

SECOND JUDICIAL DISTRICT
COUNTY OF BERNALILLO, NEW MEXICO

Notice of Class Action and Proposed Settlement (“Notice”)

If Presbyterian Healthcare Services (“PHS”) notified you of a Data Incident PHS discovered around June 6, 2019, you may be eligible for compensation and/or credit monitoring services benefits from a class action settlement.

**The Second Judicial District of Bernalillo County, New Mexico
has preliminarily approved a class action settlement that may affect your legal rights.**

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

- A class action settlement has been reached in the case of *Martinez, et al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, pending in the Second Judicial District, County of Bernalillo before the Honorable Marie Ward.
- The lawsuit arises out of a third party’s unauthorized access of certain employee email boxes maintained by Presbyterian Healthcare Services (“Defendant”) containing personally identifiable information (“PII”) and protected health information (“PHI”), as defined by the Health Insurance Portability and Accountability Act of 1995, 42 U.S.C. 1320d *et seq.* of certain current and former patients and/or health plan members (the “Data Incident”) discovered by PHS around June 6, 2019. PHS denies wrongdoing and liability in connection with the allegations in the Litigation.
- On January 19, 2024, the Court preliminarily approved this settlement (the “Settlement”) and, by agreement of the parties to the lawsuit (the “Parties”), certified this lawsuit to proceed as a class action for settlement purposes only. A full copy of the Settlement Agreement may be reviewed at the Settlement Website at **www.PHSDataIncidentSettlement.com**. This Notice contains only a summary of the Settlement Agreement.
- If you received notice from PHS notifying you that your PII and/or PHI was potentially compromised in the Data Incident discovered by PHS around June 6, 2019, you are a Settlement Class Member. Excluded from the Settlement Class are all those persons who timely and validly request exclusion from the Settlement Class, as well as: (i) officers and directors of PHS and/or the Related Entities; (ii) the members of the judiciary who have presided or are presiding over this matter and their families and staff; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. A full copy of the Second Amended Class Action Complaint may be reviewed at the Settlement Website at **www.PHSDataIncidentSettlement.com**.
- If you are a Settlement Class Member, then you may be entitled to compensation and/or credit monitoring services benefits under the terms of the Settlement. If you are a Settlement Class Member and you wish to file a Settlement Claim, object to the Settlement, or exclude yourself from the Settlement, you must follow the procedures contained in the Settlement Agreement and outlined in this Notice.
- This Notice is to advise you of the status of the lawsuit, the terms of the proposed Settlement, and your rights in connection with the Settlement. This is not a lawsuit against you.
- Your legal rights related to this lawsuit are affected whether you act or don’t act. **Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

ACTION	EXPLANATION	DUE DATE
DO NOTHING	You will be included in the Settlement Class but receive no benefits. You will be bound by the Court’s Judgment of dismissal and release claims against PHS relating to the Data Incident.	No deadline
SUBMIT A CLAIM FORM	Settlement Class Members can choose to submit a Settlement Claim to receive Settlement benefits. You must submit a Valid Claim to the Claims Administrator to receive any benefits from this Settlement. For more information about submitting a Settlement Claim, see question 7. You will be bound by the Court’s Judgment of dismissal and release claims against Defendant relating to the Data Incident.	May 16, 2024
ASK TO BE EXCLUDED	If you choose to exclude yourself (<i>i.e.</i> , opt out), you will not be included in the Settlement. You will receive no benefits and you will not release any claims you may have against PHS/Released Entities relating to the Data Incident.	April 16, 2024
OBJECT	If you wish to object to the Settlement, you must timely submit written notice of your objection to the Clerk of the Court, and send a copy of your objection to the attorneys for the Parties. If you exclude yourself from the Settlement, you cannot file an objection. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. If you file an objection and wish it to be considered, <u>you must also appear</u> at the Final Fairness Hearing, in-person or through counsel, to show cause as to why the proposed Settlement should not be approved as fair, reasonable, and adequate.	April 16, 2024

BASIC INFORMATION

1. Why did I receive Notice of this Settlement?

You may have received Notice of this Settlement because records show that you received notice from PHS that your PII and/or PHI was potentially compromised in the Data Incident discovered by PHS around June 6, 2019. If these records are correct, you are a Settlement Class Member and you may be entitled to receive Settlement benefits if you submit a Valid Claim to the Claims Administrator before the Claims Deadline, and if the Court grants final approval of the Settlement. You also have other options as described in this Notice.

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

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales) sue on behalf of other people who have similar claims. The people together are a “class.” The entity they sued (in this case, PHS) is called the Defendant. One court resolves the issues for every member of the “class” who does not exclude himself/herself.

3. Why is this lawsuit a class action?

The Parties have agreed and the Court has preliminarily decided that this lawsuit can proceed as a class action (for settlement purposes only) because it meets the requirements of State of New Mexico District Court Rule of Civil Procedure 1-023. Specifically, the Court found that, for settlement purposes only, there are a sufficient number of

people who may have been affected by the Data Incident at issue in this case, there are legal questions common to each of them, any claims or defenses of the representative parties are typical to those of the class, the Class Representatives will fairly and adequately represent the Settlement Class's interests; and this class action will be more efficient than having many individual lawsuits.

4. What is this Litigation about?

Chief Judge Marie Ward of the Second Judicial District of Bernalillo County, New Mexico is overseeing this class action. The case is known as *Martinez, et al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, pending in the Second Judicial District of Bernalillo County, New Mexico. The individuals who sued are called the "Plaintiffs" and the company those individuals sued, PHS, is known as the Defendant in this case.

Plaintiffs filed a lawsuit against the Defendant, individually, and on behalf of anyone whose PII and/or PHI, as defined in the Health Insurance Portability and Accountability Act of 1995, 42 U.S.C. §§ 1320d *et seq.*, was potentially compromised as a result of the Data Incident. The Litigation arises out a third party's unauthorized access of certain employee email boxes that PHS maintained and that contained PII and PHI of certain current and former patients and/or health plan members.

Defendant denies wrongdoing and liability in connection with the Litigation. The Court has not made any ruling on the merits of this case. To resolve this matter without the expense, delay, and uncertainties of continued litigation, the Parties have reached a Settlement, which resolves all claims against Defendant. The Settlement is not in any way an admission of wrongdoing or liability by Defendant and does not imply that there has been, or would be, any finding that Defendant violated the law. The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this Litigation must give final approval to the Settlement before it can be effective. The Court has certified the Settlement Class for settlement purposes only and subject to final approval of the Settlement, so that members of the Settlement Class can be given this Notice and the opportunity to submit a Settlement Claim, object, or exclude themselves from the Settlement Class. If the Court does not grant final approval of the Settlement, or if it is terminated by the Parties, the Settlement will be terminated, and the Litigation will proceed as if there had been no settlement and no certification of the Settlement Class.

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

You are included in the Settlement if you were mailed notification by PHS that your PII and/or PHI was potentially compromised in PHS's Data Incident. You will be considered a Settlement Class Member unless you timely opt-out of the Settlement. If you are not sure whether you are included or have any other questions about the Settlement, visit www.PHSDataIncidentSettlement.com, call toll free **833-630-6292**, or write to the address below:

PHS Settlement
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

6. What does the Settlement Provide?

The proposed Settlement will provide the following benefits to Settlement Class Members:

Expense Reimbursement

- 1) **Documented Out-of-Pocket Expenses:** All Settlement Class Members are eligible for reimbursement for the following documented Out-of-Pocket Expenses that must be fairly traceable to the Data Incident, not to exceed an aggregate total of \$750 per Settlement Class Member: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the minute), Internet usage charges (if charged by the minute or by the amount of data usage incurred solely as a result of the Data Incident), and text messages (if charges by the message and incurred solely as a result of the Data Incident); (iii) postage; (iv) documented costs associated with miscellaneous expenses such as notary, fax, postage, copying, and mileage; (v) documented costs associated with credit freezes; (vi) and documented costs of credit-monitoring services active between receiving notice

of the Data Incident and the date credit monitoring becomes available under this Settlement (collectively, “Out-of-Pocket Expenses”).

- 2) **Lost Time:** Settlement Class Members are also eligible to receive reimbursement for up to three (3) hours of Lost Time spent remedying issues fairly traceable to the Data Incident (calculated at \$15 per hour), but only if the Settlement Class Member attests under penalty of perjury that any claimed Lost Time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident; and (ii) provides a written description of how the claimed Lost Time was spent in connection with efforts to remedy issues fairly traceable to the Data Incident. Claims made for Lost Time can be combined with reimbursement for the above-referenced Out-Of-Pocket Expenses, and are subject to the same total aggregate cap of \$750 per Settlement Class Member.
- 3) **Documented Extraordinary Expenses:** Settlement Class Members can also receive reimbursement in an amount not to exceed \$5,000 per Settlement Class Member for their documented extraordinary monetary out-of-pocket losses to the extent not already covered by Out-of-Pocket Expenses if their identity was stolen as a result of the Data Incident. Settlement Class Members must provide sufficient documentary proof that their identity was stolen as a result of the Data Incident to be eligible for the following Extraordinary Expenses, which include (i) documented professional fees and other costs incurred to address actual identity fraud or theft; (ii) other documented unreimbursed losses, fees, or charges incurred as a result of actual identity fraud or theft, including, but not limited to (a) unreimbursed bank fees, (b) unreimbursed card reissuance fees, (c) unreimbursed overdraft fees, (d) unreimbursed charges related to unavailability of funds, (e) unreimbursed late fees, (f) unreimbursed over-limit fees, (g) unreimbursed charges from banks or credit card companies, and (h) interest on payday loans due to card cancellations or due to over-limit situations (“Extraordinary Expenses”).
- 4) **Twelve Months of Credit Monitoring Services:** Defendant agrees to offer twelve (12) months of credit monitoring to all Settlement Class Members. The credit monitoring will be provided through Experian IdentityWorks. The credit monitoring services include three-bureau credit monitoring and \$1,000,000 reimbursement insurance for losses due to identity theft and stolen funds.

Reimbursement Terms: To receive compensation for Out-of-Pocket Expenses, Extraordinary Expenses, or Lost Time, you must submit a Valid Claim along with any necessary supporting documentation (other than an adequate written description for Lost Time) by **May 16, 2024**, as outlined in the Settlement Agreement. For Extraordinary Expenses and Out-of-Pocket Expenses, the Settlement Class Member must submit reasonable documentation reflecting that the out-of-pocket losses claimed were both actually incurred and fairly traceable to the Data Incident and have not otherwise been reimbursed by another source. This documentation must include receipts or similar documentation, not to be “self-prepared” by the Settlement Class Member, that documents the costs incurred. “Self-prepared” documents, such as handwritten receipts, by themselves are insufficient to receive reimbursement. For the Lost Time claimed by Settlement Class Members, the Settlement Class Member must provide an attestation under penalty of perjury indicating that the time claimed was spent in connection with remedying issues fairly traceable to the Data Incident and a written description of how the claimed Lost Time was spent in connection with remedying issues fairly traceable to the Data Incident. Settlement Class Members who submit claims for Out-of-Pocket Expenses and Extraordinary Expenses must exhaust all reimbursement insurance benefits covering losses due to identity theft and stolen funds available to them in connection with the credit monitoring protections already provided by PHS before PHS is responsible for any Out-of-Pocket or Extraordinary Expenses claimed, as outlined in the Settlement Agreement. You can review the Claim Form at www.PHSDataIncidentSettlement.com to see an explanation of the types of loss that will be considered, as well as specific documentation requirements.

Credit Monitoring Terms: To receive twelve (12) months of credit monitoring services provided by Defendant, Settlement Class Members must submit a Valid Claim before the Claims Deadline, as outlined in the Settlement Agreement. After the Settlement becomes Effective, Settlement Class Members who have submitted Valid Claims will receive an email from the Claims Administrator with additional information about how to enroll for the credit monitoring services benefit. If the Settlement Class Member submits a Valid Claim in hardcopy for credit monitoring, that Settlement Class Member will receive additional information about how to enroll in credit monitoring via the United States Postal Service. He or she must elect to enroll in credit monitoring services to receive this benefit. He

or she may claim the credit monitoring services benefit regardless of whether he or she claims reimbursement for any other benefits under the Settlement. This benefit does not require the Settlement Class Member to submit any evidence or explanation.

Remedial Measures: The Settlement also provides remedial relief for all Settlement Class Members, regardless of whether you make a Settlement Claim in the Settlement. Specifically, Defendant has made certain systems or practice changes to mitigate the risk of similar data incidents.

Fees, Costs, and Expenses Associated with the Settlement: As outlined in the Settlement Agreement, PHS agrees (1) to pay the attorneys' fees, costs, and expenses incurred by Class Counsel in the Action, as approved by the Court, in an amount not to exceed nine hundred thousand dollars (\$900,000); and (2) not to contest a request for service awards of up to three thousand five hundred dollars (\$3,500) to each Class Representative.

For those Settlement Class Members entitled to a cash payment, the exact amount of such payment is unknown at this time and may vary depending on several factors, as outlined above and in the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Claims Administrator will calculate the final amount that is due to each eligible Settlement Class Member and shall pay each eligible Settlement Class Member who timely returns a completed Valid Claim Form and who does not actively exclude himself or herself from the Settlement Class and who otherwise qualifies for payment pursuant to the terms of the Settlement Agreement.

7. How do I receive a benefit?

If you are an eligible Settlement Class Member and you do not opt-out of the Settlement, and if you wish to receive compensation from the Settlement, then you must make a Valid Claim by **May 16, 2024**, consistent with the Settlement Agreement.

Claims can be filed online at **www.PHSDataIncidentSettlement.com** by **May 16, 2024** or by mailing your Claim Form to the Claims Administrator at the following address:

PHS Settlement
c/o Kroll Settlement Administration
P.O. Box 5324
New York, NY 10150-5324

You may also contact the Claims Administrator with questions by calling toll-free **(833) 630-6292**, or by using the contact form on the Settlement Website, **www.PHSDataIncidentSettlement.com**. Claim Forms submitted after **May 16, 2024** will not be paid.

8. How will I receive payments?

The Claims Administrator will issue a payment to each Settlement Class Member entitled to compensation under the Settlement Agreement either within sixty (60) days of the Effective Date or within thirty (30) days of the date that the last claim is approved, whichever is later. If there is an appeal of the Settlement, payment may be delayed. Cashing a Settlement check or accepting an electronic payment under the Settlement is a condition precedent to any Settlement Class Member's right to receive Settlement benefits. All Settlement payments shall be void ninety (90) days after issuance. If a payment becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance.

Counsel for the Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. Updated information about the case can be obtained through Class Counsel at the telephone number or email address provided below.

YOUR RIGHTS AND OPTIONS

9. What happens if I do nothing at all?

If you do nothing, you will not get any benefit from the Settlement, you will not be able to sue for claims in this case, and you release the claims against the PHS and Released Entities, as outlined in the Settlement Agreement.

10. Why would I ask to be excluded?

If you already have your own lawsuit against Defendant about the same claims in this Litigation and want to continue with it, you need to ask to be excluded from the Settlement Class. If you exclude yourself, you will not be legally bound by the Court’s judgment of dismissal in this case. If you start your own lawsuit against Defendant after you exclude yourself, you’ll have to hire and pay your own lawyer for that lawsuit, and you’ll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendant, you should talk to your own lawyer.

11. How do I ask the Court to exclude me from the “Settlement Class” in this case?

You have the right to exclude yourself from (i.e., “opt out” of) the Settlement Class. If you exclude yourself, you will not be eligible to receive any compensation and/or credit monitoring services benefits from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Litigation, and you will keep your right to sue the Defendant on your own for the claims that this Settlement resolves.

To exclude yourself from the Settlement Class, you must sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest your intent to be excluded from the Settlement Class. All requests for exclusion must be submitted, signed, and mailed to the Claims Administrator and postmarked no later than the Opt-Out Date of **April 16, 2024**. If you return a late request for exclusion, the request will be deemed invalid, and you will remain a member of the Settlement Class and will be bound by all of the terms of the Settlement.

YOU CANNOT EXCLUDE YOURSELF BY TELEPHONE OR BY SENDING AN EMAIL.

DO NOT SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION. IF YOU SUBMIT BOTH A CLAIM FORM AND A REQUEST FOR EXCLUSION, YOUR CLAIM FORM WILL BE DISREGARDED.

12. How do I object to the Settlement?

You have the right to object to the Settlement if you wish. To object, you must file a written statement with the Clerk of the Court, located at 400 Lomas Boulevard NW, Room 119, 1st Floor, Albuquerque, NM 87102, containing the case name and docket number *Martinez, et. al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, no later than the Objection Date of **April 16, 2024**, and served concurrently therewith upon Class Counsel, Lynn A. Toops, Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204; and counsel for PHS, Kenneth L. Chernof, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, D.C., 20001-3743. You must mail a copy of your objection to the following three places postmarked no later than **April 16, 2024**:

COURT	CLASS COUNSEL	COUNSEL FOR PHS
Clerk of Court Second Judicial District 400 Lomas Boulevard NW Room 119, 1st Floor Albuquerque, NM 87102	Lynn A. Toops Cohen & Malad, LLP 1 Indiana Square, Suite 1400 Indianapolis, IN 46204	Kenneth L. Chernof Arnold & Porter Kaye Scholer LLP 601 Massachusetts Avenue, NW Washington, D.C., 20001-3743

Your objection must include: (i) the objector’s full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector’s signature and the signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector’s counsel has filed an objection to any proposed class action settlement within the last three (3) years.

You will not be excluded from the Settlement by filing an objection. If you have submitted a request for exclusion from the Settlement, you cannot file an objection.

Any attorney you may hire for the purpose of making an objection must file his or her entry of appearance on or before April 16, 2024. The entry of appearance shall be filed with the Clerk of the Court with a copy served upon Class Counsel and counsel for PHS.

Any Settlement Class Member who does not timely file and serve this written objection will not be permitted to raise an objection, except for good cause shown, and any Settlement Class Member who fails to object in the manner described above will be deemed to have waived objections to the claim and will be foreclosed from raising any objections.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

For purposes of this Settlement, the Class Representatives and the Settlement Class are represented by Class Counsel. Class Counsel is comprised of Gerard Stranch IV of Branstetter, Stranch & Jennings PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC.

You will not be personally charged for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. Is there a release or waiver of claims?

Yes. Unless you affirmatively exclude yourself, you will agree to the “Release” of claims as described in Section 6 of the Settlement Agreement. That means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or other Released Entities for any of the Released Claims. It also means that the Court’s orders will apply to you and legally bind you. You may view the Settlement Agreement for the full language of the claims you will give up if you remain in the Settlement by requesting a copy from the Claims Administrator or viewing it online at www.PHSDataIncidentSettlement.com.

THE COURT’S FINAL FAIRNESS HEARING

15. When and where will the Court decide whether to approve the Settlement?

The Court has already granted preliminary approval of the Settlement. The Court will hold a Final Fairness Hearing on **April 23, 2024, at 9 a.m. MT**, before the Honorable Marie Ward, Chief Judge, in Division XiV of the Second Judicial District of Bernalillo County, New Mexico courthouse, located at 400 Lomas Blvd NW, Albuquerque, NM 87102. Pursuant to the Preliminary Approval Order, the Court may decide to hold the Final Fairness Hearing by videoconference, and if it does so, details about how to appear at the videoconference will be posted on the Settlement Website. The Final Fairness Hearing may be continued to a future date without further notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider and rule on them. The Court may also decide the amount of attorneys’ fees, costs, and expenses to pay Class Counsel and the amount of the service awards to pay Class Representatives. After the hearing, the Court will decide whether to approve the Settlement.

If the Court does not approve the Settlement, or if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, Settlement Class Members will receive no benefits from the Settlement. Plaintiffs, Defendant, and all of the Settlement Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (subject to approval or otherwise), and the Plaintiffs and Defendant will continue to litigate the case. There can be no assurance that, if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

16. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you may come to Court to talk about it. You may also pay your own lawyer to attend, if you so choose.

GETTING MORE INFORMATION

17. Are more details available?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.PHSDataIncidentSettlement.com or request a copy by contacting the Claims Administrator using the contact form on the Settlement Website or calling the toll-free **(833) 630-6292**.

Please do not contact the Court Clerk, the Judge, counsel for PHS, or Defendant; they are not in a position to give you any advice about the Settlement.

DEADLINE SUMMARY

18. What are the important deadlines?

The following are the important dates and deadlines under the proposed Settlement:

Opt-Out Date:	April 16, 2024
Objection Date:	April 16, 2024
Claims Deadline:	May 16, 2024
Final Fairness Hearing:	April 23, 2024 at 9 a.m. MT