

**CAUSE NO. 342-339562-23**

**SCOTT KAETHER, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

v.

**METROPOILITAN AREA EMS  
AUTHORITY D/B/A MEDSTAR MOBILE  
HEALTHCARE**

**Defendant.**

**IN THE DISTRICT COURT**

**TARRANT COUNTY, TEXAS**

**342ND JUDICIAL DISTRICT**

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT**

Plaintiff Scott Kaether (“Plaintiff”) submits this Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum in support pursuant to Texas Rule of Civil Procedure 42. Plaintiff requests this Court preliminarily approve the Settlement, certify the Settlement Class, approve the proposed plan of Notice, and schedule a Final Approval Hearing. Plaintiff submits the executed Settlement Agreement herewith.

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief in the form direct reimbursements for expenses incurred and time spent relevant to the Data Security Incident and credit monitoring and financial asset protection services, as well as data security enhancements that will better protect their sensitive information in the future. For these and the reasons set forth in the supporting memorandum of points and authorities, Plaintiff respectfully requests this Court grant this Unopposed Motion for Preliminary Approval of Class Action Settlement.

## INTRODUCTION

Plaintiff, Scott Kaether (“Plaintiff”) on behalf of himself and the putative Settlement Class, moves the Court to preliminarily approve the class action settlement with Metropolitan Area EMS Authority D/B/A MedStar Mobile Healthcare (“Defendant” or “MedStar” and together with Plaintiff, the “Parties”), as “fair, adequate, and reasonable.”

On or about December 19, 2022, cybercriminals bypassed MedStar’s cybersecurity and potentially accessed the personally identifiable information and protected health information (“Private Information”) belonging to over 707,906 current and former MedStar patients (the “Data Security Incident”). Those individuals disclosed their Private Information to MedStar to obtain medical services including names, Social Security numbers, addresses, and date of birth. The Data Security Incident disclosed data that hackers might be able to use to steal consumer identities and compromise their accounts.

To address that claimed harm, Plaintiff sued MedStar, alleging the company violated its duty to protect their Private Information. Early in the case, the parties agreed to explore the possibility of resolution. After several months of hard fought, arm’s length negotiations, the Parties reached a Settlement.

If approved, the settlement will provide significant benefits to the class. First, it guarantees Settlement Class members credit monitoring and \$1,000,000 in fraud insurance for one year at no cost, reducing their risk for identity theft and fraud. Second, Settlement Class members can claim demonstrated losses they suffered from the Data Security Incident, including damages or time spent mitigating their damages. Third, MedStar has improved its cybersecurity following the Data Security Incident, implementing systems meant to safeguard Settlement Class Members’ Private Information. And fourth, MedStar will pay the costs to administer the settlement, Class Counsel’s

attorney fees and costs, and a service award to Plaintiff—all without reducing the benefits to the Settlement Class. The Settlement Class will receive the benefits of the Settlement no matter how the Court rules on Plaintiff’s petition for fees and service awards.

Pursuant to Rule of Civil Procedure 42(e), Plaintiff moves the Court for an order certifying the class for settlement purposes, preliminarily approving the proposed settlement agreement, and approving the content and manner of the proposed notice process. Accordingly, and relying on the following memorandum of points and authorities, the Declaration of Plaintiff’s counsel and attached exhibits filed herewith, Plaintiff respectfully requests the Court preliminarily approve the Parties’ Settlement Agreement and issue the proposed order attached as Exhibit D to the Settlement Agreement.

## **BACKGROUND FACTS & PROCEDURAL HISTORY**

### **A. The Data Security Incident and Plaintiff’s Claims**

MedStar is a Texas-based administrative governmental agency that provides emergency medical services and advanced clinical care in approximately fifteen cities in North Central Texas, with its principal place of business located at 2900 Alta Mere Drive, Fort Worth, Texas. Plaintiff’s Complaint (“Compl.”) ¶¶18, 24. In the ordinary course of business, MedStar collects Private Information from patients, such as Plaintiff and Settlement Class Members. *Id.* ¶25. The information collected may include full name, address, phone number, email address, Social Security number, date of birth, demographic information, information relating to dental and medical history, and insurance coverage information. *Id.* Plaintiff alleges in his complaint that MedStar never implemented the necessary safeguards and systems needed to protect that information, resulting in a Data Security Incident on or about October 20, 2022.

Plaintiff is a resident and citizen of the State of Texas, who provided his Private Information to Defendant, and received a letter from Defendant regarding the Data Security Incident. *Id.* ¶17. On January 13, 2023, Plaintiff filed this lawsuit against MedStar to remediate the harm he alleges that the Data Security Incident caused him. The Complaint asserts claims of negligence, breach of implied contract, negligence per se, breach of fiduciary duty, public disclosure of private facts, and unjust enrichment and demanded that MedStar reimburse Plaintiff and the Settlement Class for their losses.

Prior to filing the Complaint, Plaintiff’s counsel conducted extensive pre-suit discovery to ascertain all publicly available details about the cause, scope, and result of the Data Security Incident, as well as about the damages that Plaintiff and the Class allege they suffered. *See* Declaration of Gary M. Klinger in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, attached hereto as **Exhibit 1** (“Klinger Decl.”) ¶ 26.

Shortly after the Complaint was filed, the Parties agreed to discuss the possibility of early resolution. The Parties exchanged key information to inform the settlement negotiations, including without limitation the size of the Settlement Class, facts concerning the named Plaintiff, and other pertinent facts. *Id.* ¶28. The Parties engaged in months of arm’s length negotiations, communicating their positions and evaluating the strengths and weaknesses underlying their claims and defenses. *Id.* The Parties did not discuss Proposed Class Counsel’s attorney fees or Plaintiff’s service award until they agreed on the settlement agreement’s core terms, thus avoiding conflict between Plaintiff and the Settlement Class. *Id.* ¶37.

The hard fought, arm’s length negotiations ultimately resulted in a Settlement which Class Counsel and Plaintiff support, and which will provide significant relief to Settlement Class

Members. *Id.* ¶30. Plaintiff now seeks preliminary approval of the Settlement from the Court so that notice can be disseminated to the Settlement Class.

## SETTLEMENT OUTLINE

The Settlement Agreement specifies how to implement the Settlement from start to finish, including how to define the Settlement Class, the benefits they will receive, how to handle claims, and how Plaintiff may petition for fees and service awards.

### A. Class Definition

The Settlement Agreement defines the Settlement Class as “All persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.” Settlement Agreement (“S.A.”), attached to this memorandum as **Exhibit 2**, § 47.<sup>1</sup> The Settlement Agreement also defines a Settlement Subclass defined as “all persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.” *Id.* For avoidance of doubt, members of the Settlement Subclass are also members of the Settlement Class.

### B. Settlement Benefits

The Settlement secures four benefits for the Settlement Class, remediating and mitigating the harms they allege that MedStar’s Data Security Incident has caused and will continue to cause.

First, Settlement Class members can file a claim to receive a year of credit monitoring services. *Id.* § 52(a). These services will come with fraud insurance, covering up to \$1 million in

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<sup>1</sup> The term “Health Insurance Information” has the meaning of that term as defined in the Settlement Agreement.

losses for members who enroll. *Id.* This service will not reduce any other benefits afforded to the Settlement Class.

Second, the settlement offers Settlement Class members a chance to claim losses from the Data Security Incident, up to a total of \$3,000. *Id.* Settlement Class Members may claim certain actually incurred losses resulting from the Data Security Incident, including identity theft, fraud, and costs spent mitigating those risks when sufficient documentation is provided establishing the loss. Members of the Settlement Subclass can also claim “lost time” dealing with the Data Security Incident at \$20/hour for up to four hours. *Id.* § 52(b). To support their claim for lost time Settlement Subclass Members need only submit an attestation under oath that the time claimed was spent dealing with issues related to the Data Incident. *Id.*

Third, MedStar will pay the cost to administer the settlement, including the Claims Administrator’s costs to notify the class and process claims, separately from any benefits to the Settlement Class. *Id.* § 63(b). Thus, as with credit monitoring, the costs of notice and settlement administration will not reduce any other benefits afforded to the Settlement Class.

And fourth, MedStar has confirmed it has improved its cybersecurity since the Data Security Incident. Specifically, MedStar agrees to implement and/or keep in place the following security related measures through December 31, 2024; (1) update its multi-factor authentication; (2) disable Outlook Anywhere access for its employees; (3) deploy security awareness training for its employees; and (4) lower the maximum recipients per email message. *Id.* § 55. Altogether, these improvements will help safeguard the Private Information MedStar still possesses, including data belonging to Settlement Class members.

### **C. Class Notice**

To notify the Settlement Class, the settlement outlines how the Settlement Administrator will collect Settlement Class member information and notify them about the settlement's terms. *Id.* § VIII. To start, the Settlement Administrator will create and update the Settlement website where it will post all documents relating to this case and the settlement, including all claim forms needed to submit a claim online. *Id.* § 42. Under the Agreement, the website must allow class members to file claims “electronically” if they so choose. *Id.* Then, the Settlement Administrator will notify all Settlement Class members by mail using mailing addresses known and on file with MedStar. *Id.* §68. In so doing, the Settlement Administrator will compare those addresses to the National Change of Address database and update any addresses if needed. *Id.* §68(b). If a mailer is returned “undeliverable,” the Settlement Administrator will remail the notice to any “forwarding address” provided by the USPS. *Id.* Under the Settlement Agreement, the Settlement Administrator will start this process 30 days after the Court preliminarily approves the settlement and the class will have 90 days to claim benefits after the Notice Date. *Id.* § 28, 54.

### **D. Release**

To receive the settlement's benefits, Plaintiff and the Settlement Class agree to release MedStar from their class action claims. *Id.* § VI. The parties tailored the release to affect only those claims related to MedStar Data Security Incident, defined as “Released Claims” under the agreement. Klinger Decl. ¶ 32. That definition restricts the release only to claims “arising out of or in any way related to the Data Incident [.]” S.A. § 57. That release will take effect after the Court enters its “Final Order and Judgment” approving the settlement, though it will not prevent the parties or class members from moving to enforce the settlement's terms. *Id.*

### **E. Attorneys' Fees and Service Awards**

The parties did not discuss or negotiate the fee or service award until they agreed on the terms benefiting the class. Klinger Decl. ¶37. As a result, the parties avoided conflict with the Settlement Class's interests, and Plaintiff's counsel maintained their responsibilities to the Settlement Class first. *Id.*

If the Court preliminarily approves the settlement, Plaintiff will petition the Court at least 14 days prior to the Objection/Exclusion Deadline to approve their requested attorney's fees and service award. Settlement Agreement § 79. MedStar has agreed not to object to an application for attorney fees up to \$150,000 by Class Counsel. *Id.* Plaintiff will request a service award in the amount of \$2,500, which MedStar has also agreed not to object to. *Id.* § 81. As with the settlement's provisions for credit monitoring and settlement administration, these payments will be separate and apart from any other sums agreed to under the Settlement Agreement, meaning the Class will receive its benefits no matter how the Court decides Plaintiff's fee and award petition.

## **ARGUMENT**

### **A. Legal Standards**

Plaintiff brings this motion pursuant to Texas Rule of Civil Procedure 42(e). The Rule reads, in pertinent part, "[t]he Court must approve any settlement, dismissal, or compromise of the claims, issues, or defenses of a certified class," and requires "[n]otice of the material terms of the proposed settlement, dismissal or compromise, together with an explanation of when and how the members may elect to be excluded from the class" to be provided to all class members as the Court directs. Tex. R. Civ. P. 42(e)(1). The Court may then give final approval to a settlement only after notice has been provided, a hearing has been held, and the Court has found that the settlement is fair, reasonable, and adequate. *Id.*



In determining whether a class action settlement should be approved, Texas courts endorse the three step process described in by the *Manual for Complex Litigation*: (1) preliminary approval of the proposed settlement; (2) dissemination of notice of the settlement to settlement class members; and (3) a fairness hearing or final approval hearing where class members may be heard regarding the settlement, evidence regarding the fairness, adequacy and reasonableness of the settlement can be presented, and the court can safeguard class member interests and determine whether to provide final approval. *See e.g., Stassi v. Boone*, No. 2003 WL 214369959 (June 6, 2003) (noting that when the court preliminarily approved the class settlement it issued an order granting class certification, preliminarily approving the settlement, and approving the content of the notice and ordering dissemination prior to final approval); *see also Northrup v. SW. Bell Tel. Co.*, 72 S.W.3d 16, 18 (Tex. App. 2002) (same).

The preliminary approval stage provides a forum for the initial evaluation of a settlement, and where no class has been previously certified, a determination as to whether a proposed settlement class should be certified. 2 Newberg & Conte, *Newberg on Class Actions* §§ 11.22, 11.27 (3d ed. 1992); *In re Beef Indus. Antitrust Lit.*, 607 F.2d 167, 175 (5th Cir. 1979). The decision to approve or reject a proposed settlement lies firmly within the discretion of the trial court. *Northrup v. Southwestern Bell Telephone Co.*, 72 S.W.3d 16 (Tex. Ct. App. 2002). Granting preliminary approval will allow Settlement Class Members the opportunity to learn about the settlement, make a claim, opt-out, or object and be heard by the Court.

Plaintiff here seeks preliminary approval of the proposed settlement—an initial evaluation of the fairness of the proposed Settlement. *See Manual for Complex Litigation* § 30.44 (4th ed.). Because the proposed Settlement Agreement and plan of distribution fall within the range of possible approval, this Court should grant Plaintiff's motion and allow notice to be disseminated

to the class. See 2 Newberg & Conte, *Newberg on Class Actions* (“*Newberg*”) § 11.25 (3d ed. 1992).

## LEGAL DISCUSSION

Judicial policy favors the resolution of disputes through settlement. *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982). There is a strong presumption in favor of finding settlement agreements fair. *Garza v. Sporting Goods Props.*, CIV.A. NO. SA-93-CA-1082, 1996 U.S. Dist. LEXIS 2009 (W.D. Tex. Feb. 6, 1996). Settlement agreements are not required to “achieve some hypothetical standard constructed by imagining every benefit that might someday be obtained in contested litigation”—rather, compromise is the essence of settlement, and a court may rely on the judgment of experienced counsel for the parties. *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 286 (W.D. Tex. Feb. 21, 2007) (quoting *Garza*, 1996 WL 56247, at \*11).

### **A. The Court Should Certify the Proposed Class for Settlement Purposes.**

Plaintiff here seeks certification of a Settlement Class consisting of “all persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.” S.A. § 47. Certification is also sought for a Settlement Subclass consisting of “all persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.” *Id.* The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the “judge should make a preliminary determination that the proposed class satisfies the criteria.” MCL 4th, § 21.632.

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is different than in a case that

has not yet settled. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See Id.* Other certification issues however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” in the settlement-only class context require close examination by the court “asked to certify a settlement class [as the absentees] lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*; *see also McAllen Medical Center, Inc. v. Cortez*, 66 S.W.3d 227 (Tex. 2001). Specifically, Texas Courts require close analysis of the scope of the class definition and the typicality and adequacy prongs of the class action assessment at the preliminary approval stage—as “the trial court’s ability to later adjust the class at the fairness hearing and still protect all class members’ interest may be severely limited.” *McAllen Medical Center*, 66 S.W.3d at 232.

Despite the necessarily rigorous analysis of certain prongs at the preliminary certification stage, class actions are regularly certified for settlement. In fact, similar data security incident cases have been certified – on a *national* basis. *See e.g., In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig.*, 851 F.Supp.2d 1040 (S.D. Tex. 2012). This case is no different.

Texas law regarding class actions is patterned after its Federal counterpart, making federal cases regarding the certification of class actions highly persuasive authority. *See Glassell v. Ellis*, 956 S.W.2d 676, 682 (Tex. Ct. App. 1997). Under Rule 42, a class action may be maintained where the movants demonstrate (1) the class is so numerous that joinder is impracticable; (2) the class has common questions of law or fact; (3) the representatives’ claims are typical of the class claims;

and (4) the representatives will fairly and adequately protect class interests. *St. Louis S.W. Ry. Co. v. Voluntary Purchasing Groups, Inc.*, 929 S.W.2d 25, 30 (May 13, 1996) (citing Tex. R. Civ. P. 42 (a)). Additionally, under Rule 42(b)(1(B)), a class may be maintained where the prosecution of separate actions by or against individual members of the class would create a risk of “adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.” *Id.* at 32.

**1. The Settlement Class is so numerous that joinder is impracticable.**

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Tex. R. Civ. P. 42(a)(1). This determination is not based on numbers alone, it also takes into account the nature of the action, judicial economy, geographical locations of the class members, and the likelihood that class members would be unable to prosecute individual lawsuits. *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 653 (Tex. App. 1995). Here, for purposes of this settlement the numbers are sufficient to demonstrate the numerosity prong has been met, as the proposed Settlement Class here numbers approximately 707,906 individuals, judicial economy would be well-served by certification. Despite the likelihood that most proposed class members live in and around Texas, any attempt at joinder of such a large number of individual suits over such a vast geographical location would be impractical. Accordingly, the Settlement Class is sufficiently numerous to justify certification.

**2. Questions of law and fact are common to the Settlement Class.**

Commonality requires Plaintiff to demonstrate “questions of law or fact common to the class.” Tex. R. Civ. P. 42(a)(2). The threshold for meeting this prong is not high—commonality does not require that every question be common to every member of the class, but rather that the

questions linking class members are substantially related to the resolution of the litigation and capable of generating common answers “apt to drive the resolution of the litigation” even where the individuals are not identically situated. *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1052 (S.D. Tex. 2012) (citing *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 347 (2011)).

Here, for purposes of this settlement the commonality requirement is met because Plaintiff can demonstrate numerous common issues exist. For example, whether MedStar failed to adequately safeguard the Private Information of Plaintiff and other Settlement Class Members is a question common across the entire class. MedStar’s data security safeguards were common across the class, and those applied to the data of one Settlement Class Member did not differ from those safeguards applied to another. This common question, and others alleged by Plaintiff in his Complaint, are central to the causes of action brought here, will generate common answers, and can be addressed on a class-wide basis. Thus, Plaintiff has met the commonality requirement of Rule 42 for purposes of this settlement.

### **3. Plaintiff’s claims and defenses are typical of the Settlement Class.**

Under Rule 42, the typicality requirement is satisfied where “the claims or defenses of the class representatives have the same essential characteristics as those of the class as a whole.” *Peters v. Blockbuster, Inc.*, 65 S.W.3d 295, 307 (Tex. Ct. App. 2001) (citing *Chevron U.S.A. v. Kennedy*, 808 S.W.2d 159, 162 (Tex. Ct. App. 1991)). “The claims need not be identical or perfectly coextensive, only substantially similar.” *Peters*, 65 S.W.3d at 307.

Here, Plaintiff’s and Settlement Class Members’ claims all stem from the same event—the cyber attack on MedStar’s computers and servers—and the cybersecurity protocols that MedStar had (or did not have) in place to protect Plaintiff’s and Settlement Class Members’ Private

Information. Thus, for purposes of this settlement Plaintiff's claims are typical, and the typicality requirement is satisfied.

**4. Plaintiff and his counsel will provide fair and adequate representation for the Settlement Class.**

Representative Plaintiff must be able to provide fair and adequate representation for the class. To satisfy the adequacy of representation requirement, plaintiff must establish that: (1) there is no antagonism or conflict of interest between the class representatives and other members of the class; and (2) the assurance that through class counsel, the representative will vigorously prosecute the class's claims. *Glassell*, 956 S.W.2d at 682.

Here, Plaintiff's interests are aligned with those of the Settlement Class in that he seeks relief for injuries arising out of the same Data Incident. Plaintiff's and Settlement Class Members' data was all allegedly compromised by Defendant in the same manner. Under the terms of the Settlement Agreement, Plaintiff and Settlement Class Members will all be eligible for the same identity theft protection services, and will receive the same benefit from the enhanced cybersecurity measures taken by MedStar as a result of this Settlement.

Further, Class Counsel has decades of experience as vigorous class action litigators and are well suited to advocate on behalf of the class. *See* Klinger Delc. ¶¶ 2-24, and Milberg Firm Resume attached thereto. Class Counsel have put their collective experience to use in negotiating an early-stage settlement that guarantees immediate relief to class members. Thus, for purposes of this settlement the requirements of Rule 42 (a) are satisfied.

**5. Certification is also appropriate because common issues predominate over individualized ones, and class treatment is superior.**

To show that common issues predominate, Plaintiff must demonstrate that common questions of law or fact relating to the class predominate over any individualized issues. Tex. R. Civ. Proc. 42(b)(3). In evaluating predominance of common issues, Texas courts do not focus on

whether the common issues outnumber the individual ones, but rather whether the common issues “will be the object of most of the efforts of litigation.” *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 648 (Tex. Ct. App. 1996). Factors to be considered include:

- (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) the desirability or undesirability of concentrating the litigation in the particular forum;
- (D) the difficulties likely to be encountered in the management of a class action.

Tex.R. Civ. P. 42(b)(3).

Here, for purposes of this settlement no facts suggest that the Settlement Class Members have an interest in controlling the prosecution or defense of separate actions. No other actions filed against MedStar pertaining to the Data Incident have been brought to proposed Class Counsel’s knowledge. Concentration of litigation in this court is appropriate because the acts and omissions that led to the Data Incident, as well as many members of the Settlement Class are primarily located in this county. And finally, because Plaintiff is seeking certification for purposes of settlement, the manageability of the class action need not be considered. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”)

In this case, for purposes of this settlement the common questions that arise from MedStar’s conduct predominate over any individualized issues. Some key predominating questions are whether MedStar had a duty to exercise reasonable care in safeguarding, securing, and protecting the Private Information of Plaintiff and the Settlement Class, and whether MedStar breached that duty. Other courts have recognized that the types of common issues arising from data breaches

predominate over any individualized issues. *See, e.g., In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data security incident case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–315 (N.D. Cal. 2018) (finding predominance was satisfied because “Plaintiffs’ case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs’ personal information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information,” and that these issues predominated over potential individual issues).

Here, for purposes of this settlement the resolution of hundreds of thousands of claims in one action is far superior to litigation via individual lawsuits. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating hundreds of thousands of individual data security incident cases arising out of the *same* data security incident. For purposes of this settlement the common questions of fact and law that arise from Defendant’s conduct predominate over any individualized issues, a class action is the superior vehicle by which to resolve these issues, and the requirements of Rule 42(b)(3) are met. Accordingly, the class should be certified for settlement purposes.

**B. The Settlement Terms are Fair, Adequate, and Reasonable.**

Rule 42(e)(2) permits approval of a class action settlement after a determination that the Settlement is “fair, reasonable, and adequate.” In determining whether a proposed class settlement is fair, adequate, and reasonable, a trial court is required to consider six factors: (1) whether the settlement was negotiated at arms’ length or was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the Plaintiff from



prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members. *Johnson v. Scott*, 113 S.W.3d 366, 371 (Tex. App. 2003). “Put another way, the trial court must examine both substantive and procedural elements of the settlement: (1) whether the terms of the settlement are fair, adequate, and reasonable; and (2) whether the settlement was the product of honest negotiations or collusion.” *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996).

**1. The Settlement Agreement was the result of arm’s length negotiations between the Parties.**

“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.” 2 McLaughlin on Class Actions § 6:7 (8th ed. 2011); *see also Wal-Mart Stores*, 396 F.3d at 116 (internal quotation omitted). Here, the Parties negotiated their agreement through months of “arm’s length” negotiations, exchanging important information in the process. *Wal-Mart Stores*, 396 F.3d at 116 (presuming a settlement to be “fair” after experienced and capable counsel negotiated at arm’s length negotiations). Moreover, the parties avoided any conflict between Plaintiff and the Settlement Class by bifurcating negotiations; first addressing the terms affecting the benefits to the Settlement Class and then negotiating the terms regarding Plaintiff’s attorney fees and service awards.

**2. The terms of the Settlement Agreement are fair, adequate, and reasonable.**

**i. The Settlement Agreement provides real and certain relief to the Settlement Class, particularly in light of the uncertainty of prevailing on the merits.**

The Settlement helps to ensure Settlement Class Members are made whole for harms allegedly suffered as a result of the Data Incident and that they are less likely to suffer additional harms in the future. As explained below, the risks faced in continuing to litigate this case outweigh

any benefit it would provide. In fact, Plaintiff secured an agreement that delivers what they sought to achieve in the first place, requiring MedStar to mitigate their harm through credit monitoring, reimburse Settlement Class members' losses, and affirm that it improved its cybersecurity.

Additionally, due at least in part to their cutting-edge nature and the rapidly evolving law, data security incident cases like this one generally face substantial hurdles—even to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, 08 Civ. 6060, 2010 WL 2643307, at \*1 (S.D.N.Y. June 25, 2010) (collecting data security incident cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data security incident cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). The parties' settlement not only avoids those risks but affords class members relief now rather than years down the line. As a result, this factor favors settlement.

**ii. Continued litigation is likely to be complex, lengthy, and expensive.**

The costs, risks, and delay of continued litigation weigh in favor of settlement approval. The risks in establishing MedStar's liability and the Settlement Class's losses favor settlement. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits—and securing any amount of damages—are uncertain. While Plaintiff strongly believes in the merits of his case, he also understands that MedStar will likely assert a number of potentially case-dispositive defenses should litigation in this matter move forward. Proceeding with litigation would open up Plaintiff to the risks inherent in trying to achieve and maintain class certification and prove liability. There would also be significant additional costs as Plaintiff begins his preparations for the certification argument and if successful, a near inevitable interlocutory appeal attempt. Additionally, even if Plaintiff were to prevail at trial, MedStar may appeal any

verdict, delaying the Settlement Class's relief. Given the facts Plaintiff identified in pre-suit discovery, including those affecting the class size, these factors favor settling the class's claims. As a result, the Court should find this factor supports preliminary approval.

**iii. The settlement was reached after significant investigation and exchange of information and has strong support from Counsel.**

The Parties were able to reach a settlement only after a significant exchange of information. Klinger Decl. ¶ 28. Prior to filing his case, Plaintiff completed an independent investigation of the facts to reach a full understanding of the value of the case, as well as the attendant risks of continued litigation. *Id.* ¶¶ 29-30. As proposed Class Counsel details in his declaration, he recommends the Court approve the settlement. Additionally, to date, no Settlement Class members have objected to the Settlement, nor have they objected to the class representatives and counsel. Although class members will have a chance to object after the administrator notifies them about the agreement, Plaintiff anticipates the class will welcome its benefits given the significant relief offered.

**C. The Proposed Settlement and Claims Administrator will Provide Adequate Notice.**

Texas Rule of Civil Procedure 42 states that a trial court shall order the best notice practicable under the circumstances. Here the notice process is designed with the assistance of an experienced Settlement Administrator to ensure that Notice has the best chance of reaching as many Settlement Class Members as possible. *See* Long Form Notice, Ex. A to the Settlement Agreement.

Settlement Class Members will be provided notice directly by U.S. Mail as well as by digital advertisements, and publication on the Settlement Website to be maintained by the Settlement Administrator. Settlement Agreement ¶ 66.

Notice is required to provide specific information, all of which is included in the notice available to class members here. Tex. R. Civ. P. 42(c)(2)(A)(i)-(vi). The Notice proposed by the Parties here explains clearly and in plain language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues or defenses; (iv) that a class member may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and (vi) the binding effect of a class judgment on class members under Rule 42(c)(3). *See* Settlement Agreement Exhibits A-C. Moreover, notice by publication is acceptable in a data security incident cases such as this one, where the costs and difficulties of providing individualized notice would be unreasonable. *See In re Heartland*, 851 F. Supp. 2d at 1061 (approving notice by publication in a data security incident case).

The Notice is designed to be the best practicable under the circumstances, apprises Settlement Class Members of the pendency of the action, and gives them an opportunity to object or exclude themselves from the settlement. Accordingly, the notice process should be approved by this Court.

### **CONCLUSION**

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Settlement Class Members significant relief. The Settlement Agreement is well within the range of reasonable results, and an initial assessment of factors required to be considered on final approval favors approval. For these and the above reasons, Plaintiff respectfully requests this Court certify the class for settlement purposes and grant their Motion for Preliminary Approval of Class Action Settlement.

Respectfully submitted,

Dated: October 13, 2023

Respectfully submitted,

*/s/ Joe Kendall*

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*Attorneys for Plaintiff and the Proposed Class*

**CERTIFICATE OF CONFERENCE**

I certify that on September 14, 2023 and October 12, 2023, my co-counsel, Gary M. Klinger, and/or other attorneys at Milberg Coleman Bryson Phillips Grossman conferred with Josh Becker of Shook Hardy & Bacon, counsel for defendant, regarding the substance of this motion and he stated that they are unopposed to the relief requested herein.

*/s/ Joe Kendall*

\_\_\_\_\_  
JOE KENDALL

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served on all counsel of record via E-file Texas on this 13th day of October, 2023.

*/s/ Joe Kendall*

\_\_\_\_\_  
JOE KENDALL

# **EXHIBIT 1**

**CAUSE NO. 342-339562-23**

**SCOTT KAETHER, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**v.**

**METROPOILITAN AREA EMS  
AUTHORITY D/B/A MEDSTAR MOBILE  
HEALTHCARE**

**Defendant.**

**IN THE DISTRICT COURT**

**TARRANT COUNTY, TEXAS**

**342ND JUDICIAL DISTRICT**

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT**

I, Gary M. Klinger, hereby declare the following is true and accurate and based on my personal knowledge:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. I am currently a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC ("Milberg"). I am counsel at Milberg for the proposed Settlement Class. I submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.



### Counsel Qualifications

3. I have extensive experience prosecuting complex class actions, especially in data breach litigation. I have been licensed to practice law in the State of Illinois since 2010, am a member of the bars of numerous federal district and appellate courts,

4. I have extensive experience in class action litigation generally and data breach class actions in particular. My experience, and that of my law partners, is described below.

5. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on hundreds of complicated and complex class actions.

6. These cases recently include cutting-edge litigation, including: *In re Dealer Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill. 2018) (appointed co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea & Tick Collar Marketing, Sales Practices, & Products Liability Litigation*, Case No. 1:21-cv-04447 (N.D. Ill. 2021) (appointed co-lead counsel; case on-going); and *Carder v. Graco Children's Products, Inc.*, Case No. 2:20-cv-00137 (N.D. Ga. 2020) (appointed interim co-lead counsel; case on-going)

7. With respect to privacy cases, Milberg is presently litigating more than fifty (50) cases across the country involving violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., privacy violations, data breaches, and ransomware attacks. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and privacy litigations, including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation*, MDL 2972, Case No. 3:20-mn-02972 (D.S.C. 2020) (appointed co-lead counsel; case on-going).

8. Milberg Attorneys have also participated in other data breach and privacy litigation, recently, which includes: *Veiga v. Respondus, Inc.*, Case No., 1:21-cv-02620 (N.D. Ill. 2021); *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga. 2021); *In*

*re Wawa, Inc. Data Security Litig.*, Case No. 2:19-cv-06019 (E.D. Pa. 2019); *Whalen v. Facebook, Inc.*, Case No. 4:20-cv-06361 (N.D. Cal. 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247 (7th Cir. 2021).

9. Milberg Attorneys have also served as Lead Counsel, Co-Counsel, or Class Counsel on dozens of class actions ranging from defective construction materials, *e.g.*, defective radiant heating systems, siding, shingles, and windows, to misrepresented and recalled products, *e.g.*, dog food, prenatal vitamins, to environmental incidents, such as the Exxon Valdez, BP Oil Spill.

10. It is noteworthy that, just in the time since 2020 through the present, I (either individually, or as a member of the law firms in which I have been a partner during that timeframe) have been appointed class counsel in a number of data breach and/or data privacy cases, including, but not limited to, the following:

- a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted Aug. 2021);
- b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D.N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);
- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington)

- (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);
- g. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case, final approval granted September 2021);
  - h. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);
  - i. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);
  - j. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million);
  - k. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel);
  - l. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted Sept. 27, 2021);
  - m. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted Sept. 2021);
  - n. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement);
  - o. *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted Jan. 2022);
  - p. *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co-lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted Feb. 2022);

- q. *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (appointed co- lead counsel in data breach case involving over 3 million class members);
- r. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers);
- s. *Hough v. Navistar, Inc.*, Case No.: 2021L001161 (Ill. 18th Jud. Cir. Ct., DuPage Cnty.); (appointed co-lead class counsel; final approval granted May 2022);
- t. *Clark v. Mercy Hospital, et al*, Case No. CVCV082275 (Iowa Dist. Crt, Johnson Cnty.) (appointed class counsel; final approval granted July 2022);
- u. *Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist. Crt., Marshall Cnty.) (appointed class counsel; final approval granted June 2022);
- v. *Devine, et al v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; final approval granted September 2022);
- w. *Davidson v. Healthgrades Operating Company, Inc.*, Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; final approval granted August 2022);
- x. *Bodie v. Capitol Wholesale Meats, Inc.*, Case No. 2022CH000020 (Ill. 18th Jud. Cir. Ct., DuPage Cnty.) (appointed class counsel; final approval granted March 2022);
- y. *Culp v. Bella Elevator LLC*, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Ct., Peoria Cnty.) (appointed class counsel; final approval granted May 2022);
- z. *Cain, et al. v. OSF Healthcare*, Case No. 21-L-00231 (Circuit Court for the Tenth Judicial Circuit of Peoria County, Illinois) (appointed settlement class counsel; final approval granted January 2023);
- aa. *Nelson, et al. v. Bansley & Kiener*, Case No. 2021-CH-06274 (Ill. Cir. Ct., Cook Cnt’y) (appointed class counsel; final approval granted November 2022);
- bb. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021- CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; final approval granted January 2023);

- cc. *Summers II v. Sea Mar Community Health Ctrs.*, Case No. 22-2-00773-7 SEA (Wash. Sup. Ct., King Co.) (appointed class counsel; final approval granted December 2022);
- dd. *In re Forefront Data Breach Litigation*, Master File No. 1:21-cv-00887-LA (E.D. Wisc.) (appointed settlement class counsel; final approval granted March 2023);
- ee. *Engle v. Talbert House*, Case No.: A2103650 (Court of Common Pleas, Hamilton County, Ohio) (appointed class counsel; final approval granted February 2023);
- ff. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-2021-01043 (11<sup>th</sup> Jud. Dist. Ct., County of San Juan, NM) (appointed class counsel; final approval granted March 2023);
- hh. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498 (Mass. Sup. Ct. Dept.) (appointed class counsel; final approval granted February 2023);
- ii. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC CO)(appointed class counsel; final approval granted April, 2023);
- jj. *McHenry v. Advent Health Partners, Inc.*, Case No. 3:22-cv-00287 (USDC MD TN) (appointed settlement class counsel; final approval granted April 2023);
- kk. *Beasley et al. v. TTEC Services Corporation*, Civil Action No. 22-cv-00097-PAB-STV (USDC CO) (appointed class counsel; preliminary approval granted May 2023);
- ll. *Boyd v. Public Employees Credit Union*, Case No. 1:22-cv-00825-LY (USDC WD TX)(appointed class counsel; final approval granted June 2023);
- mm. *Charlie et al. v. Rehoboth McKinley Christian Healthcare Services*, Civil No 21-652 SCY/KK (USDC NM)(appointed class counsel; final approval granted July 2023);
- nn. *Sharma et al. v. Accutech Systems Corporation*, Case No. 18C02-2210-CT-000135 (Delaware Circuit Court 2, Delaware County, Indiana) (appointed Class Counsel; preliminary approval granted January 2023);
- oo. *Simmons et al. v. Assistcare Home Health Services, LLC*, Index No. 511490/2021 (Supreme Court of the State of New York, County of

Kings)(appointed settlement class counsel; final approval granted August 2023);

- pp. *Bailey et al. v. Alacrity Solutions Group, LLC*, Cause No. 29D03-2204-PL-002383 (Hamilton County (Indiana) Superior Court)(appointed class counsel; final approval granted June 2023);
- qq. *Retsky et al. v. Super Care, Inc d/b/a/ Supercare Health*, Case No. 22STCV16267 (Los Angeles County California Superior Court)(appointed class counsel; final approval granted August 2023);
- rr. *In re Medical Review Institute of America, LLC, Data Breach Litigation*, Civil No. 2:22cv0082-DAK-DAO (USDC UT)(appointed co-lead class counsel; final approval granted August 2023);
- ss. *Colon v. Creative Ventures Inc.*, Case Number 2023LA000177 (In the Circuit Court of the Eighteenth Judicial Circuit, Dupage County, Illinois)(appointed settlement class counsel; final approval granted September 2023);
- tt. *Jones v. Horizon House, Inc.*, Case No. 01767, Control No. 23030116 (Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania)(appointed class counsel; preliminary approval granted April 2023);
- uu. *Keefe, et al v. Froedtert Health, Inc.*, Case No. 2023CV001935 (Circuit Court of Wisc., Milwaukee Cty.) (appointed settlement class counsel; final approval granted September 29, 2023).

11. I have been appointed by state and federal courts to act as Class Counsel for millions of consumers and recovered hundreds of millions of dollars for consumers throughout the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits pending in state and federal courts across the country.

12. I recently obtained final approval of a class-wide settlement for a major data breach class action involving more than six million consumers. *See Carrera Aguillo v. Kemper Corp.*, No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (appointed co-lead counsel, obtained preliminary

approval of a \$17.6 million dollar settlement to resolve similar data breach class action claims against Kemper Corporation in a case involving more than six million class members).

13. I presently serve as one of two Court-appointed Lead Counsel in the data breach case, *In re Canon U.S.A. Data Breach Litigation*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23, 2020).

14. I was also appointed Co-Lead Counsel in the data breach case, *In re Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involved more than one million class members and was finally approved on a class-wide basis for a \$4.35 million settlement.

15. I also served as co-lead counsel in the consolidated data breach litigation styled, *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.), which involved more than 2.4 million class members and was finally approved on a class-wide basis for a \$4.75 million settlement.

16. I was also recently appointed co-lead counsel to represent more than three million class members in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher Data Breach Litig.*, No. 1:21-cv-04056 (N.D. Ill.).

17. I have successfully litigated privacy class actions through class certification. *In Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at \*1 (N.D. Ill. June 25, 2018), where I certified, over objection, a nationwide privacy class action involving more than one million class members.

18. In a recent nationwide privacy class settlement hearing in the United States District Court for the Northern District of California, Judge Richard Seeborg personally commended me for having achieved “quite a substantial recovery for class members.” Judge Seeborg further stated

he could not recall any class action case where “the amounts going to each class member were as substantial” as that obtained by me (and my co-counsel).

19. In addition to concentrating my practice on class action litigation involving consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of the current law on these issues. In recent years, I have attended various legal training seminars and conferences, such as the dri™ conference for Class Actions, The Consumer Rights Litigation Conference and Class Action Symposium, as well as attended various seminars offered by Strafford on class action issues.

20. I am also a member of the International Association of Privacy Professionals and a Certified Information Privacy Professional (CIPP/US).

21. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A. Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor for the Illinois Business Law Journal. My published work includes: *The U.S. Financial Crisis: Is Legislative Action the Right Approach?*, Ill. Bus. L. J. (Mar. 2, 2009).

22. I am presently pursuing my Master of Laws (LLM) in Data Privacy and Cybersecurity from the University of Southern California Gould School of Law.

23. I became licensed to practice law in the State of Illinois in 2010 and am a member of the Trial Bar for the Northern District of Illinois, as well as the U.S. Bankruptcy Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the country, including, but not limited to, the U.S. District Courts for the District of Colorado, the Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern District of Indiana, Eastern District of Michigan, and the Eastern District of Texas.



24. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs’ settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

25. In the sections that follow, I will detail the hard-fought negotiations that resulted in the Agreement now before the Court for preliminary approval. As described below, the Settlement provides significant relief to Members of the Settlement Classes, and I and my co-counsel strongly believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned, fair, reasonable, adequate, and in the best interests of the Settlement Class Members and is worthy of preliminary approval.

### **Initial Investigation and Communications**

26. After, Plaintiff retained my firm I, my Milberg colleagues, and my co-counsel vigorously and aggressively gathered all of the information that was available regarding Defendant and the allegations in this lawsuit. After an initial investigation, I filed a complaint on behalf of Plaintiff.

### **The Class Settlement**

#### ***History of Negotiations***

27. The settlement came about as the result of protracted arm’s-length negotiations.

28. The parties engaged in months of negotiations, communicating back and forth via e-mail and telephone calls, and exchanged significant amounts of information relating to Plaintiff’s claims. While the negotiations were always collegial, cordial, and professional, there is no doubt

that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients.

29. Plaintiff and I believe that the claims asserted in this case have merit. I acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, trial, and potential appeals. I have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation.

30. It is my belief, based on my extensive experience generally and my investigation and research into this case in particular, that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. The collective experience of me and my colleagues with experience on similar types of privacy and data protection practices provided substantive knowledge on the subject to enable us to represent Plaintiff's and Settlement Class Members' interests without expending hundreds of hours and substantial financial resources to come up to speed on the subject area or engaging in formal discovery.

31. Plaintiff has been personally involved in the case and support the Settlement. Plaintiff strongly believes the settlement is favorable to the Settlement Class.

### ***Release***

32. The release in this case is tailored to the claims that have been pleaded or could have been pleaded in this case.

### ***Exclusions and Objections***

33. The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement and decide whether they would like to opt-out or object.

34. The timing with regard to objections and exclusions is structured to give Class Members sufficient time to review the Settlement documents—including Plaintiff’s Motion for Attorneys’ Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the deadline for Class Members to object or exclude themselves from the Settlement.

35. Any Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent.

36. The Opt-Out Members shall not be eligible to receive any Settlement Benefits under, and shall not be bound by the terms of, the Settlement Agreement or the Judgment. The Opt-Out Members shall also waive and forfeit any and all rights they may have to appear separately regarding and/or to object to the Settlement Agreement.

***Service Award, Fees, and Costs***

37. The Parties did not discuss the payment of attorneys’ fees, costs, expenses and/or service awards to Representative Plaintiff until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys’ fees, costs, expenses, and a service award to Representative Plaintiff as may be agreed to by Defendant and proposed Class Counsel and/or as ordered by the Court.

38. The Settlement Agreement calls for a reasonable service award to Plaintiff in the amount of \$2,500, subject to approval of the Court. The Service Award is meant to recognize Plaintiff for his effort on behalf of the Class, including assisting in the investigation of the case, reviewing the pleadings, answering counsel’s many questions, and reviewing the terms of the Settlement Agreement. The Representative Plaintiff was not promised a service award, nor did he condition his representation on the expectation of a service award.

39. Defendant has also agreed to pay, subject to Court approval, up to \$150,000 in attorney's fees and reimbursement of actual costs and expenses incurred in the Litigation.

40. Proposed Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiff's Service Awards 14-days prior to Class Members' deadline to exclude themselves from the Settlement Class or to object to the Settlement Agreement.

41. I am not aware of any opposition to the Settlement. It is my opinion that the Settlement provides fair, adequate, and reasonable result for the Plaintiff and Class Members.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 15, 2023 in Chicago, Illinois.

Gary M. Klinger  
Gary M. Klinger

# **EXHIBIT 2**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (1) Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare (“MedStar”) and (2) Scott Kaether, individually and on behalf of all others similarly situated (“Plaintiff”), in the case of *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23; In the District Court of Tarrant County, Texas. MedStar and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

### **I. FACTUAL BACKGROUND AND RECITALS**

1. On January 13, 2023, Plaintiff filed the class action lawsuit referenced above against MedStar based on a cyberattack on MedStar’s network in October 2022 (the “Incident”), alleging claims of negligence, breach of implied contract, negligence per se, breach of fiduciary duty, public disclosure of private facts, and unjust enrichment (the “Litigation”).
2. Following several months of negotiations the Parties negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims Plaintiff and Settlement Class Members have or may have had against MedStar and related persons and entities, as set forth herein.
3. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, uncertainty, discovery, time, and expense for both of the Parties.
4. MedStar denies all claims of wrongdoing or liability that Plaintiff, Settlement Class Members, or anyone else have asserted in this Litigation or may assert in the future. Despite MedStar’s position that it is not liable for, and has good defenses to, the claims alleged in the Litigation, MedStar desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.
5. The Parties now enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood

that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

6. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

7. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

## II. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

8. "**Administrative Expenses**" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.
9. "**Approved Claims**" shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.
10. "**Claim Form**" shall mean the form that Settlement Class Members and Settlement Subclass Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit C-1 and C-2**.
11. "**Claims Deadline**" shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date ninety days after the Notice Date is entered. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.
12. "**Class,**" "**Settlement Class,**" "**Settlement Subclass,**" "**Class Member,**" "**Settlement Class Member,**" or "**Settlement Subclass Member**" shall mean each

member of the Settlement Class or Settlement Subclass, as defined in Section III of this Settlement Agreement, who does not timely elect to be excluded from the Settlement Class or Settlement Subclass.

13. “**Class Counsel**” shall mean (i) Gary M. Klinger, Alexander Wolf, and John Nelson of Milberg Coleman Bryson Phillips Grossman and (ii) Joe Kendall of Kendall Law Group, PLLC.
14. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.
15. “**Court**” shall mean the District Court of Tarrant County, Texas, and any other judge who shall have jurisdiction over the pending Litigation.
16. “**Defendant**” or “**MedStar**” shall mean Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare.
17. “**Defendant’s Counsel**” shall mean Shannon Norris of Norris Law Firm PLLC and Joshua L. Becker of Shook, Hardy & Bacon, LLP.
18. “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final, which is 35 days after the Court’s grant of the Final Approval Order assuming no appeals have been filed. If an appeal is filed, the Effective Date will become 35 days from when the appeal is finalized and a final judgment is entered in this case.
19. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, as well as a Service Award for the Class Representative.
20. “**Fee Award**” means the amount of attorneys’ fees awarded by the Court to Class Counsel that along with Class Counsel’s expenses shall not exceed \$150,000.
21. “**Final**” means the Final Approval Order has been entered on the docket, and (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).
22. “**Final Approval Hearing**” means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representative.
23. “**Final Approval Order**” shall mean an order entered by the Court that:



- i. Certifies the Settlement Class and Settlement Subclass pursuant to Rule 42(a), (b)(2), and (b)(3);
  - ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
  - iii. Dismisses Plaintiff's claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
  - iv. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
  - v. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
  - vi. Finds that there is no just reason for delay of entry of final judgment with respect to the foregoing.
24. **"Frequently Asked Questions"** or **"FAQs"** are questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.
25. **"Health Insurance Information"** shall mean the name and health insurance information that potentially was exfiltrated during the Incident that MedStar suffered in or around October 2022.
26. **"Litigation"** shall mean the action captioned *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23; In the District Court of Tarrant County, Texas.
27. **"Long Form Notice"** is the content of the notice substantially in the form as **Exhibits A-1 and A-1** is the detailed, long form notice that will be posted on the Settlement Website that will include robust details about the Settlement.
28. **"Notice"** means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits A through B**, and is consistent with the requirements of due process. The Notice Date in this case will be 30 days after the Court enters the Preliminary Approval Order.
29. **"Objection/Exclusion Deadline"** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within

the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as a date approximately 60 days after Notice Date, or such other date as ordered by the Court. This Deadline will also be known as the Objection Date and/or Exclusion Date.

30. “**Parties**” shall mean Plaintiff and MedStar, collectively.
31. “**Plaintiff**” or “**Class Representative**” shall mean the named class representative, Scott Kaether.
32. “**Preliminary Approval Order**” shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Settlement Agreement. Attached as **Exhibit D**.
33. “**Private Information**” means, for purposes of this settlement, names, dates of birth, contact information and additional personally identifiable information, as well as medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including health insurance information, medical information, and other protected health information that Defendant collected and maintained, as those terms are defined by applicable data breach notification laws.
34. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.
35. “**Released Parties**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.
36. “**Releasers**” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.
37. “**Service Award**” shall have the meaning ascribed to it as set forth in Section XV of this Settlement Agreement. The Service Award requested in this matter will be \$2,500, subject to court approval.
38. “**Settlement Administrator**” means, subject to Court approval, Epiq Global, an entity jointly selected and supervised by Class Counsel and MedStar to administer the settlement.
39. “**Settlement Payment**” means an amount up to a maximum of Three Thousand Dollars per person (\$3,000). In no event shall MedStar be required to pay more than this amount for claims made under the terms of this Settlement Agreement to any

person. The actual amount of the Settlement Payment paid for Approved Claims will be determined on a “claims made” basis such that only those individual Approved Claims will be funded up to the maximum amount. The Service Award to Plaintiff is in addition to any Settlement Payment he may receive.

40. “**Settlement Subclass**” means any member of the Settlement Class who had their medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.
41. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A-C** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website, [www.MAEMSDataSettlement.com](http://www.MAEMSDataSettlement.com), will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim, Objection, Exclusion requests, and the date of the Fairness Hearing. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Website will remain active until 90 days after the Effective Date.
42. “**Short Form Notice**” is the postcard notice that will be mailed to each available Settlement Class Member and/or emailed to the Settlement Class Members. Short Form Notice will include a copy of the Claim Form, in the same or substantially similar form as **Exhibits B-1 and B-2** hereto.

### III. SETTLEMENT CLASS CERTIFICATION

43. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class and Subclass shall be certified in accordance with the definition contained in Paragraph 40; (2) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (3) Plaintiff’s Counsel shall be appointed as Class Counsel.

44. MedStar does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Settlement Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (1) any Court orders preliminarily or finally approving the certification of any class contemplated by this Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (2) the fact of the settlement reflected in this Settlement Agreement, that MedStar did

not oppose the certification of a Class under this Settlement Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

45. The settlement shall be administered on a wholly claims-made basis. To receive any relief, Settlement Class Members and Settlement Subclass Members, as defined below, must submit a valid and timely claim to the Claims Administrator.

46. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

All persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.

Subject to Court approval, the following Settlement Subclass shall be certified for settlement purposes:

All persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.

47. Excluded from the Class are: (1) any entity in which MedStar has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of MedStar. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

48. It is estimated that the Class is comprised of approximately 612,000 individuals and the Settlement Subclass in comprised of approximately 108,000 individuals.

49. If for any reason the Settlement is not granted preliminary and/or final approval, MedStar’s agreement to certification of the Settlement Class or Settlement Subclass shall not be used for any purpose, including in any request for class certification in the Litigation or any other proceeding.

#### **IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASED PARTIES**

50. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiff and the Settlement Class and Settlement Subclass, the Litigation and the Released Claims, as described in Section VII.

51. **Settlement Benefits:**

a. Settlement Class:

*Compensation for Out-of-Pocket Losses:* MedStar will make the following compensation available to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by a third-party Claims Referee, at MedStar's expense, if they dispute the Settlement Administrator's initial determination.

MedStar will provide compensation for unreimbursed losses, up to a total of \$3,000 per person, upon submission of a claim and supporting documentation, such as the following losses:

- i. *Out of pocket expenses incurred* as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between October 20, 2022, and the date of the close of the Claims Period;
- iii. *Monetary Losses incurred from identity theft or fraud* as a result of the Data Incident, including unauthorized charges or purchases;

In order to be an out-of-pocket loss for which compensation can be claimed, the following conditions must be met:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not caused by the Data Incident;
- iii. The loss occurred between the time of the Data Incident and the time that claim forms are submitted; and
- iv. The loss is not already covered by one or more of the normal reimbursement categories; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

Settlement Class Members with out-of-pocket losses set forth above must submit adequate documentation establishing their claims. This can include receipts or other documentation not "self-prepared" by the claimant that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

*Credit Monitoring:* MedStar will pay for credit monitoring services for Settlement Class Members for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with at least \$1,000,000 in fraud insurance.

b. Settlement Subclass:

*Compensation for Lost Time:* MedStar will make additional compensation available to Settlement Subclass Members in the form of up to 4 hours of lost time at \$20/hour of time spent mitigating the effects of the Data Incident (so up to a total of \$80 for lost time).<sup>1</sup> Settlement Subclass members may submit claims for up to 4 hours of lost time with an attestation under oath on a form provided by the Settlement Administrator that they spent the claimed time responding to issues raised by the Data Incident.

**Release:** The relief stated above will be provided to Settlement Class Members as consideration for a general release of MedStar for all claims and causes of action pleaded or that could have been pleaded that are related in any way to the activities related to or stemming from the Incident.

**Settlement Administration Fees:** MedStar will pay the settlement administration fees, including the cost of notice to the class and claims administration.

**Settlement Administration Process:** Once a Settlement Administrator is reasonably agreed to by the Parties and after the settlement is preliminarily approved by the Court, the Settlement Administrator will provide notice in a manner reasonably agreed upon by the Parties.

After the Court enters an order approving the final Settlement Agreement, the Settlement Administrator shall provide the requested relief to all Settlement Class Members that made a valid and timely claim, subject to the individual caps on settlement class payout set forth in Paragraph 51 above.

- a. **Settlement Payments:** Within fifteen days after the entry of the Final Approval Order and receipt of payee instructions and a Form W-9 for the payee, MedStar or its insurer shall pay to the Settlement Administrator the Settlement Payment to satisfy the payments in Paragraph 51. Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Payment will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.
- b. **Escrow Agent:** The funds provided by MedStar to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Payment pursuant to Section 1.468B-1, et seq., of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

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<sup>1</sup> Claims for lost time are included within the \$3,000 cap on out-of-pocket losses.

- c. **Total Extent of Obligations:** The Settlement Payment represents the total extent of MedStar’s monetary obligations under the Settlement Agreement, plus any outstanding Court costs that exists after the entry of the Final Approval Order is filed with the District Court of Tarrant County, Texas clerk of court. MedStar’s contribution to the Settlement Payment shall be fixed under this Section and shall be final. MedStar shall have no obligation to make further payments into the Settlement Payment and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Payment, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

52. **Procedure for Approving Settlement**

- a. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.** Plaintiff will file an unopposed motion for an order conditionally certifying the Settlement Class and Settlement Subclass, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claim Form (the “Unopposed Motion for Preliminary Approval”).
  - i. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class/Subclass and preliminary approval of the Settlement; appointing the Class Representative and Class Counsel; approving the Claim Form and the forms of notice to the Settlement Class; and setting the Final Approval Hearing.
  - ii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiff shall be conditionally appointed class representative for the Class/Subclass, and that Class Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

53. **Submission and Evaluation of Claims**

- a. **Claims Period:** The Parties agree that the period for filing claims shall be set at a date certain at no more than 90 days from the date that notice is mailed to the Settlement Class.
- b. **Claim Form:** All claims must be submitted on a Claim Form. The Claim Form will require the Settlement Class Member to provide his or her full name, home

mailing address, and telephone number; an affirmation that he/she has received services from MedStar; and a signature affirming the accuracy of the included information.

- c. The Claim Form shall provide Settlement Class Members with the ability to receive up to \$3,000 in total value, which can be comprised of a combination of single-bureau credit-monitoring and the ability to claim up to \$3,000 for reimbursement of out-of-pocket expenses, upon provision of appropriate documentation, as discussed below.<sup>2</sup> Settlement Subclass Members may also receive up to \$80 for lost time, with this amount also subject to the \$3,000 limit for each person.
- d. The Claim Form must be submitted (either electronically submitted or postmarked) on or before the Claims Deadline. The Claim Form shall be substantially in the form attached hereto as **Exhibits C-1 and C-2**.
- e. Completed Claim Forms shall be submitted directly to the Settlement Administrator either electronically via the Settlement Website, via electronic mail, or via U.S. Mail for processing, assessment, and payment (when properly submitted).
- f. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment.
- g. A Settlement Class Member is not entitled to any compensation or to enrollment in the credit-monitoring services if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form is incomplete after an opportunity to cure any error(s) and/or omission(s) or contains false information.
- h. Within twenty-one days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted upon its sole discretion, and may request additional information prior to initially accepting or rejecting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud and shall deny Claim Forms which are materially incomplete, where there is evidence of abuse and/or fraud, or where the Claim Form does not meet the requirements set forth in this Agreement.
- i. Within thirty-five days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved

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<sup>2</sup> Claims are subject to the provisions in Paragraph 40. Claims for lost time are included within the \$3,000 cap on out-of-pocket losses.



Claims (“Initially Approved Claims List”), and shall include an electronic PDF copy of all such initially approved Claim Forms. Within forty-five days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”), and shall include an electronic PDF copy of all such initially rejected Claim Forms.

- j. Counsel for the Parties shall have thirty days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within thirty days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.
- k. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have thirty days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within thirty days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.
- l. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “**Claims Finalization Date.**” If neither Class Counsel nor MedStar’s Counsel have any challenges to the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and MedStar’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.
- m. So long as the Final Approval Order has been entered, within twenty-one days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant under Paragraph 51 above (the “Final Claims List”). Within thirty days of the Claims Finalization Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each Settlement Class Member on the Final Claims List.

- n. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five business days of the last such payment.
- o. In the event that checks sent to Settlement Class Members are not cashed within ninety days after their date of issuance, those checks will become null and void, and will revert to MedStar or its insurer.
- p. The ability to enroll in the credit-monitoring product will be delivered to each claimant after the claimant's claim has been approved. Within ten days of the Claims Finalization Date, the settlement administrator will send to each claimant who has filed an approved claim an email or direct mail, which will provide an activation code and instructions on how to enroll in and use the product. The activation code will be active for 90 days and once enrolled in the credit-monitoring, claimants are entitled to remain enrolled for 12 or 24 months, whichever term is applicable to the claimant, at no cost to them.

## **V. PROSPECTIVE RELIEF**

54. MedStar agrees to implement and/or to keep in place the following (or better) security-related measures through December 31, 2024:

- update its multi-factor authentication;
- disable Outlook Anywhere access for its employees;
- deploy security awareness training for its employees; and
- lower the maximum recipients per email message.

55. Costs associated with these business practice commitments will be paid by MedStar separate and apart from other Settlement benefits.

## **VI. RELEASE**

56. Upon Final Approval of this Settlement Agreement, Settlement Class members release, acquit, and forever discharge MedStar and its agents, subsidiaries, parents, and affiliates, and their respective employees, officers, directors, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, insurers (including excess insurers and reinsurers), and/or sureties ("Released Parties") from any claims, demands, actions, or causes of action that each Class member has, had, or may ever have, now or in the future, known or unknown, arising out of or in any way related to the Incident and/or Released Parties' recordkeeping or data security policies and practices, whether or not those claims, demands, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof ("Released Claims").

57. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

## **VII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER**

58. This Settlement Agreement shall be subject to approval of the Court. As set forth in Section V, MedStar shall have the right to withdraw from the Settlement Agreement if the Court does not approve any material aspects of the Settlement Agreement.

59. Plaintiff, through Class Counsel, shall submit this Settlement Agreement, together with its exhibits, to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Settlement Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, substantially in the form of **Exhibit D**, which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Plan.

60. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing at least 150 days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.

61. At least fourteen days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for (1) final approval of the Settlement; (2) final appointment of the Class Representatives and Class Counsel; and (3) final certification of the Settlement Class, including for the entry of a Final Approval Order identical in all material respects to the proposed Final Approval Order, and file a memorandum in support of the motion for final approval.

## **VIII. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS**

### **62. Settlement Administrator**

- a. The Parties have jointly selected the Settlement Administrator, who shall be jointly supervised by Class Counsel and MedStar to administer the settlement.
- b. Costs of Settlement Administration shall be borne by MedStar, outside of and separate from the Settlement Payment.

### **63. Class List**

- a. MedStar, with the assistance of the Settlement Administrator as appropriate, shall create a "Class List," based on information already within its possession.
- b. The Class List shall include the names and last known mailing addresses of potential Settlement Class Members, to the extent such information is readily available.
- c. MedStar shall provide the Class List to the Settlement Administrator and Class Counsel within seven days after entry of the Preliminary Approval Order.

64. **Type of Notice Required**

- a. The Notice, which shall be substantially in the form of **Exhibits A through C** attached hereto, shall be used to inform proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement and to further inform Settlement Class Members how they may: (1) obtain a copy of the Claim Form; (2) protect their rights regarding the settlement; (3) request exclusion from the Settlement Class and the proposed settlement, if desired; (4) object to any aspect of the proposed settlement, if desired; and (5) participate in the Final Approval Hearing, if desired. The Notice shall provide that (1) Settlement Class Members may submit Claim Forms and be eligible for (i) a twelve-month subscription to a single credit-monitoring service and (ii) the ability to claim up to \$3,000 for reimbursement of out-of-pocket expenses or lost time mitigating the effects of the Incident, upon provision of appropriate documentation and Settlement Subclass Members may also submit for compensation for lost time. Additionally, the Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class and that the \$3,000 is a total maximum amount for Settlement Class Members, while Settlement Subclass Members may also receive a maximum amount of \$80 as compensation for lost time with that amount also counting toward the \$3,000 limit per person.
- b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as **Exhibits A through C** hereto. Notice will be sent by the Settlement Administrator via U.S. Mail to the Class List provided by Defendant. Prior to mailing Notice, the Settlement Administrator will check each address against the National Change of Address database and update any addresses as needed. If any mailer is returned as undeliverable, the Settlement Administrator will remail the notice to any “forwarding address” provided by the United States Postal Service.
- c. Notice of the settlement (substantially in the form of **Exhibits A and B**) shall be posted on the Settlement Website within fourteen (14) days of the entry of the Preliminary Approval Order.

65. **Notice Deadline**

- a. Within thirty days of entry of the Preliminary Approval Order, the Settlement Administrator shall:
  - disseminate by U.S. Mail the Short Form Notice in the form of **Exhibits B-1 and B-2** to Settlement Class Members identified on the Class List;
  - publish the Digital Ad Notice; and,
  - post the Long Form Notice on the Settlement Website.

## **IX. EXCLUSIONS**

### **66. Exclusion Period**

- a. Settlement Class Members will have up to and including sixty days following Notice Deadline to exclude themselves from the Settlement in accordance with this Section.
- b. If the Settlement is finally approved by the Court, all Settlement Class Members who have not excluded themselves by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

### **67. Exclusion Process**

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Settlement Agreement, if approved.
- c. Any member of the Settlement Class who elects to be excluded shall not: (1) be bound by any order or judgment; (2) be entitled to relief under this Settlement Agreement; (3) gain any rights by virtue of this Settlement Agreement; or (4) be entitled to object to any aspect of this Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within ten business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.
- f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the Settlement.

## **X. OBJECTIONS**

### **68. Objection Period**

- a. Settlement Class Members will have up to and including sixty days following the Notice Deadline to object to the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not excluded themselves by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

### **69. Objection Process**

- a. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (1) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (2) send copies of such papers to the Settlement Administrator. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.
- b. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (1) his/her full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

- c. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

## **XI. FINAL APPROVAL HEARING**

70. The Parties will jointly request that the Court hold a Final Approval Hearing no earlier than one hundred twenty days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to Rule 42(a), (b)(2), and (b)(3) for settlement and, if so, (1) consider any properly filed objections, (2) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (3) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

## **XII. FINAL APPROVAL ORDER**

71. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waive any rights of appeal.

72. The Parties shall jointly submit to the Court a proposed Final Approval Order, that, without limitation:

- a. Approves finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;
- b. Dismisses with prejudice all claims of the Settlement Class against MedStar in the Litigation, without costs and fees except as explicitly provided for in this Settlement Agreement; and
- c. Reserves continuing and exclusive jurisdiction over the Settlement and this Settlement Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, MedStar, and the Settlement for the purposes of administering, consummating, supervising, construing, and enforcing the Settlement Agreement and the Settlement Payment.

73. Class Counsel shall use their best efforts to assist MedStar in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Settlement Agreement.

## **XIII. TERMINATION OF THE SETTLEMENT**

74. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement.

75. Either Party may elect to terminate and cancel this Settlement Agreement within ten days of any of the following events:

- a. The Court refuses to grant preliminary approval of this Settlement Agreement;
- b. The Court refuses to grant final approval of this Settlement Agreement in any material respect; or
- c. The Court refuses to enter a final judgment in this Litigation in any material respect.

76. MedStar may unilaterally terminate this Settlement Agreement on seven days written notice to Class Counsel if more than the agreed-upon number of individuals (more than 200 Class Members) submit valid Exclusion requests.

77. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

#### **XIV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD**

78. **Attorneys' Fees:** At least fourteen days before the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees and costs in an amount not to exceed \$150,000 (One Hundred Fifty Thousand Dollars). MedStar agrees not to oppose an application for attorneys' fees by Class Counsel in such an amount. Class Counsel, in turn, agree not to seek or accept attorneys' fees in excess of such amount from the Court. Attorneys' fees and expenses awarded by the Court shall be provided outside of and separate from the Settlement. This amount was negotiated after the primary terms of the settlement were negotiated, with the assistance of the mediator, Bennett Picker.

79. Notwithstanding any contrary provision of this Settlement Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Settlement Agreement or be deemed material thereto.



80. **Service Award to Plaintiff:** Before or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for Plaintiff in an amount not to exceed \$2,500. MedStar agrees not to oppose such a request. Service Awards approved by the Court will be provided outside of and separate from the Settlement Payment. This amount was negotiated after the primary terms of the settlement were negotiated.

81. The Service Award shall be paid by check written by Defendant or its insurer within seven days of the Effective Date and delivered to Class Counsel. The Fee Award shall also be paid by wire transfer from MedStar or its insurer within seven days of the Effective Date and sent to an account designated by Class Counsel.

82. In no event will MedStar's liability hereunder for the Fee Award, Administration Expenses, and/or a Service Award or any other fees, costs or expenses exceed its funding obligations set out in this Settlement Agreement. MedStar shall have no financial responsibility for this Settlement Agreement except as explicitly set out in this Settlement Agreement. MedStar shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members, the Settlement Class, and/or the Settlement Subclass. MedStar will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

## **XV. MISCELLANEOUS REPRESENTATIONS**

83. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

84. The Parties (1) acknowledge that it is their intent to consummate this Settlement Agreement, and (2) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and MedStar's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

85. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class, the Settlement Subclass, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Litigation was brought by Plaintiff or defended by MedStar in bad faith or without a reasonable basis.

86. The Parties agree not to identify, describe, disclose, testify, convey, or discuss with any individual, person, organization, corporation, or other entity the subject matter, amount, facts, terms, and conditions of this Settlement Agreement, including but not limited to any negotiations leading up to the actual resolution of this matter except where disclosure is compelled by law. In

such case reasonable notice will be provided to the other Party before disclosure is made. The Parties further agree that they will not issue, nor cause to be issued, any statements to the public or media regarding the claims and allegations leading up to this Settlement Agreement or regarding the Settlement Agreement or any of its terms, including statement on any website or via social media, unless prior written consent of the other Party is given.

87. Nothing express or implied in this Settlement Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Settlement Agreement. Each of the Released Parties is an intended third-party beneficiary of this Settlement Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasers.

88. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

89. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

90. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Settlement Agreement.

91. This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

92. This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

93. The Parties agree that **Exhibits A through E** to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

94. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Settlement Agreement.

95. Except as otherwise provided herein, each Party shall bear its own costs.

96. Plaintiff represents and warrants that Plaintiff has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

97. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

98. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Texas Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

99. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

100. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed, offered, or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Approval Order.

101. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay, or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.

102. Upon the Effective Date, Defendant and its representatives, officers, agents, directors, principals, affiliates, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged Plaintiff and Class Counsel from any and all claims, whether known or unknown, that arise out of, are based upon, or relate to the Prosecution of the Action, Litigation, Settlement Agreement, or Settlement Claims Process (provided, however, that this release and

discharge shall not include claims relating to the enforcement of the terms of the Settlement Agreement.)

103. This Settlement Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Settlement Agreement all exchange signed counterparts.

104. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

105. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

108. This Settlement Agreement shall be governed by and construed in accordance with the laws of the state of Texas.

109. This Settlement Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.

110. Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and shall be sent by electronic mail or hand delivery, as follows:

If to Class Counsel:

Gary M. Klinger  
MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN  
227 West Monroe Street  
Suite 2100  
Chicago, IL 60606  
Tel: 866.252.0878  
gklinger@milberg.com

Joe Kendall  
KENDALL LAW GROUP, PLLC  
3811 Turtle Creek  
Suite 1450  
Dallas, TX 75219  
Tel: 214.744.3000  
jkendall@kendalllawgroup.com

If to MedStar's Counsel:

Joshua L. Becker  
SHOOK, HARDY & BACON, LLP  
1230 Peachtree Street  
Suite 1200  
Atlanta, GA 30309  
Tel: 404.867.6010  
jbecker@shb.com

Shannon D. Norris  
NORRIS LAW FIRM, PLLC  
735 Plaza Boulevard  
Suite 200  
Coppell, TX 75019  
Tel: 214.396.3345  
sdnorris@norrisfirm.com

111. This Settlement Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

**IN WITNESS HEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, as Class Counsel

By: *Gary M. Klinger*

Print Name: Gary M. Klinger

Date: October 12, 2023

SHOOK, HARDY & BACON, LLP, as MedStar's Counsel

By: *Josh Becker*

Print Name: Josh Becker

Date: October 12, 2023

## SETTLEMENT TIMELINE

<b><u>Grant of Preliminary Approval</u></b>	
MedStar provides list of Settlement Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+14 days after Preliminary Approval
Notice Date	+30 days after Preliminary Approval
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+45 days after Notice Date
Objection Deadline	+60 days after Notice Date
Exclusion Deadline	+60 days after Notice Date
Claims Deadline	+90 days after Notice Date
Settlement Administrator Provide List of Objections/Exclusions to the Court and Settlement Administrator	+70 days after Notice Date
Initially Approved Claims List	+35 days after Claims Deadline
Initially Rejected Claims List	+35 days after Claims Deadline
Parties’ Challenge to Any Claims	+ 35 days from Initially Approved Claims List
<b><u>Final Approval Hearing</u></b>	
	+150 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	-14 days before Fairness Hearing Date
Settlement Administrator Provide Notice of Opt-Outs and/or Objections	-14 days before Fairness Hearing Date
<b><u>Final Approval</u></b>	
Settlement Administrator provides W-9 to MedStar	+15 days after Final Approval Order
Effective Date	+35 days after Final Approval Order
Payment of Attorneys’ Fees and Expenses Class Representative Service Award	+7 days after Effective Date
Settlement Website Deactivation	+90 days after Effective Date

# **EXHIBIT A-1**

**If you were notified on or around December 19, 2022 that your health insurance information was potentially compromised as a result of a cyberattack on MedStar’s network, you may be entitled to benefits from a settlement.**

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

- A settlement has been reached in a class action lawsuit against Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare (“MedStar”) arising out of a cyberattack on MedStar’s network in October 2022. The information at issue may have included names, dates of birth, contact information and additional personally identifiable information, as well as medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
- You are a “Settlement Class Member” if you were sent a letter by MedStar dated on or around December 19, 2022. Additionally, the Court also certified a Settlement Subclass that includes all persons whose HIPAA protected medical information were potentially compromised in the cyberattack. The Settlement Subclass is included within the overall Settlement Class.
- The Settlement provides the following to Settlement Class Members who file a valid Claim:
  - **Out-of-Pocket Losses** – Settlement Class Members can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses.
  - **Credit Monitoring** – Settlement Class Members can file a Claim for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance.

**This Notice may affect your rights. Please read it carefully.**

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	You will be ineligible to receive any Settlement Benefits if you fail to submit a Claim Form.	<b>Month Day, 202X</b>
<b>EXCLUDE YOURSELF</b>	Get no Settlement Benefits. Keep your right to file your own lawsuit against MedStar about the legal claims in this case.	<b>Month Day, 202X</b>
<b>OBJECT</b>	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it. You may still file a Claim Form and/or receive Identity Theft Protection Services.	<b>Month Day, 202X</b>
<b>DO NOTHING</b>	Get no Settlement Benefits. Be bound by the Settlement.	

- The Court in charge of this case must still decide whether to approve the Settlement and the requested attorneys’ fees and expenses. No Settlement Benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

**Questions? Go to [www.xxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**



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## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about your rights and options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

Judge Kimberly Fitzpatrick of the District Court of Tarrant County, Texas is overseeing this class action case. The case is known as *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23 (the “Litigation”). The person who filed this lawsuit is called the “Plaintiff” or “Representative Plaintiff” and the company sued, Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare, is referred to in this document as “MedStar” or the “Defendant.”

### 2. What is this lawsuit about?

On January 13, 2023, Plaintiff filed the class action lawsuit against MedStar based on a cyberattack on MedStar’s network in October 2022 (the “Incident”), alleging claims of negligence, breach of implied contract, negligence per se, breach of fiduciary duty, public disclosure of private facts, and unjust enrichment (the “Litigation”). On December 19, 2022, after a preliminary investigation, MedStar sent a letter to those whose data may have been exposed. MedStar’s letter informed the relevant individuals that “...we recently suffered a cyberattack affecting portions of protected health information for individuals we have served, which may have included your information. On October 20, 2022, we experienced issues with our network systems. We promptly investigated and determined that a third party had accessed our network. MedStar is providing this notice to give you more information on what happened and what we are doing in response. An unauthorized third party gained access to a restricted location in MedStar’s computer network that contained a number of files, including those with personal health information.”

No court or other entity has determined that MedStar committed any wrongdoing or violated any law, and MedStar denies all the claims asserted in the Litigation. By entering the Settlement, MedStar is not admitting any wrongdoing or liability.

### 3. Why is the lawsuit a class action?

In a class action, a representative plaintiff or plaintiffs sues on behalf of all people who have similar claims. Together all these people are called a settlement class or settlement class members. One court resolves the issues for all settlement class members, except for those settlement class members who timely exclude themselves from the settlement class.

The proposed Representative Plaintiff in this case is Scott Kaether.

### 4. Why is there a Settlement?

Plaintiffs and MedStar do not agree about the claims made in this Litigation. The Litigation has not gone to trial, and the Court has not decided in favor of any party. Instead, Plaintiffs and MedStar have agreed to settle the Litigation. Plaintiffs and the attorneys for the Settlement Class (“Class Counsel”) believe the Settlement is best for all Settlement Class Members because of the Settlement Benefits and the risks and uncertainty associated with continued litigation and the nature of the defenses raised by MedStar.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

## WHO IS INCLUDED IN THE SETTLEMENT?

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

Under the Settlement, the Court decided that the Class includes all persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. Additionally, the Court also certified a Settlement Subclass that includes all persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.

### 6. Are there exceptions to being included in the Settlement?

Yes. Excluded from the Class are: (1) any entity in which MedStar has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of MedStar. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families, and members of their staff.

### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call the Settlement Administrator’s toll-free number at 1-XXX-XXX-XXXX.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 8. What does the Settlement provide?

If you are a Settlement Class Member and you file a valid and timely Claim Form by **Month DD, 2023** you may be eligible for the following Settlement Benefits:

**Out-of-Pocket Losses** - If you are a member of the Settlement Class, you can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses related to the cyber-attack that MedStar discovered in or about October 2022 (the “Data Incident”). Examples of potentially reimbursable losses include:

- Out of pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- Fees for credit reports, credit monitoring, or other identity theft insurance product purchased between October 20, 2022, and Month DD, 2023;
- Monetary Losses incurred from identity theft or fraud as a result of the Data Incident, including unauthorized charges or purchases.

In order for your claimed out-of-pocket loss to qualify for a payment, the following conditions must be met:

- The loss is an actual, documented, and unreimbursed monetary loss;
- The loss was more likely than not caused by the Data Incident;
- The loss occurred between the time of the Data Incident and the time that claim forms are submitted; and

**Questions? Go to [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**

- The loss is not already covered by one or more of the normal reimbursement categories; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

In order to have your Claim for out-of-pocket losses approved, you must submit adequate documentation establishing your claim. This can include receipts or other documentation (not “self-prepared” by you) that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered by the administrator to add clarity or support other submitted documentation.

**Credit Monitoring** - MedStar will pay for credit monitoring services for Settlement Class Members for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance. You can easily file your claim for Credit Monitoring services at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).

**9. What else does the Settlement Provide?**

Under the Settlement MedStar agrees to implement and/or to keep in place the following (or better) security-related measures through December 31, 2024:

- update its multi-factor authentication;
- disable Outlook Anywhere access for its employees;
- deploy security awareness training for its employees; and
- lower the maximum recipients per email message.

Costs associated with these business practice commitments will be paid by MedStar separate and apart from other Settlement benefits.

**10. What am I giving up to receive Settlement Benefits or stay in the Settlement Class?**

Unless you exclude yourself, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against MedStar and the Released Parties about the legal issues in this Litigation that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

**11. What are the Released Claims?**

The Settlement Agreement in Sections VI and XV describes the Release, Released Claims, and the Released Parties in necessary legal terminology, so please read these sections carefully. The Settlement Agreement is available at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or in the public court records on file in this lawsuit. For questions regarding the Release and what it means, you can also contact one of the lawyers listed in Question 16 for free, or you can talk to your own lawyer at your own expense.

**HOW TO GET BENEFITS FROM THE SETTLEMENT**

**12. How do I make a claim for Settlement Benefits?**

To submit a claim for reimbursement for Out-of-Pocket Losses and/or Credit Monitoring, you must submit a valid Claim Form.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

Settlement Class Members seeking reimbursement under the Settlement must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before **Month Day, 202X**. Claim Forms may be submitted online at [www.xxxxxxxx.com](http://www.xxxxxxxx.com), or printed from the website and mailed to the Settlement Administrator at the address on the form. The quickest way to submit a claim is online. Claim Forms are also available by calling 1-xxx-xxx-xxxx or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

### **13. What happens if my contact information changes after I submit a claim?**

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-XXX-XXX-XXXX or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

### **14. When will I receive my Settlement Benefits?**

If you make a valid Claim, payment will be provided by the Settlement Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.xxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxx.com) for updates.

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in this case?**

Yes, the Court has appointed Gary M. Klinger, Alexander Wolf, and John Nelson of Milberg Coleman Bryson Phillips Grossman and Joe Kendall of Kendall Law Group, PLLC as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Litigation.

### **16. How will Class Counsel be paid?**

Class Counsel will file a motion asking the Court to award attorneys' fees and costs in an amount not to exceed \$150,000 to be paid by MedStar. They will also ask the Court to approve a service award of \$2,500 to the Representative Plaintiff for participating in this Litigation and for his efforts in achieving the Settlement. If awarded by the Court, MedStar will pay reasonable fees, costs, expenses, and incentive awards directly. The Court may award less than the amounts sought by Representative Plaintiffs and Class Counsel.

Class Counsel's application for attorneys' fees, expenses, and service awards will be made available on the settlement website at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) before the deadline for you to comment or object to the Settlement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue the Defendants on your own based on the claims raised in this Litigation or released by the

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting-out” of – the Settlement.

### 17. How do I get out of the Settlement?

You may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before **Month DD, 2023**. Your request must include the following:

- Your name, address, and telephone number;
- The name and number of this case, *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23;
- A statement that you wish to be excluded from the Settlement Class; and
- Your signature.

A request to be excluded that is sent to an address other than designated below, or that is not electronically submitted or postmarked within the time specified, will be invalid and the person making the request will be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Settlement Agreement, if approved.

If sent by mail, your exclusion request must be **postmarked** and sent to the Settlement Administrator at the following address by **Month Day, 2023**:

MedStar Settlement Administrator  
Exclusions  
PO Box XXXX  
Portland, OR XXXXX-XXXX

If made electronically at the Settlement website, your request to be excluded must be made by **midnight Central Time on Month, DD, 2023**.

### 18. If I exclude myself, can I still get anything from this Settlement?

No. If you exclude yourself, you are telling the Court you do not want to be part of the Settlement. You can only get Settlement Benefits if you stay in the Settlement and submit a valid Claim Form.

### 19. If I do not exclude myself, can I sue MedStar for the same thing later?

No. Unless you exclude yourself, you give up any right to sue MedStar and Released Parties for the claims resolved by this Settlement. You must exclude yourself from this Litigation to start or continue with your own lawsuit or be part of any other lawsuit against the MedStar or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECT TO THE SETTLEMENT

### 20. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of the Settlement or the requested attorneys’ fees and expenses. You can also give reasons why you think the Court should not approve the Settlement or attorneys’ fees and expenses.

To object, you must file a timely written notice of your objection so it is received by **Month Day, 2023**. Such notice must state:

- Your full name, address, and current telephone number;

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

- The name and number of this case, *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23;
- All grounds for your objection, with factual and legal support for the stated objection, including any supporting materials;
- The identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years;
- Whether you intend to appear at the Final Approval Hearing; and
- Your signature.

If you are represented by counsel and file an objection, you must also provide the name and telephone number of your counsel.

To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court for the District Court of Tarrant County, Texas by **Month Day, 2023** with copies sent at the same time to the Settlement Administrator. The addresses for each are as follows:

THE COURT	SETTLEMENT ADMINISTRATOR
Office of the Clerk District Court of Tarrant County, Texas 100 N. Calhoun St. Fort Worth, Texas 7619	MedStar Settlement Administrator Objections PO Box XXXX Portland, OR 97XXX-XXXX

Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

**21. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court you do not like something about the Settlement or requested attorneys’ fees and expenses. You can object only if you stay in the Settlement Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you cannot object to the Settlement.

**THE FINAL FAIRNESS HEARING**

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

The Court will hold a Final Fairness Hearing on **Month Day, 202\_**, at **X:XX a.m./p.m.** before Judge \_\_\_\_\_.

At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to Rule 42(a), (b)(2), and (b)(3) for settlement and, if so, (1) consider any properly filed objections, (2) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (3) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

Note: The date and time of the Final Fairness Hearing are subject to change. Any change will be posted at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com).

### **23. Do I have to attend to the Final Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to speak about it. As long as you file or mail your written objection on time, the Court will consider it.

### **24. May I speak at the Final Fairness Hearing?**

Yes, as long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this Litigation and Settlement. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to hire and pay for your own lawyer.

If you file an objection and you do intend to appear at the Final Approval Hearing, either with or without counsel, you must state in your objection your intention to appear at the Hearing, and you must also identify any witnesses you may call to testify at the Final Approval Hearing, and all exhibits you intend to introduce into evidence at the Final Approval Hearing. Any intended exhibits must also be attached to, or included with, the written objection.

## **IF YOU DO NOTHING**

### **25. What happens if I do nothing at all?**

If you are a Settlement Class Member and you do nothing, you will not receive any Settlement Benefits. You will give up rights explained in the “Excluding Yourself from the Settlement” section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against MedStar or any of the Released Parties about the legal issues in this Litigation that are released by the Settlement Agreement.

## **GETTING MORE INFORMATION**

### **26. How do I get more information?**

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com), by calling 1-XXX-XXX-XXXX, or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT’S CLERK OFFICE  
REGARDING THIS NOTICE.**

**Questions? Go to [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**



# **EXHIBIT A-2**

**If you were notified on or around December 19, 2022 that your health insurance information was potentially compromised as a result of a cyberattack on MedStar’s network, you may be entitled to benefits from a settlement.**

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

- A settlement has been reached in a class action lawsuit against Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare (“MedStar”) arising out of a cyberattack on MedStar’s network in October 2022. The information at issue may have included names, dates of birth, contact information and additional personally identifiable information, as well as medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
- You are a “Settlement Subclass Member” if you were sent a letter by MedStar dated on or around December 19, 2022. The Settlement Subclass includes all persons whose medical information protected by HIPAA and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. The Settlement Subclass is included within the overall Settlement Class.
- The Settlement provides the following to Settlement Subclass Members who file a valid Claim:
  - **Out-of-Pocket Losses** – Settlement Subclass Members can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses.
  - **Credit Monitoring** – Settlement Subclass Members can file a Claim for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance.
  - **Compensation for Lost Time** – Members of the Settlement Subclass can make an additional Claim for up to 4 hours of lost time at \$20/hour of time spent mitigating the effects of the Data Incident (up to a total of \$80 for lost time).

**This Notice may affect your rights. Please read it carefully.**

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

Your Legal Rights and Options		Deadline
<b>SUBMIT A CLAIM FORM</b>	You will be ineligible to receive any Settlement Benefits if you fail to submit a Claim Form.	<b>Month Day, 202X</b>
<b>EXCLUDE YOURSELF</b>	Get no Settlement Benefits. Keep your right to file your own lawsuit against MedStar about the legal claims in this case.	<b>Month Day, 202X</b>
<b>OBJECT</b>	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it. You may still file a Claim Form and/or receive Identity Theft Protection Services.	<b>Month Day, 202X</b>
<b>DO NOTHING</b>	Get no Settlement Benefits. Be bound by the Settlement.	

- The Court in charge of this case must still decide whether to approve the Settlement and the requested attorneys’ fees and expenses. No Settlement Benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

**Questions? Go to [www.xxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**

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- 2. What is this lawsuit about?
- 3. Why is the lawsuit a class action?
- 4. Why is there a Settlement?

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- 5. How do I know if I am part of the Settlement?
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- 7. What if I am still not sure whether I am part of the Settlement?

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- 10. What else does the Settlement Provide?
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**OBJECT TO THE SETTLEMENT..... PAGE**

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- 24. Do I have to attend the Final Fairness Hearing?
- 25. May I speak at the Final Fairness Hearing?

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- 26. What happens if I do nothing at all?

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- 27. How do I get more information?

## BASIC INFORMATION

### 1. Why is this Notice being provided?

A Court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about your rights and options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

Judge Kimberly Fitzpatrick of the District Court of Tarrant County, Texas is overseeing this class action case. The case is known as *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23 (the “Litigation”). The person who filed this lawsuit is called the “Plaintiff” or “Representative Plaintiff” and the company sued, Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare, is referred to in this document as “MedStar” or the “Defendant.”

### 2. What is this lawsuit about?

On January 13, 2023, Plaintiff filed the class action lawsuit against MedStar based on a cyberattack on MedStar’s network in October 2022 (the “Incident”), alleging claims of negligence, breach of implied contract, negligence per se, breach of fiduciary duty, public disclosure of private facts, and unjust enrichment (the “Litigation”). On December 19, 2022, after a preliminary investigation, MedStar sent a letter to those whose data may have been exposed. MedStar’s letter informed the relevant individuals that “...we recently suffered a cyberattack affecting portions of protected health information for individuals we have served, which may have included your information. On October 20, 2022, we experienced issues with our network systems. We promptly investigated and determined that a third party had accessed our network. MedStar is providing this notice to give you more information on what happened and what we are doing in response. An unauthorized third party gained access to a restricted location in MedStar’s computer network that contained a number of files, including those with personal health information.”

No court or other entity has determined that MedStar committed any wrongdoing or violated any law, and MedStar denies all the claims asserted in the Litigation. By entering the Settlement, MedStar is not admitting any wrongdoing or liability.

### 3. Why is the lawsuit a class action?

In a class action, a representative plaintiff or plaintiffs sues on behalf of all people who have similar claims. Together all these people are called a settlement class or settlement class Members. One court resolves the issues for all settlement class members, except for those settlement class members who timely exclude themselves from the settlement class.

The proposed Representative Plaintiff in this case is Scott Kaether.

### 4. Why is there a Settlement?

Plaintiffs and MedStar do not agree about the claims made in this Litigation. The Litigation has not gone to trial, and the Court has not decided in favor of any party. Instead, Plaintiffs and MedStar have agreed to settle the Litigation. Plaintiffs and the attorneys for the Settlement Subclass (“Class Counsel”) believe the Settlement is best for all Settlement Subclass Members because of the Settlement Benefits and the risks and uncertainty associated with continued litigation and the nature of the defenses raised by MedStar.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

## WHO IS INCLUDED IN THE SETTLEMENT?

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

Under the Settlement, the Court decided that the Class includes all persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. Additionally, the Court also certified a Settlement Subclass that includes all persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. The Settlement Subclass is included within the overall Settlement Class.

### 6. Are there exceptions to being included in the Settlement?

Yes. Excluded from the Class are: (1) any entity in which MedStar has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of MedStar. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families, and members of their staff.

### 7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Subclass Member, you may go to the Settlement Website at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call the Settlement Administrator’s toll-free number at 1-XXX-XXX-XXXX.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 8. What does the Settlement provide?

If you are a Settlement Subclass Member and you file a valid and timely Claim Form by **Month DD, 2023** you may be eligible for the following Settlement Benefits:

**Out-of-Pocket Losses** – If you are a member of the Settlement Subclass, you can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses related to the cyber-attack that MedStar discovered in or about October 2022 (the “Data Incident”). Examples of potentially reimbursable losses include:

- Out of pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
- Fees for credit reports, credit monitoring, or other identity theft insurance product purchased between October 20, 2022, and Month DD, 2023;
- Monetary Losses incurred from identity theft or fraud as a result of the Data Incident, including unauthorized charges or purchases.

In order for your claimed out-of-pocket loss to qualify for a payment, the following conditions must be met:

- The loss is an actual, documented, and unreimbursed monetary loss;
- The loss was more likely than not caused by the Data Incident;
- The loss occurred between the time of the Data Incident and the time that claim forms are submitted; and

**Questions? Go to [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**

- The loss is not already covered by one or more of the normal reimbursement categories; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

In order to have your Claim for out-of-pocket losses approved, you must submit adequate documentation establishing your claim. This can include receipts or other documentation (not “self-prepared” by you) that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered by the administrator to add clarity or support other submitted documentation.

**Credit Monitoring** – MedStar will pay for credit monitoring services for Settlement Subclass Members for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance. You can easily file your claim for Credit Monitoring services at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).

**Compensation for Lost Time** – In addition to the above benefits, members of the Settlement Subclass can make an additional Claim for Compensation for Lost Time. MedStar will make additional compensation available to Settlement Subclass Members in the form of up to 4 hours of lost time at \$20/hour of time spent mitigating the effects of the Data Incident (up to a total of \$80 for lost time). Settlement Subclass members may submit their claim for up to 4 hours of lost time with an attestation under oath that they spent the claimed time responding to issues raised by the Data Incident. Lost Time Claims can be filed at the Settlement website. Settlement Subclass Members can also download an attestation form at the website and file by mail.

**9. I am a Class Member, but how do I know if I am a member of the Settlement Subclass?**

If you were sent a Notice of the Settlement by Mail, the Notice will identify you as a member of the Settlement Subclass. On the Postcard Notice you were sent is a unique identifying number that you can use to file your Lost Time Claim at the settlement website.

**10. What else does the Settlement Provide?**

Under the Settlement MedStar agrees to implement and/or to keep in place the following (or better) security-related measures through December 31, 2024:

- update its multi-factor authentication;
- disable Outlook Anywhere access for its employees;
- deploy security awareness training for its employees; and
- lower the maximum recipients per email message.

Costs associated with these business practice commitments will be paid by MedStar separate and apart from other Settlement benefits.

**11. What am I giving up to receive Settlement Benefits or stay in the Settlement Subclass?**

Unless you exclude yourself, you are choosing to remain in the Settlement Subclass. If the Settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against MedStar and the Released Parties about the legal issues in this Litigation that are released by this Settlement. The specific rights you are giving up are called “Released Claims.”

## 12. What are the Released Claims?

The Settlement Agreement in Sections VI and XV describes the Release, Released Claims, and the Released Parties in necessary legal terminology, so please read these sections carefully. The Settlement Agreement is available at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or in the public court records on file in this lawsuit. For questions regarding the Release and what it means, you can also contact one of the lawyers listed in Question 16 for free, or you can talk to your own lawyer at your own expense.

## HOW TO GET BENEFITS FROM THE SETTLEMENT

### 13. How do I make a claim for Settlement Benefits?

To submit a claim for reimbursement for Out-of-Pocket Losses, Credit Monitoring, and/or Lost Time, you must submit a valid Claim Form.

Settlement Subclass Members seeking reimbursement under the Settlement must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before **Month Day, 202X**. Claim Forms may be submitted online at [www.xxxxxxxx.com](http://www.xxxxxxxx.com), or printed from the website and mailed to the Settlement Administrator at the address on the form. The quickest way to submit a claim is online. Claim Forms are also available by calling 1-xxx-xxx-xxxx or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

### 14. What happens if my contact information changes after I submit a claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-XXX-XXX-XXXX or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

### 15. When will I receive my Settlement Benefits?

If you make a valid Claim, payment will be provided by the Settlement Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [www.xxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxx.com) for updates.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

Yes, the Court has appointed Gary M. Klinger, Alexander Wolf, and John Nelson of Milberg Coleman Bryson Phillips Grossman and Joe Kendall of Kendall Law Group, PLLC as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Litigation.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

## 17. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award attorneys' fees and costs in an amount not to exceed \$150,000 to be paid by MedStar. They will also ask the Court to approve a service award of \$2,500 to the Representative Plaintiff for participating in this Litigation and for his efforts in achieving the Settlement. If awarded by the Court, MedStar will pay reasonable fees, costs, expenses, and incentive awards directly. The Court may award less than the amounts sought by Representative Plaintiffs and Class Counsel.

Class Counsel's application for attorneys' fees, expenses, and service awards will be made available on the settlement website at [www.xxxxxxxx.com](http://www.xxxxxxxx.com) before the deadline for you to comment or object to the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Settlement Subclass Member and want to keep any right you may have to sue or continue to sue the Defendants on your own based on the claims raised in this Litigation or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting-out” of – the Settlement.

## 18. How do I get out of the Settlement?

You may request to be excluded from the Settlement Subclass in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before **Month DD, 2023**. Your request must include the following:

- Your name, address, and telephone number;
- The name and number of this case, *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23;
- A statement that you wish to be excluded from the Settlement Class; and
- Your signature.

A request to be excluded that is sent to an address other than designated below, or that is not electronically submitted or postmarked within the time specified, will be invalid and the person making the request will be considered a member of the Settlement Subclass and shall be bound as Settlement Subclass Members by the Settlement Agreement, if approved.

If sent by mail, your exclusion request must be **postmarked** and sent to the Settlement Administrator at the following address by **Month Day, 2023**:

MedStar Settlement Administrator  
Exclusions  
PO Box XXXX  
Portland, OR XXXXX-XXXX

If made electronically at the Settlement website, your request to be excluded must be made by **midnight Central Time on Month, DD, 2023**.

## 19. If I exclude myself, can I still get anything from this Settlement?

No. If you exclude yourself, you are telling the Court you do not want to be part of the Settlement. You can only get Settlement Benefits if you stay in the Settlement and submit a valid Claim Form.

## 20. If I do not exclude myself, can I sue MedStar for the same thing later?

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**



No. Unless you exclude yourself, you give up any right to sue MedStar and Released Parties for the claims resolved by this Settlement. You must exclude yourself from this Litigation to start or continue with your own lawsuit or be part of any other lawsuit against the MedStar or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECT TO THE SETTLEMENT

### 21. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Subclass Member, you can tell the Court you do not agree with all or any part of the Settlement or the requested attorneys' fees and expenses. You can also give reasons why you think the Court should not approve the Settlement or attorneys' fees and expenses.

To object, you must file a timely written notice of your objection so it is received by **Month Day, 2023**. Such notice must state:

- Your full name, address, and current telephone number;
- The name and number of this case, *Kaether v. Metropolitan Area EMS Authority*; Cause No. 342-339562-23;
- All grounds for your objection, with factual and legal support for the stated objection, including any supporting materials;
- The identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years;
- Whether you intend to appear at the Final Approval Hearing; and
- Your signature.

If you are represented by counsel and file an objection, you must also provide the name and telephone number of your counsel.

To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court for the District Court of Tarrant County, Texas by **Month Day, 2023** with copies sent at the same time to the Settlement Administrator. The addresses for each are as follows:

THE COURT	SETTLEMENT ADMINISTRATOR
Office of the Clerk District Court of Tarrant County, Texas 100 N. Calhoun St. Fort Worth, Texas 7619	MedStar Settlement Administrator Objections PO Box XXXX Portland, OR 97XXX-XXXX

Any Settlement Subclass Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

### 22. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court you do not like something about the Settlement or requested attorneys' fees and expenses. You can object only if you stay in the Settlement Subclass (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Subclass or the Settlement. If you exclude yourself, you cannot object to the Settlement.

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

## THE FINAL FAIRNESS HEARING

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

The Court will hold a Final Fairness Hearing on **Month Day, 202\_**, at **X:XX a.m./p.m.** before Judge \_\_\_\_\_.

At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Subclass should be certified as a class pursuant to Rule 42(a), (b)(2), and (b)(3) for settlement and, if so, (1) consider any properly filed objections, (2) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (3) enter the Final Approval Order, including final approval of the Settlement Subclass and the Settlement Agreement, and a Fee Award.

Note: The date and time of the Final Fairness Hearing are subject to change. Any change will be posted at [www.xxxxxxxxxxx.com](http://www.xxxxxxxxxxx.com).

### 24. Do I have to attend to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to speak about it. As long as you file or mail your written objection on time, the Court will consider it.

### 25. May I speak at the Final Fairness Hearing?

Yes, as long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this Litigation and Settlement. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to hire and pay for your own lawyer.

If you file an objection and you do intend to appear at the Final Approval Hearing, either with or without counsel, you must state in your objection your intention to appear at the Hearing, and you must also identify any witnesses you may call to testify at the Final Approval Hearing, and all exhibits you intend to introduce into evidence at the Final Approval Hearing. Any intended exhibits must also be attached to, or included with, the written objection.

## IF YOU DO NOTHING

### 26. What happens if I do nothing at all?

If you are a Settlement Subclass Member and you do nothing, you will not receive any Settlement Benefits. You will give up rights explained in the “Excluding Yourself from the Settlement” section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against MedStar or any of the Released Parties about the legal issues in this Litigation that are released by the Settlement Agreement.

## GETTING MORE INFORMATION

### 27. How do I get more information?

**Questions? Go to [www.xxxxxxxxxxx.com](http://www.xxxxxxxxxxx.com) or call 1-XXX-XXX-XXXX**

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [www.xxxxxxxx.com](http://www.xxxxxxxx.com), by calling 1-XXX-XXX-XXXX, or by writing to:

MedStar Settlement Administrator  
PO Box XXXX  
Portland, OR XXXXX-XXXX

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE  
REGARDING THIS NOTICE.**

**Questions? Go to [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call 1-XXX-XXX-XXXX**

# **EXHIBIT B-1**

MedStar  
Settlement Administrator  
P.O. Box XXXX  
Portland, OR 97XXX-XXXX

UNIQUE ID: <<XXXX>>

**If you were notified on or around  
December 19, 2022, that your health  
insurance information was potentially  
compromised as a result of a cyberattack  
on MedStar's network, you may be  
entitled to benefits from a settlement.**

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

## **ACCESS YOUR FREE CREDIT MONITORING SERVICES**

Fill out the information below **ONLY** to receive your free Credit Monitoring Services. Claim Forms for Documented Out-of-Pocket Expense Reimbursements are available on the Settlement Website at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling toll-free 1-XXX-XXX-XXXX.

Email Address:

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### **CREDIT MONITORING SERVICES**

All class members are eligible to claim 12 months of single-bureau credit monitoring services, issued through [credit monitoring provider]. If you wish to receive the Credit Monitoring Services, please check the box or below.

**I want to receive free Credit Monitoring Services at the email entered in the above section.**

*If you select the Credit Monitoring and/or Password Management services option, you will be sent activation instructions after the Settlement is final to your email address or home address. These benefits can be selected in addition to any other benefit to which the class member may be entitled on this form.*

A settlement has been reached in a class action lawsuit against Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare (“MedStar”) arising out of a cyberattack on MedStar’s network in October 2022. The information at issue may have included names, dates of birth, contact information and additional personally identifiable information, as well as medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). No court or other entity has determined that MedStar committed any wrongdoing or violated any law, and MedStar denies all the claims asserted in the Litigation.

**Why did I receive this Notice?** You are receiving this Notice because you were sent a letter by MedStar dated on or around December 19, 2022.

**What can I get from the Settlement?** Under the terms of the Settlement, you can recover the following benefits.

- **Out-of-Pocket Losses** – Settlement Class Members can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses.
- **Credit Monitoring** – Settlement Class Members can file a Claim for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance.

**What are my options?** You can file a Claim for the benefits listed above. The easiest way to submit a Claim is online at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com). To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online on or before **Month DD, 2023**. You can also exclude yourself or object to the Settlement on or before **Month DD, 2023**. If you do not exclude yourself from the Settlement, you will remain in the Class and will give up the right to sue the Released Persons for the claims resolved by the Settlement. A summary of your rights under the Settlement and instructions regarding how to submit a Claim, access the Credit Monitoring benefit and other Settlement benefits, exclude yourself, or object are available at [www.XXXXXXXXXXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXXXXXXXXXX.com).

The Court will hold a Final Fairness Hearing on **Month DD, 2024, at \_\_\_\_.m.** At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also listen to people who have asked to speak at the hearing. You may attend the hearing at your own expense, or you may also pay your own lawyer to attend. It is not necessary to attend the hearing nor retain your own lawyer to attend the hearing.

**How can I get more information?** This Notice is a summary. The Settlement Agreement and more information about the lawsuit and Settlement are available at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling toll-free 1-XXX-XXX-XXXX.

# **EXHIBIT B-2**



MedStar  
Settlement Administrator  
P.O. Box XXXX  
Portland, OR 97XXX-XXXX

UNIQUE ID: <<XXXX>>

**If you were notified on or around  
December 19, 2022, that your health  
insurance information was potentially  
compromised as a result of a cyberattack  
on MedStar's network, you may be  
entitled to benefits from a settlement.**

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

## **ACCESS YOUR FREE CASH PAYMENT OR CREDIT MONITORING SERVICES**

Fill out the information below **ONLY** to receive your free Lost Time payment and/or Credit Monitoring Services. Claim Forms for Documented Out-of-Pocket Expense Reimbursements are available on the Settlement Website at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling toll-free 1-XXX-XXX-XXXX.

Email Address:

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### **CASH PAYMENT FOR LOST TIME**

Without documentation, you may receive reimbursement for up to 4 hours of lost time compensated at \$20 per hour if you spent at least one full hour and can provide a brief description of your actions. Round up to the nearest hour and check only one box.

1 Hour

2 Hours

3 Hours

4 Hours

**By checking this box, I certify under oath that any claimed lost time was spent related to the Data Incident.**

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### **CREDIT MONITORING SERVICES**

All class members are eligible to claim 12 months of single-bureau credit monitoring services, issued through [credit monitoring provider]. If you wish to receive the Credit Monitoring Services, please check the box below.

**I want to receive free Credit Monitoring Services sent to the email entered in the above section.**

*If you select the Credit Monitoring and/or Password Management services option, you will be sent activation instructions after the Settlement is final to your email address or home address. These benefits can be selected in addition to any other benefit to which you may be entitled on this form.*

A settlement has been reached in a class action lawsuit against Metropolitan Area EMS Authority d/b/a MedStar Mobile Healthcare (“MedStar”) arising out of a cyberattack on MedStar’s network in October 2022. The information at issue may have included personally identifiable information, as well as medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). No court or other entity has determined that MedStar committed any wrongdoing or violated any law, and MedStar denies all the claims asserted in the Litigation.

**Why did I receive this Notice?** You are receiving this Notice because you were sent a letter by MedStar dated on or around December 19, 2022 and have been identified as part of the Settlement Subclass. The Settlement Subclass includes all persons whose medical information protected by HIPAA and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. The Settlement Subclass is included within the overall Settlement Class.

**What can I get from the Settlement?** Under the terms of the Settlement, you can recover the following benefits.

- **Out-of-Pocket Losses** – Settlement Subclass Members can file a Claim for up to \$3,000 in unreimbursed Out-of-Pocket Losses.
- **Credit Monitoring** – Settlement Subclass Members can file a Claim for a one-year membership of single-bureau (“1Y/1B”) credit monitoring with up to \$1,000,000 in fraud insurance.
- **Compensation for Lost Time** – Members of the Settlement Subclass can make an additional Claim for up to 4 hours of lost time at \$20/hour of time spent mitigating the effects of the Data Incident (up to a total of \$80 for lost time).

**What are my options?** You can file a Claim for the benefits listed above. The easiest way to submit a Claim is online at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com). To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online on or before **Month DD, 2023**. You can also exclude yourself or object to the Settlement on or before **Month DD, 2023**. If you do not exclude yourself from the Settlement, you will remain in the Class and will give up the right to sue the Released Persons for the claims resolved by the Settlement. A summary of your rights under the Settlement and instructions regarding how to submit a Claim, access the Credit Monitoring benefit and other Settlement benefits, exclude yourself, or object are available at [www.XXXXXXXXXXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXXXXXXXXXX.com).

The Court will hold a Final Fairness Hearing on **Month DD, 2024, at \_\_\_\_.m**. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also listen to people who have asked to speak at the hearing. You may attend the hearing at your own expense, or you may also pay your own lawyer to attend. It is not necessary to attend the hearing nor retain your own lawyer to attend the hearing.

**How can I get more information?** This Notice is a summary. The Settlement Agreement and more information about the lawsuit and Settlement are available at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling toll-free 1-XXX-XXX-XXXX.

# **EXHIBIT C-1**

Must be postmarked  
or submitted online  
NO LATER THAN  
[deadline]

MEDSTAR SETTLEMENT  
ADMINISTRATOR  
P.O. BOX 2348  
PORTLAND, OR 97208-2348  
[website]

## MedStar Settlement Class Claim Form

### SETTLEMENT BENEFITS – WHAT YOU MAY GET

The Settlement Class includes all persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.

The easiest way to submit a claim is online at [website], or you can complete and mail this claim form to the mailing address above.

**You may submit a claim for one or more of these benefits:**

**Credit Monitoring Services:** Use the claim form to request free Credit Monitoring Services.

**Cash Reimbursement:** Use the claim form to request reimbursement for the following:

1. **Reimbursement for Money You Spent.** If you spent unreimbursed money trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Data Incident (out-of-pocket losses), you can be reimbursed up to \$3,000 (including any claim for lost time). You must submit documents supporting your claim.

\* \* \*

**Claims must be submitted online or mailed by [deadline]. Use the address at the top of this form for mailed claims.**

*Please note: the settlement administrator may contact you to request additional documents to process your claim.*

For more information and complete instructions visit [website].

**Please note that Settlement benefits will be distributed after the Settlement is approved by the Court and becomes final.**

## Your Information

### 1. NAME (REQUIRED):

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

### 2. MAILING ADDRESS (REQUIRED):

Street Address		
<input type="text"/>		
Apt. No.		
<input type="text"/>		
City	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

### 3. PHONE NUMBER:

<input type="text"/>	-	<input type="text"/>	-	<input type="text"/>
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### 4. EMAIL ADDRESS:

<input type="text"/>
----------------------

### 5. UNIQUE ID:

<input type="text"/>
----------------------

## Credit Monitoring Services

*You may be eligible to receive free Credit Monitoring Services.*

All class members are eligible to claim 12 months of single-bureau credit monitoring services, issued through **[credit monitoring provider]**.

*Please select the checkbox if you want the Credit Monitoring Services for which you are eligible.*

**Credit Monitoring Services:** I want to receive free Credit Monitoring Services sent to the email entered in the above section.

*If you select this option, you will be sent instructions and an activation code after the settlement is final to your email address or home address. Enrollment in this service will not subject you to marketing for additional services or any required payments.*

## Cash Payment: Documented Out-of-Pocket Expenses

If you lost or spent money trying to prevent or recover from fraud or identity theft that you believe is fairly traceable to the Data Incident and have not been reimbursed for that money (Out-of-Pocket Losses), you can receive reimbursement for up to \$3,000 total, including your claim for Lost Time, if any. Eligible Out-of-Pocket Losses include those incurred on or after October 2022, up to the date of filing your claim.

In order for your claimed out-of-pocket loss to qualify for a payment, the following conditions must be met: (1) The loss is an actual, documented, and unreimbursed monetary loss; (2) The loss was more likely than not caused by the Data Incident; (3) The loss occurred between the time of the Data Incident and the time that claim forms are submitted; and (4) The loss is not already covered by one or more of the normal reimbursement categories; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for the loss, including but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered by the administrator to add clarity or support other submitted documentation.

To look up more details about how cash payments work, visit [\[website\]](#) or call toll-free at 877-581-2235. You will find more information about the types of costs and losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment. *By filling out the boxes below, you are certifying that the money you spent doesn't relate to other data breaches.*

Loss Type and Examples of Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the Data Incident)
<p>Costs related to credit reports, credit monitoring purchases/freezing/unfreezing or other identity theft insurance product purchased between <b>October 2022</b> and the date of filing your claim.</p> <p><i>Examples: Receipts, notices, or account statements reflecting payment for credit monitoring services purchase</i></p>	<p>\$ _____.</p> <p>Date: _____</p> <p>MM DD YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Costs, and expenses incurred as a result of the Data Incident including Bank Fees, long distance phone charges, cell phone charges, data charges, postage, gasoline for local travel.</p> <p><i>Examples: Phone bills, receipts, detailed list of addresses you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled; Bank statements with fees, such as card reissuance, unreimbursed overdraft and late fees, circled.</i></p>	<p>\$ _____.</p> <p>Date: _____</p> <p>MM DD YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>

### Cash Payment: Documented Out-of-Pocket Expenses

Loss Type and Examples of Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the Data Incident)
<p>Monetary losses or costs resulting from identity theft or fraud as a result of the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____.</p> <p>Date:</p> <p>____ - ____ - ____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Other losses or costs resulting from the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____.</p> <p>Date:</p> <p>____ - ____ - ____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Other losses or costs resulting from the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____.</p> <p>Date:</p> <p>____ - ____ - ____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>



## How You Will Receive Your Payment

If you made a claim for payment on this Claim Form, and if your claim and the settlement are finally approved, an email will be sent from [noreply@epiqpay.com](mailto:noreply@epiqpay.com) to the email address you provided on this Claim Form, prompting you to elect your method of payment. Popular electronic payment options will be available, or you can elect a check. Please ensure you have provided a current and complete email address. If you do not provide a current and valid email address, the claims administrator may attempt to send you a check relying on your physical address on file.

## Signature

I hereby certify that:

1. The information I have supplied in this claim form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.
2. I have read and understand the Claim Form.
3. I believe in good faith that I am a member of the Settlement Class because my Health Insurance Information was potentially compromised as a result of the cyberattack that Medstar discovered in or about October 2022 and/or my medical information protected by HIPAA and other protected health information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.
4. I have neither assigned any right to recover this Benefit to any other party nor been reimbursed in whole by a third-party for any damages related to the allegations at issue in this case.
5. I understand that I may be asked to provide more information by the Settlement Administrator before my claim is complete.

\_\_\_\_\_  —  —   
Print Name MM DD YYYY

Signature

# **EXHIBIT C-2**

Must be postmarked  
or submitted online  
NO LATER THAN  
[deadline]

MEDSTAR SETTLEMENT  
ADMINISTRATOR  
P.O. BOX 2348  
PORTLAND, OR 97208-2348  
[website]

## MedStar Settlement Subclass Claim Form

### SETTLEMENT BENEFITS – WHAT YOU MAY GET

The Settlement Subclass includes all persons whose medical information protected by HIPAA and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.

The easiest way to submit a claim is online at [website], or you can complete and mail this claim form to the mailing address above.

**You may submit a claim for one or more of these benefits:**

**Credit Monitoring Services:** Use the claim form to request free Credit Monitoring Services.

**Cash Reimbursement:** Use the claim form to request reimbursement for one or more of the following:

1. **Reimbursement for Money You Spent.** If you spent unreimbursed money trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Data Incident (out-of-pocket losses), you can be reimbursed up to \$3,000 (including any claim for lost time). You must submit documents supporting your claim.
2. **Reimbursement for Lost Time.** If you spent time trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Data Incident and you are in the Settlement Subclass, you can get \$20 per hour for up to 4 total hours.

\* \* \*

**Claims must be submitted online or mailed by [deadline]. Use the address at the top of this form for mailed claims.**

*Please note: the settlement administrator may contact you to request additional documents to process your claim.*

For more information and complete instructions visit [website].

**Please note that Settlement benefits will be distributed after the Settlement is approved by the Court and becomes final.**

## Your Information

### 1. NAME (REQUIRED):

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

### 2. MAILING ADDRESS (REQUIRED):

Street Address		
<input type="text"/>		
Apt. No.		
<input type="text"/>		
City	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

### 3. PHONE NUMBER:

<input type="text"/>	-	<input type="text"/>	-	<input type="text"/>
----------------------	---	----------------------	---	----------------------

### 4. EMAIL ADDRESS:

<input type="text"/>
----------------------

### 5. UNIQUE ID:

<input type="text"/>
----------------------

## Credit Monitoring Services

*You may be eligible to receive free Credit Monitoring Services.*

All class members are eligible to claim 12 months of single-bureau credit monitoring services, issued through **[credit monitoring provider]**.

*Please select the checkbox if you want the Credit Monitoring Services for which you are eligible.*

**Credit Monitoring Services:** I want to receive free Credit Monitoring Services sent to the email entered in the above section.

*If you select this option, you will be sent instructions and an activation code after the settlement is final to your email address or home address. Enrollment in this service will not subject you to marketing for additional services or any required payments.*

## Cash Payment: Documented Out-of-Pocket Expenses

If you lost or spent money trying to prevent or recover from fraud or identity theft that you believe is fairly traceable to the Data Incident and have not been reimbursed for that money (Out-of-Pocket Losses), you can receive reimbursement for up to \$3,000 total, including your claim for Lost Time, if any. Eligible Out-of-Pocket Losses include those incurred on or after October 2022, up to the date of filing your claim.

In order for your claimed out-of-pocket loss to qualify for a payment, the following conditions must be met: (1) The loss is an actual, documented, and unreimbursed monetary loss; (2) The loss was more likely than not caused by the Data Incident; (3) The loss occurred between the time of the Data Incident and the time that claim forms are submitted; and (4) The loss is not already covered by one or more of the normal reimbursement categories; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for the loss, including but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered by the administrator to add clarity or support other submitted documentation.

To look up more details about how cash payments work, visit [\[website\]](#) or call toll-free at 877-581-2235. You will find more information about the types of costs and losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment. *By filling out the boxes below, you are certifying that the money you spent doesn't relate to other data breaches.*

Loss Type and Examples of Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the Data Incident)
<p>Costs related to credit reports, credit monitoring purchases/freezing/unfreezing or other identity theft insurance product purchased between <b>October 2022</b> and the date of filing your claim.</p> <p><i>Examples: Receipts, notices, or account statements reflecting payment for credit monitoring services purchase</i></p>	<p>\$ _____.</p> <p>Date: _____</p> <p>MM DD YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Costs, and expenses incurred as a result of the Data Incident including Bank Fees, long distance phone charges, cell phone charges, data charges, postage, gasoline for local travel.</p> <p><i>Examples: Phone bills, receipts, detailed list of addresses you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled; Bank statements with fees, such as card reissuance, unreimbursed overdraft and late fees, circled.</i></p>	<p>\$ _____.</p> <p>Date: _____</p> <p>MM DD YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>

### Cash Payment: Documented Out-of-Pocket Expenses

Loss Type and Examples of Documents	Amount and Date	Description of Loss or Money Spent and Supporting Documents (Identify what you are attaching, and why it's related to the Data Incident)
<p>Monetary losses or costs resulting from identity theft or fraud as a result of the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____●</p> <p>Date:</p> <p>____-____-____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Other losses or costs resulting from the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____●</p> <p>Date:</p> <p>____-____-____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>Other losses or costs resulting from the Data Incident (provide detailed description)</p> <p><i>Please provide a detailed description or a separate document submitted with this Claim Form.</i></p>	<p>\$ _____●</p> <p>Date:</p> <p>____-____-____</p> <p>MM    DD    YYYY</p>	<p>_____</p> <p>_____</p> <p>_____</p>

### Cash Payment: Lost Time

Without documentation, you may receive reimbursement for up to 4 hours of lost time compensated at \$20 per hour if you spent at least one full hour and can provide a brief description of your actions. Round up to the nearest hour and check only one box.

1 Hour    2 Hours    3 Hours    4 Hours

#### Description of Actions Taken


**By checking this box, I certify under oath that any claimed lost time was spent related to the Data Incident.**

## How You Will Receive Your Payment

If you made a claim for payment on this Claim Form, and if your claim and the settlement are finally approved, an email will be sent from [noreply@epiqpay.com](mailto:noreply@epiqpay.com) to the email address you provided on this Claim Form, prompting you to elect your method of payment. Popular electronic payment options will be available, or you can elect a check. Please ensure you have provided a current and complete email address. If you do not provide a current and valid email address, the claims administrator may attempt to send you a check relying on your physical address on file.

## Signature

I hereby certify that:

1. The information I have supplied in this claim form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.
2. I have read and understand the Claim Form.
3. I believe in good faith that I am a member of the Settlement Class because my Health Insurance Information was potentially compromised as a result of the cyberattack that Medstar discovered in or about October 2022 and/or my medical information protected by HIPAA and other protected health information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.
4. I have neither assigned any right to recover this Benefit to any other party nor been reimbursed in whole by a third-party for any damages related to the allegations at issue in this case.
5. I understand that I may be asked to provide more information by the Settlement Administrator before my claim is complete.

---

**Print Name**

**Signature**

**Date:**  -  -   
MM DD YYYY



# **EXHIBIT D**

**CAUSE NO. 342-339562-23**

**SCOTT KAETHER, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**v.**

**METROPOILITAN AREA EMS  
AUTHORITY D/B/A MEDSTAR MOBILE  
HEALTHCARE**

**Defendant.**

**IN THE DISTRICT COURT**

**TARRANT COUNTY, TEXAS**

**342ND JUDICIAL DISTRICT**

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

This matter coming before the Court on Plaintiff's Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement, and with the Court being fully advised on the premises, the Court hereby finds and orders as follows:

1. Unless defined herein, all defined terms in this order shall have the respective meanings ascribed to the same terms in the settlement agreement (the "Agreement").

2. The Court has conducted a preliminary evaluation of the settlement set forth in the Agreement. Based on this preliminary evaluation, the Court finds that the Agreement meets all applicable requirements of Tex. R. Civ. P. 42 for settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties fairly and adequately protect the interests of the class and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds that: (i) there is a good cause to believe that the settlement is fair, reasonable and adequate, (ii) the Agreement has been negotiated at arm's length between

experienced attorneys familiar with the legal and factual issues of this case and (iii) the settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the Settlement.

4. Pursuant to Section 42 of the Texas Code of Civil Procedure, and for settlement purposes only, the Court certifies the following Settlement Class:

“All persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. “

The Court also Certifies the following Subclass:

“All persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022.”

Excluded from the Settlement Class are (1) any entity in which MedStar has a controlling interest and (2) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of MedStar. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

5. For settlement purposes only, the Court hereby approves the appointment of Plaintiff Scott Kaether as Class Representative.

6. For settlement purposes only, the Court hereby approves the appointment of (i) Gary M. Klinger, Alexander Wolf, and John Nelson of Milberg Coleman Bryson Phillips Grossman and (ii) Joe Kendall of Kendall Law Group, PLLC as Class Counsel and finds that they are competent and capable of exercising the responsibilities of Class Counsel.

7. On \_\_\_\_\_, 2023 at \_\_\_\_ a.m., this Court will hold a final approval hearing on the

fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Agreement should be granted and (b) Class Counsel's application for attorney's fees and expenses and an incentive award to the Class Representative should be granted. No later than \_\_\_\_\_, 2023 ( *i.e.* 14 days prior to the deadline to opt out of or object to the Settlement) Plaintiff must file any papers in support of Class Counsel's application for attorneys' fees and the Enhancement Award to the Class Representative, and no later than \_\_\_\_\_, 2023 (*i.e.*, 14 days prior to Final Approval Hearing) Plaintiff must file any papers in support of final approval of the Agreement and in response to any objections.

8. Pursuant to the Agreement, Epiq is hereby appointed as the Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Agreement or this Order.

9. The Court approves the proposed plan for giving notice to the Settlement Class, via direct Notice in the U.S. Mail, as fully described in the Agreement. The plan for giving notice, in form, method and content, fully complies with the requirements of Texas laws and due process and is due and sufficient notice to all persons entitled thereto.

10. The Court hereby directs the parties and Settlement Administrator to complete all aspects of the notice plan no later than \_\_\_\_\_, 2023 (*i.e.*, 30 days after entry of this Order).

11. All persons who meet the definition of the Settlement Class and who wish to exclude themselves from the Settlement Class must submit their request for exclusion in writing no later than the Objection/Exclusion deadline of \_\_\_\_\_, 2023 (*i.e.*, 60 days after the Notice Date). To be valid, any request for exclusion must (a) be in writing; and include (b) the name, address, and telephone number of the Settlement Class Member submitting the request; (c) the name and number of this case; (d) a statement that the Settlement Class Member wishes to be

excluded from the Settlement Class;(e) a signature.; and (f) be postmarked or submitted electronically by the Settlement Administrator on or before the Objection/Exclusion Deadline. A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice or that is not postmarked or submitted electronically to the Settlement Administrator within the time specified, shall be invalid and the person serving such a request shall be deemed to remain a Settlement Class Member and shall be bound as a Settlement Class Member by the Agreement. Settlement Class Members shall be bound by all determinations and orders pertaining to the Agreement, including the release of all claims to the extent set forth in the Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided and as provided in the Agreement. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Agreement.

12. Any member of the Settlement Class who intends to object to the Agreement must include in his or her written objection: (1) his/her full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; (5) whether the objector intends to appear at the Final Approval Hearing; and (6) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with

or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

13. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the final approval hearing in accordance with the terms of this Order and as detailed in the Notice, and at the same time provide copies to designated counsel for the parties, shall not be permitted to object to the Agreement at the final approval hearing, and shall be foreclosed from seeking any review of the Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

14. Class Members who wish to participate in the settlement and receive their share of the settlement proceeds shall complete and submit a claim form in accordance with the terms and conditions of the Agreement. The Settlement Administrator shall accept and process claim forms in accordance with the Agreement.

15. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Action. In the event that the Agreement fails to become effective, is overturned on appeal or does not become final for any reason whatsoever, the parties shall be restored to their respective positions in the Action as of the date of the signing of the Agreement, and no reference to the Settlement Class, the Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose.

17. Pending the final determination of the fairness, reasonableness and adequacy of the Settlement, no Settlement Class Member may prosecute, institute, commence or continue any

lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

18. A “Final Approval Hearing” shall be held before the Court on \_\_\_\_\_, at \_\_\_\_\_ a.m. for the following purposes:

- a. to determine whether the Settlement is fair, reasonable and adequate and should be approved by the Court;
- b. to determine whether the judgment as provided under the Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Agreement;
- c. to consider the application for an award of attorney’s fees, costs and expenses of Class Counsel;
- d. to consider the application for an Service Award to the Class Representative;
- e. to consider the distribution of court-approved attorneys’ fees and any Service Award, as well as any settlement funds to claiming class members pursuant to the Agreement and
- f. to rule upon such other matters as the Court may deem appropriate.

19. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Agreement and a Final Approval Order in accordance with the Agreement that adjudicates the rights of all Settlement Class Members.

20. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

21. All discovery and other proceedings in the Action as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Agreement and this Order.

22. For clarity, the deadlines set forth above and in the Agreement are as follows:

**Notice Date:** 30 Days after Preliminary Approval

**Motion for Final Approval:** 14 Days before Final Approval Hearing

**Motion for Service Award, Attorneys' Fees and Costs:** 14 Days before the deadline for Class Members to Opt-Out or Object

**Opt-Out Deadline:** 60 Days after Notice Completion Date

**Objection Deadline:** 60 Days after Notice Completion Deadline

**Claim Deadline:** 90 Days after Date

**IT IS ORDERED.**

ENTERED: \_\_\_\_\_

JUDGE: \_\_\_\_\_



# **EXHIBIT E**

CAUSE NO. 342-339562-23

**SCOTT KAETHER, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

v.

**METROPOILITAN AREA EMS  
AUTHORITY D/B/A MEDSTAR MOBILE  
HEALTHCARE**

**Defendant.**

**IN THE DISTRICT COURT**

**TARRANT COUNTY, TEXAS**

**342ND JUDICIAL DISTRICT**

**[PROPOSED] ORDER  
GRANTING FINAL APPROVAL OF CLASS SETTLEMENT**

Before the Court is Plaintiff's Motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiff Scott Kaether, individually and on behalf of all others similarly situated ("Plaintiff" or "Settlement Class Representative"), and Defendant Metropolitan Area EMS Authority D/B/A/ Medstar Mobile Healthcare ("Medstar" or "Defendant") as fair, reasonable and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the following findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

**THE COURT** not being required to conduct a trial on the merits of the case or to determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

**THE COURT** makes the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable,

adequate under Rule 42 of the Texas Rules of Civil Procedure, and in the best interests of the Settlement Class;

**IT IS ON THIS** \_\_\_\_th day of \_\_\_\_\_, 20\_\_,

**ORDERED** that:

1. The Settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

2. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

3. On \_\_\_\_\_, 2023, this Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a settlement class and settlement subclass in this matter, including defining the class, appointed Plaintiff as the Settlement Class Representative, and appointed Settlement Class Counsel; (c) preliminarily approved the Settlement; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator and (f) set the date for the Final Approval Hearing.

4. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, for settlement purposes only, the Court certified the Settlement Class, defined as follows:

“All persons whose Health Insurance Information was potentially compromised as a result of the cyberattack that MedStar discovered in or about October 2022. “

The Court also Certifies the following Subclass:

“All persons whose medical information protected by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other protected health information potentially compromised as

a result of the cyberattack that MedStar discovered in or about October 2022.”

5. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties, grants final approval of the Settlement Agreement and finds that the settlement is fair, reasonable and adequate and meets the requirements of the laws of the state of Texas.

6. Notice of the Final Approval Hearing, the proposed motion for attorneys’ fees, costs and expenses, and the proposed Enhancement Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court’s Orders, and an affidavit or declaration of the Settlement Administrator’s compliance with the Notice Program has been filed with the Court.

7. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due and sufficient notice to all Settlement Class Members.

8. As of the final date of the Opt-Out Period, [REDACTED] potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in **Exhibit A** to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

9. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

10. Further to the Settlement Agreement, Plaintiff and the Settlement Class Members release claims against Defendant and all Released Persons, as defined in the Settlement Agreement, as follows:

“Released Claims” shall mean any and all claims, demands, actions, or causes of action that each Class member has, had, or may ever have, now or in the future, known or unknown, arising out of or in any way related to the Incident and/or Released Parties’ recordkeeping or data security policies and practices, whether or not those claims, demands, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof

Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of those persons identified in **Exhibit A** to this Order who have timely and validly requested exclusion from the Settlement Class.

11. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiff and each Settlement Class Member, and each of their respective spouses with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely and forever released and discharged the Released Persons from the Released Claims.

12. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

13. This Final Order and Judgment resolves all claims against all parties in this Action and is a final order.

14. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

**DONE AND ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_.**

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**EXHIBIT A**

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Joe Kendall  
Bar No. 11260700  
administrator@kendalllawgroup.com  
Envelope ID: 80556898  
Filing Code Description: Motion (No Fee)  
Filing Description: Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum In Support  
Status as of 10/13/2023 9:14 AM CST

Associated Case Party: SCOTTKAETHER

Name	BarNumber	Email	TimestampSubmitted	Status
Alexander Wolf		awolf@milberg.com	10/13/2023 8:53:51 AM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Meggan Burchfield		megganburchfield@norrisfirm.com	10/13/2023 8:53:51 AM	SENT
Shannon DNorris		sdnorris@norrisfirm.com	10/13/2023 8:53:51 AM	SENT
Joe Kendall		jkendall@kendalllawgroup.com	10/13/2023 8:53:51 AM	SENT
Gary Klinger		gklinger@milberg.com	10/13/2023 8:53:51 AM	SENT