

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JANE DOE, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

QUEST DIAGNOSITCS INC., COUNSELING
SERVICES OF NEW YORK, LLC, and DR.
FERDINAND B. BANEZ;

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

Plaintiff, JANE DOE (“Plaintiff”), by her undersigned attorneys, brings this class action complaint against QUEST DIAGNOSITCS INC. (“Quest”), COUNSELING SERVICES OF NEW YORK, LLC (“CSNY”), and DR. FERDINAND B. BANEZ (“Banez”) (collectively “Defendants” unless specified). Plaintiff’s allegations are based upon knowledge as to her own acts and experiences and upon information and belief as to all other matters. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein, which will be further evidenced after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a case of inexcusable error by trusted medical providers who caused, permitted, and/or knowingly and/or recklessly failed to prevent and/or abate the release and transmission of highly sensitive and confidential personal, private, and medical information to unauthorized third parties in violation of federal and state privacy laws.

JURISDICTION AND VENUE

2. This Court has diversity subject-matter jurisdiction over this class action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (“CAFA”), which, *inter alia*, amends 28 U.S.C. §1332, at subsection (d), conferring federal jurisdiction over class actions where, as here:

- (a) there are 100 or more members in the proposed Class;
- (b) there is minimal diversity, in that at least some members of the proposed Class have a different citizenship from Defendants; and
- (c) the claims of the proposed Class members exceed the sum or value of five million dollars (\$5,000,000) in the aggregate. *See* 28 U.S.C. §1332(d)(2) and (6).

3. Plaintiff’s action satisfies CAFA’s jurisdictional requirements, in that:

- (a) the proposed Class will vastly exceed 100 members, given the scope of the privacy breaches alleged herein (estimated to be in the thousands);
- (b) at least some members of the proposed Class are citizens of states different than Defendants;
- (c) at a minimum, the named Plaintiff is a citizen of New York and has a different citizenship from Defendant Quest (a Delaware corporation with its principal place of business in New Jersey);
- (d) the claims of the proposed Class members exceed five million dollars in the aggregate.

4. Venue is proper in the Southern District of New York because certain of the acts or omissions occurred in this District.

PARTIES

5. At all times relevant, Plaintiff Jane Doe was a resident of Bronx County, New York.

6. Defendant Quest Diagnostics Inc. (“Quest”) is a Delaware corporation headquartered in New Jersey that provides diagnostic medical testing services for managed care organizations and independent practice associations nationwide.

7. Defendant Counseling Services of New York LLC (“CSNY”) is a non-intensive, OASAS 822 licensed outpatient chemical dependency and substance abuse treatment program located in Bronx, New York.

8. Defendant Dr. Ferdinand B. Banez (“Banez”) is a physician at Bronx Lebanon Hospital in Bronx, New York. Banez is affiliated with and/or provides clinical services for CSNY.

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this class action on her own behalf and on behalf of all similarly situated individuals who, at any time since November 16, 2012, without authorization or consent, had their protected personal and confidential medical information transmitted to unauthorized third parties as a result of Defendants’ acts and/or omissions and were damaged thereby.

10. This action is properly maintainable as a class action.

11. The class is so numerous that joinder of all members is impracticable.

12. The number and identity of class members can easily be determined from the information transmitted to unauthorized third parties, including APS Marketing Group (“APS”) and/or its employees, agents, and others. The disposition of their claims in a class action will be of benefit to the parties and to the Court.

13. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this action as a class action. The likelihood of individual class members prosecuting separate claims is remote.

14. There is a well-defined community of interest in the questions of law and fact involved affecting members of the classes. Among the questions of law and fact which are common to the classes, and which predominate over questions affecting individual class members are the following:

a. Whether Defendant Quest violated § 349 of New York's General Business Law (GBL) by failing to take steps to adequately respond to and prevent the ongoing and significant breaches of privacy relating to the transmission of Plaintiff's and other class members' personal and private medical data to unauthorized third parties despite knowledge of the same;

b. Whether Defendant Quest engaged in fraud by failing to disclose and concealing ongoing and significant breaches of privacy relating to the transmission of Plaintiff's and other class members' personal and private medical data to unauthorized third parties despite knowledge of the same;

c. Whether Defendants were negligent in causing and/or failing to prevent ongoing and significant breaches of privacy relating to the transmission of Plaintiff's and other class members personal and private medical data to unauthorized third parties; and

d. Whether Plaintiff and other class members are entitled to damages for harm caused by Defendants' actions and/or omissions and the measure of those damages.

15. Plaintiff is a member of the class she seeks to represent and her claims are typical

of those of other class members in that her personal and private medical data was transmitted to unauthorized third parties as a result of Defendants' actions.

16. Plaintiff is committed to representing the class and prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff is thus an adequate representative of the class described herein.

17. The likelihood of individual class members prosecuting separate individual actions is remote due to the nature of the privacy breach and the harm suffered by each class member as compared to the burden and expense of prosecuting litigation of this nature and magnitude. Absent a class action, Defendants are likely to avoid liability for its wrongdoing, and the members of the class are unlikely to obtain redress for the wrongs alleged herein.

18. Adjudication of this case on a class-wide basis is manageable by this Court. The protected medical information that was transmitted to a third party, without consent or authorization. Additionally, all documents transmitted were intended to be sent to Defendant Quest. As a result, it will not be difficult for the Court or the jury to determine whether Defendants either were negligent, engaged in fraudulent activity, and/or engaged in violations of GBL § 349. This court is an appropriate forum for this dispute.

FACTUAL ALLEGATIONS

Massive Amounts of Protected Medical Data Transmitted to Marketing Firm and Others

19. APS is not a medical service provider but rather a Brooklyn-based marketing agency, unaffiliated with Defendants. Neither APS, nor any of its owners, officers, employees, agents, or affiliates, are authorized to receive sensitive and protected personal and private medical information sent from and/or intended for Defendants.

20. Although APS is not affiliated with Defendant Quest, APS's facsimile number

apparently is similar to the facsimile number provided by Defendant Quest – bearing only a different area code.

21. For at least a year, APS has received “thousands” of various medical forms via facsimile, intended for Defendant Quest, which contain sensitive and protected personal and private medical information.

22. These transmissions are received electronically through APS’s fax server which automatically distributes the documents internally via email to various APS employees. The transmissions are stored and backed up with other facsimiles on APS’s corporate server.

23. The facsimiles, which contain sensitive and protected personal and private medical data intended for Defendant Quest, were sent from numerous medical facilities and medical providers throughout New York City, including Defendants CSNY and Banez.

24. Since these facsimiles first started arriving on its servers, APS employees have made numerous and repeated attempts to prevent the same, including contacting the senders and intended recipient, Defendant Quest.

25. As far back as April of 2015, APS employees began contacting Defendant Quest to alert Defendant Quest to the fact that APS was receiving a high volume of documents containing sensitive and protected personal and private medical data intended for Defendant Quest.

26. During this time, APS employees also alerted the various medical providers and doctors, including Defendants CSNY and Banez, who were improperly transmitting the documents to APS intended for Defendant Quest.

27. Despite APS’s efforts, the transmissions continued.

28. APS also contacted the New York Department of Health (NYDOH) regarding the

facsimiles to lodge a complaint. However, recently, upon following up on the matter, APS was informed that the matter has been closed.

29. Finally, in October of 2015, having tried in vain for many months to cease the unabated transmissions intended for Defendant Quest, APS reached out to Pei-Sze Cheng, an investigative reporter for NBC News 4 New York, to report what had been occurring.

Federal and State Law Prohibits Release of Private Data

30. The Health Insurance Portability and Accountability Act (“HIPAA”) is federal legislation that was passed in 1996 and requires providers of health care to ensure the privacy of patient records and health information.

31. HIPAA required the federal Department of Health and Human Services (“HHS”) to develop regulations to implement these privacy requirements, called the “Privacy Rule,” which became effective on April 14, 2003. Some states, including New York, have statutes which provide even more stringent protections for medical data privacy.

32. The HIPAA Privacy Rule has set forth certain requirements that safeguard the privacy rights associated with patients’ personal information and prohibit uses and disclosures of the information without a patient’s consent.

33. The HIPAA Security Rule requires compliance with standards, implementation specifications, and requirements regarding electronic protected health information. The HIPAA Security Rule also requires security incident procedures that require an identification, documentation and response to suspected or known security incidents and to mitigate such harmful effects.

Defendants Fail to Safeguard Protected Data

34. Despite having ample knowledge of the ongoing and serious breaches of privacy

and violations of federal and state privacy laws, including HIPAA, Defendant Quest failed and has continued to fail to adequately address and/or take steps to prevent the continued release of this highly sensitive personal and protected medical data to unauthorized third-parties.

35. For instance, Defendant Quest could have, but failed to: alert medical providers who were improperly transmitting the information; investigate the extent of the breach and take steps to adequately protect the information; alert patients (including the Plaintiff and other class members) that their sensitive personal and private medical data had been breached and was in the hands of unauthorized third parties; alert authorities, including the DOH and the New York State Office of Alcoholism and Substance Abuse Services (OASAS), that a serious and significant breach of privacy was occurring; or take other steps to change policies and procedures so that transmissions intended for Defendant Quest would not easily end up in the possession of unauthorized third parties.

36. Defendant Quest is thus directly responsible for causing and perpetuating an ongoing and serious breach of privacy and causing harm to affected patients, including Plaintiff and other class members. And, to make matters worse, Defendant Quest has concealed the same from Plaintiff, class members, medical providers, and authorities – preventing others from taking necessary actions to protect privacy interests.

37. Whether they had prior knowledge or not, Defendants CSNY and Banez erroneously transmitted sensitive personal and protected medical data to unauthorized third-parties. When handling information of this sort, Defendants CSNY and Banez had a duty to ensure that the information was being properly transmitted, including verifying recipient information. Because Defendants CSNY and Banez failed to take such steps and, they caused sensitive personal and protected medical data to be transmitted to unauthorized third-parties.

Experience of Plaintiff

38. On or about August 2015, Plaintiff began treatment at Defendant CSNY.

39. In connection with that treatment, Plaintiff was subjected to certain clinical tests, including regular urine testing.

40. On October 14, 2015, Defendant Banez signed a document containing Plaintiff's personal information and protected medical data. The document instructed Defendant Banez to fax or mail the signed form to Defendant Quest.

41. On October 15, 2015, said document was transmitted via facsimile from Defendants CSNY and Banez to APS.

42. Plaintiff was unaware of said transmission and did not authorize or consent to Defendants CSNY or Banez releasing her personal and protected medical data to APS.

43. On or about October 29, 2015, Plaintiff was contacted by NBC reporter Pei-Sze Cheng and learned for the first time that her personal and protected medical data from Defendant CSNY, along with the personal and protected medical data of hundreds of other people, had been sent to APS.

44. On or about November 3, 2015, Plaintiff notified Defendant CSNY that she has learned of said breach.

CLAIMS FOR RELIEF

COUNT I

(Negligence against all Defendants)

45. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

46. Defendants owed a duty to Plaintiffs to perform their duties without violating

Plaintiff's rights.

47. Defendants CSNY and Banez breached their duty by transmitting sensitive personal and protected medical data to unauthorized third parties.

48. Defendant Quest breached its duty by failing to take reasonable steps to stop and/or prevent further privacy violations from occurring.

49. Defendants' conduct proximately caused the release and disclosure of Plaintiff's personal and protected medical data without her knowledge or consent.

50. Disclosure of Plaintiff's personal and protected medical data to unauthorized third parties without her knowledge or consent constitutes a cognizable injury for which relief should be granted.

COUNT II

(Violation of GBL § 349 against Defendant Quest)

51. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

52. Defendant Quest's actions alleged herein constitute unlawful, unfair, deceptive, and fraudulent business practices.

53. Defendant Quest's conduct constitutes acts, uses and/or employment by Defendant Quest and/or its employees of deception, fraud, unconscionable and unfair commercial practices, false pretenses, false promises, misrepresentations and/or the knowing concealment, suppression, and/or omission of material facts with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of services, and with the subsequent performance of services and transactions, in violation of § 349.

54. Defendant Quest's acts and omissions were generally directed at the consuming

public.

55. Defendant Quest's conduct directly, foreseeably, and proximately caused cognizable injury to Plaintiff.

56. Defendant Quest's violations of § 349 have damaged Plaintiff, and others similarly situated, and threaten additional injury if the violations continue.

57. Plaintiff seeks damages, injunctive relief, including an order enjoining Defendant Quest's from further § 349 violations, and court costs and attorneys' fees.

COUNT III

(Fraud against Defendant Quest)

58. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

59. Defendant Quest willfully and deliberately failed to alert Plaintiff, class members, medical providers, and authorities that sensitive personal and protected medical data had been - and was continuing to be - transmitted to unauthorized third parties.

60. Defendant Quest knew that its failure to take any steps to prevent or otherwise notify affected parties about the breaches of privacy would cause harm to the individuals whose personal information and protected medical data was released and would be released in the future.

61. Defendant Quest concealed and intentionally failed to take steps to protect sensitive personal information and protected medical data from being released and to prevent further breaches from occurring.

62. Plaintiff reasonably relied on the fact that her personal information and protected medical data would remain private in accordance with the law and not be disclosed to

unauthorized third parties.

63. Defendant Quest's concealment and omission was the proximate cause of the release and disclosure of Plaintiff's personal and protected medical data.

64. Disclosure of Plaintiff's personal and protected medical data to unauthorized third parties without her knowledge or consent constitutes a cognizable injury for which relief should be granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demands judgment against Defendants as follows:

- a. Damages, court costs and attorney's fees, pursuant to GBL § 349;
- b. Declaring unlawful Defendants' practice of causing or allowing protected medical data and personal information to be transmitted to third parties without their knowledge or consent;
- c. Enjoining Defendants, their agents, representatives and employees from continuing such practice; and
- d. Granting such other relief as is just and proper.

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