

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY, MICHIGAN

DANA NESSEL, Attorney General, on Case No. -CP
behalf of the People of the State of
Michigan,
Plaintiff,

HON.

v.

RETRIEVAL-MASTERS CREDITORS
BUREAU, INC., a New York corporation,
d/b/a AMERICAN MEDICAL
COLLECTION AGENCY,

Defendant.

/

Kathy Fitzgerald (P31454)
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COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Dana Nessel, Michigan Attorney General, on behalf of the People of the State of Michigan, brings this action against Retrieval-Masters Creditors Bureau, Inc., doing business as American Medical Collection Agency (“AMCA”) for violations of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, and alleges the following:

PARTIES

1. Dana Nessel, Michigan Attorney General, on behalf of the People of the State of Michigan, Plaintiff herein, is authorized to enforce the Michigan Consumer

Protection Act, MCL 445.901 *et seq.* (“MCPA”) and the Health Insurance Portability and Accountability Act as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 42 U.S.C. § 1320d-5(d) (HIPAA). Plaintiff brings this action in her official capacity pursuant to Section 5 of the Michigan Consumer Protection Act, MCL 445.905, in connection with a data breach disclosed by Defendant in June 2019.

2. Defendant Retrieval-Masters Creditors Bureau, Inc., d/b/a American Medical Collection Agency, is a New York corporation with a current principal place of business at 200 Pemberwick Rd., Greenwich, CT 06831 and a previous principal place of business at 4 Westchester Plaza, Suite 110, Elmsford, NY 10523.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in the Ingham County Circuit Court pursuant to MCL 600.715, MCL 600.1631, MCL 14.102 and MCL 445.905(1).

4. Defendant agrees to waive notice of the Attorney General’s intent to bring this action as required by MCL 445.905(2).

BACKGROUND AND FACTUAL ALLEGATIONS

5. Defendant Retrieval-Masters Creditors Bureau, Inc., is a debt collection agency. Defendant collected medical debts on behalf of healthcare providers under the name American Medical Collection Agency (“AMCA”) from consumers across the country, including residents of the State of Michigan.

6. Defendant engaged in trade and commerce and did business in the State of Michigan, including by acting as a Business Associate, as defined by the Health

Insurance Portability and Accountability Act (“HIPAA”)¹, and collecting debts in this State on behalf of medical providers.

7. In the regular course of its business, Defendant collected and maintained the personal information of individuals located in Michigan and throughout the country, to include dates of birth, social security numbers, financial information, and medical information (hereafter “PI”).

8. In June 2019, Defendant publicly disclosed that between August 1, 2018 and March 30, 2019, an unauthorized user had gained access to Defendant’s internal system (hereafter “Data Breach”).

9. Defendant further disclosed that the intruder had gained access to records with the personal information of not less than 7.7 million individuals from whom Defendant was attempting to collect payment on behalf of medical providers. The information included names, dates of birth, social security numbers, financial information, and medical information.

10. The personal information of approximately 146,886 Michigan residents was accessed in the Data Breach.

11. The intruder was able to gain access to Defendant’s network due to wholly insufficient security employed by Defendant.

12. On or about June 6, 2019, Defendant began mailing notice of the Data Breach

¹ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1938, as amended by the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, and its implementing regulations, 45 C.F.R. §§ 160 *et seq.*

to certain of the 7.7 million affected consumers. These notices included an offer to affected individuals of consumer credit monitoring for two years.

13. Contemporaneously filed with this Complaint is a Final Consent Judgment that the Parties hereto respectfully request that this Court sign and enter as the final resolution of this action. Plaintiff and Defendant, by their respective counsel, have agreed to resolve the issues raised in the investigation of this matter without trial or adjudication of any issue of fact or law and without admission of any wrongdoing or admission of any violations of the Michigan Consumer Protection Act or any other law as alleged by Plaintiff.

14. Defendant is entering into Consent Judgments with each of the participating States in a Multistate Working Group, of which Michigan is a member, in the respective courts of each State.

15. Defendant has stipulated and does not contest that:

A. Defendant engaged in trade and commerce affecting consumers in this State; and

B. Defendant is a Business Associate and therefore is subject to the requirements of HIPAA and its Rules. Defendant is also subject to the Michigan Consumer Protection Act.

VIOLATIONS OF THE MCPA

16. Plaintiff re-alleges and incorporates by reference the allegations set forth in Paragraphs 5 – 15 of this Complaint.

17. Section 3 of the MCPA, MCL 445.903(1), defines certain unfair,

unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce that are unlawful, including but not limited to the following:

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

* * *

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

18. Defendant represented to consumers that it protects the personal information of Michigan residents, either implicitly by collecting such personal information or explicitly.

19. Contrary to these representations, intruders were able to gain access to personal information on Defendant's network and the Defendant suffered a data breach. Such representations were likely to mislead consumers acting reasonably under the circumstances into believing that personal information was safeguarded from misuse by third parties and were material to their decisions about whether to entrust the Defendant with personal information, including credit card information for payment on medical debts.

20. Defendant is subject to the requirements of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 – 1692p ("FDCPA") and the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations. *See* 45 CFR Parts 160 and 164.15.

21. Defendant represented that it was compliant with all applicable Federal and State laws.

22. Contrary to these representations the Defendant was not in compliance with all applicable Federal and State laws.

23. Defendant represented on its website that it accepted payments by credit card thus implicitly represented that it was compliant with the Payment Card Industry Data Security Standard (“PCI DSS”), which is a set of security standards designed to ensure that all companies that accept, process, store, or transmit credit card information maintain a secure environment to safeguard such information throughout the transaction process.

24. Contrary to these representations the Defendant was not in compliance with the Payment Card Industry Data Security Standard.

25. Defendant, in the course of conducting its business, failed to implement and maintain reasonable security procedures and practices appropriate to protect the personal information of Michigan residents that Defendant owned, licensed, or maintained, and thus did not protect that personal information from unauthorized access, use, destruction, modification, or disclosure.

26. The Defendant’s misleading statements to consumers regarding its data protection practices have had the capacity, tendency, or effect of deceiving or misleading consumers and constitute unfair or deceptive trade practices as defined in MCL 445.903(1)(bb).

27. Defendant's failure to adequately inform consumers regarding its data protection practices constitutes a failure to state material facts, the omission of which has deceived or tended to deceive consumers, as set forth above, and constitute unfair or deceptive trade practices as defined in MCL 445.903(1)(s), MCL 445.903(1)(cc).

28. Defendant engaged in the acts and practices alleged herein when it knew or should have known that its conduct was unfair or deceptive, in violation of MCL 445.903(1).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award judgment for the Plaintiff and against Defendant and enter an Order:

A. Enjoining Defendant from engaging in the deceptive acts and practices alleged herein;

B. Requiring Defendant to pay civil penalties as provided by MCL 445.905, together with costs of this proceeding, including costs of investigation and attorneys' fees; and

C. Awarding Plaintiff such other and further relief that the Court deems just and equitable.

Respectfully Submitted,

Dana Nessel
Attorney General

/s/ Kathy Fitzgerald
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Dated: February 24, 2021