

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

KATHLEEN DEVINE, *et al.*,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

HEALTH AID OF OHIO, INC.,

Defendant

:
: Case No. CV-21-948117
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: Judge Nancy Margaret Russo
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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
FOR PERSONS WHOSE INFORMATION WAS POTENTIALLY
ACCESSED IN A DATA SECURITY INCIDENT FIRST DETECTED BY
HEALTH AID OF OHIO ON OR ABOUT FEBRUARY 19, 2021**

Health Aid of Ohio Customers who were sent notice correspondence notifying them that their Personal Identifiable Information (“PII”) and Protected Health Information (“PHI”) (collectively, “Personal Information”) may have been comprised in a February 19, 2021, Data Incident may benefit from this class action settlement.

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

**THIS IS A NOTICE OF A SETTLEMENT OF A CLASS ACTION LAWSUIT.
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.**

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT IF YOU RECEIVED NOTICE OF THE SECURITY INCIDENT FIRST DETECTED BY HEALTH AID OF OHIO ON OR ABOUT FEBRUARY 19, 2021.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM BY AUGUST 22, 2022	If you submit a Claim Form, <u>including along with this Notice</u> , by August 22, 2022 , your Claim Form will be considered for one year of free credit monitoring and identify restoration services and, if requested, monetary recovery.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY JULY 22, 2022	You will receive no benefits, but you will retain your legal claims against the Defendant.
OBJECT BY JULY 22, 2022	Write to the Class Counsel and/or the Court about why you do, or do not, like the settlement. You must remain in the Settlement Class to object to the Settlement.
GO TO A HEARING ON SEPTEMBER 20, 2022 AT 1:00 PM	Ask to speak in Court about the fairness of the settlement.

1. What is this notice?

This is a court-authorized notice of a proposed settlement (the “Settlement”) in a class action lawsuit, *Devine v. Health Aid of Ohio, Inc.*, Case No. CV 21 948117, pending in the Court of Common Pleas of Cuyahoga County, Ohio (the “Court”). The Settlement would resolve the Lawsuit brought on behalf of persons who allege that their information was impacted by the data security incident first discovered by Defendant Health Aid of Ohio, Inc. (“Health Aid” or “Defendant”) on or about February 19, 2021 (the “Security Incident”). The Court has granted preliminary approval of the Settlement Agreement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement Agreement, and the legal rights and obligations of members of the Settlement Class. Please read the instructions and explanations below so that you can better understand your legal rights.

2. Why did I get this notice?

You are receiving this notice because you were identified by Health Aid as a person whose information may have been accessed without authorization by an unknown individual on or about February 19, 2021.

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QUESTIONS? VISIT WWW.HEALTHAIDSETTLEMENT.COM

3. What is this lawsuit about?

On or about February 19, 2021, Health Aid discovered that it had been the target of the Security Incident, which may have impacted the information of certain patients and customers. Health Aid then provided notice to individuals whose personal information may have been impacted. The Lawsuit alleges that Health Aid failed to adequately protect the information of the potentially affected individuals, and asserts various claims, including negligence, negligence per se, invasion of privacy, breach of implied contract, breach of fiduciary duty, and unjust enrichment. Health Aid contests these claims and denies any wrongdoing.

4. Why is this a class action?

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” When a Class Action is settled, the settlement, which must be approved by the court, resolves the issues for all Class Members, except for those who exclude themselves from the settlement.

5. Why is there a settlement?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties reached a settlement that resolves all claims by the Class related to the Security Incident. If approved by the Court, the Settlement Agreement requires Health Aid to provide, at no cost to Class Members, one year of IDX credit monitoring services, and compensation to certain Class Members who submit valid claim forms. The Settlement is not an admission of wrongdoing by Health Aid and does not imply that there has been, or would be, any finding that Health Aid violated the law.

The Court already has preliminarily approved the Settlement Agreement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement Agreement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, and to voice their support or opposition to final approval of the Settlement Agreement. If the Court does not give final approval to the Settlement Agreement, or if it is terminated by the Parties, the Settlement Agreement will be void, and the Lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

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6. How do I know if I am a part of the settlement?

You are a member of the Settlement Class if you were sent a Notice of Data Breach as a result of the Data Incident because your Personal Information was maintained on Defendant Health Aid's system.

Further, there is a subclass of individuals whose Social Security numbers were included in the database on which notice was based (“SSN Subclass”). You are a member of this Subclass if you were offered complimentary credit monitoring in the notice of the Data Incident.

YOUR BENEFITS UNDER THE SETTLEMENT

7. What can I get from the settlement?

All Settlement Class Members are eligible for one year of free credit monitoring and identity restoration services, which is in addition to any free credit monitoring initially provided by Health Aid following the Data Incident.

Further, members of the SSN Subclass are eligible for monetary recovery for Out-of-Pocket Losses, Lost time, and Extraordinary Losses if they submit Valid and Timely Claims supported by third party documentation pursuant to Section 4.2 of the Settlement Agreement and as described in more detail below.

In addition, Defendant will provide detailed information on all security enhancements undertaken since February 19, 2021, to the date of the Settlement Agreement. Defendant commits to undertaking a security risk assessment in 2022 and 2023 and will enact reasonable and appropriate security enhancements identified in the security risk assessments.

8. When will I receive these benefits?

If you pre-register for, or submit a Claim for, credit monitoring and identity restoration services, you will receive these benefits after the Court enters a Final Approval Order. If you submit a Claim for monetary recovery, you will receive payment in the amount approved by the Claims Administrator after processing your Claim.

9. I want to be a part of the settlement. What do I do?

For Credit Monitoring and Identity Restoration Services: You may pre-register for these services by submitting pre-registering on the Settlement Website at www.HealthAidSettlement.com. You can also submit your claim by mail. Each Settlement Class Member who pre-registers or submits a claim that is approved shall receive one year of free credit monitoring and identity restoration services provided by ID Experts (“IDX”), which includes \$1,000,000 in identity theft insurance per Class Member and is in addition to any free credit monitoring services previously provided by Health Aid following the Data Incident.

For Claims for Monetary Recovery: To submit a claim for Monetary Recovery, you must submit the Claim Form found on the Settlement Website and included along with this Notice. Such monetary claims are only available to members of the SSN Subclass and can cover Out-of-Pocket Losses, Lost time and Extraordinary Losses as described in more detail below. Such claims must be supported by third-party documentation

You must submit any Claims by **August 22, 2022** and there can be only one Valid and Timely Claim per Class Member.

10. Payments for the SSN Subclass.

SSN Subclass Members are eligible to submit claims of up to \$250 (in total per Class Member) for the following categories of Out-Of-Pocket Expenses:

- Costs associated with obtaining credit reports;
- Costs associated with purchasing identity theft insurance products for the period after the expiration of the credit monitoring and identity theft insurance coverage offered to the Subclass Members at the time of notice;
- Credit monitoring costs that were incurred on or after February 19, 2021, through the date of the Claim submission;
- Long distance telephone charges;
- Cell minutes (if charged by the minute or the amount of data usage);
- Internet usage charges (if charge by the minute or the amount of data usage);
- Text messages (if charged by the message);
- Miscellaneous expenses such as notary, fax, postage, copying and mileage; and
- Reimbursement of up to four hours of lost time spent remedying issues related to the Data Incident (at \$15 per hour) if at least one full hour was spent remedying fraud, identity theft, or other alleged misuse of Personal Information traceable to the Data Incident or spent on preventative and remedial measures to protect Personal Information that are traceable to the Data Incident. Claims for lost time must be supported by an attestation setting forth the amount of time spent dealing with the Data

Incident and an explanation how the time was spent. on preventative, remedial, or other measures related to the Data Incident.

SSN Subclass Members are also eligible to submit claims of up to \$2500 (in total per Class Member) for Extraordinary Losses. To qualify, a SSN Subclass Member must:

- a. Show that the loss is an actual, documented, and unreimbursed monetary loss of an extraordinary nature such as one of the following categories:
 - unreimbursed bank fees;
 - unreimbursed card reissuance fees;
 - unreimbursed overdraft fees;
 - unreimbursed charges related to unavailability of funds;
 - unreimbursed late fees;
 - unreimbursed over-limit fees;
 - unreimbursed charges from banks or credit card companies; and
 - interest on payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the Data Incident.
- b. Show that the loss was more likely than not caused by the Data Incident.
- c. Show that the loss occurred during the time period after the Data Incident and before the Claim Deadline.
- d. Show that the loss is not already covered by one or more of the normal reimbursement categories; and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.
- e. Submit a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and it is being made under penalty of perjury.

All Out-Of-Pocket Expenses and Extraordinary Losses are capped in the aggregate at \$125,000. If the total amount of Timely and Valid Claims exceeds \$125,000, each approved Claim will be reduced on a *pro rata* basis.

Reasonable documentation must be submitted with all Claims showing that the Out-Of-Pocket Expenses and/or Extraordinary Losses were caused by, or plausibly arose from, the Data Incident. More details are provided in the Settlement Agreement, which is available at www.HealthAidSettlement.com.

11. If I'm eligible for expense of loss reimbursement, when will I be paid?

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement Agreement, so please be patient. However, if the Court gives final approval to the Settlement, eligible Settlement Subclass Members will be paid as soon as possible after the Court order becomes final. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at www.HealthAidSettlement.com or contact the Claims Administrator or Class Counsel at the information provided below.

12. What am I giving up if I remain in the settlement?

By staying in the Class, all the Court's orders will apply to you, and you give Defendant a "release." A release means you cannot sue or be part of any other lawsuit against Defendant about the claims or issues in this lawsuit with respect to the unauthorized access of your information stored in Defendant's system on or about February 19, 2021.

The precise terms of the release are in the Settlement Agreement, which is available on the Settlement website. Unless you formally exclude yourself from this Settlement, you will release your claims. To the extent applicable, each releasor is given the opportunity to read and review the following provision of California Civil Code Section 1542:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Your release shall apply according to their terms, regardless of any provision of law or legal authority similar to California Civil Code Section 1542 identified above. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

The precise terms of the release are in the Settlement Agreement, which is available on the Settlement website. Unless you formally exclude yourself from this Settlement, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

13. How much will the Class Representative receive?

The Plaintiffs will seek a payment of \$1,500, each, for their services to the Class Members. This payment is subject to the Court's Approval and is not included in the \$125,000 aggregate amount available to Class Members.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to remain in the settlement, but you want to keep your legal claims against Defendant, then you must take steps to exclude yourself from this settlement.

14. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from *Kathleen Devine et. al. v. Health Aid of Ohio, Inc.*, Case No. CV-21-948117 (Cuyahoga County Ohio). Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked **no later than July 22, 2022**, to:

Class Action Exclusion
Health Aid Settlement
P.O. Box 58220
Philadelphia, PA 19102
1-855-910-1119
Info@HealthAidSettlement.com

15. If I exclude myself, do I still receive benefits from this settlement?

No, you will not receive anything resulting from the settlement, but you will have the right to sue Defendant over the claims raised in this case, either on your own or as a part of a different lawsuit. If you exclude yourself, the time you have in which to file your own lawsuit (called the "statute of limitations") will begin to run again. You will have the same amount of time to file the suit that you had when this case was filed.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has appointed the law firms of Markovits, Stock & DeMarco, LLC; Milberg Coleman Bryson Phillips Grossman; and The Lyon Firm, LLC to serve as Class Counsel. You will not be

charged for these lawyers and if you want to be represented by your own lawyer, you may hire one at your own expense.

Terence R. Coates
Markovits, Stock & DeMarco, LLC
119 E. Court Street, Suite 530
Cincinnati, OH 45202
Phone: (513) 651-3700
tcoates@msdlegal.com

Gary M. Klinger
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221 W. Monroe Street, Suite 2100
Chicago, IL 60606
Phone: (847) 208-4585
gklinger@milberg.com

Joseph M. Lyon
The Lyon Firm, LLC
2754 Erie Avenue
Cincinnati, OH 45208
Phone: (513) 381-2333
jlyon@thelyonfirm.com

17. How will the lawyers be paid?

Class Counsel will be paid reasonable attorneys' fees and expenses up to \$235,000, subject to court approval.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

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

If you are a Class Member, you can object to the Settlement and the Court will consider your views. In order to object to the Settlement, you must provide a written objection (such as a letter or legal brief) stating that you object and the reasons why you think the Court should not approve the Settlement. Your objection should include: (i) the objector's full name and address; (ii) the case name and docket number, *Devine v. Health Aid of Ohio*, Case No. CV-21-948117; (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a

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member of the Settlement Class (e.g., copy of the objector's settlement notice, copy of original notice of one of the Data Incidents, or a statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Proposed Settlement Class Counsel, Terence Coates at MARKOVITS, STOCK & DEMARCO, LLC, 119 E. Court Street, Suite 530, Cincinnati, OH 45202 and/or Gary M. Klinger at MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, 221 W. Monroe Street, Suite 2100, Chicago, IL 60606; and counsel for Defendants, Walter A. (Scott) Lucas at Weston Hurd, LLP, 1300 E. 9th Street, Suite 1400, Cleveland, OH 44114 and Claudia McCarron at Mullen Coughlin LLC, 426 W. Lancaster Ave, Devon, PA 19333.

The objector or his or her counsel may also file an objection with the Court through the Court's ECF system, with service on Proposed Settlement Class Counsel and Defendant's Counsel made through the ECF system. For all objections mailed to Proposed Settlement Class Counsel and counsel for Defendant, Proposed Settlement Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

THE FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement. You may attend if you wish, but you are not required to do so.

19. Where and when is the final approval hearing?

The Court has already given preliminary approval to the Settlement Agreement. A final hearing on the settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement Agreement.

The Court will hold a hearing on **September 20, 2022 at 1:00 p.m.** in the courtroom of the Honorable Nancy Margaret Russo, Court of Common Pleas in Cuyahoga County, Ohio. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Class and to determine the appropriate amount of compensation for Class Counsel and rule on the request for service awards for the Representative Plaintiffs. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. After the hearing, the Court will decide whether to approve the Settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT. The hearing may be postponed to a later date without notice.

GETTING MORE INFORMATION

This Notice only provides a summary of the proposed Settlement. Complete details about the Settlement can be found in the Settlement Agreement available on the Settlement Website.

www.HealthAidSettlement.com

If you have any questions, you can contact the Claims Administrator or Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the Settlement Website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR TO THE JUDGE.

They are not permitted to answer your questions.

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