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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

BARBARA BROWN,
Plaintiff,

vs.

SUTTER HEALTH a not for profit
corporation, SUTTER MEDICAL
FOUNDATION, SUTTER PHYSICAL
SERVICES, and DOES NOS. 1-100
Defendant

Case No.:

CLASS ACTION COMPLAINT

Plaintiff, BARBARA BROWN, by and through her attorneys AUDET & PARTNERS, LLP, on behalf of herself and the proposed Class, hereby brings this class action complaint against SUTTER HEALTH, SUTTER MEDICAL FOUNDATION, and SUTTER PHYSICAL SERVICES ("Sutter") for violations of Cal. Bus. & Prof. Code § 17200, et seq.; the California Confidentiality of Medical Information Act (CMIA), Cal. Civ. Code § 56 et seq.; Cal. Civ. Code § 1798.82; and common law Negligence arising out of Sutter's unlawful failure to protect Plaintiff's and the Class Members' Personal Health Information ("PHI") and Personally Identifiable Information ("PII").

INTRODUCTION

1. On or about October 15, 2011, a desktop computer containing unencrypted and

1 unsecured PHI and PII of more than 4 million California residents was “stolen” or otherwise
2 went missing from offices belonging to Sutter Medical Foundation in Sacramento, California.
3 To date the computer had not been recovered.

4 2. The PII contained on the missing desktop computer included but is not limited to
5 patients’ name, address, date of birth, phone number, and email address; the PHI contained on
6 the missing computer included but is not limited to dates of service and a description of medical
7 diagnoses and/or procedures.

8 3. Defendants’ failure to properly protect and secure private patient information
9 violated California's Confidentiality of Medical Information Act (CMIA) and the other
10 aforementioned statutes. Plaintiff brings this lawsuit for appropriate damages and penalties, and
11 to ensure that Sutter takes adequate steps in the future to protect confidential PHI and PII.

12 **JURISDICTION AND VENUE**

13 4. This Court has personal and subject matter jurisdiction over all causes of action
14 asserted herein. Venue is proper in Sacramento County under Code of Civil Procedure 395(a)
15 based on the facts, without limitation, that Defendants reside in and conduct substantial business
16 in this county, and the acts and omissions upon which this action is based occurred in part in this
17 county.

18 **PARTIES**

19 5. Plaintiff Barbara Brown is a citizen of California residing in Modesto, California.
20 Plaintiff was at all relevant times a patient of Sutter Medical Foundation, and has standing to
21 pursue these claims and has suffered injury.

22 6. Defendant Sutter Medical Foundation (“SMF”) is a California based corporation,
23 with its principal place of business in Sacramento, California. Upon information and belief,
24 SMF provides services in Sacramento, Amador, Nevada, Placer, Solano, Yolo and Yuba
25 Counties.

26 7. Defendant Sutter Health is a California based corporation with its principal place
27 of business in Sacramento, California. Upon information and belief, Sutter Health provides
28 services in more than 100 northern California cities and towns, including Sacramento.

1 We discovered the theft on Monday, October 17, 2011, and immediately reported it to the
2 Sacramento Police Department and began a thorough internal investigation." (See Exhibit A.)

3 15. Defendants acknowledged in the November 16th statement that the missing
4 computer included information for two types of patients: 3.3 million patients whose care is
5 supported by Sutter Physician Services (SPS) and 943,000 patients of Sutter Medical
6 Foundation (SMF). (*Id.*)

7 16. The letter informed Plaintiff and Class Members that the stolen computer
8 contained "some of your personal information, including name, address, date of birth, telephone
9 number, email address (if one was provided to us), medical record number, dates of services, a
10 description of your medical diagnoses and/or procedures used for billing purposes, and the name
11 of your health insurance plan." (*Id.*)

12 17. The information contained in the missing computer regarding SPS patients
13 included the following: name, address, date of birth, phone number, email address (if provided),
14 medical record number, and the name of the patient's health insurance plan. Upon information
15 and belief, patients of SPS were not, as of this filing, receiving individual notices regarding the
16 data breach.

17 18. The information contained in the missing computer regarding SMF patients
18 included the following information dated January 2005 to January 2011: dates of service and a
19 description of medical diagnoses and/or procedures. Defendants indicated in the November 16th
20 statement that all SPS patients would receive individual notice no later than December 5, 2011.
21 (*Id.*)

22 19. Sutter Health President and CEO Pat Fry was quoted in the November 16th
23 statement that Defendant failed to encrypt all of its desktop computers prior to theft, but that
24 efforts to so were being "accelerated." (*Id.*)

25 20. SMF provides patients with a Notice of Privacy Practices, which states that
26 absent patient consent, SMF is "are required by law to protect the privacy of your health
27 information, establish policies and procedures that govern the behavior of our workforce and
28 businesses associates, and provide this notice about our privacy practices, and abide by the

1 terms of this notice.” (See Exhibit C.)

2 **CLASS ACTION ALLEGATIONS**

3 21. This action is brought on behalf of the named Plaintiff identified above and all
4 similarly situated California citizens initially defined as:

5 All citizens of the State of California whose confidential personal
6 health information from Sutter Medical Foundation was contained on
7 the desktop computer taken on October 15, 2011 from the Sutter
8 Medical Foundation offices in Sacramento, California.

9 22. Excluded from the class are Defendants, any agent, affiliate, parent, or subsidiary
10 of Defendants; any entity in which Defendants have a controlling interest; any officer or director
11 of Defendants; any successor or assign of Defendants; and any Judge to whom this case is
12 assigned as well as his or her staff and immediate family.

13 23. This action is brought as a class action and may properly be so maintained
14 pursuant to California Code of Civil Procedure section 382 and applicable case law. In addition
15 to injunctive relief; this action seeks recovery of statutory damages.

16 24. The Class is composed of numerous people, whose joinder in this action would
17 be impracticable. The disposition of their claims through this class action will benefit Class
18 members, the parties and the courts.

19 25. Upon information and belief, the identities and contact information of the
20 individual members of the Class are available through Defendants' electronic records.

21 26. There is a well-defined community of interest in questions of law and fact
22 affecting the Class. These questions of law and fact predominate over individual questions
23 affecting individual Class members, including, but not limited to, the following:

24 a Whether Sutter’s conduct described herein violated California's Unfair
25 Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.;

26 b Whether Sutter’s conduct described herein violated California's
27 Confidentiality of Medical Information Act (CMIA), Cal. Civ. Code § 56
28 et seq.;

c Whether Sutter failed to timely notify Plaintiff and the Class regarding

1 the data breach in violation of Cal. Civ. Code § 1798.82;

2 d Whether Sutter was negligent in failing to take adequate measure, such as
3 encryption, to ensure that Plaintiff's and the Class Members' confidential
4 information would be protected; and

5 e Whether Class Members are entitled to damages as a result of Sutter's
6 conduct, and, if so, what is the measure of those damages.

7 27. Plaintiff's claims are typical of those of the Class as all members of the Class are
8 similarly affected by Defendants' uniform and actionable conduct as alleged herein.

9 28. Plaintiff has standing to pursue those claims because they suffered injury in fact
10 as a result of the violations described herein.

11 29. Defendants have acted and failed to act on grounds generally applicable to
12 Plaintiffs and the other members of the Class, requiring the Court's imposition of uniform relief
13 to ensure compatible standards of conduct toward the members of the Class. Under the facts and
14 circumstances set forth above, joinder of all Class Member is impractical, and a class action
15 proceeding is thus superior to any other methods available for the fair, just and efficient
16 adjudication of this matter.

17 30. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has
18 retained counsel competent and experienced in class action litigation, and Plaintiff has no
19 interests antagonistic to, or in conflict with, the Class that Plaintiffs seek to represent

20 31. Plaintiff reserves the right to revise the above class definition based on facts
21 learned in discovery.

22 32. No claim is asserted under Federal law. Removal of the Complaint is improper
23 under CAFA and other federal statutes.

24 **FIRST CAUSE OF ACTION**
25 **(Violation of Cal. Bus. & Prof. Code § 17200)**

26 33. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
27 herein and further allege as follows:

28 34. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200,

1 *et seq.*, protects both consumers and competitors by promoting fair competition in commercial
2 markets for goods and services.

3 35. As described herein, Sutter's failure to take adequate measure to protect its
4 patient's personal information is a violation of the UCL.

5 36. Plaintiff has standing to bring a claim under the UCL because she suffered
6 damages as a result of the disclosure of her private information, and because she paid money to
7 Defendants for services that were not rendered as advertised.

8 37. Sutter has violated the "unlawful" prong of the UCL in that Sutter's conduct
9 violated the Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et seq.*, see *infra*,
10 and such violation may serve as predicate violations under the "unlawful" prong of the UCL.

11 38. Sutter violated the "unfair" prong of the UCL by failing to take reasonable
12 procedural safeguards to prevent private patient information from being divulged to third parties
13 without consent.

14 39. Sutter also violated the "fraudulent" prong of the UCL by misleading customers
15 into thinking that their personal information would be properly protected, and would not be
16 accessed by third parties and omitting the fact that Sutter failed to take all standard procedural
17 safeguards to protect against the disclosure of such information.¹

18 40. Sutter's unfair unlawful and fraudulent practices occurred in California.
19 Decisions concerning safeguarding Class Member information were made in California. Sutter
20 maintains all or a substantial part of its computer systems containing patient information in
21 California, the computer in question was stolen in California, and thus the disclosure of its
22 patient's information took place in California.

24 ¹ "The fraudulent business practice prong of the UCL has been understood to be distinct from common law fraud.
25 A common law fraudulent deception must be actually false, known to be false by the perpetrator and reasonably
26 relied upon by a victim who incurs damages. None of these elements are required to state a claim for injunctive
27 relief under the UCL." *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009) (internal quotations omitted). "This
28 distinction reflects the UCL's focus on the defendant's conduct, rather than the plaintiff's damages, in service of
the statute's larger purpose of protecting the general public against unscrupulous business practices." *Id.* "Reliance
is proved by showing that the defendant's misrepresentation or nondisclosure was an immediate cause of the
plaintiff's injury-producing conduct." *In re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009).

1 e The authorization must state the name or functions of the health care
2 provider or service plan disclosing the information, the persons or entities
3 authorized to receive the medical information, and the specific uses and
4 limitations on the use of the medical information by the persons or
5 entities authorized to receive the medical information;

6 f The authorization must specify the date after which the recipient is no
7 longer entitled to use the information; and

8 g The authorization must advise the person signing the authorization of the
9 right to receive a copy of the authorization.

10 46. Sutter, in failing to adequately protect confidential patient medical information,
11 violated section 56.101 of the CMIA, which prohibits the negligent creation, maintenance,
12 preservation, storage, abandonment, destruction, or disposal of confidential medical
13 information.

14 47. Sutter failed to reasonably secure the “stolen” desktop computer that contained
15 the personal health care information of approximately 4.4 million patients treated by Sutter
16 since 1995. Sutter has been unable to locate the missing computer nor explain what happened to
17 it. This is the type of security incident and breach would not have occurred but for negligence
18 on the part of Sutter.

19 48. Sutter was negligent by failing to use reasonable security procedures to prevent
20 unauthorized access to patients' medical information, such as storing such information in an
21 encrypted form. Sutter was likewise negligent for failing to use reasonable authentication
22 procedures so that the medical information could be tracked in case of a security breach; and
23 failing to implement and maintain reasonable security and tracking procedures to protect
24 medical information from unauthorized access and disclosure.

25 49. On behalf of herself and the Class, Plaintiff seeks an order requiring Sutter to
26 cease its violations of the CMIA. Among other things, Sutter should be required to encrypt all
27 medical information and to store all such information in a highly securitized manner, which it
28 has admittedly failed to do.

1 herein and further allege as follows:

2 58. Sutter owed a duty to Plaintiffs and the Class to take adequate precautions to
3 safeguard their confidential medical and other information.

4 59. Plaintiffs are informed and believe and on that basis allege that during all times
5 relevant to the allegations of this complaint, Sutter was negligent in designing and implementing
6 a system-wide encryption system to protect against the disclosure of Plaintiffs' and the Class
7 Members' information.

8 60. Defendants, and each of them, breached the duty owed to Plaintiffs and the Class
9 by failing to protect against the disclosure of their information to a third-party.

10 61. As a direct and proximate result of the conduct of the Defendants, and each of
11 them, Plaintiffs have each sustained economic and other damages.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of themselves and the proposed
14 class, prays for the following relief:

15 a. An order certifying the proposed class pursuant to California Civil Code section
16 382 appointing Plaintiffs and their counsel to represent the class;

17 b. Appropriate injunctive relief and/or declaratory relief, including an order
18 requiring Sutter secure and encrypt all patient medical information and to stop negligently
19 storing, handling, and securing its patients' medical information, and to promptly notify patients
20 whose medical information is lost in the most expedient and timely manner without
21 unreasonable delay.

22 c. Statutory damages of up to \$1,000.00 for each Class Member;

23 d. Attorneys' fees and costs of suit, including expert witness fees; and

24 e. Such other relief as the Court may deem appropriate.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial by jury on all claims so triable.

27 Dated this December_, 2011

AUDET & PARTNERS, LLP

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