class received adequate notice of the settlement. Fed. R. Civ. P. 23(c)(2)(B); *accord Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Specifically, the court must find that the notice to the class was "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). "[T]he rule does not insist on actual notice to all class members in all cases." *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017) (quoting *Mullins v Direct Digital LLC*, 795 F.3d 654, 665 (7th Cir. 2015)). Although what constitutes the "best notice practicable" is case-specific, the Federal Judicial Center has noted that a notice campaign that reaches 70% of a class is often reasonable. Federal Judicial Center, *Judges' Class Action Notice & Claims Process Checklist & Plain*

5

Language Guide 3 (2010).[2]

D.   The Reaction of the Settlement Class Has Been Overwhelmingly Positive.

The Court-approved Notice Plan informed each Settlement Class Member of their right to request exclusion from the Settlement Class by providing written notice of such intent to the Settlement Administrator. *See* SA, ¶ VIII.3. The Notices also informed each Settlement Class Member of their right to object to the Settlement and the process to do so. The deadline to object or opt-out passed on April 26, 2024. There have been 6 Opt-Outs and zero Objections received. Admin Decl., ¶ 16.

The claims deadline ran May 21, 2024. *Id*. ¶15. As of July 5, 2024 the Settlement Administrator has received 4,565 non-duplicative claims from Settlement Class Members.[3] *Id.*

The Settlement Website, www.MedDataSettlement.com, was made publicly accessible on March 7, 2024. *Id*. ¶ 10. Visitors to the Settlement Website could access and download the Summary Notice, the Long Form Notice, the Claim Form, as well as case documents, such as the Class Action Complaint, the Settlement Agreement, the Preliminary Approval Order, the Motion for Attorneys' Fees, and other relevant documents. *Id*. Through the Settlement Website, Class Members could also submit claims electronically, submit address updates electronically, and find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the

---

[2] Available at: https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf.
[3] Plaintiffs will provide the Court with updated claims information prior to the Final Approval Hearing to be held on September 11, 2024.

Settlement Administrator. *Id* As of July 5, 2024, the Settlement Website has had 39,056 unique visitors. *Id*

P&N established a dedicated toll-free telephone number which is available twenty-four hours per day. *Id*. ¶ 12. Settlement Class Members can call and interact with an interactive voice response system ("IVR") that provides important settlement information and offers the ability to leave a voice message to address specific questions or requests. *Id*. The dedicated toll-free telephone number was provided in all Notices, as well as being listed in multiple locations on the Settlement Website. *Id.* The Settlement Website and dedicated toll-free telephone number will remain active through the close of the Settlement administration process. *Id.*

In accordance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b), CAFA Notice was mailed on December 20, 2023 to appropriate officials. *Id.* ¶ 5. The 90-day statutory notice period has expired and neither Class Counsel nor the Settlement Administrator has received any inquiries from any federal or state official in response to the CAFA notice. *Id*.

Thus, the Notice Plan has been executed in accordance with the Preliminary Approval Order in a manner that ensured the due process rights of Settlement Class Members were amply protected. *See* Fed. R. Civ. P. 23(c)(2)(B); *see also* Federman Decl., ¶ 12.

IV.   THE SETTLEMENT SHOULD BE FINALLY APPROVED

Plaintiffs respectfully request that the Court grant final certification of the Settlement Class because: (1) the Settlement Class satisfies the requirements of Rule 23(a)

and (b)(3); (2) the Court-approved notice program satisfies both Rule 23 and due process requirements and has been fully implemented pursuant to the Court's requirements; and (3) the Settlement is fair, reasonable, and adequate.

A.   The Settlement is Fair, Reasonable, and Adequate

A Court may approve a class action settlement when it is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). To make that determination, Rule 23(e)(2) provides the following factors:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
>> (i) the costs, risks, and delay of trial and appeal;
>>
>> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>>
>> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>>
>> (iv) any agreement required to be identified under Rule 23(e)(3); and
>>
>> (D) the proposal treats class members equitably relative to each other.

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

Additionally, in *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983), the Fifth Circuit laid out six (6) factors for courts to consider in determining the fairness, reasonableness, and adequacy of a proposed class settlement: "(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the

8

litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the

probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and

(6) the opinions of the class counsel, class representatives, and absent class members." *Id.*

at 172. "Because the Rule 23 and case-law factors overlap, courts in this circuit often

combine them in analyzing class settlements." *Odonnell v. Harris Cnty.*, No. H-16-1414,

2019 WL 4224040, at *8 (S.D. Tex. Sept. 5, 2019); *see, e.g.*, *Union Asset Mgmt. Holding

A.G. v. Dell, Inc.*, 669 F.3d 632, 639 (5th Cir. 2012) ("[D]istrict courts must determine

whether proposed class-action settlements are fair, adequate, and reasonable. To do this in

the Fifth Circuit, courts evaluate the six *Reed* factors."); *Newby v. Enron Corp.*, 394 F.3d

296, 308 (5th Cir. 2004) (affirming district court's grant of final approval where district

court "faithfully applied" the *Reed* factors).

The Court concluded these factors supported the finding that the Court would likely

approve the Settlement as fair, reasonable, and adequate such that issuance of notice to the

Settlement Class was justified. ECF No. 88. "Nothing has occurred that would alter the

Court's initial assessment that the Settlement is fair, reasonable, and adequate." *Spegele v.

USAA Life Ins. Co.*, No. 5:17-cv-967-OLG, 2021 WL 4935978, at *3 (W.D. Tex. Aug. 26,

2021). In fact, the overwhelmingly positive response of the Settlement Class Members

further underscores that the Settlement is, in fact, fair, reasonable, and adequate. *See id.* For

these reasons, Class Representatives now respectfully request that the Court find that the

Settlement is fair, reasonable, and adequate under both the Rule 23(e) factors and the Fifth

Circuit's *Reed* factors and enter an order granting final approval.

1. **Class Representatives and Class Counsel Have Adequately Represented the Class.**

Class Representatives and Class Counsel have vigorously pursued this litigation, satisfying the adequacy of representation factor under Rule 23(e)(2)(A). First, the Class Representatives have shown their dedication to representing the Class by actively participating in the litigation, providing allegations for the Complaint, gathering information for discovery, sitting for their depositions, and working with Class Counsel to advance the litigation on behalf of themselves and all members of the proposed Settlement Class. *See*, ECF No. 91-1, ¶ 36.

Second, Class Counsel are experienced in the successful litigation and settlement of class action litigation, including data privacy cases. *See,* ECF No. 82-1, ¶¶ 9-11. As a result of Class Counsel's efforts, the proposed Settlement Agreement provides significant monetary relief to the Settlement Class. *See generally*, ECF No. 82-2. Since the Preliminary Approval Order, Class Counsel have remained hard at work overseeing the notice program and claims process and will continue to do so until the Settlement is fully implemented. *See* ECF No. 91-1, ¶ 21.

This factor supports final approval.

2. **The Settlement was the Result of Arms-length Negotiations Without Fraud or Collusion.**

The proposed Settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of two neutral mediators, culminating in the execution of the Agreement. Federman Decl., ¶ 13. The arm's length nature of the negotiations amongst experienced counsel supports a finding that the Settlement is fair,

reasonable, and adequate. *See* Comment to December 2018 Amendment to Fed. R. Civ. P. 23(e) ("The involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."); *see also Welsh v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018) ("The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.").

Nothing has changed to alter the Court's preliminary determination that there was no "evidence of collusion between the Parties" in reaching the Settlement. *See* ECF 88, p. 1. Thus, this factor supports final approval.

3. The Settlement is Favorable Given the Duration, Complexity and Expense of The Litigation and The Relief Sought.

The Parties devoted significant time and resources to litigating this case over the course of two years. Federman Decl., ¶ 5. The Parties conducted multiple depositions, including those of each Representative Plaintiff and corporate representatives, briefed motions to dismiss in each case, served multiple sets of discovery, with Med-Data producing over 26,000 documents, and briefed motions for class certification in each case. *Id.* ¶¶ 5–6. Under these circumstances, there is "no doubt" that Class Representatives and their counsel were "able to form an adequate appreciation of the merits of the case before negotiating." *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *19–20 (N.D. Tex. Nov. 8, 2005) (cleaned up); *Matson v. NIBCO Inc.*, 2021 WL 4895915, at *10 (W.D. Tex. Oct. 20, 2021) (noting the central question is "whether the parties have obtained sufficient

information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.").

Continued litigation would have required additional time and expense, and would have been accompanied by the risk of adverse rulings on class certification, summary judgment, and trial, leaving class members with no recovery. *See Hashemi v. Bosley, Inc.*, 2022 WL 2155117, at *7 (C.D. Cal. Feb. 22, 2022) (recognizing the risks of proving causation and injury in data breach cases, "compounded by the fact that data breach class actions are a relatively new" and "damages methodologies in data breach cases are largely untested and have yet to be presented to a jury"); *Kostka v. Dickey's Barbecue Restaurants*, 2022 WL 16821685, at *11 (Oct. 14, 2022) ("[I]n the Fifth Circuit, there is little case law on the subject of data breaches. Moreover, the out-of-circuit authority is not universally favorable to the proposed claims."), *adopted by* 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022).

In light of these risks, the Settlement, which secures immediate and significant relief for class members, is an outstanding result and this factor supports final approval. The litigation has lasted for more than two years and, should litigation continue, the amount of time it would take to recover on behalf of the class "would measure in [additional] years rather than months were the Court to disapprove the proposed settlement." *Melby v. Am.'s MHT, Inc.*, 2018 WL 10399004, at *8 (N.D. Tex. June 22, 2018); *see Schwartz*, 2005 WL 3148350, at *19 (weighing a potential "delay in the receipt of any relief" in favor of approving a proposed settlement).

12

Moreover, when evaluating a proposed class action settlement, "the Court must determine "whether the range of possible recovery or the benefit of the settlement to plaintiffs outweighs the risks of proceeding through litigation." *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 290–91 (W.D. Tex. 2007). This Settlement guarantees Settlement Class Members real relief for harms and protections from potential future fall-out from the Data Breach. This Settlement provides class members with a $7 million recovery, access to fraud monitoring services, *and* concrete changes to Med-Data's cybersecurity practices. SA, ¶ IV. The value achieved through the Settlement is guaranteed, where chances of prevailing on the merits remain uncertain. Through the Settlement, Settlement Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

4.   **The Views of Class Counsel, Class Representatives, and the Settlement Class Support Final Approval .**

All Class Representatives and Class Counsel firmly believe that this Settlement is fair, reasonable, and adequate, and in the best interests of Settlement Class Members. Federman Decl., ¶ 19. "The endorsement of class counsel is entitled to deference, especially in light of class counsels' significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims." *DeHoyos*, 240 F.R.D. at 292; *see Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 346 (N.D. Tex. 2011) ("As class counsel tends to be the most familiar with the intricacies of a class action lawsuit and settlement, 'the trial court is entitled to rely upon the judgment of experienced counsel for the parties.'").

Further, the overwhelmingly positive reaction of the Settlement Class also supports

final approval. The deadline to object or opt-out passed on April 26, 2024 and to date there

have been no Objections and only 6 Opt-outs received. Admin Decl., ¶ 16. Thus, the

favorable reception by the class constitutes strong evidence of the fairness of the Settlement

and supports approval. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227,

at *5 (N.D. Tex. Apr. 25, 2018) ("Receipt of few or no objections can be viewed as

indicative of the adequacy of the settlement.") (citing *In re Enron Corp. Sec., Derivative

& "ERISA" Litig.*, 228 F.R.D. 541, 567 (S.D. Tex. 2005)); *DeHoyos*, 240 F.R.D. at 293

("Given the wide reach of the notice versus the small number of objections, the Court finds

the opinions of class counsel, the class representatives, and the absent class members weigh

in favor of approving the settlement.") (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140,

1152 (8th Cir. 1999)).

     **5.   The Effectiveness of the Method of Distributing Relief to the Class
              Supports Approval of the Settlement.**

Subject to Court approval, the Settlement Fund will be distributed in the following

order: (1) Tier 3 benefits of 36 months of Medical Shield Premium service for all

Settlement Class Members who timely activate those services; (2) reimbursement for Tier

1 Out-of-Pocket Losses and Time Spent for valid and approved claims; (3) Notice and

Administration Costs; (4) Fee Award and Costs as awarded by the Court; (5) Service

Award payments approved by the Court; and (6) Tier 2 Alternative Cash Payments up to

$500 for Settlement Class Members who submit valid claims. *See* SA, ¶ IV. This allocation

plan is fair and reasonable because it prioritizes fraud prevention and reimbursing

claimants for lost time and out-of-pocket losses, ensuring that those most injured by the

14

Data Incident are compensated and that all Settlement Class Members can protect themselves from future fraud. Federman Decl., ¶ 15. The alternative cash payment recognizes Plaintiffs' allegation that PHI/PII exposed in the Data Breach has independent value. *Id*. at ¶ 17.

No residual funds will revert to Defendant. SA, ¶ IV.5. Settlement Class Members were able to select digital payments or to receive the payments by check. ECF No. 82-2 at 35. Given the simplified process for paying each Class Member and the fact that no funds will revert to Defendant, this factor weighs in favor of approval under Fed. R. Civ. P. 23(e)(2)(C)(ii).

> **6.   The Settlement Treats Settlement Class Members Equitably Relative to Each Other.**

The final factor for final approval of a settlement considers whether class members are treated equitably. *See* Fed. R. Civ. P. 23(e)(2)(D). Importantly here, all Settlement Class Members automatically received a code to enroll in 36 months of health data/fraud monitoring services. Federman Decl., ¶ 16. This service is available to Settlement Class Members whether or not they file a claim in the Settlement. Additionally, all Settlement Class Members were eligible to make a claim for the same amount of Out-of-Pocket expense and time spent reimbursements. *Id*. Moreover, all Settlement Class Members had the option to elect an alternative cash payment which is calculated as a pro rata share of the Net Settlement Fund. *Id*. Thus, the Settlement treats Settlement Class Members equitably relative to each other, satisfying Rule 23(e)(2)(D). *See* Fed. R. Civ. P. 23(e)(2)(D).

*   *   *

Given the litigation risks involved and the complexity of the underlying issues, the $7,000,000.00 recovery is a significant and meaningful result, designed to meet the types of repercussions sustained by Settlement Class Members following a data breach. Accordingly, the Rule 23(e) and Fifth Circuit Reed factors support a finding that the Settlement is fair, reasonable, and adequate, and therefore that it should be finally approved.

B.   Certification of the Settlement Class Remains Appropriate.

The Court previously concluded that it was appropriate to provisionally certify the Settlement Class for settlement purposes only. *See* ECF No. 88, ¶ 3. Since preliminary approval, nothing has changed that should cause call into question the Court's prior conclusions regarding class certification.

1.   The Requirements of Rule 23(a) Remain Satisfied.

The Settlement Class is numerous—over 140,000 members received direct notice of the Settlement. Federman Decl., ¶ 10.

There are significant questions of law and fact common to all Settlement Class members that will "generate common answers" that are "apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted). All Settlement Class Members' claims arise from the same Data Breach and turn on whether Med-Data had a duty to protect their PHI/PII. ECF No. 82, p. 12.

Class Representatives' claims are typical of Settlement Class Members' claims because they arise from the same course of alleged conduct, are premised on the same legal

16

theory, and allege the same injuries resulting from the Data Breach. *Id*., p. 13.

Finally, Class Representatives adequately performed their duties in representing the Settlement Class and have no conflicts of interest with other Settlement Class Members. Class Representatives and their counsel have, and continue to, vigorously prosecute this case on behalf of the Settlement Class. Further, Co-Lead Class Counsel are highly experienced in the successful litigation and settlement of class action litigation, including data privacy cases, have zealously prosecuted this matter, and are well qualified to represent the Settlement Class. Federman Decl., ¶ 19; *see also* ECF No. 82-1, ¶¶ 9–11.

2. The Requirements of Rule 23(b)(3) Remain Satisfied.

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). In its Preliminary Approval Order, the Court found that the Settlement Class met each of Rule 23(b)(3)'s requirements of predominance and superiority. ECF No. 88, pp. 2–3 ("[T]he Settlement Class is ascertainable and so numerous that joinder would be impracticable, the action presents common issues of law and fact that predominate over any individual questions.").

Common issues related to the Data Breach continue to dominate over any individual issues. Additionally, class-wide resolution is superior, because it is the only practical means through which the Settlement Class Members may obtain significant and immediate relief.

Therefore, because the proposed Class satisfies the requirements for class certification, the Court should certify the Settlement Class for purposes of judgment on the Settlement.

C. **The Court Should Confirm Its Earlier Appointment of Class Counsel and Settlement Class Representatives.**

The Court appointed Beth E. Terrell and Ryan Tack-Hooper of Terrell Marshall Law Group, Jean Martin of Morgan & Morgan, Maureen Brady of McShane & Brady, William B. Federman of Federman & Sherwood, and John Heenan of Heenan & Cook as Class Counsel pursuant to Rule 23(g)(3) to act on behalf of the Settlement Class pending final approval of the Settlement. Prelim. Approval Order, ¶ 6. Upon the Court's certification of the Settlement Class for purposes of entry of judgment on the Settlement, Class Representatives request that these counsel be appointed Class Counsel under Rule 23(g)(1).

The Court likewise preliminarily appointed Plaintiffs M.S., D.H., Nicole Tokarski, and C.C. as Settlement Class Representatives. *Id*. Because Plaintiffs have diligently and successfully fulfilled their responsibilities as the representatives of the Settlement Class, the Court should finally appoint them as Settlement Class Representatives.

V.   CONCLUSION

For the foregoing reasons, Class Representatives respectfully request that the Court enter an Order (1) finally certifying the Settlement Class for settlement purposes; (2) granting final approval of the Settlement; (3) finding that Notice has been conducted in accordance with the Court-approved notice plan and due process; (4) dismissing with prejudice Plaintiffs' and Settlement Class Members' claims against Defendant; and (5) ordering the Settlement Class Members be bound by the releases set forth in the Settlement

Agreement.

RESPECTFULLY SUBMITTED AND DATED this 5th day of July, 2024.

FEDERMAN & SHERWOOD

By: /s/ *William B. Federman*
William B. Federman, TX Bar No. 00794935
Email: wbf@federmanlaw.com
10205 N. Pennsylvania Ave.
Oklahoma City, Oklahoma 73120
Telephone: (405) 235-1560

Maureen Brady, *Admitted Pro Hac Vice*
Email: mbrady@mcshanebradylaw.com
MCSHANE & BRADY LLC
1656 Washington St., Ste. 120
Kansas City, Missouri 64108
Telephone: (816) 888-8010

Beth E. Terrell
Email: bterrell@terrellmarshall.com
Ryan Tack-Hooper
Email: rtack-hooper@terrellmarshall.com
TERRELL MARSHALL
LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603

Jean S. Martin
Email: jeanmartin@forthepeople.com
MORGAN & MORGAN COMPLEX
LITIGATION GROUP
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 559-4908

19

John Heenan
Email: john@lawmontana.com
HEENAN & COOK
1631 Zimmerman Trail, Suite 1
Billings, Montana 59102
Telephone: (406) 839-9081

Attorneys for Plaintiffs

CERTIFICATION OF WORD COUNT

I hereby certify that this document complies with Rule 18 of this Court's Procedures, being 4,594 words (under the Court's limit of 5,000 words), exclusive of case caption, tables, signatures, and certificates.

/s/ William B. Federman
William B. Federman

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2024, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of the filing to all counsel of record.

/s/ William B. Federman
William B. Federman

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M.S. and D.H., individually and on behalf of all others similarly situated,	Case No. 4:22-cv-00187
Plaintiffs,	Hon. Charles Eskridge
v.	
MEDDATA, Inc.,	
Defendant.	

**DECLARATION OF WILLIAM B. FEDERMAN
IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, William B. Federman, declare as follows:

1.   I am the founding member of Federman & Sherwood. Federman & Sherwood has extensive experience in complex class action litigation, including data breach class actions. Federman & Sherwood has successfully prosecuted and settled numerous data breach class actions, consumer class actions, and other complex litigation throughout the country, and the firm has a strong reputation in this field.

2.   I make this declaration based upon my personal knowledge.

3.   I am admitted to practice before this Court and designated as one of the Class Counsel in this matter.

4.   The Parties attended several in person and hybrid (some in person and some via Zoom) mediations. The first mediation was conducted in September 2022 with mediator Louis Peterson of Hillis, Clark, Martin, and Peterson. Although some progress was made, the Parties did not resolve the case. Accordingly, the Parties proceeded with litigation, including briefing motions for class certification, conducting additional

Exhibit 1 – Page 1

investigations, and consulting with the Plaintiffs and witnesses while also continuing discussions about potential resolution.

5.   The Parties have devoted significant time and resources to litigating this case for two years. The Parties engaged in extensive discovery that included multiple sets of written discovery, Med-Data's production of over 26,000 pages of documents and numerous spreadsheets, production of the Plaintiffs' documents, Rule 30(b)(6) depositions of Med-Data and Shawnee Mission Medical Center, and Plaintiffs' depositions. Plaintiffs also subpoenaed and obtained discovery from Med-Data's cybersecurity consultant, Crowe LLP, and interviewed and obtained a declaration from Jelle Ursem, the information security researcher who discovered the exposed PHI and PII on GitHub.

6.   Plaintiffs successfully opposed Med-Data's motions to dismiss for lack of standing in this case and the *Tokarski* and *C.C.* cases. Plaintiffs in this case and in *Tokarski* moved for class certification in February 2023, and Med-Data opposed in March 2023. Plaintiffs' motions were supported by a report from Gary Olsen, an expert in valuing intangible assets in several industries, including healthcare. Med-Data filed an expert report and motions to exclude Mr. Olsen's testimony with its oppositions.

7.   On March 28, 2023, the Parties attended a second mediation before mediator Robert A. Meyer of JAMS in Los Angeles, California, and reached agreement on material terms of the proposed settlement.

8.   The proposed settlement resolves the claims in this case and four additional cases: (1) *Tokarski v. Med-Data, Inc.*, No. 2:21-cv-00631-TL (W.D. Wash.); (2) *C.C. v. Shawnee Mission Medical Center*, Case No. 21CV01724, (Johnson County, Kansas); (3) *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, (Johnson County, Kansas); (4) *D.H. v. Shawnee Mission Medical Center*, Case No. 2116-CV09159, (Jackson County, Missouri) (collectively, the "Actions"). Each of the Actions brought claims related to the posting the

Exhibit 1 – Page 2

PHI and PII of approximately 147,408 patients by a Med-Data employee to Github.com (the "Data Incident")

9.   Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement on November 16, 2023. The Court granted preliminary approval of the Settlement on February 6, 2024, after preliminarily finding that the Settlement was fair, adequate, and reasonable.

10.   In accordance with the Court's Preliminary Approval Order, the Settlement Administrator disseminated direct notice of the Settlement to more than 140,000 Settlement Class Members. At the request of Class Counsel, a reminder Postcard Notice was mailed to 121,030 Settlement Class Members who had not yet submitted a claim. This reminder Notice was mailed on April 23, 2024, a month prior to the Claims Deadline of May 21, 2024.

11.   After notice of the Settlement was disseminated, there were zero objections and six timely opt-outs of the approximately 140,908 Class Members.

12.   The Notice Plan was executed in accordance with the Preliminary Approval Order in a manner that ensured the due process rights of Settlement Class Members were amply protected.

13.   The proposed Settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of two neutral mediators, culminating in the execution of the Settlement Agreement.

14.   Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to incur further risk. Also, the cost of trial and any appeals would be significant and would delay the resolution of this litigation without the guarantee of any relief.

15.   The plan for allocating the Settlement Fund prioritizes fraud prevention and reimbursing claimants for lost time and out-of-pocket losses, ensuring that those most

Exhibit 1 – Page 3

injured by the Data Incident are compensated and that all Settlement Class Members have the ability to protect themselves from future fraud.

16.   In the Settlement Notice, all Settlement Class Members received a code to enroll in 36 months of health data/fraud monitoring services. Additionally, Settlement Class Members were eligible to make a claim for Out-of-Pocket expenses and time spent reimbursements, capped at $5,000, or had the option to elect an alternative cash payment which will be calculated as a *pro rata* share of the Net Settlement Fund.

17.   As part of the Settlement Fund distribution, the alternative cash payment recognizes Plaintiffs' allegation that PHI/PII exposed in the Data Breach has independent value.

18.   Common issues related to the Data Breach continue to dominate over any individual issues. Class-wide resolution of this case is superior because it is the only practical means through which the Settlement Class Members may obtain significant and immediate relief.

19.   Based on our experience litigating and resolving data breach and other data privacy cases, the discovery conducted in this case, and considering the risks and cost of continued litigation, my co-counsel and I believe this settlement is fair, reasonable and adequate as well as in the best interests of the proposed Settlement Class. The named plaintiffs support the settlement as well.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 5th day of July, 2024 at Oklahoma City, Oklahoma.

By: /s/: *William B. Federman*
       William B. Federman

Exhibit 1 – Page 4

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M.S., D.H, C.C. and Nicole Tokarski, individually and on behalf of all others similarly situated,	Case No. 4:22-cv-00187
Plaintiffs,	Hon. Judge Charles Eskridge
v.	
MED-DATA, Inc.	
Defendant.	

**DECLARATION OF ELENA MACFARLAND REGARDING THE STATUS OF
SETTLEMENT NOTICE PROGRAM**

I, Elena MacFarland, hereby declare and state as follows:

1.   I am a Project Manager for the Court-appointed Settlement Administrator, Postlethwaite & Netterville, APAC ("P&N")[1], a full-service administration firm providing legal administration services, including the design, development, and implementation of unbiased complex legal notification programs. As the Project Manager, I am personally familiar with the facts set forth in this Declaration.

2.   I am over the age of 21. Except as otherwise noted, the matters set forth in this Declaration are based upon my personal knowledge as well as the information provided by other experienced employees working under my supervision.

BACKGROUND

3.   ***Preliminary Approval.*** On February 6, 2024, this Court entered its order preliminarily approving the Settlement Agreement and appointing P&N as the Settlement Administrator. After the Court's preliminary approval of the Settlement, P&N began to implement and coordinate the Notice Program ("Notice Program").

4.   ***Purpose of this Declaration.*** I submit this Declaration to evidence and establish P&N's compliance with the terms of the Preliminary Approval Order and detail P&N's execution of its role as the Settlement Administrator.

CLASS ACTION FAIRNESS ACT NOTICE ("CAFA")

5.   On December 20, 2023, pursuant to 28 U.S.C. §1715(b), P&N, on behalf of the Defendant, caused notice of this settlement and related materials to be sent to the Attorneys General of all U.S. states, territories, District of Columbia, as well as the Attorney General of the United States. As of July 5, 2024, P&N has not received any objection from any Attorney General. A copy of the CAFA Notice is attached hereto as **Exhibit A.**

---

[1] As of May 21, 2023, the directors & employees of Postlethwaite & Netterville, APAC ("P&N") joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named as an entity, EAG Gulf Coast, LLC employees will service work contracted with P&N.

NOTICE PROGRAM EXECUTION

6.   *Notice Database.* P&N maintains a database of 140,365 Settlement Class Members which was used to effectuate the notice campaign outlined in the Settlement Agreement. P&N received the class data on February 14, 2024, in one Excel file with two (2) lists containing the names and mailing addresses for a total of 143,119 records. After consolidating and deduplicating the data, P&N determined that a total of 140,365 unique records exist in the class data.

7.   *Mail Notice.* P&N coordinated and caused the Summary Notice ("Postcard Notice") to be mailed via First Class Mail to Settlement Class Members for whom a mailing address was available from the class data. The Postcard Notice included (a) the web address to the case website for access to additional information, (b) rights and options as a Settlement Class Member and the dates by which to act on those options, and (c) the date of the Final Approval Hearing. The Notice mailing was substantially completed on March 7, 2024, in accordance with the Preliminary Approval Order. A true and correct copy of the Postcard Notice is attached hereto as **Exhibit B**.

8.   *Mailing Address Validation.* P&N performed skip trace search using LexisNexis third-party database to obtain current mailing information, where available, for records where address data was insufficient to attempt the Postcard Notice mailing. Prior to mailing, all mailing addresses were checked against the National Change of Address (NCOA) database maintained by the United States Postal Service ("USPS"). In addition, the addresses were certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip codes and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. P&N caused the mailing of the Postcard Notice by U.S. First Class Mail to a total of 136,641 Settlement Class Members. P&N also executed supplemental mailing for 8,415 Settlement Class Members for which an initial Postcard Notice was not deliverable but for which P&N was able to obtain an alternative mailing address through (1) forwarded address provided by the USPS, (2) skip trace searches using LexisNexis third-party vendor database, or (3) requests received directly from Settlement Class Members. Mail notice delivery statistics are detailed in paragraph 14 below.

3

9.   ***Reminder Notice.*** The Notice Plan provided, and the Settlement Agreement directed, that the Settlement Administrator shall have the option, if requested by Class Counsel, to mail reminder Postcard Notices to Class Members who have not yet submitted a claim. On April 23, 2024, P&N caused a reminder Postcard Notice to be mailed to 121,030 Settlement Class Members who had not submitted a claim and who had a deliverable mailing address as of the date of the reminder Notice.

10.   ***Settlement Website.*** On March 7, 2024, P&N published the Settlement Website, www.MedDataSettlement.com. Visitors to the Settlement Website can download the Summary Notice, the Long Form Notice, the Claim Form, as well as Court Documents, such as the Class Action Complaint, the Settlement Agreement, Orders of the Court, and other relevant documents. A true and correct copy of the Long Form Notice is attached hereto as **Exhibit C**, with a copy of the Claim Form. Visitors are also able to submit claims electronically, submit address updates electronically, and find answers to frequently asked questions (FAQs), important dates and deadlines, and contact information for the Settlement Administrator. As of July 5, 2024, the Settlement Website has received 39,056 unique visitors and 458,894 page views.

11.   ***Settlement Post Office Box.*** P&N maintains the following Post Office Box ("P.O. Box") for the Settlement Program:

<div align="center">

Med-Data Settlement Administrator

P.O. Box 341

Baton Rouge, LA 70821

</div>

This P.O. Box serves as a location for USPS to return undeliverable program mail to P&N and for Settlement Class Members to submit claims, exclusion requests, and other settlement-related correspondence. The P.O. Box address appears prominently in all Notices and in multiple locations on the Settlement website. P&N monitors the P.O. Box daily and uses a dedicated mail intake team to process each item received.

12.   ***Dedicated Toll-Free Number.*** P&N established a toll-free telephone number, 1-844-930-2009 ("Toll-Free Number"), which is available twenty-four hours per day. Settlement

Class Members can call and interact with an interactive voice response system ("IVR") that provides important settlement information and offers the ability to leave a voice message to address specific questions or requests. The Toll-Free Number appears in all Notices, as well as in multiple locations on the Settlement Website. The Toll-Free Number will remain active through the close of this Settlement Program.

13.   ***Email   Support.***   P&N   established   an   Email   address, info@MedDataSettlement.com, to provide an additional option for Settlement Class Members to address specific questions or requests to the Settlement Administrator for support.

NOTICE PROGRAM REACH

14.   ***Notice Reach Results.*** Through the Notice procedures outlined above, P&N attempted to send direct notice to 136,641 Settlement Class Members. As of July 5, 2024, the Notice Program reached a total of 122,004 (86.92%) of Settlement Class Members[2]. Table 1 below provides an overview of dissemination results and reach statistics for the Notice Program.

---

[2] A Settlement Class Member is considered "reached" by direct Notice if a Postcard Notice mailed to the Settlement Class Member has not been returned by the USPS as undeliverable.

Table 1: Direct Notice Program Dissemination & Reach		
Description	**Volume of Class Members**	**Percentage of Class Members**
Class Members	140,365	100.0%
Initial Notice Mailing		
(+) Total Notices Mailed	136,641	97.35%
(-) Total Notices Returned as Undeliverable	21,933	15.63%
Supplemental Notice Mailing		
(+) Total Unique Notices Re-Mailed	8,415	6.00%
(-) Total Undeliverable (Re-Mailed) Notices	2,019	1.44%
Reminder Notice Mailing		
(+) Total Reminder Notices Mailed	121,030	86.23%
(-) Total Reminder Notices Returned as Undeliverable	7,404	5.27%
Direct Notice Program Reach		
(+) Received Only Initial/Supplemental Notice	8,378	5.97%
(+) Received Only Reminder Notice	900	0.64%
(+) Received Both Initial/Supplemental and Reminder Notice	112,726	80.31%
(=) Received Direct Notice	**122,004**	**86.92%**

CLAIM ACTIVITY

15.   ***Claim Intake and Processing.*** The online claim submission feature was available on the Settlement Website beginning March 7, 2024. As of July 5, 2024, P&N has received a total of 4,838 claim submissions, of which 4,565 claims have been determined to be non-duplicative and from Settlement Class Members. Table 2 below provides summary statistics of claim submissions received. P&N will continue to intake and analyze claims submitted to the Settlement P.O. Box, postmarked by the claims filing deadline of May 21, 2024.

Table 2: Claims Statistics	
Description	**Volume (#)**
Total Claims Received	**4,838**
(-) Duplicate Claims Identified	47
(-) Invalid Claims – Not a Class Member	216
(-) Invalid Claims – Late	10
(=) Net Claims Received	**4,565**

EXCLUSIONS AND OBJECTIONS

16.   ***Exclusions (Opt-Outs) Received.*** The deadline for Settlement Class Members to request to be excluded from the Settlement was April 26, 2024. P&N has received six (6) exclusion requests from Settlement Class Members as of July 5, 2024. A list of individuals who have timely requested exclusion from the Settlement is attached hereto as **Exhibit D**.

17.   ***Settlement Objections.*** The Settlement Agreement directs that objections be filed with the Court and also mailed to the Settlement Administrator by April 26, 2024. As of July 5, 2024, P&N has not received any objections from Settlement Class Members.

CERTIFICATION

I, Elena MacFarland, declare under the penalty of perjury that the foregoing is true and correct. Executed on this 5th day of July, 2024, in Baton Rouge, Louisiana.

_____
Elena MacFarland

Exhibit A

CAFA Notice

![P&N Postlethwaite & Netterville logo]

December 18, 2023

By Certified Mail

Federal and State Officials
as listed in Attachment 1

Re: NOTICE UNDER THE CLASS ACTION FAIRNESS ACT OF 2005, 28 U.S.C. § 1715(b),
M.S., D.H., C.C. and Nicole Tokarski v. Med-Data, Inc., Case No. 4:22-cv-00187

Dear Sir or Madam:

I send this letter and the enclosed disc to you on behalf of the Parties to the action referenced above (the "Parties") regarding the Motion for Preliminary Approval of Class Action Settlement filed on November 16, 2023. This communication constitutes the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA").

The proposed Settlement resolves the Class Action lawsuit brought by M.S., D.H., C.C. and Nicole Tokarski against Med-Data, Inc. a/k/a Med-Data, LLC ("Med-Data" or "Defendant"). The lawsuit involves allegations that Med-Data failed to adequately protect patient data it received from healthcare providers and failed to timely notify patients whose information was compromised when a Med- Data employee uploaded files containing patients' personally identifying information and personal health information to the public-facing portion of GitHub between December 2018 and September 2019 (the "Data Incident"). Plaintiffs, on behalf of themselves and all others similarly situated, allege negligence, negligence *per se*, breach of third-party beneficiary contract, breach of implied contract, unjust enrichment, negligent training and supervision, invasion of privacy, breach of fiduciary duty of confidentiality, violation of Washington Consumer Protection Act, RCW 19.86, *et seq.*, and violations of Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010 *et seq*. Defendant denies all allegations of wrongdoing and any liability.

The Settlement Agreement, if approved, will establish a nationwide settlement class which includes all residents of the United States whose personal information was posted on GitHub.com by a Med-Data employee, as announced by Med-Data in March 2021.

In accordance with 28 U.S.C. § 1715(b), the enclosed disc includes:
a. Exhibit 1: A copy of the Class Action Complaint filed on August 9, 2021;
b. Exhibit 2: A copy of the First Amended Class Action Complaint filed on August 22, 2023;
c. Exhibit 3: A copy of the Settlement Agreement filed on November 16, 2023, including the Class Notice Documents as Exhibits A-1 – A-2B;
d. Exhibit 4: A copy of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement filed on November 16, 2023;

At the time of this notice, a comprehensive list of class members by state and their estimated proportionate share of claims is being compiled. This list may be provided upon request to the Settlement Administrator once

P&N

Postlethwaite & Netterville

8550 United Plaza Blvd., Ste. 1001   –   Baton Rouge, LA 70809
225-922-4600 Phone   –   225-922-4611 Fax   –   **pncpa.com**

the information is available. To request a copy of the full list of class members by state, please email elena.macfarland@eisneramper.com.

The proposed Settlement provides for a fund totaling $7,000,000, which will be used to provide settlement awards to Settlement Class Members. All Settlement Class Members will be eligible for 36 months of Medical Shield Premium fraud monitoring services. Settlement Class Members may submit a claim for up to a total of $5,000 for reimbursement of out-of-pocket losses and lost time, or an alternative cash payment of up to $500. The Settlement also provides for non-monetary relief that requires Med-Data to implement and maintain several changes to its business and cybersecurity practices, including: (1) annual cybersecurity testing and training on data privacy; (2) appropriate cybersecurity spending and regular updates to internal security policies and procedures; (3) robust monitoring and auditing for data security issues, including firewalls and up-to-date anti-malware programs on all services; (4) encryption of PII and HI data access controls; (5) annual systems penetration testing and training; (6) a monitored internal whistleblowing mechanism; and (7) maintenance of a legally-compliant data deletion policy.

No hearing on Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement has been scheduled before the Honorable Charles Eskridge of the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, Courtroom 9F. No other hearings have yet been scheduled.

There are no other agreements between Class Counsel and counsel for Defendant, there are no final judgments in this matter, and there are no written judicial opinions relating to the materials described under 28 U.S.C. §§ 1715(b)(3)-(6).

Thank you for your attention to this matter. If you have any question about this notice or the enclosed materials, please contact us.

Sincerely,

Elena MacFarland
Postlethwaite & Netterville[1], *Settlement Administrator*
M.S., et al. v. Med-Data, Inc.

cc by email:

Beth E. Terrell   Ralph H. Palumbo
Ryan Tack-Hooper   PALUMO LAW

---

[1] As of May 21, 2023, the Directors & employees of Postlethwaite & Netterville (P&N), APAC joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named as an entity, EAG Gulf Coast, LLC employees will service work contracted with P&N.

8550 United Plaza Blvd., Ste. 1001   –   Baton Rouge, LA 70809
225-922-4600 Phone   –   225-922-4611 Fax   –   **pncpa.com**

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103
Email: bterrell@terrellmarshall.com
Telephone: (206) 816-6603

Jean Martin
MORGAN & MORGAN COMPLEX LITIGATION
GROUP
201 N Franklin Street, 7th Floor
Tampa, FL 33602
Email: jeanmartin@forthepeople.com
Telephone: (813) 559-4908

Maureen Brady
MCSHANE & BRADY LLC
1656 Washington St., Suite 120
Kansas City, MO 64108
Email: mbrady@mcshanebradylaw.com
Telephone: (816) 888-8010

William B. Federman
A. Brooke Murphy
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120
Email: wbf@federmanlaw.com
Telephone: (405) 235-1560

John Heenan
HEENAN & COOK
1631 Zimmerman Trail, Suite 1
Billings, MT 59102
Email: john@lawmontana.com
Telephone: (406) 839-9081

*Attorneys for the Representative Plaintiffs
and the Plaintiff Class(es)*

398 Lark Sparrow Lane
P.O. Box 137
Walcott, CO 81655
Email: Ralph@lark-sparrow.com

Lynn M. Engel
ARETE LAW GROUP PLLC
1218 Third Avenue, Suite 200
Seattle, WA 98101
Email: lengel@aretelaw.com
Telephone: (206) 428-3260

Ethan Carlyle
WILSON ELSER MOSKOWITZ & DICKER LLP
909 Fannin Street, Suite 3300
Houston, TX 77010
Email: Ethan.Carlyle@wilsonelser.com
Telephone: (713) 353-2070

*Attorneys for Defendant
Med-Data, Inc*

CAFA Notice Service List							
M.S., D.H., C.C. and Nicole Tokarski v. Med-Data, Inc., Case No. 4:22-cv-00187							
Name1	Name2	Address1	Address2	Address3	City	State	Zip
Office of the Attorney General		1031 W. 4th Avenue, Suite 200			Anchorage	AK	99501-1994
Office of the Attorney General		501 Washington Avenue	PO Box 300152		Montgomery	AL	36104
Office of the Attorney General		323 Center Street, Suite 200			Little Rock	AR	72201-2610
Office of the Attorney General		PO Box 7			Pago Pago	AS	96799
Office of the Attorney General		2005 N Central Ave			Phoenix	AZ	85004-2926
Office of the Attorney General	CAFA Coordinator, Consumer Law Section	455 Golden Gate Avenue, Suite 11000			San Francisco	CA	94102
Office of the Attorney General		Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor		Denver	CO	80203
Office of the Attorney General		165 Capitol Avenue			Hartford	CT	06106
Office of the Attorney General		441 4th Street NW, Suite 1100S			Washington	DC	20001
United States Office of the Attorney General	US Department of Justice	950 Pennsylvania Ave, NW			Washington	DC	20530-0001
Office of the Attorney General		820 North French Street	6th Floor		Wilmington	DE	19801
Office of the Attorney General		The Capitol	PL-01		Tallahassee	FL	32399-1050
Office of the Attorney General		40 Capitol Square SW			Atlanta	GA	30334
Office of the Attorney General	Administrative Division	590 S. Marine Corps Dr., Suite 901			Tamuning	GU	96913
Department of the Attorney General		425 Queen Street			Honolulu	HI	96813
Office of the Attorney General		Hoover State Office Building	1305 East Walnut Street		Des Moines	IA	50319
Office of the Attorney General		954 West Jefferson Street, 2nd floor	PO Box 83720		Boise	ID	83720-0010
Office of the Attorney General		100 West Randolph Street			Chicago	IL	60601
Office of the Attorney General		Indiana Government Center South	302 West Washington Street, 5th Floor		Indianapolis	IN	46204
Office of the Attorney General		120 SW 10th Ave, 2nd Floor			Topeka	KS	66612-1597
Office of the Attorney General		700 Capitol Avenue, Suite 118			Frankfort	KY	40601-3449
Office of the Attorney General		PO Box 94005			Baton Rouge	LA	70804
Office of the Attorney General	ATTN: CAFA Coordinator/General Counsel's Office	One Ashburton Place			Boston	MA	02108
Office of the Attorney General		200 St. Paul Place			Baltimore	MD	21202
Office of the Attorney General		6 State House Station			Augusta	ME	04333
Office of the Attorney General		G. Mennen Williams Building	525 West Ottawa Street	PO Box 30212	Lansing	MI	48909
Office of the Attorney General		445 Minnesota Street, Suite 1400			St Paul	MN	55101-2131
Office of the Attorney General		Supreme Court Building	207 West High Street		Jefferson City	MO	65102
Office of the Attorney General		Administrative Building	PO Box 10007		Saipan	MP	96950
Office of the Attorney General		Walter Sillers Building	550 High Street, Suite 11		Jackson	MS	39201
Office of the Attorney General		Justice Building Third Floor	215 North Sanders		Helena	MT	59601
Office of the Attorney General	ATTN: Consumer Protection	114 West Edenton Street			Raleigh	NC	27603
Office of the Attorney General		State Capitol	600 East Boulevard Avenue, Dept. 125		Bismarck	ND	58505
Office of the Attorney General		2115 State Capitol	PO Box 98920		Lincoln	NE	68509
Office of the Attorney General		33 Capitol Street			Concord	NH	03301
Office of the Attorney General		RJ Hughes Justice Complex	25 Market Street	PO BOX 080	Trenton	NJ	08625-0080
Office of the Attorney General	ATTN: Farrah Diaz, Paralegal	201 3rd St NW, Suite 300			Albuquerque	NM	87102
Office of the Attorney General		Old Supreme Court Building	100 North Carson Street		Carson City	NV	89701
Office of the Attorney General		The Capitol			Albany	NY	12224-0341
Office of the Attorney General		State Office Tower	30 East Broad Street, 14th Floor		Columbus	OH	43215
Office of the Attorney General		313 NE 21st Street			Oklahoma City	OK	73105
Office of the Attorney General	Oregon Department of Justice	1162 Court Street NE			Salem	OR	97301-4096
Office of the Attorney General		16th Floor, Strawberry Square			Harrisburg	PA	17120
Office of the Attorney General		PO Box 9020192			San Juan	PR	00902-0192
Office of the Attorney General	ATTN: Lisa Pinsonneault/CAFA Notice	150 South Main Street			Providence	RI	02903
Office of the Attorney General		PO Box 11549			Columbia	SC	29211-1549
Office of the Attorney General		1302 E. Highway 14, Suite 1			Pierre	SD	57501-8501
Office of the Attorney General and Reporter		PO Box 20207			Nashville	TN	37202
Office of the Attorney General		Capitol Station	PO Box 12548		Austin	TX	78711-2548
Office of the Attorney General		Utah State Capitol Complex	350 North State Street, Suite 230		Salt Lake City	UT	84114-2320
Office of the Attorney General		202 North Ninth Street			Richmond	VA	23219
Office of the Attorney General		34-38 Kronprindsens Gade	Gers Building, 2nd Floor		St Thomas	VI	00802
Office of the Attorney General		109 State Street			Montpelier	VT	05609
Office of the Attorney General		1125 Washington Street SE	PO Box 40100		Olympia	WA	98504-0100
Office of the Attorney General	Wisconsin Department of Justice	PO Box 7857			Madison	WI	53707-7857
Office of the Attorney General		State Capitol	Building 1, Room E-26		Charleston	WV	25305
Office of the Attorney General		Kendrick Building	2320 Capital Avenue		Cheyenne	WY	82002

Exhibit B

Postcard Notice

If you received a Notice of Data Incident from Med-Data, Inc. or one of its Business Associates, received this Notice of Settlement, or if you believe you were affected when a Med-Data employee inadvertently uploaded files containing sensitive personal and health information to the public-facing portion of GitHub between December 2018 and September 2019 (the "Data Incident"), a proposed class action settlement may affect your rights.

This Notice was authorized by the United States District Court for the Southern District of Texas. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit against Med-Data. The lawsuit, *M.S. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, filed in the United States District Court for the Southern District of Texas, involves allegations that Med-Data failed to protect sensitive personal and health information it received from healthcare providers and failed to timely notify patients after learning their information was exposed. Med-Data denies these allegations.

Why am I being contacted? Records indicate that Med-Data, or its Business Associates sent you a Notice of Data Incident and/or that your sensitive personal or health information may have been exposed in the Data Incident.

Visit www.MedDataSettlement.com or call 1-844-930-2009 for more information.

Med-Data Settlement Administrator
P.O. Box 341
Baton Rouge, LA 70821

ELECTRONIC SERVICE REQUESTED

SETTLEMENT CLAIM ID: [ID]
[FIRST NAME] [LAST NAME]
[ADDRESS]
[ADDRESS]
[CITY] [STATE] [ZIP]

Postal Service: Do Not Mark or Cover Barcode

What does the settlement provide? The proposed settlement provides for a fund totaling $7,000,000, which will be used to provide settlement awards to Settlement Class Members. All Settlement Class Members will be eligible to 36 months of Medical Shield Premium fraud monitoring services. If you spent time on tasks related to the Data Incident or suffered out-of-pocket losses due to the Data Incident, you may submit a "Tier 1 Claim" for reimbursement of up to five hours of lost time and your documented out-of-pocket expenses. In the alternative, if you took any action at all in response to the Data Incident, even if *de minimis*, you may submit a claim for an alternative cash payment of up to $500 ("Tier 2 Claim"). The actual amount of the alternative cash payment will depend on the amounts remaining in the Settlement Fund after paying (1) the cost of fraud monitoring; (2) reimbursements for valid "Tier 1" claims; (3) notice and settlement administration costs; and (4) court-approved attorneys' fees of $2,333,333.33, costs not to exceed $200,000, and service awards of up to $5,000 to the four Named Plaintiffs. You can learn more about the settlement and your options by visiting www.MedDataSettlement.com.

Your rights and options:

Submit a Claim Form. To receive a settlement award, you must submit a Claim Form to the Settlement Administrator. The Claim Form is available on the Settlement Website at www.MedDataSettlement.com, or upon request to the Settlement Administrator, and can be submitted electronically on the Settlement Website or by mail.

Opt out. You may exclude yourself from the Settlement and keep your right to sue Defendants on your own by sending a written request for exclusion to the Settlement Administrator postmarked by **April 26, 2024**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue Defendants regarding the settled claims. Visit the Settlement Website for more details.

Object. If you do not opt out, you have the right to object to the proposed settlement. Objections must be filed with the court, postmarked by **April 26, 2024** and provide the reasons for the objection, among other requirements. Visit the Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive any payment and will lose the right to sue Defendants about the Released Claims. You will be considered part of the Settlement Class, and you will be bound by the Court's decisions.

Attend the final approval hearing. The Court is scheduled to hold a hearing on **September 11, 2024** at **3:00 p.m. Central Time**, to consider whether to approve the settlement, Class Counsel's request for attorneys' fees and costs, and the service awards to the class representatives. You can appear at the hearing, which will be held at the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, Courtroom 9F, but you do not have to appear. If you wish, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Exhibit C

Long Form Notice

M.S. v. Med-Data, Inc.
United States District Court for the Southern District of Texas
Case No. 4:22-cv-00187

If you received a Notice of Data Incident from Med-Data, Inc. or one of its Business Associates, a Notice of Settlement from the Settlement Administrator, or if you believe you were affected when a Med-Data employee uploaded files containing sensitive personal and health information to the public-facing portion of GitHub between December 2018 and September 2019, you may be entitled to benefits from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against Med-Data. The lawsuit involves allegations that Med-Data failed to adequately protect patient data it received from healthcare providers and failed to timely notify patients whose information was compromised when a Med-Data employee uploaded files containing patients' personally identifying information and personal health information to the public-facing portion of GitHub between December 2018 and September 2019 (the "Data Incident"). Med-Data denies all allegations of wrongdoing and any liability.

- The parties have agreed to a proposed settlement on behalf of whose personally identifying information and/or Protected Health Information may have been exposed in the Data Incident.

- Med-Data has agreed to pay $7,000,000 into a fund that will be used to pay settlement awards to eligible persons who file claims, settlement administration expenses, any court-awarded service awards, and court-awarded attorneys' fees and costs.

- Court-appointed lawyers for the Settlement Class ("Class Counsel") will ask the Court for a payment of $2,333,333.33 from the fund as attorneys' fees, which is equal to one-third of the settlement fund. In addition, Class Counsel will ask the Court to reimburse them for out-of-pocket expenses they incurred in this case, which currently amount to approximately $200,000. Class Counsel will also request service awards of $5,000 to each of the four class representatives.

- Your legal rights are affected whether you act, or don't act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM BY MAY 21, 2024	This is the only way to receive a payment.
EXCLUDE YOURSELF BY APRIL 26, 2024	You will receive no benefits from the Settlement if you exclude yourself. You keep any rights to sue Med-Data separately about the same or similar legal claims.
OBJECT BY APRIL 26, 2024	You may file a written objection with the Court if you disagree with any portion of the Settlement. If you exclude yourself from the Settlement, the Court will not consider an objection from you.
ATTEND A HEARING ON SEPTEMBER 11, 2024 AT 3:00 p.m., Central Time	You may ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up your rights.

BASIC INFORMATION

1.   Why did I receive this notice?

Med-Data's records show that your sensitive personal and/or health information was compromised when a Med-Data employee inadvertently uploaded files containing sensitive personal and health information to the public-facing portion of GitHub between December 2018 and September 2019 (the "Data Incident"). You may have received a Notice of Data Incident from Med-Data or one of its Business Associates. The purpose of this Notice is to let you know that the parties have reached a proposed settlement in the class action lawsuit entitled *M.S. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, pending in the United States District Court for the Southern District of Texas. You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2.   What is this lawsuit about?

The Named Plaintiffs allege that Med-Data violated the Washington Consumer Protection Act, Missouri Merchandising Practices Act, and state common law by failing to protect sensitive personal and health information Med-Data received from healthcare providers or by failing to timely notify affected patients after learning their data was compromised in the Data Incident.

3.	What is a class action and who is involved?

In a class action lawsuit, one or more people called plaintiffs or "class representatives" sue on behalf of other people who have similar claims. The people together are a "class" or "class members." The party they sue (in this case Med-Data, Inc.) is called the defendant. If the lawsuit proceeds as a class action, it resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the class.

THE SETTLEMENT

4.	Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or Med-Data. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The class representatives and their attorneys think the settlement is best for the Settlement Class.

5.	How do I know if I am a part of the Settlement?

You are in the "Settlement Class" if your personal information was included in the data inadvertently uploaded to GitHub by a Med-Data employee.

The Settlement Class does not include any persons who validly request exclusion from the Settlement Class, as described under Question 11. A person who does not exclude themselves is a "Settlement Class Member."

If you have questions about whether you are a part of the Settlement Class, you may call 1-844-930-2009 or visit www.MedDataSettlement.com for more information.

THE SETTLEMENT BENEFITS

6.	What does the Settlement Agreement provide?

Med-Data has agreed to pay $7,000,000 to pay Settlement Class Members who submit valid claims, any court-approved attorneys' fees, litigation expenses, service awards, and notice and settlement administration expenses. Any amounts remaining in the settlement fund after all claims have been paid will be used to extend the term of Tier 3 Benefits as defined below. You will not receive any settlement payment unless you submit a Claim Form as described in Question 8.

Settlement Class Members may submit a claim for one of two payment options, are eligible for fraud monitoring without the need to file a claim. Med-Data also agreed to change their business and cybersecurity practices.

Tier 1 Claims

If you spent time on tasks related to the Data Incident or suffered Out-of-Pocket Losses due to the Data incident, you may submit a "Tier 1 Claim" for reimbursement of up to five hours of lost time at $25 per hour and your documented out-of-pocket expenses, up to a total of $5,000. Claims for out-of-pocket losses (other than lost time reimbursement) must include supporting documentation sufficient to verify the loss. Supporting documentation may include, for example, receipts, credit card statements, bank statements, invoices, or any other documentation tending to establish out of pocket loss that is fairly traceable to the Data Incident. You may mark out or redact any transactions that are not relevant to your claim before sending in the documentation.

Out-of-Pocket Losses may include any out-of-pocket expenses incurred as a result of the Data Incident, such as the following: (a) unreimbursed losses relating to fraud, medical or identity theft, (b) professional fees, including attorneys' fees, accountants' fees, and fees for credit repair services, (c) costs associated with freezing or unfreezing credit with any credit reporting agency, (d) credit monitoring costs, and (e)miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Lost time may include time spent on tasks such as (a) changing passwords on potentially impacted accounts; (b) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (c) contacting a medical provider or financial institution to discuss suspicious activity; (d) signing up for identity theft or fraud monitoring services; or (e) researching information about the Data Incident, its impact, or how to protect yourself from harm due to the Data Incident.

The above lists of reimbursable lost time and documented out-of-pocket losses are not meant to be exhaustive and are provided only as examples. You may make claims for any lost time and out of pocket expenses that you believe are reasonably related to the Data Incident or to mitigating the effects of the Data Incident.

Tier 2 Claims

In the alternative, you took any action at all in response to the Data Incident, even if *de minimis*, you may submit a "Tier 2 Claim" for an alternative cash payment of up to $500. The actual amount of the alternative cash payment will depend on the amounts remaining in the Settlement Fund after all Tier 1 Claims have been paid.

Tier 3 Benefits – Fraud Monitoring

Settlement Class Members are also eligible to access 36 months of Medical Shield Premium, which is a health data and fraud monitoring service with $1,000,000 in identity theft insurance coverage provided by Pango, without the need to file a claim. If the Settlement is approved and becomes final, the settlement administrator will send an activation code to each Settlement Class Member that can be redeemed on Pango's website.

Payment Priority

The Settlement Fund will be used to pay for the settlement in the following order: (1) Tier 3 benefits of 36 months of Medical Shield Premium; (2) reimbursement for valid "Tier 1" claims for Out-of-Pocket Losses and/or lost time; (3) notice and administration costs; (4) court-approved attorneys' fees and costs; (5) court approved service awards; and (6) Tier 2 claims for alternative cash payments.

Non-Monetary Relief

The Settlement also provides for non-monetary relief that requires Med-Data to implement and maintain several changes to its business and cybersecurity practices, including: (1) annual cybersecurity testing and training on data privacy; (2) appropriate cybersecurity spending and regular updates to internal security policies and procedures; (3) robust monitoring and auditing for data security issues, including firewalls and up-to-date anti-malware programs on all services; (4) encryption of PII and HI data access controls; (5) annual systems penetration testing and training; (6) a monitored internal whistleblowing mechanism; and (7) maintenance of a legally-compliant data deletion policy. In addition, Med-Data will retrieve any exposed class member data still in existence. A complete description of the Settlement's non-monetary relief is included in the Settlement Agreement.

7.	What are the tax implications of accepting a settlement payment?

The tax implications may vary based on your income, the amount you receive and other factors, so you should consult a tax professional to assess the specific tax implications of any payment you may receive. Class Counsel, Med-Data, and the Settlement Administrator cannot advise you with respect to your tax obligations.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8.	How do I make a claim?

To qualify for a settlement payment, you must submit a Claim Form by **May 21, 2024**. You may submit a Claim Form online by going to the Settlement Website at www.MedDataSettlement.com and following the instructions. You may also download a paper Claim Form on the Settlement Website or call the Settlement Administrator at 1-844-930-2009 to request a paper Claim Form, and submit the Claim Form by mail. Claim Forms sent by mail must be postmarked by **May 21, 2024** and mailed to:

Med-Data Settlement Administrator
P.O. Box 341
Baton Rouge, LA 70821

If you have questions about the claim submission process you may call the Settlement Administrator at 1-844-930-2009 or visit www.MedDataSettlement.com for more information.

9.	When will I get my payment?

The Court will hold a hearing on September 11, 2024, at 3 p.m. central time, to decide whether to approve the settlement, as described in Question 19. If no appeals are timely filed after the Court enters the Final Approval Order, then the Order and settlement will become final. Settlement payments will be sent to Settlement Class Members who submitted valid claims approximately 30 days from the Settlement's Effective Date (roughly 65 days after the Settlement is approved). The checks will only be valid for 120 days from the date of issuance, after which you will not be able to cash or deposit them. However, if an appeal is filed, payments will not be sent until after the appeal is finally resolved, which could take more than one year.

10.	What am I giving up to stay in the Settlement Class?

Unless you request to exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. If the Court approves the settlement and becomes final, you and other Settlement Class Members can't sue, continue to sue, or be part of any other lawsuit against the "Released Parties" regarding the Data Incident.

The Settlement Agreement (available at www.MedDataSettlement.com) describes the claims you are releasing and against whom you are releasing claims, so read it carefully. To summarize, the release includes claims against Med-Data or the healthcare entities through which Med-Data obtained the compromised data (the "Released Parties") that arise out of or relate to the Data Incident.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of this settlement or if you want to keep the right to sue or continue to sue Med-Data or its Business Associates regarding the Data Incident, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself – or is sometimes referred to as "opting out" of the Settlement Class.

11.	How do I exclude myself from the settlement?

To "opt out" or exclude yourself from the settlement you must send the request in writing to the Settlement Administrator using the opt-out form available on the Settlement Website (www.MedDataSettlement.com) or from the Settlement Administrator upon request. You must include your name and address in the letter. You can mail your exclusion request, which must be postmarked no later than **April 26, 2024**, to the following address:

<div align="center">

Med-Data Settlement Administrator
P.O. Box 341
Baton Rouge, LA 70821

</div>

Requests for exclusion mailed after **April 26, 2024** will not be effective and will not result in your being excluded from the Settlement Class.

If you ask to be excluded, you will not get any payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

| 12. | Why would I ask to be excluded? |

If you already have, or want to bring, your own lawsuit against the Released Parties regarding the Data Incident and want to continue with the lawsuit, you need to ask to be excluded from the Settlement Class. If you exclude yourself from the Settlement Class you won't get any money from the Settlement. However, you may be able to sue or continue to sue the Released Parties regarding the Data Incident on your own. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

| 13. | If I exclude myself, can I get anything from this settlement? |

No. You will not receive any payment from the settlement if you exclude yourself.

THE LAWYERS REPRESENTING YOU

| 14. | Do I have a lawyer in this lawsuit? |

The Court decided that the law firms of Terrell Marshall Law Group, Morgan & Morgan, McShane & Brady, Federman & Sherwood, and Heenan & Cook, are qualified to represent you and all Settlement Class Members. These law firms are referred to as "Class Counsel." You will not receive a bill from these lawyers, who have asked the Court to be paid a percentage of the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense. The names and addresses of Class Counsel are:

Beth E. Terrell
Ryan Tack-Hooper
Terrell Marshall Law Group PLLC
936 N 34th Street, Suite 300
Seattle, Washington 98103

Jean Martin
Morgan & Morgan, P.A.
201 Franklin Street, 7th Floor
Tampa, FL 33602

Maureen Brady
McShane & Brady, LLC
1656 Washington St., Suite 120
Kansas City, MO 64108

John Heenan
Heenan & Cook, PLLC
1631 Zimmerman Trail, Suite 1
Billings, Montana 59102

William B. Federman
Federman & Sherwood
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120

15.   Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want to hire your own lawyer, you will have to pay that lawyer. For example, you can ask a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you.

16.   How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of attorneys' fees in the amount of $2,333,333.33, which is one-third of the $7,000,000 Settlement Fund, plus litigation costs of approximately $200,000. This payment compensates Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also request $5,000 service awards for each of the four Named Plaintiffs, M.S., D.H., Nicole Tokarski, and C.C, to compensate them for their time and effort time and effort during the litigation. Class Counsel's complete request for fees, costs, and the service award to the Class Representative will be posted on the settlement website, www.MedDataSettlement.com. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

17.   How do I object to the settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue.

Any objection to the proposed settlement must be in writing and include your name, address, telephone number, the name of the case, and the reason(s) for your objection, and meet the criteria described in the Settlement Agreement. You must mail a copy of the objection to the following addresses postmarked no later than **April 26, 2024** and file it with the Court:

SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
Med-Data Settlement Administrator P.O. Box 341 Baton Rouge, LA 70821	William B. Federman Federman & Sherwood 10205 N. Pennsylvania Ave. Oklahoma City, OK 73120	Lynn M. Engel 1218 Third Avenue, Suite 2100 Seattle, WA 98101 Ralph H. Palumbo Palumbo Law 140 Lakeside Ave., Suite A – Box 506 Seattle, WA 98122

18.	What is the difference between objecting and excluding myself from the settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

19.	When and where will the Court hold a hearing on the fairness of the settlement?

The Court will hold the Final Approval Hearing on September 11, 2024 at 3:00 p.m. central time, before the Honorable Charles Eskridge of the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, Courtroom 9F. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the service awards to the Named Plaintiffs. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the settlement website, www.MedDataSettlement.com. You can also monitor case activity and for changes to the dates and time of the fairness hearing by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.txsd.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Texas, Houston Division, 515 Rusk Avenue, Houston, Texas 77002, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

20.	Do I have to come the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come to the hearing at your own expense. If you send an objection you don't have to come to Court to talk about it, as long as your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

21.	May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you submit an objection (see Question 18 above) and intend to appear at the hearing, you must state your intention

to do so in your objection. You cannot speak at the hearing if you exclude yourself or if you fail to state your intention to do so in your objection.

IF YOU DO NOTHING

22.	What happens if I do nothing at all?

If you do nothing, you will be a member of the Settlement Class and you will not receive payment from the settlement. You will also be bound by the terms of the settlement, including the Release described in Question 10, above.

GETTING MORE INFORMATION

23.	Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may review and download or print a copy of the Settlement Agreement via the settlement website at www.MedDataSettlement.com. You can also get a copy of the Settlement Agreement by writing to Med-Data Settlement Administrator at P.O. Box 341, Baton Rouge, LA 70821.

24.	How do I get more information?

You can call 1-844-930-2009 toll free; write to Med-Data Settlement Administrator at P.O. Box 341, Baton Rouge, LA 70821; or visit the settlement website at www.MedDataSettlement.com where you will find answers to common questions about the settlement, the Settlement Agreement, Plaintiff's Complaint, Class Counsel's motion for an award of attorneys' fees and costs, and other information.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR MED-DATA WITH QUESTIONS ABOUT THE SETTLEMENT.

Med-Data Settlement Administrator
P.O. Box 341
Baton Rouge, LA 70821

**Your Claim Form Must Be Postmarked
By May 21, 2024**

M.S. v. Med-Data, Inc.

United States District Court for the Southern District of Texas, Houston Division, Case No. 4:22-cv-00187

<u>Claim Form</u>

This Claim Form should be filled out if you received a Notice of Data Incident from Med-Data, Inc. ("Med-Data") or one of its business associates or if you otherwise believe you were affected by the data security incident that occurred when an employee of Med-Data saved files containing patients' PII and PHI to the public-facing portion of GitHub sometime between December 2018 and September 2019 (the "Data Incident").

Settlement Class Members may submit a claim for either (a) Out-of-Pocket Losses, including lost time reimbursement ("Tier 1 Claim"), or (b) an alternative Cash Payment ("Tier 2 Claim"). Settlement Class Members can submit a claim for one of these payment options:

- Tier 1 Claims: Up to $5,000 in documented Out-of-Pocket Losses and lost time reimbursement.

  Settlement Class members who suffered <u>Out-of-Pocket Losses</u> because of the Data Incident, and can provide supporting documentation, will be eligible for a payment of the amount of loss proven up to five thousand dollars ($5,000.00). Out-of-Pocket Losses eligible for reimbursement must have been incurred on or after December 2018.
  A Settlement Class Member may also make a claim for <u>Time Spent</u> remedying issues related to the Data Incident. Claims made for such time are subject to a 5-hour cap reimbursed at $25 per hour and can be combined with reimbursement for Out-of-Pocket Losses subject to the $5,000.00 cap.

- Tier 2 Claims: In the alternative, Settlement Class Members who took any action in response to the Notice of Data Incident may submit a claim for a cash payment of up to $500 from the net settlement fund, based on the amounts remaining after all Tier 1 claims have been paid.

This Claim Form may be submitted electronically via the Settlement Website at www.MedDataSettlement.com or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

Med-Data Settlement Administrator
P.O. Box 341
Baton Rouge, LA 70821

I. CLASS MEMBER NAME AND CONTACT INFORMATION.

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

First Name*

Last Name*

Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)*

City*

State*

Zip Code*

Email Address*

Telephone Number*

Settlement Claim ID*

II. TIER 1: OUT-OF-POCKET LOSSES UP TO $5,000.

<div>

☐ **Check this box if you incurred Out-of-Pocket Losses as a result of the Data Incident.**

Settlement Class Members are eligible for lost time reimbursement and compensation for unreimbursed Out-of-Pocket Losses incurred on or after December 2018, up to a total of $5,000.00 per Settlement Class Member, upon submission of a valid Claim Form and supporting documentation (except for claims for lost time).

Out-of-Pocket Losses may include: (A) out-of-pocket expenses incurred as a result of the Data Incident, such as the following: (i) unreimbursed losses relating to fraud, medical or identity theft, (ii) professional fees, including attorneys' fees, accountants' fees, and fees for credit repair services, (iii) costs associated with freezing or unfreezing credit with any credit reporting agency, (iv) credit monitoring costs, and (v) miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and (B) up to five (5) hours of lost time, calculated at $25/hour, for time spent responding to issues raised by the Data Incident.

Lost time may include time spent on tasks such as (i) changing passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring services; or (v) researching information about the Data Incident, its impact, or how to protect yourself from harm due to the Data Incident.

Please note that the above lists of reimbursable lost time and documented Out-of-Pocket Losses are not meant to be exhaustive, but are exemplary. You may make claims for any lost time and out of pocket expenses that you believe are reasonably related to the Data Incident or to mitigating the effects of the Data Incident.

Total amount claimed for this category: $ ☐☐☐ . ☐☐

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

Compensation for Lost Time

☐ I certify that I spent the following number of hours responding to issues raised by the Data Incident.

Hours claimed (5 hour maximum):   ☐ hours

</div>

III. TIER 2: ALTERNATIVE CASH PAYMENT.

<div>

☐ **Check this box if you wish to receive the Tier 2 Alternative Cash Payment.**

In the alternative to submitting a claim for reimbursement of Out-of-Pocket Losses and/or lost time reimbursement, Settlement Class Members who took any action at all in response to the Notice of Data Incident, even if *de minimis* , may submit a claim for an alternative cash payment of up to $500, based on the amounts remaining in the net settlement fund after deducting payments for (1) Tier 3 Benefits of Medical Shield Premium fraud monitoring; (2) all Tier 1 Claims; (3) notice and administration costs; and (4) attorneys' fees, litigation expenses, and service awards to the Settlement Class Representatives.

Examples of actions taken in response to receiving the Notice of Data Incident include changing account passwords, monitoring for suspicious activity on potentially impacted medical, financial, or other accounts, checking your credit report, signing up for identity theft or fraud monitoring services; or researching information about the Data Incident, its impact, or how to protect yourself from harm due to the Data Incident.

☐ **I certify that I took at least some *de minimis* action in response to the Data Incident.**

Note: You can only select one of the two claim options listed on this claim form. Tier 2 Claims for alternative cash payments cannot be combined with Tier 1 Claims for Out-of-Pocket Losses or lost time reimbursement. If you check both options, your claim will be processed as a Tier 2 Claim for the alternative cash payment.

</div>

IV. PAYMENT OPTIONS.

Settlement Class Members whose claim forms are determined to be timely and valid will receive their cash payments via an electronic payment method or by check. Please ensure you provide a current, valid email address in Section I of this claim form. If the email address you include with your submission becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment.

Please select from **one** of the following payment options:

☐ **Venmo**

_____
Venmo Account Email Address or Phone Number

☐ **Zelle**

_____
Zelle Account Email Address or Phone Number

☐ **E-MasterCard**

_____
Your Current Email Address

☐ **Physical Check:** Payment will be mailed to the address provided in Section I above.

V. ATTESTATION & SIGNATURE.

I affirm that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

_____	_____	_____
Signature	**Print Name**	**Date**

Exhibit D

Exclusion Requests

Exclusion Requests				
M.S., D.H., C.C. and Nicole Tokarski v. Med-Data, Inc., Case No. 4:22-cv-00187				
Count	First Name	Last Name	State	Submission Date
1	Beckie	Cook	TX	3/14/2024
2	Laura	Winske	MI	3/19/2024
3	Colleen	Reilly	TN	4/6/2024
4	Jenny	Kuhlman	WI	4/10/2024
5	Perry	Adelung	KS	4/10/2024
6	Jo Dee	Adelung	KS	4/10/2024