

IN THE CIRCUIT COURT OF SHARP COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
LESLIE RUTLEDGE, ATTORNEY GENERAL

PLAINTIFF

v.

CASE NO. 68 CV 22-33

COUNTRY MEDICAL SERVICES OF
ARKANSAS, INC. D/B/A COLLECTION
LIQUIDATORS OF AMERICA
DUKE FAMILY MEDICAL CENTER
EASTERN OZARKS HOME HEALTH
AND HOSPICE
EASTERN OZARKS INTERNAL
MEDICINE CLINIC
EASTERN OZARKS MEDICAL CLINIC
EASTERN OZARKS PHYSICAL
THERAPY AND REHABILITATION
EASTERN OZARKS REGIONAL
HEALTH SYSTEM; ROBERT BECHT;
and THERESA B. HANSON

FILED

MAR 17 2022

ALISA BLACK, CLERK
BY AL 9:35 D.C.

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the Attorney General” or “the State”), for its Complaint against Country Medical Services of Arkansas, Inc. d/b/a Collection Liquidators of America, Duke Family Medical Center, Eastern Ozarks Home Health and Hospice, Eastern Ozarks Internal Medicine Clinic, Eastern Ozarks Medical Clinic, Eastern Ozarks Physical Therapy and Rehabilitation, Eastern Ozarks Regional Health System (collectively, “Eastern Ozarks”); Robert

Becht (“Becht”); and Theresa B. Hanson (“Hanson”); (collectively for all defendants, “Defendants”), states:

INTRODUCTION

1. This is a consumer protection action brought in the public interest to redress and restrain violations of the Personal Information Protection Act (“PIPA”), Ark. Code Ann. §§ 4-110-101 *et seq.* and the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. §§ 4-88-101 *et seq.*

2. The PIPA was enacted by Act 1526 of 2005 with the intent “to ensure that sensitive personal information about Arkansas residents is protected” and for the purpose “to encourage individuals, businesses, and state agencies that acquire, own, or license personal information about the citizens of the State of Arkansas to provide reasonable security for the information.” See Ark. Code Ann. § 4-110-102.

3. The PIPA requires that “a person or business take all reasonable steps to destroy or arrange for the destruction of a customer’s records within its custody or control containing personal information,” and also requires that “a person or business that acquires, owns, or licenses personal information about an Arkansas resident shall ... maintain reasonable security procedures and practices ... to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.” See Ark. Code Ann. § 4-110-104.

4. Pursuant to Ark. Code Ann. § 4-110-108, a violation of the PIPA is punishable by action of the Attorney General under the ADTPA.

5. Pursuant to Ark. Code Ann. § 4-88-104, the ADTPA is the statutory authority for the Attorney General's enforcement of deceptive and unlawful business practices affecting Arkansas consumers.

6. In this case, Defendants engaged in unlawful conduct harmful to Arkansas consumers by failing to take reasonable measures to protect their patients' and employees' personal information and by failing to properly dispose of said information, thereby leaving those consumers without privacy protections afforded by law.

7. The State seeks an order for injunctive relief, civil penalties, restitution, all costs associated with this action, attorneys' fees, and other relief against Defendants.

PARTIES

8. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State. Pursuant to Ark. Code Ann. § 4-110-108, the Attorney General is authorized to enforce the PIPA. Pursuant to Ark. Code Ann. § 4-88-104 and § 4-88-113, the Attorney General may seek civil enforcement of the ADTPA.

9. Defendant Country Medical Services of Arkansas, Inc. operated as a health facility located at 122 Hospital Dr., Cherokee Village, Arkansas, from on or about May 18, 1995, until it ceased business operations on or about December 3, 2004. According to the Arkansas Secretary of State's website, it was incorporated on May

18, 1995, and its current status is “Forfeited Charter.” The corporate officers listed are Robert M. Becht and Theresa B. Cleveland (now Hanson). It also operated under the fictitious names of Collection Liquidators of America, Duke Family Medical Center, Eastern Ozarks Home Health and Hospice, Eastern Ozarks Internal Medicine Clinic, Eastern Ozarks Medical Clinic, Eastern Ozarks Physical Therapy and Rehabilitation, and Eastern Ozarks Regional Health System.

10. Defendant Robert M. Becht is currently a resident of Hartsville, Tennessee. According to the Arkansas Secretary of State’s website, he was the president, vice-president, treasurer, and controller of Country Medical Services of Arkansas, Inc.

11. Defendant Theresa B. Hanson, previously Cleveland, is currently a resident of Deland, Florida. According to the Arkansas Secretary of State’s website, she was the secretary of Country Medical Services of Arkansas, Inc.

JURISDICTION

12. This Court has jurisdiction over this matter pursuant to Ark. Code Ann. § 4-88-104, § 4-88-113, and the common law of the State of Arkansas.

13. This Court has personal jurisdiction pursuant to Ark. Code Ann. § 4-88-104, § 4-88-113, § 4-110-108, § 16-4-101, and the common law of the State of Arkansas.

14. Venue is proper pursuant to Ark. Code Ann. § 4-88-104, § 4-88-112 and the common law of the State of Arkansas.

15. The violations alleged herein are ongoing, for public protection, and in the public interest, and thus, under the equitable doctrine of *nullum tempus occurrit regi*,¹ this cause of action is not barred by Ark. Code Ann. § 4-88-115.²

FACTUAL ALLEGATIONS

Background of Eastern Ozarks:

16. Eastern Ozarks is an abandoned hospital and healthcare facility located at 122 Hospital Dr., Cherokee Village, Arkansas.

17. The property and buildings had been used for a hospital under different names and ownerships since about June 18, 1980.

18. On or about May 18, 1995, Becht and Hanson, through their now defunct corporation, Country Medical Services of Arkansas, Inc., had acquired the property and began operations as a hospital and healthcare facility.

19. The facility primarily operated as Eastern Ozark Regional Health System, and various departments and clinics within Eastern Ozark used the fictitious names registered by Country Medical Services of Arkansas, Inc., namely Collection Liquidators of America, Duke Family Medical Center, Eastern Ozarks Home Health

¹ "No time runs against the sovereign."

² In *Arkansas Dept. of Environmental Quality v. Brighton Corp.*, 352 Ark. 396, 411–413, 102 S.W.3d 458, 468–469 (2003), the Arkansas Supreme Court held that under doctrine of *nullum tempus occurrit regi*, the statute of limitations did not bar a government entity from bringing an enforcement action, if in the action, the government entity was representing the general public and the action was for the protection of the public.

and Hospice, Eastern Ozarks Internal Medicine Clinic, Eastern Ozarks Medical Clinic, and Eastern Ozarks Physical Therapy and Rehabilitation. See Secretary of State Corporate Filing attached as Exhibit A.

20. Several buildings are located on the property. In addition to the main hospital facility, there are four storage buildings. There is also a separate building with a sign stating "Eastern Ozarks Medical Plaza," which housed Eastern Ozarks Specialty Clinic and Eastern Ozarks Family Medical Clinic, and possibly other medical offices that may have been directly or indirectly related to Eastern Ozarks. See Affidavit of Investigator Jay Blaylock attached as Exhibit B ¶3.

21. Upon information and belief, several of the business operations and health clinics may have collected their own personal information from patients and employees and maintained such information within each respective clinic and department.

22. According to records of the Arkansas Department of Health (ADH), on or about October 26, 2006, the Arkansas State Board of Health approved the permanent suspension of Eastern Ozark's hospital license. See Affidavit of Laura Shue, ADH General Counsel, attached as Exhibit C.

23. Reportedly, on or about December 3, 2004, Defendants abruptly and immediately closed the entire facility, including the clinics and offices housed in Ozarks Medical Plaza and ceased all operations. Allegedly, on that same day, the employees were unexpectedly locked out, and the facility was abandoned, including

most, if not all, property, furnishings, medical equipment, and other such items, and most relevant to this case, a massive amount of patient and employee files.

24. On or about October 25, 2010, the property was certified to the Commissioner of State Lands (“COSL”) for nonpayment of taxes. Currently, the property is encumbered with multiple judgments and tax liens, including approximately \$127,103.62 due to the State of Arkansas for taxes, penalties, interests, fees, and costs. See Affidavit of Lisa Pelton, COSL Director of Real Estate, attached as Exhibit D.

Patient and Employee Files:

25. On September 22, 2021, the Attorney General conducted a site visit of the Eastern Ozarks property and took photographs of the condition of the building, property, files, and documents, and also took photographs of exemplar files and documents related to the violations alleged herein. See Exhibit B, generally.

26. Currently, the main hospital facility, the offices in Eastern Ozarks Medical Plaza, and the outside storage buildings are in severe disrepair with broken windows and unlocked doors, and all of the patient and employee files are exposed to the elements and easily accessible to the general public. *Id.*

27. The patient and employee files located throughout the property contain personal information of employees and patients of Eastern Ozarks during the years of its operation. *Id.*

28. The personal and medical information contained in each patient and employee file was part of the internal customer account of Eastern Ozarks and was for the purpose of using the information in transactions with the person to whom the information relates. *Id.*

29. The files contain documents with an Arkansas residential address for the person identified in each file. Exhibit B ¶15.

30. The documents within the files contain unencrypted and unredacted personal information for the person identified for the file, which includes the person's first and last name in combination with one or more of the following data elements: social security number, driver's license or state identification number, account numbers, medical information, and biometric data. Exhibit B ¶16.

31. It appears that unknown persons, likely trespassers, have rifled through most of the files and strewn them about in large piles within the buildings. Exhibit B ¶¶ 5 and 9.

32. Additionally, it appears that unknown persons, likely trespassers, have reviewed specific personal information in several files, indicated by the manner in which pages had been folded back to a page with a significant amount of personal information as if someone had recently copied down the information. Exhibit B ¶17.

33. While the total number of files has not yet been ascertained, there are possibly thousands of files observable throughout the facility, clinics, and storage

buildings. Additionally, there may be patient and employee files on the property that have not yet been discovered. Exhibit B ¶¶ 3 through 18.

34. Simultaneously with this Complaint, the Attorney General filed a Motion for Temporary Restraining Order, for Preliminary Injunction, and for Other Relief to remove the files and documents containing personal information from the property and to store them in a secure location during the pendency of this case.

Defendants' Liability:

35. In the course of their operation of Eastern Ozarks, Defendants acquired and owned the personal and medical information contained within the patient and employee files and were in charge and control of said information.

36. Defendants are sophisticated and experienced in the ownership and operation of healthcare facilities, and have owned and operated several such facilities in numerous states.

37. Likewise, Defendants are knowledgeable of the legal requirements for the treatment, protection, and disposal of personal and medical information collected and retained in the operation of such facilities.

38. At the time of the closing and abandoning of Eastern Ozarks, Defendants intentionally, knowingly, and deliberately failed to take any reasonable steps to secure or dispose of the personal and medical information, as required by law.

39. There is no evidence that at the time Defendants abandoned the property, or any time thereafter, that they took any reasonable measures to destroy, or arrange for the destruction of, the personal and medical information contained within the patient and employee files that was no longer to be retained by Eastern Ozarks, as required by law.

40. Additionally, there is no evidence, that at the time Eastern Ozarks closed and the property was abandoned, or any time thereafter, that Defendants took any reasonable measures to secure the personal information contained within the patient and employee files from unauthorized access, destruction, use, modification, or disclosure, as required by law.

41. Defendants' legal obligation for the proper security and disposal of the personal information contained with the files did not cease when they closed Eastern Ozarks and abandoned the property.

42. Defendants' legal obligation for the proper security and disposal of the personal information contained with the files did not cease when the property was certified to COSL due to Defendants' failure to pay the taxes due on the property.

43. Defendants cannot rely on their own bad acts of abandoning the property and failing to pay taxes to escape liability for the violations alleged herein.

44. The personal information contained within the patient and employee files is in danger of theft and criminal misuse, which could have unconscionable and devastating repercussions for the data subjects of such information.

45. The violations of the ADTPA alleged herein are ongoing and continuous from the date that Defendants abandoned Eastern Ozarks on or about December 3, 2004, and the violations of the PIPA alleged herein are ongoing and continuous from the date the PIPA became effective on August 12, 2005.

46. This cause of action is in the public interest.

47. Upon information and belief, other persons who have not yet been named as Defendants in this Complaint may have participated in the activities described herein, and additional facts and violations which are not presently known to the State may be discovered and added to this Complaint at a later time.

48. Discovery is ongoing, and the State reserves the right to amend this Complaint and to plead further.

APPLICABLE LAW

PIPA

49. At all times relevant herein, Defendants operated a “business” within the meaning of Ark. Code Ann. § 4-110-103(2)(A).

50. At all times relevant herein, patients and employees of Defendants were “customers” and “individuals” within the meaning of Ark. Code Ann. §§ 4-110-103(3) and (4).

51. At all times relevant herein, the information that Defendants collected from patients and employees was “medical information” and “personal information”

within the meaning of Ark. Code Ann. §§ 4-110-103(5) and (7), which Defendants “owned or licensed” as defined by Ark. Code Ann. § 4-110-103(6).

52. Pursuant to Ark. Code Ann. § 4-110-103(5), “medical information” means “any individually identifiable information, in electronic or physical form, regarding the individual’s medical history or medical treatment or diagnosis by a healthcare professional.”

53. Pursuant to Ark. Code Ann. § 4-110-103(6), “owns or licenses” includes, but is not limited to, personal information that a business retains as part of the internal customer account of the business or for the purpose of using the information in transactions with the person to whom the information relates.

54. Pursuant to Ark. Code Ann. § 4-110-103(7), “personal information” means “an individual’s first name or first initial and his or her last name in combination with any one (1) or more of the following data elements when either the name or the data element is not encrypted or redacted:

- A. Social Security number;
- B. Driver’s license number or Arkansas identification card number;
- C. Account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account;
- D. Medical information; and
- E. Biometric data.

i. “biometric data” means data generated by automatic measurements of an individual’s biological characteristics, including without limitation:

- a) Fingerprints;
- b) Faceprint;
- c) A retinal or iris scan;
- d) Hand geometry;
- e) Voiceprint analysis;
- f) Deoxyribonucleic acid (DNA); or
- g) Any other unique biological characteristics of an individual if the characteristics are used by the owner or licensee to uniquely authenticate the individual’s identity when the individual accesses a system or account;

55. Pursuant to Ark. Code Ann. § 4-110-108, “[a]ny violation of [the PIPA] is punishable by action of the Attorney General under the provisions of [the ADTPA].”

ADTPA

56. At all times relevant herein, Defendants were “persons” who engaged in the practices alleged herein which constitute the sale of “goods” or “services” as defined by Ark. Code Ann. § 4-88-102. Additionally, Defendants’ practices constitute business, commerce, or trade under Ark. Code Ann. § 4-88-107.

57. At all times relevant herein, each Defendant was a person subject to

liability under Ark. Code Ann § 4-88-113(d) and knew or reasonably should have known of the facts and violations alleged herein.

58. Pursuant to Ark. Code Ann. § 4-88-107(a)(10), the ADTPA prohibits a person from engaging in an “unconscionable, false, or deceptive act or practice in business, commerce, or trade.” “An act is unconscionable if it affronts the sense of justice, decency, and reasonableness.” *GulfCo of Louisiana, Inc. v. Brantley*, 2013 Ark. 367, 9, 430 S.W.3d 7, 13 (2013).

59. Pursuant to Ark. Code Ann. § 4-88-113(d), “[e]very person who directly or indirectly controls or facilitates another person who is in violation of or liable under [the ADTPA] and every partner, officer, or director of another person who is in violation of or liable under [the ADTPA] shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded...provided that the persons to be held jointly and severally liable knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists.”

VIOLATIONS OF LAW

60. The State re-alleges the facts above and incorporates them herein by reference.

Violations of Ark. Code Ann. § 4-110-104(a) of the PIPA

61. Defendants violated Ark. Code Ann. § 4-110-104(a) by failing to take all reasonable steps to destroy or arrange for the destruction of unencrypted and unredacted personal information in Defendants’ custody and control, and no longer

to be retained by Defendants, contained within patient and employee files that Defendants abandoned at the Eastern Ozarks property.

Violations of Ark. Code Ann. § 4-110-104(b) of the PIPA

62. Defendants violated Ark. Code Ann. § 4-110-104(b) by failing to implement and maintain reasonable security procedures and practices to protect and secure from unauthorized access, destruction, use, modification, or disclosure of unencrypted and unredacted personal information of Arkansas residents, acquired and owned by Defendants, contained within the patient and employee files that Defendants abandoned at the Eastern Ozarks property.

Violations of Ark. Code Ann. § 4-88-107(a)(10) of the ADTPA

63. Defendants violated Ark. Code Ann. § 4-88-107(a)(10) by engaging in unconscionable acts in the course of business by failing to reasonably secure, protect, or dispose of unencrypted and unredacted personal information contained within the patient and employee files that Defendants abandoned at the Eastern Ozarks property.

PRAYER FOR RELIEF

64. Relief for violations under the PIPA and the ADTPA includes the following:

a. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-104, the Attorney General may bring a civil action to enforce practices prohibited by the PIPA and the ADTPA.

b. Pursuant to Ark. Code Ann. § 4-110-108, § 4-88-104, and § 4-88-113(a)(1), the Attorney General may seek an injunction prohibiting any person from engaging in any deceptive or unlawful practice.

c. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(a)(3), any person who violates the provisions of the PIPA and the ADTPA may be assessed a civil penalty of up to \$10,000 per violation.

d. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(b), upon petition of the Attorney General, the court may order the suspension or forfeiture of franchises, corporate charters, other licenses or permits, or authorization to do business in this state.

e. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(c), any person who violates the terms of an injunction issued under the PIPA and the ADTPA shall pay a civil penalty of up to \$10,000.

f. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(d), every person who directly or indirectly controls another person who is in violation of or liable under [the PIPA and the ADTPA] and every partner, officer, or director of another person who is in violation of or liable under [the PIPA and the ADTPA] shall be jointly and severally liable for any penalties assessed and any monetary judgments awarded in any proceeding for civil enforcement of the provisions of [the PIPA and the ADTPA], provided that the persons to be held jointly and severally liable knew or

reasonably should have known of the existence of the facts by reason of which the violation or liability exists.

g. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(e), the Attorney General shall be entitled to all expenses reasonably incurred in the investigation and prosecution of suits, including, but not limited to, expenses for expert witnesses, to be paid by the defendant when judgment is rendered for the state, and, in addition, shall recover attorney's fees and costs.

WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General, respectfully requests that this Court:

(a) Enter an order and judgment against Defendants and in favor of the State for each violation alleged in this complaint.

(b) Find that this cause of action is in the public interest.

(c) Find that Defendants' acts and practices alleged herein are violations of the PIPA, Code Ann. §§ 4-110-101 *et seq.* and the ADTPA, §§ 4-88-101 *et seq.*

(d) Find that Defendants violated Ark. Code Ann. § 4-110-104(a) as alleged herein, and that each instance of unencrypted and unredacted personal information contained in abandoned patient and employee files and documents constitutes a separate violation.

(e) Find that Defendants violated Ark. Code Ann. § 4-110-104(b), as alleged herein, and that each instance of unencrypted and unredacted personal information

contained in abandoned patient and employee files and documents constitutes a separate violation.

(f) Find that Defendants violated Ark. Code Ann. § 4-88-107(a)(10), as alleged herein, and that each instance of unencrypted and unredacted personal information contained in abandoned patient and employee files and documents constitutes a separate violation.

(g) Issue a permanent injunction prohibiting Defendants, pursuant to Ark. Code Ann. § 4-110-108, § 4-88-104, and § 4-88-113(a)(1), from engaging in any violations of the PIPA and the ADTPA, particularly the unlawful acts and practices described herein.

(h) Require Defendants, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(a)(2)(A), to pay any consumer restitution that may be owed to Arkansas consumers affected by the unlawful acts and practices described herein.

(i) Impose civil penalties, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(a)(3), to be paid to the State by Defendants in the amount of up to \$10,000 for each violation of the PIPA proved at a trial of this matter, the full amount of which will exceed the amount necessary to establish federal diversity jurisdiction.

(j) Impose civil penalties, pursuant to Ark. Code Ann. § 4-88-113(a)(3), to be paid to the State by Defendants in the amount of up to \$10,000 for each violation of the ADTPA proved at a trial of this matter.

(k) Suspend or revoke Defendants' authorization to do business in this state, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(b).


(l) Require Defendants to pay all of the State's costs in this investigation and litigation, including, but not limited to, expert witness fees, and attorneys' fees and costs, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(e).

(m) Find that Becht and Hanson are each a "controlling person" or a "facilitating person" within the meaning of Ark. Code Ann. § 4-88-113(d)(1) and that pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(d), each is personally liable for not only his or her personal acts which violated Arkansas law, but also jointly and severally liable for the individual and collective acts of the other Defendants; and


(n) For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

By: 

David A.F. McCoy, Ark. Bar No.2006100
Senior Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Direct phone: (501) 682-7506
Fax: (501) 682-8118
Email: David.McCoy@ArkansasAG.gov

By: 
Jason Epperson, Ark Bar No. 2015083
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Direct phone: (501) 682-6491
Fax: (501) 682-8118
Email: Jason.Epperson@ArkansasAG.gov