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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

DARA L. HALLIDAY, TERESA L. GREEN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

GLENS FALLS HOSPITAL, PORTAL HEALTHCARE SOLUTIONS LLC d/b/a "PORTAL ASCEND GROUP," and CARPATHIA HOSTING, INC.

Defendants.

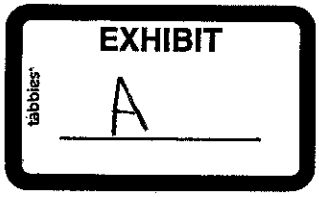
CLASS ACTION COMPLAINT

Index No.:

Plaintiffs, individually and on behalf of all others similarly situated, through their attorneys, Dreyer Boyajian LLP, allege as and for their complaint against defendants:

INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all others similarly situated against defendants as a result of defendants' failure to safeguard private and confidential health information that was in their custody, control and care. Specifically, certain personal data and health information contained in medical records for over 2,300 patients of defendant Glens Falls Hospital's health centers and physician practices was accessible on the internet by unauthorized persons without any security restrictions for viewing, copying, printing and downloading.



According to defendant Glens Falls Hospital, said medical records were available for over four months, from November 2, 2013 to March 14, 2013. Upon information and belief, the records were accessible through the internet by simply typing the name of a patient into a search engine which then returned a search result with a link directly to the patient's medical records.

PARTIES

2. Plaintiff Dara L. Halliday is a resident of Saratoga County, State of New York

3. Plaintiff Teresa L. Green is a resident of Warren County, State of New York

4. Upon information and belief, defendant Glens Falls Hospital is a not-for-profit corporation organized under the laws of the State of New York with a principal place of business located at 100 Park Street, Glens Falls, New York 12801.

5. Upon information and belief, defendant Portal Healthcare Solutions LLC d/b/a "Portal Ascend Group" is a limited liability company organized under the laws of the State of Nevada doing business in the State of New York with a principal place of business located at 5885 Trinity Parkway, Suite 210, Centreville, Virginia 20120.

6. Upon information and belief, defendant Carpathia Hosting, Inc. is a corporation organized under the laws of the State of Delaware doing business in the State of New York with a principal place of business located at 21000 Atlantic Boulevard, Suite 500, Dulles, Virginia 20166.

NATURE OF THE ACTION

7. Defendant Glens Falls Hospital is a health care provider which offers health care services to its patients at its various health centers and physician practices.

8. Glens Falls Hospital's website states that it "is not only the largest hospital between Albany, NY, and Montreal, Canada, we are the comprehensive health care system

serving Warren, Washington, northern Saratoga, Essex, Hamilton and northern Rensselaer counties. Our 29 regional facilities include health centers in Cambridge, Corinth, Granville, Greenwich, Hoosick Falls, Salem, Whitehall and Wilton."

9. Upon information and belief, defendant Glens Falls Hospital maintains electronic medical records for patients of its Family Health Centers and hospital-owned physician practices.

10. Upon information and belief, defendant Glens Falls Hospital's health centers and physician practices include Adirondack Cardiology, Adirondack ENT, Broad Street Medical Group, Cambridge Family Health, Center for Lung & Chest Surgery, Evergreen Health Center, Fort Edward Internal Medicine, GFH Neurosurgery & Spine Care, Granville Family Health, Greenwich Regional Medical Center, Hoosick Falls Family Health Center, Hudson Falls Internal Medicine, Medical Center at Wilton, Salem Family Health Center, Saratoga Endocrinology, School-Based Health Program, Urgent Care at Cambridge Family Health, Whitehall Family Medicine, Urgent Care at Glens Falls Hospital, Wilton Family Medicine and Your Patient-Centered Medical Home (hereinafter referred to individually as "Provider" and collectively as "Provider Group").

11. Defendant Glens Falls Hospital's "Patient Bill of Rights" states that patients have the right to "privacy while in the hospital and confidentiality of information and records regarding your care."

12. Defendant Glens Hospital's "Patient Information Guide" states that it "respects the patient's right to confidentiality and privacy and maintains current policies and procedures to ensure compliance."

13. Defendant Glens Falls Hospital's "Joint Notice of Privacy Practices" states, in part, that defendant "is required by law to make sure that medical information that identifies you

is kept private; give you this notice of our legal duties and privacy practices with respect to medical information about you; and follow the terms of the notice that is currently in effect."

14. Upon information and belief, defendant Glens Falls Hospital contracted with defendant Portal Healthcare Solutions LLC d/b/a "Portal Ascend Group" for electronic storage and maintenance of certain medical records.

15. Upon information and belief, defendant Portal Ascend Group provides clinical documentation services for hospitals, clinics, group practices and health care networks, including clinical document transcription and coding as well as web-based product solutions for HIPAA compliant Electronic Health Records.

16. Upon information and belief, defendants Glens Falls Hospital and/or Portal Ascend Group contracted with defendant Carpathia Hosting, Inc. to provide certain electronic medical record hosting services.

17. Defendant Carpathia's Hosting, Inc.'s website includes a press release dated February 14, 2012 which states that "[o]ur hosting services have been architected to ensure that healthcare providers are compliant with federal regulatory laws including HIPAA and the HITECH Act, aimed at ensuring data privacy and patient confidentiality."

18. Defendant Carpathia Hosting, Inc.'s February 14, 2012 press release states that "[w]orking with Carpathia enables covered entities and business associates to set up strong process, methods and controls required by HIPAA and HITECH and guarantee auditors that security and integrity of electronic protected health information (eHIP) is assured, all while Electronic Health Records (EHR) are used."

19. According to defendant Carpathia Hosting, Inc.'s February 14, 2012 press release, the CEO of defendant Portal Ascend Group states that "Carpathia's infrastructure services enable

Portal Ascend Group to meet stringent HIPPA compliance standards, ultimately supporting us in serving our national hospital client base 24/7 and without interruptions."

20. Defendant Carpathia Hosting, Inc.'s website states that defendant "PORTAL Ascend's team came to Carpathia because they wanted a single structure infrastructure and hosting services provider that could deliver the suite of services the company needed. By choosing Carpathia's services in the company's Ashburn facility, PORTAL Ascend is able to take advantage of a solution that leverages facilities and interconnection expertise combined with Carpathia's industry-leading system infrastructure management and professional services."

21. Defendant Carpathia Hosting, Inc.'s website states that its Ashburn facility is a state-of-the-art data center offering the highest levels of availability and data security.

22. Upon information and belief, all of the defendants their agents, servants, contractors, employees and affiliates were acting at all relevant times as the agents, servants, contractors, employees and affiliates of Glens Falls Hospital's heath centers and physician practices, and that the acts alleged herein occurred during the course of said agency, service, contract, employment and/or affiliation, and with the with express or implied permission, knowledge and consent of all defendants.

23. At all relevant times, plaintiffs Dara L. Halliday and Teresa L. Green were patients of defendant Glens Falls Hospital's family health centers and/or physician practices.

24. At all relevant times, plaintiffs Dara L. Halliday and Teresa L. Green expected that their medical records and information related to their treatment at defendant Glens Falls Hospital's health centers and/or physician practices would be kept confidential and not disclosed to anyone without their authorization.

25. On or about March 7, 2013, plaintiff Dara L. Halliday used a computer to "Google" here name. After typing her name in the Google search engine, the first Google search result was a link that included plaintiff's name and certain patient identifying information.

26. Upon selecting the aforementioned the link, certain health information of plaintiff Dara L. Halliday from a Glens Falls Hospital Provider appeared on the screen.

27. Upon information and belief, the aforementioned health information was a medical report authored by plaintiff Dara L. Halliday's treating physician at the Glens Falls Hospital Provider.

28. The aforementioned medical report contained confidential health information, including notes on plaintiff Dara Halliday's prior and current medical treatment, medications, social history, physical examination, laboratory data, assessment and future treatment plan.

29. On or about March 7, 2013, plaintiff Teresa L. Green used a computer to "Google" here name. After typing her name in the Google search engine, the first Google search result was a link that included plaintiff's name and certain patient identifying information.

30. Upon selecting the aforementioned the link, certain health information of plaintiff Teresa L. Green's from a Glens Falls Hospital Provider appeared on the screen.

31. Upon information and belief, the aforementioned health information was a medical report authored by plaintiff Teresa L. Green's treating physician at the Glens Falls Hospital Provider.

32. The aforementioned medical report contained confidential health information, including notes on plaintiff Teresa L. Green's prior and current medical treatment, medications, social history, physical examination, laboratory data, assessment and future treatment plan.

33. The aforementioned medical records of plaintiffs Dara L. Halliday and Teresa L. Green could accessed, viewed, copied, printed and downloaded from the internet by unauthorized persons without any security restrictions.

34. Upon information and belief, the aforementioned medical records of plaintiffs were hosted on the internet by IP Address 69.5.82.214 registered to defendant Carpathia Hosting, Inc.

35. Upon information and belief, the aforementioned medical records of plaintiffs were maintained on a server of defendant Carpathia Hosting, Inc. located in Ashburn, Virginia.

36. By letter dated April 3, 2013, plaintiffs each separately received a letter from defendant Glens Falls Hospital advising that "[o]n March 14, 2013, we learned that a third-party vendor the Hospital uses for the transcription of some medical records—Portal Healthcare Solutions LLC ("Portal")—was operating a server containing patient health information that was vulnerable to access by unauthorized persons."

37. Defendant Glens Falls Hospital's letter to plaintiffs dated April 3, 2013, stated that "[o]ur investigation indicated that Portal's server was 'open,' or unprotected, from November 2, 2013 through March 14, 2013. It is possible that documents containing some of your medical information may have been accessed during that time. The documents that were available on the server contained transcribed doctor's notes, which may include medical diagnoses, clinical laboratory results, diagnostic imaging reports, emergency records and medication administration."

38. Defendant Glens Falls Hospital's letter to plaintiffs dated April 3, 2013, stated that "[w]e are unable to determine whether your medical information was actually viewed or downloaded from Portal's server because Portal's access records are unavailable."

39. Upon information and belief, certain medical records of plaintiff and over 2,300 other patients of defendant Glens Falls Hospital's health centers and physician practices were accessible on the internet by unauthorized persons from November 2, 2012 through March 14, 2013.

40. According to an article published by PHIprivacy.net on April 5, 2013, the CEO of defendant Portal Healthcare Solutions LLC, acknowledged in an email that through human error, a secure server's firewall settings left it open to unrestricted access.

41. According to an article published by PHIprivacy.net on April 5, 2013, the CEO of defendant Portal Healthcare Solutions LLC, stated in an email that access logs were provided to Glens Falls Hospital, that examination showed no access to the files and no downloads, and that "[n]ot a single document was showing a third party access."

42. Upon information and belief, the statements of defendant Portal Healthcare Solutions LLC that none of the aforementioned medical records were accessed or downloaded is false.

43. Upon information and belief, defendants failed to timely notify patients of the data breach that compromised and/or disclosed their medical records.

44. Upon information and belief, defendants concealed from patients the true scope and nature of the data breach that compromised and/or disclosed their medical records.

CLASS ALLEGATIONS

45. Plaintiffs incorporate by reference all of the paragraphs alleged above.

46. Plaintiffs seek certification of a class consisting of all patients of Glens Falls Hospital's health centers and physician practices whose private personal data and confidential

health information was compromised and/or disclosed without authorization during the period November 2, 2013 through March 14, 2013.

47. Upon information and belief, the scope of the class may be further refined after discovery of defendants' and/or third party records.

48. The exact number of members of the class, as identified above, is not known to plaintiffs, but upon information and belief, exceeds 2,300 persons, and is sufficiently numerous such that joinder of individual members herein is impracticable.

49. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class, namely, questions as to whether defendants breached their duty of care to all of the members of the class.

50. The members of the putative class are mutually and commonly aggrieved and the relief sought is common to the entire class and, if granted, would commonly benefit the entire class.

51. Plaintiffs' claims herein are typical of the claims of the class, in that the claims of all members of the class, including plaintiffs, depend on a showing of the acts and omissions of defendants giving rise to the right of plaintiffs to the relief sought.

52. Plaintiffs will fairly and adequately protect the interests of the respective class members in that plaintiffs have such a plain, direct, and adequate interest in the outcome of the controversy to assure the adequacy of the presentation of the issues involved herein. Plaintiffs have no interest which is adverse to any interest of the class members.

53. Plaintiffs have retained competent counsel with substantial experience litigating class claims in both state and federal court.

54. Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

55. Absent class certification, individual litigation of the claims would be unreasonably expensive in light of the probable recoverable damages, burdensome upon the court, and would waste resources otherwise available to compensate the class.

56. The causes of action alleged herein fall into one or more of the exceptions set forth in CPLR Section 1602.

FIRST CAUSE OF ACTION
(NEGLIGENCE – GROSS NEGLIGENCE)

57. Plaintiffs incorporate by reference all of the paragraphs alleged above.

58. Defendants, their agents, servants and employees, had a duty to protect the personal data and confidential health information contained in patient medical records under their custody or control.

59. Defendants, their agents, servants and employees, owed a duty of trust and confidence to plaintiffs not to disclose their confidential personal information to unauthorized persons.

60. Defendants, their agents, servants and employees, had a duty to ensure that plaintiffs' electronic health information was kept and maintained in a secure manner to ensure data privacy and patient confidentiality.

61. Defendants, their agents, servants and employees, owed a duty to timely notify patients of the scope and nature of any data breach that compromised and/or disclosed their medical records.

62. Defendants breached the duty owed to plaintiffs and those similarly situated.

63. Defendants committed the minimum following acts and omissions of negligence in connection with the conduct and events alleged herein:

a. Defendants failed to exercise reasonable care to safeguard and protect patient personal data and confidential health information;

b. Defendants failed to adequately monitor, audit and oversee the security of their electronic systems containing patient medical records;

c. Defendants failed to prevent the unauthorized access and/or disclosure of patient electronic confidential health information;

d. Defendants failed to apply reasonable policies and procedures so as to ensure data privacy and patient confidentiality;

e. Defendants failed to properly train their agents, servants and employees how to safeguard electronically protected health information.

f. Defendants failed to timely warn patients that their personal data and confidential health information was compromised and/or disclosed;

g. Defendants concealed from patients the true nature and scope of the data breach that compromised and/or disclosed their confidential medical records; and

h. Defendants failed to comply with industry standards in maintaining the security of patient personal data and confidential health information, and notifying patients that such records were compromised and/or disclosed.

64. As a direct and proximate result of defendants' negligence, plaintiffs have been injured, and said injury was foreseeable.

65. As a direct and proximate result of the foregoing, plaintiffs and the class members have been injured are entitled to damages in an amount to be determined at trial, including, but

not limited to, monetary damages and expenses for credit and identify theft monitoring and insurance, periodic credit reports, anxiety, emotional distress, loss of privacy and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

66. Defendants knew or should have known, or consciously disregarded, the scope and nature of the data breach that compromised and/or disclosed patient medical records, as described above.

67. Defendants consciously and deliberately delayed notifying patients of the breach of data privacy and patient confidentiality.

68. Defendants consciously and deliberately concealed the true nature and scope of the data breach that compromised and/or disclosed patient confidential medical records

69. Defendants consciously and recklessly failed to monitor the security of patient electronic medical records.

70. Upon information and belief, defendants concealed the risks and harm posed by the compromise and/or disclosure of patient medical records. With their superior knowledge, defendants had a duty of disclosure which they violated.

71. The aforementioned conduct constitutes gross negligence, recklessness and/or wantonness which has been and continues to be a direct and proximate cause and/or contributing cause of the damages and injuries sustained by plaintiffs.

72. The acts of defendants have been intentional, willful, wanton, illegal and done with conscious and deliberate disregard for the health, safety and rights of plaintiffs and, as a result of the acts of defendants, plaintiffs are entitled to punitive damages.

SECOND CAUSE OF ACTION
FOR BREACH OF WARRANTIES

73. Plaintiffs incorporate by reference all of the paragraphs alleged above.

74. Defendants expressly and implicitly represented and warranted the confidentiality of patient personal data and health information in their custody and control.

75. The representations and warranties of defendants were in fact untrue in that defendants failed to ensure data privacy and patient confidentiality of medical records that were compromised and/or disclosed without authorization.

76. As a direct and proximate result of the foregoing, plaintiffs and the class members have been injured are entitled to damages in an amount to be determined at trial, including, but not limited to, monetary damages and expenses for credit and identify theft monitoring and insurance, periodic credit reports, anxiety, emotional distress, loss of privacy and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

THIRD CAUSE OF ACTION
(BREACH OF CONTRACT)

77. Plaintiffs incorporate by reference all of the paragraphs alleged above.

78. Defendant Glens Falls Hospital contracted and/or agreed to provide plaintiffs with health care services including the maintenance of privacy and the keeping of confidential health information of plaintiffs.

79. Upon information and belief, defendant Glens Falls Hospital contracted with defendants Portal Healthcare Solutions LLC and/or Carpathia Hosting, Inc. to provide medical record hosting services which required that plaintiffs' personal data and health information be kept private and confidential.

80. Plaintiffs were a party to or third-party beneficiary of the aforesaid contracts.

81. That the aforementioned acts and omissions of defendants Glens Falls Hospital, Portal Healthcare Solutions LLC and Carpathia Hosting, Inc., constitute a breach their respective

contracts and/or agreements all to the damage and pecuniary detriment of plaintiffs without any breach on the part of plaintiffs.

82. By reason of foregoing, plaintiffs and the class members have been injured are entitled to damages in an amount to be determined at trial, including, but not limited to, monetary damages and expenses for credit and identify theft monitoring and insurance, periodic credit reports, anxiety, emotional distress, loss of privacy and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

FOURTH CAUSE OF ACTION
(INJUNCTIVE RELIEF)

83. Plaintiffs incorporate by reference all of the paragraphs alleged above.

84. The scope and nature of the compromise and/or disclosure of plaintiffs and the class members' medical records containing confidential personal information, including but not limited to the server logs documenting the access of medical records by unauthorized persons, is within the sole knowledge, custody and control of defendants.

85. Plaintiffs seek declaratory and injunctive relief enjoining defendants from destroying, deleting or otherwise disposing of any physical and/or electronically stored information related to the compromise and/or disclosure of plaintiffs and the class members' medical records, including but not limited to the aforementioned server logs.

86. Plaintiffs further ask for declaratory and injunctive relief compelling an audit of defendants' electronic computer systems, at defendants' cost, by a independent court appointed computer forensic auditor, to determine the nature and scope of the compromise and/or disclosure of plaintiffs and the class members' medical records to unauthorized persons.

87. Plaintiffs further ask for declaratory and injunctive relief compelling defendants at their cost to identify and retrieve any medical records of plaintiffs and the class members that were accessed by unauthorized persons.

88. Upon information and belief, the possession of plaintiffs and the class members' medical records by unauthorized persons will continue indefinitely unless defendants are restrained and compelled by this court to identify and retrieve said records.

89. Substantial and irreparable harm to plaintiffs and the class members has occurred and shall continue to occur unless the court issues an injunction.

90. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, demand judgment against each of the defendants, on all causes of action asserted, in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction, as follows:

(1) On the First, Second and Third causes of action, an award of all general, special, incidental and consequential damages incurred, or to be incurred, by plaintiffs and all others similarly situated, together with interest thereon;

(2) On the Fourth Cause of Action granting a preliminary and permanent injunction enjoining defendants from destroying, deleting or otherwise disposing of physical and electronically stored information; compelling a computer forensic audit of defendants electronic computer systems; and compelling defendants to identify and retrieve any patient medical records accessed by unauthorized persons;

(3) Pursuant to CPLR § 909, the plaintiffs' attorneys fees, together with costs and disbursements incurred; and

(4) Such other and further relief as this Court deems necessary and equitable under the circumstances.

Dated: April 18, 2013

DREYER BOYAJIAN LLP

By: _____

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