

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”) is made and entered into by and among the following Parties (as defined below): Lisa Smith, Robert N. Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Dottie Nikolich, Sabrina Munoz, Hilary French, Elisa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer, Chad Hohenbery, Colleen Rickard, Kristinia Accardo, Roger Winstanley, and Bonnie Bennett (together, “Plaintiffs” or “Representative Plaintiffs”), individually on behalf of themselves and each of the Settlement Class Members (as defined below), and Defendant Apria Healthcare LLC (“Apria” or “Defendant,” as defined below). Plaintiffs and Defendant are referred to here as the “Settling Parties” or “Parties” and each individually as a “Party.” The Settlement Agreement is intended by the Settling Parties to resolve, discharge, and settle the Released Claims (as defined below) upon and subject to the terms and conditions set forth below and approval by the United States District Court for the Southern District of Indiana (the “Court”).

### RECITALS

WHEREAS, the Parties hereto state the following:

In April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria’s computer network and gained unauthorized access to the personally identifiable information (“PII”) and Personal Health Information (“PHI”) (collectively “Protected Information”) of certain Apria customers and employees (the “Illegal Hacking Events”).

Starting on June 9, 2023, Plaintiffs filed a series of class action lawsuits against Apria in federal district court in the Southern District of Indiana arising out of and related to the Illegal Hacking Events.

On or about September 6, 2023, all such class action lawsuits were consolidated into one case, captioned *In Re Apria Data Breach Litigation.*, Case No. 1:23-cv-01003-JPH-KMB (“the Class Action Lawsuit”). (ECF No. 44).

On October 23, 2023, Plaintiffs filed a consolidated complaint with all claims asserted against Apria (the “Consolidated Complaint”). (ECF No. 52). Plaintiffs, on behalf of themselves and a purported class and subclasses, alleged claims for:

- a) negligence,
- b) negligence per se in violation of the Federal Trade Commission Act (“FTC Act”),
- c) negligent training and supervision,
- d) breach of contract,
- e) breach of implied contract,
- f) bailment,
- g) breach of fiduciary duty,
- h) breach of confidence,
- i) conversion,

- j) invasion of privacy- intrusion upon seclusion,
- k) invasion of privacy- public disclosure of private facts,
- l) unjust enrichment,
- m) violations of Indiana Deceptive Consumer Sales Act,
- n) violations of California's Unfair Competition Act,
- o) violations of California Confidentiality of Medical Information Act,
- p) Violations of Illinois Consumer Fraud and Deceptive Business Practices Act,
- q) violations of the Washington Consumer Protection Act,
- r) violations of the Washington Personal Information-Notice of Security Breaches,
- s) violations of the Washington Uniform Health Care Information Act,
- t) violations of the Missouri Merchandising Practices Act,
- u) violation of the New York Deceptive Trade Practices Act, and
- v) declaratory judgment.

The Consolidated Complaint alleged that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals.

On December 13, 2023, Apria filed its *Partial Motion to Dismiss Under Federal Rule of Civil Procedure 12(B)(3)* in response to certain Plaintiffs' claims within the Consolidated Complaint based on the fact that the overwhelming majority, if not all, of the Plaintiffs signed their respective Sales Service and Rental Agreements and/or Employment Agreements, in which they allegedly agreed to arbitrate the disputes brought in this Class Action Lawsuit (the "Partial Motion to Dismiss"). The Court in the Class Action Lawsuit has not yet ruled on the Partial Motion to Dismiss.

On or about December 13, 2023, Apria filed a limited answer to address those Plaintiffs' claims that were not subject to the Partial Motion to Dismiss. (ECF No. 84).

In response to informal and formal discovery requests, Apria produced information that addressed the manner and mechanism of the Illegal Hacking Events, the number of impacted individuals nationwide, and Apria's security enhancements implemented following the Illegal Hacking Events. Apria and counsel for the Plaintiffs engaged in multiple arm's-length settlement negotiation sessions by telephone, and e-mail after the Consolidated Complaint was filed and through October 2024.

On April 23, 2024, Apria and the Plaintiffs participated in a formal mediation with Hon. Wayne R. Andersen (Ret.). Apria and Plaintiffs were unable to resolve their disputes, claims, and defenses at that time. However, Apria and the Plaintiffs made progress in negotiations for a complete resolution of the Class Action Lawsuit.

Pursuant to a Scheduling Order entered on July 29, 2024, (ECF No. 114), Apria and Plaintiffs agreed to engage the United States Magistrate Kellie Barr to oversee settlement negotiations.

On October 21, 2024, the Parties engaged in an in-person settlement conference conducted by Magistrate Judge Barr and, after thorough negotiations aided by Magistrate Judge Barr, were able to reach a resolution. The agreed resolution or settlement is memorialized in this Settlement Agreement.

Class Counsel has investigated the facts relating to the Illegal Hacking Events, analyzed the evidence adduced based on publicly available information, court filings, discovery responses, and information exchanged during settlement discussions, and researched the applicable law with respect to the Plaintiffs' claims against Apria and potential defenses thereto, including the Partial Motion to Dismiss described above.

Apria denies any wrongdoing whatsoever and denies all of the claims and contentions alleged in the Consolidated Complaint. This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Apria with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Apria has asserted or would assert. Apria has considered the uncertainty and risks inherent in any litigation and in the Class Action Lawsuit. Apria has therefore determined that it is desirable and beneficial that the Class Action Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

Based upon their investigation as set forth above, Class Counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of Plaintiffs and Settlement Class Members, and have agreed to settle the claims relating to the Illegal Hacking Events pursuant to the terms and provisions of this Agreement after considering (a) the substantial benefits that Settlement Class Members will receive from the Settlement, (b) the uncertain outcome and attendant risks of litigation, (c) the delays inherent in litigation, and (d) the desirability of permitting the settlement of this litigation to be consummated as provided by the terms of this Agreement.

It is the intention of the Parties to resolve the Class Action Lawsuit and all claims which they have between them on the terms set forth below.

### **TERMS OF THE SETTLEMENT**

IT IS HEREBY STIPULATED AND AGREED, by and among the Representative Plaintiffs (individually and on behalf of the Settlement Class Members), by and through their duly authorized counsel, and Apria, by and through its duly authorized counsel, that the Class Action Lawsuit and all matters that have been, could have been, or could be raised in the Class Action Lawsuit are hereby settled and compromised, that the Class Action Lawsuit will be dismissed on the merits and with prejudice as to Apria based upon the terms and conditions set out in this Settlement Agreement (including the Release), subject to the Court's approval and such approval becoming Final.

## 1. Definitions

As used in this Settlement Agreement, the following capitalized terms have the following meanings, unless a section or subsection of this Settlement Agreement provides otherwise. The definitions in this Agreement are intended to have substance and effect and are considered a material part of all terms and conditions in this Agreement.

- 1.1 “Affiliates” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity. For purposes of this definition, “control,” when used with respect to any entity, means an ownership interest of at least twenty-five percent (25%) and/or the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities by contract or otherwise. For avoidance of any confusion, “Affiliates” with respect to Apria includes, but is not limited to, Owens & Minor, Inc.; Apria Healthcare; Apria Healthcare Group, Inc.; Apria Healthcare Group LLC; Apria Healthcare, Inc.; Apria, Inc.; and Coram Specialty Infusion Services, An Apria Healthcare Company.
- 1.2 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and its exhibits attached hereto, including any subsequent written amendments to the Settlement Agreement and Release and/or to its exhibits.
- 1.3 “Apria’s Counsel” means Dentons Bingham Greenebaum LLP.
- 1.4 “Approved Claim” means the timely submitted Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.
- 1.5 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and/or Friday, excluding holidays observed by the federal government and/or the state of Indiana.
- 1.6 “Business Practice Adjustments” means the security business practice adjustments that Apria has made to its information security policies following the Illegal Hacking Events, including specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to Protected Information, and (v) enhanced monitoring and response capability, as provided in Section 7 of this Agreement.
- 1.7 “Claim” or “Claims” means any and all actions, causes of action, proceedings, adjustments, counter-claims, cross-claims, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees and losses of any sort whatsoever, whether in law, in admiralty or in equity, and whether based on a United States federal, state or foreign statutory or common-law United States federal, state or foreign statutory or

common-law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known, accrued or not accrued, existing now or to be created in the future, including “Unknown Claims” (as defined below).

- 1.8 “Claim Form” means the form(s) Settlement Class Members must submit to receive a Pro Rata Cash Payment or be eligible for reimbursement of Out-of-Pocket Losses or Expenses, which is attached hereto as Exhibit A.
- 1.9 “Claims Deadline” means the last day to submit a timely Claim Form(s), which will occur ninety (90) days after the Notice Deadline.
- 1.10 “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.
- 1.11 “Class Action Lawsuit” means the nationwide class action lawsuit captioned *Smith et al v. Apria Healthcare LLC*, No. 1:23-cv-01003-JPH-KMB (S.D. Ind.), currently pending before the Honorable Judge James Patrick Hanlon and referred in part to the Honorable Magistrate Judge Kellie Barr.
- 1.12 “Class Counsel” means Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC.
- 1.13 “Court” means the United States District Court for the Southern District of Indiana.
- 1.14 “Data Privacy Laws” means any law or industry self-regulatory program concerning the collection, use, analysis, retention, storage, protection, transfer, disclosure, disposal or processing of Protected Information.
- 1.15 “Defendant” means Apria.
- 1.16 “Effective Date” means one Business Day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) Business Day following entry of the Final Approval Order and Judgment if no parties have standing to appeal; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.
- 1.17 “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund, as set forth in Section 15.

- 1.18 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.
- 1.19 “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Class Action Lawsuit with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Apria’s Counsel will work together on a proposed Final Approval Order and Judgment, which Apria must approve before filing.
- 1.20 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.
- 1.21 “Illegal Hacking Events” means the criminal attacks against Apria’s network that occurred between April 5, 2019 to May 7, 2019 and between August 27, 2021 to October 10, 2021.
- 1.22 “Judgment” means the final judgment to be entered by the Court.
- 1.23 “Litigation Costs and Expenses” means the costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Class Action Lawsuit.
- 1.24 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.
- 1.25 “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as Exhibit B.
- 1.26 “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur forty-nine (49) days after entry of the Preliminary Approval Order.
- 1.27 “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, identifying and locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative

Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

- 1.28 “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be sixty (60) days after the Notice Deadline.
- 1.29 “Opt-Out Deadline” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline.
- 1.30 “Out-of-Pocket Losses or Expenses” means all documented and unreimbursed out-of-pocket losses, costs, or expenditures fairly traceable to and reasonably resulting from the Illegal Hacking Events that a Settlement Class Member has actually incurred. Out-of-Pocket Losses may include, without limitation, unreimbursed costs associated with fraud or identity theft, including professional fees such as attorneys’ fees (other than Class Counsel fees), accountants’ fees, fees for credit repair services, and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, as well as costs for credit monitoring or other mitigative services that were incurred on or between April 5, 2019 and the Claims Deadline.
- 1.31 “Parties” or “Settling Parties” means all Parties to this Settlement Agreement.
- 1.32 “Person” means an individual or legal entity or their respective successors or assigns.
- 1.33 “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members and determining that the Court preliminarily approves the Settlement under Federal Rule of Civil Procedure 23(e)(2) and that is consistent with all material provisions of this Settlement Agreement. Class Counsel and Apria’s Counsel will work together on a proposed Preliminary Approval Order, which Apria must approve before filing.
- 1.34 “Pro Rata Cash Payment” means the cash payments of the remaining Net Settlement Fund to each Settlement Class Member after the distribution of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, as set forth in Section 4 of this Settlement Agreement.
- 1.35 “Protected Information” means Personally Identifiable Information (“PII”) and/or Protected Health Information (“PHI”). PII means (i) all data and information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, to a particular individual or is otherwise subject to any applicable Data Privacy Laws related to the privacy or security of information associated with an individual, and (ii) that was stored on

Apria's systems and potentially accessed without authorization during the Illegal Hacking Events. PHI refers to individually identifiable health information that is transmitted or maintained in any form or medium (electronic, oral, or paper) by a covered entity or its business associates, excluding certain educational and employment records, which is subject to any applicable Data Privacy Laws related to the privacy or security of information associated with an individual, and (ii) was stored on Apria's systems and potentially accessed without authorization during the Illegal Hacking Events.

- 1.36 "Release" means the release set forth in Section 14 of this Settlement Agreement.
- 1.37 "Released Claims" means any and all Claims, debts, demands, actions, causes of action, specialties, covenants, contracts, variances, damages, executions, rights, suits, sums, accounts, reckonings, presentments, extents and any other liabilities, fixed or contingent, matured or not matured, of or by the Settlement Class, or any member or representative of the Settlement Class, as against the Releasees, including both known claims and "Unknown Claims" (as defined below), whether class or individual in nature, that were asserted, could have been asserted, could in the future be asserted, or are related to the claims that were, could have been, or could in the future be asserted, related to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information of or by the Settlement Class, of or by any member or representative of the Settlement Class (including, without limitation, any claims for alleged violations of federal or state statutory or common law, or any other law, and for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), by reason of, arising out of, based on, or in any way relating to the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances, or other matters referenced in or relating to the Illegal Hacking Events and/or prior unauthorized access to or disclosure of Protected Information. It is understood that any current, former, and future in-house attorneys for Apria are intended to be included in and fully released hereunder.
- 1.38 "Releasee" means each and every one of, and "Releasees" means Apria and all past, present, and future Subsidiaries and/or Affiliates (including any and all in-house and outside counsel including, without limitation, Apria's Counsel) and its and/or their past, present, and future advisors, administrators, auditors (including any and all internal and external auditors), employees, accountants, actuaries, consultants, fiduciaries, representatives, service providers, Successors, successors-in-interest, parents, trustees, insurance carriers, reinsurers, estates, heirs, executors, beneficiaries, trusts, and assigns of, including all persons controlling, controlled by, or under common control with, any or all of the above persons or entities referenced in this paragraph.
- 1.39 "Releasor" means each and every one of, and "Releasors" means all of, (i) Representative Plaintiffs, (ii) all other Settlement Class Members, (iii) their respective past or present parents, predecessors, successors, current and former



Affiliates, divisions, business units, joint ventures, Subsidiaries, assigns, any entities in which any Releasor has or had a Controlling Interest or that has or had a Controlling Interest in him, her, or it, and any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of Representative Plaintiffs or any other Settlement Class Member and (iv) the respective past and present officers, directors, employees, officials, members, partners, estates, heirs, executors, beneficiaries, trusts, and assigns of any or all of the above persons or entities referenced in this paragraph.

- 1.40 “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.
- 1.41 “Service Award Payment” means compensation awarded by the Court and paid to the Representative Plaintiffs in recognition of their role in this litigation.
- 1.42 “Settlement” means the settlement of the Class Action Lawsuit by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.43 “Settlement Administrator” means Kroll Settlement Administration, LLC (“Kroll”). Class Counsel and Apria’s Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.44 “Settlement Class” means all individuals who received actual or constructive notice and/or were mailed a notice by Apria that their information may have been compromised as a result of the Illegal Hacking Events and/or as a result of prior unauthorized access to or disclosure of Protected Information. Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.
- 1.45 “Settlement Class List” means the list generated by Apria containing the full names and current or last known addresses for all persons who fall under the definition of the Settlement Class Members, which Apria shall provide to the Settlement Administrator within twenty-eight (28) days of the Preliminary Approval Order.
- 1.46 “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.
- 1.47 “Settlement Class Representatives” or “Representative Plaintiffs” means Lisa Smith, Robert N. Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Dottie Nikolich, Sabrina Munoz, Hilary French, Elisa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer,

Chad Hohenbery, Colleen Rickard, Kristinia Accardo, Roger Winstanley, and Bonnie Bennett.

- 1.48 “Settlement Fund” means \$6,375,000.00 to be paid by Apria as specified in Section 2 of this Agreement, including any interest accrued thereon after payment. This payment is the limit and extent of Apria’s payment of any and all monetary obligations or liability with respect to the Settlement. For avoidance of any confusion, this limit and extent includes any and all forms of relief, monetary or otherwise, provided to Class Members by Apria pursuant to this Settlement, including, but not limited to, all items identified in Paragraph 2.5 of this Agreement, but excluding the business practice adjustments in Section 7 of this Agreement. Apart from the business practice adjustments in Section 7 of this Agreement, Apria is not and shall not, under any circumstance, be obligated to pay any amount beyond the agreed \$6,375,000.00 for anything arising out of or related to the Settlement or the Illegal Hacking Events, and/or any prior unauthorized disclosure of Protected Information by Apria or any of its Affiliates.
- 1.49 “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check and/or electronic payment to a Settlement Class Member pursuant to Section 5.
- 1.50 “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 mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaints in the Class Action Lawsuit. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.
- 1.51 “Subsidiaries” means with respect to any entity, any corporation, limited liability company, partnership, or other entity of which such entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other entity.
- 1.52 “Successor” means, with respect to a natural person, that person’s heir, and, with respect to an entity, any other entity that through merger, buyout, or any other means, acquires all or part of that entity’s duties, rights, obligations, shares, units, ownership interests, debts, or assets.

- 1.53 “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Apria with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.
- 1.54 “Unknown Claims” means claims that could have been raised related to the Illegal Hacking Events or any prior unauthorized access or disclosure of Protected Information that any of the Settlement Class Representatives or Settlement Class Members do not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release Releasees or the Released Claims or might affect his, her, or its decision to agree, object or not to object to the Settlement.

## **2. Settlement Fund**

- 2.1 **Establishment of Settlement Fund.** Within thirty (30) days of the entry of the Preliminary Approval Order, Apria shall deposit the Settlement Fund into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator and Apria.
- 2.2 **Non-Reversionary.** The Settlement Fund shall be non-reversionary as set forth herein.
- 2.3 **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. Upon written request by any of the Parties, 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.
- 2.4 **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 Section 13.

- 2.5 **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Award Payments approved by the Court; (iv) Fee Award and Costs; (v) reimbursement for Out-of-Pocket Losses or Expenses; and (vi) Pro Rata Cash Payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.
- 2.6 **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund 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. The Settlement Administrator shall reserve funds reasonably sufficient to cover all Taxes and Tax-Related Expenses before distributing funds in accordance with Section 6.2. 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 with respect to the tax treatment of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund to any Settlement Class Representative or any Settlement Class Member. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to them of the receipt of funds from the Settlement Fund pursuant to this Agreement.

### 3. **Reimbursement for Out-Of-Pocket Losses**

- 3.1 **Reimbursement for Out-of-Pocket Losses.** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$2,000 per person who is a member of the Settlement Class, upon submission of a claim and supporting documentation, for out-of-pocket monetary losses or expenses that are fairly traceable to and reasonably resulting from the Illegal Hacking Event, including, without limitation, unreimbursed losses relating to fraud 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 that were incurred on or after the date of the Illegal Hacking Event through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.
- 3.2 **Assessing Claims for Out-of-Pocket Losses or Expenses.** Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. To receive reimbursement for Out-of-Pocket Losses,

Settlement Class Members must submit a valid Claim Form (either in paper form or on the Settlement Website) that includes the following: (i) third-party documentation supporting the loss; and (ii) a brief description of the documentation describing the nature of the costs, if the nature of the costs is not apparent from the documentation alone. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. Out-of-Pocket Losses Claim Forms may be submitted at any time on or before the date that is ninety (90) days after entry of the Final Order Approving Settlement and Judgment. The Settlement Administrator shall verify that each person who submits an Out-of-Pocket Losses Claim Form is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent an Out-of-Pocket Claim Form reflects valid Out-of-Pocket Losses or Expenses fairly traceable to and reasonably resulting from the Illegal Hacking Events. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

- 3.3 **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses 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) days to cure the deficiencies. Such notifications shall 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 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) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations. The Settlement Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Losses or Expenses.

#### 4. **Pro Rata Cash Payment**

- 4.1 **Pro Rata Cash Payment.** After the distribution of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make pro rata cash settlement payments of the remaining Settlement Fund to each Settlement Class Member who submits a valid claim for this benefit. This Pro Rata Cash Payment may be selected by itself or in addition to a claim for Out-of-Pocket Losses or Expenses. Any Net Settlement Funds that remain after the distribution and reissuance of all payments from the Settlement Fund, including for settlement

checks that are not cashed by the deadline to do so, will be distributed to a cy pres recipient that is jointly proposed by the parties and approved by the Court.

## **5. Payments to Settlement Class Members**

- 5.1 **Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses or Expenses and/or Pro Rata Cash Payments shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.
- 5.2 **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member reminding him/her of the deadline to cash such check.
- 5.3 **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Settlement Class Members within that time.
- 5.4 **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissue a check or mail the Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time. Any remaining funds will be distributed to a cy pres recipient that is jointly proposed by the parties and approved by the Court.

- 5.5 **Deceased Settlement Class Members.** If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased and after consultation with Class Counsel.

## 6. Claims, Caps, and Distribution of Settlement Funds

- 6.1 **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. Defendant and Releasees shall be entitled to access information regarding which Settlement Class Members submitted a Claim Form or otherwise participated in the Settlement. Apria's Counsel may obtain this information upon request, including but not limited to any disputes arising out of the claims process.
- 6.2 **Order of Distribution of Funds.** The Settlement Administrator must first use the Net Settlement Fund to make payments for Approved Claims for Out-of-Pocket Losses. The Settlement Administrator shall then use the remaining funds in the Net Settlement Fund to make distributions for Pro Rata Cash Payments.
- 6.3 **Pro-Rata Contingencies.** In the event that the aggregate amount of all payments for reimbursement of Out-of-Pocket Losses exceeds the total amount of the Net Settlement Fund, then the value of such payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Out-of-Pocket Losses does not exceed the Net Settlement Fund. All pro rata determinations required by this Section shall be performed by the Settlement Administrator.

## 7. Business Practice Adjustments

- 7.1 **Business Practice Adjustments.** In connection with the Parties' settlement negotiations in the Class Action Lawsuit, Apria provided Plaintiffs with formal discovery regarding the Illegal Hacking Events and the security business practice adjustments that Apria has made to address its information security posture following the Illegal Hacking Events. These Business Practice Adjustments are specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to personal information, and (v) enhanced monitoring and response capability.
- 7.2 **Modification and Costs.** The Parties acknowledge that technical requirements for securing information evolve and change dynamically. In the event that technological or industry developments, or intervening changes in law or business

practices render specific Business Practice Adjustments obsolete or make compliance by Apria with them unreasonable or technically impractical, Apria may modify its business practices as necessary to ensure appropriate security practices are being followed. All costs associated with implementing the Business Practice Adjustments will be borne by Apria separate and apart from the Settlement Fund.

## 8. Taxes

- 8.1 **Awards to Settlement Class Members.** For tax purposes, Awards made to Settlement Class Members who are current or former Apria employees shall be allocated as non-wage compensation. The Claims Administrator is responsible for facilitating all reporting with respect to all amounts payable to Settlement Class Members required pursuant to any federal, state or local tax law or regulation and with respect to properly and timely filing and sending Form 1099s to any applicable Settlement Class Member.
- 8.2 **Individual Responsibilities.** Representative Plaintiffs and each individual Settlement Class Member that receives a payment will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to this Settlement Agreement. Representative Plaintiffs, on behalf of the Settlement Class Members, acknowledge and agree that they have **not** relied upon any advice from Apria or Class Counsel as to the taxability of the payments received pursuant to the Settlement Agreement. Apria and Class Counsel shall have no responsibility for any taxes, interest penalties or other amounts due with respect to any payments made pursuant to the Settlement Agreement.
- 8.3 **Settlement Administrator.** The Claims Administrator shall handle all tax reporting with respect to the payments made pursuant to the Settlement Agreement and shall report the payments in accordance with applicable law, including, but not limited to, complying with the responsibilities in Section 8.1 of this Agreement.

## 9. Settlement Class Notice

- 9.1 **Notice.** Within twenty-eight (28) days after the date of the Preliminary Approval Order, Apria shall provide the Settlement Class List to the Settlement Administrator. Within twenty-one (21) days after receipt of Settlement Class List, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. Notice shall be disseminated via U.S. mail to all Settlement Class Members and also via e-mail to Settlement Class Members whose personal e-mail addresses are known. Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline.



## 10. Procedures for Opt-Outs and Objections to the Settlement

- 10.1 **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The Request for Exclusion must include the name of the Class Action Lawsuit, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Section will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.
- 10.2 **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The written objection must include (i) the name of the Class Action Lawsuit; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Section waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

## 11. Duties of the Settlement Administrator

- 11.1 **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement as specified in this Agreement, including, but not limited to, the responsibilities under Section 8 and the following:
- a. Creating, administering, and overseeing the Settlement Fund;
  - b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
  - c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;

- 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 within one (1) Business Day;
- f. Responding to any mailed or e-mailed Settlement Class Member inquiries within one (1) Business Day;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Apria's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Apria's Counsel;
- i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- j. Providing weekly or other periodic reports to Class Counsel and Apria's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Apria's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of the Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion;
- l. Performing any function related to settlement administration at the agreed-upon instruction of Class Counsel or Apria's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed; and
- m. Distributing any net settlement funds that remain after the distribution and re-issuance of all payments from the Settlement Fund, including for settlement checks that are not cashed by the deadline to do so, to the cy pres recipient approved by the Court.

- 11.2 **Limitation of Liability.** The Parties, Class Counsel, and Apria's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.
- 11.3 **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Apria's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

## 12. **Preliminary Approval, Final Approval, and Jurisdiction**

- 12.1 **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 the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. The Parties also stipulate to the appointment of Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel. This stipulation is strictly for the purposes of this Settlement Agreement and shall not and may not be used in any other proceeding as any authority for or against certification of any other class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Class Action Lawsuit shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or

Settling Party's position on the issues of class certification, class action waivers, agreements to arbitrate, or any other issue.

- 12.2 **Preliminary Approval.** Within fourteen (14) days of execution of this Settlement Agreement, Class Counsel shall file a motion for preliminary approval of the settlement.
- 12.3 **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement Agreement to be issued at or following the Final Approval Hearing and at least one hundred (100) days after the motion for preliminary approval has been filed.
- 12.4 **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 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.

### 13. **Modification or Termination of this Settlement Agreement**

- 13.1 **Modification.** The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.
- 13.2 **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date does not occur, the certification of the Settlement Class shall be void *ab initio*. Apria reserves the right to contest class certification for all other purposes. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Apria did not oppose certification of a class under the

Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

- 13.3 **Termination.** Settlement Class Representatives and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so (“Termination Notice”) within seven (7) days of: (1) the Court’s stated refusal to issue the Preliminary Approval Order; or (2) within fourteen (14) days of any of the following: (i) determination that a total of ten percent (10%) of Settlement Class Members object to the Settlement or Fee Application, (ii) the Court’s refusal to enter the Final Approval Order and Judgment, or (iii) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court.
- 13.4 **Effect of Termination.** In the event of a termination as provided in Section 13.3, this Agreement and the Settlement shall be considered null and void; all of the Parties’ obligations under the Agreement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Class Action Lawsuit as if the Parties had not entered into this Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties’ respective pre-Settlement claims and defenses, including, but not limited to, class action waivers and agreements to arbitrate, will be preserved.

#### 14. Releases

- 14.1 **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Settlement Class Members shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against Releasees.
- 14.2 **Unknown Claims.** The Released Claims include the release of Unknown Claims. Upon the Effective Date, the Settlement Class Representatives and Settlement Class Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each of the Settlement Class Representatives and Settlement Class Members shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common

law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Settlement Class Representatives and Settlement Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Section.

- 14.3 **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Releasees or based on any actions taken by any of the Releasees 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.

**15. Attorneys' Fees, Costs, Expenses, and Service Awards**

- 15.1 **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application to be paid from the Settlement Fund. Apria agrees not to oppose Class Counsel's request for an award of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable litigation costs and expenses not to exceed \$50,000.00. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Apria and the Settlement Administrator a properly completed and duly executed IRS Form W-9. If approved by the Court, Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than three (3) days after the Effective Date.
- 15.2 **Allocation.** Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs among Plaintiffs' counsel and any other attorneys for Plaintiffs. Apria shall have no liability or other responsibility for allocation of any such attorneys' fees and Litigation Costs and Expenses.
- 15.3 **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that will include a request for Service Award Payments for the Settlement Class Representatives in recognition for their contributions to this Class Action Lawsuit. Apria agrees not to oppose Class Counsel's request for a service award not to exceed three thousand U.S. dollars and zero cents (\$3,000.00) per representative. If approved by the Court, the Settlement Administrator shall make the Service Award Payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award Payments shall be paid by the Settlement Administrator from the Settlement Fund,

in the amount approved by the Court, no later than thirty (30) days after the Effective Date. Any Party receiving a Service Award Payment shall and hereby does release any and all Claims of any kind against Apria under federal, state, or local law and statute, including, but not limited to, the California Labor Code, California Civil Code, California Constitution, the California Private Attorneys General Act, and any similar federal or state law and/or regulation.

- 15.4 **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

## 16. **No Admission of Liability**

- 16.1 **No Admission of Liability.** Nothing relating to this Settlement Agreement, or any communications, papers, or orders related to the Settlement Agreement, shall be cited to as, construed to be, admissible as, or deemed an admission by Defendant or any Releasee of any liability, culpability, negligence, misconduct or other wrongdoing toward the Representative Plaintiffs, the Settlement Class Members, or any other Person, and Defendant and each Releasee specifically disclaims and disputes any liability, culpability, negligence, misconduct or other wrongdoing toward the Representative Plaintiffs, the Settlement Class Members, or any other Person, or that class certification is appropriate in this or any other matter. This Agreement, and any communications, papers, or orders related to the settlement, may not be cited to, used, or admitted as evidence of liability or that class action certification is appropriate. There has been no determination by any court as to the merits of the claims asserted by the Representative Plaintiffs against Defendant or as to whether a class should be certified, other than for settlement purposes only.
- 16.2 **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) 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 Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Apria in the Class Action Lawsuit or in any proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be, or may be used, in evidence as an admission, concession or presumption that class certification is appropriate in this Class Action Lawsuit.

## 17. **Miscellaneous Provisions**

- 17.1 **Reasonable, Good Faith Efforts.** The Parties and their counsel agree to make reasonable, good faith efforts to effectuate the purposes and intent of this Settlement

Agreement and obtain Court approval of this Settlement Agreement, subject to Apria's rights to terminate the Settlement Agreement, as provided herein.

- 17.2 **Representation by Counsel.** The Representative Plaintiffs and Apria represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Settlement Agreement and have been given the opportunity to review independently this Settlement Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 17.3 **Exhibits.** All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any difference between the terms of the Settlement Agreement and any of the exhibits, the terms of the Settlement Agreement shall control.
- 17.4 **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.
- 17.5 **Final Resolution.** The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Representative Plaintiffs, any other Class Members and their attorneys against the Releasees with respect to the Released Claims. Accordingly, Representative Plaintiffs and Apria agree not to assert in any forum that the Class Action Lawsuit were brought by the Representative Plaintiffs or defended by Apria in bad faith or without a reasonable basis. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties, including during a mediation conducted by a Magistrate Judge, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.
- 17.6 **Headings.** The headings herein are used for the purpose of convenience only and are not meant to have legal effect. In the event of a dispute concerning the terms and conditions of this Settlement Agreement, the headings shall be disregarded.
- 17.7 **No Precedential Value.** The Parties agree and acknowledge that this Agreement carries no precedential value.
- 17.8 **Fair and Reasonable.** The Parties and their counsel believe this Settlement Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of extensive arm's-length negotiations.
- 17.9 **Waiver.** The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or



remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any provision or breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other provision or any other prior or subsequent breach of this Settlement Agreement.

- 17.10 **Severability.** Should any part, term or provision of this Settlement Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.
- 17.11 **Integration.** This Settlement Agreement and its exhibits constitute the entire agreement among the Parties hereto concerning the Settlement of the Class Action Lawsuit, and no representations, warranties or inducements have been made by any Party hereto concerning this Settlement Agreement and its exhibits other than those contained and memorialized in such documents.
- 17.12 **Counterparts.** This Settlement Agreement may be executed in one or more original and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided, however, that counsel for the signatories of this Settlement Agreement shall exchange among themselves original signed counterparts.
- 17.13 **Facsimile and Electronic Mail.** Transmission of a signed Settlement Agreement by facsimile or electronic mail shall constitute receipt of an original signed Settlement Agreement by mail.
- 17.14 **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.
- 17.15 **Governing Law.** The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Indiana without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.
- 17.16 **Interpretation.** Definitions apply to the singular and plural forms of each term defined. Definitions apply to the masculine, feminine, and neuter genders of each term defined. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”
- 17.17 **Drafting.** This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is

the result of arm's-length negotiations between the Parties, and all Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

- 17.18 **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other in good faith prior to seeking Court intervention.
- 17.19 **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.
- 17.20 **Contractual Agreement.** All counsel and any other persons executing this Settlement Agreement and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.
- 17.21 **No Assignment.** Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 17.22 **Non-Disparagement.** Representative Plaintiffs, Class Counsel, Apria, and Apria's Counsel agree not to make any statements, written or verbal, or to cause or encourage any other Person to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Parties and their respective counsel concerning all Released Claims, as well as the litigation of the Class Action Lawsuit, the Settlement, this Settlement Agreement, and any discussions, interactions, or negotiations of the Settlement by the Parties and their counsel. Representative Plaintiffs, Class Counsel, Apria, and their respective counsel may issue press releases in connection with the filing of the motion for preliminary approval of this Settlement. The Parties shall exchange drafts of any such proposed press releases 24 hours in advance of publication and provide the opposing Party with a meaningful opportunity to comment on the draft press releases.
- 17.23 **Authority.** Any person executing this 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 Agreement to all of the terms and provisions of this Agreement.
- 17.24 **Notice.** All notices to Class Counsel provided for herein shall be sent by overnight mail and e-mail to:

Lynn Toops  
Amina Thomas  
**Cohen & Malad, LLP**  
One Indiana Square  
Suite 1400  
Indianapolis, IN 46204

Gary M. Klinger  
**Milberg Coleman Bryson Phillips Grossman PLLC**  
227 West Monroe Street  
Chicago, Illinois 60606

All notices to Apria provided for herein, shall be sent by overnight mail and e-mail to:

John F. McCauley  
Gregory A. Neibarger  
Jessica Laurin Meek  
Zechariah Lee Banks  
**Dentons Bingham Greenebaum LLP**  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

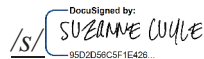
Colleen Parga  
**Dentons Bingham Greenebaum LLP**  
3500 PNC Tower  
101 S. 5th Street  
Louisville, KY 40202

The notice recipients and addresses designated above may be changed by written notice.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed by themselves or by their duly authorized counsel:

Signed by:  
  
CS228F97F3E9485


Plaintiff Robert Herrera

DocuSigned by:  
  
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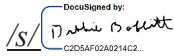
Plaintiff Suzanne Cuyle

 Signed by:  
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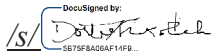
Plaintiff Leonardo DePinto

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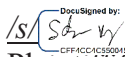
Plaintiff Joel Kamisher

 DocuSigned by:  
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Plaintiff Debbie Bobbitt

 DocuSigned by:  
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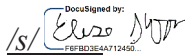
Plaintiff Dottie Nikolich

 DocuSigned by:  
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Plaintiff Sabrina Munoz

 Signed by:  
8E8D9F7D4003A...

Plaintiff Hillary French

 DocuSigned by:  
F8FB03E4712450...

Plaintiff Elisa Stroffolino

 Signed by:  
5E7F3D8D733420...

Plaintiff Amy Clark

 Signed by:  
D18A74E1BFDE10C...

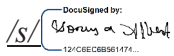
Plaintiff Reginald Reese

 DocuSigned by:  
C8ECCF0B2DAE109...

Plaintiff Rita May

 Signed by:  
85E04EE687EB1E7...

Plaintiff Tammie Creek

 DocuSigned by:  
12/C6E06B561474...

Plaintiff Sonya Albert

 DocuSigned by:  
708617D8E469137...

Plaintiff Paul Kramer





Plaintiff Colleen Rikard

DocuSigned by:  
/s/ Kristina Accardo  
01217B5A98AA1F8...

Plaintiff Kristina Accardo

DocuSigned by:  
/s/ Roger Winstanley  
790B1CC3722E498...

Plaintiff Roger Winstanley

Signed by:  
/s/ Bonnie Bennett  
700F8CDE16804D1...

Plaintiff Bonnie Bennett

/s/ \_\_\_\_\_

Defendant Apria Healthcare, LLC

Dated: \_\_\_\_\_

/s/ \_\_\_\_\_

Plaintiff Kristina Accardo

/s/ \_\_\_\_\_

Plaintiff Roger Winstanley

/s/ \_\_\_\_\_

Plaintiff Bonnie Bennett

/s/ *Perry Bernocchi*  
Defendant Apria Healthcare, LLC  
*Perry Bernocchi*

Dated: 3/3/2025 \_\_\_\_\_

By: \_\_\_\_\_  
John F. McCauley  
Gregory A. Neibarger  
Jessica Laurin Meek  
Colleen Parga  
Zechariah Lee Banks  
Dentons Bingham Greenebaum LLP

Date: **March 4, 2025**

*Counsel for Defendant Apria*

By: *Lynn Toops*  
Lynn Toops  
Amina Thomas  
Cohen & Malad, LLP

Date: February 24, 2025

By: *Gary M. Klinger*  
Gary M. Klinger  
Milberg Coleman Bryson Phillips Grossman PLLC

Date: February 24, 2025

*Counsel for Plaintiffs and the Settlement Class*

# **EXHIBIT A**



\*00000000000000\*

#: 1865

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Your claim must be submitted online or postmarked by: <<Claims Deadline>>

CLAIM FORM FOR APRIA DATA BREACH CLASS ACTION LAWSUIT

APRIA-C

Smith et al v. Apria Healthcare LLC
Case No. 1:23-cv-01003-JPH-KMB
United States District Court for the Southern District of Indiana

USE THIS FORM ONLY IF YOU ARE A SETTLEMENT CLASS MEMBER

GENERAL INSTRUCTIONS

If you received a Notice of this Settlement, the Settlement Administrator identified you as a Settlement Class Member who may have received actual or constructive notice from Apria that your information may have been compromised as a result of the Data Breach (defined in the Settlement Agreement as the "Illegal Hacking Events"). You may submit a claim for Settlement Payments, outlined below.

Please refer to the Notice posted on the Settlement Website www.Website.com, for more information on submitting a Claim Form and if you are part of the Settlement Class.

To receive a Settlement Payment from this Settlement via an electronic payment, you must submit the Claim Form below electronically at www.Website.com by <<Claims Deadline>>.

This Claim Form may also be 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:

<<Mailing Caption>>
c/o Kroll Settlement Administration LLC
PO Box XXXX
New York, NY 10150-XXXX

Pro Rata Cash Payments will be adjusted up or down depending on the amount of Approved Claims. Any increases or decreases to Pro Rata Cash Payments will be on an equal basis. You may submit a claim for one or more of the following benefits:

- 1) a) Reimbursement of Out-of-Pocket Losses or Expenses: reimbursement up to a total of \$2,000 per Person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses incurred as a result of the Data Breach;

In addition to Out-of-Pocket Losses or Expenses, Settlement Class Members may also select:

- 2) b) Pro Rata Cash Payment. After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make pro rata, or equal share, cash Settlement Payments from the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit. This Pro Rata Cash Payment may be selected by itself or in addition to a claim for Out-of-Pocket Losses and Expenses.

Questions? Go to www.Website.com or call (XXX) XXX-XXXX.

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**I. PAYMENT SELECTION**

If you would like to elect to receive your Settlement Payment through electronic transfer, please visit the Settlement Website and timely file your Claim Form. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

**II. SETTLEMENT 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 Claim Form.

First Name

Last Name

Address 1

Address 2

City

State

Zip Code

Email Address (optional): \_\_\_\_\_@\_\_\_\_\_.com

Telephone Number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**III. PROOF OF DATA BREACH SETTLEMENT CLASS MEMBERSHIP**

Check this box to certify if you are an individual who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach.

Enter the Class Member ID Number provided on your Notice:

Class Member ID : 0 0 0 0 0 \_\_\_\_\_

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

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**IV. OUT-OF-POCKET LOSSES OR EXPENSES**

All Settlement Class Members are also eligible for reimbursement for up to \$2,000 per person for Out-of-Pocket Losses incurred as a result of the Data Breach, including:

- (i) *Unreimbursed losses* relating to fraud 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 that were incurred on or after <<the date of the Data Breach>> through <<the date of claim submission>>; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

This payment can be in addition to the *Pro Rata* Cash Payment.

**You must have unreimbursed Out-of-Pocket Losses or Expenses incurred as a result of the Data Breach and submit documentation to obtain this reimbursement.**

I have attached documentation showing that the claimed losses were more likely than not caused by the Data Breach. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss	Description of Supporting Reasonable Documentation (Identify what you are attaching and why)
Example: Identity Theft Protection Service	0 7/17/2 0 (mm/dd/yy)	\$50.00	Copy of identity theft protection service bill
	— / — / — (mm/dd/yy)	\$ _____.	
	— — / — — / — — (mm/dd/yy)	\$ _____.	
	— — / — — / — — (mm/dd/yy)	\$ _____.	

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

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Page 3 of 4

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**IV. PRO RATA CASH PAYMENT**

By checking the below box, I choose a *pro rata*, or equal share, cash payment (which may increase or decrease depending on Approved Claims and remaining Settlement Funds). **You may also submit a claim for Out-of-Pocket Losses or Expenses.**

Yes, I choose a *Pro Rata* Cash Payment

**VI. ATTESTATION & SIGNATURE**

I swear and affirm under the laws of my state 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.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

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

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\*Page 4 of 4\*

Page 4 of 4

# **EXHIBIT B**

# NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Southern District of Indiana

*Smith et al v. Apria Healthcare LLC*

Case No. 1:23-cv-01003-JPH-KMB

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

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**If You Received Actual Or Constructive Notice From Apria That Your Information May Have Been Compromised As A Result Of The Data Breach, You Are Eligible to Receive a Settlement Payment from a Class Action Lawsuit**

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- A Court authorized this Notice, to those that are eligible to receive a Settlement Payment from a proposed class action Settlement. The Class Action Lawsuit is titled *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB and is pending in the United States District Court for the Southern District of Indiana. The Persons that filed the Class Action Lawsuit are called Plaintiffs or Settlement Class Representatives and the company they sued is Apria Healthcare LLC (or Apria). Apria denies any wrongdoing whatsoever.

- **Who is a Settlement Class Member?**

All individuals who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach (defined in the Settlement Agreement as the “Illegal Hacking Events”).

Excluded from the Settlement Class are: 1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to <<the Opt-Out Deadline>>.

- Settlement Class Members under the Settlement Agreement will be eligible to receive:
  - ❖ **Out-of-Pocket Losses:** reimbursement up to a total of \$2,000 per person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses that are as a result of the Data Breach; **AND/OR**
  - ❖ **Pro Rata Cash Payment:** After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make *pro rata* cash payments of the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit.
- To submit a claim or obtain more information visit [www.website.com](http://www.website.com) or call (XXX) XXX-XXXX to request a Claim Form no later than <<Claims Deadline>>.

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

**Please read this Notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	<b>Summary of Legal Rights</b>	<b>Deadline(s)</b>
<b>Submit a Claim Form</b>	The only way to receive Settlement Payments from the Settlement.	Submitted or postmarked on or before <b>&lt;&lt;Claims Deadline&gt;&gt;</b> .
<b>Exclude Yourself by Opting Out of the Class</b>	Receive no benefit from the Settlement. This is the only option that allows you to keep your right to bring any other lawsuit against Apria relating to the Data Breach.	Mailed and postmarked on or before <b>&lt;&lt;Opt-Out Deadline&gt;&gt;</b> .
<b>Object to the Settlement and/or Attend the Final Approval Hearing</b>	You can write the Court about why you agree or disagree with the Settlement. The Court cannot order a different Settlement. You can also ask to speak at the Final Approval Hearing on <b>&lt;&lt;Final Approval Hearing date&gt;&gt;</b> , about the fairness of the Settlement, with or without your own attorney.	Mailed and postmarked on or before <b>&lt;&lt;Objection Deadline&gt;&gt;</b> .
<b>Do Nothing</b>	You will not receive any Settlement Payments from this class action Settlement.	N/A

- Your rights and options as a Settlement Class Member – **and the deadlines to exercise your rights** – are explained in this Notice.
- The Court still will have to decide whether to approve the Settlement. Payments to Settlement Class Members will be made only if the Court approves the Settlement and after any possible appeals are resolved.

**TO RECEIVE AN ELECTRONIC OR ACH PAYMENT FOR YOUR APPROVED CLAIM, YOU MUST FILE A CLAIM FORM ONLINE AT [WWW.WEBSITE.COM](http://WWW.WEBSITE.COM)**

**What This Notice Contains**

**Basic Information** ..... 4

**Who is in the Settlement** ..... 4

**The Settlement Benefits—What You Get if You Qualify** ..... 5

**How Do You Submit a Claim** ..... 6

**Excluding Yourself from the Settlement** ..... 7

**Objecting to the Settlement** ..... 8

**The Lawyers Representing You** ..... 9

**The Court’s Final Approval Hearing** ..... 9

**If You Do Nothing** ..... 10

**Additional Information** ..... 11



## BASIC INFORMATION

### 1. Why is there a Notice?

The Court authorized this Notice because you have a right to know about the Settlement, and all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the Settlement, and your legal rights and options.

The Honorable Judge [REDACTED] of the United States District Court for the Southern District of Indiana is overseeing this case captioned as *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB. The people who brought the lawsuit are called the Settlement Class Representatives. The company being sued, Apria Healthcare LLC, is called the Defendant.

### 2. What is the Class Action Lawsuit about?

The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria's computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the Data Breach. The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals.

Apria denies any wrongdoing whatsoever. No court or other judicial body has made any judgment or other determination that Apria has done anything wrong.

### 3. Why is this a class action?

In a class action, one or more people called "Settlement Class Representatives" or "Plaintiffs" sue on behalf of all people who have similar claims. Together, all of these people are called a "Settlement Class," and the individuals are called "Settlement Class Members." One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Apria. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to Settlement Class Members. The Settlement Class Representatives appointed to represent the Settlement Class, and the attorneys for the Settlement Class, Class Counsel think the Settlement is best for all Settlement Class Members.

## WHO IS IN THE SETTLEMENT?

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

You are affected by the Settlement and potentially a Settlement Class Member if you are a

an individual who received actual or constructive notice from Apria that their information may have been compromised as a result of the Data Breach.

Only Settlement Class Members are eligible to receive benefits under the Settlement. Excluded from the Settlement Class are: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to <<the Opt-Out Deadline>>.

#### 6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call (XXX) XXX-XXXX with questions. You may also write with questions to:

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

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

#### 7. What does the Settlement provide?

The Settlement provides the following Settlement Payments available to Settlement Class Members who submit Approved Claims: (a) Reimbursement for Out-of-Pocket Losses or Expenses; and/or (b) *Pro Rata* Cash Payment. If a Settlement Class Member does not submit an Approved Claim or opts out, the Settlement Class Member will release his or her Claims against Apria without receiving a Settlement Payment.

Settlement Class Members with Out-of-Pocket Losses or Expenses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Apria has undertaken security business practice adjustments that Apria has made to address its information security posture following the Data Breach. These Business Practice Adjustments are specific business practice and remedial measures within the following general categories: (i) enhanced cybersecurity training and awareness program, (ii) enhanced data security policies, (iii) enhanced security measures, (iv) further restricting access to personal information, and (v) enhanced monitoring and response capability.

#### 8. What payments are available for reimbursement under the Settlement?

Settlement Class Members that submit a valid and timely Claim Form may select one or all of the following:

- a) ***Reimbursement of Out-of-Pocket Losses or Expenses:*** reimbursement up to a total of \$2,000 per Person who is a Settlement Class Member, upon submission of an Approved Claim and supporting documentation, for out-of-pocket monetary losses or expenses

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

incurred as a result of the Data Breach.

- These documented losses include:
  - *Unreimbursed losses* relating to fraud 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 that were incurred on or after <<the date of the Data Breach>> through <<the date of claim submission>>; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

In addition to Out-of-Pocket Losses or Expenses, Settlement Class Members may also select:

- b) ***Pro Rata Cash Payment.*** After the payment of the Fee Award and Costs, Notice and Administrative Expenses, Service Award Payments, and Out-of-Pocket Losses or Expenses, the Settlement Administrator will make *pro rata* cash Settlement Payments from the remaining Settlement Fund to each Settlement Class Member who submits an Approved Claim for this benefit. This *Pro Rata Cash Payment* may be selected by itself or in addition to a claim for Out-of-Pocket Losses and Expenses.

## HOW DO YOU SUBMIT A CLAIM?

### 9. How do I get Settlement Payments?

To receive Settlement Payments, you must complete and submit a Claim Form online at [www.website.com](http://www.website.com) or by mail to <<Mailing caption>>, c/o Kroll Settlement Administration LLC, PO Box XXXX, New York, NY 10150-XXXX. Read the Claim Form instructions carefully, fill out the Claim Form, provide the required documentation, and submit online by <<Claims Deadline>> or by mail postmarked by <<Claims Deadline>>.

### 10. How will claims be decided?

The Settlement Administrator will decide whether and to what extent any claim made on each Claim Form is an Approved Claim. The Settlement Administrator may require additional information from you. If you do not provide the additional information in a timely manner, the claim will be considered invalid and will not be paid.

The Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies.

### 11. When will I get my Settlement Payment?

The Court will hold a Final Approval Hearing on <<Date>>, at <<Time>> a.m. ET to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving them can take time. It also takes time for all of the Claim Forms to be processed. Please be patient. Payments will begin after the Settlement has obtained Court approval

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

and the time for all appeals has expired.

## 12. What am I giving up as part of the Settlement?

Apria and its affiliates will receive a release from all Claims that could have been or that were brought against Apria relating to the Data Breach. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Settlement Class Member and you will give up your right to sue Apria and all past, present, and future Subsidiaries and/or Affiliates (including any and all in-house and outside counsel including, without limitation, Apria's Counsel) and its and/or their past, present, and future advisors, administrators, auditors (including any and all internal and external auditors), employees, accountants, actuaries, consultants, fiduciaries, representatives, service providers, Successors, successors-in-interest, parents, trustees, insurance carriers, reinsurers, estates, heirs, executors, beneficiaries, trusts, and assigns of, and any other person acting on Apria's behalf. This Release is described in the Settlement Agreement, known as Released Claims, which is available at [www.website.com](http://www.website.com). If you have any questions, you can talk to the law firms listed in Question 18 for free or you can talk to your own lawyer.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of the Settlement, then you must take steps to exclude yourself from the Settlement Class. This is sometimes referred to as "opting out" of the Settlement Class.

## 13. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to receive any benefits from the Settlement.

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

No. Unless you exclude yourself, you give up any right to sue Apria and any other Releasee for any Claim that could have been or was brought relating to the Data Breach. You must exclude yourself from the Settlement to start your own lawsuit or to be part of any different lawsuit relating to the Claims in this case.

## 15. How do I exclude myself from the Settlement?

To exclude yourself, send a Request for Exclusion or written notice of intent to opt-out that says you want to be excluded from the Settlement in *Smith et al v. Apria Healthcare LLC*, Case No. 1:23-cv-01003-JPH-KMB. The Request for Exclusion must include: the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. You must mail your Request for Exclusion to the Settlement Administrator postmarked by **<<Opt-Out Deadline>>**, to:

<<Mailing caption>>

c/o Kroll Settlement Administration LLC

PO Box XXXX

New York, NY 10150-XXXX

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

## OBJECTING TO THE SETTLEMENT

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

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. For an objection to be a valid objection under the Settlement, it must be in writing, mailed to the Settlement Administrator at the addresses listed below, postmarked by **no later than <<Objection Deadline>>**.

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box XXXX  
New York, NY 10150-XXXX

Your objection must be written and must include all of the following:

- i) the name of the Class Action Lawsuit;
- ii) the Settlement Class Member's full name, current mailing address, and telephone number;
- iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- v) the identity of any attorneys representing the objector;
- vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and
- vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

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

Objecting is telling the Court that you do not like the Settlement or parts of it and why you do not think it should be approved. You can object only if you are a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a Settlement Class Member, and the case no longer affects you.

## THE LAWYERS REPRESENTING YOU

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

Yes. The Court appointed Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, as Class Counsel to represent the Settlement Class in Settlement negotiations. If you want to be represented by your own lawyer, you may hire one at your own expense.

**19. How will the lawyers be paid?**

Class Counsel will file a Fee Application to be paid from the Settlement Fund. Apria agrees not to oppose Class Counsel's request for a Fee Award and Costs of attorneys' fees not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable Litigation Costs and Expenses not to exceed \$50,000. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Class Counsel will also ask the Court for request for a Service Award Payment not to exceed \$3,000 per Settlement Class Representative, from the Settlement Fund, in recognition of their contributions to this Class Action Lawsuit.

Any Fee Application for Fee Award and Costs, and Service Award Payments must be approved by the Court. The Court may award less than the amounts requested.

**THE COURT'S FINAL APPROVAL HEARING****20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at <<Time>> ET on <<Date>>, at the <<Court Address>>, Room [redacted] as ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the Fee Application and Service Awards Payments. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommends checking the Settlement Website [www.website.com](http://www.website.com), or calling (XXX) XXX-XXXX.

**21. Do I have to attend the hearing?**

No. Class Counsel will present the Settlement Class to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

**22. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file an objection according to the instructions in Question 16, including all the information required. Your objection must be **mailed** to the Settlement Administrator, at the mailing addresses listed above, postmarked by no later than the <<Objection Deadline>>.

**IF YOU DO NOTHING****23. What happens if I do nothing?**

If you do nothing, you will not receive any benefits from this Settlement. If the Settlement is granted final approval and becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apria or the other Releasees based on any Claim that could have been or that was brought relating to the Data Breach.

**ADDITIONAL INFORMATION****24. How do I get more information?**

This Notice summarizes the Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at [www.website.com](http://www.website.com). You may also call the Settlement Administrator with questions or to receive a Claim Form at [\(XXX\) XXX-XXXX](tel:(XXX)XXX-XXXX).

**25. What if my contact information changes or I no longer live at my address?**

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

<<Mailing caption>>  
c/o Kroll Settlement Administration LLC  
PO Box [XXXX](#)  
New York, NY 10150-[XXXX](#)

**PLEASE DO NOT CONTACT THE COURT, CLERK OF THE COURT OR CLASS  
COUNSEL FOR INFORMATION ABOUT THE CLASS ACTION LAWSUIT  
SETTLEMENT**

DocuSign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

<<Mailing Caption>>

c/o Kroll Settlement Administration LLC

P.O. Box <<#####>>

New York, NY 10150-<<####>>

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

**ELECTRONIC SERVICE REQUESTED**

**COURT APPROVED LEGAL NOTICE**

*Smith et al. v. Apria Healthcare LLC*  
Case No. 1:23-cv-01003-JPH-KMB

**If You Received Actual Or Constructive Notice  
From Apria That Your Information May Have Been  
Compromised As A Result Of The Data Breach,  
You Are Eligible to Receive a Settlement Payment  
from a Class Action Lawsuit.**

*This is not a solicitation from a lawyer.*

**This is NOT a Claim Form.**

**For more information about the Settlement  
and how to file a Claim Form visit or call:**

**[www.website.com](http://www.website.com)**

**(XXX) XXX-XXXX**

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>-<<zip4>>

<<Country>>



DocuSign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

*f al. v. Apria Healthcare LLC*. Case No. 1:23-cv-01003-JPH-KMB, filed in the United States District Court for the Southern District of Indiana. The Persons who sued are called the "Plaintiffs" or "Settlement Class Representatives" and the company they sued, Apria Healthcare LLC, is known as the Defendant in this case. The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria's computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the "Data Breach" (defined in the Settlement Agreement as "Illegal Hacking Events"). The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals. Defendant denies any wrongdoing whatsoever.

**Who Is A Settlement Class Member?** You are a Settlement Class Member if you are an individual who received actual or constructive notice from Apria that your Protected Information may have been compromised as a result of the Data Breach. The Settlement Class specifically excludes: (1) the judges presiding over the Class Action Lawsuit, members of their staff, and members of their direct families; (2) Defendant and any other Releasee; (3) Settlement Class Members who submit a valid Request for Exclusion prior to **<<the Opt-Out Deadline>>**.

**What Are The Settlement Class Member Benefits?** Defendant has agreed to pay \$6,375,000 into a Settlement Fund. The Settlement provides the following Settlement Payments available to Settlement Class Members who submit Approved Claims: (a) Reimbursement for Out-of-Pocket Losses or Expenses; and/or (b) *Pro Rata* Cash Payment. The Settlement Administrator will distribute *pro rata*, or equal share cash payments, to Settlement Class Members who submit a valid and timely Claim Form.

**How To Make A Claim?** You must file a Claim Form by mail postmarked by **<<Claims Deadline>>**, and mailed to the Settlement Administrator's address below, or online at **www.website.com** by **<Claims Deadline>**, to receive compensation from the Settlement.

**What Are My Other Rights?** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Opt-Out Deadline**. If you do not exclude yourself, you will release any Claims you may have against Defendant and the Releasees, as more fully described in the Settlement Agreement, available at **WEBSITE**. If you do not exclude yourself, you may object to the Settlement by **Objection Deadline**. Visit **WEBSITE** for complete information on how to exclude yourself from or object to the Settlement.

**Do I have A Lawyer?** Yes, the Court has appointed the law firm of Lynn A. Toops of Cohen & Malad, LLP, and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC to represent you and the Settlement Class. Class Counsel will request a Fee Award and Costs not to exceed one-third (33.33%) of the Settlement Fund and reimbursement of reasonable Litigation Costs and Expenses not to exceed \$50,000 for prosecuting the Class Action Lawsuit, and Service Award Payments of \$3,000 for each Settlement Class Representative.

**The Final Approval Hearing:** The Court has scheduled a hearing for **DATE/TIME** in Courtroom **X**, located at **COURT ADDRESS**, to consider whether to approve the Settlement, Service Award Payments, Fee Award and Costs, as well hear as any objections. You or your attorney may request to appear at the hearing, but you are not required to do so. The date or time of the hearing may change, so please check **WEBSITE** for updates.

*This Notice is only a summary.*

**For Additional Information or to Update Your Address & Contact Information:**

Visit **WEBSITE** or contact the Settlement Administrator:

Mail: **<<Mailing Caption>>**, c/o Kroll Settlement Administration LLC, P.O. Box **XXXX**,

New York, NY 10150-XXXX

Toll-Free: **(XXX) XXX-XXXX**

Docusign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

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Postage  
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<***Mailing Caption***>>  
c/o Kroll Settlement Administration LLC  
P.O. Box <<#####>>  
New York, NY 10150-<<#####>>

DocuSign Envelope ID: 252F7F1C-56D4-4666-B1EB-B0899906120A

<<Barcode>>

Class Member ID: <<Refnum>>

### Address Update

If you have an address different from where this postcard was mailed to, please write your correct address and email below and return this portion to the address provided on the other side.

**DO NOT USE THIS POSTCARD TO FILE A CLAIM, AN EXCLUSION OR OBJECTION.**

Name: _____			
First Name		M.I.	Last Name
Street Address: _____			
Street Address 2: _____			
City: _____	State: _____	Zip Code: _____	
E m a i l   A d d r e s s : _____ @ _____			

From:

To:

Subject: Email Notice of Class Action Settlement

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Class Member ID: <<RefNum>>

## NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Southern District of Indiana

*Smith et al v. Apria Healthcare LLC*

Case No. 1:23-cv-01003-JPH-KMB

**A Court has authorized this email. This is not a solicitation from a lawyer.**

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**What Is This Class Action Lawsuit About?** This Class Action Lawsuit is known as *Smith et al. v. Apria Healthcare LLC*. Case No. 1:23-cv-01003-JPH-KMB, filed in the United States District Court for the Southern District of Indiana. The Persons who sued are called the “Plaintiffs” or “Settlement Class Representatives” and the company they sued, Apria Healthcare LLC, is known as the Defendant in this case. The Class Action Lawsuit alleges that in April of 2019 and various dates thereafter, criminal actors illegally accessed limited portions of Apria’s computer network and gained unauthorized access to the personally identifiable Protected Information of certain Apria customers and employees, which constituted the “Data Breach” (defined in the Settlement Agreement as the “Illegal Hacking Events”). The Settlement Class Representatives allege that Apria failed to properly protect the Protected Information in accordance with its duties, had inadequate data security, and delayed notifying potentially impacted individuals. Defendant denies any wrongdoing whatsoever.

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Toll-Free: **(XXX) XXX-XXXX**

**Unsubscribe**