

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

Santana, et al. v. Rady Children's Hospital-San Diego
Case No. 37-2014-00022411-CU-MT-CTL

NOTICE OF PENDENCY OF CLASS ACTION

The San Diego Superior Court has authorized this Notice.

PLEASE READ THIS NOTICE CAREFULLY

It contains important information as to your right to participate in a class action and your right to elect not to be included in the class action. This is not a solicitation from a lawyer.

Dated: February 23, 2018

To: All patients (or their parents or guardians) of Defendant Rady Children's Hospital - San Diego ("Rady" or "Defendant") who were admitted in-patient to one of Defendant's hospital, satellite or urgent care locations between July 1, 2012 and June 30, 2013" (hereinafter the "Class" or "Class Members").

1. *Why did I receive this Notice?*

You have received this Notice because Defendant's records show that you (or your child) was a patient of Rady Children's Hospital - San Diego who was admitted in-patient to one of Rady's hospital, satellite or urgent care locations at some point between July 1, 2012 and June 30, 2013.

On November 6, 2017, the San Diego Superior Court (the "Court") entered an Order certifying the above described case as a class action. This Notice explains how your rights may be affected by this class action lawsuit. Lawyers for the Class must prove the claims at a trial set to start on **September 28, 2018**. If money or benefits are obtained following the trial and you have not requested to be excluded or "opted-out" from the class action, you will be notified about your rights to a share of any benefits the Court may award to the Class. These rights and options are summarized below and fully explained in this Notice.

2. *What is a class action?*

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as the "Class" or "Class Members." In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves or "opt out" from the Class. The Honorable Joel R. Wohlfeil of the San Diego Superior Court is presiding over this class action. Judge Wohlfeil has not made any determination about who is right or wrong in this lawsuit.

3. *What are the claims alleged in this class action?*

On June 16, 2014, Defendant mailed you and the other approximately 14,121 patients a letter that stated in part "[o]n June 6, 2014, an employee of Rady Children's Hospital - San Diego inadvertently sent an electronic file containing information about your child in an email to four individuals.... Through our interviews with the individuals, we learned that one of the recipients forwarded the email to two additional people."

In a Press Release, Defendant stated in part that "[t]he file contained information on 14,121 patients admitted to Rady Children's between July 1, 2012 and June 30, 2013. Information included patients'

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names, dates of birth, primary diagnoses, admit/discharge dates, medical record numbers, and other information including insurance carrier and claim information. The email did not contain social security, insurance or credit card numbers, street addresses, or parent and guardian names.”

As a result of the litigation, Plaintiffs have discovered, and it is undisputed, that on June 6, 2014, a Recruiter in Rady’s Human Resources Department sent an email to four job applicants attaching an electronic file (an Excel spreadsheet) at the direction of Rady’s Director of Decision Support. None of the four job applicants or the two other recipients were ever employed by Rady.

In the lawsuit, Plaintiffs allege that Rady’s disclosure to the four job applicants was negligent and that Rady’s release of Class Members’ personal and confidential medical information was a violation of the Confidentiality of Medical Information Act, Civil Code §§ 56 *et seq.*, (“CMIA”). Rady denies any violation of the CMIA, and any alleged damages.

4. What does the class action seek to recover?

Under the CMIA (*see* Civil Code § 56.36(b)), Plaintiffs alleged that Class Members are entitled to recover from Defendant statutory damages of \$1,000 each, without having to show any individual harm or losses as a result of the release of patient medical information. This class action seeks to recover statutory damages of \$1,000 for each Class Member on a class-wide basis. In addition to the \$1,000 in statutory damages, you are entitled to seek to recover from Defendant actual damages (including past or future economic losses, emotional distress, pain and suffering, actual identity theft, or any other legally cognizable harm) for any harms or losses individually suffered according to proof under the CMIA.

This class action is limited to seeking nominal damages of no more than \$1,000 in statutory damages for each Class Member on a class-wide basis under the CMIA. **THIS CLASS ACTION DOES NOT SEEK TO RECOVER FOR HARMS OR LOSSES SUFFERED INDIVIDUALLY BY CLASS MEMBERS, SUCH AS ACTUAL DAMAGES** (including past or future economic losses, emotional distress, pain and suffering, actual identity theft, or any other legally cognizable harm). If you wish to pursue actual damages beyond the \$1,000 in statutory damages against Defendant with regard to the claims brought in this case, you need to exclude yourself from the Class and file your own individual lawsuit against Rady Children's Hospital - San Diego.

5. What is the status of the litigation?

Four separate class actions were filed between June 18, 2014, and July 9, 2014, related to Rady’s alleged violation of the Confidentiality of Medical Information Act, California Civil Code §§ 56 *et seq.* (“CMIA”). Those cases were deemed complex and coordinated before the San Diego Superior Court. On January 28, 2015, Plaintiffs filed a Consolidated Amended Class Action Complaint and Injunctive Relief consolidating four cases.

On March 4, 2015, Rady brought a demurrer seeking to dismiss the Consolidated Amended Class Complaint with prejudice on the grounds that Plaintiffs’ claims had no legal merit, which was denied by the Court on April 3, 2015. On February 16, 2017, Rady brought a motion for summary judgment and summary adjudication seeking to an order to dismiss Plaintiffs’ claims on the grounds that there are no triable issues of material fact and Rady is entitled to summary judgment as a matter of law, which was also denied by the Court on July 13, 2017.

On September 29, 2017, Plaintiffs brought a motion for Class certification. On November 6, 2017 the Court certified the Class (“class certification”) of all involved individuals on the CMIA claim, and you

are receiving this Notice as a result. The Court appointed COHELAN KHOURY & SINGER, KEEGAN & BAKER, LLP, ADLER LAW GROUP, APLC, KAZEROUNI LAW GROUP, APC, and HYDE & SWIGART as Class Counsel to represent you and the other Class Members. The Court also appointed Timothy D. Cohelan of COHELAN KHOURY & SINGER, 605 C Street, Suite 200, San Diego, California 92101, and Patrick N. Keegan of KEEGAN & BAKER, LLP, 6156 Innovation Way, Carlsbad, California 92009, as co-lead counsel for the Class.

The parties have engaged in extensive discovery, including depositions of numerous witnesses, and have exchanged written discovery, including interrogatories, requests for admission, and requests for production of documents. The Court has set a trial date of **September 28, 2018**, and discovery is continuing.

6. *What will happen next?*

If you do nothing, you will automatically participate in the Class. If you want to opt out, please refer to Paragraph 7 below. If you do not opt out of the class, you will remain a member of the Class and will be bound by the outcome of the lawsuit. Any claims that you may have against Defendant arising from the matters alleged in the class action will be decided in the class action, in which you will be represented by Class Counsel. You will share in any recovery obtained for the class, but you will not be able to sue for the same claims in another lawsuit even if the class does not win this case. **IF YOU WANT TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT HAVE TO DO ANYTHING AT THIS TIME AND YOU SHOULD NOT MAIL IN A REQUEST FOR EXCLUSION.**

7. *How do I exclude myself from the Class?*

You have the right to remove yourself from this Class and this lawsuit. If you do, you will still have the right to pursue any claims you have with a lawyer of your choice at your own expense. You will not lose any claims you have by removing yourself, but you cannot share in any money recovered in this Class action. If you want to be removed from the Class in this lawsuit, you must mail your request to the administrator at the address listed below. The request must include your name, address, telephone number, and signature and must specifically state that you wish to request to be excluded from the plaintiff class in this case entitled *Santana, et al. v. Rady Children's Hospital-San Diego LLC* Case No. 37-2014-00022411-CU-MT-CTL. The request must be postmarked by **April 4, 2018** and mailed to:

Santana, et al. v. Rady Children's Hospital-San Diego Administrator
c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

If you request to be excluded from the class, you will not share in any recovery (if any) that may be made in the Class action. You will not be bound by any judgment in the Class action. You will be free to file your own lawsuit against the Defendant at your own expense.

8. *If I do not exclude myself from the Class, can I sue Defendant for the same thing later?*

No. If you do not exclude yourself, you give up any right to bring your own individual lawsuit against Defendant with regard to the claims brought in this case or that could have been brought in this case. If you have a pending lawsuit, speak to your lawyer in that case immediately to see if this Notice will affect your other case. Remember, the exclusion deadline is **April 4, 2018**.

9. *If I exclude myself from the Class, can I get money from this lawsuit?*

No. If you exclude yourself, you will not receive any money or other benefits from this lawsuit in the event such money or benefits are awarded. But, by excluding yourself, you may file a separate lawsuit to sue Defendant regarding these same claims.

10. *Do I have a lawyer in this case?*

The Court appointed COHELAN KHOURY & SINGER, KEEGAN & BAKER, LLP, ADLER LAW GROUP, APLC, KAZEROUNI LAW GROUP, APC, and HYDE & SWIGART as Class Counsel to represent you and the other Class Members. The Court also appointed Timothy D. Cohelan of COHELAN KHOURY & SINGER, 605 C Street, Suite 200, San Diego, California 92101, and Patrick N. Keegan of KEEGAN & BAKER, LLP, 6156 Innovation Way, Carlsbad, California 92009, as co-lead counsel for the Class. You will not be charged separately for these lawyers. Their fees will be paid from the verdict, if any, against Defendant. If you want to be represented by your own lawyer, you must exclude yourself from this lawsuit and you may hire one at your own expense.

11. *How will the lawyers be paid?*

At the appropriate time, Class Counsel will ask the Court to approve payment to them from Defendants for attorneys' fees and costs, if successful at trial. The fees would pay Class Counsel for work that they reasonably have performed and costs they reasonably have incurred in this action, including filing briefs, engaging in discovery, investigating the facts, and attending court conferences. Costs will also include the use of an administrator to help facilitate notice, class paperwork and payments. This request must be approved by the Court.

12. *How do I get more Information?*

The papers filed in this Class action can be examined online on the San Diego County Superior Court's website. Go to www.sdcourt.ca.gov and click on "REGISTER OF ACTION" and enter case number "00022411", select "2014" in "year filed", and click, "Search." The documents filed in this Class action are listed as Register of Actions Entries and some may be available to view at a minimal charge. You can also see any document filed in the case by requesting the file at the San Diego County Superior Court, Hall of Justice, 330 West Broadway, San Diego, California 92101.

You may also call the administrator. **1-888-250-6810** toll free. You may also contact Class Counsel or visit www.radyprivacyclassaction.com.

DO NOT WRITE OR CALL THE COURT OR THE CLERK OF THE COURT.

Dated: **February 23, 2018**

/s/ Hon. Joel R. Wohlfeil
Judge of the Superior Court