



## AlaFile E-Notice

01-CV-2024-902563.00

Judge: MONICA Y. AGEE

To: JONATHAN S. MANN  
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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

JEREMY HUFSTETLER ET AL V. UPSTREAM REHABILITATION, INC. ET AL  
01-CV-2024-902563.00

The following matter was FILED on 2/10/2025 5:25:45 PM

**C001 HUFSTETLER JEREMY**

**C002 RUNK ADAM**

**C003 HATFIELD CONNIE**

**C004 JHALA YASHVANTSINH**

**C005 STARK DALE**

**C006 KENNY LISA**

**C007 MORRISSETTE A'TAVION**

**C008 SAWYER GENE**

**C009 MOFFA ROBERT**

**C010 HARNER LEAH**

**C011 YOUNG JUDY**


UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

[Filer: MANN JONATHAN STEPHEN]

Notice Date: 2/10/2025 5:25:45 PM

JACQUELINE ANDERSON SMITH  
CIRCUIT COURT CLERK  
JEFFERSON COUNTY, ALABAMA  
716 RICHARD ARRINGTON, JR BLVD  
BIRMINGHAM, AL, 35203

205-325-5355  
jackie.smith@alacourt.gov

<b>STATE OF ALABAMA</b> Unified Judicial System 01-JEFFERSON		Revised 3/5/08 <input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	Cas CV20	 <b>ELECTRONICALLY FILED</b> 2/10/2025 5:25 PM 01-CV-2024-902563.00 CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA JACQUELINE ANDERSON SMITH, CLERK
JEREMY HUFSTETLER ET AL V. UPSTREAM REHABILITATION, INC. ET AL		<b>CIVIL MOTION COVER SHEET</b> <i>Name of Filing Party:</i> C001 - HUFSTETLER JEREMY C002 - RUNK ADAM C003 - HATFIELD CONNIE C004 - JHALA YASHVANTSINH C005 - STARK DALE C006 - KENNY LISA C007 - MORRISSETTE A'TAVION C008 - SAWYER GENE C009 - MOFFA ROBERT C010 - HARNER LEAH C011 - YOUNG JUDY		
<i>Name, Address, and Telephone No. of Attorney or Party. If Not Represented.</i> JONATHAN S. MANN 2001 PARK PLACE N., STE. 1100 BIRMINGHAM, AL 35203 <i>Attorney Bar No.:</i> MAN057		<input type="checkbox"/> Oral Arguments Requested		
<b>TYPE OF MOTION</b>				

Motions Requiring Fee	Motions Not Requiring Fee
<input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion <input type="checkbox"/> (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00) Renewed Dispositive Motion (Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56 (\$50.00) <input type="checkbox"/> Motion to Intervene (\$297.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00)  <p>*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.</p> <input type="checkbox"/> Local Court Costs \$   0 _____	<input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input checked="" type="checkbox"/> Other      Unopposed Motion for Final Approval of Class Action Settlement pursuant to Rule 23 _____ (Subject to Filing Fee)
Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) <input type="checkbox"/>	<div style="display: flex; justify-content: space-between;"> <div> <b>Date:</b>            2/10/2025 5:20:24 PM         </div> <div> <b>Signature of Attorney or Party</b>            /s/ JONATHAN S. MANN         </div> </div>

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION**

**JEREMY HUFSTETLER, ADAM RUNK,  
CONNIE HATFIELD, YASHVANTSINH  
JHALA, DALE STARK, LISA KENNY,  
A'TAVION MORRISSETTE, GENE  
SAWYER, ROBERT MOFFA, LEAH  
HARNER, and JUDY YOUNG, individually  
and on behalf of all others similarly situated,**

**Plaintiffs,**

**v.**

**UPSTREAM REHABILITATION, INC.  
and UPSTREAM ROLLCO, LLC,**

**Defendants.**

**Case No. 01-CV-2024-902563.00**

**PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT AND MEMORANDUM IN SUPPORT**

Plaintiffs Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A'Tavion Morrisette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young, individually ("Representative Plaintiffs" or "Plaintiffs"), and on behalf of the proposed Settlement Class<sup>1</sup> of similarly situated individuals, respectfully submit this Unopposed Motion for Final Approval of Class Action Settlement and Memorandum of Law in support thereof. As set forth below and in the proposed Final Approval Order submitted herewith, Plaintiffs respectfully request that this Court enter an Order and thereafter a Final Judgment as follows: (a) granting certification of the Settlement Class for settlement purposes; (b) appointing Plaintiffs as Representative

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<sup>1</sup> Unless otherwise specified, capitalized terms not herein defined shall have the meaning ascribed to them in Settlement Agreement ("SA"), which is attached as Exhibit A to *Plaintiffs' Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement*.

Plaintiffs and reaffirming as Class Counsel the attorneys appointed in the Preliminary Approval Order; (c) finding the Notice Program satisfied due process requirements and Alabama Rule of Civil Procedure 23; (d) finding the terms of the Settlement are fair, reasonable, and adequate; (e) directing the Parties, their attorneys, and the Settlement Administrator to consummate the Settlement in accordance with the Final Approval Order and the terms of the Agreement; (f) resolving all claims, including the Released Claims, against the Released Parties and ruling the Settlement is binding on all Settlement Class Members, including the Releases contained in the Agreement; (g) overruling objections, if any; (h) granting this *Motion and Memorandum For Approval of Attorneys' Fees, Expenses, and Service Awards*; and (i) dismissing the Action and entering a Final Judgment.

## **I. INTRODUCTION**

On September 24, 2024, the Court granted preliminary approval of the Settlement between Plaintiffs and Defendants Upstream Rehabilitation, Inc. and Upstream Rollco, LLC, and ordered that Notice be given to the Settlement Class. The Settlement provides an excellent result for the roughly 546,168-person Settlement Class in the form of monetary and non-monetary relief, which includes: (1) up to \$5,000 in reimbursement of documented losses fairly traceable to the Data Security Incident; (2) *pro rata* cash payments from the Settlement Fund, and (3) three years of financial account monitoring, including \$1,000,000 of fraud/identity theft insurance. The Settlement also provides for equitable relief in the form of data security enhancements implemented at considerable cost to Defendants.

After extensive arm's-length negotiations and a full-day mediation, the Parties negotiated the Settlement, thereby allowing Plaintiffs to circumvent the many risks and uncertainties they would ultimately face at each stage of litigation if the case were to proceed to trial. Indeed,

Plaintiffs' claims involve the intricacies of data security litigation, which is a novel and constantly evolving area of the law. Although Plaintiffs believe in the merits of their claims, Defendants deny all charges of wrongdoing or liability. Against these risks, Class Counsel and Plaintiffs believe that the Settlement is fair, reasonable, and adequate, and represents an excellent result for the Settlement Class.

After this Court granted preliminary approval, the Settlement Administrator disseminated Notice to the Settlement Class as set forth in the Settlement Agreement. Individual Notice was provided directly to Settlement Class Members via first-class mail, successfully reaching 99.3% of the Settlement Class and easily meeting the due process standard. *See Declaration of Brian Devery on Implementation and Adequacy of Notice Program* attached hereto as **Exhibit 1** ("Admin. Decl."), ¶ 9. The Notice was written in plain language, providing each Settlement Class Member with information on how to make a claim, how to opt-out, and how to object to the Settlement. Settlement Class Members' support for the Settlement has been very favorable, with only six opt-out requests and not a single Settlement Class Member objecting to the Settlement. Admin. Decl. ¶¶ 13-14.

For these reasons and those further set forth herein, Plaintiffs respectfully request the Court grant their Motion for Final Approval of the Class Action Settlement.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

In the interest of efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to, and hereby incorporate, *Plaintiffs' Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement* filed on September 18, 2024.

### III. SUMMARY OF SETTLEMENT

#### A. Settlement Benefits

The Settlement negotiated on behalf of the Settlement Class provides significant relief for the Plaintiffs and Settlement Class Members who submit timely and valid claims. The Settlement requires Defendants establish a non-reversionary Settlement Fund in the amount of \$4,304,898.50, which provides for the following: (1) reimbursement of documented monetary losses, up to \$5,000, (2) three years of single-bureau financial account monitoring and at least \$1,000,000 of fraud/identity theft insurance; and (3) a *pro rata* cash payment, with no maximum cap; (4) equitable relief in the form of information security enhancements. *See* SA ¶ 58. The Settlement Fund will also be used to pay for the costs of notice and settlement administration and Plaintiffs' service awards and attorneys' fees and costs awarded by the Court. *Id.* ¶ 56. The Settlement provides for relief for a Settlement Class of over 546,000 individuals, which is defined 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.

SA ¶ 48. The Settlement specifically excludes 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. *Id.* ¶ 49.

#### 1. *Monetary Relief*

The monetary relief provided for by the Settlement Agreement consists of reimbursement of documented monetary losses, fairly traceable to the Data Security Incident up to \$5,000 per individual ("Monetary Losses") and a Pro Rata Cash Payment. SA ¶ 58(a) and (c). Monetary Losses may include, 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. Settlement Class Members with Monetary Losses 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 to support other submitted documentation. SA ¶ 58(a).

Settlement Class Members may also submit a claim for a *Pro Rata* Cash Payment. *Id.* ¶ 58(c). The amount of this benefit shall be determined *pro rata* based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Service Awards, Administration and Notice Costs, costs of Financial Account Monitoring, and claims for Reimbursement of Documented Monetary Losses. There will be no maximum payment amount for *Pro Rata* Cash Payments. *Id.*

## **2. Credit Monitoring and Identity Theft Protections**

All Settlement Class Members may submit a claim for three (3) years of single-bureau financial account monitoring and at least \$1,000,000 of fraud/identity theft insurance. Settlement Class Members may use their code to enroll for a period of 12 months (meaning that a Class Member could enroll up to the end of the first year and have coverage for the full three (3) years). SA ¶ 58(b). Such coverage and flexibility in enrollment will provide protection for Settlement Class Members against future identity theft. The three-year period will commence when Settlement Class Members use their codes to activate the Financial Account Monitoring. *Id.*

### **3. *Equitable and Prospective Relief***

In addition to the benefits available to Settlement Class Members described above, Plaintiffs have also received assurances that Defendants either have undertaken or will undertake certain reasonable steps to further secure their systems and environments and Defendants will prepare a confidential declaration detailing same. SA ¶ 58(d). None of the past or future costs associated with the development and implementation of these enhanced security procedures has been or will be paid by Plaintiffs, and no portion of the Settlement Fund is to be used for this purpose. *Id.*

#### **B. Attorneys' Fees, Costs, and Expenses**

On December 17, 2024, Class Counsel moved for an attorneys' fee and expenses award of \$1,434,966.17, one-third of the Settlement Fund plus reimbursement of litigation costs and expenses of \$10,598.48. The fee motion and supporting declaration were posted to the Settlement Website so Settlement Class Members could access and review it prior to submitting a claim, objection, or request for exclusion from the settlement and not a single objection was received. Admin Decl. ¶¶ 7, 14. To date, no Settlement Class Members have objected to the requested attorneys' fees.

#### **C. Notice and Settlement Administration Costs**

Defendants agreed to pay for Notice and Settlement Administration costs from the Settlement Fund, including the cost of implementing and developing the Notice Program, as well as the costs of a Settlement Administrator to disseminate Notice, administer the Settlement, evaluate claims, and pay Settlement Class Members who submitted timely and valid claims. SA ¶ 61. The final cost will not be known to the Parties until administration is complete, however, such costs are estimated to be \$547,824. Admin. Decl. ¶ 15.

#### **D. Release**

Upon entry of the Final Approval Order, Settlement Class Members who do not submit a valid and timely request for exclusion from the Settlement Agreement will release claims against Defendants related to the Data Incident. The “Released Claims” are fully defined in Paragraph 31 of the Settlement Agreement and include all claims “arising out of, or relating to the Data Security Incident, and which have been asserted or could have been asserted based on the facts alleged in this Action against any of the Released Parties.” SA ¶ 31. The Release is tailored to the claims that have been pleaded or could have been pleaded in this case. *See Declaration of Jonathan Mann in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement* (“Mann Prelim. App. Decl.”) ¶ 28.

#### **IV. THE SETTLEMENT MERITS FINAL APPROVAL**

A class action may be settled, voluntarily dismissed, or compromised only with court approval. Ala. R. Civ. P. 23(e). Judicial policy favors voluntary settlement as the means of resolving class-action cases; however, the court has an independent duty to ensure that the settlement is fair, adequate, and reasonable. *See Austin v. Hopper*, 28 F.Supp.2d 1231 (M.D. Ala. 1998). Courts review a proposed class action settlement for fairness, reasonableness, and adequacy. Ala. R. Civ. P. 23; *Perdue v. Green*, 127 So. 3d 343, 356 (Ala. 2012). Courts have long recognized that “class action suits have a well-deserved reputation as being the most complex,” and, therefore, compromise is particularly appropriate. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977); *In re Domestic Air Transportation Antitrust Litigation*, 148 F.R.D. 297, 312 (N.D. Ga. 1993) (“Settlements of class actions are highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits.”); *In re General Motors Corp. Pick-up Truck Fuel Tank Litig.*, 55 F. 3d 768, 784 (3d Cir. 1995) (“The law favors

settlement, particularly in class actions. . .”).

### **A. The Settlement is Fair and Reasonable**

In assessing a class action settlement, the courts are advised to “refrain from making a precise determination of the parties’ respective legal rights.” *EEOC v. Hiram Walker & Sons, Inc.*, 768 F. 2d 884, 889 (7th Cir. 1985). Similarly, “[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 614, 625 (9th Cir. 1982). Even if “the relief afforded by the proposed settlement is substantially more narrow than it would be if the suits were to be successfully litigated,” this is no objection to a class settlement, since “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Air Line Stewards & Stewardesses Assn’ v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

Instead, considerable weight should be given to the views of experienced counsel on the merits of the settlement. *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982). There is a “strong initial presumption” that an arms-length settlement arrived at by counsel experienced in the type of litigation involved on the basis of sufficient information concerning the claims at issue is fair. *Feder v. Harrington*, 58, F.R.D. 171, 175 (S.D.N.Y. 1972). Stated another way, “[t]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of the counsel.” *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (citing *Flinn v. FMC Corp.*, 528 F. 2d 1169, 1173 (4th Cir. 1975)); *Pettway v. American Cast Iron Pipe Co.*, 576 F. 2d 1157, 1214 (5th Cir. 1978) *cert. denied*, 439 U.S. 1115 (1979). Also, it is essential that the Court does not examine the settlement as if the defendants had been found liable. *See, e.g., City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455-56 (2nd Cir. 1974); *Cf. Cotton*, 559 F. 2d at 1330 (“Inherent in

compromise is a yielding of absolutes and an abandoning of highest hopes”) (quoting *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972)).

In *Adams v. Robertson*, 676 So. 2d 1265 (Ala. 1995), the Alabama Supreme Court set forth eight factors that trial courts may consider when determining whether to approve a settlement: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which the settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of the litigation; (5) the substance and amount of opposition to the settlement; (6) the stage of the proceedings at which the settlement was achieved; (7) the financial ability of the defendant(s) to withstand a greater judgment and the potential for a judgment or judgments in an amount or amounts likely to trigger due process considerations relating to punitive damages; and (8) whether proper notice was given. *Id.* at 1273; *see also Perdue*, 127 So. 3d at 356.

As shown below, these factors all support a finding that the proposed Settlement is fair and reasonable and should be approved.

### ***1. The likelihood of success at trial***

While Plaintiffs strongly believe they have a good likelihood of prevailing on their claims, they are also aware that Defendants have denied their material allegations and have raised several legal defenses, any of which, if successful, would result in Plaintiffs and the proposed Settlement Class Members receiving no relief whatsoever. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2023 U.S. Dist. LEXIS 117355, at \*24 (S.D. Fla. July 8, 2023) (“This is not only a complex case—it lies within an especially risky field of litigation: data breach.”). Class certification is

another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). And while it is easy to hope for a substantial award at trial, as one federal district court reminded several objectors to a class settlement, “[i]n the real world. . .the path to a large damage award is strewn with hazards.” *In re Gulf Oil/Cities Serv. Tender Offer Litigation*, 142 F.R.D. 588, 595 (S.D.N.Y. 1992). The Settlement replaces the risks of establishing liability and damages with immediacy and certainty of a substantial recovery.

Given there is significant risk that either Plaintiffs’ individual claims will not survive, or that Plaintiffs will ultimately be unsuccessful in certifying a class of individuals who would be entitled to any award following trial, this factor favors final approval.

**2. *The Settlement is within the range of possible recovery at trial and is fair, reasonable, and adequate.***

The second and third *Adams* factors are often considered together. *See Burrows v. Purchasing Power, LLC*, No. 1:12-cv-22800, 2013 U.S. Dist. LEXIS 189397, at \*14 (S.D. Fla. Oct. 4, 2013) (the second and third factors “are easily combined”). In determining whether the amount of the settlement is reasonable, “the Court is not confined to the mechanistic process of comparing the settlement to the estimated recovery times the multiplier derived from the likelihood of prevailing on the merits.” *In re Corrugated Container Antitrust Litigation*, 643 F. 2d 195, 217 (5th Cir. 1981). Instead, the Court must recognize that, “[i]n any case, there is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in a particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.1972), *cert. denied sub nom.*, 409 U.S. 1039 (1972). There is no fixed point above or below which a settlement is or is not fair. Indeed, “[t]he fact that a proposed settlement may only amount to a fraction of the potential

recovery does not, in and of itself, mean that the proposed settlement is inadequate; there is no reason why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.” *In re TBK Partners, Limited v. Western Union Corp.*, 675 F. 2d 456, 463-64 (2d Cir. 1982).

Here, the proposed Agreement is fair, reasonable, and adequate and is in the best interest of Settlement Class Members because, upon submission of a valid Claim Form and approval of the claim, Settlement Class Members may be provided (1) up to \$5,000 in reimbursement of documented losses fairly traceable to the Data Security Incident; (2) *pro rata* cash payments from the Settlement Fund, and (3) three years of financial account monitoring, including \$1,000,000 of fraud/identity theft insurance. SA ¶ 58. This relief is especially beneficial to the Settlement Class Members in light of the possibility that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Thus, the Settlement provides an immediate and substantial benefit to participating Settlement Class Members and is eminently reasonable, especially considering that it avoids the potential contingencies of continued litigation. *See Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 559 (N.D. Ga. 2007) (court found settlement fair, reasonable, and adequate, and approval warranted where there was an immediate and substantial benefit to the class).

Thus, in light of the second and third *Adams* factors, the proposed Settlement is fair, reasonable, and adequate and warrants the Court’s final approval.

### **3. *The complexity, expense, and duration of the Litigation***

With respect to factor four, in the absence of settlement, it is certain that the expense, duration, and complexity of the resulting protracted litigation would be substantial. Courts have consistently viewed the expense and possible duration of litigation as factors appropriately

considered in evaluating the reasonableness of a settlement. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1292 (9th Cir. 1992) (“complexity, duration and sheer enormity of the pending class action weighed heavily against a conclusion that the district court abused its discretion in approving the settlement”). Continued litigation would increase the burden on the court, without any guaranteed benefit to Plaintiffs or Settlement Class Members. “Complex litigation . . . ‘can occupy a court’s docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.’” *Woodward v. NORAM Chem. Co.*, No. Civ-94-0870, 1996 U.S. Dist. LEXIS 7372, at \*62-63 (S.D. Ala. May 23, 1996). Where a settlement, like here, “will alleviate the need for judicial exploration of . . . complex subjects [and] reduce litigation costs[,]” this factor weighs in favor of final approval. *See Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005).

Here, continued litigation of all issues by Defendants, which are represented by highly capable counsel, would have prolonged any recovery to Settlement Class Members. The Parties would have to undergo significant motions practice and discovery before any trial on the merits could even be contemplated. Such motions practice would likely include motions for summary judgment on each Plaintiffs’ individual claims, briefing on any motion for class certification brought by Plaintiffs, motions to exclude expert witness(es), in addition to briefing motions involving discovery disputes. Further, given the complexity of the issues and the amount in controversy, the defeated party(ies) would likely appeal any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification. And even if Plaintiffs were ultimately successful in the continued prosecution of the case through trial, appeals taken by the determined Defendants would entail enormous additional effort and expense with no promise of a greater recovery. As such, the immediate and considerable relief provided to the Class under the



Settlement Agreement weighs heavily in favor of its final approval compared to the inherent risk and delay of continued litigation, trial, and appeal.

**4. *The response to the Settlement has been overwhelmingly positive.***

It is well-settled that “the reaction of the Class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *Sala v. National Railroad Passenger Corp.*, 721 F.Supp. 80, 83 (E.D. Pa 1989). A favorable reception by the Class constitutes “strong evidence” of the fairness of the settlement and supports judicial approval. *In re Payne Webber Limited Partnerships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff’d*, 117 F. 3d 721 (2d Cir. 1997) (citing *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 462 (2d Cir. 1974)).

Given the strength of this Settlement and the significant benefits that Settlement Class Members can claim, the Settlement has been received positively by the Settlement Class. The 26,830 valid Claim Forms submitted by Settlement Class Members represent a 4.93% claims rate. Admin. Decl. ¶12. This surpasses the claims rates frequently seen in other data breach class action settlements that have been approved. *See, e.g., In re Wawa, Inc. Data Sec. Litig.*, No. 19-6019, 2024 U.S. Dist. LEXIS 65200 (E.D. Pa. Apr. 9, 2024) (2.56% claims rate “actually compares favorably to the claims rates in other data breach class actions”); *Carter v. Vivendi Ticketing United States LLC*, No. 22-01981, 2023 U.S. Dist. LEXIS 210744, at \*15 (C.D. Cal. Oct. 30, 2023) (1.6% claims rate “is in line with claims rates in other data breach class action settlements” and collecting cases with claims rates between 0.83% and “about two percent”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 (N.D. Cal. 2018) (1.8% claims rate reflects a positive reaction by the class). Moreover, the Objection Deadline passed with *no objections* to the Settlement submitted. Admin Decl. ¶ 14.

Thus, the overwhelming support for this Settlement reaffirms the Court’s preliminary

conclusion that the Settlement is fair, reasonable and adequate, and this factor supports final approval.

**5. *Plaintiffs and Class Counsel had sufficient information to evaluate the merits and negotiate a fair, adequate, and reasonable Settlement.***

In assessing this factor, the relevant inquiry is whether the parties have obtained sufficient information or discovery to assess the strengths and weaknesses of the claims and defenses to be asserted in the action. *Garst v. Franklin Life Ins. Co.*, No. 97-cv-0074, 1999 U.S. Dist. LEXIS 22666, at \*70 (N.D. Ala. June 25, 1999). Comprehensive discovery is not required. *Woodward*, 1996 U.S. Dist. LEXIS 7372, at \*64. Only some reasonable amount of discovery is necessary. *Id.*

This case, though settled at an early stage, has been thoroughly investigated by Class Counsel who are experienced in data breach litigation and who spent a significant amount of time reviewing informal discovery and considering the claims and defenses at issue in this case; the Settlement is also the result of adversarial arms' length negotiations. Mann Prelim. App. Decl., ¶¶10-15. Class Counsel's experience and investigation, combined with confirmatory discovery, put Plaintiffs in a position to proficiently evaluate the case and negotiate a Settlement they view as fair, reasonable, adequate, and worthy of final approval. *See Griffin v. Flagstar Bancorp Inc.*, No. 2:10-cv-10610, 2013 U.S. Dist. LEXIS 173702, at \*11-12 (E.D.Mich. Dec. 12, 2013) ("The absence of formal discovery in no way undermines the integrity of the settlement given the extensive investigation that has occurred as a result of proceedings thus far which demonstrates that counsel have a full understanding of the strengths and weaknesses of their case."). Thus, this factor favors approval of the settlement.

**6. *Defendants' ability to withstand a greater judgment.***

The ability for Defendants to withstand a greater judgment is not at issue here. However, even if Defendants could withstand a greater judgment, its ability to do so, "standing alone, does

not suggest that the settlement is unfair.” *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 178 n.9 (S.D.N.Y. 2000)); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d. Cir. 2004) (finding that “this factor neither favored nor disfavored settlement” because Defendants’ “ability to pay a higher amount was irrelevant to determining the fairness of the settlement.”). Thus, this factor is neutral.

**B. The Notice Program was Successful.**

On September 24, 2024, the Court preliminarily appointed AB Data, Ltd. to be the Settlement Administrator. On November 1, 2024, AB Data commenced the Notice Program. Admin. Decl. ¶ 4. The Notice program utilized Postcard Notice disseminated via U.S. mail to all Settlement Class Members whose addresses are available within Defendants’ records. *Id.* ¶¶ 2-5. On November 1, 2024, AB Data also established a Settlement Website, [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com), which included information about the Settlement, related case documents, the Settlement Agreement, and allowed Settlement Class Members to file claim forms electronically. *Id.* ¶ 7. There have been 16,052 total unique users who have visited the Settlement Website with 47,230 page views. *Id.* Finally, on November 1, 2024, AB Data established the toll-free number, 1-866-217-4459, for Settlement Class Members to receive additional information and ask questions about the Settlement. *Id.* ¶ 8. As of January 30, 2025, AB Data has received 1,312 calls regarding the Settlement. *Id.*

The timing of the Claims Process was structured to ensure that all Settlement Class Members had adequate time to review the terms of the Settlement, compile documents supporting their Claim, and to decide whether to submit a Claim, opt-out of, or object to the Settlement. Mann Prelim. App. Decl. ¶ 38. The Claims Process has been straightforward, with Settlement Class

Members able to submit claims either through the Settlement Website or by hard copy mailed to the Settlement Administrator. Admin. Decl. ¶ 10. The Settlement Administrator has received a total of 26,830 Claim Forms as of January 30, 2025. *Id.* ¶ 11. The 26,7830 claims represent 4.95% of the Settlement Class—a rate that is typical in consumer settlements, and certainly those involving data breaches. *Id.* ¶ 12. As of January 30, 2025, the estimated number of claims received requesting a Cash *Pro Rata* payment total 25,683. *Id.* ¶ 17. Estimating a Cash *Pro Rata* payment of \$50.00 per claim, the total estimated payment for Cash *Pro Rata* payments totals \$1,284,150.00. *Id.* As of January 30, 2025, 204 claimants have requested Financial Account Monitoring only. *Id.* ¶ 18. As of January 30, 2025, 70 claims have been received requesting Compensation for Unreimbursed Documented Losses. *Id.* ¶ 19. The value per claim and the validity of the supporting documentation will be substantiated following completion of the claims review process. The Objection and Opt-Out Periods ended on December 31, 2024. *Id.* ¶¶ 13, 14. As of January 30, 2025, A.B. Data has received six (6) opt-out requests and no objections. *Id.*

In conclusion, the Settlement Agreement is fair, reasonable, and adequate considering, among other things: (1) the relief available to Plaintiffs and Settlement Class Members under the terms of the Settlement Agreement; (2) the attendant risks and uncertainty of litigation, as well as the difficulties and delays inherent in litigation; and (3) the desirability of resolving the case promptly to provide effective relief to Plaintiffs and the Settlement Class.

### **C. The Settlement Class Satisfies Alabama Rule of Civil Procedure 23**

As set forth in Plaintiffs' Motion for Preliminary Approval, each of the class certification requirements of Alabama Rule of Civil Procedure 23 is easily met here. Indeed, in the Preliminary Approval Order, the Court preliminarily certified the Settlement Class, finding that the Class satisfies all Ala. R. Civ. P. 23 requirements. Nothing has changed since then that could conceivably

undermine class certification. Accordingly, Plaintiffs respectfully request that the Court finally certify the Settlement Class for Settlement purposes.

## V. CONCLUSION

Plaintiffs have negotiated a fair, adequate, and reasonable Settlement that guarantees Settlement Class Members receive significant benefits in the form of monetary compensation, credit monitoring, and equitable relief. Based on the above reasons, Plaintiffs respectfully request that the Court enter an order granting final approval of the Settlement, finally certifying the Settlement Class for settlement purposes only, appointing Plaintiffs as Representative Plaintiffs, appointing PITTMAN, DUTTON, HELLUMS, BRADLEY, & MANN, P.C., CORY WATSON, P.C., MIGLIACCIO & RATHOD LLP, SROURIAN LAW FIRM, P.C., SIRI & GLIMSTAD LLP, HENINGER GARRISON DAVIS, LLC, DEGARIS LAW, LLC, and MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC, as Class Counsel, and granting Plaintiffs' request for Service Awards in the amount of \$2,500 each, attorneys' fees in the amount of one-third of the Settlement Fund (\$1,434,966.17), and reimbursement of litigation expenses in the amount of \$10,598.48.

Dated: February 10, 2025

Respectfully submitted,

/s/ Jon Mann

Jonathan S. Mann (MAN057)

Austin B. Whitten (WHI165)

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Email: [acalton@degarislaw.com](mailto:acalton@degarislaw.com)

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

Pursuant to Ala. R. Civ. Pro. 5(d), I hereby certify that on February 10, 2025, I filed the foregoing with the Clerk of the Court using the Court's filing system, which will send notice to all counsel of record, including:

Scott S. Brown  
**MIXON BROWN, LLC**  
44 Inverness Center Parkway  
Suite 140  
Birmingham, AL 35242  
Telephone: 205.259.6633  
Email: [sbrown@mixonbrown.com](mailto:sbrown@mixonbrown.com)

/s/ Jon Mann

Jonathan S. Mann



# **EXHIBIT 1**

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA,  
BIRMINGHAM DIVISION**

**JEREMY HUFSTETLER, ADAM RUNK,  
CONNIE HATFIELD, YASHVANTSINH  
JHALA, DALE STARK, LISA KENNY,  
A'TAVION MORRISSETTE, GENE  
SAWYER, ROBERT MOFFA, LEAH  
HARNER, and JUDY YOUNG, individually  
and on behalf of all others similarly situated,**

**Plaintiffs,**

**v.**

**UPSTREAM REHABILITATION, INC. and  
UPSTREAM ROLLCO, LLC,**

**Defendants.**

Case No.: 01-CV-2024-902563.00

**DECLARATION OF BRIAN DEVERY ON IMPLEMENTATION  
AND ADEQUACY OF NOTICE PROGRAM**

I, Brian Devery, declare as follows:

1. I am a Client Services Director at the Class Action Notice and Settlement Administration division of A.B. Data, Ltd. (“A.B. Data”), whose Corporate Office is located in Milwaukee, Wisconsin. A.B. Data was appointed as the Settlement Administrator<sup>1</sup> in this matter and is not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

**Class List**

2. Upstream provided A.B. Data with a single data file containing 548,085 entries with Insured Names and Addresses. A.B. Data reviewed the data and removed 1,917 duplicate

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<sup>1</sup> Unless defined herein, the capitalized terms used in this declaration shall have the same meaning as those defined in Section II of the Settlement Agreement and Release.

entries of names and addresses. The final list contained 546,168 unique Potential Settlement Class Members (“Class List”).

3. Prior to mailing Postcard Notices, A.B. Data processed the names and mailing addresses on the Class List through the National Change of Address Database (“NCOA”) maintained by the United States Postal Service (“USPS”). This process, among a number of features, ensures the Class List contains updated mailing addresses for Potential Settlement Class Members who may have had a registered change of address, conforms all addresses into the USPS preferred layout, and provides information regarding the validity of the provided postal addresses. After completing this process, 546,168 mailing addresses were determined to be valid.

#### **Initial Notice**

4. On November 1, 2024 A.B. Data mailed the Postcard Notice via the USPS to 546,168 Potential Settlement Class Members with mailing addresses. The Postcard Notice consisted of a double postcard with a detachable postage prepaid Paper Claim Form. A true and correct copy of the Postcard Notice is attached as **Exhibit 1**.

5. Throughout the Notice period, all Postcard Notices returned by the USPS as undeliverable as addressed were subjected to advanced address searches (Skip Traces) to locate updated mailing addresses. As of January 30, 2025, 8,295 mailed Postcard Notices were returned as undeliverable as addressed. Postcard Notices were remailed to 4,070 Potential Settlement Class Members whose updated address was available through tracing. An additional 506 Potential Settlement Class Members whose forwarding address was provided by the USPS were also remailed a Postcard Notice.

6. As of January 29, 2025, A.B. Data received 14 requests for mailed documents. A.B. Data mailed each requester a notice packet consisting of a Paper Claim Form and Long Form Notice.

#### **Settlement Website**

7. On November 1, 2024 A.B. Data published a dedicated, case-specific Settlement Website, [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com), to provide Settlement information to Potential Settlement Class Members and includes contact information for Potential Settlement Class Members to ask additional questions or request documents. The website address appeared on the Notice. Visitors to the Settlement Website can download copies of the Long Form Notice, Paper Claim Form, and other case-related documents, including the Settlement Agreement, Preliminary Approval Order, Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, and the Class Action Complaint. The Settlement Website also contained an online portal which Potential Class Members could use to submit a claim online. The Settlement Website has been viewed by 16,052 unique visitors with 47,230 page views.

#### **Toll-Free Telephone Number**

8. On November 1, 2024, A.B. Data established a toll-free telephone number, 1-866-217-4459, dedicated to answering telephone inquiries from Potential Settlement Class Members. As of January 30, 2025, A.B. Data has received 1,312 calls. The toll-free phone number has an automated interactive voice response system. It presents callers with a series of choices to hear prerecorded answers. If callers need further help, they have the option to leave a voicemail and have an operator return their call during business hours.

### **Notice Program Results**

9. As of January 30, 2025, Postcard Notice was successfully sent by USPS mail to 542,450 or 99.3% of the Potential Settlement Class Members.

### **Claim Forms**

10. Potential Settlement Class Members have the ability to submit a Claim online through the online “File a Claim” portal on the Settlement Website. The portal includes a two-point verification requiring Potential Settlement Class Members to login using their assigned Unique ID and PIN (provided on their Postcard Notices) to complete and submit an Electronic Claim Form. Potential Settlement Class Members who do not have their Unique ID and PIN can download (or print) a Paper Claim Form available on the Settlement Website. Settlement Class Members may also submit their completed Claim Form by mail or email. A copy of the Claim Form is attached as **Exhibit 2**.

11. The Claim Deadline for Settlement Class Members to submit a Claim is January 30, 2025. As of January 30, 2025, A.B. Data has received 26,830 claims, of which 7,777 were submitted online and 19,053 were submitted by mail.

12. Of the 542,450 Potential Settlement Class Members who were mailed a Notice, 26,830 (or 4.95%) of Potential Settlement Class Members have submitted a Claim.

### **Requests to Opt-Out from Settlement Class**

13. The Opt-Out Deadline for Potential Settlement Class Members to request to opt-out from the Settlement Class was December 31, 2024. As of January 30, 2025, A.B. Data has received six opt-out requests. A redacted list of the Potential Settlement Class Members who requested to opt-out of the Settlement is attached as **Exhibit 3**.

### **Objections to the Settlement**

14. The Objection Deadline for Settlement Class Members to object to the Settlement was December 31, 2024. As of January 30, 2025, A.B. Data has not received any objections.

### **Settlement Administration Costs**

15. On November 21, 2024, A. B. Data received \$500,000.00 to cover Notice, Postage, and other Settlement Administration Costs. The total Settlement Administration Costs are estimated to be \$547,824.

### **Claim Processing, Distribution, and Remaining Tasks**

16. Once the Claim Deadline has passed, A.B. Data will complete reviewing and processing all Claims received. A.B. Data will match Claims to the Class List, research Claims that do not appear in the Class List, and review submitted Claims for duplicates and fraud. A.B. Data will follow all other procedures set forth in the Settlement Agreement for approved and rejected Claims. A.B. Data will receive an electronic transfer of funds for the full amount of the Settlement Class Member Payments. Payments for Approved Claims for reimbursement for Documented Monetary Losses and Cash Payments will receive payment issued in the form of electronic payments, or upon request, a check mailed to the address provided on their Claim Form.

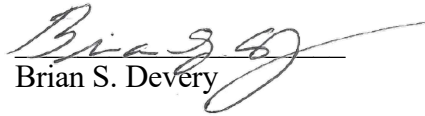
17. As of January 30, 2025, the estimated number of claims received requesting a Cash *Pro Rata* payment total 25,683. Estimating a Cash *Pro Rata* payment of \$50.00 per claim, the total estimated payment for Cash *Pro Rata* payments totals \$1,284,150.00.

18. As of January 30, 2025, 204 claimants have requested Financial Account Monitoring only.

19. As of January 30, 2025, 70 claims have been received requesting Compensation for Unreimbursed Documented Losses. The value per claim and the validity of the supporting documentation will be substantiated following completion of the claims review process.

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

Executed this 7th day of February 2025.

  
Brian S. Devery

# EXHIBIT 1



**Court Approved Legal Notice**

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

**You Can Get a Cash Payment and FREE Financial Account Monitoring Services To Help Protect Your Personal Information That May Have Been Compromised in the Upstream Rehabilitation, Inc. and Upstream RollCo LLC d/b/a Upstream Rehabilitation Data Security Incident.**

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

**IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU ARE ENTITLED TO CLAIM BENEFITS AND YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU TAKE ACTION.**

[www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com)  
1-866-217-4459

Upstream Settlement Administrator  
P.O. Box 173117  
Milwaukee, WI 53217

**PRESORTED**  
**First-Class Mail**  
**U.S. Postage**  
**Paid**  
**Permit #3780**

Postal Service: Please do not mark bar code

**Claimant ID:** [REDACTED]

[REDACTED]

RI [REDACTED] 9K

C [REDACTED] V

A

38

[REDACTED] ST

[REDACTED]

000001  
000001  
000000  
#  
#



00000001

**POSTCARD CLAIM FORM -- MEMBER ID: [REDACTED]**

To submit a claim for Credit Monitoring and/or a Pro Rata Cash Payment, please complete the form below, sign, and mail this portion of the postcard to the Settlement Administrator by no later than **January 30, 2025**. Please complete the claim form for each category of benefits that you would like to claim. You may claim one or both options.

**Contact Information (Please fill in completely.)**

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

Credit Monitoring: To receive the credit monitoring and identity theft protection plan offered as part of the settlement, please check "Yes" I would like to claim three (3) years of credit monitoring and identity theft protection. ☐ **Yes** ☐ **No**

Pro Rata Cash Payment: Would you like to receive a *pro rata* cash payment (estimated to be at least \$50)? ☐ **Yes** ☐ **No**

Payment and Credit Monitoring Details will be issued digitally via email. If the email address you include with your claim submission becomes invalid, it is your responsibility to update this information with the Settlement Administrator.

**SIGN AND DATE YOUR CLAIM FORM**

I declare under penalty of perjury that the information supplied in this claim form is true and correct. I authorize the Settlement Administrator to contact me, using the contact information set forth above, to obtain any necessary supplemental information.

Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

If you want to make a claim for out-of-pocket expenses, you must complete a claim form online or mail a full claim form.

Please visit [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com) to file or print a claim.

**Who is included in the Settlement?** 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.”

**What are the settlement benefits?** Settlement Class Members who submit valid claims and any required documentation may receive one or more of the following, to be paid from the \$4,304,898.50 Settlement Fund: (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. Visit the settlement website or call the toll-free number below for complete benefit details.

**How do I receive a payment or other benefit?** To receive any payments or benefits under the Settlement, you **MUST** submit a claim. To submit a claim, you may either: (i) fill out, detach, and mail the attached Postcard Claim Form to the Settlement Administrator; or (ii) submit a Claim Form online at [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com). You may also call 1-866-217-4459 to request that a Claim Form be mailed to you. Claims must be submitted online or postmarked by **January 30, 2025**.

**What are my other options?**

If you **Do Nothing**, you will be legally bound by the terms of the Settlement, and you will release your claims against Defendants and other Released Parties as defined in the Settlement Agreement. If you do not want to be legally bound by the Settlement, you must Exclude Yourself by **December 31, 2024**, or you will not be able to sue the Defendant for released claims relating to the Data Security Incident. If you exclude yourself, you cannot get money or benefits from this Settlement. If you want to Object to the Settlement, you may file an objection by **December 31, 2024**. The detailed Notice explains how to submit a Claim Form, exclude yourself, or object.

**Do I have a Lawyer in this Case?**

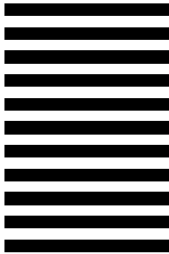
Yes, the Court appointed several law firms as Class Counsel to represent members of the Settlement Class, including Pittman, Dutton, Hellums, Bradley & Mann P.C. and Cory Watson, P.C. The full list of Class Counsel is included in the Long-Form Notice posted on the Settlement Website. If you want to be represented by your own lawyer, you may hire one at your own expense.

**When will the Court decide whether to approve the Settlement?** The Court will hold a hearing in this case on **February 24, 2025**, at the Circuit Court of Jefferson County Alabama, Tenth Judicial Circuit, 716 Richard Arrington Jr. Blvd. N, Birmingham, AL 35203, to consider whether to approve the Settlement. The Court will also consider Class Counsel’s request for attorneys’ fees of up to one-third of the Settlement Fund (or \$1,434,966.17) and reimbursement of litigation expenses of no more than \$50,000 for litigating the case and negotiating the Settlement on behalf of the Class, and service awards of \$2,500 for each of the Plaintiffs. You may attend the hearing, but you do not have to.

DEV



NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL    PERMIT NO. 1    MILWAUKEE WI

POSTAGE WILL BE PAID BY ADDRESSEE

**UPSTREAM SETTLEMENT  
ADMINISTRATOR  
PO BOX 173132  
MILWAUKEE WI 53217-9904**



# EXHIBIT 2

Upstream Data Settlement Administrator  
P.O. Box 173117  
Milwaukee, WI 53217  
[www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com)

**Your Claim Form Must Be Submitted  
Electronically or Postmarked by  
January 30, 2025**

*Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al.*

Case No. 01-CV-2024-902563.00,

Circuit Court of Jefferson County, Alabama, Tenth Judicial Circuit

**ATTENTION:** This Claim Form is to be used to apply for relief related to the Data Security Incident that occurred in January and February 2023, and potentially impacted individuals who provided their personal information to Defendants. All Settlement Class Members are eligible to receive: (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 \$50.00.

To submit a Claim, you must have been affected by the Data Security Incident beginning in January 2023 as a potential Settlement Class Member from Defendants' records and received Notice of this Settlement with a **unique Claim Number**.

**PLEASE BE ADVISED** that any documentation you provide in support of your Unreimbursed Economic Losses claim must be submitted **WITH** this Claim Form. No documentation is required for claiming a Pro Rata Cash Payment or the Credit Monitoring Services.

**CLAIM VERIFICATION:** All Claims are subject to verification. You will be notified if additional information is needed to verify your Claim.

**ASSISTANCE:** If you have questions about this Claim Form, please visit the Settlement website at [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com) for additional information or call 1-877-217-4459.

**PLEASE KEEP A COPY OF YOUR CLAIM FORM AND PROOF OF MAILING FOR YOUR RECORDS.**

**Failure to submit required documentation, or to complete all parts of the Claim Form, may result in denial of the claim, delay its processing, or otherwise adversely affect the claim.**

# CLAIM FORM

## Claimant Information

**CLAIMANT NAME\* (INDIVIDUAL OR BUSINESS NAME)**

**CONTACT NAME (IF DIFFERENT THAN CLAIMANT NAME)**

**AUTHORIZED REPRESENTATIVE (IF APPLICABLE)**

**STREET ADDRESS\***

**FLOOR/SUITE**

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

**CITY\***

**STATE\***

**ZIP\***

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

**TELEPHONE NUMBER\***

**EMAIL ADDRESS\***



**Unique ID Number:\*** (8-digit alpha/numeric number identified on the Notice mailed to you)

*Instructions. Please follow the instructions below and answer the questions as instructed.*

### *Section A - Confirm Your Eligibility*

**Did you receive a Unique Claim Number indicating that you may be a member of the Settlement Class?**

☐ Yes ☐ No

*If yes, continue to the next question. If no, you are not a member of the Settlement Class and do not qualify to file a Claim.*

### *Section B - Credit Monitoring*

☐ **Yes**, I would like to claim up to three (3) years of financial account monitoring.

The Settlement requires Defendant to provide up to three (3) years of credit and financial account monitoring to Participating Settlement Class Members under the Settlement. These services include one-bureau credit monitoring; dark web monitoring; real-time inquiry alerts; and \$1 million in identity theft insurance, among other features to Settlement Class Members who affirmatively request it.

**You do NOT need to submit valid claims for Unreimbursed Economic Losses and/or Pro Rata Cash Payment to submit a claim for credit monitoring.**

***Section C, Part 1 – Pro Rata Cash Payment***

**Cash Payment:** Would you like to receive a cash payment under the Settlement?

☐ Yes

☐ No

**\*\*** The payments under this option are predicted to be fifty dollars (\$50), however, the value of cash payment under this option will be increased or decreased *pro rata* based on the balance of the Settlement Fund after the payment of other benefits and attorneys' and Settlement Administrator fees and expenses. 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.

***Section C, Part 2 - Compensation for Unreimbursed Documented Monetary Losses***

If you suffered costs or expenditures in response to the Data Security Incident, you may be eligible to receive a payment to compensate you for losses.

If it is verified that you meet all the criteria described in the Settlement Agreement and you submit the dollar amount of those losses, you will be eligible to receive a payment compensating you for your losses of up to five thousand dollars (\$5,000).

Examples of what can be used to prove your losses include: receipts, account statements, etc. You may also prove losses by submitting information on the Claim Form that describes the expenses and how they were incurred.

Providing adequate proof of your losses does not guarantee that you will be entitled to receive the full amount claimed. All claims will also be subject to an aggregate maximum payment amount, as explained in the Settlement Agreement. If the amount of losses claimed exceeds the maximum amount of money available under the Settlement Agreement, then the payment for your claim will be reduced on a *pro rata* basis. If you would like to learn more, please review the Settlement Agreement for further details.

**Did you suffer any financial expenses or other financial losses that you believe was as a result of the Data Security Incident? For example, did you sign up and pay for a credit monitoring service or hire and pay for a professional service to remedy identity theft, etc. as a direct result of or attributed to the Data Incident?**

☐ Yes ☐ No

*If yes, you may be eligible to fill out the rest of this form and provide corroborating documentation.*

For each loss that you believe can be traced to the Data Security Incident, please provide a description of the loss, the date of the loss, the dollar amount of the loss, and the type of documentation you will be submitting to support the loss. **You must provide this information for this claim to be processed.**

Supporting documentation must be submitted alongside this Claim Form. **If you fail to provide sufficient supporting documents, the Settlement Administrator will deny your claim.** Please provide only copies of your supporting documents and keep all originals for your personal files. The Settlement Administrator will have no obligation to return any supporting documentation to you. A copy of the Settlement Administrator's privacy policy is available at [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com). Please do not directly communicate with Defendants regarding this matter. All inquiries are to be sent to the Settlement Administrator.

Examples of Unreimbursed Documented Monetary Losses may include, 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 Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Examples of documentation include receipts for identity theft protection services, etc.

Description of the Loss	Date of Loss	Amount	Type of Supporting Documentation
Example: Unauthorized credit card charge	<div>07</div> <div>MM</div> - <div>17</div> <div>DD</div> - <div>20</div> <div>YY</div>	\$50.00	Letter from Bank
Example: Fees paid to a professional to remedy a falsified tax return	<div>02</div> <div>MM</div> - <div>30</div> <div>DD</div> - <div>21</div> <div>YY</div>	\$25.00	Copy of the professional services bill

Description of the Loss	Date of Loss	Amount	Type of Supporting Documentation
	<div></div> <div>MM</div> - <div></div> <div>DD</div> - <div></div> <div>YY</div>	\$	
	<div></div> <div>MM</div> - <div></div> <div>DD</div> - <div></div> <div>YY</div>	\$	
	<div></div> <div>MM</div> - <div></div> <div>DD</div> - <div></div> <div>YY</div>	\$	
	<div></div> <div>MM</div> - <div></div> <div>DD</div> - <div></div> <div>YY</div>	\$	
	<div></div> <div>MM</div> - <div></div> <div>DD</div> - <div></div> <div>YY</div>	\$	

By checking the below box, I hereby declare under penalty of perjury that the information provided in this Claim Form to support relief for Unreimbursed Economic Losses is true and correct.

☐

I understand that I am submitting this Claim Form and the affirmations it makes as to my seeking relief for Unreimbursed Documented Monetary Losses under penalty of perjury. I further understand that my failure to check this box may render my claim for Unreimbursed Economic Losses null and void.

#### Section D - Payment

**Please select the manner in which payment will be issued for your valid Claims.**

☐ Electronic Payment  
(see below)\*

\_\_\_\_\_  
Email Address

☐ Paper Check via Mail:      A check will be mailed to the address on this claim

\*If you select electronic payment, an email will be sent to the email provided above and allow you to select a payment method such as PayPal, Pre-Paid Mastercard, Amazon, etc.

#### Section E - Settlement Class Member Affirmation

I declare under penalty of perjury that the information supplied in this Claim Form is true and correct. I authorize the Settlement Administrator to contact me, using the contact information set forth above, to obtain any necessary supplemental information.

***Section E - Attestation***

☐ By submitting this Claim Form, I certify that any documentation that I have submitted in support of my Claim consists of unaltered documents in my possession. I understand that my failure to check this box may render my Claim null and void.

Please include your name in both the Signature and Print Name fields below.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**IN ORDER TO BE VALID, THIS CLAIM FORM MUST BE POSTMARKED OR RECEIVED NO  
LATER THAN JANUARY 30, 2025.**

**YOU MAY ALSO SUBMIT A CLAIM ONLINE AT: [www.UpstreamDataSettlement.com](http://www.UpstreamDataSettlement.com)**



# EXHIBIT 3

**Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al. Requests for Exclusion  
Case No. 01-CV-2024-902563.00,**

**Deadline: December 31, 2024**

[illegible]



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM DIVISION

**JEREMY HUFSTETLER, ADAM RUNK,  
CONNIE HATFIELD, YASHVANTSINH  
JHALA, DALE STARK, LISA KENNY,  
A'TAVION MORRISSETTE, GENE  
SAWYER, ROBERT MOFFA, LEAH  
HARNER, and JUDY YOUNG, individually  
and on behalf of all others similarly situated,**

**Plaintiffs,**

**v.**

**UPSTREAM REHABILITATION, INC. and  
UPSTREAM ROLLCO, LLC,**

**Defendants.**

**Case No. 01-CV-2024-902563.00**

**[PROPOSED] FINAL APPROVAL ORDER**

This matter coming before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting memorandum of law, the parties' Settlement Agreement (the "Agreement"), the pleadings and other papers filed in this Action, and the statements of counsel and the parties, has determined that the proposed Settlement satisfies the criteria for final approval and the proposed Settlement Class is certified for settlement purposes only. Accordingly, good cause appearing in the record, Plaintiffs' Motion is **GRANTED** as follows:

1. Unless defined herein, all defined terms in this order shall have the respective meanings ascribed to the same terms in the Agreement.
2. The Court has conducted a final evaluation of the Settlement set forth in the Agreement. Based on this evaluation, the Court finds that the Agreement meets all applicable

requirements of Alabama Rule of Civil Procedure 23 for settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the Class Representatives fairly and adequately protect the interests of the Settlement Class and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds that: (i) there is a good cause to believe that the Settlement is fair, reasonable, and adequate; (ii) the Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the Settlement is in the best interests of the Settlement Class Members. Therefore, the Court grants final approval of the Settlement.

#### **Provisional Certification of the Settlement Class**

4. Pursuant to Alabama Rule of Civil Procedure 23, and for settlement purposes only, the Court certifies the following Settlement Class:

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.

5. The Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Alabama Rule of Civil Procedure 23, are satisfied in that:

A. the Settlement Class is so numerous that joinder of all members is impracticable;

- B. there are questions of law or fact common to the Settlement Class;
- C. Plaintiffs and Class Counsel fairly and adequately represent the Settlement Class;
- D. the claims of Plaintiffs are typical of those of Settlement Class Members;
- E. common issues predominate over any individual issues affecting the members of the Settlement Class;
- F. Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class; and
- G. settlement on a class action basis is superior to other means of resolving this matter.

6. For settlement purposes only, the Court hereby approves the appointment of Plaintiffs Jeremy Hufstetler, Adam Runk, Connie Hatfield, Yashvantsinh Jhala, Dale Stark, Lisa Kenny, A'Tavion Morrisette, Gene Sawyer, Robert Moffa, Leah Harner, and Judy Young as Class Representatives.

7. For settlement purposes only, the Court hereby approves the appointment of AB Data as the Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Agreement or this Order.

8. For settlement purposes only, the Court hereby approves the appointment of PITTMAN, DUTTON, HELLUMS, BRADLEY, & MANN, P.C., CORY WATSON, P.C., MIGLIACCIO & RATHOD LLP, SROURIAN LAW FIRM, P.C., SIRI & GLIMSTAD LLP, HENINGER GARRISON DAVIS, LLC, DEGARIS LAW, LLC, and MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC as Class Counsel and finds that they are competent and

capable of exercising the responsibilities of Settlement Class Counsel.

9. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides beneficial relief to the Settlement Class. The Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of a mediator; (b) meets all applicable requirements of law, including Alabama Rule of Civil Procedure 23; and (d) is not a finding or admission of liability by Defendant.

### **Notice**

10. Notice of the Final Approval Hearing, the proposed attorneys' fees, costs, and expenses, and the proposed Service Award payment to Class Representatives have been provided to Settlement Class Members as directed by this Court. An affidavit or declaration of the Settlement Administrator's compliance with the notice program has been filed with the Court.

11. The Court finds that such Notice constituted the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Alabama Rule of Civil Procedure 23.

### **Exclusions and Objections**

12. The six persons listed and identified on **Exhibit 1**, attached hereto and incorporated by this reference, submitted timely and proper requests for exclusion, are excluded from the Settlement Class, and are not bound by the terms of the Settlement Agreement or this Final Approval Order.

13. Plaintiffs and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing,

prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against the Released Parties.

14. Any member of the Settlement Class who failed to file and serve a timely written objection in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

**Award of Attorneys' Fees, Costs, and Expenses and Plaintiffs' Service Awards**

15. The Court has considered Plaintiffs' Motion and Memorandum for Approval of Attorneys' Fees, Expenses, and Service Awards.

16. The Court awards Class Counsel one third of the Settlement Fund, \$1,434,966.17, as an award of attorneys' fees and \$10,598.48 in costs and expenses to be paid in accordance with the Settlement, and the Court finds this amount of fees, costs, and expenses to be fair and reasonable. This award of attorneys' fees, costs, and expenses, and any interest earned thereon, shall be paid by the Defendant, separate and apart from any benefits provided to Settlement Class Members and the costs of notice and Settlement Administration. This award of attorneys' fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

17. The Court awards \$2,500 to each Class Representative, for a total of \$27,500, in recognition of their efforts on behalf of the Settlement Class.

18. The Court orders payment of Settlement Administration costs and expenses to AB Data, Ltd. for performance of its settlement notice and claims administration services.

19. Defendant shall pay the attorneys' fees, costs, and expenses to the Settlement Administrator within thirty (30) days of the Effective Date.

**Final Approval**

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

21. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims against Defendant and all Released Parties, as defined in the Settlement Agreement.

22. On the Effective Date as provided for under the Settlement Agreement, (i) Plaintiffs and each Settlement Class Member (collectively and individually, the “Releasing Parties”), and (ii) Settlement Class Counsel will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Parties from the Released Claims.

23. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

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

25. In accordance with Alabama Rule of Civil Procedure 23, this Final Order and Judgment resolves all claims against all Parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2025.

/s/ \_\_\_\_\_  
Honorable Monica Y. Agee



# EXHIBIT 1

**Jeremy Hufstetler, et al. v. Upstream Rehabilitation, Inc., et al. Requests for Exclusion  
Case No. 01-CV-2024-902563.00,**

**Deadline: December 31, 2024**

[illegible]