

NOTICE OF CLASS ACTION SETTLEMENT

Circuit Court of Jefferson County, Alabama, Tenth Judicial Circuit
Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al.
Case No. 01-CV-2024-902563.00

If your data was exposed to unauthorized third parties in the 2023 Data Security Incident involving Upstream Rehabilitation, you may be eligible for a CASH PAYMENT or other benefits under a class action settlement.

A proposed Settlement has been reached in the class action lawsuit titled *Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al.*, Case No. 01-CV-2024-902563.00 (the “Action”). The Action asserts claims against (“Defendants”) related to the unauthorized access to certain email accounts on Defendants’ computer systems that began in January 2023, about which Defendants notified potentially impacted individuals beginning in September 2023 (the “Data Security Incident”). Plaintiffs alleged that the Data Security Incident resulted in the potential exposure of certain personally identifiable information (“PII”) and personal health information (“PHI”) of Defendants’ current and former customers. Defendants deny all claims of wrongdoing or liability that Plaintiffs, Settlement Class Members, or anyone else have asserted in this Action or may assert in the future based on the conduct alleged in the complaint.

The Settlement offers payments and financial account monitoring services to members of the Settlement Class. Settlement Class Members can claim the following Settlement Benefits:

- (1) Financial Account Monitoring: All Participating Settlement Class Members are eligible to enroll in three (3) years of Financial Account and Credit Monitoring Services;
- (2) Compensation for Unreimbursed Documented Monetary Losses: The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$5,000 per person who is a Participating Settlement Class Member; or
- (3) Pro Rata Cash Payment: Participating Settlement Class Members can elect to make a claim for a *pro rata* share of the Net Settlement Fund, less all valid claims for Unreimbursed Monetary Losses. Class Counsel predicts the value of *pro rata* payments will exceed \$50 per valid claimant.

Settlement Class Members may receive compensation for both Unreimbursed Monetary Losses and Pro Rata Cash Payments, subject to a combined monetary benefits cap of \$5,000 per Settlement Class Member.

If you are a Settlement Class Member, your options are:

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to receive cash and other benefits from this Settlement is by submitting a valid and timely Claim Form.
DEADLINE: JANUARY 30, 2025	You can submit your Claim Form online at www.UpstreamDataSettlement.com or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call or email the Settlement Administrator to receive a paper copy of the Claim Form.
DO NOTHING	You will receive no payment and will no longer be able to sue Defendants over the claims resolved in the Settlement.
EXCLUDE YOURSELF	You may exclude yourself from this Settlement and keep your right to sue separately. If you exclude yourself, you will receive no Settlement Benefits. Exclusion instructions are provided in this Notice.
DEADLINE: DECEMBER 31, 2024	
OBJECT	If you do not exclude yourself, you may write to the Court to comment on or detail why you do not like the Settlement by following the instructions in this Notice. The Court may reject your objection. You must still file a claim if you desire any monetary relief under the Settlement.
DEADLINE: DECEMBER 31, 2024	
ATTEND A HEARING: FEBRUARY 24, 2025	Ask to speak in Court about the Settlement. You may ask the Court for permission to speak about your objection at the Final Approval Hearing.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court must give final approval to the Settlement before it takes effect but has not yet done so. No payments will be made until after the Court gives final approval and any appeals are resolved.

Please review this Notice carefully. You can learn more about the Settlement by visiting www.UpstreamDataSettlement.com or by calling 1-866-217-4459.

Further Information about this Notice and the Action

1. Why was this Notice issued?

Settlement Class Members are eligible to receive payment and financial account monitoring services from a proposed Settlement in the Action. The Court overseeing the Action authorized this Notice to advise Settlement Class Members about the proposed Settlement that will affect their legal rights. This Notice explains certain legal rights and options Settlement Class Members have in connection with the Settlement.

2. What is the Action about?

The Action is a proposed class action lawsuit brought on behalf of the Settlement Class. The Settlement Class includes “All individuals within the United States of America whose PHI/PII was exposed to unauthorized third parties as a result of Defendants’ data breach that occurred between January 24, 2023, and January 31, 2023, and between February 3, 2023, and February 9, 2023.”

The PII/PHI alleged to have been exposed in the Data Security Incident includes names, dates of birth, demographic information, diagnosis information, health insurance subscriber number, medical billing/claims information, medical record number, other health insurance information, patient account number, and/or treatment information.

The Action claims Defendants are legally responsible for the Data Security Incident and asserts various legal claims including (1) Negligence; (2) Negligence *Per Se*; (3) Breach of Confidence; (4) Breach of Implied Contract; (5) Breach of the Implied Covenant of Good Faith and Fair Dealing; (6) Breach of Fiduciary Duty; and (7) Unjust Enrichment. Plaintiffs also alleged state-specific causes of action for violations of: (i) Georgia Deceptive Trade Practices and Protection Law (“Georgia UDTPA”), Ga. Code Ann. §§10-1-370, *et seq.*; and (ii) the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. §§ 201-1 to 201-9.2.

Defendants deny all claims of wrongdoing or liability that Plaintiffs, Settlement Class Members, or anyone else have asserted in this Action or may assert in the future based on the conduct alleged in the complaint.

3. Why is the Action a class action?

In a class action, one or more plaintiffs bring a lawsuit on behalf of others who have similar claims. Together, all these people are the “Class,” and each individual is a “Settlement Class Member.” There are eleven Plaintiffs in this case: Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A’Tavion Morrisette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young. The Class in this case is referred to in this Notice as the “Settlement Class.”

4. Why is there a Settlement?

Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Action. The Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class. The Court has not decided whether Plaintiffs' claims or Defendants' defenses have any merit, and it will not do so if the proposed Settlement is approved. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests. The Settlement does not mean that Defendants did anything wrong, or that the Plaintiffs and the Settlement Class would or would not win the case if it were to go to trial.

Terms of the Proposed Settlement

5. Who is in the Settlement Class?

The Settlement Class is defined by the Court as "All individuals within the United States of America whose PHI/PII was exposed to unauthorized third parties as a result of Defendants' data breach that occurred between January 24, 2023, and January 31, 2023, and between February 3, 2023, and February 9, 2023."

Excluded from the Settlement Class are the Court, the officers and directors of Defendants, persons who have been separately represented by an attorney and entered into a separate settlement agreement in connection with the Data Security Incident, and persons who timely and validly request exclusion from the Settlement Class.

6. What are the terms of the Settlement?

The proposed Settlement would create a non-reversionary common fund amount of \$4,304,898.50 that would be used to pay all costs of the Settlement, including: (i) payments to Settlement Class Members who submit valid claims, (ii) costs of administration and notice, (iii) any attorneys' fees and costs awarded by the Court to Class Counsel (not to exceed one-third of the total Settlement Fund, or \$1,434,966.17 in attorneys' fees, and litigation expenses up to \$50,000), and (iv) any Service Awards to the Plaintiffs awarded by the Court (not to exceed an amount of \$2,500 to each Class Representative). The Settlement also releases all claims or potential claims of Settlement Class Members against Defendants arising from or related to the Data Security Incident, as detailed in the Class Settlement Agreement and Release.

7. What claims are Settlement Class Members giving up under the Settlement?

Any Settlement Class Member who does not file a timely request for exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. The claims that Settlement Class Members are releasing are described in the Class Settlement Agreement and Release.

Settlement Benefits Available to Settlement Class Members

8. What benefits can Settlement Class Members receive?

Settlement Class Members who submit valid claims and any required documentation may receive one or more of the following: (i) three (3) years of Financial Account Monitoring Services, (ii) Compensation for Unreimbursed Documented Monetary Losses up to \$5,000, and (iii) a Pro Rata Cash Payment: a *pro rata* share of the Net Settlement Fund, less all valid claims for Unreimbursed Losses and Financial Account Monitoring, estimated to be not less than \$50.

Depending on how many valid claims are submitted, the amounts of the Pro Rata Cash Payment will be adjusted upward or downward proportionally among Settlement Class Members submitting valid claims for those awards, as explained further below in Question 11.

9. What are Unreimbursed Documented Monetary Losses?

The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$5,000 per person who is a Participating Settlement Class Member, upon submission of a claim and supporting documentation, for unreimbursed ordinary and/or extraordinary monetary losses incurred as a result of the Data Security Incident, 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 Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Participating Settlement Class Members with ordinary and/or extraordinary economic losses 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.

10. What is the Pro Rata Cash Payment?

Every Settlement Class Member is eligible to receive a Pro Rata Cash Payment share of the Net Settlement Fund, less all valid claims for Unreimbursed Losses and Credit Monitoring. To receive this benefit, Participating Settlement Class Members must submit a valid claim form, but no documentation is required to make a claim. The amount of the Cash Payments will be increased or decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments. Class Counsel predicts the value of *pro rata* payments will exceed \$50 per valid claimant. The Pro Rata Cash Payment is subject to upward or downward adjustment as described below in Question 11.

Eligibility for any award and the validity of your claim, including the Pro Rata Cash Payment, will be determined by the Settlement Administrator as outlined in Question 15.

11. When and how will the amount of Settlement payments be adjusted?

The amounts paid for all Pro Rata Cash Payments will be adjusted upward or downward from the amounts listed in Question 10 depending on how many Settlement Class Members submit valid claims.

If the total dollar value of all valid claims is less than the amount of money available in the Settlement Fund for payment of those claims, the amounts for Pro Rata Cash Payments will be adjusted upward proportionally among all valid claims for those awards, until the amounts remaining in the Settlement Fund are exhausted (or as nearly as possible).

If the total dollar value of all valid claims is more than the amount of money available in the Settlement Fund for payment of those claims, the amount of the payments for Pro Rata Cash Payments will be adjusted downward proportionally among all Settlement Class Members who submitted valid claims for Pro Rata Cash Payments.

Settlement Class Members may receive compensation for both Unreimbursed Economic Losses and Pro Rata Cash Payments, subject to a combined monetary benefits cap of \$5,000 per Settlement Class Member.

12. What happens after all claims are processed and there are funds remaining?

The funds remaining in the Settlement Fund after completion of these disbursements and after the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be sent to a not-for-profit charitable organization, which must be jointly proposed by the parties and approved by the Court, as a *cy pres* distribution.

Your Options as a Settlement Class Member

13. If I am a Settlement Class Member, what options do I have?

If you are a Settlement Class Member, you do not have to do anything to remain in the Settlement. In order to receive payment from the Settlement, you must submit a valid Claim Form.

If you do not want to give up your right to sue Defendants about the Data Security Incident or the issues raised in this case, you must exclude yourself (or “opt out”) from the Settlement Class. See Question 16 below for instructions on how to exclude yourself.

If you wish to object to the Settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and submit a written objection. See Question 19 below for instructions on how to submit an objection.

14. What happens if I do nothing?

If you do nothing, you will get no award from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes Final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants related to the claims released by the Settlement.

15. Who decides my Settlement claim and how do they do it?

The Settlement Administrator will decide whether a Claim Form is complete and valid and includes all required documentation. The Settlement Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

16. How do I exclude myself from the Settlement?

To opt out of the Settlement, you must submit a request for exclusion that must include the name of the proceeding, 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, or some other clear manifestation of the intent to opt out of the Settlement in the written communication. Each request for exclusion must request exclusion only for that one individual whose personal signature appears on the request. You must mail your request to this address:

**Upstream Data Settlement Administrator
Attn: Exclusions
P.O. Box 173001
Milwaukee, WI 53217**

Your request must be postmarked by **December 31, 2024**.

17. If I exclude myself, can I receive any payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any award under the Settlement. However, you will also not be bound by any judgment in this Action.

18. If I do not exclude myself, can I sue Defendants for the Data Security Incident later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a claim form requesting a payment.

19. How do I object to the Settlement?

All Settlement Class Members who do not opt out from the Settlement Class have the right to object to the Settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement Payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing and your objection and any supporting papers must be mailed to this address:

**Upstream Data Settlement Administrator
c/o A.B. Data, Ltd.
P.O. Box 173117
Milwaukee, WI 53217**

Your objection must be filed or postmarked no later than the objection deadline, December 31, 2024.

To be considered by the Court, your written objection must include: (i) the name of the proceeding; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the 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.

If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

Court Approval of the Settlement

20. How, when, and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. That hearing is scheduled for **February 24, 2025, at 2:00 p.m.** at the Circuit Court of Jefferson County Alabama, Tenth Judicial Circuit, 716 Richard Arrington Jr. Blvd. N, Birmingham, AL 35203. At the Final Approval Hearing, the Court will consider whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement. If there are timely objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Class Counsel's request for attorneys' fees and costs and expenses, and

the request for a service award for the Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check www.UpstreamDataSettlement.com to confirm the schedule if you wish to attend.

21. Do I have to attend the hearing?

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 19. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

22. What happens if the Court approves the settlement?

If the Court approves the Settlement and no appeal is taken, the Settlement Fund will be fully funded. The Settlement Administrator will pay any Fee Award and Expenses and any Plaintiffs' Service Awards from the Settlement Fund. Then, the Settlement Administrator will send Settlement Payments and Credit Monitoring Services to Settlement Class Members who submitted timely and valid Claim Forms.

If any appeal is taken, it is possible the settlement could be disapproved on appeal.

23. What happens if the Court does not approve the settlement?

If the Court does not approve the Settlement, there will be no Settlement Payments to Settlement Class Members, Class Counsel, or the Plaintiffs, and the case will proceed as if no Settlement had been attempted.

Lawyers for the Settlement Class and Defendants

24. Who represents the Settlement Class?

The Court has appointed the following Class Counsel to represent the Settlement Class in this Action:

Class Counsel	
Jonathan S. Mann Austin B. Whitten PITTMAN, DUTTON, HELLUMS, BRADLEY & MANN P.C. 2001 Park Place, Suite 1100 Birmingham, AL 35203	Hirlye R. “Ryan” Lutz, III F. Jerome Tapley Hunter Phares CORY WATSON, P.C. 2131 Magnolia Avenue South Birmingham, AL 35205
Annesley H. DeGaris Alexandra J. Calton DEGARIS LAW, LLC 2 20th Street North, Suite 1030 Birmingham, AL 35203	Taylor Bartlett HENINGER GARRISON DAVIS, LLC 2224 1st Avenue N. Birmingham, AL 35203
Nicholas A. Migliaccio Jason S. Rathod MIGLIACCIO & RATHOD LLP 412 H St. NE, Suite 302 Washington, D.C. 20002	A. Brooke Murphy MURPHY LAW FIRM 4116 Will Rogers Pkwy., Suite 700 Oklahoma City, OK 73108
Daniel Srourian, Esq. SROURIAN LAW FIRM, P.C. 468 N. Camden Dr., Suite 200 Beverly Hills, CA 90210	Tyler J. Bean SIRI & GLIMSTAD LLP 745 Fifth Avenue, Suite 500 New York, NY 10151
Gary M. Klinger MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC 227 W. Monroe Street, Suite 2100 Chicago, IL 60606	

Settlement Class Members will not be charged for the services of Class Counsel. Class Counsel will be paid out of the Settlement Fund, subject to Court approval. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the Final Approval Hearing.

25. How will the lawyers for the Settlement Class be paid?

Class Counsel will file a Fee and Expense Application for an award of attorneys' fees to be paid from the Settlement Fund not to exceed one-third (1/3) of the value of the Settlement, or \$1,434,966.17, and litigation expenses up to \$50,000.00. 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 Action not to exceed \$2,500 per Plaintiff (\$25,000.00 total).

26. Who represents Defendants in the Action?

Defendants are represented by the following counsel:

Defendants' Counsel
<p>James F. Monagle, Esq.</p> <p>MULLEN COUGHLIN LLC 500 Capitol Mall, Suite 2350 Sacramento, CA 95814</p>

For Further Information

27. What if I want further information or have questions?

Go to www.UpstreamDataSettlement.com, call 1-866-217-4459, or write to Upstream Data Settlement Administrator, c/o A.B. Data, Ltd., P.O. Box 173117, Milwaukee, WI 53217.

Please do not contact the Court or Defendants' Counsel.