

# BakerHostetler

## Baker & Hostetler LLP

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David E. Kitchen  
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April 17, 2019

### VIA EMAIL (OCP@DCCA.HAWAII.GOV)

Office of Consumer Protection  
Leiopapa A Kamehameha Building aka State  
Office Tower  
235 South Beretania Street  
Honolulu, Hawaii 96813

*Re: Supplemental Incident Notification*

Dear Sir or Madam:

We are writing on behalf of our client, flexPATH Strategies, LLC (“flexPATH”), to supplement the security incident notification we submitted to your office on March 15, 2019.

Following our initial submission, additional clients accepted flexPATH’s offer to provide notification to the employees and retirement plan participants whose information was contained in the flexPATH employee email account at issue. Accordingly, flexPATH provided notice to additional Hawaii residents on March 19, March 22, April 1, and April 5, 2019, and is completing notice to the Hawaii residents today, April 17, 2019. To date, flexPATH has provided notice to a total of 1,573 Hawaii residents.<sup>1</sup>

The Hawaii residents were notified in accordance with Haw. Rev. Stat. §§ 487N-1 to 487N-4,<sup>2</sup> in substantially the same form as the letter provided to your office with our initial submission. flexPATH has offered the individuals a complimentary, one-year membership to credit monitoring and identity theft protection services. flexPATH has also established a dedicated call center where all individuals may obtain more information regarding the incident.

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<sup>1</sup> flexPATH notified Hawaii residents on behalf of its clients, including, California Pizza Kitchen (1,476), and others with 1,000 or fewer Hawaii residents. We note that this incident occurred solely on the systems of flexPATH, and no systems under the control of its clients were involved.

<sup>2</sup> This notice does not waive flexPATH’s objection that Hawaii lacks personal jurisdiction over flexPATH regarding any claims related to this incident.

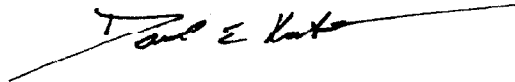
Office of Consumer Protection

April 17, 2019

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Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Kitchen", is written over a horizontal line.

David E. Kitchen  
Partner

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March 15, 2019

### VIA EMAIL (OCP@DCCA.HAWAII.GOV)

Office of Consumer Protection  
Leiopapa A Kamehameha Building aka State  
Office Tower  
235 South Beretania Street  
Honolulu, Hawaii 96813

*Re: Incident Notification*

Dear Sir or Madam:

We are writing on behalf of our client, flexPATH Strategies, LLC (“flexPATH”), to notify you of a security incident involving Hawaii residents.<sup>1</sup> flexPATH is a third-party adviser that provides retirement plan consultant firms with investment analysis and target-date fund assessments for use with their retirement plan clients. To accomplish this function, flexPATH receives from its clients or one of its service providers, such as a recordkeeper or insurance carrier, necessary data about employees and retirement plan participants, including certain types of personal information.

flexPATH began notifying its clients that provided flexPATH with the data involved in the incident on February 22, 2019. For each client, flexPATH offered to provide notification to the employees and retirement plan participants whose information was contained in the flexPATH employee email account at issue, as well as complimentary credit monitoring services for individuals whose Social Security number was contained in the email account, call center services for all individuals, and required regulatory notifications. flexPATH is now providing notice of the incident to individuals for clients who have accepted its offer.

The clients that provided flexPATH with the data were notified shortly after flexPATH completed its investigation of a phishing email incident involving an employee’s email account. The investigation, conducted with the assistance of a computer security firm after flexPATH had learned of the incident and secured the employee’s email account, determined that an unauthorized

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<sup>1</sup> flexPATH is notifying Hawaii residents on behalf of its clients, including California Pizza Kitchen.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver  
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

person had access to a flexPATH employee's account on December 7, 2018. The investigation was unable to determine whether information was viewed or acquired by the unauthorized person. flexPATH therefore reviewed the full contents of the account for personal information and identified the client who provided the information. The information that could have been accessed in the employee's account includes the names and Social Security numbers of 1,477 Hawaii residents that were provided to flexPATH by a client or a client's service provider.

On March 15, 2019, pursuant to Haw. Rev. Stat. §§ 487N-1 to 487N-4,<sup>2</sup> flexPATH will begin mailing notification letters to Hawaii residents on behalf of its clients, in substantially the same form as the enclosed letter.

flexPATH is taking steps to help prevent a similar incident from occurring in the future, including implementing additional procedures to further expand and strengthen its security processes and is providing continued education and training to its employees.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,



David E. Kitchen  
Partner

Enclosure

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<sup>2</sup> This notice does not waive flexPATH's objection that Hawaii lacks personal jurisdiction over flexPATH regarding any claims related to this incident.



Return Mail Processing Center  
P.O. Box 6336  
Portland, OR 97228-6336

<<Mail ID>>  
<<Name 1>>  
<<Name 2>>  
<<Address 1>>  
<<Address 2>>  
<<Address 3>>  
<<Address 4>>  
<<Address 5>>  
<<City>><<State>><<Zip>>  
<<Country>>

<<Date>>

Dear <<Name 1>>:

flexPATH Strategies, LLC (“flexPATH”) is a third-party adviser that provides retirement plan consultants with investment analysis and target-date fund assessments for use with their retirement plan clients. flexPATH places a high value on maintaining the integrity and security of the data we receive and maintain in connection with these services. Regrettably, we write to inform you of a recent incident that may have involved your personal information that we received in connection with the planning and advisory services we provide to the retirement plan consultant firm for your current or former employer, <<Client>>. This notice describes the incident, outlines the measures we have taken in response, and advises you on steps you can take to further protect your information.

On December 14, 2018, our ongoing investigation into a phishing email incident at flexPATH determined that an unauthorized person had obtained access to an email account belonging to a flexPATH employee. Immediately upon learning of the incident, we secured the employee’s email account, launched an investigation to determine the nature and scope of the incident, and engaged a computer security firm to assist us. The investigation determined that an unauthorized person had access to the employee’s account on December 7, 2018. We therefore reviewed the full contents of the account for personal information. As a result of our review, on January 25, 2019, we found that an attachment to an email within the account contained some of your information, including your <<Data Elements>>.

The investigation was unable to determine whether your information was viewed or acquired by the unauthorized person. However, out of an abundance of caution, and because we are committed to the safety and security of your personal information, we would like to offer you complimentary access to credit monitoring tools and other resources to assist you.

We are offering a complimentary one-year credit monitoring membership with Experian’s® IdentityWorks<sup>SM</sup>. This product helps detect the possible misuse of your personal information and provides you with identity protection support. For more information on IdentityWorks<sup>SM</sup>, including instructions on how to activate your complimentary one-year membership, as well as some additional steps you can take to protect yourself, please see the additional information provided in this letter.

Protecting the information of our clients' employees and fostering a relationship built on trust is core to our values. We take this situation extremely seriously and sincerely apologize for this incident. As a result of this incident, we are implementing additional procedures to further expand and strengthen our security processes and are providing continued education and training to our employees. If you have questions about this matter please call 877-431-9927, Monday through Friday between 9:00 a.m. and 9:00 p.m. Eastern Time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel Shapiro', with a stylized flourish at the end.

Joel Shapiro  
Senior Vice President

## Activate IdentityWorks Credit 3B Now in Three Easy Steps

1. ENROLL by: <<Enrollment Deadline>> (Your code will not work after this date.)
2. VISIT the **Experian IdentityWorks website** to enroll: [www.experianidworks.com/3bcredit](http://www.experianidworks.com/3bcredit)
3. PROVIDE the **Activation Code**: <<Enrollment Code>>

If you have questions about the product, need assistance with identity restoration or would like an alternative to enrolling in Experian IdentityWorks online, please contact Experian's customer care team at 877-288-8057 by <<Enrollment Deadline>>. Be prepared to provide engagement number <<Engagement Number>> as proof of eligibility for the identity restoration services by Experian.

### **ADDITIONAL DETAILS REGARDING YOUR 12-MONTH EXPERIAN IDENTITYWORKS CREDIT 3B MEMBERSHIP:**

A credit card is **not** required for enrollment in Experian IdentityWorks Credit 3B.

You can contact Experian **immediately without needing to enroll in the product** regarding any fraud issues. Identity Restoration specialists are available to help you address credit and non-credit related fraud.

Once you enroll in Experian IdentityWorks, you will have access to the following additional features:

- **Experian credit report at signup:** See what information is associated with your credit file. Daily credit reports are available for online members only.\*
- **Credit Monitoring:** Actively monitors Experian, Equifax and Transunion files for indicators of fraud.
- **Identity Restoration:** Identity Restoration specialists are immediately available to help you address credit and non-credit related fraud.
- **Experian IdentityWorks ExtendCARE™:** You receive the same high-level of Identity Restoration support even after your Experian IdentityWorks membership has expired.
- **Up to \$1 Million Identity Theft Insurance\*\*:** Provides coverage for certain costs and unauthorized electronic fund transfers.

If you believe there was fraudulent use of your information and would like to discuss how you may be able to resolve those issues, please reach out to an Experian agent at 877-288-8057. If, after discussing your situation with an agent, it is determined that Identity Restoration support is needed, then an Experian Identity Restoration agent is available to work with you to investigate and resolve each incident of fraud that occurred (including, as appropriate, helping you with contacting credit grantors to dispute charges and close accounts; assisting you in placing a freeze on your credit file with the three major credit bureaus; and assisting you with contacting government agencies to help restore your identity to its proper condition).

Please note that this Identity Restoration support is available to you for one year from the date of this letter and does not require any action on your part at this time. The Terms and Conditions for this offer are located at [www.ExperianIDWorks.com/restoration](http://www.ExperianIDWorks.com/restoration). You will also find self-help tips and information about identity protection at this site.

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\* Offline members will be eligible to call for additional reports quarterly after enrolling.

\*\* Identity theft insurance is underwritten by insurance company subsidiaries or affiliates of American International Group, Inc. (AIG). The description herein is a summary and intended for informational purposes only and does not include all terms, conditions and exclusions of the policies described. Please refer to the actual policies for terms, conditions, and exclusions of coverage. Coverage may not be available in all jurisdictions.

## **MORE INFORMATION ON WAYS TO PROTECT YOURSELF**

Even if you choose not to take advantage of this complimentary credit monitoring service, we remind you to remain vigilant for incidents of fraud or identity theft by reviewing your account statements and free credit reports for any unauthorized activity. You may obtain a copy of your credit report, free of charge, once every 12 months from each of the three nationwide credit reporting companies. To order your annual free credit report, please visit [www.annualcreditreport.com](http://www.annualcreditreport.com) or call toll free at 1-877-322-8228. Contact information for the three nationwide credit reporting companies is as follows:

**Experian**, PO Box 2002, Allen, TX 75013, [www.experian.com](http://www.experian.com), 1-888-397-3742  
**TransUnion**, PO Box 2000, Chester, PA 19016, [www.transunion.com](http://www.transunion.com), 1-800-916-8800  
**Equifax**, PO Box 740241, Atlanta, GA 30374, [www.equifax.com](http://www.equifax.com), 1-800-685-1111

If you believe you are the victim of identity theft or have reason to believe your personal information has been misused, you should immediately contact the Federal Trade Commission (“FTC”) and/or the Attorney General’s office in your state. You can obtain information from these sources about steps an individual can take to avoid identity theft as well as information about fraud alerts and security freezes. You should also contact your local law enforcement authorities and file a police report. Obtain a copy of the police report in case you are asked to provide copies to creditors to correct your records. Contact information for the FTC is as follows:

*Federal Trade Commission*, Consumer Response Center, 600 Pennsylvania Avenue, NW Washington, DC 20580, 1-877-IDTHEFT (438-4338), [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft)

**If you are a resident of Maryland or North Carolina** you may contact and obtain information from your state attorney general at:

*Maryland Attorney General’s Office*, 200 St. Paul Place, Baltimore, MD 21202, [www.oag.state.md.us](http://www.oag.state.md.us), 1-888-743-0023 (toll free when calling within Maryland) or 410-576-6300 (for calls originating outside Maryland)

*North Carolina Attorney General’s Office*, 9001 Mail Service Center, Raleigh, NC 27699, [www.ncdoj.gov](http://www.ncdoj.gov), 1-919-716-6400 or toll free at 1-877-566-7226

**If you are a resident of West Virginia**, you have the right to ask that nationwide consumer reporting agencies place “fraud alerts” in your file to let potential creditors and others know that you may be a victim of identity theft, as described below. You also have a right to place a security freeze on your credit report, as described below.

**Fraud Alerts:** There are two types of fraud alerts you can place on your credit report to put your creditors on notice that you may be a victim of fraud—an initial alert and an extended alert. You may ask that an initial fraud alert be placed on your credit report if you suspect you have been, or are about to be, a victim of identity theft. An initial fraud alert stays on your credit report for at least 90 days. You may have an extended alert placed on your credit report if you have already been a victim of identity theft with the appropriate documentary proof. An extended fraud alert stays on your credit report for seven years. You can place a fraud alert on your credit report by contacting any of the three national credit reporting agencies.

**Credit Freezes:** You have the right to put a credit freeze, also known as a security freeze, on your credit file, free of charge, so that no new credit can be opened in your name without the use of a PIN number that is issued to you when you initiate a freeze. A security freeze is designed to prevent potential credit grantors from accessing your credit report without your consent. If you place a security freeze, potential creditors and other third parties will not be able to get access to your credit report unless you temporarily lift the freeze. Therefore, using a security freeze may delay your ability to obtain credit.

There is no fee to place or lift a security freeze. Unlike a fraud alert, you must separately place a security freeze on your credit file at each credit reporting company. For information and instructions to place a security freeze, contact each of the credit reporting agencies at the addresses below:

**Experian Security Freeze**, PO Box 9554, Allen, TX 75013, [www.experian.com](http://www.experian.com)  
**TransUnion Security Freeze**, PO Box 2000, Chester, PA 19016, [www.transunion.com](http://www.transunion.com)  
**Equifax Security Freeze**, PO Box 105788, Atlanta, GA 30348, [www.equifax.com](http://www.equifax.com)



To request a security freeze, you will need to provide the following information:

1. Your full name (including middle initial as well as Jr., Sr., II, III, etc.)
2. Social Security number
3. Date of birth
4. If you have moved in the past five years, provide the addresses where you have lived over the prior five years
5. Proof of current address such as a current utility bill or telephone bill
6. A legible photocopy of a government issued identification card (state driver's license or ID card, military identification, etc.)
7. If you are a victim of identity theft, include a copy of the police report, investigative report, or complaint to a law enforcement agency concerning identity theft.

The credit reporting agencies have one business day after receiving your request by toll-free telephone or secure electronic means, or three business days after receiving your request by mail, to place a security freeze on your credit report. The credit bureaus must also send written confirmation to you within five business days and provide you with a unique personal identification number ("PIN") or password or both that can be used by you to authorize the removal or lifting of the security freeze.

To lift the security freeze in order to allow a specific entity or individual access to your credit report, or to lift a security freeze for a specified period of time, you must submit a request through a toll-free telephone number, a secure electronic means maintained by a credit reporting agency, or by sending a written request via regular, certified, or overnight mail to the credit reporting agencies and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze as well as the identity of those entities or individuals you would like to receive your credit report or the specific period of time you want the credit report available. The credit reporting agencies have one business day after receiving your request by toll-free telephone or secure electronic means, or three business days after receiving your request by mail, to lift the security freeze for those identified entities or for the specified period of time.

To remove the security freeze, you must submit a request through a toll-free telephone number, a secure electronic means maintained by a credit reporting agency, or by sending a written request via regular, certified, or overnight mail to each of the three credit bureaus and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze. The credit bureaus have one business day after receiving your request by toll-free telephone or secure electronic means, or three business days after receiving your request by mail, to remove the security freeze.

**Fair Credit Reporting Act:** You also have rights under the federal Fair Credit Reporting Act, which promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. The FTC has published a list of the primary rights created by the FCRA (<https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>), and that article refers individuals seeking more information to visit [www.ftc.gov/credit](http://www.ftc.gov/credit). The FTC's list of FCRA rights includes:

- You have the right to receive a copy of your credit report. The copy of your report must contain all the information in your file at the time of your request.
- Each of the nationwide credit reporting companies – Experian, TransUnion and Equifax – is required to provide you with a free copy of your credit report, at your request, once every 12 months.
- You are also entitled to a free report if a company takes adverse action against you, like denying your application for credit, insurance, or employment, and you ask for your report within 60 days of receiving notice of the action. The notice will give you the name, address, and phone number of the credit reporting company. You're also entitled to one free report a year if you're unemployed and plan to look for a job within 60 days; if you're on welfare; or if your report is inaccurate because of fraud, including identity theft.
- You have the right to ask for a credit score.
- You have the right to dispute incomplete or inaccurate information.
- Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.
- Consumer reporting agencies may not report outdated negative information.
- Access to your file is limited. You must give your consent for reports to be provided to employers.
- You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.
- You may seek damages from violators.
- Identity theft victims and active duty military personnel have additional rights.