

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

*Santana, et al. v. Rady Children's Hospital-San Diego*

Case No. 37-2014-00022411-CU-MT-CTL

**NOTICE OF CLASS ACTION SETTLEMENT**

*The Superior Court of California, County of San Diego has authorized this Notice.  
This is not a solicitation from a lawyer.*

**This notice may affect your rights. Please read this notice carefully.  
You may be entitled to receive compensation under this class action settlement.**

**Dated: November 5, 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 Rady'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. As a result, you were previously provided notice of this class action and given the option to exclude yourself.

You are being provided the current notice because you did not previously exclude yourself from the Class and you have a right to know about a proposed settlement this class action lawsuit, and about your rights and options, before the Court decides whether to grant final approval of the settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who may be eligible for those benefits, and how to get them.

Prior to reaching the Settlement, the Plaintiffs and Rady Children's Hospital – San Diego engaged in extensive discovery, including depositions of over twenty (20) witnesses and experts, written interrogatories and requests for production of documents. Class Counsel have reviewed tens of thousands of documents and have diligently litigated this class action since its inception over four (4) years ago. Most recently, the parties engaged in a mediation session with a respected neutral mediator, Bruce Friedman, Esq. of JAMS.

On October 26, 2018, Plaintiffs brought a Motion for Preliminary Approval of the proposed Class Action Settlement. On October 26, 2018, the Court granted preliminary approval of the Settlement, approving this Class Notice and directing that this notice be provided to the Class.

**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. The Class Representative Plaintiffs and their lawyers think the Settlement terms are the best result reasonably attainable and in the best interest for all Class Members.

### **3. What Is This Class Action About?**

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’ 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 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 2292 Faraday Avenue, Suite 100, Carlsbad, California 92008, as co-lead counsel for the Class.

The parties have engaged in extensive discovery, including depositions of over twenty (20) witnesses and experts, and have exchanged written discovery, including interrogatories, requests for admission, and requests for production of documents.

Rady Children’s Hospital – San Diego denies that their actions violated the law and deny any liability. The Court has not decided whether Rady Children’s Hospital – San Diego did anything wrong.

Prior to the Settlement, the parties participated in a mediation session with a respected neutral mediator, Bruce Friedman, Esq. of JAMS.

On October 26, 2018, Plaintiffs brought a Motion for Preliminary Approval of the proposed Class Action Settlement. On October 26, 2018, the Court granted preliminary approval of the Settlement, approving this Class Notice and directing that this notice be provided to the Class.

#### **5. *Why Is There A Settlement?***

The Court did not decide in favor of Plaintiffs or the Defendant. Instead, both sides agreed to settle this case to avoid the additional cost and risk of trial and appellate proceedings. The Settlement does not mean that the Court has determined whether the Defendant did anything wrong. Defendant Rady Children's Hospital – San Diego denies all legal claims set forth by the Class Representative Plaintiffs in this case. The Class Representative Plaintiffs and their lawyers think the Settlement terms are the best result reasonably attainable and in the best interest of all Settlement Class Members.

#### **6. *What Does the Settlement Provide?***

The Settlement provides a variety of benefits to the Class Members, including:

- A total cash payment into the non-reversionary Settlement Fund in the sum of \$5,000,000, which will result in cash payments to each Class Member in addition to paying for the cost of identity theft protection and credit monitoring.
- Two (2) years of Experian identity theft protection and credit monitoring, including identity theft insurance of up to \$1 million, provided to all Class Members, which is valued by Plaintiffs up to approximately \$6,764,616.
- Remedial measures valued by Rady at approximately \$1,800,000 to be provided by Rady, including revised medical information training and enhanced security-related remedial measures to be taken and implemented by Rady Children's Hospital – San Diego as a result of this action.

In summary, the Settlement is estimated by Plaintiffs to confer a **total settlement value of approximately \$13,564,616** to the Class.

#### **7. *What Does the Identity Theft Protection and Credit Monitoring Package Provide?***

All members of the Final Settlement Class shall receive free of charge two (2) years of Experian identity theft protection) that will include: Social Security Number Trace (For minor Class Members, alerts of all names, aliases and addresses that become associated with a minor's Social Security Number (SSN) on the Experian credit report); Internet Surveillance (Technology searches the web, chat rooms & bulletin boards 24/7 to identify trading or selling of personal information on the Dark Web); Credit Monitoring (For adult Class Members, actively monitors Experian, Equifax and Transunion files for indicators of fraud); Identity Restoration (Identity Restoration specialists are immediately available to help address credit and non-credit related fraud); Experian IdentityWorks ExtendCARE (Identity Restoration support even after the Experian IdentityWorks membership has expired); and Up to \$1 Million Identity Theft Insurance (Provides coverage for certain costs and unauthorized electronic fund transfers). Class Counsel estimates and Defendant does not dispute that, if fully utilized, the value of this benefit to the Class is estimated to be approximately \$6,764,616.

#### **8. *What Are the Additional Remedial Measures Being Implemented by Rady?***

As a result of this Class Action, Defendant Rady Children's Hospital – San Diego has and will be implanting various security-related remedial measures, which will include:

- \$210,000.00 in estimated expenses for notifying Class Members of the disclosure and AllClear ID costs.
- \$400,000.00 in estimated expenses for Zix and data loss protection ("DLP") software for 10 years.

- \$195,000.00 in estimated expenses for startup costs for the Zix and DLP.
- \$54,776.00 in estimated expenses for refresher privacy training costs.
- \$297,265.00 in estimated expenses for new employee privacy training costs.
- \$348,500.00 in estimated expenses for existing employee privacy training costs.
- \$41,000.00 in estimated expenses for costs of privacy training for independent contractors.
- \$50,000.00 in estimated expenses for training for medical staff physicians working for Rady Children's Hospital – San Diego.

The value of this benefit to the Class is estimated by Defendant to be approximately \$1,800,000. Defendant has also acknowledged that these remedial measures will have been taken and implemented as a result of the alleged release of medical information at issue in this Class Action and Plaintiffs and Class Counsel's litigation of this Class Action. The Declaration of Joshua Kohrumel, Chief Data Officer at Rady Children's Hospital – San Diego submitted to the Court with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement details the remedial measures and their estimated value.

**9. What Will Happen Next?**

If you do nothing, you will automatically participate in the Settlement. If you want to opt out, please refer to the following paragraph below. If you do not exclude yourself from 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.**

**10. How Can I Receive a Payment from the Settlement?**

You do not need to do anything to participate in the Settlement. If the Court grants final approval of the Settlement, you will automatically receive a cash payment from the Settlement. The Settlement Administrator shall calculate the Settlement Share by taking (i) the Settlement Fund (ii) subtracting the amounts to be paid for cost of the Identity Theft Protection Package; and settlement administration, including notice to Class Members and reasonable fees of the Settlement Administrator, Plaintiffs' reasonable attorneys' fees and litigation costs, and any Incentive Award to the Class Representatives, as approved by the Court (Z); and (iii) dividing the sum of such number by the number of Class Members who do not opt out of the Settlement (X) as represented in the following formula:

$$\text{Settlement Share} = \frac{\text{Settlement Fund} - Z}{X}$$

If this Notice was not mailed to your current address or if you move before the final approval hearing, please contact the Settlement Administrator toll-free at 1-888-250-6810 to provide your new address.

**11. When and How Will I Receive a Payment from the Settlement?**

Checks will be mailed to the Settlement Class Members and/or their parents after the Court grants Final Approval of the Settlement, and after the time for appeal has ended and any appeals have been resolved.

**12. What Am I Giving Up As Part Of The Settlement By Staying In The Class?**

If the Settlement is granted final approval by the Court, Final Settlement Class will be releasing Defendant and Released Parties, as defined in Paragraph Z and described in Section X of the Settlement Agreement, from any and all claims or causes of action alleged in the Action and that could have been alleged in this Class Action, under the laws of any jurisdiction, including federal law, state law, and common law, whether at law or equity, that arise out of, relate to, or in any way concern the facts alleged in the Class Action. This means that you will no longer be able to file a lawsuit against Defendant or the Released Parties for the same claims brought in this case or that could have been brought in this case. The Settlement Agreement is available at [www.radyprivacyclassaction.com](http://www.radyprivacyclassaction.com).

**13. 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*, Case No. 37-2014-00022411-CU-MT-CTL. The request must be postmarked by December 10, 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 payment provided to the Class as a result of this Settlement. You will not be bound by any judgment in the Class Action. You will be able to file your own lawsuit against the Defendant at your own expense.

**14. If I Do Not Exclude Myself From the Class, Can I File A Lawsuit Against 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 December 10, 2018.

**15. If I Exclude Myself From The Class, Can I Get Money From This Settlement?**

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 at your own expense.

**16. 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 2292 Faraday Avenue, Suite 100, Carlsbad, California 92008, 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.

### **17. How Will The Lawyers Be Paid?**

At the appropriate time, Class Counsel will ask the Court to approve payment to them from the Settlement Fund for attorneys' fees, litigation costs and expenses, including the cost for settlement administration. The fees would compensate 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 hearings and 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.

### **18. How Can I Tell the Court If I Object To The Settlement?**

You have the right to object to the Settlement if you do not like some or all of it. In your objection, you must state your reasons why you think the Court should not approve the Settlement. To object to the Settlement, you must provide to the Settlement Administrator the following information in your written objection: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Class; (iii) a statement of the position(s) that you, as the objector, wish to assert, including the factual and legal grounds for the position(s); (iv) provide copies of any other documents that you, as the objector, wish to submit in support of his/her/its position; (v) the name and contact information for all counsel representing the objector; and (vi) the objector's signature under the penalty of perjury.

If you wish to appear at the Final Approval Hearing, in person or by counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for reasonable attorneys' fees, you must file a Notice of Intention to Appear at the Final Approval Hearing and serve a copy of the Notice of Intention to Appear to all Class Counsel listed on this Class Notice. Any Objections must be filed and mailed to each of the following recipients and must be postmarked to each the Class Counsel listed below no later than December 10, 2018:

#### For Class Counsel:

Timothy D. Cohelan, Esq.  
J. Jason Hill, Esq.  
Cohelan Khoury & Singer  
605 C Street, Suite 200  
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#### For Defendant Rady Children's Hospital – San Diego:

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Fax: (213) 250-7900  
[Jon.Kardassakis@lewisbrisbois.com](mailto:Jon.Kardassakis@lewisbrisbois.com)

**19. *What is the Difference Between Objecting to the Settlement vs. Asking to Be Excluded?***

Objecting to the Settlement is a way of formally telling the Court that you do not like something about the Settlement and do not think the Court should approve the Settlement for a particular reason or reasons. You can only object only if you stay in the Settlement Class and do not request for exclusion.

Excluding yourself or opting out of the Settlement is a way of telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement and you will not be eligible to receive for any benefits under the Settlement because you are excluded the case no longer affects you. By excluding yourself, you will still be able to file a separate lawsuit to sue Defendant regarding these same claims at your own expense.

**20. *When and Where Will the Court Decide Whether to Give Final Approval of Settlement?***

The Honorable Joel R. Wohlfeil of the Superior Court of California will hold a Fairness Hearing at 9:00 a.m. on January 25, 2019 at the Superior Court of California for the County of San Diego located at 330 West Broadway, San Diego, California 92101. At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. The Court may also consider Class Counsel's request for attorneys' fees and costs, and the incentive awards. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the proposed Settlement and how much to award to Class Counsel as fees and costs, and the incentive awards to the Class Representative Plaintiffs.

The Fairness Hearing may be moved to a different date or time without additional notice being mailed to the Class Members, so it is recommended that you check [www.radyprivacyclassaction.com](http://www.radyprivacyclassaction.com) prior to the date above for any updated information.

**21. *Do I Have to Come to the Hearing?***

No, you do not have to attend the Fairness Hearing. Class Counsel will answer any questions the Court may have regarding the Settlement. However, you are welcome to attend the hearing at your own expense. If you have mailed in your valid written objection on time, the Court will consider it. You do not have to come to the Fairness Hearing if you send in a written objection, however, you may attend the hearing if you have provided Notice of Intention to Appear as described above and in the Settlement Agreement. You also may pay your own lawyer to attend the Fairness Hearing, but their attendance is not necessary.

**22. *May I Speak At the Hearing?***

Yes, you may speak at the Fairness Hearing if you have filed and served a Notice of Intention to Appear, as described above and in the Settlement Agreement. Be sure to include your name, address, telephone number, and your signature. Please send your Notice of Intent to Appear postmarked no later than December 10, 2018, to the addresses listed above in the section entitled "*How Can I Tell the Court If I Object To The Settlement?*" along with the following information:

- a statement confirming that you want to speak at the Fairness Hearing;
- the name and address of your attorney (if you have one) that will appear at the Fairness Hearing; and
- a list of any witnesses you intend to call at the Fairness Hearing.

You will not be permitted by the Court to speak at the hearing if you exclude yourself or opt-out from the Settlement.

**23. *What Happens If I Do Nothing At All?***

If you are a Settlement Class Member and do nothing after receiving this notice, you will receive the monetary and non-monetary benefits afforded to the Class as provided by the terms of the Settlement and you will be legally bound by the Settlement and will be releasing Defendant and Released Parties, as defined in Paragraph Z and described in Section X of the Settlement Agreement, from any and all claims or causes of action alleged in this Class Action and that could have been alleged in this Class Action.

**24. *How Can 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](http://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 toll-free at 1-888-250-6810. You may also contact Class Counsel or visit [www.radyprivacyclassaction.com](http://www.radyprivacyclassaction.com) for additional documents and information.

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

Dated: November 5, 2018

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