

LONG FORM NOTICE - CONSUMER CLASS

Smith et al. v. Kaye-Smith Enterprises, Inc.
United States District Court for the District of Oregon
Cause No. 3:22-cv-01499-AR

If you received a Notice of Data Incident from Kaye-Smith Enterprises, Inc. or if you believe you were affected when Kaye-Smith Enterprises, Inc. (“Kaye-Smith”) was subjected to a data breach in June 2022 (the “Data Incident”), a proposed class action settlement may affect your rights.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against Kaye-Smith. The lawsuit involves allegations that Kaye-Smith Enterprises, Inc. failed to protect sensitive personal information it received from Business Associates and failed to timely notify affected individuals after learning their information was exposed. Kaye-Smith denies these allegations.
- The parties have agreed to a proposed settlement on behalf of those persons whose personal information may have been exposed in the Data Incident.
- Kaye-Smith has agreed to pay no less than \$2,000,000 into a fund that will be used to pay settlement awards to eligible persons who file claims, settlement administration expenses, any court-awarded service awards, and court-awarded attorneys’ fees and costs.
- Court-appointed lawyers for the Settlement Class (“Class Counsel”) will ask the Court for a payment of one third of the fund (approximately \$667,000) as attorneys’ fees. In addition, Class Counsel will ask the Court to reimburse them for out-of-pocket expenses they incurred in this case, which currently amount to approximately \$50,000. Class Counsel will also request service awards of up to \$5,000 to each of the class representatives.
- Your legal rights are affected whether you act, or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Submit A Claim Form by December 26, 2024	This is the only way to receive a payment.
Exclude Yourself by December 2, 2024	You will receive no benefits from the Settlement if you exclude yourself. You keep any rights to sue Kaye-Smith or its Business Associates separately about the same or similar legal claims.
Object by December 26, 2024	You may file a written objection with the Court if you disagree with any portion of the Settlement. If you exclude yourself from the Settlement, the Court will not consider an objection from you.
Attend a Hearing on January 7, 2025	You may ask to speak in Court about the fairness of the settlement.
Do Nothing	Get no payment. Give up your rights.

BASIC INFORMATION

1. Why did I receive this notice?

Kaye-Smith’s records show that your sensitive personal information may have been compromised when Kaye-Smith was subjected to a cybersecurity hack in June 2022 (the “Data Incident”). You may have received a Notice of Data Incident from Kaye-Smith or one of its Business Associates. The purpose of this Notice is to let you know that the parties have reached a proposed settlement in the class action lawsuit entitled *Smith et al. v. Kaye-Smith Enterprises, Inc.*, Cause No. 3:22-cv-01499-AR, pending in the United States District Court for the District of Oregon. You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

LONG FORM NOTICE - CONSUMER CLASS

2. What is this lawsuit about?

The Named Plaintiffs allege that Kaye-Smith violated the Washington Consumer Protection Act, and state common law by failing to protect sensitive personal information Kaye-Smith received from Business Associates or by failing to timely notify affected individuals after learning their data was compromised in the Data Incident.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called plaintiffs or “class representatives” sue on behalf of other people who have similar claims. The people together are a “class” or “class members.” The party they sue (in this case Kaye-Smith Enterprises, Inc.) is called the defendant. If the lawsuit proceeds as a class action, it resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the class.

THE SETTLEMENT

4. Why is there a settlement?

The Court did not decide in favor of the Plaintiff or Kaye-Smith. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The class representatives and their attorneys think the settlement is best for the Settlement Class.

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

You are in the “Settlement Class” if your personal information was included in the Data Incident.

The Settlement Class does not include any persons who validly request exclusion from the Settlement Class, as described under Question 11. A person who does not exclude themselves is a “Settlement Class Member.”

If you have questions about whether you are a part of the Settlement Class you may call 1-877-203-8209 or visit www.KayeSmithSettlement.com for more information.

THE SETTLEMENT BENEFITS

6. What does the Settlement Agreement provide?

Kaye-Smith has agreed to pay no less than \$2,000,000 to pay Settlement Class Members who submit valid claims, any court-approved attorneys’ fees, litigation expenses, service awards, and notice and settlement administration expenses. You will not receive any settlement payment unless you submit a Claim Form as described in Question 8.

Settlement Class Members may submit a claim for one of two payment options and are eligible for fraud monitoring without the need to file a claim. Kaye-Smith also agreed to change their business and cybersecurity practices.

Tier 1 Claims

If you spent time on tasks related to the Data Incident or suffered Out-of-Pocket Losses due to the Data Incident, you may submit a “Tier 1 Claim” for reimbursement of up to five hours of lost time at \$25 per hour and your documented out-of-pocket expenses, up to a total of \$2,500. Claims for out-of-pocket losses (other than lost time reimbursement) must include supporting documentation sufficient to verify the loss. Supporting documentation may include, for example, receipts, credit card statements, bank statements, invoices, or any other documentation to establish out of pocket loss that is fairly traceable to the Data Incident. You may mark out or redact any transactions that are not relevant to your claim before sending in the documentation.

Out-of-Pocket Losses may include any out-of-pocket expenses incurred as a result of the Data Incident, such as the following: (a) unreimbursed losses relating to fraud, medical or identity theft, (b) professional fees, including attorneys’ fees, accountants’ fees, and fees for credit repair services, (c) costs associated with freezing or unfreezing credit with any credit reporting agency, (d) credit monitoring costs, and (e) miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

LONG FORM NOTICE - CONSUMER CLASS

Lost time may include time spent on tasks such as (a) changing passwords on potentially impacted accounts; (b) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (c) contacting a medical provider or financial institution to discuss suspicious activity; (d) signing up for identity theft or fraud monitoring services; or (e) researching information about the Data Incident, its impact, or how to protect yourself from harm due to the Data Incident.

The above lists of reimbursable lost time and documented out-of-pocket losses are not meant to be exhaustive and are provided only as examples. You may make claims for any lost time and out of pocket expenses that you believe are reasonably related to the Data Incident or to mitigating the effects of the Data Incident.

Tier 2 Claims

In the alternative, if you took any action at all in response to the Data Incident, even if *de minimis*, you may submit a “Tier 2 Claim” for an alternative cash payment of up to \$500. The actual amount of the alternative cash payment will depend on the amounts remaining in the Settlement Fund after all Tier 1 Claims have been paid.

Tier 3 Benefits – Fraud Monitoring

Settlement Class Members are also eligible to access 12 months of credit monitoring services provided by CyEx. If the Settlement is approved and becomes final, the settlement administrator will send an activation code to each Settlement Class Member that can be redeemed on CyEx’s website.

7. What are the tax implications of accepting a settlement payment?

The tax implications may vary based on your income, the amount you receive and other factors, so you should consult a tax professional to assess the specific tax implications of any payment you may receive. Class Counsel and the settlement administrator cannot advise you with respect to your tax obligations.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8. How do I make a claim?

To qualify for a settlement payment, you must submit a Claim Form by December 26, 2024. You may submit a Claim Form online by going to the Settlement Website at www.KayeSmithSettlement.com and following the instructions. You may also download a paper Claim Form on the Settlement Website or call the settlement administrator at 1-877-203-8209 to request a paper Claim Form and submit the Claim Form by mail. Claim Forms sent by mail must be postmarked by December 26, 2024 and mailed to:

Kaye-Smith Settlement Administrator
PO Box 2378
Portland, OR 97208-2378

If you have questions about the claim submission process you may call the settlement administrator at 1-877-203-8209 or visit www.KayeSmithSettlement.com for more information.

9. When will I get my payment?

The Court will hold a hearing on January 7, 2025 to decide whether to approve the settlement, as described in Question 19. If no appeals are timely filed after the Court enters the Final Approval Order, then the Order and settlement will become final. Settlement payments will be sent to Settlement Class Members who submitted valid claims approximately 30 days from the Settlement’s Effective Date (roughly 65 days after the Settlement is approved). The checks will only be valid for 120 days from the date of issuance, after which you will not be able to cash or deposit them. However, if an appeal is filed, payments will not be sent until after the appeal is finally resolved, which could take more than one year.

LONG FORM NOTICE - CONSUMER CLASS

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

Unless you request to exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. If the Court approves the settlement and becomes final, you and other Settlement Class Members can't sue, continue to sue, or be part of any other lawsuit against the "Released Parties" regarding the Data Incident.

The Settlement Agreement (available at www.KayeSmithSettlement.com) describes the claims you are releasing and against whom you are releasing claims, so read it carefully. To summarize, the release includes claims against Kaye-Smith or the Business Associates through which Kaye-Smith obtained the compromised data (the "Released Parties") that arise out of or relate to the Data Incident.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to receive the benefits of this settlement or if you want to keep the right to sue or continue to sue Kaye-Smith or its Business Associates regarding the Data Incident, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself – or is sometimes referred to as "opting out" of the Settlement Class.

11. How do I exclude myself from the settlement?

To "opt out" or exclude yourself from the settlement you must send the request in writing to the Settlement Administrator. You must include your name and address in the letter. You can mail your exclusion request, which must be postmarked no later than December 2, 2024, to the following address:

Kaye-Smith Settlement Administrator
PO Box 2378
Portland, OR 97208-2378

Requests for exclusion mailed after December 2, 2024 will not be effective and will not result in your being excluded from the Settlement Class.

If you ask to be excluded, you will not get any payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

12. Why would I ask to be excluded?

If you already have, or want to bring, your own lawsuit against the Released Parties regarding the Data Incident and want to continue with the lawsuit, you need to ask to be excluded from the Settlement Class. If you exclude yourself from the Settlement Class you won't get any money from the Settlement. However, you may be able to sue or continue to sue the Released Parties regarding the Data Incident on your own. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

13. If I exclude myself, can I get anything from this settlement?

No. You will not receive any payment from the settlement if you exclude yourself.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this lawsuit?

The Court decided that the law firms of Rhodes Legal Group, Baxter & Baxter, and Heenan & Cook are qualified to represent you and all Settlement Class Members. These law firms are referred to as "Class Counsel." You will not receive a bill from these lawyers, who have asked the Court to be paid a percentage of the Settlement Fund.

LONG FORM NOTICE - CONSUMER CLASS

If you want to be represented by your own lawyer, you may hire one at your own expense. The names and addresses of Class Counsel are:

Ari Brown
RHODES LEGAL GROUP, PLLC
918 South Horton Street, Suite 901
Seattle, Washington 98134

John Heenan
Heenan & Cook, PLLC
1631 Zimmerman Trail, Suite 1
Billings, Montana 59102

Justin Baxter
BAXTER & BAXTER, LLP
8835 S.W. Canyon Lane, Suite 130
Portland, Oregon 97225

15. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want to hire your own lawyer, you will have to pay that lawyer. For example, you can ask a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you.

16. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of attorneys' fees in the amount of one-third of the \$2,000,000 Settlement Fund (which may be increased due to unspent litigation or administration costs) plus litigation costs of approximately \$50,000. This payment compensates Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also request \$5,000 service awards for named plaintiffs, Richard Smith, Noel Woodard, and Richard Krefting, and \$2,500 for Named Plaintiff Washington Federal Bank to compensate for time and effort during the litigation. Class Counsel's complete request for fees, costs, and the service award to the Class Representative will be posted on the settlement website, www.KayeSmithSettlement.com. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

17. How do I object to the settlement?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue.

Any objection to the proposed settlement must be in writing and include your name, address, telephone number, the name of the case, and the reason(s) for your objection, and meet the criteria described in the Settlement Agreement. You must mail a copy of the objection to the following addresses postmarked no later than December 26, 2024 and file it with the Court:

SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
Kaye-Smith Settlement Administrator PO Box 2378 Portland, OR 97208-2378	John Heenan Heenan & Cook, PLLC 1631 Zimmerman Trail, Suite 1 Billings, Montana 59102	Christopher Seusing Tim Shea Wood Smith Henning & Berman, LLP 801 Kirkland Avenue, Suite 100 Kirkland, WA 98033

18. What is the difference between objecting and excluding myself from the settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

LONG FORM NOTICE - CONSUMER CLASS

THE COURT'S FAIRNESS HEARING

19. When and where will the Court hold a hearing on the fairness of the settlement?

The Court will hold the Final Approval Hearing on January 7, 2025 at 2:00 p.m., before the Honorable Jeffrey Armistead of the United States District Court for the District of Oregon, 1000 SW 3rd Ave #740, Portland, OR 97204. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the service awards to the Named Plaintiffs. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the settlement website, www.KayeSmithSettlement.com. You can also monitor case activity and for changes to the dates and time of the fairness hearing by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.ord.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Oregon, 1000 SW 3rd Ave #740, Portland, OR 97204, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

20. Do I have to come the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come to the hearing at your own expense. If you send an objection you don't have to come to Court to talk about it; as long as your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

21. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you submit an objection (see Question 17 above) and intend to appear at the hearing, you must state your intention to do so in your objection. You cannot speak at the hearing if you exclude yourself or if you fail to state your intention to do so in your objection.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you do nothing, you will be a member of the Settlement Class and you will not receive payment from the settlement. You will also be bound by the terms of the settlement, including the Release described in Question 10, above.

GETTING MORE INFORMATION

23. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may review and download or print a copy of the Settlement Agreement via the settlement website at www.KayeSmithSettlement.com. You can also get a copy of the Settlement Agreement by writing to Kaye-Smith Settlement Administrator at PO Box 2378, Portland, OR 97208-2378.

24. How do I get more information?

You can call 1-877-203-8209 toll free; write to Kaye-Smith Settlement Administrator at PO Box 2378, Portland, OR 97208-2378; or visit the settlement website at www.KayeSmithSettlement.com where you will find answers to common questions about the settlement, the Settlement Agreement, Plaintiff's Complaint, Class Counsel's motion for an award of attorneys' fees and costs, and other information.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR KAYE-SMITH
WITH QUESTIONS ABOUT THE SETTLEMENT.**