

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA
Lutz, et al. v. Electromed, Inc., No. 21-cv-2198

A court has authorized this notice. This is not a solicitation from a lawyer.

If You Were Subject to the Electromed, Inc. Data Breach and Previously Received a Notice Letter Notifying You of the Data Breach, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$825,000 class action settlement.
- The class action lawsuit concerns the June 2021 data breach of Electromed, Inc. (“Electromed” or “Defendant”) in which it was determined that an unauthorized third party gained access to certain Electromed’s files containing sensitive personal information of its customers, employees, and some third-party contractors. Electromed denies that it did anything wrong and disputes that it has any liability, but has agreed to settle the lawsuit on a class wide basis.
- To be eligible to make a claim, you must have received a notice letter of the Electromed data breach that occurred in June 2021.
- Eligible claimants under the Settlement Agreement will receive \$30 (non-California claimants) or \$100 (California claimants) or the actual amount of unreimbursed ordinary losses up to \$250 with supporting documentation or up to \$5,000 of extraordinary losses with adequate documentation to prove the monetary losses – whichever is greater.
- For more information or to submit a claim visit www.ElectromedDataSettlement.com or call 1-855-518-4168 Monday through Saturday, between 8:30 a.m. and 5:00 p.m. Central Standard Time.
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
SUBMIT A CLAIM FORM	The only way to receive payment.	Submitted or Postmarked on or Before April 1, 2023
EXCLUDE YOURSELF BY OPTING OUT OF THE CLASS	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant for the same claims.	Submitted or Postmarked on or Before March 2, 2023
OBJECT TO THE SETTLEMENT AND/OR ATTEND THE HEARING	You can write the Court about why you agree or disagree with the Settlement. The Court cannot order a different settlement. You can also ask to speak to the Court at the Final Approval Hearing on March 2, 2023 about the fairness of the Settlement, with or without your own attorney.	Submitted or Postmarked on or Before March 2, 2023
DO NOTHING	Receive no payment. Give up rights if you are a class member.	

- Your rights and options as a class member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

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CLASS NOTICE INFORMATION

1. Why did I get this notice?

Defendants’ records indicate that you may have been part of a data breach of Electromed’s systems in June 2021 that may have exposed certain personal information of yours. If you qualify, you could be eligible to receive a payment as part of the Settlement.

For more information, go to: www.ElectromedDataSettlement.com

The person who has sued Electromed is called the Plaintiff. Electromed is the Defendant that has been sued in the lawsuit.

2. What is this lawsuit about?

In June 2021, Electromed determined through a third-party cybersecurity expert investigation that a criminal ransomware attacked allowed cybercriminals accessed to certain Electromed files containing customers, employees, and some third-party contractors personal information. Upon receiving notice that her information was part of the data breach, Plaintiff brought this lawsuit on behalf of herself and all potential class members for the alleging claims of negligence to implement adequate data security safeguards, which allowed cybercriminals to access to her personal information. Defendant denies that it acted negligently in protecting Plaintiff’s personal information.

3. What is a class action?

In a class action lawsuit, one or more people called “Class Representatives” have sued on behalf of themselves and other people who have similar claims. These people and entities together are called a “Class” or “Class Members.” The company Plaintiff sued on behalf of herself and all others similarly situated —Electromed, Inc.—is called the Defendant. In a class action, one court resolves the issues for all Class Members, except for those who choose to exclude themselves.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both parties agreed to a Settlement to resolve the claims. A class wide settlement avoids the costs and risk of a trial, and class members can receive the available settlement compensation benefits. The Class Representative and Class Counsel believe the Settlement is in the best interest of the Class.

WHO IS INCLUDED IN THE SETTLEMENT

5. Who is in the Settlement?

You have been identified through Electromed’s records as a class member, and are included in the Settlement, if you

received a data breach notice letter from Defendant indicating you may be part of the Electromed data breach that occurred in June 2021. The Class is defined for settlement purposes as:

All persons who were sent notice of the Data Breach. A California Subclass will be created to address their claims under the California Confidentiality of Medical Information Act.

Excluded from the Class are Electromed's officers, directors, and employees; any entity in which Electromed has a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Electromed. Also excluded from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

6. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Class, you can request free assistance by calling the Settlement Administrator or calling 1-855-518-4168 for more information.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Defendant will pay \$825,000 into a Settlement Fund, which will be distributed to class members who submit valid claims, after deducting the named Plaintiff's incentive award, class counsel's attorneys' fees and expenses, and notice and administration costs, if such award is approved by the Court.

The Settlement Fund will provide:

- **\$30** to each Class Member upon submission of a valid claim;
- **\$100** to each California Subclass Member upon submission of a valid claim;
 - o California Subclass Members may receive the \$100 payment, but are unable to claim the \$30 payment in addition to the \$100 payment.
- **Up to \$250** for unreimbursed ordinary losses and supporting documentation;
 - o Including out of pocket expenses incurred as a result of the data breach, which must be fairly traceable to the June 2021 data breach and must not have been previously reimbursed by a third-party, along with supporting documentation or sworn attestation;
 - o Including up to 4 hours of lost time at \$25/hour spent mitigating the effects of the Electromed data breach with sworn attestation;
- **Up to \$5,000** in compensation to each valid claim for proven monetary loss;
 - o If the loss is an actual, documented, and unreimbursed monetary loss;
 - o The loss was more likely than not cause by the Eletromed data breach;
 - o The loss occurred between June 2021 and June 2022;
 - o The loss is not already covered by unreimbursed ordinary losses category;
 - o The Settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft.

8. Why does the Settlement include a separate California class?

The settlement includes a subclass of California residents who will receive additional settlement monetary benefits under the California Confidentiality of Information Act. Class members who submit valid claims will receive a different amount than the California subclass members.

9. Who can get money from the Settlement, and how much?

To receive money from the Settlement, you must be a class member – meaning that you received a notice of the June

2021 Data Breach from Electromed. The determination of settlement funds available to each valid claimant is described in Question #7 above.

10. What am I giving up if I stay in the Class?

If you are a class member (*see* Question #5 above), unless you exclude yourself with an opt-out request (*see* Questions #17-19 below), you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the same issues as in this lawsuit. The “Release” section in the Settlement Agreement (VII.) describes the legal claims that you are giving up if you remain in the settlement class. The Settlement Agreement can be viewed at www.ElectromedDataSettlement.com.

HOW TO GET A PAYMENT – MAKING A CLAIM

11. How can I get a payment?

By submitting a valid claim form by on or before the claim deadline of April 1, 2023. If you received the June 2021 data breach notification letter you can make a claim by filling out and submitting the claim form available at www.ElectromedDataSettlement.com.

You can also contact the Settlement Administrator to request a paper claim form by telephone (1-855-518-4168), email (info@ElectromedDataSettlement.com), or U.S. mail (Settlement Administrator, Electromed Data Breach Settlement, P.O. Box 2006, Chanhassen, MN 55317-2006).

12. What is the deadline for submitting a claim form?

To be eligible for payment from the Settlement, your valid claim form **must be received or postmarked no later than April 1, 2023.**

13. When will I get my payment?

The Court will hold a hearing on June 5, 2023, 10:00 a.m., to decide whether to approve the Settlement. Payments will be made after the Settlement is approved and becomes final, meaning there is no appeal from the Court’s order approving the Settlement.

Updates regarding the Settlement will be posted on the Settlement website, www.ElectromedDataSettlement.com.

THE ATTORNEYS REPRESENTING YOU

14. Do I have an attorney in the case?

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as “Class Counsel.”

Terence R. Coates Dylan J. Gould MARKOVITS, STOCK & DEMARCO, LLC 119 E. Court Street, Suite 530 Cincinnati, OH 45202 513-651-3700	Nathan D. Prosser HELLMUTH & JOHNSON, PLLC 8050 West 78th Street Edina, MN 55439 952-941-4005	Bryan L. Bleichner CHESTNUT CAMBRONNE, LLC 100 Washington Ave., Suite 1700 Minneapolis, MN 55401 612-339-7300
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You will not be charged by these attorneys for their work on the case. If you want to be represented by your own attorney

15. Should I get my own attorney?

You do not need to hire your own attorney. If you want your own attorney, you may hire one, but you will be responsible for any payment for that attorney’s services. For example, you can ask your own attorney to appear in court for you if you want someone other than Class Counsel to speak on your behalf. You may also appear for yourself without an attorney.

16. How will the attorneys be paid?

Class Counsel have undertaken this case on a contingency-fee basis, meaning they have paid for all of the expenses in the case and have not been paid any money in relation to their work on this case. Accordingly, Class Counsel will ask the Court to award them attorneys' fees of up to 1/3 (\$275,000) of the Settlement Fund and reimbursement for costs and expenses not to exceed \$15,000 to be paid from the Settlement Fund. The Court will decide the amount of fees and costs and expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel's request for attorneys' fees and costs will be filed by February 16, 2023 and will be available to view on the settlement website at www.ElectromedDataSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a class member and you don't want to receive the benefits from the Settlement, and you want to keep your right, if any, to sue Defendant on your own about the legal issues at issue in this lawsuit, then you must take affirmative steps to get out of the Settlement. This is called excluding yourself from – or “Opting Out” of the Class.

17. How do I get Opt-Out of the Settlement?

A class member may request to be excluded from the Settlement in writing by a request postmarked, or submitted electronically through the Settlement Website, on or before the Objection/Exclusion deadline (60 days after Notice Date) of March 2, 2023. The timely exclusion Opt-Out must include:

- Your name;
- Address; and
- Telephone number;
- Name and number of this case;
- A statement that he/she wishes to be excluded from the Settlement; and
- Signature.

A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement class and shall be bound by the terms of the Settlement.

18. If I am a class member and don't Opt-Out, can I sue the Defendant for the same thing later?

No. If you are a class member (*see* Question #5 above), unless you opt-out, you give up the right to sue Electromed for the claims resolved by the Settlement. So if you are a class member and you want to try to pursue your own lawsuit, you must opt out.

19. What happens if I Opt-Out?

If you opt-out of the Settlement, you will not have any rights as a member of the Class under the Settlement terms; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on the claims alleged in this lawsuit at your own expense.

OBJECTING TO OR COMMENTING ON THE SETTLEMENT

20. How do I tell the Court if I don't agree with the Settlement terms?

If you are a class member and you do not Opt-Out of the Settlement, you can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

You will have up to and including 90 days following entry of the Preliminary Approval Order (60 days after the Notice Date) to object to the Settlement. You may also appear at the Fairness Hearing, either in person or through your own attorney. If

you appear through your own attorney, you are responsible for paying that attorney. To object, you must file a document with Court indicating that you object to the proposed Settlement in *Lutz et al. v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.). You must include copies of such papers you propose to submit at the Final Approval Hearing with the Clerk of the Court; and send copies of such papers via U.S. Mail or overnight delivery to both Class Counsel and Defendant's Counsel.

A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator has established to receive requests for exclusion or objections, Claim Forms, and any other communication relating to the Settlement.

Any class member who intends to object to this Settlement must include in any such objection:

- Your full name, address, and current telephone number;
- Name and number of this case (*Lutz et al. v. Electromed, Inc.*, No. 21-cv-2198 (D. Minn.);
- All grounds for the objection, with factual and legal support for the stated objection, and supporting material;
- Identification of any other objections you have filed, or have had filed on your behalf in any other class action case in the last four years; and
- Signature.

You must also include whether you intend to appear at the Final Approval Hearing, with or without counsel, and identify any witnesses you may call to testify at the Final Approval Hearing along with all exhibits you intend to introduce into evidence at the Final Approval Hearing.

21. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a class member and do not opt-out of the Settlement. Opting-out of the Settlement indicates to the Court that you do not want to be part of the Settlement. If you opt-out of the Settlement, you cannot object to it because it does not affect you. You cannot both opt-out of the Settlement and also object to the Settlement.

THE COURT'S FAIRNESS HEARING

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on June 5, 2023, at the federal courthouse located at 316 North Robert Street, St. Paul, MN 55101. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and listen to any arguments presented. The Court may also decide how much Class Counsel should receive in fees and expense reimbursements. After the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to the class members. Be sure to check the website, www.ElectromedDataSettlement.com, for news of any such changes.

23. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the Final Approval Hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include a statement in your written objection (discussed above at Question #20) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the Class.

IF I DO NOTHING

25. What happens if I do nothing?

If you do nothing and you are a class member, you will get no money from this Settlement, and you will not be able to sue Electromed for the conduct alleged in this lawsuit. If you do nothing and you are not a class member, the Settlement will not affect or release any individual claim you may have.

GETTING MORE INFORMATION

26. Are more details about the Settlement available?

Yes. This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents. You can get a copy of these documents at www.ElectromedDataSettlement.com, by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.dcd.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Minnesota, 316 N. Robert Street, St. Paul, Minnesota 55101 between 9:00 a.m. and 4:00 p.m. CST, Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

27. How do I get more information?

The settlement website www.ElectromedDataSettlement.com has the claim form, answers to questions about the Settlement and other information, including important documents, to help you determine whether you are eligible for a payment.

You can also write or call to the Settlement Administrator at:

Electromed Data Breach Settlement
Settlement Administrator
P.O. Box 2006
Chanhassen, MN 55317-2006
1-855-518-4168
info@ElectromedDataSettlement.com