

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION

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

PLAINTIFF

v.

23CV-21-

501 PAIN & REHAB, LLC;
501 PAIN AND REHAB FAMILY CLINIC
OF RUSSELLVILLE LLC;
JOHN D'ONOFRIO; and
DONNY McCUIEN

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General (“the State” or “the Attorney General”), for its Complaint against 501 Pain & Rehab, LLC (“501 Pain & Rehab Conway”); 501 Pain and Rehab Family Clinic of Russellville, LLC, (“501 Pain and Rehab Russellville”), (collectively, “Defendant Clinics”); John D’Onofrio; and Donny McCuien; (all defendants collectively, “Defendants”), states:

I. INTRODUCTION

1. This is a consumer protection action brought 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.*

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2. On or about November 10, 2020, Mayflower city employees found files that appeared to be medical records of patients from 501 Pain and Rehab clinic discarded in a wooded area in Palarm Park, a public park outside of Mayflower near the Arkansas River.

3. Defendants John D’Onofrio and Donny McCuien, individually and through their operation of the clinics, 501 Pain & Rehab Conway and 501 Pain and Rehab Russellville, engaged in conduct that is unconscionable and harmful to Arkansas consumers by failing to take reasonable measures to protect patients’ personal information and medical information from unauthorized access and by failing to properly dispose of said information as required by law.

4. As outlined herein, the acts and practices undertaken by the Defendants were in violation of the requirements under the PIPA and are unconscionable in violation of the ADTPA.

5. The State seeks a judgment and order imposing injunctive relief, civil penalties, restitution for affected consumers, suspension or revocation of license authorization to conduct business, and all other appropriate sanctions against Defendants and other equitable relief.

6. The State will exercise its right to a trial by jury.

II. PARTIES

7. 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, and pursuant to § 4-88-104 and § 4-88-113, the Attorney General may seek civil enforcement of the ADTPA.

8. Defendant 501 Pain & Rehab, LLC is an Arkansas limited liability company that registered with the Arkansas Secretary of State on September 28, 2015, with its principal place of business at 611 Court St. #9, Conway, AR. Defendant John D'Onofrio is listed as its registered agent.

9. Defendant 501 Pain and Rehab Family Clinic of Russellville, LLC is an Arkansas limited liability company that registered with the Arkansas Secretary of State on June 28, 2016, with its principal place of business at 109 B Weir Rd., Russellville, AR. Defendant John D'Onofrio is listed as its registered agent.

10. Defendant John D'Onofrio is a chiropractic physician licensed by the State of Arkansas. According to the Arkansas Secretary of State records, he is named as an officer and the incorporator/organizer of 501 Pain & Rehab Conway and the registered agent of 501 Pain and Rehab Russellville and 501 Pain & Rehab Conway, with his address listed for both clinics as 611 Court St. #9, Conway, AR.

11. Defendant Donny McCuien is named as an officer and a manager of 501 Pain & Rehab Conway according to the Arkansas Secretary of State records.

III. JURISDICTION

12. At all times relevant to this lawsuit, Defendants systematically and continually did business and availed themselves of the privileges of conducting activities within the State of Arkansas.

13. This Court has jurisdiction over the subject matter and persons in this cause of action pursuant to Ark. Code Ann. § 4-110-108, § 4-88-104, § 4-88-113, §16-4-101, and the common law of the State of Arkansas.

14. Venue is proper pursuant to Ark. Code Ann. § 4-110-108, § 4-88-104, § 4-88-112, §16-60-101, §16-60-104, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

16. On December 11, 2020, the Attorney General's Office opened a consumer protection investigation of suspected PIPA and ADTPA violations by Defendants for allegedly failing to protect or properly dispose of patients' personal and medical information contained in approximately 271 files found discarded in a public park. Said investigation was concluded on February 5, 2021 with the determination that Defendants violated the PIPA and ADTPA as set forth in the facts alleged herein.

17. Defendant 501 Pain & Rehab Conway began business operations on or about September 28, 2015.

18. Defendant 501 Pain and Rehab Russellville began business operations on or about June 28, 2016.

19. Defendant D'Onofrio is a chiropractic physician who owns and operates the Defendant Clinics.

20. Upon information and belief, during the period relevant to this lawsuit, Defendant McCuien operated as a procurer¹ of potential patients for Defendant Clinics and was employed by, had an ownership interest in, or was otherwise associated, involved, and connected with the operation of Defendant Clinics in conjunction with Defendant D’Onofiro.

21. Upon information and belief, in the ordinary course of business, Defendants collected and maintained personally identifiable and protected information from patients of Defendant Clinics, including, but not limited to, personal information, medical information, financial information, insurance information, and other such information.

22. On or about November 10, 2020, employees of the City of Mayflower Water Department, namely Russell York, Chris Henson, and Hunter Ringquist (collectively “City Workers”), found files and documents that appeared to be medical records from Defendant Clinics discarded in a wooded area in Palarm Park, a public park outside of Mayflower near the Arkansas River. See Mayflower Police Report attached hereto as EXHIBIT A.

23. The City Workers witnessed an individual parked in a truck by the wooded area in the park. This individual was the only person in the park at the time and abruptly drove away when the City Workers arrived. See EXHIBIT A.

¹ According to Ark. Code Ann. § 17-81-107(a)(1), a “procurer” means a person or entity who for pecuniary benefit procures or attempts to procure a client, patient, or customer by directly contacting the client, patient, or customer in person, by telephone, or by electronic means at the direction of, request of, employment of, or in cooperation with a chiropractic physician.

24. The City Workers took the files and documents to the Mayflower Police Department. The City Workers provided the police with photographs of some of the files as they were found, and gave a description of the individual and the truck they witnessed in the park when they found the files, which reportedly fit the description of a subject known to the police as Defendant Donny McCuien. See EXHIBIT A.

25. On or about November 16, 2020, the Mayflower Police Department delivered said files and documents to Laurie Mayhan, director of the Arkansas State Board of Chiropractic Examiners (ASBCE).²

26. On or about December 10, 2020, Ms. Mayhan reported to the Attorney General's Office that she was in possession of said files and documents, which totaled approximately 271 files.

27. Based on numerous documents in the files that clearly identified the Defendant Clinics, the discarded files and documents belonged to Defendants. This allegation is further supported by the City Workers' eyewitness accounts that placed Defendant McCuien in the park when the files and documents were found.

28. According to the dates in the files, these were documents of patients that were seen and treated at Defendant Clinics from approximately 2016 to 2018.

29. The documents in the files indicated a residential address in the state of Arkansas for each patient identified in each file.

² The ASBCE licenses and regulates chiropractic practitioners in the State.

30. The files contained approximately 957 instances of unencrypted and unredacted personal information in total, which included each patient'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, patient history, medical diagnosis, and medical treatment plan.

31. Upon information and belief, Defendants D'Onofrio and McCuien worked in close association with each other, and each knew, or reasonably should have known, about the illegal activities alleged herein in which the other engaged.

32. 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 violations which are not presently known to the State may be discovered and added to this Complaint at a later time.

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

V. APPLICABLE LAW

34. Pursuant to Ark. Code Ann. § 4-110-102, 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."

35. Pursuant to Ark. Code Ann. § 4-110-104(a), 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.”

36. Pursuant to Ark. Code Ann. § 4-110-104(b), the PIPA 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.”

37. 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.”

38. 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;

...; [or]

(D) Medical information;”

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

40. Pursuant to Ark. Code Ann. § 4-110-104(b), the ADTPA is the statutory authority for the Attorney General's enforcement of deceptive or unlawful business practices affecting Arkansas consumers.

41. Pursuant to Ark. Code Ann. § 4-88-103(a)(10), the ADTPA prohibits a person from engaging in an "unconscionable, false, or deceptive act or practice in business, commerce, or trade."

42. Pursuant to Ark. Code Ann. § 4-88-113(d), "[e]very person who directly or indirectly controls 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."

VI. VIOLATIONS OF LAW

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

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

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

46. At all times relevant herein, the information that Defendants collected from patients of Defendant Clinics 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).

47. 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.

48. 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.

COUNT ONE

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

49. Defendants violated Ark. Code Ann. § 4-110-104(a) by failing to take reasonable steps as required by this statute to destroy or arrange for the destruction of approximately 957 instances of unencrypted and unredacted personal information in Defendants’ custody and control that were contained within the patient files found discarded in a public park.

COUNT TWO

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

50. Defendants violated Ark. Code Ann. § 4-110-104(b) by failing to protect and secure from unauthorized access, destruction, use, modification, or disclosure of approximately 957 instances of unencrypted and unredacted personal information of patients acquired and owned by Defendants and contained within the patient files found discarded in a public park.

COUNT THREE

Violating Ark. Code Ann. § 4-88-103(a)(10) of the ADTPA

51. Defendants violated Ark. Code Ann. § 4-88-103(a)(10) by engaging in unconscionable acts in the course of their businesses by failing to reasonably and adequately secure and protect, and by failing to properly dispose of, approximately 957 instances of unencrypted and unredacted personal information of patients belonging to Defendants and contained within the patient files found discarded in a public park.

VI. PRAYER FOR RELIEF

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

- a. Pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(a)(2)(A), 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, or 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:

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

54. Find that Defendants' acts and practices alleged herein are violations of the Personal Information Protection Act, Ark. Code Ann. §§ 4-110-101 *et seq.* and the Arkansas Deceptive Trade Practices Act, §§ 4-88-1010 *et seq.*

55. Find that Defendants violated Ark. Code Ann. § 4-110-104(a) as alleged in Count One herein, and that each instance of unencrypted and unredacted

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personal information attributable to the patients of Defendant Clinics shall constitute a separate violation of Count One herein.

56. Find that Defendants violated Ark. Code Ann. § 4-110-104(b), as alleged in Count Two herein, and that each instance of unencrypted and unredacted personal information attributable to the patients of Defendant Clinics shall constitute a separate violation of Count Two herein.

57. Find that Defendants violated Ark. Code Ann. § 4-88-103(a)(10), as alleged in Count Three herein, and that each instance of unencrypted and unredacted personal information attributable to the patients of Defendant Clinics shall constitute a separate violation of Count Three herein.

58. 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.

59. 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.

60. Impose civil penalties, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(b), to be paid to the State by the 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.

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

62. Suspend or revoke Defendants' authorization to do business in this state, pursuant to Ark. Code Ann. § 4-110-108 and § 4-88-113(b), including the suspension or forfeiture of all of Defendants' corporate charters and all business licenses and permits, including chiropractic physician license of Defendant D'Onofrio.

63. Require Defendants to pay 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).

64. Find that Defendants D'Onofrio and McCuien is each a "controlling 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 personal acts which violated Arkansas law, but also jointly and severally liable for the individual and collective acts of the other Defendant; and

65. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

By: 

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