

# **Notice of The Kroger Co. FTA Data Breach Class Action Settlement**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.  
Please read this Notice carefully and completely.*

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

*Para una notificación en Español, llamar 1-866-790-4318 o visitar nuestro sitio web  
[www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com).*

- A Settlement has been proposed in a class action lawsuit against The Kroger Co. (“Kroger” or “Defendant”), relating to a data breach that Kroger announced on February 19, 2021, whereby on or around January 23, 2021, Kroger learned that an unauthorized user(s) gained access to certain Kroger customer and current and former employee information, including names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers, information to process insurance claims, prescription information (such as prescription number, prescribing doctor, medication names, and dates), medical history, certain clinical services, and/or salary-related information (the “FTA Data Breach”). The FTA Data Breach was part of the breach involving Accellion, Inc.’s (“Accellion”) file transfer product called the File Transfer Appliance (FTA).
- If you received a notice from Kroger that your personal information was compromised as a result of the FTA Data Breach, you are included in this Settlement as a “Class Member.”
- Under the Settlement, Kroger has agreed to establish a \$5 million Settlement Fund to: (1) pay for two years of credit monitoring services and identity theft insurance (“Credit Monitoring and Insurance Services”); or (2) provide cash payments of up to \$5,000 per Class Member for reimbursement of certain Documented Losses (“Documented Loss Payment”); or (3) provide cash payments to Class Members (“Cash Fund Payment”). The Settlement Fund will also be used to pay for the costs of the settlement administration, court-approved attorneys’ fees and expenses and Service Awards for named Plaintiffs. In addition, Kroger has agreed to undertake certain remedial measures and enhanced security measures that it will continue to implement.
- Your legal rights will be affected whether you act or do not act. You should read this entire Notice carefully.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>                           |   |
|--|---|
| <b>File a Claim Form</b><br><b>Deadline: March 5, 2022</b>                         | Submitting a Claim Form is the only way that you can receive any of the benefits provided by this Settlement, including Credit Monitoring and Insurance Services, a Documented Loss Payment, or a Cash Fund Payment. If you submit a Claim Form, you will give up the right to sue the Defendant and certain related parties in a separate lawsuit about the legal claims this Settlement resolves. |
| <b>Exclude Yourself From This Settlement</b><br><b>Deadline: February 18, 2022</b> | This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against the Defendant, or certain related parties, for the claims this Settlement resolves. If you exclude yourself, you will give up the right to receive any benefits from this Settlement.  |

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|   |  |
|---|--|
| <p><b>Object to or Comment on the Settlement</b></p> <p><b>Deadline:</b><br/><b>February 18, 2022</b></p> | <p>You may object to the Settlement by writing to the Court and informing it why you do not think the Settlement should be approved. You can also write the Court to provide comments or reasons why you support the Settlement.</p> <p>If you object, you may also file a Claim Form to receive Settlement benefits, but you will give up the right to sue the Defendant in a separate lawsuit about the legal claims this Settlement resolves.</p> |
| <p><b>Go to the “Final Fairness” Hearing</b></p> <p><b>Date:</b><br/><b>March 10, 2022</b></p>            | <p>You may attend the Final Fairness Hearing where the Court may hear arguments concerning approval of the Settlement. If you wish to speak at the Final Fairness Hearing, you must make a request to do so in your written objection or comment. You are <u>not</u> required to attend the Final Fairness Hearing.</p>  |
| <p><b>Do Nothing</b></p>  | <p>If you do nothing, you will not receive any of the monetary Settlement benefits and you will give up your rights to sue Kroger and certain related parties for the claims this Settlement resolves.</p>   |

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

## BASIC INFORMATION

### 1. Why did I get this Notice?

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of 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 is eligible for them, and how to get them.

The Honorable Edward J. Davila of the United States District Court for the Northern District of California is overseeing this class action. The case is known as *Cochran vs. The Kroger Co.*, U.S.D.C. Case No. 5:21-cv-01887 (the “Action”). The people who filed this lawsuit are called the “Plaintiffs” and one of the companies they sued, The Kroger Co., is called the “Defendant.”

### 2. What is this lawsuit about?

On or about February 19, 2021, Kroger announced that in December 2020, an unauthorized user had accessed information relating to certain Kroger pharmacy and money services customers and current and former employees, including names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers, information to process insurance claims, prescription information (such as prescription number, prescribing doctor, medication names, and dates), medical history, certain clinical services, and/or salary-related information in a data breach involving Kroger’s file transfer software vendor, Accellion. Specifically, the breach exploited vulnerabilities in Accellion’s file transfer product called the FTA, which allowed third parties to then access information about Kroger’s customers and current and former employees.

The Plaintiffs claim that Kroger failed to adequately protect their personal information and that they were injured as a result. Kroger denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing or that the law has been violated. Kroger denies

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these and all other claims made in the Action. By entering into the Settlement, Kroger is not admitting that it did anything wrong.

### **3. Why is this a class action?**

In a class action, one or more people called the Class Representatives sue on behalf of all people who have similar claims. Together all of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

The Class Representatives in this case are Ricky Cochran, Alain Berrebi, and Jareme Stobbe.

### **4. Why is there a Settlement?**

The Class Representatives and Kroger do not agree about the claims made in this Action. The Action has not gone to trial and the Court has not decided in favor of the Class Representatives or Kroger. Instead, the Class Representatives and Kroger have agreed to settle the Action. The Class Representatives and the attorneys for the Class (“Class Counsel”) believe the Settlement is best for all Class Members because of the risks and uncertainty associated with continued litigation and the nature of the defenses raised by Kroger.

## **WHO IS INCLUDED IN THE SETTLEMENT**

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

If you received Notice of this Settlement, you have been identified by the Settlement Administrator as a Class Member. More specifically, you are a Class Member, and you are affected by this Settlement, if: you received a notice from Kroger that your personal information was compromised as a result of the FTA Data Breach.

### **6. Are there exceptions to individuals who are included in the Settlement?**

Yes, the Settlement does not include: (1) the Judges presiding over the Action, and members of their families; (2) Kroger, their subsidiaries, parent companies, successors, predecessors, and any entity in which Kroger or their parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded Persons.

### **7. What if I am still not sure whether I am part of the Settlement?**

If you are still not sure whether you are a Class Member, you may go to the Settlement website at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com), or call the Settlement Administrator’s toll-free number at 1-866-790-4318.

## **THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

### **8. What does the Settlement provide?**

The Settlement will provide Class Members with the opportunity to select and make a claim for one of the following benefits:

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- Cash Fund Payments in amounts to be determined in accordance with the terms of the Settlement; or
- Two years of Credit Monitoring and Insurance Services; or
- Cash Payments of up to \$5,000 per Class Member for reimbursement of certain Documented Losses (“Documented Loss Payment”).

In addition, Kroger has agreed to take certain remedial measures and enhanced security measures as a result of this Action.

Please review Question 12 carefully for additional information regarding the order in which Benefits are paid from the Settlement Fund. This additional information may impact your decision as to which of the three benefit options is the best option for you.

## 9. Credit Monitoring and Insurance Services.

In the alternative to a Cash Fund Payment, you may elect Credit Monitoring and Insurance Services. Credit Monitoring and Insurance Services provides a way to protect yourself from unauthorized use of your personal information. If you already have credit monitoring services, you may still sign up for this additional protection. The Credit Monitoring and Insurance Services provided by this Settlement are separate from, and in addition to, the two years of credit monitoring and identity resolution services offered by Kroger in response to the FTA Data Breach to individuals who received a notice letter from Kroger. You are eligible to make a claim for the Credit Monitoring and Insurance Services being offered through this Settlement even if you did not sign up for the previous services.

Credit Monitoring and Insurance Services include: (i) up to \$1 million dollars of identity theft insurance coverage; (ii) three bureau credit monitoring providing notice of changes to the Participating Settlement Class Member’s credit profile; (iii) customer care and dedicated fraud resolution agent; (iv) comprehensive educational resources; (v) extended fraud resolution. The estimated retail value of the Credit Monitoring and Insurance Services is \$360.

## 10. The Documented Loss Payment.

In the alternative to a Cash Fund Payment or Credit Monitoring and Insurance Services, you may elect to submit a Claim Form for reimbursement of Documented Losses. If you spent money remedying or addressing identity theft and fraud that was more likely than not related to the FTA Data Breach, and was not reimbursable by insurance, or you spent money to protect yourself from future harm because of the FTA Data Breach, you may make a claim for a Documented Loss Payment for reimbursement of up to \$5,000 in Documented Losses.

Documented Losses consist of unreimbursed losses incurred on or after December 16, 2020, that were related to identity theft and fraud and are more likely than not a result of the FTA Data Breach, as well as any expenses related to the FTA Data Breach. For example, credit card or debit card cancellation or replacement fees, late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, credit-related costs associated with purchasing credit reports, credit monitoring or identity theft protection, costs to place a freeze or alert on credit reports, costs to replace a driver’s license, state identification card, Social Security number, professional services, and out-of-pocket expenses for notary, fax, postage, delivery, copying, mileage, and long-distance telephone charges. Other losses or costs related to the FTA Data Breach that are not insurance reimbursable, may also be eligible for reimbursement. Please note, as Kroger stated in the data breach notification letter previously sent to you, no credit card or debit card data was affected by the breach insofar as it relates to Kroger, so there should not be any documented losses related to fraudulent charges on your credit

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card or debit card. To protect the Settlement Fund and valid claims, all Claim Forms submitted that seek payment related to credit or debit card fraudulent transactions will be carefully reviewed by the Settlement Administrator.

Claims for Documented Loss Payments must be supported by Reasonable Documentation. Reasonable Documentation means written documents supporting your claim, such as credit card statements, bank statements, invoices, telephone records, and receipts.

Individual cash payments may be reduced or increased pro rata depending on the number of Class Members that participate in the Settlement.

If you file a Claim Form for a Documented Loss Payment and it is rejected by the Settlement Administrator and you do not correct it, your Claim Form will be considered for a Cash Fund Payment.

## **11. The Cash Fund Payment.**

You may file a claim to receive a cash payment. This is the “Cash Fund Payment.” The amount of the Cash Fund Payment will vary depending on the number of valid claims that are submitted. An estimated range for the Cash Fund Payment is \$36-\$182 for California Class Members who submit valid Claims, and \$18-\$91 for all other Class Members who submit valid claims, but this is just an estimate, not a guarantee. To receive a Cash Fund Payment, you must submit a completed Claim Form electing to receive a Cash Fund Payment.

You are not required to provide Reasonable Documentation with your Claim Form to receive a Cash Fund Payment. Individual Cash Fund Payments may be reduced or increased pro rata depending on the number of Class Members that participate in the Settlement and the amount of money that remains in the Cash Fund after payments of other Benefits and charges with priority for payment under the Settlement. *See* Number 12 below.

## **12. How will Settlement Benefits be paid?**

Before determining which Benefit option from the Settlement is best for you (selecting a Cash Fund Payment, Credit Monitoring and Insurance Services, or Documented Loss Payment), it is important for you to understand how Settlement payments will be made. Court awarded attorneys’ fees, up to a maximum of 25% of the \$5 million Settlement Fund (i.e., \$1,250,000), reasonable costs and expenses incurred by attorneys for the Class, and service awards of \$1,500 to each of the three Class Representatives will be deducted from the Settlement Fund before making payments to Class Members. The Court may award less than these amounts. The remainder of the Settlement Fund will be distributed in the following order:

1. Credit Monitoring and Insurance Services claims will be paid first.
2. If money remains in the Settlement Funds after paying for the Credit Monitoring and Insurance Services, Documented Loss Payment claims will be paid second.
3. If money remains in the Settlement Funds after paying Credit Monitoring and Insurance Services claims and Documents Loss Payment claims, the amount of the Settlement Fund remaining will be used to create a “Post DC Net Settlement Fund,” which will be used to pay all Cash Funds Payment claims. As stated in paragraph 11 above, those are an estimated range of \$36-\$182 for California Class Members who submit valid Claims, and \$18-\$91 for all other Class Members who submit valid claims. This is just an estimate, not a guarantee, based on Class counsel’s experience and belief.

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### **13. Tell me more about Kroger’s remedial measures and enhanced security measures.**

Defendant has completed an investigation into the cause and scope of the FTA Data Breach and completed remediation of the vulnerabilities that allowed the FTA Data Breach to occur. Kroger has confirmed that it has ceased using the Accellion FTA and migrated to a new secure file transfer solution, and that it has secured the sensitive information that was accessed during the FTA Data Breach. Furthermore, as a result of the Action, for a period of five (5) years, Kroger has agreed to institute policies, procedures, and additional security-related remedial measures. These measures include enhancements to Kroger’s third-party vendor risk management program and performing dark web monitoring for fraud, among other measures.

### **14. What is the total value of the Settlement?**

The Settlement provides a \$5,000,000 Settlement Fund and remedial actions taken by Kroger for the benefit of the Class. Any court-approved attorneys’ fees, costs, and expenses, Service Awards to the named Plaintiffs, taxes due on any interest earned by the Settlement Fund, if necessary, and any notice and settlement administration expenses will be paid out of the Settlement Fund, and the balance (“Net Settlement Fund”) will be used to pay for the above Benefits.

### **15. What am I giving up to get a Settlement payment or stay in the Class?**

Unless you exclude yourself, you are choosing to remain in the Class. If the Settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against Kroger and related parties about the legal issues in this Action, resolved by this Settlement and released by the Class Action Settlement Agreement and Release. The specific rights you are giving up are called Released Claims (see next question).

### **16. What are the Released Claims?**

In exchange for the Settlement, Class Members agree to release Kroger and its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees, and assigns of any of the above, as well as Plaintiffs and Class Counsel (“Released Parties”) from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any law (including federal law, state law, common law, contract, rule, or regulation) or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen actual or contingent, liquidated or unliquidated, punitive or compensatory, monetary or nonmonetary, that have been pled in the Action, or that could have been pled in the action, that arise out of or relate to the causes of action, allegations, practices, or conduct at issue in the Complaint related to Kroger, with respect to the FTA Data Breach (“Released Claims”).

The Released Claims do not include claims relating to the enforcement of the settlement. Released Claims do not include rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, against Accellion, Inc. and its predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all past, present, and future officers, directors, employees, stockholders, partners, servants, agents, attorneys, representatives, insurers,

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reinsurers, subrogees, and assigns of any the foregoing entities listed in this sentence. No claims against Accellion are released and the litigation continues as to it.

More information is provided in the Class Action Settlement Agreement and Release which is available at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com).

## HOW TO GET SETTLEMENT BENEFITS—SUBMITTING A CLAIM FORM

### 17. How do I make a claim for Settlement Benefits?

You must complete and submit a Claim Form by **March 5, 2022**. Claim Forms may be submitted online at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com), or printed from the website and mailed to the Settlement Administrator at the address on the form. Claim Forms are also available by calling 1-866-790-4318 or by writing to *Kroger FTA Data Breach Settlement*, Settlement Administrator, P.O. Box 4079, Portland, OR 97208-4079. The quickest way to file a claim is online.

If you received a Notice by mail, use your Claim Number to file your Claim Form. If you lost or do not know your Claim Number, please call 1-866-790-4318 to obtain it.

You may submit a claim for a Cash Fund Payment, or Credit Monitoring and Insurance Services, or a Documented Loss Payment by submitting a Claim Form on the Settlement Website, or by downloading, printing, and completing a Claim Form, and mailing it to the Settlement Administrator.

You may file a claim for only one of the benefits provided under the Settlement: 1) a Cash Fund Payment, or 2) Credit Monitoring and Insurance Services, or 3) a Documented Loss Payment.

### 18. How do I make a claim for a Cash Fund Payment?

To file a claim for a Cash Fund Payment, you must submit a valid Claim Form electing to receive the Cash Fund Payment. To submit a claim for a Cash Fund Payment, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, on or before **March 5, 2022**.

If you wish to receive your payment via PayPal, Venmo, or digital card instead of a check, simply provide your email address (optional). Anyone who submits a valid claim for Cash Fund Payment and does not elect to receive payment via PayPal, Venmo, or digital card, will receive their payment via regular check sent through U.S. Mail.

Instructions for filling out a claim for a Cash Fund Payment are included on the Claim Form. You may access the Claim Form at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com).

The deadline to file a claim for a Cash Fund Payment is **March 5, 2022**.

### 19. How do I make a claim for Credit Monitoring and Insurance Services?

To file a claim for Credit Monitoring and Insurance Services, you must submit a valid Claim Form electing to receive Credit Monitoring and Insurance Services. To submit a claim for Credit Monitoring and Insurance Services, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, on or before **March 5, 2022**.

Instructions for filling out a claim for Credit Monitoring and Insurance Services are included on the Claim Form. You may access the Claim Form at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com).

The deadline to file a claim for Credit Monitoring and Insurance Services is **March 5, 2022**.

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## 20. How do I make a claim for a Documented Loss Payment for reimbursement?

To file a claim for a Documented Loss Payment of up to \$5,000 for reimbursement of Documented Losses, you must submit a valid Claim Form electing to receive a Documented Loss Payment. To submit a claim for a Documented Loss Payment, you may either complete a Claim Form on the Settlement Website or print and mail a completed Claim Form to the Settlement Administrator, on or before **March 5, 2022**.

The Claim Form requires that you sign the attestation regarding the information you provided and that you include Reasonable Documentation, such as credit card statements, bank statements, invoices, telephone records, and receipts.

If your claim for a Documented Loss Payment is rejected by the Settlement Administrator and you do not correct it, your claim for a Documented Loss Payment will instead be considered a claim for a Cash Fund Payment.

Instructions for filling out a claim for a Documented Loss Payment are included on the Claim Form. You may access the Claim Form at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com).

The deadline to file a claim for a Documented Loss Payment is **March 5, 2022**.

## 21. What happens if my contact information changes after I submit a claim?

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-866-790-4318 or by writing to:

*Cochran, et al. v. The Kroger Co.*  
Settlement Administrator  
P.O. Box 4079  
Portland, OR 97208-4079

## 22. When and how will I receive the benefits I claim from the Settlement?

If you make a valid claim for Credit Monitoring and Insurance Services, the Settlement Administrator will send you information on how to activate your credit monitoring after the Settlement becomes final. If you received a notice in the mail, keep it in a safe place as you will need the unique Claim Number provided on the Notice to activate your Credit Monitoring and Insurance Services.

Payment for valid claims for a Cash Fund Payment or a Documented Loss Payment will be provided by the Settlement Administrator after the Settlement is approved and becomes final. You may elect to receive payment for valid claims for a Cash Fund Payment or a Documented Loss Payment via PayPal, Venmo, or digital payment card instead of a check, by submitting your e-mail address with your Claim Form. Anyone who does not elect to receive payment via PayPal, Venmo, or digital payment card, will receive their payment via regular check sent through U.S. Mail.

The approval process may take longer than one year. Please be patient and check [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com) for updates.

## 23. What happens if money remains after all of the Settlement Claims are paid?

None of the money in the \$5 million Settlement Fund will be paid back to Defendant. Any money left in the Settlement Fund after 150 days after the distribution of payments to Class Members will be

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distributed pro rata among all Class Members with approved claims, who cashed or deposited their initial check or received the Settlement proceeds through digital means, as long as the average payment amount is \$3 or more. If there is not enough money to provide qualifying Class Members with an additional \$3 payment, the remaining funds will be distributed to a non-profit organization, or “Non-Profit Residual Recipient.” The Non-Profit Residual Recipient is, subject to final court approval, Rose Foundation’s Consumer Rights Privacy Fund, a 26 U.S.C. 501(c)(3) non-profit organization.

## THE LAWYERS REPRESENTING YOU

### 24. Do I have a lawyer in this case?

Yes, the Court has appointed Tina Wolfson, Robert Ahdoot, and Andrew Ferich of Ahdoot & Wolfson, PC, and Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C., as Class Counsel to represent you and the Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Action.

### 25. How will Class Counsel be paid?

Class Counsel will file a motion asking the Court to award them attorneys’ fees of up to a maximum of 25% of the \$5 million Settlement Fund (i.e., \$1,250,000) and reasonable costs and expenses. They will also ask the Court to approve \$1,500 service awards to each of the three Class Representatives for participating in this Action and for their efforts in achieving the Settlement. If awarded, these amounts will be deducted from the Settlement Fund before making payments to Class Members. The Court may award less than these amounts.

Class Counsel’s application for attorneys’ fees and expenses, and service awards will be made available on the Settlement website at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com) before the deadline for you to comment or object to the Settlement. You can request a copy of the application by contacting the Settlement Administrator, at 1-866-790-4318.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Class Member and want to keep any right you may have to sue or continue to sue Kroger on your own based on the claims raised in this Action or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement.

### 26. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must complete and sign a Request for Exclusion. The Request for Exclusion must be in writing and identify the case name *Cochran vs. The Kroger Co.*, U.S.D.C. Case No. 5:21-cv-01887 (N.D. Cal.); state the name, address and telephone number of the Settlement Class Members seeking exclusion; be physically signed by the Person(s) seeking exclusion; and must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *Cochran vs. The Kroger Co.*, U.S.D.C. Case No. 5:21-cv-01887 (N.D. Cal.).” A valid Request for Exclusion requires you to state your full name, current mailing address, and telephone number; be physically signed by you; and contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Cochran vs. The Kroger Co.*, U.S.D.C. Case No. 5:21-cv-01887 (N.D. Cal.).” The Request for Exclusion must be

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submitted electronically on the Settlement Website, or (ii) postmarked or received by the Settlement Administrator at the address below no later than **February 18, 2022**:

*Cochran, et al. v. The Kroger Co.*  
Exclusions  
P.O. Box 4079  
Portland, OR 97208-4079

You cannot exclude yourself by telephone or by e-mail.

**27. If I exclude myself, can I still get Credit Monitoring and Insurance Services or a Settlement payment?**

No. If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You can only get Credit Monitoring and Insurance Services or a cash payment if you stay in the Settlement and submit a valid Claim Form.

**28. If I do not exclude myself, can I sue Kroger for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Kroger and Released Parties for the claims that this Settlement resolves. You must exclude yourself from this Action to start or continue with your own lawsuit or be part of any other lawsuit against Kroger or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## **OBJECT TO OR COMMENT ON THE SETTLEMENT**

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

You can ask the Court to deny approval by filing an objection. You cannot 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. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Cochran et al. v. The Kroger Co.*, Case No. 5:21-cv-01887-EJD (N.D. Cal.)); (b) state your full name, current mailing address, and telephone number; (c) contain a signed statement that you believe you are a member of the Settlement Class; (d) identify the specific grounds for the objection; (e) include all documents or writings that you desire the Court to consider; (f) contain a statement regarding whether you (or counsel of your choosing) intend to appear at the Fairness Hearing; (g) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, or by filing them in person at any location of the United States District Court for the Northern District of California; and (h) be filed or postmarked on or before **February 18, 2022**.

**Questions? Go to [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com) or call 1-866-790-4318.  
This Settlement affects your legal rights even if you do nothing.**

### **30. What is the difference between objecting and requesting exclusion?**

Objecting is telling the Court you do not like something about the Settlement. You can object only if you stay in the Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

## **THE FINAL FAIRNESS HEARING**

### **31. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Fairness Hearing on **March 10, 2022, at 9:00 a.m.** before the Honorable Edward J. Davila, United States District Court for the District of the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 4, 5th Floor, San Jose, California 95113.

The date and time of the Final Fairness Hearing is subject to change without further notice to the Settlement Class. Class members should monitor the Settlement website or the Court's PACER site (see Question 35) to confirm whether the date for the Final Fairness Hearing is changed.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and will decide whether to approve: the Settlement; Class Counsel's application for attorneys' fees, costs and expenses; and the service awards to the Class Representatives. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing.

### **32. Do I have to come to the Final Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time the Court will consider it.

### **33. May I speak at the Final Fairness Hearing?**

Yes. If you wish to attend and speak at the Final Fairness Hearing, you must indicate this in your written objection (see Question 29). Your objection must state that it is your intention to appear at the Final Fairness Hearing and must identify any witnesses you may call to testify or exhibits you intend to introduce into evidence at the Final Fairness Hearing. If you plan to have your attorney speak for you at the Fairness Hearing, your objection must also include your attorney's name, address, and phone number.

## **IF YOU DO NOTHING**

### **34. What happens if I do nothing at all?**

If you are a Class Member and you do nothing, you will not receive any Settlement benefits. You will also give up certain rights, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Kroger or any of the Released Parties about the legal issues in this Action and released by the Settlement Agreement.

**Questions? Go to [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com) or call 1-866-790-4318.  
This Settlement affects your legal rights even if you do nothing.**

## GETTING MORE INFORMATION

### 35. How do I get more information?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement available at [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com), or by contacting class counsel (see below), by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California (San Jose Division), Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, California 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

If you have questions about the proposed settlement or anything in this Notice, you may contact Class Counsel at:

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| Ahdoot & Wolfson, P.C.<br>c/o Kroger FTA Data Breach Settlement<br>2600 W. Olive Avenue   Suite 500<br>Burbank, CA 91505-4521<br><a href="mailto:info@KrogerFTADataBreachSettlement.com">info@KrogerFTADataBreachSettlement.com</a> | Barnow and Associates, P.C.<br>c/o Kroger FTA Data Breach Settlement<br>205 W. Randolph St., Suite 1630<br>Chicago, IL 60606<br><a href="mailto:info@KrogerFTADataBreachSettlement.com">info@KrogerFTADataBreachSettlement.com</a> |
|---|--|

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

**Questions? Go to [www.KrogerFTADataBreachSettlement.com](http://www.KrogerFTADataBreachSettlement.com) or call 1-866-790-4318.  
This Settlement affects your legal rights even if you do nothing.**