

IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF MULTNOMAH

LAURIE PAUL, individually and on
behalf of all other similarly-situated
individuals,

Plaintiff,

vs.

PROVIDENCE HEALTH SYSTEMS-
OREGON, an Oregon non-profit
corporation,

Defendant.

Plaintiff alleges:

Case No. 0601-01059

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

PERSONAL INJURY

CLASS ACTION

(Negligence/negligence per se)

Not subject to mandatory arbitration

PRELIMINARY STATEMENT

1.

This is a claim brought by plaintiff Laurie Paul for herself and for the class of similarly-situated current and former patients of Providence Health Systems for negligent loss and disclosure of protected health information. Pursuant to ORCP 32J, plaintiff presently seeks equitable relief but intends to amend her complaint to seek compensatory damages after the expiration of the period set forth in ORCP 32H.

Plaintiff claims that defendants were negligent in failing to safeguard protected health information when it allowed an employee to store in his or her car the patient care records of an estimated 365,000 patients. As defendant has admitted, the patient information was stolen. The information in question included social security numbers

and clinical information. As a result of the theft, the affected patients have been put in jeopardy of identity theft, with potential consequences that include abuse and misuse of confidential patient information, personal data, financial records, and benefit rights. Defendants have informed plaintiff and the class of the theft but have failed to take any actions to protect patients from misuse of this information; rather, defendant has informed plaintiff and the class that they must take steps to protect themselves. For the present, plaintiff and the class seek an injunction requiring defendants to set up a system at their expense to request fraud alerts under the Fair Credit Reporting Act, to notify the Social Security Administration, to fund the monitoring of patients' credit reports, and to fund the repairs of credit that may occur in the future. At the expiration of the 30-day notice period set forth in ORCP 32H, plaintiff intends to amend her complaint to add a claim for money damages.

PARTIES

2.

Laurie Paul, plaintiff, resides in Oregon. She is a former patient of the Providence Health System who received a letter dated January 24, 2006 disclosing that computerized patient records of 365,000 patients were stolen from an employee's car where they had been stored overnight.

3.

Defendant Providence Health System-Oregon is a domestic non-profit corporation licensed to do business and doing business in Oregon.

JURISDICTION AND VENUE

4.

All of the claims giving rise to this action accrued in Oregon. Defendant engages in regular, sustained business in Multnomah County. Further, patients affected by this case reside in Multnomah County. Defendant's Registered Agent, Data Research, Inc., is also located in Multnomah County.

5.

Plaintiff and similarly-situated class members' claims are based only on State law. Plaintiff makes no federal claims in this case. Based on information and belief, the primary defendants are Oregon corporations and more than two thirds of the class reside in Oregon. Further, no individual's claim in this case is worth more than \$75,000.

ALLEGATION OF FACTS COMMON TO ALL CLAIMS

6.

On or about December 31, 2005, computer disks and tapes containing patient information were stolen from a car where the data was stored overnight. The car belonged to defendant or to defendant's agent or employee who was, at all material times, acting within the course and scope of his or her agency or employment.

7.

Defendant first reported the data loss on December 31, 2005. However, it did not inform patients and former patients of the incident until it sent a letter out on January 24, 2006.

8.

The stolen data included social security numbers and patient care information, which is health information that is confidential, as defined by state and federal law. (ORS 192.518 *et seq.*; 45 CFR §§160.103).

9.

The theft of data exposed plaintiff and members of the class to loss of privacy, identity theft, with attendant financial losses and future expense of monitoring credit reports, together with repair costs of credit damage caused by the theft of data.

CLASS ALLEGATIONS

10.

The class consists of current and former patients of Providence Health Systems whose patient information was stored on computer backup disks and tapes that were stolen from an employee or agent of Providence Health Systems and Providence Home Services.

11.

Based on information and belief, plaintiffs estimate that there are more than 375,000 members of the class. Members of the classes are so numerous that joinder of all or most of them is impracticable.

12.

There are questions of fact and law common to the classes in that each class member has suffered an injury as a result of defendants' conduct. Common questions of law and fact predominate over any questions affecting only individual class members.

Common questions include:

A. Whether defendant was negligent in handling patient information that was stored on computer backup disks and tapes;

B. Whether defendant complied with the requirements of the Health Insurance Portability and Accountability Act and its implementing regulations;

C. Whether defendant complied with ORS 192.518, the Protected Health Information Act;

D. Whether defendant took appropriate steps to secure the stolen information, including encryption and securing the tapes and disks;

E. Whether plaintiff and members of the class are entitled to equitable relief to require defendant to fund the future costs associated with the monitoring of patient credit information for class members;

F. Whether plaintiff and class members are entitled to equitable relief to require

defendant to fund the future costs of credit repair for those class members who suffer financial loss from identity theft; and

G. Whether plaintiffs and members of the class will be entitled to damages for inconvenience, out-of-pocket expense and emotional distress caused by defendant's failure to secure the confidential information.

13.

The claims of the named plaintiff are typical of the claims of the class in that:

A. All claims involve identical conduct in that the loss arose from a single incident that occurred on or about December 31, 2005;

B. Defendant sent identical letters to plaintiff and members of the class advising them of the loss of data and advising them to take the same precautions to protect themselves;

C. The injuries suffered by the named plaintiffs and the class members differ only in the amount of damage; and

D. The named plaintiff's claims for relief are based upon the same legal theories as are the claims of the class members.

14.

The named plaintiff will fairly and adequately protect and represent the interests of the class in that:

A. The claims are typical of the claims of the class members;

B. She is represented by attorneys who are qualified and competent and who

will vigorously prosecute this litigation; and

C. Her interests are not antagonistic to or in conflict with the interests of the class members.

15.

A class action is superior to other available methods for the fair and efficient adjudication of this case in that:

A. Common questions of law and fact predominate over factors affecting only individual members;

B. As far as plaintiffs know, no class action that purports to address this issue has been commenced;

C. Individual class members have little interest in controlling the litigation, due to the high cost of each individual action, the relatively modest amount of damages suffered by any individual plaintiff, and because plaintiff and their attorneys will vigorously pursue the claims;

D. The forum is desirable as defendants do business here;

E. A class action will be an efficient method of adjudicating the claims of the class members who have suffered relatively small monetary damages as a result of the same type of conduct by defendants; and

F. In the aggregate, class members have claims for relief that are significant in scope relative to the expense of the litigation.

16.

Plaintiff has filed only for equitable relief. Plaintiff has also delivered a notice and demand on defendants as required by ORCP 32H. After 30 days have run, plaintiff intends to amend the complaint to allege claims for money damages in addition to the claims for equitable relief.

FIRST CLAIM: NEGLIGENCE

Count 1: Negligence Per Se

17.

ORS 192.518(1) provides that Oregonians have the right to have their protected health information safeguarded. Federal regulations in 45 CFR Parts 160 and 164 set forth standards for protecting patient information. For example, 45 CFR Section 164.306 provides that patients are entitled to have their health information protected to ensure confidentiality and integrity, including against reasonably anticipated threats or hazards to the integrity and continuing security of such data.

18.

Plaintiff and members of the class are members of the class of people intended for protection by the state statute and federal regulations. Theft of data and resulting identity theft are two of the types of harm that the rules were meant to prevent.

19.

Defendant was negligent in failing to comply with the standards set forth ORS 192.518 *et seq.* and 45 CFR Parts 160 and 164.

20.

Defendant's negligence caused or contributed to plaintiff's and class members' injuries. Plaintiff and class members suffered financial injury in the form of recurring future costs to monitor credit reports, recurring future costs to notify and re-notify credit bureaus of fraud alerts, costs of notification to the Social Security Administration and possible future costs of repair of identity theft.

21.

Plaintiff and class members lack an adequate remedy at law in that the monitoring needs are on-going to minimize future harm. Further, monetary damages will not fully and adequately compensate plaintiff and class members for future harm and on-going monitoring costs.

22.

Plaintiff and the class are entitled to an injunction that requires defendant to pay for on-going monitoring of credit reports, notify Social Security of the data loss, fund recurring credit bureau fraud alerts and pay for the future cost of possible loss and damage due to identity theft.

23.

Plaintiff and class members have suffered non-economic damages as well, in the form of worry and upset over the disclosure of confidential information. After the time set forth in ORCP 32H and 32I has passed, plaintiff anticipates making a claim for non-economic damages.

Count 2: Common Law Negligence

24.

Plaintiff incorporates ¶¶1-16; 20-23.

25.

Defendant was negligent in failing to safeguard the data, in failing to encrypt it, in allowing its agent or employee to store such data in his or her car, and in failing to put in place policies that would protect such data from theft and disclosure.

26.

As a result of defendant's negligence, plaintiff and class members suffered the previously-described injuries.

WHEREFORE, plaintiff and the class claims for relief against defendant as follows:

- a. An order certifying this matter as a class action;
- b. An injunction requiring defendant to fund the costs of credit monitoring, credit reporting, benefit reporting and repair damages caused by identity theft; and

c. Judgment in their favor; and

d. Costs and disbursements incurred in this action.

DATED this 30th day of January, 2006
Respectfully submitted,
PAUL & SUGERMAN, PC

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