

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
BUSINESS LITIGATION SESSION
CA No. 1884-CV-00285

COURTNEY MELLEN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

SHARECARE HEALTH DATA SERVICES, LLC

Defendant.

LEGAL NOTICE
PENDENCY AND PROPOSED SETTLEMENT
OF CLASS ACTION AND HEARING ON PROPOSED SETTLEMENT

TO: ALL PERSONS WHOSE REQUEST FOR MEDICAL RECORDS FROM A MASSACHUSETTS HEALTHCARE FACILITY WAS FULFILLED BY SHARECARE HEALTH DATA SERVICES, LLC BETWEEN MAY 10, 2015 AND MAY 10, 2019.

FINAL APPROVAL BY THE SUFFOLK COUNTY SUPERIOR COURT FOLLOWING A HEARING TO BE HELD ON JANUARY 14, 2020.

This Notice Provides Information About the Proposed Settlement and How It May Affect the Rights and Obligations of Class Members If It Is Approved

A settlement (the “Settlement”) has been proposed in a class action lawsuit (the “Action”) pending in Suffolk County Superior Court in Boston, Massachusetts. The caption for the Action appears above.

The terms of the proposed settlement are set forth in a written settlement agreement (the “Settlement Agreement”) that contemplates certification of the settlement class for the Action (collectively, hereinafter referred to as the “Settlement Class”). If the Court gives final approval to the Settlement Agreement, distributions will be issued in accordance with the terms of the Settlement Agreement without further action being required.

YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OBJECT	You may submit a written objection to Class Counsel with reasons why you believe the Settlement should not be approved. The deadline to file an Objection is December 1, 2019.
OBJECT AND ATTEND THE “FINAL APPROVAL HEARING”	<p>The Court will hold a “Final Approval Hearing” whether to grant final approval to the Settlement, whether to approve legal fees and expenses requested by Class Counsel, and whether to approve an incentive award to the Plaintiff for her services in connection with the Action. The Final Approval Hearing is scheduled for January 14, 2020.</p> <p>If you file a timely written objection, you may be entitled to speak and present evidence at the at the Final Approval Hearing. If you wish to be heard at the Final Approval Hearing, you must follow the procedures set forth herein.</p>
IF YOU CHOOSE TO DO NOTHING	Upon final approval of the Settlement Agreement, funds will be distributed in accordance with the terms of the Settlement Agreement without the need for any action on your part.

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of the Action has preliminarily approved the Settlement Agreement and must decide whether to give final approval to the Settlement Agreement. The relief provided, and agreed upon, will be provided only if the Court gives final approval to the Settlement Agreement and, if there are any appeals, after the appeals are resolved in favor of the Settlement Agreement.

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BACKGROUND INFORMATION

1. What is this Notice?

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can view a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), please see **Section 15** below.

2. What is the Action about?

On or about January 24, 2018, Plaintiff, Courtney Mellen filed a putative class action, Mellen, et al. v. Sharecare Health Data Services, LLC, in which she asserted, among other things, that Sharecare was liable under G.L. c. 93A, §9 for allegedly assessing postage charges in excess of the actual cost of mailing or sending medical records to requestors in alleged violation of G.L. c. 111, § 70 (“Class Claims”). Defendant denied any wrongdoing.

THE ISSUANCE OF THIS NOTICE IS NOT AN EXPRESSION OF THE COURT’S OPINION ON THE MERITS OR THE LACK OF MERITS OF THE CLAIMS IN THE ACTION.

For information about how to learn about what has happened in the Action to date, please see **Section 15** below.

3. Why is this a class action?

In a class action lawsuit, one or more people called a “Representative Plaintiff(s)” sues on behalf of other people who may have similar claims. The company sued in this case is called the Defendant. The purpose of a class action is to bring forward all similar claims in one judicial proceeding. As part of the proposed Settlement, the Representative Plaintiff and the Defendant will be asking the Court to certify the Action as a class action solely for purposes of settlement—in other words, to certify the Settlement Class.

4. Why is there a Settlement?

The Court has not decided that the Representative Plaintiff or Defendant should win. Instead, both sides have agreed to a Settlement, which avoids the cost of protracted litigation and provides relief on behalf of Settlement Class now rather than years from now, if at all.

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

You may be a member of the class if you are a person or entity whose request for medical records from a Massachusetts healthcare facility was fulfilled by Sharecare Health Data Services, LLC between May 10, 2015 and May 10, 2019.

If you are still not sure whether you are a Class Member, you can contact Plaintiff’s Counsel for help. The address and phone number are as follows:

Forrest, LaMothe, Mazow,
McCullough, Yasi & Yasi, P.C.
2 Salem Green, Suite 2
Salem, MA 01970
(877) 559-8890

For general questions about the Settlement, you may contact the Settlement Administrator at 1-866-983-3173.

THE PROPOSED SETTLEMENT

6. What relief does the Settlement Provide?

Defendant will pay \$340,007.50 (the “Common Fund”) for the benefit of the Plaintiff and all Settlement Class Members (together totaling 19,429 members) in full and final settlement of all claims that were, or could have been, asserted in the Action. Payment of such sum to the Settlement Administrator shall relieve the Defendant of any further payment or delivery obligations with respect to the Plaintiff, any members of the Settlement Class, or Class Counsel. It is the intention of the Parties that the Common Fund shall be the sole source of recovery for any and all claims for damages, reimbursement, and any other amounts sought by the Plaintiff or any of the Settlement Class Members in connection with the Action.

Each Settlement Class Member shall have an Allowed Claim in the amount of \$17.50 *less* a pro-rata share of: (1) any incentive award to the Plaintiff, (2) any legal fees and costs awarded by the Court to Class Counsel, (3) any administrative costs and fees that are to be paid to the Settlement Administrator, and (4) any other costs or expenses (such as additional forms of notice beyond the Publication Notice) that are to be paid out of the Common Fund pursuant to the terms of this Agreement. **The parties estimate that this will result in a net payment of approximately \$10.31-\$11.19 per Allowed Claim.**

The exact amount of the Allowed Claim for the Settlement Class Members shall be calculated by Class Counsel and/or the Settlement Administrator and submitted to the Court for approval as part of the Fairness Hearing.

The Parties have agreed that any unclaimed/undeliverable funds remaining in the Common Fund after the expiration date for the last settlement distribution check issued from the Common Fund has passed shall be paid to the Massachusetts IOLTA Committee, as a *cy pres* designee.

THE LAWYERS IN THE ACTION AND THE REPRESENTATIVE PLAINTIFF

7. Do I have a lawyer in the Action?

The Court has ordered that the law firm of Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi, P.C. (“Class Counsel”) is to represent the interests of all Class Members. You will not be separately charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

8. How will the lawyers be paid and how will the Representative Plaintiff receive compensation for bringing the Action?

In accordance with the terms of the Settlement Agreement, Plaintiff will apply to the Court for an Incentive Award for the Representative Plaintiff and an Award of Costs and Fees for Class Counsel. Plaintiff’s application for attorneys’ fees shall not exceed thirty percent (30%) of the Common Fund, such fees to be paid from the Common Fund itself. The Court will be asked to act on this application at the Final Approval Hearing. The Court will ultimately make the final decision as to the amount to be paid to Class Counsel and to the Class Representative at the Final Approval Hearing.

DISMISSAL OF THE ACTION AND RELEASE OF ALL CLAIMS

9. What am I giving up under the Settlement?

If the Court approves the proposed Settlement Agreement, you will be releasing your claims against Defendant for the practices described herein. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendant with respect to the Defendant’s fulfillment of medical records requests or any other claims that are the subject of the Action. For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement Agreement, you may refer to the papers on file with the Court or contact Plaintiff’s Counsel. You or your attorney may examine the Court’s files during regular business hours of each business day at the Civil Clerk’s Office, Suffolk County Superior Courthouse, 12th Floor, Three Pemberton Square, Boston, Massachusetts 01970.

HOW TO OBJECT TO THE SETTLEMENT

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

At the date, time, and location stated below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Plaintiff’s application for an award of attorneys’ fees and costs as well as an incentive award to the Representative Plaintiff.

If you wish to present objections to the Settlement or the Agreement at the Final Approval Hearing must do so in writing, mailed or faxed to the Court and Class Counsel:

**Forrest, LaMothe, Mazow,
McCullough, Yasi & Yasi, P.C.
2 Salem Green, Suite 2,
Salem, MA 01970
Phone: 877-599-8890/Fax: (617) 517-3271**

Any Objections must be mailed or faxed no later than **December 1, 2019**, and must be contain:

- (A) the name and case number of the Action;
- (B) the full name, address, and telephone number of the person objecting;
- (C) a statement of each objection; and
- (D) a written brief detailing the specific reasons, if any, for the Objection, including any legal and factual support the objector wishes to bring to the Court’s attention and any evidence the objector

wishes to introduce in support of the Objection, including an attestation of facts demonstrating that the person objecting qualifies as a Settlement Class Member by reason of having paid one of Defendant's invoices during the Class Period without receiving reimbursement from a client or otherwise. If a Settlement Class Member makes an Objection through counsel, the Settlement Class Member will be responsible for his or her attorney's fees and costs.

The objection, to be effective, must be sent by the objector or a legally authorized representative only on an individual basis and not as part of a group, class or subclass.

Any Settlement Class Member who fails to timely file such a written statement of his/her or its intention to object shall be foreclosed from making any objection to this Settlement Agreement or to the Fee and Expense Application, except as permitted by the Court.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.

If you file and serve an Objection, you may appear at the Final Approval Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear.

FINAL APPROVAL HEARING

11. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement Agreement and will hold a hearing to decide whether to give final approval to the Settlement Agreement. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement Agreement should be approved as fair, reasonable, adequate, and in the best interest of the Settlement Class; to consider the application for a representative stipend and attorneys' fees and expenses.

12. When and where is the Final Approval Hearing?

On January 14, 2020 at 2:00 p.m., the Final Approval Hearing will be held on the proposed Settlement. The hearing will take place at: **The Suffolk County Superior Courthouse**, Courtroom 1309, 13th Floor, Three Pemberton Square, Boston, Massachusetts, 02108. At the hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the proposed Settlement.

The hearing may be postponed to a different date or time or location without notice. Please check with the Court or Plaintiff's Counsel for any updates about the Settlement generally or the Final Approval Hearing specifically. If the date or time of the Final Approval Hearing changes, the new date and/or time will be posted on the Court's Online Docket, which can be found at: <https://www.masscourts.org/eservices/home.page.3>.

13. May I speak at the hearing?

At that hearing, the Court will entertain Objections concerning the Settlement and other issues as described herein. You may attend, but you do not have to. You may speak at the Final Approval Hearing only if you have timely served and filed an Objection in accordance with the terms set forth herein.

GETTING MORE INFORMATION

14. How do I get more information?

For the full details of the lawsuit, the claims that have been asserted by Plaintiff, and the terms and conditions of the Settlement Agreement, you may:

1. View the pleadings, settlement documentation and long-form notice on the claim administrators Website: www.MedicalRecordsRequestSettlement.com; and/or

2. You may examine the Action's files during regular business hours of each business day at the Civil Clerk's Office, Suffolk County Superior Courthouse, 12th Floor, 3 Pemberton Square, Boston, Massachusetts.
3. This description of the Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit the Civil Clerk's Office, Suffolk County Superior Courthouse, 12th Floor, 3 Pemberton Square, Boston, Massachusetts or Class Counsel's Website: <https://forrestlamothe.com/>.
4. For general questions about the Settlement, you may contact the Settlement Administrator at 1-866-983-3173.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO
THE CLERK OF THE COURT OR THE JUDGE.**