

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

M.S., D.H., C.C. and Nicole Tokarski,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MED-DATA, Inc.,

Defendant.

Case No. 4:22-cv-00187

Hon. Charles Eskridge

**PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE NATURE AND STAGE OF PROCEEDINGS.....	2
A.	Procedural history.....	2
B.	Settlement Terms.....	4
1.	The Settlement Class.....	4
2.	Monetary Relief.....	4
3.	Non-monetary relief.....	6
4.	Release	7
III.	ARGUMENT	7
A.	Settlement Class members have standing.	7
B.	The Settlement Class satisfies the Rule 23 requirements.....	8
1.	The Rule 23(a) requirements are satisfied.	8
2.	The Rule 23(b)(3) requirements are satisfied.....	9
C.	The proposed settlement should be preliminarily approved.	10
1.	Plaintiffs and their counsel have adequately represented the Class.	11
2.	The stage of the proceedings and discovery completed support approval.....	11
3.	The settlement relief is adequate considering the risk, cost, and delay of trial and appeal.	12
4.	The Settlement Fund will be fairly and effectively distributed.....	14
5.	The participants’ opinions support approval.....	15
D.	The Court should approve the proposed notice plan.....	16
E.	Appointment of the Settlement Administrator	19
F.	Appointment of Settlement Class Counsel.....	19
G.	The Court should set a final fairness hearing.....	20
IV.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc., No. 3:16-cv-05486-JCS, 2018 WL 8949777 (N.D. Cal. Oct. 15, 2018) 15

Almon v. Conduent Bus. Servs., 2022 WL 902992 (W.D. Tex. Mar. 25, 2022) 8

Al's Pals Pet Care v. Woodforest Nat'l Bank, 2019 WL 387409 (S.D. Tex. Jan. 30, 2019) 15

Amchem Prods. v. Windsor, 521 U.S. 591 (1997)..... 16

Ayers v. Thompson, 358 F.3d 356 (5th Cir. 2004) 12

Bridges v. Ridge Natural Resources, 2020 WL 7495252 (W.D. Tex. Jan. 3, 2020) 17

Castano v. Am. Tobacco Co., 84 F.3d 734 (5th Cir. 1996) 10

Chatelain et al. v. C, L and W PLLC, d/b/a Affordacare Urgent Care Clinics, No. 50742-A (42nd Dist. Texas) 13

Clemens v. ExecuPharm, 48 F.4th 146 (3d Cir. 2022)..... 7

Duncan v. JPMorgan Chase Bank, 2016 WL 4419472 (W.D. Tex. May 24, 2016) 15

Hashemi v. Bosley, Inc., 2022 WL 2155117 (C.D. Cal. Feb. 22, 2022) 12

Ibe v. Jones, 836 F.3d 516 (5th Cir. 2016) 9

In re Anthem, Inc. Data Breach Litig., 327 F.R.D. 299 (N.D. Cal. 2018) 9, 10, 13

In re Brinker Data Incident Litig., 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021)... 8, 9, 10

In re Chesapeake Energy Corp., 567 F. Supp. 3d 754 (S.D. Tex. 2021)..... 11, 13

In re Educ. Testing Service, 2006 WL 3332829 (E.D. La. Nov. 15, 2006) 15

In re Facebook Privacy Litig., 572 F. App'x 494 (9th Cir. 2014) 8

In re Horizon Health Servs. Inc. Data Breach Litig., 846 F.3d 625 (3d Cir. 2017) 8

In re Katrina Canal Breaches, 628 F.3d 185 (5th Cir. 2010) 16

In re Solara Med. Supplies Data Breach Litig., 2022 WL 1174102 (S.D. Cal. Apr. 20, 2022) 13

In re Zappos.com, Inc., 888 F.3d 1020 (9th Cir. 2018)..... 7

Kostka v. Dickey's Barbecue Restaurants, 2022 WL 16821685 (Oct. 14, 2022) 12, 13, 14, 16

Mullen v. Treasure Chest Casino, 186 F.3d 620 (5th Cir. 1999)..... 8

Reed v. Gen. Motors Corp., 703 F.2d 170 (5th Cir. 1983)..... 11

Slipchenko v. Brunel Energy, 2015 WL 338358 (S.D. Tex. Jan. 23, 2015)..... 17

Unger v. Amedisys Inc., 401 F.3d 316 (5th Cir. 2005)..... 9

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)..... 8

Rules

Fed. R. Civ. P. 23(a)(3) 9

Fed. R. Civ. P. 23(e) 7, 10

Fed. R. Civ. P. 23(g)(1)(B)..... 19

Regulations

45 CFR § 164.103.....	18
45 CFR § 164.502.....	18

I. INTRODUCTION

Plaintiffs M.S., D.H., C.C. and Nicole Tokarsi submit this Unopposed Motion for Preliminary Approval of Class Action Settlement. Defendant, Med-Data, Inc. a/k/a Med-Data, LLC (“Med-Data” or “Defendant”) does not oppose certification of the Settlement Class solely for purposes of facilitating the settlement sought to be approved in this motion. Plaintiffs strongly believe the Settlement is fair, reasonable and adequate, and that the Court should grant preliminary approval and notice should be distributed to Class Members.

Several individuals filed class action lawsuits after Med-Data announced that patient data had been exposed on a publicly-accessible website, Github.com. Plaintiffs in these cases (collectively, the “Litigation”) alleged that Med-Data and, in two cases, healthcare provider Shawnee Mission Medical Center, failed to maintain the confidentiality of their most sensitive data. After extensive arm’s-length negotiations including two mediations with different mediators, the parties reached a settlement of the Litigation that is fair, adequate, and reasonable. The agreement creates a \$7,000,000 Settlement Fund with tiered benefits addressing the harms to class members and ensures meaningful changes to Med-Data’s cybersecurity practices.

Plaintiffs now ask the Court to: (1) certify the Settlement Class for settlement purposes and appoint Plaintiffs as class representatives and their counsel as class counsel; (2) appoint Postlethwaite & Netterville (“P&N”) as Settlement Administrator; (3) preliminarily approve the settlement as fair, reasonable, and adequate, (4) approve the form

and manner of notice, and the procedures for objecting to and opting out of the proposed settlement; (5) direct notice to class members, and (6) set a final fairness hearing.

II. THE NATURE AND STAGE OF PROCEEDINGS

Med-Data is a revenue cycle management company that services hospitals, physicians, and healthcare systems nationwide. In this business, Med-Data takes possession of patients' PHI and PII. The lawsuit stems from a Med-Data employee posting the PHI and PII of approximately 147,408 patients to Github.com (the "Data Incident"), where it remained for over a year. Plaintiffs allege Med-Data's failure to properly secure their data put Plaintiffs at risk of identity theft and other crimes. ECF 1 ¶¶ 35-105; ECF 67 at 2.

A. Procedural history

Plaintiffs M.S. and D.H. filed this lawsuit after learning their PHI/PII had been exposed. Four additional class action lawsuits were filed in various jurisdictions: (1) *Tokarski v. Med-Data, Inc.*, No. 2:21-cv-00631-TL (W.D. Wash.); (2) *C.C. v. Shawnee Mission Medical Center*, Case No. 21CV01724, (Johnson County, Kansas); (3) *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, (Johnson County, Kansas); (4) *D.H. v. Shawnee Mission Medical Center*, Case No. 2116-CV09159, (Jackson County, Missouri).

Plaintiffs' counsel have cooperatively litigated the claims in the Litigation. Plaintiffs interviewed and obtained a declaration from Jelle Ursem, the security researcher who discovered the exposed data on GitHub. Plaintiffs served multiple sets of written discovery requests on Med-Data. Med-Data produced over 26,000 pages of documents. Plaintiffs also

obtained documents from Med-Data’s cybersecurity consultant, Crowe LLP. Plaintiffs’ counsel took Rule 30(b)(6) depositions of Med-Data and Shawnee Mission. Med-Data deposed Plaintiffs, who also responded to multiple sets of written discovery requests and produced documents. **Exhibit 1**, Declaration of William B. Federman (“Federman Decl.”) ¶¶ 7–8.

Plaintiffs opposed Med-Data’s motions to dismiss in this case and the *Tokarski* and *C.C.* cases. Plaintiffs here and in *Tokarski* moved for class certification, and Med-Data opposed. Plaintiffs’ motions were supported by a report from Gary Olsen, an expert in valuing intangible assets in healthcare. Med-Data filed its own expert report and motions to exclude Olsen’s testimony.

The parties mediated in September 2022 with the assistance of mediator Louis Peterson, without success. On March 28, 2023, the parties attended a second mediation with mediator Robert A. Meyer. During this second mediation, the parties agreed to key terms and, thereafter, continued negotiating the final terms of the settlement. The Settlement Agreement (“SA”) is attached as **Exhibit A** to the Federman Declaration.

The parties agreed that approval for the Settlement would be sought through the present case. To that end, Plaintiffs filed a First Amended Complaint on August 22, 2023. ECF 81.

B. Settlement Terms

1. The Settlement Class

The proposed Settlement would create a nationwide settlement class which includes all residents of the United States whose personal information was posted on GitHub.com by a Med-Data employee, as announced by Med-Data in March 2021. SA § III. It is intended that the Settlement Class shall include approximately 147,908 individuals.

2. Monetary Relief

Med-Data will establish a \$7 million non-reversionary Settlement Fund to pay settlement awards, notice and administration costs, and any court-approved service awards and attorneys' fees and costs. SA § II.29, V.1. If the Court awards less than Plaintiffs' request in service awards or attorneys' fees and costs, the difference will remain in the Settlement Fund, none of which will revert to Med-Data. SA § XI.3.

a. Settlement Awards

The Settlement Agreement allows Settlement Class Members to submit claims for one of two payment options. SA §§ IV.6, Ex. 1. Settlement Class Members may submit a "Tier 1 Claim" for up to five hours of lost time reimbursed at \$25 per hour and compensation for documented Out-of-Pocket Losses, up to a total of \$5,000. SA §§ IV.1.a–d. In the alternative, Settlement Class Members may submit a "Tier 2 Claim" for an alternative cash payment of up to \$500. SA §§ IV.2.

All Settlement Class Members will also be eligible for "Tier 3 Automatic Benefits" of 36 months of Medical Shield Premium—a health data/fraud monitoring service with

\$1,000,000 in identity theft insurance coverage—even if they do not file a claim. The Postcard Notice will contain a unique activation code for Settlement Class Members. SA § IV.3.

The Settlement Fund will be used to pay settlement obligations in the following order: (1) Tier 3 Benefits; (2) reimbursement for valid Tier 1 claims; (3) notice and administration costs; (4) court-approved attorneys' fees and costs; (5) court-approved service awards; and (6) Tier 2 claims for alternative cash payments. SA § V.5. Any residual funds will be used to extend the term of Medical Shield Premium for all Settlement Class Members. Any nominal funds remaining will be distributed *cy pres* to the National Cybersecurity Alliance, subject to Court approval. SA § IV.5.

b. Service Awards and Attorneys' Fees and Litigation Expenses

Plaintiffs will move separately for approval of service awards of \$5,000 each. Plaintiffs' counsel will move for approval of an attorneys' fee award equal to one-third of the settlement fund and reimbursement of litigation costs not to exceed \$200,000. Med-Data is free to contest the motion.

The settlement is not contingent on the amount of service awards or attorneys' fees or expenses awarded. SA §§ XI.1–3. If the Court awards less than Plaintiffs' request for service awards or attorneys' fees and expenses, the difference will remain in the Settlement Fund, and will not revert to Med-Data. SA § XI.3.

c. Administrative Expenses

After a competitive bidding process, Plaintiffs propose to retain P&N to serve as Settlement Administrator. P&N will be responsible for disseminating notice, establishing the Settlement Website and toll-free number, responding to Class member inquiries, processing claim forms and opt-out requests, and administering the Settlement Fund. SA §§ VII–VIII. P&N estimates its costs will not exceed \$269,700 (based upon a 10% claims rate). Declaration of Ryan Aldridge of P&N (“Aldridge Decl.”) ¶ 14.

3. Non-monetary relief

Med-Data has agreed to implement several changes to its business practices for at least two years. These changes include:

- annual cybersecurity testing by a qualified cybersecurity firm and Board presentations by an internal security auditor;
- regular updates to internal security policies and procedures;
- robust monitoring and auditing for data security issues;
- encryption of PII/PHI and data access controls;
- annual systems penetration testing and training;
- a monitored internal whistleblowing mechanism; and
- maintenance of a legally-compliant data deletion policy.

Med-Data will also work with GitHub to ensure that no PHI/PII of class members remains accessible on that platform. SA § IV.4.

4. Release

Settlement Class members will release claims against Med-Data or its Business Associates, including Shawnee Mission Medical Center, and their affiliates, divisions, predecessors, successors, assigns, parents or subsidiaries, associates, employers, employees, agents, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, shareholders, arising out of the Data Incident, that were alleged or could have been brought in the Litigation. SA § X.

III. ARGUMENT

A class action “may be settled ... only with the court’s approval.” Fed. R. Civ. P. 23(e). Because the parties negotiated this settlement before a ruling on class certification, the Court must decide whether certification for settlement purposes is appropriate. The Court must then determine whether the settlement is likely to be approved as fair, reasonable, and adequate.

A. Settlement Class members have standing.

As discussed in their opposition to Med-Data’s motion to dismiss, ECF 58, Plaintiffs and Settlement Class members have standing. The Fifth Circuit has not ruled on whether increased risk of harm from a data breach establishes standing, but other circuits find it does. *See In re Zappos.com, Inc.*, 888 F.3d 1020, 1027-29 (9th Cir. 2018). Plaintiffs also allege separate concrete harms, including identity theft and data misuse, invasion of privacy, loss of time and money, and emotional distress. *See Clemens v. ExecuPharm*, 48 F.4th 146, 155-56 (3d Cir. 2022); *In re Horizon Health Servs. Inc. Data Breach Litig.*, 846

F.3d 625, 638 (3d Cir. 2017). And Plaintiffs allege the loss of value of confidential information, another cognizable injury. *In re Facebook Privacy Litig.*, 572 F. App'x 494 (9th Cir. 2014).

B. The Settlement Class satisfies the Rule 23 requirements.

1. The Rule 23(a) requirements are satisfied.

Numerosity is satisfied because the Settlement Class includes approximately 147,408 members, making joinder impracticable. *Mullen v. Treasure Chest Casino*, 186 F.3d 620, 624 (5th Cir. 1999). Settlement Class members are ascertainable because they can be readily identified “from the records maintained in [Med-Data’s] ordinary course of business.” *Almon v. Conduent Bus. Servs.*, 2022 WL 902992, at *24 (W.D. Tex. Mar. 25, 2022).

Commonality is satisfied because there are significant questions of law and fact common to all Settlement Class members that will “generate common answers” that are “apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted). These questions include whether Med-Data had a duty to protect class members’ PHI/PII, whether Med-Data’s security measures were adequate, and whether Med-Data timely notified class members about the exposure. *See In re Brinker Data Incident Litig.*, 2021 WL 1405508, at *8 (M.D. Fla. Apr. 14, 2021) (finding commonality satisfied by questions of “whether Brinker had a duty to protect customer data, whether Brinker knew or should have known its data systems were susceptible, and whether Brinker failed to implement adequate data security measures”), *vacated in part on*

other grounds, 73 F. 4th 883 (11th Cir. 2023); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 308 (N.D. Cal. 2018) (“The extensiveness and adequacy of Anthem’s security measures lie at the heart of every claim. ... and whether Anthem amply responded to the data breach also apply uniformly across the entire Class.”).

Typicality is satisfied because “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3); *Ibe v. Jones*, 836 F.3d 516, 528-29 (5th Cir. 2016). Plaintiffs’ and all Settlement Class members’ injuries arise from the same data exposure and their claims are based on the same legal theories. *See Brinker*, 2021 WL 1405508, at *8; *Anthem*, 327 F.R.D. at 309.

Adequacy is satisfied because the “class representatives, their counsel, and the relationship between the two are adequate to protect the interests of absent Class Members.” *Unger v. Amedisys Inc.*, 401 F.3d 316, 321 (5th Cir. 2005). Plaintiffs have no conflicting interests with other Settlement Class members and have demonstrated their commitment to the Class’s interests. Plaintiffs also retained counsel with substantial experience litigating and resolving similar class action cases. Federman Decl. ¶ 10, Ex. B.

2. The Rule 23(b)(3) requirements are satisfied.

The common issues in this case predominate over any individual issues because Settlement Class members’ claims arise from a single event: the exposure of their PHI and PII on GitHub. Courts routinely recognize that claims arising from unauthorized disclosures of PHI/PII turn on common questions that are proven with predominantly common evidence. *See, e.g., Brinker*, 2021 WL 1405508, at *8, 11 (finding that

predominating common questions included defendant's duty to protect customer data, and whether defendant failed to implement adequate data security measures"); *Anthem*, 327 F.R.D. at 312 ("[T]he focus would remain on the extent and sufficiency of the specific security measures that Anthem employed. This is the precise type of predominant question that makes class-wide adjudication worthwhile.")

This class wide settlement is superior to thousands of individual lawsuits. Any individual recovery would be dwarfed by the costs of litigation. *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 748 (5th Cir. 1996); *Brinker*, 2021 WL 1405508, at *13.

C. The proposed settlement should be preliminarily approved.

In determining whether to grant preliminary approval of a class settlement, courts consider:

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

Fed. R. Civ. P. 23(e)(2). In addition, the Fifth Circuit has provided six factors for courts to consider in evaluating class settlements:

(1) the existence of fraud or collusion behind the settlement;
(2) the complexity, expense, and likely duration of the litigation;
(3) the stage of the proceedings and the amount of discovery completed;
(4) the probability of plaintiffs' success

on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983). Courts consider these overlapping factors together. *In re Chesapeake Energy Corp.*, 567 F. Supp. 3d 754, 767-68 (S.D. Tex. 2021).

1. Plaintiffs and their counsel have adequately represented the Class.

Plaintiffs and their counsel have demonstrated their commitment to the Settlement Class by zealously pursuing Class members' interests through discovery, motion practice, and settlement negotiations. *See* Federman Decl. ¶¶ 4, 7–10. Plaintiffs have no conflicts of interest with other Class members and their counsel are well qualified to evaluate the merits of the settlement.

Proposed Class Counsel have extensive experience prosecuting and defending class actions, including those involving the breach of consumer data. William B. Federman of Federman & Sherwood, Jean S. Martin of Morgan & Morgan Complex Litigation Group, Beth E. Terrell and Ryan Tack-Hooper of Terrell Marshall Law Group, Maureen Brady of McShane Brady, and John Heenan of Heenan & Cook have been litigating class actions for many years and have held court-appointed leadership roles such cases across the country. *See* Federman Dec. ¶ 9-11, Ex. A (firm resumes).

2. The stage of the proceedings and discovery completed support approval.

This factor requires the Court to consider whether “the parties and the district court possess ample information with which to evaluate the merits of the competing

positions.” *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004). The parties have a solid understanding of the strengths and weaknesses of their positions following written discovery, document production, and depositions. The parties also worked closely with experts to assess the potential damages. ECF 67-8, 69-11; Federman Decl. ¶ 7.

3. The settlement relief is adequate considering the risk, cost, and delay of trial and appeal.

“When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened.” *Heartland*, 851 F. Supp. 2d at 1064 (citation omitted); *see also Ayers*, 358 F.3d at 369 (“[S]ettling ... avoids the risks and burdens of potentially protracted litigation.”). The parties devoted significant time and resources to litigating the Litigation for two years. Yet substantial work remains. Class certification briefing was ongoing, and fact and expert discovery are incomplete. Med-Data also moved to exclude Plaintiffs’ damages expert. ECF 73. If Plaintiffs prevailed on class certification, Plaintiffs would have to prevail on dispositive motions, at trial, and the inevitable appeal.

Continued litigation is thus risky and costly, and a loss at any stage could leave class members with no recovery. *See Hashemi v. Bosley, Inc.*, 2022 WL 2155117, at *7 (C.D. Cal. Feb. 22, 2022) (recognizing the risks of proving causation and injury in data breach cases, “compounded by the fact that data breach class actions are a relatively new” and “damages methodologies in data breach cases are largely untested and have yet to be presented to a jury”); *Kostka v. Dickey’s Barbecue Restaurants*, 2022 WL 16821685, at *11 (Oct. 14, 2022) (“[I]n the Fifth Circuit, there is little case law on the subject of data

breaches. Moreover, the out-of-circuit authority is not universally favorable to the proposed claims.”), *adopted by* 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022).

This Settlement provides class members with a \$7 million recovery, access to fraud monitoring services, *and* concrete changes to Med-Data’s cybersecurity practices. The \$7 million Settlement Fund represents approximately 59% of the \$11.9 million recovery calculated by Plaintiffs’ expert that Settlement Class members would be entitled to if they prevailed. *See* ECF 67-8 at 38 (Olsen Expert Report); *see also Chesapeake*, 567 F. Supp. 3d at 780-81 (“The question is not whether the parties have reached ‘exactly the remedy they would have asked the Court to enter absent the settlement,’ but instead ‘whether the settlement’s terms fall within a reasonable range of recovery.’” (citation omitted)).

The Settlement is within the range of reasonableness given the risks and costs of litigation. *See Anthem*, 327 F.R.D. at 319 (approving settlement equaling 14.5% of class members’ projected recovery plus data security changes); *Kostka*, 2022 WL 16821685, at *1, 6, 12 (granting preliminary approval of \$2,350,000 settlement of data breach claims of 725,000-member class); *In re Solara Med. Supplies Data Breach Litig.*, 2022 WL 1174102, at *7 (S.D. Cal. Apr. 20, 2022) (granting preliminary approval of \$5,060,000 settlement for approximately 100,000 class members plus remedial measures); *Chatelain et al. v. C, L and W PLLC, d/b/a Affordacare Urgent Care Clinics*, No. 50742-A (42nd Dist. Texas) (data breach settlement providing 12-months of credit monitoring services and no expense reimbursements).

4. The Settlement Fund will be fairly and effectively distributed.

Settlement Class members who submit valid claim forms are eligible to receive a share of the Settlement Fund. The Settlement pays for Tier 3 benefits and Tier 1 claims before deducting notice and administration costs, and any court-approved attorneys' fees, litigation expenses, and service awards. This allocation plan is fair and reasonable because it prioritizes fraud prevention and reimbursing claimants for lost time and out-of-pocket losses, ensuring that those most injured by the Data Incident are compensated and that all Settlement Class Members can protect themselves from future fraud. After administration costs, attorneys' fees, litigation expenses, and service awards are deducted, Tier 2 claimants will receive an alternative cash payment, recognizing Plaintiffs' allegation that the exposed information has independent value. This allocation essentially tracks the proportion of any judgment Class members would recover if they prevailed on summary judgment or at trial.

Submitting a claim will require minimal effort. The form is intentionally simple. SA, Ex. 1. The claim, including any supporting documentation, may be submitted online or mailed to the Settlement Administrator, and it will be deemed complete if it includes information sufficient to permit the Settlement Administrator to distribute a settlement payment to the Class Member and there is no reason to doubt its authenticity. If a claim is deficient or incomplete, P&N will promptly notify the class member, who will have 21 calendar days to cure any deficiencies. SA §§ IV.1–2, .6.

A claims process is appropriate and necessary in this case to ensure the Settlement Fund is properly and efficiently distributed. *See Kostka*, 2022 WL 16821685, at *12

(approving claim process where “potential class members need only submit a claim form in order to have their claim considered, and that all claims will be considered by an experienced and recognized national claims administrator”); *In re Educ. Testing Service*, 2006 WL 3332829, at *2 (E.D. La. Nov. 15, 2006) (claims process decreases risk of fraud and reduces time and money spent on sending checks to incorrect addresses). The settlement website and toll-free number available to Class members will encourage the filing of claims, as will the simplicity of the claim form and minimal effort required to submit a claim. *See Abante Rooter & Plumbing, Inc. v. Pivotal Payments Inc.*, No. 3:16-cv-05486-JCS, 2018 WL 8949777, at *7 (N.D. Cal. Oct. 15, 2018).

Plaintiffs in the Litigation will request Court approval of \$5,000 service awards. Service awards recognize class representatives’ efforts on behalf of the class and are routinely approved in this amount. *See, e.g., Duncan v. JPMorgan Chase Bank*, 2016 WL 4419472, at *16 (W.D. Tex. May 24, 2016) (“District courts in the Fifth Circuit routinely award \$5,000-\$10,000 per named plaintiff.”). Here, Plaintiffs were deposed and answered discovery. Plaintiffs’ counsel will seek approval of an award of attorneys’ fees of one-third of the Settlement Fund, “an oft-awarded percentage in common fund class action settlements in this Circuit.” *Al’s Pals Pet Care v. Woodforest Nat’l Bank*, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019).

5. The participants’ opinions support approval.

Plaintiffs and their counsel strongly support the proposed settlement. *See Federman Decl.* ¶ 11. As the Fifth Circuit has explained, “the trial court is entitled to rely upon the

judgment of experienced counsel for the parties.” *Jones*, 865 F.3d at 300 (citation omitted). “The quality and experience of the lawyering is thus ‘something of a proxy for both ‘trustworthiness’ and ‘reasonableness’—that is, if experienced counsel reached this settlement, the court may trust that the terms are reasonable in ways that it might not had the settlement been reached by lawyers with less experience in class action litigation.” *Id.* (citation omitted); *see also Kostka*, 2022 WL 16821685, at *143 (placing more weight on opinion of counsel experienced in data breach litigation).

D. The Court should approve the proposed notice plan.

Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by” a proposed settlement, voluntary dismissal, or compromise. To comply with due process, notice must be “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997). The notice must state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B); *In re Katrina Canal Breaches*, 628 F.3d 185, 197 (5th Cir. 2010).

The proposed Notice Program complies with Rule 23 and due process. Similar notice plans are commonly used in class actions like this one, and constitute the best notice practicable under the circumstances. *See Bridges v. Ridge Natural Resources*, 2020 WL 7495252, at *5 (W.D. Tex. Jan. 3, 2020); *Slipchenko v. Brunel Energy*, 2015 WL 338358, at *5-6 (S.D. Tex. Jan. 23, 2015).

P&N will send a Postcard Notice to each Settlement Class Member, using the most recent address in Med-Data's records or identified through address correction services. SA § VIII.2. P&N will also establish a Settlement Website with detailed information about the Settlement, including the Notices, the Complaint, the Settlement Agreement, the Claim Form, an opt-out form, and the Preliminary Approval Order. SA §§ II.15, VIII.6–7. Class Counsel's motion for an award of attorneys' fees, costs, and service awards will also be posted on the Settlement Website. And P&N will, upon Class Counsel's request, send reminder postcard notices 30 calendar days before the claims deadline. SA §§ III.1, VIII.2.

The Long Form Notice, attached as Exhibit 2A to the Settlement Agreement, and the Postcard Notice, attached as Exhibit 2B, are drafted in plain English so they will be easy to understand and include all necessary information for Class Members to ascertain and act upon their rights. The Notices direct Settlement Class Members to the Settlement Website for further information and provides Class Counsel's contact information.

Med-Data's business records contain contact information for members of the proposed Settlement Class. However, because Med-Data is a business associate covered by the Health Insurance Portability and Accountability Act ("HIPAA"), Med-Data cannot disclose the identity or contact information for Settlement Class members to the Settlement

Administrator unless “required by law,” which would include an order of the Court. 45 CFR § 164.502; 45 CFR § 164.103. As a result, parties request that the Court issue an order compelling Med-Data to produce the names and contact information of Settlement Class members to P&N for the limited purpose of providing notice of the Settlement and verifying claims.

As stated above, the proposed Settlement Class comprises all of the approximately 147,908 individuals who Med-Data concluded had their PI/PHI potentially compromised in the Data Incident. Med-Data was unable to provide notice of the Data Incident to approximately 6,500 individuals for whom Med-Data did not have current or complete contact information. These 6,500 individuals are expressly included in the proposed Settlement Class. SA § III.1. As part of the notice administration process, Med-Data will provide the Settlement Administrator all known personally identifiable data sufficient to identify these 6,500 individuals, such as date of birth and social security number, and the identity of the Med-Data Business Associate that provided health care services to the Settlement Class Member. The Settlement Administrator will use this information to determine valid contact information for these 6,500 individuals, similar to its standard procedure for validating class member contact information. Aldridge Decl. ¶¶ 6.

P&N has opined that the direct notice plan proposed is sufficient to satisfy the requirements of due process, including with respect to the 6,500 individuals, such that publication or geo-targeted notice is not necessary. Aldridge Decl. ¶¶ 15-16. If the Court does not agree with P&N’s determination, P&N will provide such notice in the form and manner ordered by the Court. SA § III.1.

E. Appointment of the Settlement Administrator

In connection with implementation of the Notice Plan and administration of the settlement benefits, the Parties request the Court appoint P&N to serve as the Settlement Administrator. P&N is a well-respected third party administrator with a trusted and proven track record of supporting class action administrations. Aldridge Decl., Ex. A.

F. Appointment of Settlement Class Counsel

Under Rule 23, “a court that certifies a class must appoint class counsel [who must] fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). In making this determination, courts generally consider the following attributes: the proposed class counsel’s (1) work in identifying or investigating potential claims, (2) experience in handling class actions or other complex litigation, and the types of claims asserted in the case, (3) knowledge of the applicable law, and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–iv).

Here, proposed Class Counsel have extensive experience prosecuting consumer class actions and other complex cases, and specifically data breach cases. *See* Federman Dec. ¶ 9-11, Ex. A (firm resumes). Accordingly, the Court should appoint William B. Federman of Federman & Sherwood, Jean S. Martin of Morgan & Morgan Complex Litigation Group, Beth E. Terrell and Ryan Tack-Hooper of Terrell Marshall Law Group, Maureen Brady of McShane Brady, and John Heenan of Heenan & Cook as Class Counsel.

G. The Court should set a final fairness hearing.

The next steps in the settlement approval process are to schedule a final fairness hearing, notify Settlement Class members of the settlement and hearing, and provide Settlement Class Members with the opportunity to submit Claim Forms and object, opt out, or comment on the Settlement. The parties propose the following schedule:

EVENT	DATE
Deadline for Med-Data to provide the “Mailing List” to the Settlement Administrator (SA § VI.4)	10 business days after the preliminary approval order
Notice to be disseminated (Notice Deadline) (SA § II.15)	30 calendar days after the preliminary approval order
Deadline for Settlement Class Members to object or request exclusion (SA §§ II.17–18)	50 calendar days after Notice Deadline
Class Counsel to file motion for attorneys’ fees, costs, and service awards (SA § IX.1)	90 calendar days after the preliminary approval order
Plaintiffs to file motion for final approval (SA § IX.1)	120 calendar days after the Notice Deadline
Deadline for Settlement Class Members to Submit Claims (SA § II.5)	75 calendar days after Notice Deadline
Deadline to file responses to any objections and replies in support of final approval and/or Class Counsel’s motion for attorneys’ fees, costs, and service awards (SA § VIII.1)	No later than 14 calendar days before the Final Fairness Hearing
Final Fairness Hearing	Not less than 210 days after entry of preliminary approval order

IV. CONCLUSION

Plaintiffs respectfully request the Court grant their motion, certify the Settlement Class for settlement purposes only, direct notice to the Class, compel Med-Data to provide

contact information for Settlement Class Members to the Settlement Administrator for purposes of notice and claims administration, and enter a schedule for final approval.

RESPECTFULLY SUBMITTED AND DATED this 16th day of November, 2023.

FEDERMAN & SHERWOOD

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

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

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

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

Telephone: (813) 559-4908

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

Attorneys for Plaintiffs

CERTIFICATION OF WORD COUNT

I hereby certify that this document complies with Rule 18 of this Court’s Procedures, being 4,991 words (under the Court’s limit of 5,000 words), exclusive of case caption, tables, signatures, and certificates.

/s/ William B. Federman
William B. Federman

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2023, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of the filing to all counsel of record.

/s/ William B. Federman
William B. Federman

Exhibit 1

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

M.S. and D.H., individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

MEDDATA, Inc.,

Defendant.

Case No. 4:22-cv-00187

Hon. Charles Eskridge

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

I, William B. Federman, declare as follows:

1. I am a partner at the law firm of Federman & Sherwood. I make this declaration based upon my personal knowledge.
2. I am admitted to practice before this court and designated as the lead counsel for the Plaintiffs and the proposed class.
3. Attached as **Exhibit A** is a true and correct copy of the parties' Settlement Agreement and Release.
4. The parties attended several in person and hybrid (some in person and some via Zoom) mediations. The first mediation was conducted in September 2022 with mediator Louis Peterson of Hillis, Clark, Martin, and Peterson. Although some progress was made the parties did not resolve the case. After the first mediation was concluded the parties proceeded with litigation, including briefing motions for class certification, conducting additional investigations, and consulting with the Plaintiffs and witnesses while also continuing discussions about potential resolution of both pending federal court actions and three cases pending in different state courts [as discussed below, there are five cases with substantially similar allegations being prosecuted and all will be resolved by the proposed settlement.] On March 28, 2023, the parties attended a

second mediation before mediator Robert A. Meyer of JAMS in Los Angeles, California, and reached agreement on material terms of the proposed settlement. Both Mr. Peterson and Mr. Meyer are seasoned mediators with extensive experience mediating class action cases including data breach cases.

5. The proposed settlement resolves the claims in this case and four additional cases: (1) *Tokarski v. Med-Data, Inc.*, No. 2:21-cv-00631-TL (W.D. Wash.); (2) *C.C. v. Shawnee Mission Medical Center*, Case No. 21CV01724, (Johnson County, Kansas); (3) *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, (Johnson County, Kansas); (4) *D.H. v. Shawnee Mission Medical Center*, Case No. 2116-CV09159, (Jackson County, Missouri) (collectively, the “Actions”). The Actions, collectively, allege claims for negligence, negligence *per se*, breach of third-party beneficiary contract, breach of implied contract, unjust enrichment, negligent training and supervision, invasion of privacy, breach of fiduciary duty of confidentiality, violation of the Washington Data Incident Notice Act, RCW 19.255, *et seq.*, violation of the Washington Consumer Protection Act, RCW 19.86, *et seq.*, violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*, and injunctive and declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

6. Plaintiffs’ counsel have cooperatively litigated the claims in the Actions.

7. Before discussing resolution, the parties engaged in extensive discovery that included multiple sets of written discovery, Med-Data’s production of over 26,000 pages of documents and numerous spreadsheets, production of the plaintiffs’ documents, Rule 30(b)(6) depositions of Med-Data and Shawnee Mission Medical Center, and plaintiffs’ depositions. Plaintiffs also subpoenaed and obtained discovery from Med-Data’s cybersecurity consultant, Crowe LLP, and interviewed and obtained a declaration from Jelle Ursem, the information security researcher who discovered the exposed PHI and PII on GitHub.

8. Plaintiffs successfully opposed Med-Data’s motions to dismiss for lack of standing in this case and the *Tokarski* and *C.C.* cases. Plaintiffs in this case and in *Tokarski* moved for class certification in February 2023, and Med-Data opposed in March 2023. Plaintiffs’

motions were supported by a report from Gary Olsen, an expert in valuing intangible assets in several industries, including healthcare. Med-Data filed an expert report and motions to exclude Mr. Olsen's testimony with its oppositions.

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

10. My co-counsel are also experienced class action litigators. Information about their experience and qualifications as well as my own can be found in the firm resumes attached hereto as a consolidated **Exhibit B**.

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

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

EXECUTED this 16th day of November, 2023 at Oklahoma City, Oklahoma.

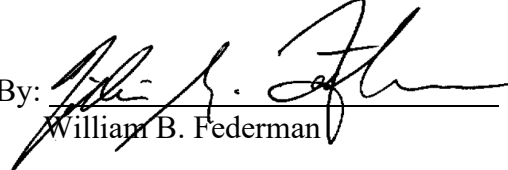
By: 
William B. Federman

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

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

***Nicole Tokarski v. Med-Data, Inc.*, Case No. 2:21-cv-00631-TL
United States District Court for the Western District of Washington**

***C.C. v. Shawnee Mission Medical Center, Inc.*, Case No. 21CV01724,
District Court of Johnson County, Kansas**

***C.C. v. Med-Data, Inc.*, Case No. 21CV01716,
District Court of Johnson County, Kansas**

***D.H. v. Shawnee Mission Medical Center, Inc.*, Case No. 2116-CV09159,
Circuit Court of Jackson County, Missouri at Kansas City**

This Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between (i) Med-Data, Inc. n/k/a Med-Data, LLC (“Med-Data” or “Defendant”) and (ii) M.S., D.H., Nicole Tokarski, and C.C., individually and on behalf of the Settlement Class (collectively, “Plaintiffs”), in the above referenced lawsuits (the “Litigation”) subject to preliminary and final Court approval as required by Federal Rule of Civil Procedure 23(e). Plaintiffs and Med-Data are collectively referred to herein as the “Parties.”

As provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class in connection with the Data Incident (defined below) against Med-Data and other Released Parties (defined below), as alleged in the above actions, shall be settled and compromised upon the terms and conditions contained herein.

I. RECITALS

1. Med-Data is a healthcare revenue cycle management services provider that services thousands of hospitals, physicians, healthcare systems, and healthcare facilities nationwide. The services offered by Med-Data include processing Medicaid eligibility, third-party liability, workers’ compensation, and patient billing for its clients.
2. On March 31, 2021, Med-Data announced a data security incident affecting the personal information of individuals who are/were patients of customers of Med-Data. An employee of Med-Data had saved files containing patients’

PHI and PII to the public-facing portion of GitHub sometime between December 2018 and September 2019 (the “Data Incident”).

3. Subsequently, five actions were filed in various jurisdictions: *M.S. and D.H. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, United States District Court for the Southern District of Texas; *Nicole Tokarski v. Med-Data, Inc.*, Case No. 2:21-cv-00631-TL, United States District Court for the Western District of Washington; *C.C. v. Shawnee Mission Medical Center, Inc.*, Case No. 21CV01724, District Court of Johnson County, Kansas; *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, District Court of Johnson County, Kansas; *D.H. v. Shawnee Mission Medical Center, Inc.*, Case No. 2116-CV09159, Circuit Court of Jackson County, Missouri at Kansas City (collectively, the “Actions”). The Actions, collectively, allege claims for negligence, negligence *per se*, breach of third-party beneficiary contract, breach of implied contract, unjust enrichment, negligent training and supervision, invasion of privacy, breach of fiduciary duty of confidentiality, violation of the Washington Data Incident Notice Act, RCW 19.255, *et seq.*, violation of the Washington Consumer Protection Act, RCW 19.86, *et seq.*, violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*, and injunctive and declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.
4. Motions to Dismiss were filed and denied in *Nicole Tokarski v. Med-Data, Inc.*, Case No. 2:21-cv-00631-TL, United States District Court for the Western District of Washington; *C.C. v. Shawnee Mission Medical Center, Inc.*, Case No. 21CV01724, District Court of Johnson County, Kansas; *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, District Court of Johnson County, Kansas; *D.H. v. Shawnee Mission Medical Center, Inc.*, Case No. 2116-CV09159, Circuit Court of Jackson County, Missouri at Kansas City.
5. In *C.C. v. Med-Data, Inc.*, the District Court for the District of Kansas, Case No. 21-2301-DDC-GEB, dismissed the case on the grounds that it did not have standing and remanded the case to State Court. In *M.S. and D.H. v. Med-Data, Inc.*, Med-Data’s Motion to Dismiss was pending at the time of the Parties’ March 28, 2023 mediation.
6. On September 8, 2022, counsel for the Parties held an in-person mediation with mediator Louis D. Peterson, Esq. in Seattle, Washington. No agreement was reached after an all-day mediation.
7. Thereafter, the parties continued litigating. Motions for class certification were filed in the two federal court cases: *M.S. and D.H. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, United States District Court for the Southern District of Texas and *Nicole Tokarski v. Med-Data, Inc.*, Case No. 2:21-cv-

00631-TL, United States District Court for the Western District of Washington. Med-Data filed responses in opposition to those motions and filed motions to strike Plaintiffs' expert in both cases.

8. On March 28, 2023, counsel for the Parties held an in-person mediation (with some counsel appearing virtually) with Robert A. Meyer, Esq. of JAMS in Los Angeles, California.
9. During the mediation, counsel for the Parties reached an agreement with regard to the material terms of the proposed settlement for all Actions, which are memorialized in this Settlement Agreement.
10. The Parties did not discuss attorneys' fees, costs, and expenses, or service awards for the Class Representative until after there was an agreement on the material terms of the proposed settlement.
11. The Parties now agree to settle the Actions in their entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class, as defined below. The Parties intend this Agreement to bind Plaintiffs, Med-Data, and all Settlement Class Members, as defined below, who do not timely and properly exclude themselves from the Settlement.
12. 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.
13. The Parties agree that approval for the Settlement will be sought through *M.S. and D.H. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, United States District Court for the Southern District of Texas. The remaining four actions will be dismissed within ten (10) business days of the Effective Date, as defined below.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Actions be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23(e), on the following terms and conditions:

II. DEFINITIONS

In addition to the terms defined at various points within this Settlement Agreement, the following defined terms apply throughout this Settlement Agreement:

1. “**Actions**” mean or refer to the matters styled *M.S. and D.H. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, United States District Court for the Southern District of Texas; *Nicole Tokarski v. Med-Data, Inc.*, Case No. 2:21-cv-00631-TL, United States District Court for the Western District of Washington; *C.C. v. Shawnee Mission Medical Center, Inc.*, Case No. 21CV01724, District Court of Johnson County, Kansas; *C.C. v. Med-Data, Inc.*, Case No. 21CV01716, District Court of Johnson County, Kansas; *D.H. v. Shawnee Mission Medical Center, Inc.*, Case No. 2116-CV09159, Circuit Court of Jackson County, Missouri at Kansas City.

2. “**Agreement**” or “**Settlement Agreement**” means this Stipulation of Agreement and Settlement and Release, including its attached Exhibits (which are an integral part of this Stipulation of Agreement and Settlement and Release and are incorporated in their entirety herein by reference).

3. “**Approved Claim**” means a Claim Form submitted by a Settlement Class Member that has satisfied the verification process outlined in Section IV paragraph 6, and is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed and executed, with all of the information requested in the Claim Form, including the Settlement Class Member’s full name and the Settlement Class Member’s current contact information; and (c) signed by the Settlement Class Member, physically or electronically.

4. “**Business Associates**” means the healthcare entities of which Settlement Class Members were patients and through which Med-Data obtained the Personal Information of Settlement Class Members that was compromised in the Data Incident.

5. “**Claims Deadline**” means the time and date by which a Claim Form must be received by the Settlement Administrator, through any means, including U.S. Mail or through the Settlement Website established pursuant to Section VI below, in order for a Settlement Class Member to be entitled to any of the monetary consideration contemplated in this Settlement Agreement. The Claims Deadline shall be seventy-five (75) calendar days after the Notice Deadline.

6. “**Claim Form**” or “**Claim**” means the form Settlement Class Members must submit to be eligible for relief under the terms of the Settlement, the proposed forms of which is attached hereto as Exhibit 1.

7. “**Class Counsel**” means:

Beth E. Terrell
Ryan Tack-Hooper
TERRELL MARSHALL LAW GROUP
936 North 34th Street, Suite 300
Seattle, WA 98103

Jean Martin
MORGAN & MORGAN
201 Franklin Street, 7th Floor
Tampa, FL 33602

Maureen Brady
MCSHANE BRADY
1656 Washington St., Suite 120
Kansas City, MO 64108

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

John Heenan
HEENAN & COOK
1631 Zimmerman Trail, Suite 1
Billings, Montana 59102

8. “**Class Representatives**” means M.S., D.H., Nicole Tokarski, and C.C.
9. “**Court**” means the United States District Court for the Southern District of Texas.
10. “**Effective Date**” means the date five business days following the later of the following events: (A) if any Settlement Class Member objects to the Settlement: (i) the date upon which the time expires for filing a notice of appeal of the Court’s Final Approval Order and Judgment; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, and the appellate court enters an order either dismissing the appeal(s) or affirming the Final Approval Order and Judgment without material modification, the date upon which the time expires for seeking review of that order; or (B) if no Settlement Class Member Objects to the Settlement: the date the Court enters the Final Approval Order and Judgment. The Effective Date shall not be delayed beyond the date ten (10) business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys’ fees, costs, and expenses, or of service awards, in the amounts that Class Counsel requests (“**Fee Request**”). Further, the Effective Date shall not be delayed beyond the date ten (10) business days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.
11. “**Final Approval**” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and

expenses awarded to Class Counsel and the amount of the Service Award (as defined in Section VIII herein). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

12. “Final Approval Order” means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

13. “Named Plaintiffs” means M.S., D.H., Nicole Tokarski, and C.C.

14. “Notice” means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

15. “Notice Deadline” means thirty (30) calendar days after the Court has entered the Preliminary Approval Order or as soon thereafter as is feasible for the Settlement Administrator.

16. “Notice Program” means the notice methods provided for in this Agreement and consists of (1) Notice to all Settlement Class Members via summary post card notice via United States Postal Service first class mail and (2) Notice posted on the Settlement Website. The forms of Notice shall be substantially in the forms attached as Exhibit 2A (Long Form) and Exhibit 2B (Short Form) to this Agreement and approved by the Court, and the Notice Program shall be affected in substantially the manner provided in Section VII herein.

17. “Objection Deadline” means fifty (50) calendar days after the Notice Deadline.

18. “Opt-Out Deadline” means fifty (50) calendar days after the Notice Deadline.

19. “Out of Pocket Losses” are documented unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident. Out-of-Pocket Losses may include, without limitation, the following: (1) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member’s personal information; (2) costs incurred on or after February 27, 2021, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (3) other miscellaneous expenses incurred related to any Out-of-Pocket Loss, such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (4) credit monitoring or other mitigative costs that were incurred on or after February 27, 2021, through the date of the Settlement Class Member’s claim submission; and (5) Time Spent (as defined below, Section IV.2.f.).

20. “Personal Information” means the protected health information (“PHI”)

and personal identifiable information (“PII”) of patients whose information was collected and stored by Med-Data and that was exposed in the Data Incident including: (i) patient contact information (such as patient names, addresses, and dates of birth); (2) Social Security numbers; (3) diagnoses; (4) medical conditions; (5) claims information; (6) dates of service; (7) subscriber IDs; (8) medical procedure codes; (9) provider names; and (10) health insurance policy numbers.

21. “Reasonable Documentation” means documentation establishing an Out-of-Pocket Loss claim, or a Time Spent claim fairly traceable to the Data Incident. Non-exhaustive examples of Reasonable Documentation include credit card statements, bank statements, invoices, official governmental correspondence, and receipts. A valid Claim, other than a request for lost time and/or an alternative cash payment, cannot be supported solely by a personal certification, declaration, or affidavit from the claimant or the claimant’s representative(s).

22. “Released Claims” means any and all claims, demands, rights, actions or causes of action, whether known or unknown, that have been or could have been asserted in the Actions by or on behalf of Named Plaintiffs, any and all of the members of the Settlement Class, arising out of the Data Incident. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Members or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Actions.

23. “Released Party” means Defendant and Business Associates, including Shawnee Mission Medical Center, Inc., and all of its and their present or past direct or indirect affiliates, divisions, predecessors, successors, assigns, parents, or subsidiaries and the associates, employers, employees, agents, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, shareholders, successors in interest, officers, directors, and general or limited partners.

24. “Releasing Parties” means Named Plaintiffs, any Settlement Class Member who does not timely and properly opt out from the Settlement, and any person claiming or receiving a benefit under this Settlement.

25. Settlement Action means or refers to the matter styled *M.S. and D.H. v. Med-Data, Inc.*, Case No. 4:22-cv-00187, United States District Court for the Southern District of Texas through which the Parties agree that approval of the Settlement will be sought.

26. “Settlement” or “Settlement Agreement” means this settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement, including the exhibits hereto.

27. “Settlement Administrator” presumptively means Postlethwaite & Netterville (“P&N”) as selected by Class Counsel, and approved by Defendant, to serve as the Settlement Administrator.

28. “**Settlement Class Members**” or “**Settlement Class**” means all persons who fall within the Nationwide Class definition set forth in Section III herein.

29. “**Settlement Fund**” shall mean the sum of \$7,000,000.00 which Defendant agrees to pay to resolve the claims of the Settlement Class.

30. “**Settlement Website**” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice, Preliminary Approval Order, the Claim Forms, the complaints filed in the Action and such other documents as Class Counsel and Defendant agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be agreed upon by Class Counsel and Defendant. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least five (5) business days after the last payment or credit under this Settlement is made or the Settlement is terminated.

III. SETTLEMENT CLASS

1. For settlement purposes only, the Parties agree that the Court should certify the following class pursuant to Federal Rule of Civil Procedure 23(c) (the “**Nationwide Class**” or “**Class**”) defined as:

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

For purposes of determining membership in the Settlement Class, Defendant provided notice of the Data Incident to 135,908 individuals who had Personal Information compromised by the Data Incident. Defendant’s Business Associates provided notice of the Data Incident to approximately 5,000 individuals who had Personal Information compromised by the Data Incident. It is intended that all of the approximately 140,908 individuals who were provided notice of the Data Incident shall constitute members of the Nationwide Class to be certified for settlement purposes.

Defendant was unable to provide notice of the Data Incident to an additional approximately 6,500 individuals because Defendant did not have current or complete contact information for those individuals. The Settlement Administrator will be alerted to this issue and will be requested to use best efforts to obtain current mailing addresses for these individuals. The Settlement Administrator will make an initial determination as to whether any publication or geo-targeted notice will be required to satisfy due process notice

requirements, particularly with regard to these 6,500 individuals. It is intended that the 6,500 individuals shall constitute members of the Nationwide Class to be certified for settlement purposes. If the Settlement Administrator determines that publication or geo-targeted notice will not be required to satisfy due process notice requirements, the Court may accept the Settlement Administrator's determination. But if the Court determines that publication or geo-targeted notice is required to include any or all of the 6,500 individuals in the Nationwide Class to be certified for settlement purposes, the Settlement Administrator will provide such notice.

2. Excluded from the Settlement Class are the Court and all members of the Court's staff, the officers and directors of Defendant and Business Associates, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Incident, and persons who timely and validly request exclusion from the Settlement Class. Named Plaintiffs will move for certification of the Nationwide Class contemporaneously with their motion for preliminary approval of the Settlement. For purposes of this Settlement only, Defendant agrees not to contest certification of the Nationwide Class. Should the Settlement not be approved, Defendant reserves all rights and defenses on the merits and as to class certification.

3. For settlement purposes only, Named Plaintiffs shall also seek, and Defendant shall not oppose, the appointment of Class Counsel as Settlement Class counsel and appointment of Named Plaintiffs as Settlement Class representatives ("**Settlement Class Representatives**").

IV. SETTLEMENT CONSIDERATION AND BENEFITS

In exchange for mutual releases of all claims by the Settlement Class and the payment of the non-reversionary sum of \$7,000,000.00, the Parties agree to the following compensation and benefits to Settlement Class Members who submit valid and timely claim forms from the Settlement Fund. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' counsel, if they dispute the Settlement Administrator's initial determination.

1. Tier One Claims:

- a. Settlement Class members who suffered Out-of-Pocket Losses because of the Data Incident, and can provide supporting documentation for their claim, will be eligible for a payment of the amount of loss proven up to five thousand dollars (\$5,000.00) on a claims-made basis, but not more than the loss proven. Out-of-Pocket Losses eligible for reimbursement must have been incurred on or after December 2018 and may include, without limitation, unreimbursed losses relating to fraud, medical or identity theft;

professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

- b. Settlement Class Members who elect to submit a Claim for reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member's name and address; (2) Reasonable Documentation supporting their claim; and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member 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 to or support other submitted documentation.
- c. Reimbursement for Time Spent. A Settlement Class Member's claim under Out-of-Pocket Losses may also include a claim for time spent remedying issues related to the Data Incident ("Time Spent"). Claims made for such time are subject to a 5-hour cap reimbursed at \$25 per hour and can be combined with reimbursement for Out-of-Pocket Losses subject to the \$5,000.00 aggregate individual cap. Time Spent may include (i) changing passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring services; or (v) researching information about the Data Incident, its impact, or how to protect themselves from harm due to a data breach.
- d. The Settlement Administrator shall deny any Tier One Claim, or any part thereof, that it decides, in its sole discretion, is not reasonably supported.

2. Tier Two Claim:

- a. Alternative Cash Payment. As an alternative to filing a Claim for Reimbursement of Out-of-Pocket Losses or Time Spent, Settlement Class Members took any *de minimis* affirmative action to respond to the Notice of

Data Incident and/or investigate the Data Incident may submit a claim to receive a pro rata payment up to \$500 from the net settlement fund, net of payment for all Tier One Claims for Reimbursement of Out-of-Pocket Losses or Time Spent, Tier Three Medical Shield Premium service, attorneys' fees and expenses, Service Awards, and notice and administration costs. Settlement Class Members who elect to submit a Claim to receive the Alternative Cash Payment must certify on the Claim Form that he/she took at least some *de minimis* action in response to the Data Incident.

3. Tier Three Automatic Benefits:

All Settlement class members are eligible to access, without the need to file a claim, for a period of 36 months the Medical Shield Premium service, a health data/fraud monitoring service with a \$1 million of fraud/ medical identity theft insurance service provided by Pango. The Settlement Administrator shall send an activation code to each valid Medical Shield claimant within thirty (30) calendar days of the Effective Date which can be used to activate the Services via an enrollment website maintained by Pango. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Pango shall provide Medical Shield to all valid claimants who timely activate those services for a period of 3 years from the date of activation.

4. Injunctive Relief: Defendant agrees to adopt and implement and/or maintain the at least the following data security measures for a period of no less than two (2) years following Final Approval of the Settlement:

- The Company's security council will continue to meet annually with a qualified cybersecurity consulting firm to discuss and implement annual testing of the Company's cybersecurity.
- Continue to designate a person responsible as the internal security auditor who will provide an annual presentation to the Board of Directors on the Company's cybersecurity status.
- Continue annual training of internal personnel on data privacy.
- The Board of Directors will continue to annually consider appropriate cybersecurity spending.
- Continue to provide a monitored internal confidential whistleblowing mechanism for data related concerns.
- Continue providing education and training to all employees to not

store or send PII/PHI using unsecured email accounts.

- Continue providing education and training to all employees to educate them to not post PHI/PII to unsecured, unapproved, websites.
- Continue to maintain a data deletion policy in compliance with state and federal law.

Data retrieval

- Make a reasonable joint request with Plaintiffs' counsel to Mr. Ursem requesting that he return all PHI of Med-Data in his possession.

Contact GitHub and request assurance in writing that either the PHI has been wiped from the database or that the information is locked and not accessible by anyone.

Monitoring

- Continued detection and response solution that continually monitors traffic on Med-Data's network and logs for security related incidents.
- Continued 24x7 monitoring of network, company provided devices.

Audits and internal assessments

- Continue vulnerability scanning.
- Continue annual internal risk assessments.
- Continue annual SOC audits.

Encryption and authentication

- Continue to encrypt or tokenize PII/PHI at rest and in movement in reasonable compliance with NIST.
- Continue multi-factor authentication for login to all accounts containing PHI and remote access to nonpublic information.

Anti-malware

- Continue to provide up to date 24x7 monitoring software that captures all activity occurring on each company provided device within the network and alerts to unusual user behavior, unauthorized transfer of data, and quarantines or kills execution of such processes that do not have approval of network.
- Continue to update anti-virus/anti-ransomware/anti-malware programs across business.
- Continue to maintain anti-malware on all servers with monitoring, reporting, and alerts for malware.

Penetration testing and training

- Continue simulated phishing campaigns.
- Continue third party security assessments/penetration tests.
- CISO will oversee independent annual penetration testing.

Security policies

- Continue to update all internal policies and procedures annually related to the maintenance and security of Protected Health Information to incorporate new security measures in compliance with HIPAA, HITECH, and applicable FTC guidelines.
- Continue to update all data policies and procedures to incorporate new security measures.

Governance

- Maintain governmental and regulatory management software that integrates corporate governance and enterprise risk management regulations and guidelines into Med-Data's IT related operations.
- Continue quarterly security council meetings.

Firewalls and Data access controls

- Maintain top-rated data loss prevention system that classifies certain sensitive data (PHI, PII, and PCI related data) on Med-

Data's network and prevents files containing such data from being exfiltrated.

- Maintain firewalls.
- Maintain segregation of the production environment from development.
- Maintain mobile device management systems to secure mobile devices with access to Med-Data networked-systems.
- Maintain security controls on USB portals to limit data removal by non-privileged users.
- Continue making file sharing websites inaccessible to all non-administrative users.
- Maintain security policy to disable access to all file sharing websites for non-administrative privileged users.

5. Residual Funds

Defendant shall not be entitled to the return of any residual monies in the Settlement Fund. Residual funds will be used to extend the coverage period of the Medical Shield Premium service for all Settlement Class Members who timely activate those services. Any nominal funds remaining after the foregoing residual pro rata distribution will be provided to National Cybersecurity Alliance, subject to approval by the Court.

6. Claims Process

The Settlement Administrator shall only make payments to Settlement Class Members who submit valid claims under Tier One or Tier Two as described in the verification process and such claims are also Approved Claims. To the extent the Settlement Administrator determines a Claim Form, along with supporting materials, is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) calendar days to cure the deficiencies. Such notifications shall be sent within twenty-one (21) calendar days after the Claims Deadline and be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail if the claimant provided an address. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) business days of the determination. The Settlement Administrator may consult with Class Counsel in making

such determinations.

V. SETTLEMENT FUND

1. **Establishment of Settlement Fund.** Within twenty-one (21) calendar days of the entry of the Preliminary Approval Order, Defendant shall cause to be deposited the costs of notice and administration through the date of final approval, as estimated by the Settlement Administrator into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendant, and Class Counsel, to cover the Settlement Administrator's reasonable set-up costs, notice, and early administration costs. Defendant shall cause to be deposited the balance of the Settlement Fund into the same account within ten (10) business days of the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendant within five (5) business days of the entry of the Preliminary Approval Order.

2. Defendant and its insurance carriers shall pay the monies to be deposited into the account established and administered by the Settlement Administrator pursuant to paragraph 1 above in such shares as agreed to in confidence by Defendant and its insurance carriers. Defendant shall be responsible for ensuring that the total Settlement Fund amount of \$7 million is paid into the account established by the Settlement Administrator.

3. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

4. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs XX. [Need to revise once finalized]

5. **Use of the Settlement Fund.** The Settlement Fund shall be used by the Settlement Administrator to pay for the following in the order listed: (1) Tier 3 benefits of 36 months of Medical Shield Premium service for all Settlement Class Members who timely activate those services; (2) reimbursement for Tier 1 Out-of-Pocket Losses and Time Spent for Settlement Class Members who submit valid claims; (3) Notice and Administration Costs; (4) Fee Award and Costs as awarded by the Court; (5) Service Award payments approved by the Court; and (6) Tier 2 Alternative Cash Payments for Settlement Class Members who submit valid claims up to \$500. Within thirty (30) calendar days after entry of the Final Approval Order, the Settlement Administrator shall pay all valid claims using the payment method selected by the Claimant. Physical checks issued to Settlement Class Members who elect to be paid by check shall be valid for one-hundred twenty (120) calendar days from the date on the check. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Settlement Agreement or approved by the Court. Responsibility for effectuating payments described in this paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

6. **Taxes and Representations.** Taxes and tax-related expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes and tax-related expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty, and have no responsibility, with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

VI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

1. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon both the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date.

2. **Preliminary Approval.** Following execution of this Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the Settlement, in a form agreeable to the Parties, within thirty (30) days thereof or a date thereafter that is agreeable to the Parties and the Court.

3. Authority to Disclose Personal Information. The Court's Order granting preliminary approval of the Settlement shall include an order issued pursuant to 45 CFR 164.512(e) authorizing Med-Data to disclose specific protected health information of Settlement Class Members to Plaintiffs and the Settlement Administrator to the limited extent any such protected health information is necessary to implement and administer the Settlement. In addition, the Court's Order granting preliminary approval of the Settlement shall include a provision that, prior to receiving any protected health information from Med-Data, the Settlement Administrator shall sign Med-Data's Business Associate Agreement.

4. Mailing List. The parties will request that the Court order that within 10 (ten) calendar days of the Court's entry of an ordering granting preliminary approval of the Settlement, Med-Data shall provide the Settlement Administrator with a list of the names and the current or last known addresses of the Settlement Class Members, including the 5,000 Settlement Class Members for whom Business Associates provided notice of the Data Incident and the 6,500 individuals whose information was posted to GitHub but for whom Med-Data does not have complete or current contact information. For those individuals for whom Med-Data does not have complete contact information, Med-Data shall also provide sufficient information to properly identify the Settlement Class Member, such as date of birth or last four digits of social security number.

5. Final Approval. Class Counsel shall move the Court for a Final Approval Order of this Settlement, to be issued following the Final Approval Hearing; within one-hundred twenty (120) calendar days after the Notice Deadline, Objection Deadline, and Opt-Out Deadline.

6. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

VII. SETTLEMENT ADMINISTRATOR

1. The Settlement Administrator shall administer various aspects of the Settlement as described in Section IV (1) through (3) and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement Agreement, including, but not limited to, overseeing the payment of Claims; providing Notice to Settlement Class Members via summary post card notice via United States Postal Service first class mail or publication as described in Section VII herein; establishing and operating

the Settlement Website and a toll-free number; administering the Claims processes including the verification processes described herein; and distributing cash payments according to the processes and criteria set forth in Section IV herein. The expense for the services of the Settlement Administrator shall be paid from the Settlement Fund.

2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Obtaining from Defendant the name and mailing address of Settlement Class Members for the purpose of sending Notice to Settlement Class Members via United States Postal Service first class mail;
- b. Obtaining from Defendant information necessary to establish a reasonably practical procedure to verify Settlement Class Members;
- c. Establishing and maintaining a post office box for mailed written notifications of exclusion or objections from the Settlement Class;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class Member inquiries;
- g. Processing all written notifications of exclusion from the Settlement Class;
- h. Providing weekly reports and, no later than ten (10) business days after the Opt-Out Deadline, a final report to Class Counsel and Defendant, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendant's counsel;
- i. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;

- j. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria set forth in Section IV herein and in Exhibit 1 attached hereto.
- k. After the Effective Date, receiving money from Defendant and processing and transmitting distributions to Settlement Class Members in accordance with Section IV herein;
- l. Providing weekly reports and a final report to Class Counsel and Defendant that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information as requested by Class Counsel and Defendant's counsel; and
- m. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, but not limited to, verifying that cash payments have been distributed in accordance with Section IV herein.

VIII. NOTICE, OPT-OUTS, AND OBJECTIONS

1. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Settlement Administrator will implement the Notice Program provided herein, using forms substantially in the nature of the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.

2. The Notice Program has two components: (1) Notice via direct summary notice via United States Postal Service first class mail; and (2) (3) Notice on the Settlement Website. The Settlement Administrator shall send Notice to all Settlement Class Members via summary notice via United States Postal Service first class mail. The Settlement Administrator shall determine if any publication or geo-targeted notice is also needed to satisfy due process requirements. The Settlement Administrator shall also have the option, if requested by Class Counsel, to mail reminder post card notices to Settlement Class Members who have not yet submitted a Claim Form, with such reminder notices to be mailed, if at all, thirty (30) calendar days prior to the Claims Deadline.

3. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in

writing of the intent to exclude himself or herself from the Settlement Class. This procedure will provide for the submission of an opt-out or exclusion form to be provided to Settlement Class Members by the Settlement Administrator. Such written notification or exclusion form must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. Any written notification or exclusion form must include the individual's name and address; a statement that he or she wants to be excluded from the Action; and the individual's signature. Only one individual may be excluded from the Settlement Class per each written notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all individuals who have timely and validly excluded themselves from the Settlement Class. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of the Settlement.

The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and Service Awards. Objections to the Settlement or to the application for fees, costs, and expenses and Service Awards must be filed electronically with the Court or mailed to the Clerk of the Court and, additionally, served concurrently therewith upon:

For Class Counsel:

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

For Med-Data:

PALUMBO LAW
Ralph H. Palumbo
398 Lark Sparrow Lane
P.O. Box 137
Wolcott, CO 81655

ARETE LAW GROUP PLLC
Lynn M. Engel
1218 Third Avenue, Suite 2100
Seattle, WA 98101

For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must

also set forth:

- a. the name of the filed action;
- b. the objector's full name, address, telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
- f. a statement confirming whether the objector intends to appear personally or through counsel and/or testify at the Final Approval Hearing; and
- g. the objector's signature on the written objection (an attorney's signature is not sufficient).

4. The Parties and their counsel agree that each will not encourage any persons to Opt Out or file Objections to this Settlement Agreement.

5. The direct summary notice via United States Postal Service first class mail, and any publication notice if required, shall be completed by the Notice Deadline, excluding any attempts to resend Notices that are returned undeliverable.

6. The Settlement Administrator shall post the Notice on the Settlement Website in the form agreed to by the Parties and approved by the Court. The Notice shall be posted on the Settlement Website by the Notice Deadline.

7. No later than thirty-five (35) days after the Claims Deadline, the Settlement Administrator shall provide Class Counsel and Defendant with one or more affidavits confirming that the Mail Notice Program, and posting of Notice on the Settlement Website, were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with the motion for final approval of the Settlement.

8. All costs associated with providing appropriate notice of the Settlement to the Settlement Class Members, including potentially a second wave of notice depending on

the claims rate, and settlement administrative costs including payment of the Settlement Administrator shall be paid out of the \$7 million Settlement Fund. Notice will require a unique claim identifier.

IX. FINAL APPROVAL ORDER AND JUDGMENT

1. Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Class Counsel shall file a motion for attorneys' fees, costs and expenses, and Service Awards within thirty (30) calendar days after the Notice Deadline. Within one-hundred-twenty (120) calendar days after the Notice Deadline, Plaintiffs shall file a motion for final approval of the Settlement. By no later than fourteen (14) calendar days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards to the Settlement Class Representatives. At the Final Approval Hearing, the Court will consider Plaintiffs' motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and Service Awards to the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the application for attorneys' fees, costs, and expenses and Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in Section VII paragraph 4 herein.

2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, and expenses, and Service Awards. The proposed Final Approval Order that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and Defendant. A current version is attached hereto as Exhibit 3, but may be subject to modification with the consent of Class Counsel and Defendant prior to the Final Approval Hearing. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice;
- e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Section IX herein, including during the pendency of any appeal from the Final Approval Order;

- f. Release Defendant and the Released Parties from the Released Claims, as set forth in Section IX herein; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Defendant and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. RELEASES

1. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all Released Claims.

2. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under consumer protection statutes in effect in the United States or in any states and territories of the United States); causes of action under the common or civil laws of any state or territory of the United States, including but not limited to: state statutory consumer protection or privacy claims, unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure; and also including, but not limited to, any and all claims in any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, and any other form of relief arising out of, or relating to, or in any way connected with, the Data Incident, and which have been asserted or could have been asserted in the Actions against any of the Released Parties. The Released Claims do not include any claims (a) not arising from or relating to the Data Incident, and/or (b) any claims arising from or relating to any conduct by Defendant after the date the Settlement Agreement is executed. Released Claims also do not include the right of Named Plaintiffs, Settlement Class Members or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action.

3. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged Named Plaintiffs and the Settlement Class Representatives, the other members of the Settlement Class, and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or

otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

4. Upon entry of the Final Approval Order, the Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

XI. ATTORNEYS' FEES, COSTS, EXPENSES AND SERVICE AWARDS

1. **Service Awards.** The Settlement Class Representatives will ask the Court to approve a service award not to exceed five thousand dollars (\$5,000.00) for each Settlement Class Representative, which is intended to compensate such individual for his effort in the litigation and commitment on behalf of the Settlement Class ("**Service Award**"). Neither Class Counsel's application for, nor Class Representatives' entitlement to, a Service Award shall be conditioned in any way upon support for this Agreement. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than ten (10) business days after the Effective Date.

2. **Attorneys' Fees, Costs, and Expenses.** Class Counsel will ask the Court to approve an award of Attorneys' Fees of up to one-third of the Settlement Fund (\$2,333,333.33) plus litigation costs and expenses not to exceed \$200,000.00 to be paid from the Settlement Fund. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount on their Fee Request and shall not alter the Effective Date. Attorneys' Fees, Costs, and Expenses shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than ten (10) business days after the Effective Date.

3. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount that Class Counsel requests, the remaining provisions of this Settlement Agreement shall remain in full force and effect. No order of the Court, or modification, or reversal, or appeal, of any order of the Court, concerning the amount(s) of attorneys' fees, costs, and expenses shall constitute grounds for cancellation or termination of this Agreement. Any amount not awarded to Class Counsel will not revert back to Defendant.

XII. TERMINATION

1. This Settlement may be terminated by either (a) a consensus of all Named Plaintiffs or (b) Defendant by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 14 calendar days (or such longer time as may be agreed between Class Counsel and Defendant) after any of the following occurrences:

- a. Class Counsel and Defendant agree to termination before the Effective Date;
- b. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the proposed Final Approval Order, or the Settlement; or
- e. The Effective Date does not occur.

2. In the event of a termination as provided in Paragraph 1 of this Section, this Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Actions as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

XIII. NO ADMISSION OF LIABILITY

1. Defendant disputes the claims alleged in the Actions and does not by this Settlement Agreement or otherwise admit any liability or wrongdoing of any kind. Defendant has agreed to enter into this Settlement Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Actions.

2. Named Plaintiffs and Class Counsel believe, and the Parties have agreed, that the Settlement confers substantial benefits upon the Settlement Class. Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Actions, Class Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Actions pursuant to the terms and provisions of this Settlement Agreement.

3. The Parties understand and acknowledge that this Settlement Agreement

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

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

XIV. MISCELLANEOUS

1. Singular and Plurals. As used in this Settlement Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

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

3. Cooperation of Parties. The Parties to this Settlement Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court disapproval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Settlement Agreement, including securing certification of the Settlement Class for settlement purposes and the prompt, complete, and final dismissal with prejudice of the Actions as to Defendant.

4. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Settlement Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

5. Integration. This Settlement Agreement (along with any Exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

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

7. Governing Law. The Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to its choice of law or conflict of laws principles.

8. Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through e-mail of an Adobe PDF shall be deemed an original.

9. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10. Notices. All notices to Class Counsel provided for herein shall be sent by overnight mail to:

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

All notices to Defendant provided for herein, shall be sent by overnight mail to:

ARETE LAW GROUP PLLC
Lynn M. Engel
1218 Third Avenue, Suite 2100
Seattle, WA 98101

PALUMBO LAW
Ralph H. Palumbo
398 Lark Sparrow Lane
P.O. Box 137
Wolcott, CO 81655

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

11. Authority. Any person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

12. Signatures of All Settlement Class Members Unnecessary to be Binding. The Parties agree that, because the members of the Settlement Class are numerous, it is impractical, if not impossible, to have each Settlement Class Member execute this Settlement Agreement. The Notice discussed above advises all Settlement Class Members of the binding nature of the Release provided herein, and therefore the Release provided herein shall have the same force and effect as if this Settlement Agreement were executed by each individual Settlement Class Member.

13. No Construction Against Drafter. This Settlement Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement Agreement.

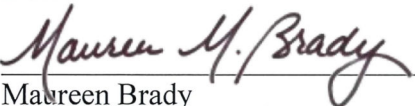
XV. SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
Defendant provides list of Settlement Class Members to the Settlement Administrator	10 business days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	30 calendar days after Preliminary Approval
Notice Deadline	30 calendar days after Preliminary Approval
Reminder Notice	30 calendar days before Claims Deadline
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	90 days after Preliminary Approval Order
Objection Deadline	50 calendar days after Notice Deadline
Opt-Out Deadline	50 calendar days after Notice Deadline
Claims Deadline	75 calendar days after Notice Deadline
<u>Final Approval Hearing</u>	
Motion for Final Approval	210 days after Preliminary Approval Order (at minimum) 120 calendar days after the Notice Deadline


Settlement Administrator to Provide the final report of Opt-Outs and/or Objections	10 business days after the Opt-Out and Objection Deadlines
Settlement Administrator to Provide the Affidavit(s) to be Submitted in Support of Final Approval	35 calendar days after the Claims Deadline

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

For Plaintiffs:

 William B. Federman
 Federman & Sherwood
 Date:

 Maureen Brady
 McShane & Brady LLC
 Date:

 Beth E. Terrell
 Terrell Marshall Law Group PLLC
 Date:

 Jean S. Martin
 Morgan & Morgan Complex
 Litigation Group
 Date:

 John Heenan
 Heenan & Cook
 Date:

For Defendant:

Lynn M. Engel
Lynn M. Engel (Oct 23, 2023 06:28 PDT)

 Ralph H. Palumbo
 Palumbo Law
 Date: Oct 23, 2023
Lynn M. Engel
Lynn M. Engel (Oct 23, 2023 06:28 PDT)

 Lynn M. Engel
 Arete Law Group PLLC
 Date: Oct 23, 2023

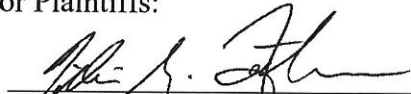
For

 Ethan Carlyle
 Wilson Elser Moskowitz Edelman &
 Dicker LLP
 Date:

Settlement Administrator to Provide the final report of Opt-Outs and/or Objections	10 business days after the Opt-Out and Objection Deadlines
Settlement Administrator to Provide the Affidavit(s) to be Submitted in Support of Final Approval	35 calendar days after the Claims Deadline


IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

For Plaintiffs:

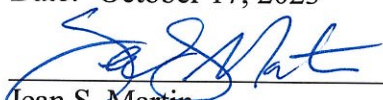


 William B. Federman
 Federman & Sherwood
 Date:

 Maureen Brady
 McShane & Brady LLC
 Date:



 Beth E. Terrell
 Terrell Marshall Law Group PLLC
 Date: October 17, 2023




 Jean S. Martin
 Morgan & Morgan Complex
 Litigation Group
 Date: 10-23-23

 John Heenan
 Heenan & Cook
 Date:

For Defendant:

 Ralph H. Palumbo
 Palumbo Law
 Date:

 Lynn M. Engel
 Arete Law Group PLLC
 Date:



 Ethan Carlyle
 Wilson Elser Moskowitz Edelman &
 Dicker LLP
 Date: 10-23-23

Exhibit A-1

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

**Your Claim Form Must Be
Postmarked By Month Day, 2023**

M.S. and D.H. v. Med-Data, Inc.

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

Claim Form

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

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

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

Settlement Class members who suffered Out-of-Pocket Losses because of the Data Incident, and can provide supporting documentation, will be eligible for a payment of the amount of loss proven up to five thousand dollars (\$5,000.00). Out-of-Pocket Losses eligible for reimbursement must have been incurred on or after December 2018.

A Settlement Class Member may also make a claim for Time Spent remedying issues related to the Data Incident. Claims made for such time are subject to a 5-hour cap reimbursed at \$25 per hour and can be combined with reimbursement for Out-of-Pocket Losses subject to the \$5,000.00 cap.

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

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

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

I. CLASS MEMBER NAME AND CONTACT INFORMATION.

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

_____	_____	
First Name*	Last Name*	

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

City*	State*	Zip Code*

Email Address*		

_____-_____-_____-	_____-_____-_____-	
Telephone Number*	Settlement Claim ID*	

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

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

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

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

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

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

Total amount claimed for this category: \$.

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

Compensation for Lost Time

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

Hours claimed (5 hour maximum): hours

III. TIER 2: ALTERNATIVE CASH PAYMENT.

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

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

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

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

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

IV. PAYMENT OPTIONS.

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

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

Venmo

Venmo Account Email Address or Phone Number

Zelle

Zelle Account Email Address or Phone Number

E-MasterCard

Your Current Email Address

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

V. ATTESTATION & SIGNATURE.

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

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

Signature

Print Name

Date

Exhibit A-2A

EXHIBIT 2A - LONG FORM NOTICE

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

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

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

- A settlement has been reached in a class action lawsuit against Med-Data. The lawsuit involves allegations that Med-Data failed to adequately protect patient data it received from healthcare providers and failed to timely notify patients whose information was compromised when a Med-Data employee uploaded files containing patients' personally identifying information and personal health information to the public-facing portion of GitHub between December 2018 and September 2019 (the "Data Incident"). Med-Data denies all allegations of wrongdoing and any liability.
- The parties have agreed to a proposed settlement on behalf of whose personally identifying information and/or Protected Health Information may have been exposed in the Data Incident.
- Med-Data has agreed to pay \$7,000,000 into a fund that will be used to pay settlement awards to eligible persons who file claims, settlement administration expenses, any court-awarded service awards, and court-awarded attorneys' fees and costs.
- Court-appointed lawyers for the Settlement Class ("Class Counsel") will ask the Court for a payment of \$2,333,333.33 from the fund as attorneys' fees, which is equal to one-third of the settlement fund. In addition, Class Counsel will ask the Court to reimburse them for out-of-pocket expenses they incurred in this case, which currently amount to approximately \$200,000. Class Counsel will also request service awards of \$5,000 to each of the four class representatives.
- Your legal rights are affected whether you act, or don't act. Read this Notice carefully.

EXHIBIT 2A - LONG FORM NOTICE

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

BASIC INFORMATION

1. Why did I receive this notice?

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

2. What is this lawsuit about?

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

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

EXHIBIT 2A - LONG FORM NOTICE

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

THE SETTLEMENT

4. Why is there a settlement?

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

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

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

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

If you have questions about whether you are a part of the Settlement Class you may call 1-800-###-#### or visit www.###.com for more information.

THE SETTLEMENT BENEFITS

6. What does the Settlement Agreement provide?

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

EXHIBIT 2A - LONG FORM NOTICE

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

Tier 1 Claims

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

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

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

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

Tier 2 Claims

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

Tier 3 Benefits – Fraud Monitoring

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

EXHIBIT 2A - LONG FORM NOTICE

Payment Priority

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

Non-Monetary Relief

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

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

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

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8. How do I make a claim?

To qualify for a settlement payment, you must submit a Claim Form by **DATE**. You may submit a Claim Form online by going to the Settlement Website at **www. .com** and following the instructions. You may also download a paper Claim Form on the Settlement Website or call the Settlement Administrator at **1-800-###-####** to request a paper Claim Form, and submit the Claim Form by mail. Claim Forms sent by mail must be postmarked by **DATE** and mailed to:

SETTLEMENT ADMINISTRATOR

P.O. Box XXXX

Baton Rouge, LA 70821

If you have questions about the claim submission process you may call the Settlement Administrator at **1-800-###-####** or visit **www. .com** for more information

9. When will I get my payment?

EXHIBIT 2A - LONG FORM NOTICE

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

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

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

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

EXCLUDING YOURSELF FROM THE SETTLEMENT

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

11. How do I exclude myself from the settlement?

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

SETTLEMENT ADMINISTRATOR

P.O. Box XXXX

Baton Rouge, LA 70821

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

EXHIBIT 2A - LONG FORM NOTICE

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

12. Why would I ask to be excluded?

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

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

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

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this lawsuit?

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

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

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

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

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

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

EXHIBIT 2A - LONG FORM NOTICE

15. Should I get my own lawyer?

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

16. How will the lawyers be paid?

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

OBJECTING TO THE SETTLEMENT

17. How do I object to the settlement?

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

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

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

EXHIBIT 2A - LONG FORM NOTICE

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

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

THE COURT'S FAIRNESS HEARING

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

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

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

20. Do I have to come the hearing?

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

21. May I speak at the hearing?

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

EXHIBIT 2A - LONG FORM NOTICE

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

IF YOU DO NOTHING

22. What happens if I do nothing at all?

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

GETTING MORE INFORMATION

23. Are there more details about the settlement?

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

24. How do I get more information?

You can call 1-888-##### toll free; write to SETTLEMENT ADMINISTRATOR at ADDRESS; or visit the settlement website at www._____.com where you will find answers to common questions about the settlement, the Settlement Agreement, Plaintiff's Complaint, Class Counsel's motion for an award of attorneys' fees and costs, and other information.

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

Exhibit A-2B

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

Your rights and options:

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

Opt out. You may exclude yourself from the Settlement and keep your right to sue Defendants on your own by sending a written request for exclusion to the Settlement Administrator postmarked by **Month Day, 2023**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue Defendants regarding the settled claims. Visit the Settlement Website for more details.

Object. If you do not opt out, you have the right to object to the proposed settlement. Objections must be filed with the court, postmarked by **Month Day, 2023** and provide the reasons for the objection, among other requirements. Visit the Settlement Website for more details.

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

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

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

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

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

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

Visit www.XXXXXXX.com or call 1-XXX-XXX-XXXX for more information.

Med-Data Settlement Administrator

P.O. Box XXXX
Baton Rouge, LA 70821

ELECTRONIC SERVICE REQUESTED

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



Postal Service: Do Not Mark or Cover Barcode

Exhibit A-3

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

M.S. and D.H., individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

MED-DATA, Inc.,

Defendant.

Civil Action No.
4:22-cv-00187

Judge Charles Eskridge

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

The Court, having considered Plaintiffs' Motion for Final Approval of Class Action Settlement, Plaintiffs' Motion for Attorneys' Fees and Costs and for Service Awards to Plaintiffs, the Settlement Agreement and Release between Plaintiffs and Defendant Med-Data, Inc., the record in this Action, the submissions and arguments presented by counsel, and, having held a Final Approval Hearing on _____, finds that:

1. Unless otherwise defined herein, all capitalized terms in this Final Approval Order shall have the same meanings as set forth in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of the action and over the settling parties, including the Settlement Class Members.
3. On _____, the Court preliminarily approved the settlement and certified, for settlement purposes, the Settlement Class as defined in the Settlement Agreement.
4. On _____, Defendant properly and timely notified the appropriate state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act

of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court finds that the notice satisfied the requirements of CAFA and that more than ninety (90) days have elapsed since notice was provided, as required by 28 U.S.C. § 1715(d).

5. Settlement Administrator Postlethwaite & Netterville ("P&N") executed the Notice Plan outlined in the Settlement Agreement and approved by the Court in its Preliminary Approval Order as meeting the requirements of due process and Federal Rule of Civil Procedure 23. The Notice Plan reached _____% of Settlement Class Members. The notices apprised the Settlement Class members of the pendency of the litigation; of all material elements of the proposed Settlement; of the res judicata effect on members of the class and of their opportunity to object to, comment on, or opt out of, the Settlement; of the identity of Class Counsel and Class Counsel’s contact information; and of the right to appear at the Final Approval Hearing. The Notice Plan prescribed by the Settlement Agreement provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Settlement Agreement, to all parties entitled to such notice.

6. The Notice Plan satisfied Federal Rule of Civil Procedure 23 and the requirements of due process, provided the best notice practicable under the circumstances, provided individual notice to all members of the Settlement Class who could be identified through reasonable effort, provided an opportunity for Settlement Class Members to object or exclude themselves from the Settlement, and supports the Court’s exercise of jurisdiction over Settlement Class Members as contemplated in the Settlement Agreement and this Final Approval Order.

7. Settlement Class Members were given an opportunity to object to the settlement. There are no objections to the settlement [OR **NAME(S)** objected to the settlement because **LIST OBJECTIONS**. The Court overrules the objections because the settlement is fair, reasonable,

adequate, and in the best interests of the Settlement Class.].

8. **The individuals listed on Exhibit A of this Order**, who made timely requests for exclusion, are excluded from the Settlement Class and are not bound by this Final Approval Order **[OR** No Settlement Class Member made a timely request to exclude themselves from the Settlement Class].

9. The settlement was arrived at as a result of arms' length negotiations conducted in good faith by experienced attorneys familiar with the legal and factual issues of this case and with the assistance of an experienced mediator.

10. The settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of the complexity, expense, and duration of litigation, as well as the risk involved in establishing liability and damages and in maintaining the class action through trial and appeal.

11. The consideration provided by the settlement constitutes fair value given in exchange for the release of the Settlement Class Members' Released Claims against the Released Parties. The Court finds that the consideration provided to Settlement Class Members is reasonable, considering the facts and circumstances of the claims and affirmative defenses asserted in the action, and the potential risks and likelihood of success of pursuing trial on the merits.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

12. The Court finally approves the Agreement, including the plans for implementation and distribution of the Settlement Fund, and the non-monetary relief, and finds that it is in all respects fair, reasonable, adequate, and in the best interest of Settlement Class Members and is the result of extensive arm's length negotiations. Class Counsel also find the Settlement to be in the best interests of the Settlement Class. The parties dispute the validity of the claims in the action,

and their dispute underscores not only the uncertainty of the outcome but also why the Court finds the Settlement Agreement to be fair, reasonable, and adequate. Had the parties continued to litigate, the Court would still need to rule on Plaintiffs' pending motion for class certification. Defendant would likely appeal any order granting certification and even if the certification order survived, dispositive motions would be likely to follow. And Settlement Class Members would have faced the risk and expense of trial, as well as possible appeals. For all these reasons, the Court finds that the uncertainties and expense of continued litigation in both the trial and appellate courts weigh in favor of settlement approval.

13. Pursuant to Federal Rule of Civil Procedure 21(a) and 23(b)(3), the following Settlement Class is certified for settlement purposes only:

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

Excluded from the class are (1) the Court and all members of the Court's staff; (2) the officers and directors of Defendant and its Business Associates; (3) persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Incident; and (4) persons who timely and validly request exclusion from the Settlement Class.

14. The Court provisionally certified the Settlement Class in its Preliminary Approval Order and now finds that the Settlement Class satisfies the applicable prerequisites for class action treatment under Federal Rule of Civil Procedure 23(a) and (b)(3).

15. The numerosity requirement is satisfied because Settlement Class Members are ascertainable from Med-Data's records and there are more than 140,000 Settlement Class Members. *Mullen v. Treasure Chest Casino*, 186 F.3d 620, 624 (5th Cir. 1999); *Almon v. Conduent*

Bus. Servs., 2022 WL 902992, at *24 (W.D. Tex. Mar. 25, 2022).

16. The commonality requirement is satisfied because there are overarching questions of law and fact common to the Settlement Class, including whether Med-Data had a duty to protect Settlement Class Members personally identifiable and personal health information. *See In re Brinker Data Incident Litig.*, 2021 WL 1405508, at *8 (M.D. Fla. Apr. 14, 2021).

17. The typicality requirement is satisfied because Plaintiffs' and Settlement Class Members' injuries arise from the same data exposure and their claims are based on the same legal theories. *See Fed. R. Civ. P. 23(a)(3); Brinker*, 2021 WL 1405508, at *8; *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 309 (N.D. Cal. 2018).

18. The adequacy requirement is satisfied because Plaintiffs have no interests that conflict with other Class Members, have demonstrated their commitment to the Settlement Class's interests, and are represented by qualified counsel. *See Unger v. Amedisys Inc.*, 401 F.3d 316, 321 (5th Cir. 2005).

19. The predominance requirement is satisfied because Settlement Class Members' claims arise from a single event, the exposure of their PHI and PUU on GitHub.com, and Defendant's liability will turn on common questions proven with predominantly common evidence. *See Anthem*, 327 F.R.D. at 312; *In re Heartland Payment Systems*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012).

20. The superiority requirement is satisfied because the resolution of numerous claims in one action is far superior to individual lawsuits and promotes consistence and efficiency of adjudication, particularly in a case like this one with modest damages. *See Fed. R. Civ. P. 23(b)(3); Castano v. Am. Tobacco Co.*, 84 F.3d 734, 748 (5th Cir. 1996); *Brinker*, 2021 WL 1405508, at *13.

21. Plaintiff, Settlement Class Members, and their successors and assigns have released claims pursuant to the release in the Settlement Agreement. The Released Claims are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Final Approval Order.

22. Pursuant to Section II.10 of the Settlement Agreement, the “Effective Date” means the date five business days following the later of the following events: (A) if any Settlement Class Member objects to the Settlement: (i) the date upon which the time expires for filing a notice of appeal of the Court’s Final Approval Order and Judgment; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, and the appellate court enters an order either dismissing the appeal(s) or affirming the Final Approval Order and Judgment without material modification, the date upon which the time expires for seeking review of that order; or (B) if no Settlement Class Member Objects to the Settlement: the date the Court enters the Final Approval Order and Judgment. The Effective Date shall not be delayed beyond the date ten (10) business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys’ fees, costs, and expenses, or of service awards, in the amounts that Class Counsel requests (“Fee Request”). Further, the Effective Date shall not be delayed beyond the date ten (10) business days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.

23. Within ten (10) business days after the Effective Date, Defendant shall deposit or otherwise transfer the remaining balance of the Settlement Fund to the Settlement Administrator.

24. Within thirty (30) calendar days of the Effective Date, the Settlement Administrator shall mail a check to each Settlement Class Member who filed a valid claim in the amount of their settlement award.

25. The parties, their counsel, and the Settlement Administrator shall fulfill their obligations and duties under the Settlement Agreement. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

26. Plaintiff, Settlement Class Members, and their successors and assigns have released claims pursuant to the release in the Settlement Agreement. The Released Claims are compromised, settled, released, discharged, and dismissed with prejudice by virtue of these proceedings and this Final Approval Order.

27. To the extent permitted by law and without affecting the other provisions of this Final Approval Order, this Final Approval Order is intended by the parties and the Court to be *res judicata* and to prohibit and preclude any prior, concurrent, or subsequent litigation brought individually, or in the name of, or otherwise on behalf of, Plaintiff or any Settlement Class Member with respect to the Released Claims, in any forum, action, or proceeding of any kind.

28. The Court retains continuing and exclusive jurisdiction over the parties and all matters relating to this action or settlement, including the administration, supervision, interpretation, construction, and enforcement of the settlement, and this Final Approval Order. This Final Approval Order finally disposes of all claims and is appealable.

29. This Final Approval Order is not, and shall not be construed as, an admission by Med-Data of any liability or wrongdoing in this or in any other proceeding.

30. The Court approves payment of attorneys' fees in the amount of \$_____ and litigation costs in the amount of \$_____. These amounts shall be taken out of the Settlement Fund pursuant to the terms of the Settlement Agreement. The Court finds these amounts to be appropriate and reasonable in light of the work performed by Class

Counsel and the benefits obtained for Settlement Class members. Courts routinely approve awards of attorneys' fees of one-third of the Settlement Fund in class action cases. *See Al's Pals Pet Care v. Woodforest Nat'l Bank*, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019).

31. The Court approves service awards to the Settlement Class Representatives in the amount of \$_____, to be paid from the Settlement Fund. The Court finds these amounts to be reasonable in light of the service performed by the Settlement Class Representatives on behalf of the Settlement Class. *See, e.g., Duncan v. JPMorgan Chase Bank*, 2016 WL 4419472, at *16 (W.D. Tex. May 24, 2016).

32. The Settlement Administrator shall pay the Court-approved attorneys' fees, litigation costs, and service awards set forth above within ten (10) business days after the Effective Date.

33. The Court further approves and authorizes the deduction of an amount not to exceed \$_____ from the Settlement Fund to cover the Settlement Administrator's costs.

34. The Court hereby dismisses this action with prejudice, without costs to any party, except as expressly provided for in the Settlement Agreement and this Order.

35. Finding no just reason for delay, the Court expressly directs that this Final Approval Order shall constitute a final judgment that is binding on the settling parties and the Settlement Class.

SO ORDERED.

Signed on _____, 2023 at Houston, Texas.

Hon. Charles Eskridge
United States District Judge

Exhibit B

FEDERMAN & SHERWOOD

(An Association of Attorneys and Professional Corporations)

10205 N. PENNSYLVANIA AVENUE
OKLAHOMA CITY, OKLAHOMA 73120
TELEPHONE: 405-235-1560
FACSIMILE: 405-239-2112

212 W. SPRING VALLEY ROAD
RICHARDSON, TEXAS 75081
TELEPHONE: 214-696-1100
FACSIMILE: 214-740-0112

FIRM RESUME

WILLIAM B. FEDERMAN. Education: Boston University (B.A., cum laude, 1979); University of Tulsa (J.D., 1982); Phi Alpha Delta (Treasurer, 1980-1982). Admitted to practice: United States District Courts for the following Districts: Western, Northern and Eastern, Oklahoma; Eastern, Southern, and Western, New York; Southern, Northern, Eastern and Western, Texas; Eastern and Western, Arkansas; District of Columbia; District of Colorado; Central and Northern Districts of Illinois; Northern District of Ohio; District of Nebraska; Eastern District of Michigan; Eastern District of Wisconsin; United States Court of Appeals for the following Circuits: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh and Federal; and United States Supreme Court. Lectures/Publications: *“Class Actions, New Rules and Data Breach Cases,”* 40th Annual OCBA Winter Seminar 2019; *“A Case Study of Ethical Issues in Complex Litigation and Trends in Class Certification,”* 39th Annual OCBA Winter Seminar, 2018; *“Talkin’ About Insurance Coverage and Complex Litigation: What Every Lawyer and Client Should Know,”* 38th Annual OCBA Winter Seminar, 2017; *“Securities Litigation: Using Data to Make the Case,”* by Bloomberg BNA, 2016; *“The Changing Landscape for Prosecution of Financial Claims Involving Insolvent Companies”* 37th Annual OCBA Winter Seminar, 2016; *“Current Status of Securities Class Actions: Where are the Courts Taking Us?”* Houston Bar Association, 2014. *“Class & Derivative Actions and Securities Litigation,”* 2013 Annual Meeting of the American Bar Association; *“Litigation and Employment Law Update,”* Securities Industry Association Compliance and Legal Division; *“Inside a Disclosure Crisis,”* 30th Annual Northwest Securities Institute Annual Meeting and sponsored by the Washington Bar Association; *“Managing Directors’ Liability,”* 3rd Annual Energy Industry Directors Conference and sponsored by Rice University; *“Executive Liability - 2009 D & O Market Trends,”* Chartis Insurance; *“Derivative Actions and Protecting the Corporation – Critical Issues in Today’s Banking,”* Oklahoma Bar Association and the Oklahoma Bankers Association; *“Arbitration - What Is It? Why Should a Lawyer Suggest or Use It?,”* Oklahoma Bar Association; *“The Attorney and Accountant as Targets in Failed Financial Institution Litigation,”* American Bar Association Trial Practice Committee; *“Effective Arbitration in the 1990’s - Adapting to Build a Successful Practice,”* Oklahoma County Bar Association; *“Current Issues in Direct Investments and Limited Partnerships: The Litigation Scene From All Perspectives,”* American Bar Association Litigation Section; *“Stockbroker Litigation and Arbitration,”* Securities Arbitration Institute. Author: *“Who’s Minding the Store: The Corporate Attorney-Client Privilege,”* 52 O.B.J. 1244, 1981; *“Potential Liability From Indirect Remuneration in Private Oil and Gas Offerings,”* 11 Sec. Reg. L.J. 135, 1983; *“Capitalism and Reality Meet in the Courts. . . Finally,”* 59 O.B.J. 3537, 1987; *“Class Actions, New Rules & Data Breach Cases,”* Annual OCBA Winter Seminar, 2019. Membership: Arbitration Panel, New York Stock Exchange; Federal Bar Association; Oklahoma County Bar Association (Committee on Professionalism, 1987-1990); Oklahoma Bar Association (Civil Procedure/Evidence Code, Lawyers Helping Lawyers Assistance Program and Rules of Professional Conduct Committees, 2017-2020); American Bar Association (Committee on Securities Litigation and Corporate Counsel); American Inns of Court (Barrister 1990-1993 and Master 2002-2004); inducted into the Outstanding Lawyers of America, 2003; received the Martindale-Hubbell peer review rating of AV Preeminent in both ethical standards and legal ability; recognized as one of the “Top Lawyers of 2013” for excellence and achievements in the legal community; Litigation Counsel of America (Trial Lawyer & Appellate Lawyer Honorary Society). Awards/Honors: Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2018 (Global Law Experts Annual Awards); Securities Litigation and Arbitration Law Firm of the Year in Oklahoma – 2019, 2020 (Corporate INTL Magazine); Oklahoma Super Lawyers list by Thomson Reuters – 2019; Recognized for Exceptional Service and Outstanding Performance on

FEDERMAN & SHERWOOD
Page 2

behalf of the Federal Bar Association (Oklahoma City Chapter) Pro Bono Program – 2018-2019, 2020, Oklahoma Super Lawyer for 2022.

STUART W. EMMONS. (In Memoriam) Education: University of Oklahoma (J.D., 1987, with distinction); University of Oklahoma (B.B.A., Accounting, 1984, with distinction). Admitted to practice: 1987, Oklahoma; 1987, U.S. District Court for the Western District of Oklahoma; 1990, U.S. District Court for the Northern District of Oklahoma; 1992, U.S. Court of Appeals, Tenth Circuit; 1994, U.S. Court of Appeals, Eighth Circuit; U.S. Patent and Trademark Office; 2002, U.S. District Court for the District of Colorado; U.S. District Court for the Southern District of Texas; 2003, U.S. Court of Appeals, Second Circuit; 2004, U.S. District Court for the Northern District of Texas; U.S. Court of Appeals, Fifth Circuit; 2005, United States Supreme Court; 2005 U.S. Court of Appeals, Fourth Circuit; 2015, U.S. Court of Appeals, First Circuit; 2016, U.S. Court of Appeals, Ninth Circuit and U.S. Court of Appeals for the First Circuit. 1988-1989, Law Clerk to the Hon. Layn R. Phillips, U.S. District Court for the Western District of Oklahoma. Published Decisions: *American Fidelity Assurance Company v. The Bank of New York Mellon*, 810 F.3d 1234 (10th Cir. 2016); *Paul Spitzberg v. Houston American Energy Corporation, et al.*, 758 F.3d 676 (5th Cir. 2014); *Patipan Nakkhumpun v. Daniel J. Taylor, et al.*, 782 F.3d 1142 (10th Cir. 2015); Membership: Oklahoma County and Oklahoma Bar Associations.

SARA E. COLLIER. Education: Oklahoma Christian University (B.S. 2000); Oklahoma City University School of Law (J.D., 2004). Admitted to practice: Oklahoma; 2005, U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma; 2007, U.S. District Court for the Southern District of Texas; and 2007, United States Court of Appeals for Veterans Claims in Washington, DC. Membership: Oklahoma Bar Association, American Bar Association.

KENNEDY M. BRIAN. Education: University of Central Oklahoma (B.M. in Musical Theater, 2018, cum laude; Minor in Real Estate Finance), University of Oklahoma (J.D., 2021) (Dean's Honor Roll; Academic Achievement Award, Trial Techniques; American Indian Law Review). Admitted to practice: Oklahoma 2021; U.S. District Court for the Eastern District of Oklahoma, 2022; U.S. District Court for the Western District of Oklahoma, 2022; U.S. District Court for the Northern District of Oklahoma, 2023. Membership: Oklahoma Bar Association, Federal Bar Association, Junior League of Oklahoma City, and Oklahoma County Bar Association. Prior to joining Federman & Sherwood, Ms. Brian was actively involved in litigation on various estate planning, probate, and trust matters.

MEAGON R. EAGON. Education: East Central University (B.S. in Legal Studies, 2013, with honors; Minor in Mass Communications); Oklahoma City University School of Law (J.D. 2017, with honors; Dean's List; Faculty Honor Roll; Merit Scholar; Class Treasurer; Pro Bono Service Award 2015-2016; Dean's Service Award 2017). Admitted to practice: Oklahoma 2017, U.S. District Court for the Eastern District of Oklahoma, U.S. District Court for the Western District of Oklahoma, U.S. District Court for the Northern District of Oklahoma, Chickasaw Nation of Oklahoma, and Choctaw Nation of Oklahoma. Membership: Oklahoma County Bar Association, Oklahoma Bar Association, Federal Bar Association. Prior to joining Federman & Sherwood, Ms. Eagon actively practiced in insurance defense and general civil litigation.

JESSICA A. WILKES. Education: Baylor University School of Law (J.D. 2021, with honors; Dean's Academic Excellence Full-Tuition Scholarship; Baylor Law Review, Technical Editor & Alumni Relations Coordinator; Research Assistant for Dean and Professors; Baylor Barrister Society). Admitted to practice: Oklahoma 2021, Membership: Oklahoma Bar Association; Oklahoma Bar Association, Women in Law; Friends of Trivera; Junior League of Oklahoma City. Prior to joining Federman & Sherwood, Ms. Wilkes actively practiced in litigation for the Oklahoma Attorney General's Office.

FEDERMAN & SHERWOOD
Page 3

TANNER R. HILTON. Education: Texas A&M University (B.S. in Political Science, 2019); Oklahoma City University School of Law (J.D., 2022, Dean's List Spring of 2021; Order of the Barristers; Native American Law Student Association Moot Court Team, 2020-2022; CALI Award for Secured Transactions (2021)). Mr. Hilton graduated from Oklahoma City University School of Law in May of 2022 and is admitted to practice law in the State of Oklahoma.

OF COUNSEL:

JOHN CHARLES SHERWOOD. Education: Texas Christian University, (BBA, magna cum laude, 1981); Baylor School of Law (J.D., 1984). Areas of Practice: Litigation. Board Certified: Civil Trial Law, Personal Injury Trial Law, Texas Board of Legal Specialization. Organizations: Texas Trial Lawyers, Association of Trial Lawyers of America, Dallas Trial Lawyers Association, Dallas Bar Association, Former Chairperson of the Solo and Small Firm Section of the Dallas Bar Association (1999), Member of the College of the State Bar of Texas and founding President of Citizens For a Fair Judiciary (Political Action Committee). Licenses and Courts of Practice: Member of the State Bar of Texas, National Board of Trial Advocacy, Licensed as a Certified Public Accountant by the Texas State Board of Public Accountancy, admitted to practice before the United States Tax Court, United States District Court, Northern District of Texas, United States Fifth Circuit Court of Appeals, and the United States Supreme Court. Papers Presented: *Other People's Money*, Presented to the Dallas Bar Association, Solo and Small Firm Section; Recognition: "Top Attorneys in Texas, Business Litigation," (2012).

A. BROOKE MURPHY. Education: Oklahoma City University (B.A. summa cum laude, 2005; Robert L. Jones Outstanding Senior Paper Award; Women's Leadership Award); University of Oklahoma College of Law (J.D. 2010, with honors; Dean's List; First Amendment Moot Court Team; Assistant Articles Editor of Oklahoma Law Review). Admitted to practice: Oklahoma, 2010; U.S. District Court for the Western District of Oklahoma, 2010; U.S. District Court for the Northern District of Texas, 2010; U.S. District Court for the Eastern District of Wisconsin, 2023; Tenth Circuit Court of Appeals, 2014; First Circuit Court of Appeals and Ninth Circuit Court of Appeals, 2016; Second Circuit Court of Appeals, 2021. Published Decisions: *Paul Spitzberg v. Houston American Energy Corporation, et al.*, 758 F.3d 676 (5th Cir. 2014); *Patipan Nakkhumpun v. Daniel J. Taylor, et al.*, 782 F.3d 1142 (10th Cir. 2015); *Angley v. UTi Worldwide Inc.*, 311 F. Supp. 3d 1117 (C.D. Cal. 2018); *Mulderrig v. Amyris, Inc.*, 492 F. Supp. 3d 999 (N.D. Cal. 2020); *McFarlane v. Altice USA, Inc.*, 524 F. Supp. 3d 264 (S.D.N.Y. 2021). Publication: *Credit Rating Immunity? How the Hands-Off Approach Toward Credit Rating Agencies Led to the Subprime Credit Crisis and the Need for Greater Accountability*, 62 Okla. L. Rev. 735 (2010). Membership: Oklahoma Bar Association. Recognition: *Oklahoma Super Lawyers*, "Rising Star," 2020, 2021, 2022.

JOSHUA D. WELLS. Education: Oklahoma Baptist University (B.A. 2004); Oklahoma City University College of Law (J.D. 2008) (Dean's List, Faculty Honor Roll, OCU American Trial Lawyers Association Moot Court Team, 2008; Staff Member, Law Review, 2006-07; Executive Editor, Law Review, 2007-08). Admitted to practice: Oklahoma, 2008; U. S. District Court for the Western District of Oklahoma; 2009, U.S. District Court for the Eastern District of Oklahoma; 2011, U.S. District Court for the Northern District of Oklahoma; 2012, U.S. Court of Appeals for the Tenth Circuit; 2016, U.S. Court of Appeals, Fourth Circuit. Membership: Oklahoma Bar Association; Federal Bar Association; American Bar Association. Publication: *Stuck in the Mire: The Incomprehensible Labor Law*, 34 Okla. City U.L. Rev. 131 (2009). Experience: Research Assistant to J. William Conger, General Counsel and Distinguished Lecturer of Law, Oklahoma City University and President of the Oklahoma Bar Association (2007-08). General Counsel for Reaching Souls International (2013-2016). Mr. Wells has significant experience in complex and class action litigation in various state and federal courts, with more than a decade of experience protecting consumer and shareholder rights. Mr. Wells knows how to efficiently prosecute complex

cases to conclusion and practices in areas of estate planning, probate, and guardianships for both children and adults. He is the recipient of the Federal Bar Association Pro Bono Exceptional Service Award (2019) and is a leader in his church.

PARALEGALS:

SHARON J. KING. Ms. King has worked in the legal community for over twenty years, after having worked in the securities and insurance industry for over fifteen years. She primarily works on insurance and civil litigation.

JANE E. ADAMS. Mrs. Adams has over 25 years of Administrative and Finance experience focusing her career on Human Resources. Additionally, she has first-hand experience with FEMA response as well as government contractual administration.

TIFFANY R. PEINTNER. Mrs. Peintner has worked in the legal community for over ten years. Before joining Federman & Sherwood, Mrs. Peintner worked in patent law, oil and gas, probate, banking and real estate, family law, personal injury and insurance defense. She works in securities and civil litigation for the firm.

FRANDELIND V. TRAYLOR. Mrs. Traylor has worked in the legal community for over fifteen years. She provides class action, securities and derivative litigation, and product liability support for the firm.

LACRISTA A. BAGLEY. Ms. Bagley has worked in the legal community for over twenty years. Before joining Federman & Sherwood, Ms. Bagley worked primarily in bankruptcy law that focused on Chapter 11's and corporate liquidations. She has previous experience with estate planning, family law, civil defense, personal injury and medical malpractice. She works in securities, derivatives, and civil litigation for the firm.

SELECT CASES WHERE FEDERMAN & SHERWOOD HAS SERVED AS LEAD OR CO-LEAD COUNSEL

CONSUMER CLASS ACTIONS	COURT
Accreditation Commission for Education in Nursing (Data Breach)	USDC Northern District of Georgia
Albany ENT & Allergy	Supreme Courts of the State of New York, Albany County
Altice USA, Inc. (Data Breach)	USDC Southern District of New York
Artech, LLC (Data Breach)	USDC Northern District of California
AssistRx, et al (Data Breach)	USDC Middle District of Florida
AT&T Services Inc.	USDC Northern District of Texas
Avem Health Partners, Inc. (Data Breach)	USDC Western District of Oklahoma
BHI Energy Services	USDC District of Massachusetts
Brinker International, Inc. (Chili's) (Data Breach)	USDC Middle District of Florida
Bryan Cave Leighton Paisner LLP Data Breach Litigation	USDC Northern District of Illinois
Burgerville, LLC (Data Breach)	Circuit Court, State of Oregon, Multnomah County
Carvin Wilson Software, LLC (Data Breach)	USDC District of Arizona
CentralSquare Technologies, LLC (Data Breach)	USDC Southern District of Florida
Christie Business Holdings Company PC (Data Breach)	USDC Central District of Illinois
Dakota Growers Pasta Company, Inc. (Food Mislabeling)	USDC District of Minnesota/District of New Jersey
Filters Fast, LLC (Data Breach)	USDC Western District of Wisconsin
Hy-Vee, Inc. (Data Breach)	USDC Central District of Illinois
Intellihartx (Data Breach) (Executive Lead Counsel)	USDC Northern District of Ohio
Lansing Community College (Data Breach) (PSC)	USDC Western District of Michigan
LeafFilterNorth, LLC/LeafFilter North of Texas, LLC (Data Breach)	USDC Western District of Texas
Lime Crime, Inc. (Data Breach)	USDC Central District of California
Medical Review Institute of America, LLC (Data Breach)	USDC District of Utah
Mednax Services, Inc. (Data Breach)	USDC Southern District of Florida
Mercer University (Data Breach)	USDC Middle District of Georgia
Peachtree Orthopaedic Clinic, P.A. (Data Breach)	Superior Court of Forsyth County, State of Georgia
Physician's Business Office, Inc. (Data Breach)	In the Circuit Court of Wood County, West Virginia
PracticeMax (Data Breach)	USDC District of Arizona
Progressive Casualty Insurance (Data Breach)	USDC Northern District of Ohio
OneTouchPoint (Data Breach) (PSC)	USDC Eastern District of Wisconsin
Smile Brands (Data Breach)	USDC Central District of California
Snap Finance (Data Breach)	USDC District of Utah
Solara Medical Supplies, LLC (Data Breach)	USDC Southern District of California
TD Ameritrade, Inc. (Data Breach)	USDC District of Nebraska
TMX Finance Corporation Services, Inc. (Data Breach) (PSC)	USDC Southern District of Georgia
Wichita State University (Data Breach)	USDC District of Kansas
Yuma Regional Medical Center (Data Breach)	USDC District of Arizona
SHAREHOLDER DERIVATIVE CASES	
Abercrombie & Fitch Company	USDC Southern District of Ohio
American Superconductor Corporation	Superior Court, Commonwealth of Massachusetts
Antares Pharma, Inc.	USDC District of New Jersey
Arrowhead Research Corporation	Superior Court, State of California, County of Los Angeles
Carrier Access Corporation	USDC District of Colorado
Catalina Marketing Corporation	Chancery Court of the State of Delaware
Cell Therapeutics, Inc.	USDC Western District of Washington
Computer Associates	USDC Eastern District of New York
Delcath Systems, Inc.	USDC Southern District of New York
Dendreon Corporation	USDC Western District of Washington
Digital Turbine, Inc.	USDC Western District of Texas
Doral Financial Corporation	USDC Southern District of New York
Dynavax Technologies Corporation	Superior Court of the State of California; county of Alameda
First BanCorp.	USDC District of Puerto Rico
Flowers Foods, Inc.	USDC Middle District of Georgia
Genta, Inc.	USDC District of New Jersey
GMX Resources, Inc.	District Court of Oklahoma County, Oklahoma
Great Lakes Dredge & Dock Corporation	Circuit Court of Illinois, Dupage County Chancery Division
Host America Corporation	USDC District of Connecticut
Motricity Inc.	USDC Western District of Washington
NutraCea	Superior Court of Maricopa County, Arizona
Nuverra Environmental Solutions, Inc.	Superior Court of Maricopa County, Arizona
Nyfix, Inc.	USDC District of Connecticut
OCA, Inc.	USDC Eastern District of Louisiana
ONEOK, Inc.	District Court of Tulsa County, Oklahoma

SELECT CASES WHERE FEDERMAN & SHERWOOD HAS SERVED AS LEAD OR CO-LEAD COUNSEL

PainCareHoldings, Inc.	USDC Middle District of Florida
Seitel, Inc.	USDC Southern District of Texas
Six Flags Entertainment Corporation	USDC Northern District of Texas
Spectrum Pharmaceuticals, Inc.	USDC District of Nevada
Southwest Airlines Co.	USDC Northern District of Texas
The Spectranetics Corporation	USDC District of Colorado
ValueClick, Inc.	USDC Central District of California
Zix Corporation	USDC Northern District of Texas
SECURITIES CLASS ACTIONS	
Amyris, Inc.	USDC, Northern District of California
Bellicum Pharmaceuticals, Inc.	USDC Southern District of Texas
Broadwind Energy, Inc.	USDC Northern District of Illinois
China Valves Technology, Inc.	USDC Southern District of New York
Cryo-Cell International, Inc.	USDC Middle District of Florida
Delta Petroleum, Inc.	USDC District of Colorado
Direxion Shares ETF Trust	USDC Southern District of New York
Ener1, Inc.	USDC Southern District of New York
Exide Technologies	USDC Central District of California
Galena Biopharma, Inc.	USDC, District of New Jersey
Houston American Energy Corp.	USDC Southern District of Texas
Image Innovations Holdings, Inc.	USDC Southern District of New York
IZEA, Inc.	USDC Central District of California
Motive, Inc.	USDC Western District of Texas
Quest Energy Partners LP	USDC Western District of Oklahoma
Secure Computing Corporation	USDC Northern District of California
Superconductor Technologies, Inc.	USDC Central District of California
UTi Worldwide, Inc.	USDC Central District of California
Unistar Financial Service Corp.	USDC Northern District of Texas
MDL PROCEEDINGS	
In re: Anthem, Inc. (Data Breach–Participating Counsel)	USDC, Northern District of California
In re: Equifax, Inc. (Data Breach–Participating Counsel)	USDC Northern District of Georgia
In re: Farmers Insurance Co.	USDC Western District of Oklahoma
In re: Home Depot, Inc. (Executive Committee)	USDC Northern District of Georgia
In re: Mednax Services Inc. (Data Breach – Co-Lead Counsel)	USDC Southern District of Florida
In re: Premera Blue Cross (Data Breach–Participating Counsel)	USC, District of Oregon
In re: Samsung Electronics America, Inc.	USDC Western District of Oklahoma
DEAL CASES (MERGERS)	
Easylink Services International Corp.	Superior Court of Gwinnett County, Georgia
Genon Energy, Inc.	Chancery Court of the State of Delaware
Lawson Software, Inc.	Chancery Court of the State of Delaware
Network Engines, Inc.	Chancery Court of the State of Delaware
Paetec Holding Corp. Shareholder Litig.	Chancery Court of the State of Delaware
Williams Pipeline Partners, L.P.	District Court of Tulsa County, Oklahoma
Xeta Technologies, Inc.	District Court of Tulsa County, Oklahoma
ERISA LITIGATION	
Winn-Dixie Stores	USDC Middle District of Florida

MC SHANE & BRADY
CHAMPIONS FOR THE INJURED

Firm Resume

Firm Overview

Founded in 2013 by Lucy McShane & Maureen Brady, The Law Firm of McShane & Brady, LLC, based in Kansas City, Missouri represents individuals in all aspects of personal injury and HIPAA privacy law. Many of the cases employing our representation involve Missouri and Kansas residents. However, McShane & Brady has garnered the reputation nationwide of being a leader in the practice of healthcare data breach and privacy law and has been sought to consult on cases from coast to coast.

McShane & Brady utilizes a team approach to each case. At least two attorneys are assigned to each case. In addition, McShane & Brady handles cases in co-counsel agreements with other firms all over the country. Working with other firms has proven to be an effective method to achieving solutions in complex cases by ensuring a multilayered approach to accountability.

McShane & Brady is and will continue to be active within the legal community in Kansas City and well as the States of Missouri and Kansas. Currently, our attorneys sit on boards such as the Missouri Association of Trial Attorneys, The Association of Women Lawyers and the Solo and Small Firm Committee of the Missouri Bar Association. Maureen Brady is the current chairwoman of the Solo and Small Firm Committee.

In addition to our commitment within the legal profession, we are active within the non-legal community as well. American Heart Association's Go Red for Women, Infant Toddler Services of Johnson County, United We, and Empowering Parents KC highlight the commitment McShane & Brady have for the community it proudly calls home. The following pages offer details about the recent class cases our firm has successfully litigated, cases we are actively litigating, and information about the attorneys at McShane & Brady.

1656 Washington
Suite 120
Kansas City, MO 64108
816-888-8010

Select Data Breach Cases

In Re T-Mobile Data Breach Litigation: U.S. District Court for the Western District of Missouri – 4:21-MD-03019-BCW

Maureen Brady was named to the Executive Committee on a class action privacy case wherein over 53 million customers' personally identifiable information were released due to a phishing infiltration. The parties were able to resolve this case on a class-wide basis at mediation.

In Re Mednax Data Breach Litigation: U.S. District Court for the Southern District of Florida 21-MD-02994-RAR

Maureen Brady was named co-lead counsel in a class action privacy case wherein over 1 million patient medical records were released without authorization. The case has survived the motion to dismiss phase and is in active litigation.

T.L. v. Truman Medical Center: Circuit Court of Jackson County, MO – 1916-CV34029

McShane & Brady was lead council on a class action privacy/breach of fiduciary duty case wherein over 100,000 patient medical records were released due to a stolen laptop. The parties were able to resolve this case on a class-wide basis at mediation.

Beckett v. AETNA: U.S. District Court for the Eastern District Pennsylvania – 2:17-cv-03864-JS
McShane & Brady was counsel on a class action privacy/breach of fiduciary duty case wherein thousands of patients' HIV status was viewable through the window of a business envelope. The parties were able to resolve this case on a national class-wide basis at mediation.

Cox v. Valley Hope Assoc.: Circuit Court of Jackson County, MO – 1716-CV03081

McShane & Brady was lead counsel on a class action privacy/breach of fiduciary duty case wherein thousands of patient medical records were released without authorization due to a stole laptop. The parties were able to resolve this case on a class-wide basis at mediation.

C.S vs. Davita Inc. & Davita RX, LLC: Circuit Court of the City of St. Louis City, MO – 2122-CC00494

McShane & Brady is lead counsel on a class action breach of fiduciary duty of confidentiality and other counts of negligence as a result of private medical records being discovered in an open field.

Shorts v. Midwest Women’s Healthcare Specialists: Jackson County, MO-1416-CV13362

McShane & Brady was lead counsel on a class action privacy/breach of fiduciary duty case wherein hundreds of patient medical records were disclosed when records were discarded in a dumpster. The parties were able to resolve this case on class-wide basis at mediation.

K.A. v. Children’s Mercy Hospital: Western District of Missouri – 18-00675-CV-W-ODS

McShane & Brady was lead counsel on a class action privacy breach of fiduciary duty case wherein patients’ private medical records were accessed by unauthorized persons through “phishing” emails on three separate occasions. The parties were able to resolve this case on a class-wide basis at mediation.

Hudson v. Valley Hope Association: Jackson County, MO - 1916-CV24811

McShane & Brady was lead counsel on a class action breach of unauthorized access of personal information of some 70,000 patients as a result of a “phishing” scam. The parties were able to resolve this case on a class-wide basis at mediation.

TPH v. Blue Springs Family Care: Jackson County, MO - 1916-CV07105

McShane & Brady was lead counsel on a class action breach of unauthorized access of personal information as the result of a “phishing” scam. The parties were able to resolve the case on a class-wide basis at mediation.

D.H vs. Med-Data: Jackson County, MO – 2116-CV09146

McShane & Brady is lead counsel on a class action breach of fiduciary duty resulting from data containing private information was uploaded to a public facing website. The parties were able to resolve the case on a class-wide basis at mediation.

D.H. vs. Advent Health Foundation Shawnee Mission: Jackson County, MO – 2116-CV09159

McShane & Brady is lead counsel on a class action breach of fiduciary duty resulting from data containing private information being uploaded to a public facing website.

C.C. vs. Advent Health Foundation Shawnee Mission: Johnson County, KS – 21CV01724

McShane & Brady is lead counsel on a class action breach of fiduciary duty resulting from data containing private information being uploaded to a public facing website.

Firm Partners

MAUREEN M. BRADY

PROFESSIONAL EXPERIENCE:

McShane & Brady, LLC, *Partner* Kansas City, MO – April 2013-present

Sanders Warren & Russell, LP, *Associate*, Overland Park, KS - October 2008- April 2013

Hon. Michael W. Manners, *Law Clerk* Independence, MO - October 2005- October 2008

- Lead counsel and/or co-counsel for injured plaintiffs and defendants in jury trials, bench trials, class action lawsuits, settlements, and apportionment hearings.
- Created and cultivated previously unused area of the law for prosecution of wrongful disclosure of medical records.
- Successfully conduct litigation in a variety of high-profile cases.
- Achieve favorable resolution of complex litigation, class actions, and difficult to win cases.
- Examine and cross-examine technical and medical expert witnesses.

COMMUNITY AND VOLUNTEER EXPERIENCE:

- American Heart Association Go Red for Women Executive Leadership Team- 2019-present
- The Sedona Conference Working Group Series- 2023
 - Data Security & Privacy Liability Panel
 - Commentary on HIPAA Updates Panel
- Empowering Parents Kansas City-Board Member, 2020-Present
- Association of Women Lawyers-Kansas City-Board Member, 2015-Present
 - Executive Committee: Treasurer
 - Step-Up Program Manager
 - Social Committee Co-Chair
 - Website and Social Media Chair
 - Community Support Chair
- Missouri Assn of Trial Attorneys (MATA) – Member, 2013-Present
- MATA Board of Governors – 2015-Present
 - CLE Committee
 - Service Committee
 - Trial Atty Magazine Committee
 - Chair of Women’s Caucus
- Braden’s Hope – Advisory Board Member, 2015-2017

- Missouri Bar Leadership Academy – 2013-2014
- Missouri Bar Solo and Small Firm Conference Chairwoman - 2021-2023
- Missouri Bar Solo and Small Firm Conference Planning Committee - 2014-Present
- Vice-Chairperson Missouri Bar Solo and Small Firm Conference – 2019-2021
- Board of Creighton University Alumni Association - 2008-Present
 - 2014 Freshman Welcome Chairperson
 - 2015 Social and Service Co-Chair
 - 2016 Secretary
 - 2017-2021 President
- UMKC- Inn of Courts - 2013
- KCMBA – Planning Committee 2014-2015 Bench Bar Conference
- MOCSA – Co-Chair of 2014 Fall Forum
- Johnson County Infant & Toddler Services – Trivia Night Planning Committee 2014-2016

PUBLICATIONS AND PRESENTATIONS:

“Taxable Court Costs” – CLE – Missouri Bar 2013
“HIPAA Privacy Laws – Pitfalls” – CLE – KCMBA Bench Bar and Boardroom Conference 2015
“HIPAA Damages” – CLE – MATA Annual Convention 2015
“Protecting Attorneys against Fiduciary Breaches” – CLE – Missouri Bar Family Law Conference 2015
“Protecting Your Privacy : HIPAA” UMKC School of Law, *Res Ipsa*, Alumni Magazine, Fall 2014
“What is Privacy Worth?” – MATA Quarterly Newsletter Publication, Spring 2015
“Health Insurance Portability and Accountability Act, Procedures and Covered Entities”- Missouri Bar Family Law Conference- Summer 2020
“Health Insurance Portability and Accountability Act, Procedures and Covered Entities”- DWI Law and Science Seminar- Fall 2020
“Growing Your Law Practice”- Missouri Bar Solo and Small Firm Conference- Spring 2021

BAR ADMISSIONS AND PROFESSION AFFILIATIONS:

- ◆ Admitted to U.S. Supreme Court, 2011
- ◆ Member, Kansas City Metropolitan Bar Association
- ◆ Admitted to Missouri Bar, 2005
- ◆ Member, Association for Women Lawyers
- ◆ Admitted to Kansas Bar, 2006
- ◆ Admitted to Western District of Missouri, 2008
- ◆ Admitted to the 9th Circuit Court of Appeals, 2015
- ◆ Admitted to Kansas District Court, 2008
- ◆ Admitted to 10th Circuit Court of Appeals, 2010
- ◆ Member, Missouri Assn of Trial Attorneys
- ◆ Admitted to Eastern District of Missouri, 2015

- ◆ Member, American Association of Justice

HONORS, AWARDS, & RECOGNITIONS:

2020-2023-The Power List, Top 30 Commercial & Consumer Litigators in Missouri, Missouri Lawyers Media
2020- Litigation Practitioner Award in Missouri, Missouri Lawyers Media
2018 – Innovator’s Award - Missouri Lawyer’s Weekly
2014-2023 – Top 100 Trial Lawyers
2013, 2014, 2016 – KC Business Journal - *Best of the Bar*, Plaintiff’s Personal Injury
2014 - 2023 – Super Lawyers of Missouri and Kansas – *Top 50 Women; Top 50 Kansas City Lawyers; Top 100 Lawyers in Missouri/Kansas*
2011-2017 – Super Lawyers of Missouri and Kansas – *Rising Star* and *Super Lawyers*
2014-2018 – AV rating by Martindale Hubbell
2016, 2019 – Association of Women Lawyers President’s Award
2017 – St. Teresa’s Academy Dream Team

LUCY MCSHANE DAVIS

PROFESSIONAL EXPERIENCE:

McShane & Brady, LLC, Partner, Kansas City, MO, 2013-present

- Plaintiff’s personal injury attorney specializing car accidents, slip and falls, dog bites, nursing home neglect and HIPAA violations
- Created and directed the litigation of an underdeveloped area of focusing on wrongful disclosure of medical records winning large judgements for those harmed
- Responsible for managing firm’s financial matters and overseeing day-to-day operations
- Lead counsel for injured plaintiffs in jury trials, class action lawsuits, bench trials and settlements
- Successfully conducted litigation of complex class action cases

HONORS, AWARDS & RECOGNITIONS:

- Best of the Bar, KC Business Journal- 2016
- Super Lawyer of Missouri and Kansas 2016-2023
- Super Lawyer Top 50 Women Lawyers in Missouri & Kansas- 2018-2023
- Top 10 Under 40, NAOPIA- 2013-2015
- Top 10 Female Personal Injury Attorneys in Missouri, NAOPIA- 2018
- Up & Coming Law Firm Leader, Missouri Lawyers Weekly- 2016
- The Power List, Top 30 Commercial & Consumer Litigators in Missouri, Missouri Lawyers Media- 2020-2022
- Top 10 Best Female Attorneys, American Association of Personal Injury Attorneys (AAOPIA)- 2019 & 2021

- Legal Practitioner Award, Missouri Lawyers Media- 2023
- Infant Toddler Services of Johnson County Friendship Award- 2019
- Missouri Lawyers Media Women's Justice Award – Litigation 2023

COMMUNITY SERVICE/PROFESSIONAL AFFILIATIONS:

- St. Teresa's Academy- Board of Directors (2019-current)
- President of Friends of Infant and Toddler Service of Johnson County (2013-2018)
- MOCSA – Co-chair of 2014 Fall Forum and Board Member
- Association of Women Lawyers- Kansas City
- Kansas City Metropolitan Bar Association
- Johnson County Bar Association
- Missouri Association of Trial Attorneys (MATA)

BAR ADMISSIONS:

- Missouri, 2005
- Kansas, 2006
- District of Columbia, 2008
- U.S. District Court Western District of Missouri
- U.S. District Court of Kansas
- U.S. District Court Eastern District of Missouri
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Ninth Circuit

Support Staff

Heather Zuerner is a paralegal with McShane & Brady. Heather has been with McShane & Brady for four years and has focused her talents with research and writing of motions, discovery, and pleadings on MDL cases. Heather is a member of the MATA Paralegal Association. Heather was recognized with an "Unsung Legal Heroes" award for her outstanding paralegal work from Missouri Lawyers Media in 2021.

Alexandria Johnson is a legal assistant with McShane & Brady. Alexandria has been with Mc&B for two years. She has been focusing her time on working class cases. She has been charged with maintaining billing logs, keeping updates on all court proceedings, coordinating schedules, and clerical tasks as needed.

Kevin McShane is the Marketing Director/Class Action Coordinator with McShane & Brady. He has been with the firm for five years. Kevin is responsible for onboarding clients and communications with all class members.

Cassandra Ponce is an administrative assistant with McShane & Brady. She has been with the firm for three months. Her responsibilities include scheduling, organizing files, drafting letters, and answering phone calls.

Terrell Marshall Law Group PLLC

Terrell Marshall is a law firm in Seattle, Washington, that focuses on complex civil and commercial litigation with an emphasis on consumer protection, product defect, civil rights, and wage and hour cases. Terrell Marshall has been appointed lead or co-lead counsel representing multi-state and nationwide classes in state and federal court in Washington and throughout the United States. Since its founding in 2008, the attorneys at Terrell Marshall have represented scores of classes, tried class actions in state and federal court, and obtained hundreds of millions of dollars in monetary relief to workers, consumers, and other individuals. Additional information about class actions litigated by Terrell Marshall can be found on the firm's website at www.terrellmarshall.com.

Beth E. Terrell is a founding member of Terrell Marshall. With over twenty years of experience, Ms. Terrell concentrates her practice in complex litigation, including the prosecution of consumer protection, defective product, and wage and hour class actions. Ms. Terrell has served as co-lead counsel on multi-state, multi-district, and nationwide class actions, resulting in hundreds of millions of dollars in settlements for consumers and workers. Ms. Terrell also represents individual employees with wage and hour, workplace exposure, and discrimination claims. Ms. Terrell has tried and won cases in state and federal courts and argued before the Washington State Court of Appeals and the Washington State Supreme Court as well as several federal circuit level courts. Ms. Terrell served as the President of the Public Justice Foundation Board of Directors from July 2019 to July 2020, serves on the Equal Justice Works' Board of Counselors, and is Chair of both the Northwest Consumer Law Center and the Washington Employment Lawyers Association. A member of the State Bar of California and the Washington State Bar Association, Ms. Terrell Co-Chairs PLI's Consumer Financial Services Institute, and

frequently presents on a wide variety of topics, including class actions, consumer protection, legal ethics, gender equity, and electronic discovery.

Ryan Tack-Hooper has been a member of Terrell Marshall since 2020. He concentrates on class actions to protect employees, consumers, and people whose civil rights have been violated. He has been co-lead counsel in successful litigation across the country in state and federal courts, including cases involving discrimination on the basis of disability, religion, speech, and race. In 2009, Mr. Tack-Hooper received a J.D., cum laude, from New York University School of Law. Before joining Terrell Marshall, Mr. Tack-Hooper was the Legal Director of the American Civil Liberties Union of Delaware, where he practiced civil rights law. He has also served as an adjunct professor of law at the University of Pennsylvania Law School, where he taught legal writing. He was a law clerk to the Honorable Jerome B. Simandle, Chief Judge of the United States District Court for the District of New Jersey.



Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 900 lawyers, and more than 3,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs’ firm in the nation. The class action lawyers at Morgan & Morgan have been involved in some of the largest data breach cases to date including: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.); and, *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.).

Jean Sutton Martin is one of the lead attorneys in the Class Action Department of Morgan & Morgan, devoting her practice to data privacy, consumer protection, and defective products class actions. In addition to consumer class actions, Ms. Martin has practiced in the areas of mass tort and catastrophic personal injury, starting mass torts practice groups at two plaintiffs’ firms. Prior to joining Morgan and Morgan, Ms. Martin ran her own law firm in North Carolina concentrating on consumer class actions and mass tort litigation.

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law, where she served as Editor-in-Chief of the *Wake Forest Law Review*. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics and earned a Master of International Business from the University of South Carolina. She also has served as an adjunct professor at her alma mater, Wake Forest University School of Law. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine’s Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. In 2022, she was recognized by Law360 as an MVP in the area of cybersecurity and data privacy. She was recently named as one of National Law Journal’s Class Action/ Mass Tort Litigation Trailblazers of 2023.

Ms. Martin concentrates her practice on complex litigation, including consumer protection, data privacy, and defective products class action. She presently serves by appointment as interim co-lead counsel in, *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-

PGG (S.D.N.Y.) and *Johnson, et al. v. Yuma Regional Medical Center*, 2:22-cv-01061-SMB (D. Ariz.). She also serves as a member of the Plaintiffs' Steering Committee for the cases proceeding against LabCorp, Inc. in *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) and a steering committee member *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.).

In a case in which she serves as interim co-lead counsel, Ms. Martin argued a motion for class certification which resulted in the first order in the country granting Rule 23(b)(3) certification in a consumer payment card data breach. *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021).

She has served in leadership positions in many consumer class actions and consolidated proceedings in federal courts around the country, including *inter alia: In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (\$68 million settlement for 15 million class members); *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million) (co-lead counsel); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to defective construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17-cv-346 (M.D.N.C.) (WARN Act violations) (class counsel).

Ms. Martin has been a presenter on a variety of topics related to class actions including: *Fantasy Gaming Webinar: FanDuel and DraftKings Litigation*, AAJ (December 2015); *Thinking Outside the Black Box: Drug Cases in the Class Context*, Mass Torts Made Perfect (October 2019); *Mass Torts and MDLs*, Western Alliance Class Action Forum (March 2020); *Consumer Class Actions*, Western Alliance Class Action Forum (March 2022); *How to Maximize Efficiency in Document Production and Review*, Mass Torts Made Perfect (April 2022); *Class Action Takeover: The Rise of Class Actions within MDLs*, HarrisMartin (July 2023).

Ms. Martin is a member of the North Carolina bar. She is also admitted to practice before the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeals for the Fourth Circuit, the Western, Middle, and Eastern Districts of North Carolina, and the United States District Court of Colorado.

Beyond her legal work, Ms. Martin organized the first Class of Our Own women's summit which was held in Nashville, Tennessee in May 2023. The invitation-only summit for female class action attorneys featured two days of legal panels while also promoting female empowerment. More than 100 women from multiple disciplines from across the country attended the event. Plans are underway for 2024 with the goal to make this summit an annual event.

Ms. Martin has the assistance of the following talented associates:

Kenya Reddy. Ms. Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida.

Ryan J. McGee. Mr. McGee was born and raised in Tampa, Florida. He studied business economics and history at the University of Florida, where he was a teaching assistant for technology classes in the business school, and received his law degree from Stetson University College of Law, where he was an editor on the *Stetson Law Review*, a research assistant for antitrust and consumer protection laws, and a teaching assistant for Stetson's trial advocacy program.

Ryan began his legal career as a state-appointed prosecutor, where he tried over 50 jury trials to verdict, mostly felonies, as well as a special prosecutor appointed to investigate police officers' deadly use-of-force and corruption within various law enforcement agencies. Ryan also served as a law clerk for two years for the Honorable Elizabeth A. Kovachevich, the former Chief United States District Judge, Middle District of Florida. Before joining Morgan & Morgan, Ryan's practice involved complex business disputes, antitrust, trade secret, data security, and class action investigations and defense-side litigation in state and federal courts across the country.

Since shifting his focus entirely to consumer class action representation, Ryan has been selected as a Florida Super Lawyer Rising Star in 2018 and 2019 in the field of Class Actions and this summer was named a Rising Star in Cybersecurity/Privacy by Law360.

Ryan was admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Patrick Barthle. Mr. Barthle was born and raised in Dade City, Florida. He attended the

University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology in 2009. While at UF, Patrick was inducted into the Phi Beta Kappa Honor Society and served as President of the Catholic Student Center. Patrick attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization.

Before joining Morgan & Morgan in 2015, Mr. Barthle worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida.

Mr. Barthle was selected as a Florida Super Lawyer Rising Star in 2019 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, at the NetDiligence Cyber Risk Summit on the topic of Unauthorized Use of Personal Data; in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in Data Breach Cases; and in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on that topics of damage models and settlements in data breach cases; and Rule 23(c)(4) classes at the Mass Torts Made Perfect conference.

Mr. Barthle was admitted to the Florida Bar in 2012 and is also admitted to practice in the Middle District of Florida, the Southern District of Florida, and the District of Colorado.

Francesca Kester Burne. Ms. Burne was born and raised in Scranton, Pennsylvania. She attended Marywood University, where she graduated with a major in English Literature, and The Pennsylvania State University's Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Burne competed in the American Bar Association's National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer's National Trial Competition, where she finished as a regional finalist. Ms. Burne also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men's Shelter legal clinic. At graduation, she was honored with the D. Arthur Magaziner Human Services Award for outstanding academic achievement and service to others, the Joseph T. McDonald Memorial Scholarship for excellence in trial advocacy, and the peer-selected Lee Popp Award for her devotion to the legal field.

Ms. Burne completed an externship with United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of

Pennsylvania. Ms. Burne now focuses her class action practice on data privacy and products liability.

Ms. Burne is admitted to practice law in both Pennsylvania and Florida as well as various federal courts throughout the country.

Ra O. Amen. Mr. Amen graduated from Stanford University with a B.A. in Economics. After graduating, he worked as a Peace Corps volunteer in Morocco teaching English as a second language and business skills to local artisans. Before entering law school, Mr. Amen worked for several years in education and in business development for a mobile technology startup. In 2017, he obtained his Juris Doctor degree with Honors from Emory University School of Law. While at Emory Law, he was a Managing Editor of the Bankruptcy Developments Journal, interned at a consumer fraud law practice, and worked in-house with one of the globe's leading metals companies assisting in a diverse array of legal issues ranging from corporate restructuring to international tax and contract disputes. Before joining Morgan & Morgan in 2020, Mr. Amen worked at one of the nation's largest defense law firms in the nation where he specialized in representing clients in complex commercial, administrative, and ecclesiastical disputes.

Mr. Amen speaks both English and Spanish, and is an avid guitar player. Mr. Amen was admitted to the Georgia Bar in 2017.

Additional Support. The class action attorneys at Morgan & Morgan can call upon a team of more than 80 attorneys for support, including 8 focused on legal research, and 75 dedicated to document review, deposition support, and trial preparation and support, 5 of which have dedicated priority for class action cases.

John Heenan
Heenan & Cook, PLLC

John Heenan is a graduate of the University of Montana (honors) and University of Montana School of Law (high honors).

After graduating from college, John worked as a truck driver, a fork lift operator and a teamster intern, helping him learn the value of hard work and an honest paycheck.

John began his legal practice by serving as a law clerk for Chief United States District Court Judge Richard F. Cebull. He then worked in private practice, handling both civil and criminal cases.

In 2009, John tried the case of *McCollough v. Johnson, Rodenburg & Lauinger*, which resulted in one of the largest jury verdicts against a debt collector ever (\$311,000).

In 2014, John and his law partner Randy Bishop tried the case of *King v. GEICO Insurance*, which resulted in a jury verdict of \$2,700,000.

In 2015, John tried the case of *Norman v. Deutsche Bank*, which resulted in a jury verdict of \$2,050,000, one of the largest jury verdicts in a wrongful foreclosure case.

John has served as lead counsel or co-lead counsel on several successful consumer class actions, recovering over \$50 million dollars on behalf of consumers in Montana and throughout the United States.

John has also written a laymen's guide to personal injury law in Montana: *Your Rights: The Ultimate guide To Victim's Rights in Montana*.

John is an AV rated lawyer, the highest skill and ethical rating an attorney can receive. He is listed by peer-rated organizations as a "Super Lawyer" and among the best consumer protection lawyers in the country. He is regularly named one of Montana's best injury lawyers.

John is regularly invited to speak to lawyers about consumer protection law and class action lawsuits. He is a proud member of the National Association of Consumer Advocates and the Montana Trial Lawyers Association.

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

M.S. and D.H., individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

MEDDATA, Inc.,

Defendant.

Civil Action No.

4:22-cv-00187

Judge Charles Eskridge

**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. Plaintiffs seek an order that (1) certifies the Settlement Class (as defined below) for settlement purposes and appoints the Named Plaintiffs as Settlement Class Representatives and their counsel as Class Counsel; (2) appoints Postlethwaite & Netterville ("P&N") as Settlement Administrator; (3) preliminarily approves the settlement as fair, reasonable, and adequate; (4) approves the form, content, and manner of notice, and the procedures for objecting to and opting out of the proposed Settlement Agreement; (5) directs notice to Settlement Class Members in accordance with the terms of the Settlement Agreement; (6) sets a date for hearing to finally approve the Settlement Agreement ("Final Approval Hearing").

Plaintiffs' Motion is Granted. The Court has considered the terms of the Settlement Agreement in light of the issues presented in this case, the stage and complexity of the proceedings, the expense of further litigation, the range of possible recovery, the absence of any evidence of collusion between the Parties, and the experience of Class Counsel, and is preliminarily satisfied

that the Settlement Agreement is fair, reasonable, and adequate. The Court also is satisfied that the plan for sending notice of the Settlement to the Settlement Class is adequate, sufficiently informs Settlement Class members of the Settlement's terms and of the certification of the Settlement Class, and satisfies the requirements set forth in Federal Rule of Civil Procedure 23 and due process.

THEREFORE, IT IS ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and the conditionally certified Settlement Class, as defined below.

2. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Order will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Order.

3. The Court preliminarily certifies the following "Settlement Class" for purposes of settlement only:

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

4. Excluded from the class are (1) the Court and all members of the Court's staff; (2) the officers and directors of Defendant and its Business Associates; (3) persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Incident; and (4) persons who timely and validly request exclusion from the Settlement Class.

5. Based on the Court's review of the Settlement Agreement (Dkt. No. ____), Plaintiffs' Motion (Dkt. No. ____), declaration of Plaintiffs' counsel (Dkt. Nos. ____), and the declaration of the Settlement Administrator (Dkt. No. ____), the Court finds that conditional certification of the Settlement Class for settlement purposes is appropriate under Federal Rule of

Civil Procedure 23 because the Settlement Class is ascertainable and so numerous that joinder would be impracticable, the action presents common issues of law and fact that predominate over any individual questions, Plaintiffs' claims are typical of Settlement Class members' claims, Plaintiffs and their counsel are adequate representatives of the Settlement Class, and a class action would be superior to thousands of individual lawsuits.

6. The Court appoints M.S., D.H., Nicole Tokarski, and C.C. as Settlement Class Representatives, and Beth E. Terrell and Ryan Tack-Hooper of Terrell Marshall Law Group, Jean Martin of Morgan & Morgan, Maureen Brady of McShane & Brady, William B. Federman of Federman & Sherwood, and John Heenan of Heenan & Cook as Settlement Class Counsel.

7. The Court appoints Postlethwaite & Netterville ("P&N") as Settlement Administrator, which shall fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Settlement Agreement and this Order. By accepting this appointment, the Settlement Administrator has agreed to the Court's jurisdiction solely for purposes of enforcement of the Settlement Administrator's obligations under the Settlement Agreement.

8. Pursuant to 45 C.F.R. § 164.512(e), Med-Data is authorized to disclose specific protected health information of Settlement Class Members to Plaintiffs and the Settlement Administrator to the limited extent such protected health information is necessary to implement and administer the Settlement. If necessary, the Settlement Administrator shall sign Defendant's Business Associate agreement prior to receiving any protected health information from Defendant.

9. The Court approves, as to form and content, the Postcard Notice and Long Form Notice attached as exhibits to the Settlement Agreement and approves the Parties' plan for disseminating notice, which will ensure that Settlement Class Members will receive the best notice

practicable under the circumstances. The Court finds that the method of providing notice to Settlement Class members and the procedure for exclusion requests and objections to the Settlement specified in Section VII of the Settlement Agreement are reasonable and appropriate, and satisfy the requirements of due process and the Federal Rules of Civil Procedure.

10. Within five (5) business days of the date of this Order, the Settlement Administrator shall provide wiring instructions and a completed and executed IRS Form W-9 to Med-Data.

11. Within ten (10) business days of the date of this Order, MedData shall provide the Settlement Administrator with a list of the names and all known contact information of all Settlement Class Members. For Settlement Class Members for which MedData does not have complete contact information, particularly the 6,500 class members for whom MedData was not able to provide notice of the data security incident, MedData shall also provide all known personally identifiable data sufficient to identify the Settlement Class Member (such as date of birth or the social security number) and the identity of the Med-Data Business Associate that provided health care services to the Settlement Class Member within ten (10) business days of the date of this Order. The Settlement Administrator has opined that publication or geo-targeted notice is not required to satisfy due process notice requirements, particularly with regard to these 6,500 individuals. It is intended that the 6,500 individuals shall constitute members of the Nationwide Class to be certified for settlement purposes. The Court accepts the Settlement Administrator's determination that publication or geo-targeted notice is not required to satisfy due process notice requirements. [Alternative: Within 14 calendar days of the receipt by the Settlement Administrator of the contact information from Med-Data, the Parties shall advise the Court as to the number of class members to whom direct notice cannot be provided due to lack of contact information. At that time the Court may determine that publication or geo-targeted notice is required to include

any or all of the 6,500 individuals in the Nationwide Class to be certified for settlement purposes. If so ordered, the Settlement Administrator will provide publication or geo-targeted notice to any Settlement Class Members required by the Court.]

12. Within twenty-one (21) calendar days after the date of this Order, Defendant shall wire or otherwise transfer the estimated costs of notice and settlement administration through the date of final approval to the Settlement Administrator.

13. The Settlement Administrator shall commence the Notice Program set forth in the Settlement Agreement within thirty (30) calendar days after the date of this Order (the “Notice Deadline”).

14. Class Counsel shall file their motion for attorneys’ fees and costs and service awards to the Settlement Class Representatives within ninety (90) calendar days of this Order.

15. Any Settlement Class Member may exclude himself or herself from the Settlement by submitting a written request to the Settlement Administrator no later than fifty (50) calendar days after the Settlement Notice Date. Following final approval of the Settlement and the occurrence of the Effective Date, each Settlement Class Member who did not submit a timely, valid request for exclusion shall be bound by the releases in the Settlement Agreement.

16. Any Settlement Class Member may object to the settlement by submitting a written objection to the Settlement Administrator within fifty (50) calendar days after the Notice Deadline. The objection must include the information stated in Section VII.3.a–g of the Settlement Agreement or the Court will not consider it. An objector who submits a timely, written objection, or their attorney, may appear at the Final Approval Hearing only if the objection includes a statement that either the objector or his counsel intends to appear.

17. Any Settlement Class Member may file a claim by submitting a valid claim form no later than seventy-five (75) calendar days after the Notice Deadline.

18. Class Counsel shall file a motion for final approval of the settlement within 120 calendar days after the Notice Deadline.

19. The parties shall file any responses to objections and/or replies to the motion for final approval and motion for attorneys' fees, costs, and service awards, no later than fourteen (14) calendar days prior to the Final Approval Hearing.

20. The Court will hold a Final Approval Hearing on _____ at _____ to finally determine whether the prerequisites for class certification and treatment under Rule 23(a) and (b) of the Federal Rules of Civil Procedure are met; to determine whether the Settlement Agreement is fair, reasonable, and adequate, and should be approved by the Court; to determine whether the Final Approval Order and Judgment should be entered; to consider the application for attorneys' fees and expenses of Class Counsel; to consider the application for Service Awards to the Class Representatives; and to rule on any other matters that the Court may deem appropriate. At the Final Approval Hearing, the Court may enter the Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of Settlement Class Members.

21. Any interested person who has not opted out of the Settlement Class may appear at the Final Approval Hearing to argue that the proposed Settlement Agreement should or should not be approved as fair, reasonable, and adequate; provided, however, that no person shall be heard or entitled to contest the approval of the Settlement unless that person has filed with the Court a written objection stating their intention to appear and any supporting papers or briefs by the Objection Deadline. Any Settlement Class Member who does not submit an objection in the

manner set forth in Section VII of the Settlement Agreement shall be deemed to have waived any objection to the Settlement Agreement and shall be foreclosed from making any objection to certification of the Settlement Class, to the fairness, adequacy or reasonableness of the Settlement Agreement, and to any attorneys' fees, cost reimbursements, or Service Awards to the Named Plaintiffs approved by the Court.

22. The Court retains jurisdiction over the Action and all matters arising out of or connected with the proposed Settlement Agreement. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement Agreement. After the Final Approval Hearing, the Court may approve the Settlement without further notice to Settlement Class Members.

23. Pursuant to Section II.10 of the Settlement Agreement, the "Effective Date" means the date five business days following the later of the following events: (A) if any Settlement Class Member objects to the Settlement: (i) the date upon which the time expires for filing a notice of appeal of the Court's Final Approval Order and Judgment; or (ii) if there is an appeal or appeals of the Final Approval Order and Judgment, and the appellate court enters an order either dismissing the appeal(s) or affirming the Final Approval Order and Judgment without material modification, the date upon which the time expires for seeking review of that order; or (B) if no Settlement Class Member Objects to the Settlement: the date the Court enters the Final Approval Order and Judgment. The Effective Date shall not be delayed beyond the date ten (10) business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys' fees, costs, and expenses, or of service awards, in the amounts that Class Counsel requests ("Fee Request"). Further, the

Effective Date shall not be delayed beyond the date ten (10) business days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.

24. If the Court does not enter the Final Approval Order, or if the Effective Date does not occur for any reason, the Parties will return to the status quo ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and thus this Order and all other findings or stipulations regarding the Settlement, including but not limited to certification of the Settlement Class, will be automatically void, vacated, and treated as if never filed.

SO ORDERED.

Signed on _____, 2023 at Houston, Texas.

Hon. Charles Eskridge
United States District Judge