

FILED

NOV 29 2022

ALISA BLACK, CLERK
BY AV 8:05 D.C.

**IN THE CIRCUIT COURT OF SHARP COUNTY, ARKANSAS
CIVIL DIVISION**

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

PLAINTIFF

v.

CASE NO. 68CV-22-33

**COUNTRY MEDICAL SERVICES OF
ARKANSAS, INC., *et al.***

DEFENDANTS

CONSENT JUDGMENT

COMES NOW, Plaintiff, State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General ("Attorney General" or "State), which brought this action to redress and restrain alleged violations of the Personal Information Protection Act ("PIPA"), Ark. Code Ann. §§ 4-110-101 *et seq.* and the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101 *et seq.* ("ADTPA"), and Defendants 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"); and Robert Becht ("Becht") (collectively for all defendants, "Defendants"), to present this Consent Judgment ("Judgment") for the Court's consideration and state:

1. The parties have reached an amicable resolution to this matter as set out herein.

2. The parties acknowledge that this Judgment has been negotiated in good faith for the purpose of avoiding further expenses of a protracted litigation, and stipulate that the terms herein are fair, reasonable, and in the public interest.

3. The parties have stipulated that this Judgment shall not constitute an admission by Defendants regarding any issue of law or fact alleged in the Complaint or of any liability by Defendants, nor shall it be construed as an endorsement of or acquiescence in, any trade practices of the Defendants, past, current, or future by the Attorney General; and, neither party shall make representations to the contrary.

4. The parties have further stipulated and consent to the Court's entry of this Judgment as the final adjudication of this civil action without taking proof, without trial, and with all parties having waived their right to appeal.

PARTIES

5. Plaintiff is the State of Arkansas, *ex rel.* Leslie Rutledge, Attorney General. Attorney General Rutledge is the chief legal officer of the State and is authorized to enforce the PIPA and ADTPA.

6. Defendant Country Medical Services of Arkansas, Inc. operated as a health facility located at 122 Hospital Dr., Cherokee Village, Arkansas 72529 from on or about May 18, 1995, until on or about December 3, 2004. 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, Eastern Ozarks Regional Health System.

7. Defendant Robert M. Becht, a resident of Hartsville, Tennessee, was the president, vice-president, treasurer, and controller of Country Medical Services of Arkansas, Inc.

JURISDICTION

8. 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.

9. 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.

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

11. Defendants hereby accept and expressly waive any defect in connection with service of process in this action issued to each Defendant.

12. For purposes of this Judgment, the State and Defendants waive all objections and defenses that they may have to jurisdiction or venue and shall not challenge the Court's jurisdiction for the entry of this Judgment or over any enforcement action in the event of breach.

RELEASE

13. This Judgment resolves and releases all civil claims, causes of action, or proceedings which were or could have been asserted by the Attorney General against

the Defendants for those practices alleged within the Complaint. This release shall not in any way limit the authority of the Attorney General to conduct such investigations as deemed advisable or to bring any enforcement action regarding alleged violations of law unrelated to the Complaint or occurring after the date of this Judgment. Also, the Attorney General is empowered to seek enforcement of the sections of this Judgment by appropriate petition to this Court.

14. Previously, the State voluntarily dismissed Defendant Theresa Hanson from this action, and as such, she shall have no liability, personal or otherwise, under the Judgment.

DEFINITIONS

15. Unless otherwise indicated, the terms used herein shall carry those definitions provided by the PIPA and ADTPA.

RELEVANT PROCEDURAL HISTORY

16. On March 17, 2022, the State filed this consumer protection action to redress alleged violations of the PIPA and ADTPA by Defendants.

17. On March 21, 2022, this Court entered the Order Granting the State's Motion for Temporary Restraining Order, Preliminary Injunction, and for Other Relief, which granted a temporary restraining order placing the files and documents in the custody of the Arkansas Department of Health ("ADH") and ordering the immediate removal and storage of the files and documents to a secure location during the pendency of this case and until further orders of this Court.

18. On April 18 - 22, 2022, the Attorney General, through its agreement with ADH, arranged for the removal and storage of approximately 146,000 patient and employee files from the Eastern Ozarks property and incurred expenses totaling \$41,638.06.

19. On April 28, 2022, the Court entered the parties' Agreed Order for Continuance and to Extend Temporary Restraining Order, which extended ADH's custody of the files and documents, and continued the preliminary injunction hearing, to May 19, 2022.

20. On May 18, 2022, the Court entered the parties' Agreed Order for Preliminary Injunction which ordered that ADH shall remain the custodian of the files and documents during the pendency of the case and until further orders of this Court.

THE ATTORNEY GENERAL'S POSITION

21. The Attorney General maintains the allegations and claims in the Complaint that Defendants engaged in conduct in violation of the PIPA and the ADTPA. These violations began from the time Defendants ceased operations on or about December 3, 2004 and failed to take any reasonable measures to secure the personal information contained within the patient and employee files from unauthorized access, destruction, use, modification, or disclosure, or to properly dispose of the files and documents, which left the consumers who were the data subjects of such information without the privacy protections afforded by law.

22. The Attorney General has gathered no information during the pendency of this action which dissuades it from the factual allegations set forth in the Complaint.

23. If proven in Court, the State of Arkansas anticipates that it could obtain a judgment against the Defendants for injunctive relief, civil penalties of up to \$10,000 per violation, the costs for removal and storage of the files, and attorney fees and court costs.

DEFENDANTS' POSITION

24. The Defendants deny the legal and factual assertions alleged in "The Attorney General's Position" section, above.

25. Defendants disclaim any liability or wrongdoing.

26. Defendants position is that they have not engaged in any conduct in violation of the PIPA or ADTPA, and Defendants position is further described in Defendant's Motion to Dismiss and brief in support thereof filed in this docket.

STIPULATED RELIEF

27. Defendants are permanently enjoined from engaging in any violations of the PIPA and the ADTPA.

28. Defendants are permanently enjoined from owning or operating any business in the State of Arkansas.

29. The Agreed Order for Continuance and to Extend Temporary Restraining Order, entered on April 28, 2022, is hereby dissolved, and ADH is relieved of its custodial responsibility for the files and documents thereunder.

30. Defendants shall immediately take custody and possession of the files and documents and shall hereafter be responsible for all costs to remove, transport, maintain, store, secure, and destroy the files and documents in accordance with applicable state and federal laws.

- a. Defendants shall take appropriate and reasonable measures to ensure that the files and documents at issue in this matter are destroyed in a manner consistent with Arkansas law and shall provide verification of the same to the Attorney General.

31. Defendants shall reimburse the Attorney General the sum of \$42,085.06 for the total costs incurred to remove and store the files and documents, in installment payments as follows:

- a. \$7,085.06 shall be due on November 1, 2022;
- b. \$5,000 shall be due on July 1st of each year thereafter until the balance is paid in full; and
- c. Defendants shall provide their updated contact information with each annual installment payment.

32. A default of this installment payment plan shall be enforceable as a violation of this Consent Judgment. Notwithstanding any other provision of this Consent Judgment, a remedy of default of an installment payment shall be limited to the amount outstanding on the total costs referenced in Paragraph 31. A default shall not result in Defendants becoming liable to the State for civil penalties or any liability beyond the outstanding installment payments.

33. Defendants are assessed a civil penalty in the amount of \$730,000, which is calculated as five dollars for each of the approximately 146,000 files removed from the Eastern Ozarks property. This civil penalty shall be suspended as long as Defendants are fully compliant with the provisions of this Judgment. However, this penalty shall not be assessed against Defendants for failure to make an installment payment.

34. The amounts ordered under this Judgment shall not bear post-judgment interest unless the Defendants are found to have violated a provision of this Judgment, including failure to make an installment payment when due.

35. Should the Court determine that Defendants violated any provisions, excluding a failure to make an installment payment, of this Judgment:

- a. Defendants shall immediately cease all activity determined by the Court to be in violation of this Judgment;
- b. The suspended payment in the amount of \$730,000 shall be immediately due and payable in full to the State; and
- c. Payment of the suspended payment shall be in addition to the payment of any restitution, civil penalties, attorney fees, costs, or other sanctions ordered by the Court due to the violation(s) triggering this provision.
- d. Effective on the date of the order finding that Defendants violated this Judgment, any monetary amounts ordered by the Court to be paid by

Defendants shall bear post-judgment interest at the rate provided in Ark. Code Ann. §16-65-114.

36. All payments ordered in this Judgment shall be made payable to the “Office of the Attorney General” and shall identify this case number and the purpose of the payment on the face of the check or money order. Payment shall be delivered to the Chief Financial Officer, Office of the Attorney General, 323 Center Street, Suite 200, Little Rock, AR 72201.

37. Defendant Becht is a “controlling person” or a “facilitating person” within the meaning of Ark. Code Ann. § 4-88-113(d)(1) and is jointly and severally liable for all relief ordered in this Judgment.

38. This Judgment shall operate as an injunction issued under Ark. Code Ann. § 4-88-104.

MISCELLANEOUS

39. Nothing in this Judgment shall be construed to waive, limit, or expand any claims of sovereign immunity the State may have in any action or proceeding.

40. Nothing in this Judgment constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. The Judgment takes no position regarding any federal, state, local, and foreign taxes tax consequences of the Judgment.

41. Nothing in this Consent Judgment shall be construed to deprive any person or entity not a signatory hereto of any private right of action of any kind

whatsoever, nor shall this Judgment be construed to create any private right of action for any person or entity not a signatory hereto.

42. This Judgment is fair, reasonable, and in the public interest and shall constitute a final judgment in this action.

43. This Consent Judgment will be construed and enforced under the laws of the State of Arkansas.

44. This Judgment constitutes the entire agreement of the Attorney General and Defendants and shall not be modified except in writing by the agreement of the Attorney General and Defendants and subject to approval by the Court.

WHEREFORE, this Court approves this Consent Judgment, orders each party to abide by the terms set forth herein, and retains jurisdiction of this action.

IT IS SO ORDERED



CIRCUIT JUDGE

DATE: 11/28/2022

[Signatures of the Parties on the following page]

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AGREED AND APPROVED:

FOR DEFENDANTS:


ROBERT BECHT

DATE: NOV 10, 2022


COUNTRY MEDICAL SERVICES
OF ARKANSAS, INC.

DATE: NOV 10, 2022

BY:
TITLE:




DATE: 11/28/22

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