UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

SUMMER MIXON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	Civil Action No.:
v.	)	REMOVED FROM: Court of Common Pleas County of Darlington, Case No. 2021CP1600887
CARESOUTH CAROLINA, INC.,	)	
Defendant.	)	

DEFENDANT CARESOUTH CAROLINA, INC.'s NOTICE OF REMOVAL

I. INTRODUCTION

Pursuant to 42 U.S.C. § 233(*l*)(2), 28 U.S.C. § 1442, 28 U.S.C. § 2679(d), and 28 U.S.C. § 1331, and on the grounds set forth below, defendant CareSouth Carolina, Inc. (hereinafter "CareSouth"), hereby removes to this Court the civil action of Plaintiff Summer Mixon, entitled *Summer Mixon, individually and on behalf of all others similarly situated v. CareSouth Carolina, Inc.,* Case No. 2021CP1600887, and filed on or about November 9, 2021 in the Court of Common Pleas for the Fourth Judicial District, Darlington County, State of South Carolina.

Under Section 330 of the Public Health Service Act (codified at 42 U.S.C. § 254b *et seq*.), CareSouth is a community health center recipient of federal grant funds. At all relevant times, the Secretary of the U.S. Department of Health and Human Services (HHS) deemed CareSouth and its officers, governing board members, employees, and (certain) contractors U.S. Public Health Service (PHS) employees a protected entity under 42 U.S.C. § 233(a). That protection is an

absolute immunity from *any* civil action or proceeding for a deemed individual or entity's performance of (or alleged failure to perform) medical or related functions within the scope of his, her, or its deemed federal employment. 42 U.S.C. § 233(a) *et seq*.

This action falls squarely within the statutory protection. According to the operative complaint, this civil action arises out of CareSouth's alleged failure to safeguard protected health information and other confidential information (referred to herein collectively as Protected Health Information or "PHI") related to the provision of health care services to its patients. As set forth in the complaint, CareSouth's alleged failures include allowing an unauthorized individual to access and steal PHI from a cloud-based Information Technology (IT) system operated and maintained by CareSouth's contracted partner, Netgain Technology, LLC. This action seeks damages as well as declaratory and injunctive relief. A copy of the summons and complaint are included in Exhibit A (State Court docket and complete set of pleadings to date, including summons and complaint).

II. JURISDICTION

1. The Court has jurisdiction under 42 U.S.C. § 233(*l*)(2), a federal officer removal statute enacted specifically for the benefit of deemed PHS employees. Section 233(*l*)(2) provides a deemed individual or entity the right to a federal forum for determination as to the availability of a federal immunity defense. *Campbell v. S. Jersey Med. Ctr.*, 732 F. App'x 113 (3d Cir. 2018) (recognizing this statutory purpose of § 233(*l*)(2)); *see also Booker v. United States*, Case No. 13–1099, 2015 WL 3884813 *7 (E.D. Pa. June 24, 2015) (recognizing "removal pursuant to § 233(*l*)(2) serves the same purpose as procedure contemplated by [28 U.S.C.] § 2679(d)(3)"]). The PHS Act imposes no time limit on Section 233(*l*)(2) removals. *Estate of Booker v. Greater Philadelphia Health Action*, 10 F.Supp.3d 656, 665-66 (E.D. Pa. 2014) ("The fact that § 233(*l*)(2)

was added to a statutory scheme in which suits against health centers were removable at any time before trial provides a basis to infer that Congress intended the same time frame to govern removals by the health centers themselves"); 42 U.S.C. § 233(c) (permits Attorney General to remove state actions on behalf of actual and deemed PHS employees "any time before trial").

2. The Court also has jurisdiction under the general officer removal statute, 28 U.S.C. § 1442(a)(1). Section 1442(a)(1) affords a right of removal to "any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office." 28 U.S.C. § 1442(a)(1). The statute permits removal even when the underlying federal question arises only as a defense to a state-law claim. *See Jefferson County v. Acker*, 527 U.S. 423, 431 (1999); *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 644 n.12 (2006) (noting federal officer removal statute operates as an exception to the "well-pleaded complaint" rule). The general officer removal statute protects important federal interests, and must be broadly construed in favor of a federal forum. *See Colorado v. Symes*, 286 U.S. 510, 517 (1932) ("It scarcely need be said that such measures [allowing for federal officer removal] are to be liberally construed to give full effect to the purposes for which they were enacted."), *Willingham v. Morgan*, 395 U.S. 402, 406–407 (1969) (finding § 1442's language "broad enough to cover all cases where federal officers can raise a colorable defense arising out of the duty to enforce federal law").

3. Pursuant to 42 U.S.C. § 1442(a)(1), CareSouth is an officer, or a person acting under a federal officer. When broadly construed, as required, the phrase "any officer" in § 1442 can be read to include CareSouth as it is "deemed to be an employee of the Public Health Service" under a federal statute that not only affords CareSouth a federal immunity defense, but affords an additional removal right as well.

4. In the alternative of finding that CareSouth is a qualifying federal officer under 42 U.S.C. § 1442, it nevertheless qualifies as a person acting under a federal officer. *Agyin v. Razmzan*, 986 F.3d 168, 177 (2d Cir. 2021) (holding that (a) individual deemed PHS employee's removal under 42 U.S.C. § 1442 was proper because, as an employee of a deemed health center entity, he was acting under a federal officer with respect to medical and related functions performed on behalf of the health center entity, and (b) deemed PHS employee enjoyed "the same legal immunity that is extended to employees of the Public Health Service")); *see also* H.R. Rep. 104-398, 10 reprinted in 1995 U.S.C.C.A.N. 767, 774 (indicating congressional intent that deemed PHS employees be "covered for malpractice claims under the [FTCA] in the same manner as are employees of the Public Health Service.").

5. To invoke § 1442(a)(1), a defendant who is not a federal officer must demonstrate that (1) he or she or it is a "person" under the statute (2) who acted 'under color of federal office' and (3) has a "colorable federal defense." 42 U.S.C. § 1442(a)(1). As a nonprofit corporation, which operates a federal grant project on behalf of HHS, CareSouth qualifies as a person within the meaning of § 1442. *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 135 (2d Cir. 2008) (finding that the "term 'person' includes corporate persons"). CareSouth "acted under" an office of HHS to "assist, or to help carry out, the duties or tasks of the federal superior." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 149 (2007); 42 U.S.C. § 254(o) (the central office of the Health Resources and Services Administration administers Health Center grant program on behalf of the HHS Secretary). In particular, CareSouth is statutorily obligated to serve an area or population that the HHS Secretary designated "medically underserved." *Id*. at 254b(a)(1). CareSouth is therefore supporting the mission of the actual PHS by performing functions that would otherwise fall within PHS responsibilities.

6. CareSouth's deemed federal status, which is irrevocable as to specified periods, affords "the same" immunity that an actual PHS employee enjoys under 42 U.S.C. § 233(a). 42 U.S.C. § 233(g)(1)(A) (making remedy against United States "exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a)"), (F) (providing that deemed status is "final and binding" on the United States and all parties to litigation). For § 1442, CareSouth's federal defense is "colorable," to the say the least.

7. The Court also has jurisdiction under 28 U.S.C. § 1331. This case raises a question of substantive federal law as a threshold matter—*i.e.*, whether the alleged acts or omissions in the state action resulted from or arose out of CareSouth's "performance of medical, surgical, dental or related functions" within the scope of its deemed PHS employment status and, in turn, whether the United States must be substituted as the only proper defendant. *See also Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 435 (1995) ("Because a case […] raises a question of substantive federal law at the very outset, it clearly 'arises under' federal law, as that term is used in Art. III") (internal citations and quotations omitted); 28 U.S.C. § 1346(b)(1) (United States "district courts […] have exclusive jurisdiction of civil actions on claims against the United States").

8. Finally, as an additional basis, CareSouth seeks removal of this action under 28 U.S.C. § 1441(c) based upon the district court's original jurisdiction over Plaintiff's claims under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(a)(1), (d). CAFA grants district courts of the United States original jurisdiction over class actions in which: (1) any member of the putative class is a citizen of a state different from any defendant; (2) the members of the putative class are over 100 people; and (3) where the amount in controversy for the putative class exceeds $5 million. *Id*.

III. PARTIES

9. Defendant CareSouth is a South Carolina-based nonprofit organization that receives federal funding under Section 330 of the PHS Act (42 U.S.C. § 254b) to operate a community-based health center project that provides primary and related health care services to medically underserved residents of various South Carolina counties, regardless of any individual's ability to pay for the services. *See* 42 U.S.C. § 254b(a), (b), (j), (k). CareSouth serves specific geographic areas that the HHS Secretary has designated as "medically underserved." *Id*. at 254b(a)(1).

10. According to the Complaint: Plaintiff Summer Mixon ("Plaintiff") is a citizen and resident of Darlington County, State of South Carolina.

IV. STATUTORY FRAMEWORK

A. Federal Immunity under 42 U.S.C. § 233 *et seq.*

11. Under the Emergency Health Personnel Act of 1970, Pub. L. No. 91-623, § 4, 84 Stat. 1868, 1870-71 (1970), codified at 42 U.S.C. § 233, PHS personnel are absolutely immunized from any civil action or proceeding arising out of their performance of medical, surgical, dental or related functions within the scope of their employment. 42 U.S.C. § 233(a). Section 233(a) extends absolute immunity to PHS personnel by making the remedy for damages against the United States under the FTCA the *exclusive* remedy for such actions. *Id*.

12. To facilitate the legislative objective of ensuring medical services in underserved areas, 42 U.S.C. § 233(a) shields PHS personnel from personal liability arising out of their medical and related duties. Without such protection, reports suggest that the cost of professional liability insurance would greatly hinder or altogether preclude the provision of these services. *See* § 2, 84 Stat. 1868; H.R. Rep. No. 1662, 91st Cong., 2d Sess. 1 (1970); 116 Cong. Rec. 42,543 (1970)

(Rep. Staggers, the House of Representatives sponsor, stating that PHS physicians "cannot afford to take out the customary liability insurance as most doctors do," "because of the low pay that so many of those who work in the [PHS] receive."). To achieve it purpose, the grant of absolute immunity to PHS personnel under 42 U.S.C. § 233(a) is "broad" and "comprehensive." *Hui v. Castaneda*, 559 U.S. 799, 806 (2010) (immunity is broad enough to "easily accommodate both known and unknown causes of action").

13. The Federally Supported Health Centers Assistance Act of 1992 (and as amended in 1995) (the "FSHCAA"), 42 U.S.C. § 233(g) *et seq*., authorizes the HHS Secretary to extend to certain federally-funded health centers and their officers, directors, and employees (and certain contractors) the same protection that § 233(a) affords to actual PHS employees. That protection grants "*absolute immunity* . . . for actions arising out of the performance of medical or related functions within the scope of their employment by barring all actions against them for such conduct." *Hui*, 559 U.S. at 806 (emphasis added).

14. To qualify as a deemed entity for § 233(a) immunity, a health center grantee must submit an application with detailed information and supporting documentation sufficient for HHS to verify that the coverage should apply to *all* services provided by the health center to patients (and in limited circumstances, non-patients) of the center. The applicant is also required to demonstrate that the health center meets four requirements listed in § 233(h), including a requirement to "implement[] appropriate policies and procedures to reduce the risk of malpractice *and the risk of lawsuits arising out of any health or health-related functions performed by the entity*." 42 U.S.C. § 233(g)(1)(D) and (h) (emphasis added).

15. The statute requires the HHS Secretary to make a deeming determination for health centers and their personnel within 30 days of receipt of such an application. *Id*. at 233(g)(1)(E).

The application seeks § 233(a) immunity in advance of and with respect to a specific prospective period (i.e., calendar year). A favorable deeming determination by the Secretary (which confers immunity) is "final and binding" (42 U.S.C. § 233(g)(1)(D)-(F)) on HHS, the Attorney General, and "other parties to *any* civil action or proceeding." 42 U.S.C. § 233(g)(1)(F) (emphasis added), with respect to the designated period.

16. A negative determination (one denying a deeming application under 233(g) and (h)) is *not* final and binding. *El Rio Santa Cruz Neighborhood Health Ctr. v. U.S. Dep't of Health and Human Servs.*, 396 F.3d 1265, 1271 (D.C. Cir. 2005) (recognizing statute's "final and binding" clause does not apply to a negative deeming determination).

17. In the event of a negative deeming determination, the FSHCAA contemplates that the applicant would have a reasonable opportunity to pursue one or more of the following options: seek reconsideration of the Secretary's decision; submit a new application addressing the Secretary's stated basis for the prior denial; challenge the Secretary's decision under the APA; or, procure private malpractice insurance. *El Rio Santa Cruz*, 396 F.3d at 1272.

18. By requiring a prompt and advance deeming determination, which constitutes a final and binding determination on all parties for a specified and prospective period, and conferring absolute immunity from any and all forms of civil malpractice suits for that period, the FSHCAA is designed to eliminate a federally-funded health center's need to purchase (expensive) private malpractice liability insurance for actions arising out of the performance of medical or related functions within the scope of their employment and in so doing allows centers to devote their federal grant funds to patient services (rather than insurance premiums). *See* H.R. Rep. 102-823, pt. 1, at 3 (1992).

19. When a civil action or proceeding is brought against a deemed PHS employee, the entity or individual has a duty to deliver the pleadings to the grantor agency's designated representative, which is HHS's Office of General Counsel (OGC). HHS OGC is in turn required, to promptly deliver copies of the pleadings to the Attorney General and appropriate local U.S. Attorney. 42 U.S.C. § 233(b)

20. Upon notification of a state court action against a deemed individual or entity (which is confirmed by a Notice of Deeming Action), the Attorney General has a mandatory (non-discretionary) duty to appear in that court within 15 days of notice of the lawsuit to report whether the "Secretary has determined under subsections (g) and (h) of [Section 233], that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding." *Id*. at § 233(*l*)(1). The report to the state or local court of the HHS Secretary's deeming determination is also, as a matter of law, "deemed to satisfy" the Attorney General's scope of employment certification under 42 U.S.C. § 233(c) for purpose of removal to federal court. *Id*. at § 233(*l*)(1); *Cf*. 28 U.S.C. § 2679(d)(3).

21. If, despite that mandatory duty, the Attorney General (or his or her authorized representative) fails to appear in the state court action and effectuate its removal to federal court within 15 days of notice of the state action, the deemed entity or individual has an absolute right to remove the matter to the appropriate federal district court, without any time limit for doing so. *Id*. at § 233(*l*)(2). Section 233(*l*)(2) is in substance and effect an officer removal statute, akin to (but even more generous than) the general officer removal statute at 28 U.S.C. § 1442(a)(1).

22. Upon removal, all proceedings are stayed, by operation of law, until the federal district court conducts a "hearing" to determine the proper forum or procedure and issues an order

consistent with its determination. 42 U.S.C. § 233(*l*)(2)—"that is, to decide whether to remand the case or to substitute the United States as a party and deem the action as one brought under the FTCA." Campbell, 732 F. App'x at 117.

23. The hearing in federal district court following § 233(*l*)(2) removal allows a deemed entity or individual to challenge the federal government's failure or refusal to "determine[] under subsections (g) and (h) of [§ 233], that such entity [or] employee … is deemed to be an employee of the [PHS] for purposes of [§ 233] with respect to the actions or omissions that are the subject of such civil action or proceeding." *Id*. at § 233(*l*)(1). Where, as here, the claim is covered by the deemed defendant's § 233(a) immunity, § 233(*l*)(2) ensures that the United States is substituted as the only proper defendant in his or her (or its) place. *El Rio Santa Cruz*, 396 F.3d at 1272; *see also Booker*, 10 F.Supp.3d at 656.

B. Federal Question

24. As an additional basis, removal of this action is proper pursuant to 28 U.S.C. § 1331, because Plaintiff's allegations include a question arising under "[c]onstitution, laws, or treaties of the United States." *See Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986) ("[T]he question whether a claim 'arises under' federal law must be determined by reference to the 'well-pleaded complaint'"), *quoting Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9-10 (1983).

25. Because the substance of Plaintiffs' action hinges on a contested question of federal law, it necessarily arises under federal law. Removal to this Court is thus proper pursuant to 28 U.S.C. §§ 1331 and 1441(a).

C. Removal under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332

26. In addition to removal under the Federal Officer Statute, the Class Action Fairness Act of 2005, 28 U.S.C. § 1332, ("CAFA") provides another basis for removal of Plaintiff's complaint.

27. CAFA was enacted "to facilitate adjudication of certain class actions in federal court," and must be read "broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (quoting S.Rep. No. 109-14, at 43 (2005)). While Defendant CareSouth disputes Plaintiff's claims in this matter, and reiterates that it is not the proper party defendant, nor that Plaintiff's claims have merit, the complaint itself meets each of CAFA's threshold requirements.

28. Under CAFA, original jurisdiction exists within the district courts when a class comprises more than 100 members. *See* 28 U.S.C. § 1332(d)(5)(B). In addition to the threshold numerosity requirement, minimal diversity must exist for CAFA to confer original jurisdiction on the district court. Minimal diversity is satisfied when *any* plaintiff, or prospective class member is a citizen of a different state than *any* defendant. 28 U.S.C. § 1332(d)(2)(A). *See Mississippi ex rel. Hood v. AU Optronics, Corp.*, 571 U.S. 161, 165 (2014) (finding that CAFA replaces the ordinary requirement of complete diversity among all plaintiffs and defendants with a requirement of minimal diversity). Finally, CAFA confers jurisdiction on the district court when the amount in controversy, taking into account all purported categories of damages, exceeds $5 million.

V. FACTUAL AND LEGAL GROUNDS FOR REMOVAL

29. CareSouth submitted deeming applications for itself and its personnel with respect to each year and all times relevant to this action. The HHS Secretary, under 42 U.S.C. § 233(g)

and (h), approved the applications and deemed CareSouth and its personnel for purposes of the protections afforded under § 233(a) *et seq*. Copies of the Notice of Deeming Action for the calendar years 2019, 2020, and 2021 are attached hereto as Exhibit B.

30. On or about November 9, 2021, Plaintiff filed a civil action against CareSouth alleging that it failed to safeguard her PHI in connection with or related to health care services she received. *See* Ex. A, Compl.

31. The complaint alleges, in essence, that: Plaintiff and members of the proposed class sought and obtained health care services from CareSouth; that, as a condition of receiving such services, Plaintiff and members of the proposed class had to furnish PHI to CareSouth; CareSouth allegedly failed to safeguard the protected PHI of Plaintiff and other similarly situated individuals; and, as a result, an unauthorized individual was able to infiltrate and steal their PHI from the cloud-based medical records system Netgain maintained and operated on behalf of CareSouth. Ex. A, Compl.

32. On January 3, 2022, CareSouth's undersigned counsel advised Plaintiff's counsel, among other things, that: CareSouth is a deemed federal employee under 42 U.S.C. § 233 *et seq*. for purposes of a federal immunity; the immunity extends to this action; other patient-plaintiffs voluntarily dismissed similar actions against CareSouth or other deemed health centers arising out of the same exact underlying events. Undersigned counsel invited Plaintiff's counsel to voluntarily dismiss this case.

33. In response, Plaintiff's counsel requested copies of the dismissals in the other similar cases and indicated that Plaintiff would consider the requested dismissal. During that period of consideration, out of an abundance of caution, undersigned counsel asked Plaintiff's counsel to consent to an extension of any applicable responsive pleading deadline for several

reasons: HHS would be making a coverage determination under 42 U.S.C. § 233 et seq.; CareSouth would be removing the action to federal court and asserting immunity in the event of the government failed to do so; and CareSouth had concerns with Plaintiff's purported service of process (explaining, for example, that the individual who apparently signed for a delivery of the summons and complaint was neither an officer or agent of CareSouth authorized to accept service of process on its behalf). *See* Ex. C (undersigned counsel's emailed to Plaintiff's counsel dated January 3, 6, and 9, 2022, without attachments).

34. That same day undersigned counsel emailed Plaintiff's counsel with copies of the dismissals in other similar cases as well as a pleading detailing the basis of CareSouth's federal status and immunity. *Id*. Plaintiff's counsel did not respond to that email or two subsequent emails. *Id*.

35. Instead, on January 6, 2022, Plaintiff filed a motion for entry of default in state court. Ex. A, Motion for Entry of Default dated January 6, 2022.

36. On January 12, 2022, CareSouth delivered copies of the summons and complaint to HHS. Ex. D (Notice through U.S. Mail and HHS OGC's designated email address without enclosure). That same day, CareSouth provided courtesy copies of the summons and complaint to the U.S. Attorney for the District for the District of South Carolina, even though HHS, not CareSouth, is required to provide such notice. 42 U.S.C. § 233(b). Ex. E (Notice to U.S. Attorney for the District of South Carolina via U.S. mail and email without enclosure).

37. On January 20, 2022, a representative of the Attorney General filed a notice in the underlying state court action, indicating that "the decision whether the United States of America will intervene is under consideration." Although the notice cites 42 U.S.C. § 233(*l*)(1), it did not advise the state court as to whether the Secretary had made favorable deeming determinations

under 42 U.S.C. § 233(g) and (h) with respect to the periods in which the events giving rise to the action occurred, nor did it remove the action to federal court, as contemplated by 42 U.S.C. § 233(*l*)(1), to preserve the status quo pending a threshold immunity determination. Ex. F, United States Notice to State Court.

A. SCOPE OF FEDERAL IMMUNITY

38. As previously stated, § 233(a) provides absolute immunity to deemed PHS employees "for damage for personal injury, including death, *resulting from the performance of medical*, surgical, dental, *or related functions*, […] while acting within the scope of his office or employment." 42 U.S.C. § 233(a), (g).

39. The immunity provided under § 233(a) is not limited to medical malpractice, but encompasses liability arising out of "*related functions"—i.e.,* functions that are related to the performance of medical, surgical, or dental functions. 42 U.S.C. § 233(a); *see e.g., Z.B. ex rel. Next Friend v. Ammonoosuc Community Health Services, Inc.*, 2004 WL 1571988, *4 (D. Me. June 13, 2004) (phrase "related to" in regulation recognizes that § 233(a) immunity extends beyond the mere act of providing medical care); *see also Pinzon v. Mendocino Coast Clinics Inc*., Case No. 14–cv–05504–JST, 2015 WL 4967257 at *1 (N.D. Ca. 2015 Aug. 20, 2015) (granting, over objection, motion by United States to substitute itself in place of deemed health center defendant in civil action asserting claims for, among other things, violation of "the Americans with Disabilities Act," "Civil Rights Act of 1964," and "Health Insurance Portability and Accountability Act of 1996").

40. The claims against CareSouth resulted from its "performance of medical … or related functions" within the scope of its deemed federal employment. 42 U.S.C. §§ 233(a), 254(b). On its face, the complaint alleges various theories of professional malpractice or malfeasance

against CareSouth. In essence, the complaint alleges that CareSouth, with respect to Plaintiff Summer Mixon and its other similarly situated patients, breached its duty maintain the confidentiality of their respective PHI and, as a result, caused harms to Plaintiff and the proposed class member patients of CareSouth.

41. Maintaining the confidentiality of a patient's health and confidential information is a "medical … or related function" within the meaning of 42 U.S.C. § 233(a). The statute that governs the health center program, and makes a health center eligible for deemed status in the first place, requires the center to have, among other things, "an ongoing quality improvement system that includes clinical services and management, and that maintains the confidentiality of patient records." 42 U.S.C. § 254b(b)(1)–(2), (k)(3)(C); *see also Kezer v. Penobscot Community Health Center*, 15-cv-225-JAW, 2019 BL 141566 at *6 (D. Me. Mar. 21, 2019) (breach of patient confidentiality claim against deemed PHS employees falls within the scope of § 233(a) immunity, and performance of administrative or operational duties, including the duties the maintain the confidentiality of patient PHI, can qualify as "related functions" within the meaning of § 233(a)); *Cf. Teresa T. v. Ragaglia*, 154 F. Supp. 2d 290, 300 (D. Conn. 2001) (finding that doctor's duty to report suspected child abuse is a "related function to the doctor's performance of medical services."); *Brignac v. United States*, 239 F.Supp.3d 1367 (N.D. Ga. 2017) (recognizing that allegations of failing to report misconduct and failing to hire and retain is conduct covered under the FSCHAA); *La Casa de Buena Salud v. United States*, 2008 WL 2323495, **18-20 (D.N.M. March 21, 2008) (recognizing that FSHCAA coverage under § 233(a) may extend to claims of negligent hiring, retention, and supervision).

42. The maintenance of confidential patient records and information is not only a medical or related function within the scope of CareSouth health center project/deemed PHS

employment, but this action, to the extent it seeks relief from CareSouth (as opposed to Netgain), is rooted in allegations that it failed to adequately perform such functions. In other words, with respect to CareSouth, the complaint acknowledges, if not hinges on, the inextricable connection between the provision of health care services and the duty to maintain the confidentiality of patient information. Ex. A, Compl. at ¶ 30 ("As a *condition of receiving treatment*, Plaintiffs and members of the classes were required by [the defendant health care providers] . . . to confide sensitive and confidential PHI . . . *related to* the care sought") (emphasis added).

43. Plaintiff's exclusive remedy with respect to the alleged acts or omissions of CareSouth is a claim against the United States under the FTCA. *See* 42 U.S.C. § 233(a) (remedy against United States provided by FTCA "shall be exclusive of any other civil action or proceeding.").

B. FEDERAL QUESTION JURISDICTION

44. Plaintiff's complaint presents questions of federal law—i.e., whether CareSouth violated the Federal Trade Commission Act (Ex. A., Compl. ¶¶ 45, 58) and that Defendant failed to employ reasonable and appropriate measures to protect against unauthorized access to patient Protected Health Information constituted an unfair act or practice prohibited by the Federal Trade Commission Act (*id.*).

45. Pursuant to a plain reading of Plaintiff's complaint, Plaintiff has alleged that CareSouth violated federal law. Thus, Plaintiffs' cause of action for negligence cannot be resolved without determining substantial questions of federal law, including whether the FTC Act creates a private right of action, whether Plaintiff and the putative class are within the class of persons the FTC Act was designed to protect, and whether and to what extent, if at all, Defendants' conduct implicates the protections of the FTC Act.

46. Even where a complaint arguably sets forth only state law causes of action, a case may nevertheless arise under federal law where the "well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27–28 (1983). In this case, in addition to Plaintiff's cause of action for negligence, Plaintiff's theory of the case requires interpretation of the FTC Act.

47. Because the substance of Plaintiff's action hinges on a contested question of federal law, it necessarily arises under federal law. Removal to this Court is thus proper pursuant to 28 U.S.C. §§ 1331 and 1441(a).

C. JURISDICTION UNDER CAFA

48. As stated, CareSouth also seeks removal of this action under CAFA. CAFA grants district courts of the United States original jurisdiction over class actions in which: (1) any member of a putative class is a citizen of a state different from any defendant; (2) the members of the putative class are over 100 people; and (3) where the amount in controversy for the putative class exceeds $5 million. 28 U.S.C. §§ 1332(a)(1), (d).

49. In the instant matter, the proposed class satisfies CAFA's numerosity requirement, which provides that, for removal to be proper, a class must be composed of more than 100 members. *See* 28 U.S.C. § 1332(d)(5)(B). Plaintiff has plead a class of "geographically dispersed" members, and estimates the potential class members to be in the "thousands." (Ex. A., Compl. ¶ 57). Accordingly, the putative class patently exceeds 100 members.

50. In addition, to the threshold numerosity requirement, this case meets the requirement of minimal diversity. Plaintiff, is a citizen of South Carolina. (Ex. A, Compl. ¶ 9) and seeks to bring a class action on behalf of herself and on behalf of all others similarly situated (Ex.

A., Compl. ¶ 109). (Ex. A., Compl. ¶¶ 20, 21, 22, 23). Defendant CareSouth is organized and does business in the State of South Carolina. Recognizing that CareSouth's patients may reside in other states, the complaint alleges that the putative class members are "geographically dispersed." (Ex. A., Compl. ¶ 57). Accordingly, minimal diversity exists between the putative class members and CareSouth.

51. Notwithstanding Plaintiff's failure to allege the total amount of monetary relief she and the putative class seek, CAFA authorizes the removal of class actions in which the amount Jurisdiction before this Court is also proper because the purported amount in controversy for all potential class members exceeds $5 million. *See* 28 U.S.C. § 1332(d)(6) ("To determine whether the matter in controversy" exceeds $5,000,000, "the claims of the individual class members shall be aggregated.")

52. "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *See Dart Cherokee*, 135 S. Ct. at 554.

53. CareSouth denies Plaintiff's claims of wrongdoing, denies the allegations in the complaint, and denies that Plaintiff can meet the requirements for class certification. As pled, however, the total amount of compensatory, exemplary, punitive, and statutory damages, restitution, attorney's fees, injunctive relief, and other monetary relief at issue in this action, on an aggregate, class wide basis, it is plausible that the monetary relief at issue would exceed CAFA's $5 million jurisdictional minimum. *Id.*

54. No exceptions to CAFA jurisdiction apply in this case, whether mandatory or discretionary. *See* 28 U.S.C. § 1332(d)(3)-(4). In addition, CAFA jurisdiction is to be interpreted broadly, and in favor of removal. Because no exception to jurisdiction exists in this matter, and

because each of the threshold jurisdictional requirements are met, the district court has original jurisdiction over Plaintiff's claims.

VI. TIMING AND VENUE

55. Venue before this court is proper because this Notice of Removal is filed in the federal district court that embraces the place where the local circuit court matter is pending. *See* 42 U.S.C. § 233(*l*)(2); 28 U.S.C. §§ 1441(a), 121(3).

56. Under 42 U.S.C. § 233(*l*)(2), removal is timely as no trial has occurred in state court and there is otherwise no time limit. 42 U.S.C. § 233(c), (*l*)(2).

57. Under 28 U.S.C. § 1446(b)(1), removal is timely as CareSouth has yet to be served with the summons and complaint in accordance with South Carolina law.

58. A copy of this Notice of Removal is being contemporaneously filed with the state court where the underlying action was commenced.

VII. CONCLUSION

For the forgoing reasons, the Court should, after staying all proceedings and conducting a hearing pursuant to 42 U.S.C. § 233(*l*)(2), substitute the United States as the only proper defendant in place of CareSouth in the above-captioned action.

Dated: January 28, 2022

Respectfully submitted,

TURNER PADGET GRAHAM AND LANEY P.A.

/s/ Arthur E. Justice

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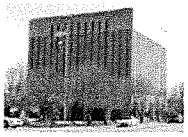
Attorneys for Defendant CareSouth Carolina, Inc.

*A motion for *pro hac* admission will be filed promptly

Darlington County
Fourth Judicial Circuit
Public Index



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Summer Mixon VS Caresouth Carolina Inc

Case Number:	**2021CP1600887**	**Court Agency:**	**Common Pleas**	**Filed Date:**	**11/09/2021**
Case Type:	**Common Pleas**	**Case Sub Type:**	**Special-Comp/Oth 699**	**File Type:**	**Mediator - Jury**
Status:	**Pending/ADR**	**Assigned Judge:**	**Clerk Of Court C P, G S, And Family Court**		
Disposition:		**Disposition Date:**		**Disposition Judge:**	
Original Source Doc:		**Original Case #:**			
Judgment Number:		**Court Roster:**			

Case Parties Judgments Tax Map Information Associated Cases **Actions** **Financials**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Mixon, Summer	ADR/Alternative Dispute Resolution (Workflow)	Action		06/07/2022-12:14		
Mixon, Summer	NEF(01-25-2022 04:04:24 PM) Proposed Order/Entry of Defa...	Filing		01/26/2022-09:14		
Mixon, Summer	Order/Order Cover Sheet $25.00	Filing		01/25/2022-16:04		
Mixon, Summer	Notice to State and Certificate of Service	Filing		01/20/2022-11:41		
Mixon, Summer	NEF(01-06-2022 09:40:49 AM) Affidavit/Attorney	Filing		01/06/2022-14:29		
Mixon, Summer	Affidavit/Attorney	Filing		01/06/2022-09:40		
Mixon, Summer	Motion/Default Judgment	Motion		01/06/2022-09:40		
Mixon, Summer	NEF(11-30-2021 01:04:28 PM) Service/Certificate Of Servi...	Filing		11/30/2021-13:59		
Mixon, Summer	Service/Certificate Of Service	Filing		11/30/2021-13:04		
Mixon, Summer	Summons & Complaint	Filing		11/09/2021-12:14		

STATE OF SOUTH CAROLINA)) COUNTY OF DARLINGTON))	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT Case No. 2021-
SUMMER MIXON, individually, and on behalf of all others similarly situated, Plaintiff, vs. CARESOUTH CAROLINA, INC. Defendant.	**SUMMONS** **(Jury Trial Demanded)**

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or her attorneys, Blake G. Abbott, Eric M. Poulin, and Roy T. Willey, IV, Paul Doolittle, at their offices at 32 Ann Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 9th day of November, 2021.

ANASTOPOULO LAW FIRM, LLC
/s/ Blake G. Abbott
Blake G. Abbott, Esquire
S.C. Bar No.: 104423
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
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STATE OF SOUTH CAROLINA)) COUNTY OF DARLINGTON))	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT Case No. 2021-
SUMMER MIXON, individually, and on behalf of all others similarly situated,)) Plaintiff,) vs.)) CARESOUTH CAROLINA, INC.)) Defendant.))	**CLASS ACTION COMPLAINT** **(Jury Trial Demanded)**

The Plaintiff, Summer Mixon ("Plaintiff"), by and through undersigned counsel, brings this action against CareSouth Carolina, Inc ("Defendant" or "CareSouth") on behalf of herself and all others similarly situated, and make the following allegations based upon information, attorney investigation and upon Plaintiff's own knowledge:

PRELIMINARY STATEMENT

1. Plaintiff brings this case against Defendant for its failure to properly secure and safeguard personal identifiable information and protected health information Defendant acquired from or created for its patients.

2. Defendant required this information from its patients or created this information for its patients as a condition or result of medical treatment, including without limitation, names, addresses, dates of birth, Social Security numbers, driver's license/state ID numbers, passport numbers, credit/debit card information, financial account information, (collectively, "personal identifiable information" or "PII"), and health insurance information. (collectively "personal health information" or "PHI") of the Plaintiff and potential Class Members. Plaintiff also alleges Defendant failed to provide timely, accurate, and adequate notice to Plaintiff, and members of the Proposed

Class, that their PII and PHI had been lost and precisely what types of information was unencrypted and in the possession of unknown third parties.

PARTIES

3. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

4. Defendant is a corporation organized under the laws of South Carolina with its principal place of business in Darlington County, South Carolina.

5. CareSouth operates as a community health center providing medical services to patients.

6. Plaintiff Summer Mixon (herein referred to as "Plaintiff") is a citizen and resident of Darlington County, State of South Carolina and received a notice letter from Defendant, dated May 17, 2021, or on about that date.

7. Plaintiff Summer Mixon was a patient at CareSouth at the time of the Data Breach.

JURISDICTION AND VENUE

8. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

9. This Court has jurisdiction over the action because, upon information and belief, greater than two-thirds of the members of the proposed class, in the aggregate, are citizens of South Carolina.

10. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in this county, regularly and systematically transacts business in this county, and the wrong conduct complained of in this complaint occurred in this county.

11. Venue is proper in this county because Defendant has its principal place of business in this county and a substantial part of the events or omissions giving rise to this complaint occurred in this county.

FACTUAL BACKGROUND

12. A breach of security of data is defined under South Carolina Code § 39-1-90(D)(1) as:

> [The] unauthorized access to and acquisition of computerized data that was not rendered unusable through encryption, redaction, or other methods that compromises the security, confidentiality, or integrity of personal identifying information maintained by the person, when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to a resident. Good faith acquisition of personal identifying information by an employee or agent of the person for the purposes of its business is not a breach of the security of the system if the personal identifying information is not used or subject to further unauthorized disclosure.

13. CareSouth has its patient's data and personal information stored by NetGain Technology, Inc. ("NetGain").

14. That on December 1, 2020, NetGain began investigating an IT security incident.

15. That on December 3, 2020, an unlawful cyberattack was made against some of the Defendant's servers which contained sensitive and confidential information linked to the Plaintiff (the "Data Breach").

16. On May 17, 2021, the Defendant sent out a letter titled "Notice of Data Breach" ("the Letter") to all potentially ill-affected patients, informing them of the December 3rd Data Breach.

17. Following the discovery of the Data Breach, CareSouth began work with cybersecurity experts to investigate the Data Breach. Based on this investigation, the cybercriminals conducting the Data Breach were able to obtain personal and medical information which was unencrypted and unprotected by the Defendant.

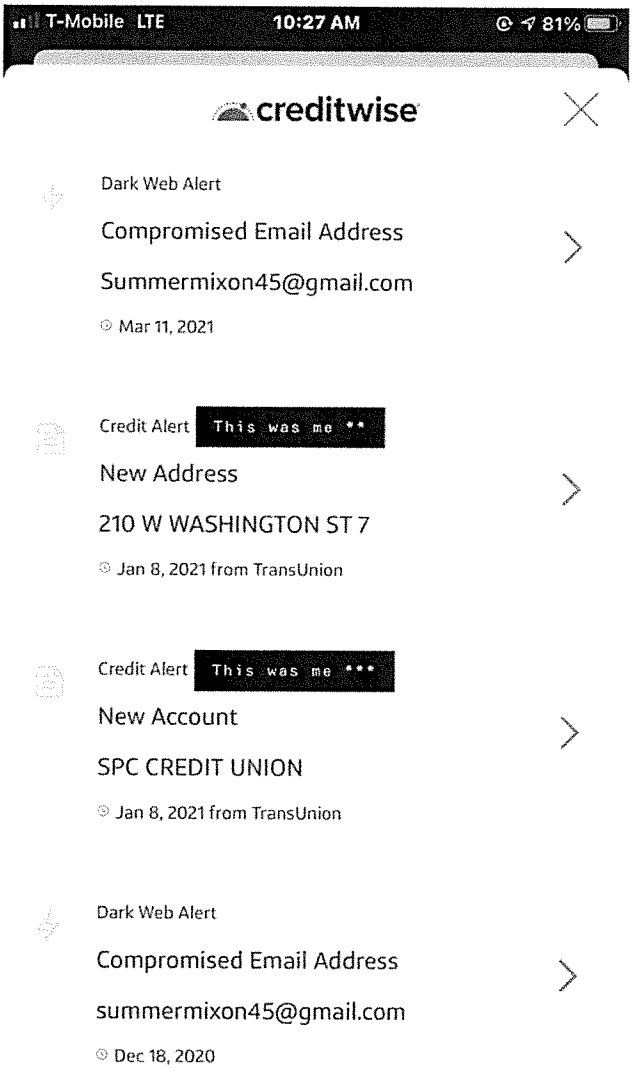
18. That Plaintiff's unencrypted personal information was acquired by an unauthorized cybercriminal(s) as a result of the Data Breach.

19. That Plaintiff's personal and confidential information was viewed by unauthorized

person(s) due to the Data Breach.

20. Upon information and belief, the unauthorized cybercriminals intended to misuse the information gathered and illegally market or sell the Plaintiff's and Class member's information.

21. In fact, due to CareSouth's negligence, nefarious actors attempted to open accounts in the Plaintiff's name and thus damaging her reputation and credit worthiness as can be seen in the excerpt below:



22. That despite the high potential for fraud and/or identity theft for the Plaintiff and potential

Class Members, the Defendant elected not to inform the Plaintiff or potential Class members of the Data Breach for six (6) months.

23. The Defendant has done virtually nothing to protect the Plaintiff or potential Class Members since the discovery of the Data Breach. Per the Letter, the only things the Defendant has done are as follows:

a. Required employees to change passwords;

b. Implemented additional security software for their networks;

c. Reported the Data Breach to the federal government; and

d. Offered a twelve (12) month identity theft protection service through IDX.

24. In response to the Data Breach, NetGain paid the cybercriminals "a significant amount to the attacker in exchange for promises that the attacker will delete all copies of the data and that it will not publish, sell, or otherwise share the data."

25. None of the above responses by the Defendant or NetGain are adequate to make the Plaintiff whole. It can be assumed the promises made by the attackers are at best hollow promises that will likely not be kept. "FBI does not support paying a ransom in response to a ransomware attack. Paying a ransom doesn't guarantee you or your organization will get any data back. It also encourages perpetrators to target more victims and offers an incentive for others to get involved in this type of illegal activity." As such, the risk of fraud or identity theft for the Plaintiff or potential Class Members is not reduced.[1]

26. Paying the cybercriminals who conducted this attack in exchange for the hollow promises to delete the stolen information will likely only encourage the same behavior to occur again.[2]

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[1] SCAMS AND SAFETY: Ransomware (last accessed on August 9, 2021) https://www.fbi.gov/scams-and-safety/common-scams-and-crimes/ransomware

[2] *Id.*

27. Moreover, the payment did not ameliorate the damage to the Plaintiff in any way, as the security of her identity was already compromised as can be seen in the below excerpt:

28. The Defendant had a duty, created via HIPAA, industry standards, common law, state statutory law, and their own promises to safeguard its patients' personal information from unauthorized access.

29. That Defendant failed to properly safeguard the Plaintiff and potential Class Members' personal information.

30. The Defendant failed to properly instruct, educate, or train its employees in cybersecurity.

31. Defendant, by nature of their business, required its patients to provide their personal and

medical information to them in exchange for services provided.

32. The Plaintiff and potential Class Members who were affected by the Data Breach had a reasonable expectation and understanding the Defendant would keep the information provided to the Defendant confidential and secure from unauthorized access.

33. Part of the data collected by the cybercriminals included health insurance information, banking information, addresses, and Social Security numbers of the Plaintiff and potential Class Members and such information is highly valuable to the cybercriminals who capitalized on Defendant's negligence.

34. The ongoing risk of injury to Plaintiff and potential Class Members by the cybercriminals is very high and has not been reasonably addressed by the Defendant.

35. Defendants are required by HIPAA (45 C.F.R. § 160.102) to comply with the HIPAA Privacy Rule and Security Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and E ("Standards for Privacy of Individually Identifiable Health Information"), and Security Rule ("Security Standards for the Protection of Electronic Protected Health Information"), 45 C.F.R. Part 160 and Part 164, Subparts A and C.

36. HIPAA's Privacy Rule or Standards for Privacy of Individually Identifiable Health Information establishes national standards for the protection of health information.

37. HIPAA's Privacy Rule or Security Standards for the Protection of Electronic Protected Health Information establishes a national set of security standards for protecting health information that is kept or transferred in electronic form.

38. HIPAA requires Defendant to "comply with the applicable standards, implementation specifications, and requirements" of HIPAA "with respect to electronic protected health

information."[3]

39. "Electronic protected health information" is "individually identifiable health information … that is (i) transmitted by electronic media; maintained in electronic media."[4]

40. HIPAA's Security Rule requires Defendants to do the following:

e. Ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity or business associate creates, receives, maintains, or transmits;

f. Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;

g. Protect against any reasonably anticipated uses or disclosures of such information that are not permitted; and

h. Ensure compliance by their workforce.

41. HIPAA also requires Defendant to "review and modify the security measures implemented … as needed to continue provision of reasonable and appropriate protection of electronic protected health information."[5]

42. HIPAA also requires Defendant to "[i]mplement technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights."[6]

43. The HIPAA Breach Notification Rule[7] also requires Defendant to provide notice of the

[3] 45 C.F.R. § 164.302
[4] 45 C.F.R. § 160.103
[5] 45 C.F.R. § 164.306(e)
[6] 45 C.F.R. § 164.312(a)(1)

[7] 45 C.F.R. §§ 164.400-414

Data Breach to each affected individual "without unreasonable delay and in no case later than 60 days following discovery of the breach."[8]

44. Defendants were also prohibited by the Federal Trade Commission Act (the "FTC Act") (15 U.S.C. § 45) from engaging in "unfair or deceptive acts or practices in or affecting commerce."

45. The Federal Trade Commission (the "FTC") concluded a company's failure to maintain reasonable and appropriate data security for consumers' sensitive personal information is an "unfair practice" in violation of the FTC Act.[9]

46. As detailed above, the Defendant has a duty to protect and safeguard Plaintiff's and potential Class Member's sensitive information and to handle any security/data breach in accordance with state and federal notification statutes.

47. Defendant owed a duty to Plaintiff and the potential Class Members to design, maintain, and test their computer and network systems to ascertain proper and adequate security measures were in place and the information they solicited from their clients was properly secured from any actual or potential threats.

48. The Defendant was on notice of the Data Breach on January 14, 2021 yet waited until May 17, 2021 to issue an announcement to its patients about the Data Breach, well outside of the sixty (60) day requirement, detailed above.

49. Defendant promised any breach, like the breach present here, will be disclosed no later

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[8] Breach Notification Rule, U.S. Dep't of Health & Human Services, https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html

[9] See, e.g., FTC v. Wyndham Worldwide Corp., 799 F.3d 236 (3d Cir. 2015).

than sixty (60) days after the discovery of the breach.[10]

CLASS ACTION ALLEGATIONS

50. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

51. Plaintiff brings this action on behalf of herself and as a class action on behalf of others similarly situated, pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure on behalf of the following class:

> **All patients of CareSouth whose personal and medical information was compromised as a result of the Data Breach which occurred in December 2020.**

52. Plaintiff alternatively requests an additional Subclass as necessary based on the types of personal and/or medical information that was compromised.

53. Excluded from the Class and potential Subclass are Defendant, any entity in which the Defendant has a controlling interest, Defendant's officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judges, justices, or judicial officers presiding over this matter and members of their immediate families and judicial staff.

54. Plaintiff reserves the right to amend the above definitions or to propose alternative or additional Subclass(es) in subsequent pleadings and motions for class certification.

55. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

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[10] CARESOUTH CAROLINA NOTICE OF PRIVACY PRACTICES (last accessed on August 9, 2021) - https://www.caresouth-carolina.com/privacy-policy

56. This action has been brought and may be properly maintained on behalf of the Class proposed herein under South Carolina Rule of Civil Procedure (23)(a).

Numerosity: S.C.R.C.P. (a)(1)

57. The members of the Class are so numerous and geographically dispersed that individual joinder of all members is impracticable. Plaintiff is informed and believes there are thousands of members of the Class, the precise number being unknown for Plaintiff, but such number being ascertainable from Defendant's records. Members of the Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

Commonality and Predominance: S.C.R.C.P. (a)(2)

58. This action involved common questions of law and fact, which predominate over any questions affecting individual members of the Class, including, without limitation:

i. Whether Defendant engaged in the wrongful conduct alleged herein;

j. Whether Defendant failed to adequately safeguard Plaintiff's and Class members' Personal and Medical Information;

k. Whether Defendant's systems, networks, and data security practices used to protect Plaintiff's and Class members' Personal and Medical Information violated the FTC Act, HIPAA, and/or state laws and/or Defendant's other duties discussed herein;

l. Whether Defendant owed a duty to Plaintiff and the Class to adequately protect their Personal and Medical Information, and whether they breached this duty;

m. Whether Defendant knew or should have known their computer and

network security systems were vulnerable to a data breach;

n. Whether Defendant's conduct, including their failure to act, resulted in or was the proximate cause of the Data Breach;

o. Whether Defendant breached contractual duties to Plaintiff and the Class to use reasonable care in protecting their Personal and Medical Information;

p. Whether Defendant failed to adequately respond to the Data Breach, including failing to investigate it diligently and notify affected individuals in the most expedient time possible and without unreasonable delay, and whether this caused damages to Plaintiff and the Class;

q. Whether Defendant continue to breach duties to Plaintiff and the Class;

r. Whether Plaintiff and the Class suffered injury as a proximate result of Defendant's negligent actions or failures to act;

s. Whether Plaintiff and the Class are entitled to recover damages, equitable relief, and other relief;

t. Whether injunctive relief is appropriate and, if so, what injunctive relief is necessary to redress the imminent and currently ongoing harm faced by Plaintiff and members of the Class and the general public;

u. Whether Defendant's actions alleged herein constitute gross negligence; and

v. Whether Plaintiff and Class members are entitled to punitive damages.

Typicality: S.C.R.C.P. (a)(3)

59. Plaintiff's claims are typical of the claims of other members of the Class because, among other things, all such members were similarly situated and were comparably injured through

Defendant's wrongful conduct as set forth herein.

Adequacy & Superiority: S.C.R.C.P. (a)(4)

60. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class she seeks to represent. Plaintiff has retained counsel competent and highly experienced in complex class action litigation and Plaintiff is committed to vigorously prosecuting the action and has the financial resources to do so. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

61. A class action is superior to other available means of fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by each individual Class member is relatively small in comparison to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct.

62. Even if Class members could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

63. The amount in controversy exceeds $100 per class member.

64. To the extent any described Class herein does not meet the requirements of Rule 23, Plaintiff seeks the certification of issues that will drive the litigation towards resolution.

65. Defendant has acted or refused to act on grounds generally applicable to Plaintiff and Class

Members, thereby making final injunctive relief and declaratory relief, as described herein, with respect to the members of the class as a whole.

FOR A FIRST COLLECTIVE CAUSE OF ACTION
NEGLIGENCE

(Plaintiff and Other Members of the Class)

66. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

67. Plaintiff brings this count on behalf of herself and other members of the Class.

68. As a condition of their treatment by Defendant, Defendant's current and former patients were obligated to provide Defendant with types of personal and/or medical information, including their names, addresses, dates of birth, Social Security numbers, driver's license/state ID numbers, passport numbers, credit/debit card information, financial account information, (collectively, "personal identifiable information" or "PII"), and health insurance information. (collectively "personal health information" or "PHI").

69. As a condition of their treatment by Defendant, Defendant created PII and PHI for Defendant's current and former patients, including their MPI (patient identification) numbers, medical treatment/diagnosis information, medical record information, and health claims information.

70. Plaintiff and Class Members entrusted their PII and PHI to Defendant on the premise and with the understanding Defendant would safeguard their information, use their PII and PHI for business purposes only and/or not to disclose their PII and PHI to unauthorized third parties.

71. Defendant knew or reasonably should have known the failure to exercise due care in the collecting, storing, and using of its current and former patients' PII and PHI involved an unreasonable risk of harm to Plaintiff and Class Members, even if the harm occurred through the criminal acts of a third party.

72. Defendant had a duty to exercise reasonable care in safeguarding, securing and protecting such information from being compromised, lost, stolen, misused and/or disclosed to unauthorized parties. This duty includes, among other things, designing, maintaining and testing Defendant's security protocols to ensure Plaintiff's and Class Members' information in Defendant's possession was adequately secured and protected.

73. Defendant also had a duty to exercise appropriate practices to remove former patients' PII it was no longer required to retain pursuant to regulations.

74. Defendant also had a duty to have procedures in place to detect and prevent the improper access and misuse or Plaintiff's and Class Members' PII and PHI.

75. Defendant's duty to use reasonable security measures arose as result of the special relationship that existed between Defendant and Plaintiff and Class Members. That special relationship arose because Plaintiff and Class Members entrusted Defendant with their confidential PII and PHI, a necessary part of obtaining treatment from Defendant.

76. Defendant was subject to an "independent duty," untethered to any contract between Defendant and Plaintiff and Class Members.

77. A breach of security, unauthorized access, and resulting injury to Plaintiff and the Class Members was reasonably foreseeable, particularly when viewed through the prism of the Defendant's inadequate security practices.

78. Plaintiff and Class Members were foreseeable and likely victims of any inadequate security practices and procedures. Defendant knew or should have known of the inherent risks in collecting and storing the PII and PHI of Plaintiff and the Class, the critical importance of providing adequate security of that PII and PHI, and the necessity for encrypting PII and PHI stored on Defendant's systems.

79. Defendant's misconduct included, but was not limited to, its failure to take the steps and opportunities to prevent the Data Breach as set forth herein. Defendant's misconduct also included its decision to ignore industry standards for safekeeping of Plaintiff's and Class Members' PII.

80. Defendant's own conduct created a foreseeable risk of harm to Plaintiff and Class Members.

81. Plaintiff and Class Members had no ability to protect their PII and PHI that was in, and possibly remains in, Defendant's possession.

82. Defendant was in a position to protect against the harm suffered by Plaintiff and Class Members as a result of the Data Breach.

83. Defendant had and continues to have a duty to adequately disclose that the PII and PHI of Plaintiff and Class Members within Defendant's possession might have been compromised, how it was compromised, and precisely the types of data that were compromised and when. Such notice was necessary to allow Plaintiff and the Class Members to take steps to prevent, mitigate and repair any identity theft and the fraudulent use of their PII and PHI by third parties.

84. Defendant had a duty to employ proper procedures to prevent the unauthorized dissemination of the PII and/or PHI of Plaintiff and Class Members.

85. Defendant has admitted the PII and PHI of Plaintiff and Class Members was wrongfully lost and disclosed to unauthorized third persons due to the Data Breach.[11]

86. Defendant, through its actions and/or omissions, unlawfully breached its duties to Plaintiff and Class Members by failing to implement industry protocols and exercise reasonable care in protecting and safeguarding the PII and PHI of Plaintiff and Class Members during the time the

[11] https://www.caresouth-carolina.com/files/files/Notice%20of%20Data%20Breach.pdf - (last accessed on August 9, 2021)

PII and PHI was within Defendant's possession or control.

87. Defendant improperly and inadequately safeguarded the PII and PHI of Plaintiff and Class Members in deviation of standard industry rules, regulations, and practices at the time of the Data Breach.

88. Defendant failed to heed industry warnings and alerts to provide adequate safeguards to protect its current and former patients' PII and PHI in the face of increased risk of theft.[12]

89. Defendant through its actions and/or omissions unlawfully breached its duty to Plaintiff and Class Members by failing to have appropriate procedures in place to detect and prevent dissemination of its current and former patients' PII and PHI.

90. Defendant breached its duty to exercise appropriate clearinghouse practices by failing to remove former patients' PII and PHI after the regulatory retention period had expired.

91. Defendant, through its actions and/or omissions, unlawfully breached its duty to adequately and timely disclose to Plaintiff and Class Members the existence and scope of the Data Breach.

92. But for the Defendant's wrongful and negligent breach of duties owed to Plaintiff and Class Members, the PII and PHI of Plaintiff and Class Members would not have been compromised.

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[12] "Ransomware Activity Targeting the Healthcare and Public Health Sector" (last accessed on August 9, 2021) - https://us-cert.cisa.gov/ncas/alerts/aa20-302a (showing that the CISA, FBI, and HHS assess malicious cyber actors are targeting the HPH Sector … often leading to ransomware attacks, data theft, and the disruption of healthcare services. These issues will be particularly challenging for organizations within the COVID-19 pandemic; therefore, administrators will need to balance this risk when determining their cybersecurity investments.) See Also: "Cyber Attacks: In the Healthcare Sector" (Last Accessed on August 9, 2021) - https://www.cisecurity.org/blog/cyber-attacks-in-the-healthcare-sector/ (The healthcare industry is plagued by a myriad of cybersecurity-related issues); "Increased Cyberattacks On Healthcare Institutions Shows The Need For Greater Cybersecurity" - https://www.forbes.com/sites/forbestechcouncil/2021/06/07/increased-cyberattacks-on-healthcare-institutions-shows-the-need-for-greater-cybersecurity/?sh=1b73b67f5650

93. There is a close causal connection between Defendant's failure to implement security measures to protect the PII and PHI of Plaintiffs and Class Members and the harm suffered or risk of imminent harm suffered by Plaintiff and the Class. Plaintiff's and Class Members' PII and PHI was lost and accessed as the proximate result of Defendant's failure to exercise reasonable care in safeguarding such PII and PHI by adopting, implementing, and maintaining appropriate security measures.

94. As a direct and proximate result of Defendant's negligence, Plaintiff and Class Members have suffered and will suffer injury including but not limited to:

a. actual identity theft;

b. the loss of the opportunity of how their PII and PHI is used;

c. the compromise, publication and/or theft of the PII and PHI;

d. out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud and/or unauthorized use of their PII and PHI;

e. lost opportunity costs associated with effort expanded and the lost productivity addressing and attempting to mitigate the actual and future consequences of the Data Breach, including but not limited to efforts spent researching how to prevent, detect, contest, and recover from tax fraud and identity theft;

f. costs associated with placing freezes on credit reports;

g. the continued risk to their PII and PHI which remain in Defendant's possession is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect the current and former patients' PII and PHI in its continued possession; and

h. future costs in terms of time, effort and money that will be expended to prevent,

detect, contest and repair the impact of the PII and PHI compromised as a result of the Data Breach for the remainder of the lives of the Plaintiff and Class Members.

95. As a direct and proximate result of Defendant's negligence, Plaintiff and Class Members have suffered and will continue to suffer other forms of injury and/or harm, including, but not limited to, anxiety, emotional distress, loss of privacy and other economic and non-economic losses.

96. As a direct and proximate result of Defendant's negligence, Plaintiff and Class Members have suffered and will suffer the continued risks of exposure of their PII and PHI, which remain in Defendant's possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect the PII and PHI in their continued possession.

97. That Plaintiff is thereby entitled to recover actual, compensatory, punitive damages, and attorneys' fees and any other relief this court deems appropriate.

FOR A SECOND COLLECTIVE CAUSE OF ACTION
WRONGFUL INTRUSION/INVASION OF PRIVACY

(Plaintiff and Other Members of the Class)

98. That Plaintiff re-alleges and reasserts each and every allegation set forth above as if herein verbatim.

99. Plaintiff brings this count on behalf of herself and on before the Class.

100. Plaintiff and Class Members had a legitimate expectation of privacy to their PII and PHI and were entitled to the protection of this information against disclosure to unauthorized third parties.

101. Defendant owed a duty to its current and former patients, including Plaintiff and Class

Members to keep their PII and PHI contained as part therefor, confidential.

102. Defendant failed to protect and released to unknown and unauthorized third parties the PII and/or PHI of Plaintiffs and Class Members.

103. Defendant allowed unauthorized and unknown third parties access to and examination of the PII and/or PHI of Plaintiff and Class Members, by way of Defendant's failure to protect the PII and PHI.

104. The unauthorized release to, custody of, and examination by unauthorized third parties of the PII and/or PHI of Plaintiff and Class Members is highly offensive to a reasonable person.

105. The intrusion was into a place or thing, which was private and is entitled to be private. Plaintiff and Class Members disclosed their PII and PHI to Defendant, or allowed Defendant to create their PII and PHI, as part of their treatment by Defendant, but privately with an intention that the PII and PHI, as part of their treatment by Defendant, but privately with an intention that the PII and PHI would be kept confidential and would be protected from unauthorized disclosure.

106. Plaintiff and Class Members were reasonable in their belief such information would be kept private and would not be disclosed without their authorization.

107. The Data Breach constitutes an intentional interference with Plaintiff and Class Members' interest in solitude or seclusion, either as to their persons or as to their private affairs or concerns, of a kind that would be highly offensive to a reasonable person.

108. Defendant acted with a knowing state of mind when it permitted the Data Breach to occur because it was with actual knowledge that its information security practices were inadequate and insufficient.

109. Because Defendant acted with this knowing state of mind, it had notice and knew the inadequate and insufficient information security practices would cause injury and harm to Plaintiff

and the other Class Members.

110. As a proximate result of the above acts and omissions of Defendant, the PII and PHI of Plaintiff and Class Members was disclosed to third parties without authorization, causing Plaintiff and Class Members to suffer damages.

111. Unless and until enjoined and restrained by Order of this Court, Defendant's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the PII and PHI maintained by Defendant can be viewed, distributed and used by unauthorized persons for years to come. Plaintiff and Class Members have no adequate remedy at law for the injuries in that judgment for monetary damages will not end the invasion of privacy for Plaintiff and the Class.

112. That these violations entitle Plaintiff to recover damages based on the diminution in the fair-market rental value of the dwelling unit, actual damages, compensatory damages, punitive damages and reasonable attorney's fees.

FOR A THIRD COLLECTIVE CAUSE OF ACTION
BREACH OF EXPRESS CONTRACT

(Plaintiff and Other Members of the Class)

113. That Plaintiff re-alleges and reasserts each and every allegation set forth above as if herein verbatim.

114. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

115. Plaintiff brings this count on behalf of herself and the other members of the Class.

116. Plaintiff and members of the Class were the direct or third-party beneficiaries of valid and enforceable express contracts with Defendant (including, inter-alia, CareSouth's own "Notice of Privacy Practices").

117. Under the Notice of Privacy Practices, the Defendant is,

> "required to provide patient notification if it discovers a breach of unsecured PHI unless there is a demonstration, based on a risk assessment, that there is a low probability that the PHI has been compromised. **You will be notified without reasonable delay and no later than 60 days after discovery of the breach**. Such notification will include information about what happened and what can be done to mitigate any harm."[13]

118. The valid and enforceable express contracts that Plaintiff and Class Members entered into with Defendant include Defendant's promise to protect PII and PHI given to Defendant's and otherwise maintained and secured by Defendant.

119. Under these express contracts, Defendant promised and was obligated to protect Plaintiff's and the Class Members' PII and PHI. In exchange, Plaintiff and Class Members agreed to pay money for these services.

120. The protection of Plaintiff's and Class Members' PII and PHI were material aspects of these contracts.

121. Defendant's express representations, including, but not limited to, express representations found in its Notice of Privacy Practices, formed an express contract requiring Defendant to implement data security adequate to safeguard and protect the privacy of Plaintiff's and Class Members' PII and PHI.

122. Consumers of healthcare services value their privacy, the privacy of their dependents, and the ability to keep their PII and PHI associated with their healthcare and finances private.

123. To customers such as Plaintiff and Class Members, maintenance and security of PII and PHI that does not adhere to industry standard data security protocols to protect private information

[13] CARESOUTH CAROLINA NOTICE OF PRIVACY PRACTICES (last accessed on August 9, 2021) - https://www.caresouth-carolina.com/privacy-policy. at "Notice of Breach" section

is fundamentally less useful and less valuable than such services that adhere to industry-standard data security.

124. Plaintiff and Class Members would not have given Defendant their PII and PHI and otherwise entered into these contracts with Defendant without an understanding that their PII and PHI would be safeguarded and protected.

125. A meeting of the minds occurred, as Plaintiff and Class Members provided their PII and PHI to Defendant, and expected protection of their PII and PHI.

126. Plaintiff and Class Members performed their obligations under the contract, including when they paid for services provided by Defendant.

127. Defendant materially breached its contractual obligation to protect Plaintiff and Class Members PII and PHI data when the information was accessed or exfiltrated by unauthorized individuals as part of the Data Breach.

128. Defendant materially breached the terms of these express contracts, including, but not limited to, the terms stated in the Notice of Privacy Practices.

129. Defendant did not maintain the privacy of Plaintiff's and Class Members' PII and PHI nor did Defendant timely notify Plaintiff and Class Members that their PII and PHI was acquired as part of the Data Breach.

130. Defendant did not comply with industry standard, or otherwise protect Plaintiff's and Class Members' PII and PHI, as set forth above.

131. The Data Breach was a reasonably foreseeable consequence of Defendant's actions in breach of these contracts.

132. As the result of Defendant's failure to fulfill the data security protections promised in these contracts, Plaintiff and Class Members did not receive the full benefit of the bargain, and

instead received services that were of a diminished value to that described in the contracts.

133. Plaintiff and Class Members therefore were damaged in an amount at least equal to the difference in the value of the services with data security protection they paid for and the services they received or provided.

134. Had Defendant disclosed its security was inadequate or that it did not adhere to industry-standard security measures the Plaintiff, Class Members, or any reasonable person would not have accepted or purchased services from Defendant and/or their Clients which required providing PII and PHI.

135. As a direct and proximate result of the Data Breach, Plaintiff and Class Members have been harmed and have suffered, and will continue to suffer, actual damages and injuries, including without limitation the release, disclosure, and publication of their PII and PHI, the loss of control of their PII and PHI the imminent risk of suffering additional damages in the future, out-of-pocket expenses, and the loss of the benefit of the bargain they had struck with Defendant

136. That Plaintiff is thereby entitled to recover actual, compensatory, punitive damages, and attorneys' fees.

FOR A FOURTH COLLECTIVE CAUSE OF ACTION
Breach of Implied Contract

(Plaintiff and Other Members of the Class)

137. That Plaintiff re-alleges and reasserts each and every allegation set forth above as if herein verbatim.

138. Plaintiff brings this count on behalf of herself and the other members of the Class.

139. Defendant required Plaintiff and Class Members to provide their personal information, including names, addresses, dates of birth, Social Security numbers, driver's license/state ID

numbers, passport numbers, credit/debit card information, financial account information, health insurance information and other personal information as a condition of their treatment.

140. As a condition of Plaintiff's and Class Members' medical treatment by Defendant, they provided their personal information to Defendant and Defendant created additional information about Plaintiff, including MPI numbers, medical treatment/diagnosis information, medical record information, and health claims information. In so doing, Plaintiff and Class Members entered into an implied contract with Defendant by which Defendant agreed to safeguard and protect such information, to keep such information secure and confidential, and to timely and accurately notify Plaintiff and Class Members if their data had been breached, compromised or stolen.

141. Plaintiff and Class Members fully performed their obligations under the implied contacts with Defendant.

142. Defendant breached the implied contracts it made with Plaintiff and Class Members by failing to safeguard and protect their personal information and by failing to provide timely and accurate notice to them that personal information was compromised as a result of the data breach.

143. As a direct and proximate result of Defendant's breach of implied contract, Plaintiff and Class Members have suffered (and will continue to suffer) ongoing, imminent and impending threat of identity theft crimes, fraud and abuse, resulting in monetary loss and economic harm; actual identity theft crimes, fraud, and abuse, resulting in monetary loss and economic harm; loss of the confidentiality of the stolen confidential data; the illegal sale of the compromised data on the dark web; expenses and/or time spent on credit monitoring and identity theft insurance; time spent scrutinizing bank statements, credit card statements, and credit reports; expenses and/or time spent initiating fraud alerts, decreased credit scores and rating; lost work time; and other economic and non-economic harm.

FOR A FIFTH COLLECTIVE CAUSE OF ACTION
BREACH OF S.C. CODE § 39-1-90

(Plaintiff and Other Members of the Class)

144. That Plaintiff re-alleges and reasserts each and every allegation set forth above as if herein verbatim.

145. Plaintiff brings this count on behalf of herself and on behalf of the Class.

146. In pertinent part, S.C. Code § 39-1-90 provides:

> A person conducting business in this State, and owning or licensing computerized data or other data that includes personal identifying information, shall disclose a breach of the security of the system following discovery or notification of the breach in the security of the data to a resident of this State whose personal identifying information that was not rendered unusable through encryption , redaction, or other methods was, or is reasonably believed to have been, acquired by an unauthorized person when the illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the resident. The disclosures must be made in the most expedient time possible and without unreasonable delay . . .

147. That the South Carolina Code defines "Personal identifying information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted:[14]

(a) social security number;[15]

(b) driver's license number or state identification card number issued instead

[14] South Carolina Code § 39-1-90(D)(3)
[15] South Carolina Code § 39-1-90(D)(3)(a)

of a driver's license;[16]

(c) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or[17]

(d) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual.[18]

148. Defendant owns, licenses and/or maintains computerized data that includes Plaintiff's and Class Members' PII and PHI.

149. Defendant's conduct, as alleged above, violated the data breach statute of South Carolina, S.C. Code § 39-1-90.

150. Defendant was required, but failed, to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the cyber security incident described herein

151. The Data Breach constituted a "breach of the security system" within the meaning of § 39-1-90.

152. The information compromised in the Data Breach constituted "personal identifying information" within the meaning of § 39-1-90.

153. Defendant violated § 39-1-90 by unreasonably delaying disclosure of the Data Breach to Plaintiff and Class Members, whose personal identifying information was, or reasonably believed to have been, acquired by an unauthorized person.

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[16] South Carolina Code § 39-1-90(D)(3)(b)
[17] South Carolina Code § 39-1-90(D)(3)(c)
[18] South Carolina Code § 39-1-90(D)(3)(d)

154. As a result of Defendant's violation of S.C. Code § 39-1-90, Plaintiff and Class Members incurred damages as alleged herein.

155. Plaintiff, individually and on behalf of the Class, seeks all remedies available under S.C. Code § 39-1-90, including, but not limited to:

i. actual damages suffered by Class Members as alleged above;

j. statutory damages for Defendant's willful, intentional, and/or reckless conduct;

k. equitable relief; and

l. reasonable attorneys' fees and costs.

FOR A SIXTH COLLECTIVE CAUSE OF ACTION
UNJUST ENRICHMENT

(Plaintiff and Other Members of the Class)

156. Plaintiff incorporates by reference, all preceding allegations as though fully set forth herein.

157. Plaintiff brings this action on behalf of herself and on behalf of the Class.

158. Plaintiff and other Class Members conferred a monetary benefit on Defendant. Specifically, Plaintiff and other Class Members paid for services which, in turn, pay Defendant for administrative, clinical, and business services and provided and entrusted their PII and PHI to Defendant.

159. In exchange, Plaintiff and other Class Members should have received from Defendant their expected goods and services, such as the security of their PII and should have been entitled to have Defendant protect their PII with adequate data security and timely notice of the Data Breach.

160. Defendant appreciated, accepted, and retained the benefit bestowed upon it under inequitable and unjust circumstances arising from Defendant's conduct toward Plaintiff and Class Members, Plaintiff and Class Members conferred a benefit on Defendant and Defendant accepted or retained that benefit.

161. Defendant failed to secure Plaintiff's and Class Members' PII and PHI and therefore did not provide full compensation for the monetary benefit Plaintiffs and Class Members conferred on Defendant.

162. Defendant acquired the PII and PHI through inequitable means in that they failed to disclose the inadequate security practices.

163. Had Plaintiff and Class Members known that Defendant would not secure their PII and PHI using adequate security, they would not have chosen to receive care from Defendant.

164. Plaintiff and Class Members have no adequate remedy at law.

Under these circumstances, it would be unjust for Defendant to be permitted to retain any of the benefits that Plaintiff and Class members conferred on it.

165. Under the principles of equity and good conscience, Defendant should not be permitted to retain the money belonging to Plaintiff and the Class.

166. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory, and exemplary or punitive damages for their personal injuries and property damages set forth herein in an amount that is fair, just, and reasonable under the circumstances, plus whatever costs, interest, and attorney fees that they may be entitled, to be determined by a jury.

FOR A SEVENTH COLLECTIVE CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

(Plaintiff and Other Members of the Class)

167. Plaintiff incorporates by reference, all preceding allegations as though fully set forth herein.

168. A fiduciary relationship exists between each and every patient of the Defendant as each and every patient reposed a special trust and confidence in the Defendant to protect their confidential patient information.

169. Defendant owed a fiduciary duty of care, loyalty, and good faith to Plaintiff and the Class by virtue of HIPAA, industry standards, common law, state statutory law, and their own promises to safeguard its patients' personal information from unauthorized access.

170. Defendant owed fiduciary duties of care, good faith, honesty, and loyalty, to Plaintiff and the Class, which include, without limitation: the duty to safeguard its patients' personal information from unauthorized access; the duty to properly instruct, educate, or train its employees in cybersecurity; the duty to comply with HIPAA's Privacy and Security Rules; the duty to disclose data breaches no later than sixty (60) days after the discovery of the breach.

171. Defendant breached its fiduciary duties to Plaintiff and the Class by failing to safeguard its patients' personal information from unauthorized access, which ultimately led to the December 3, 2020 Data Breach.

172. Defendant further breached their fiduciary duties to Plaintiff and the Class by failing to notify Plaintiff and the class of the Data Breach (which they were on notice of on January 14, 2021) until May 17, 2021, well outside of the sixty (60) day requirement, detailed above.

173. As a direct and proximate result of Defendant's conduct, Plaintiff and the Class have been injured and sustained damages.

PRAYER FOR RELIEF

174. **WHEREFORE**, Plaintiff, on behalf of herself and on behalf of other members of the Class, prays for judgment in their favor and against Defendant as follows:

A. Certifying the Class as proposed herein, designating Plaintiff as the Class representative and appointing undersigned counsel as Class Counsel;

B. Declaring Defendant is financially responsible for notifying the Class members of the pendency of this action;

C. For equitable relief enjoining Defendant from engaging in the wrong conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiff's and the Class Members' PII and PHI, and from refusing to issue prompt, complete and accurate disclosures to Plaintiff and the Class Members;

D. For an award of damages, including actual, nominal, consequential damages, and punitive damages as allowed by law in an amount to be determined;

E. Scheduling a trial by jury in this action;

F. Awarding Plaintiff's reasonable attorneys' fees, costs and expenses, as permitted by law;

G. Awarding pre and post-judgment interest on any amounts awarded, as permitted by law; and

H. Awarding such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands that this case be tried by a jury on all counts.

ANASTOPOULO LAW FIRM, LLC

/s/ Blake G. Abbott
Blake G. Abbott, Esquire
S.C. Bar No.: 104423
Eric M. Poulin, Esquire
S.C. Bar. No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
Paul Doolittle, Esquire
S.C. Bar No.: 66490
32 Ann Street
Charleston, SC 29403
Tel: (843) 614 -8888
Fax: (843) 853-2291
Email: blake@akimlawfirm.com
eric@akimlawfirm.com
roy@akimlawfirm.com
pauld@akimlawfirm.com

This 9th day of November, 2021

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2021CP1600887

Official File Stamp:	11-30-2021 01:04:28 PM
Court:	CIRCUIT COURT
	Common Pleas
	Darlington
Case Caption:	Summer Mixon VS Caresouth Carolina Inc
Document(s) Submitted:	Service/Certificate Of Service
Filed by or on behalf of:	Blake Garrett Abbott

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Eric Marc Poulin for Summer Mixon

Roy T. Willey, IV for Summer Mixon

Paul J. Doolittle for Summer Mixon

Blake Garrett Abbott for Summer Mixon

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Caresouth Carolina Inc

Certificate of Electronic Notification

Recipients

Roy Willey - Notification transmitted on 11-30-2021 01:04:45 PM.

Paul Doolittle - Notification transmitted on 11-30-2021 01:04:45 PM.

Blake Abbott - Notification transmitted on 11-30-2021 01:04:44 PM.

Eric Poulin - Notification transmitted on 11-30-2021 01:04:45 PM.

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FOURTH JUDICIAL CIRCUIT**
COUNTY OF DARLINGTON)	Case No. 2021CP1600887
)	
SUMMER MIXON, individually, and on behalf of all others similarly situated,)	
)	
Plaintiff,)	**MOTION FOR ENTRY OF DEFAULT**
vs.)	
)	
CARESOUTH CAROLINA, INC.)	
)	
Defendant.)	
)	

Plaintiff moves before this court for entry of default judgment against Defendant pursuant to Rule 55(a) and (b) of the South Carolina Rules of Civil Procedure and for a hearing to be set to determine damages.

Plaintiff served Defendants with the Summons and Complaint via Certified Mail to its Registered Agent on November 16, 2021. Proof of Service is attached hereto as **Exhibit A.**

As no Answer or pleading has been filed by Defendant during the time allowed, Defendant should be held in default. Plaintiff attaches an Affidavit of Default, Affidavit of Non-Military Service, and Certificate of Service. Plaintiff moves for an Entry Default pursuant to R. 55(a), as Defendant has failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure, and the fact is made to appear by Affidavit. As the matter is not one of liquidated damages, Plaintiff seeks a hearing pursuant to R. 55(b)(2), SCRCP to determine the amount of damages.

In support of this request, Plaintiff relies upon Affidavit of Service, Affidavit of Default, and Affidavit of Non-Military Status attached hereto, and memorandum of law that may be submitted prior to hearing of the matter and oral arguments.

ANASTOPOULO LAW FIRM, LLC

/s/ Paul Doolittle
Paul Doolittle, Esquire
S.C. Bar No.: 66490
Blake G. Abbott, Esquire
S.C. Bar No.: 104423
Eric M. Poulin, Esquire
S.C. Bar. No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
32 Ann Street
Charleston, SC 29403
Tel: (843) 614 -8888
Fax: (843) 853-2291
Email: blake@akimlawfirm.com
eric@akimlawfirm.com
roy@akimlawfirm.com
pauld@akimlawfirm.com

This 3rd day of January, 2022

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion For Entry of Default upon all counsel of record by affixing via FedEx Mail addressed to the parties and counsel's mailing address on file on 3rd day of January, 2022.

ANASTOPOULO LAW FIRM, LLC

By: */s/ Ralph J. D'Agostino III*
Ralph J. D'Agostino III
32 Ann Street
Charleston, SC 29403
Tel: 843-614-8888
Fax: 843-494-5536
Email: ralph.dagostino@akimlawfirm.com

January 3, 2022

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FOURTH JUDICIAL CIRCUIT**
COUNTY OF DARLINGTON)	Case No. 2021CP1600887
)	
SUMMER MIXON, individually, and on behalf of all others similarly situated,)	
)	
Plaintiff,)	**AFFIDAVIT OF DEFAULT AND OF NON-MILITARY SERVICE**
vs.)	
)	
CARESOUTH CAROLINA, INC.)	
)	
Defendant.)	
)	

1. PERSONALLY appeared before me Paul Doolittle, being sworn, deposes and says that:
2. He is the attorney for the Plaintiff in the above-captioned action.
3. The Defendant CareSouth Carolina, Inc. ("CareSouth") was served with a copy of the Summons and Notice, and Complaint of Plaintiff on November 16, 2021, as evidenced by **Exhibit A**.
4. More than forty-five (45) days have elapsed since the service of said Summons and Notice, and Complaint of Plaintiff.
5. The Defendant has served no Answer, Motion or Notice of Appearance or other pleading in this matter, and therefore is in default.
6. CareSouth Carolina is a corporation and therefore could not be in the Military Service of the United States as contemplated by the Service Members Civil Relief Act.

ANASTOPOULO LAW FIRM, LLC

/s/ Paul Doolittle
Paul Doolittle, Esquire
S.C. Bar No.: 66490

Blake G. Abbott, Esquire
S.C. Bar No.: 104423
Eric M. Poulin, Esquire
S.C. Bar. No.: 100209
Roy T. Willey, Esquire
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Tel: (843) 614 -8888
Fax: (843) 853-2291
Email: blake@akimlawfirm.com
eric@akimlawfirm.com
roy@akimlawfirm.com
pauld@akimlawfirm.com

This 3rd day of January, 2022

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion For Entry of Default upon all counsel of record by affixing via FedEx Mail addressed to the parties and counsel's mailing address on file on 3rd day of January, 2022.

ANASTOPOULO LAW FIRM, LLC

By: */s/ Ralph J. D'Agostino III*
Ralph J. D'Agostino III
32 Ann Street
Charleston, SC 29403
Tel: 843-614-8888
Fax: 843-494-5536
Email: ralph.dagostino@akimlawfirm.com

January 3, 2022

FedEx

November 29, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 775216958388

Delivery Information:

Status:	Delivered	**Delivered To:**	Receptionist/Front Desk
Signed for by:	D.CAIN	**Delivery Location:**	
Service type:	FedEx Standard Overnight		
Special Handling:	Deliver Weekday		HARTSVILLE, SC,
		Delivery date:	Nov 16, 2021 16:33

Shipping Information:

Tracking number:	775216958388	**Ship Date:**	Nov 15, 2021
		Weight:	1.0 LB/0.45 KG

Recipient:
HARTSVILLE, SC, US,

Shipper:
CHARLESTON, SC, US,

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

Thank you for choosing FedEx

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1600887

Official File Stamp:	01-06-2022 09:40:49 AM
Court:	CIRCUIT COURT
	Common Pleas
	Darlington
Case Caption:	Summer Mixon VS Caresouth Carolina Inc
Document(s) Submitted:	Affidavit/Attorney
	Motion/Default Judgment
	- Exhibit/Filing of Exhibits
Filed by or on behalf of:	Paul J. Doolittle

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Eric Marc Poulin for Summer Mixon

Roy T. Willey, IV for Summer Mixon

Paul J. Doolittle for Summer Mixon

Blake Garrett Abbott for Summer Mixon

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Caresouth Carolina Inc

Certificate of Electronic Notification

Recipients

Roy Willey - Notification transmitted on 01-06-2022 09:43:32 AM.

Paul Doolittle - Notification transmitted on 01-06-2022 09:43:32 AM.

Blake Abbott - Notification transmitted on 01-06-2022 09:43:32 AM.

Eric Poulin - Notification transmitted on 01-06-2022 09:43:32 AM.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) FOR THE FOURTH JUDICIAL CIRCUIT
)
SUMMER MIXON, individually, and on behalf of all other others similarly situated,) Case No. 2021CP1600887
)
Plaintiff,)
)
v.)
)
CARESOUTH CAROLINA, INC.,)
)
Defendant.)

NOTICE TO STATE COURT PURSUANT 42 U.S.C. § 233(*l*)(1)

PLEASE TAKE NOTICE that, pursuant to 42 U.S.C. § 233(*l*)(1), the United States Attorney for the District of South Carolina hereby advises this Court that whether defendant CareSouth Carolina, Inc. is deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. § 233 with respect to the actions or omissions that are the subject of the above-captioned action, is under consideration.

The United States Attorney for the District of South Carolina first was notified of this action on January 13, 2022, despite the applicable statutes and regulations requiring that CareSouth first notify the United States Department of Health and Human Services (HHS) of the pending action. Upon information and belief, HHS was first notified of this action on January 13, 2022. As a result, the decision whether the United States of America will intervene is under consideration.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

COREY F. ELLIS
UNITED STATES ATTORNEY

By: *s/ Jennifer L. Mallory*

Jennifer L. Mallory (#7435)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Phone: (803) 929-3102
Email: jennifer.rawl@usdoj.gov

January 19, 2022

STATE OF SOUTH CAROLINA **COUNTY OF DARLINGTON** SUMMER MIXON, individually, and on behalf of all other others similarly situated, Plaintiff, v. CARESOUTH CAROLINA, INC., Defendant.	**IN THE COURT OF COMMON PLEAS** **FOR THE FOURTH JUDICIAL CIRCUIT** Case No. 2021CP1600887

FILED
2022 JAN 20 A 11:41
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the United States Attorney for the District of South Carolina and I am a person of such age and discretion as to be competent to serve papers. On January 19, 2022, I served copies of the attached

NOTICE TO STATE COURT PURSUANT TO 42 U.S.C. § 233(l)(1)

via email and U.S. mail to:

Denise Ellis, PHR
Chief Personnel Officer
CareSouth Carolina, Inc
201 South Fifth Street
P.O. Box 1090
Hartsville, SC 29551
Email: Denise.Ellis@caresouth-carolina.com

Paul J. Doolittle, Blake Abbott, Eric Poulin, Roy Willey, IV,
Anastopoulo Law Firm
32 Ann Street
Charleston, SC 29403
Email: pauld@akimlawfirm.com

and via Federal Express to:

Darlington County Clerk of Court
Attn: Sharon Howle
1 Public Square Room 404
Darlington, SC 29532

January 19, 2022

s/ Amber Boco
Amber Boco, Legal Assistant to
AUSA Jennifer L. Mallory

Certificate of Electronic Notification

Recipients

Roy Willey - Notification transmitted on 01-25-2022 04:04:32 PM.

Paul Doolittle - Notification transmitted on 01-25-2022 04:04:31 PM.

Blake Abbott - Notification transmitted on 01-25-2022 04:04:31 PM.

Eric Poulin - Notification transmitted on 01-25-2022 04:04:32 PM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1600887

Official File Stamp:	01-25-2022 04:04:24 PM
Court:	CIRCUIT COURT
	Common Pleas
	Darlington
Case Caption:	Summer Mixon VS Caresouth Carolina Inc
Event(s):	
Order/Order Cover Sheet $25.00	
Document(s) Submitted:	Proposed Order/Entry of Default
Filed by or on behalf of:	Blake Garrett Abbott

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Eric Marc Poulin for Summer Mixon

Roy T. Willey, IV for Summer Mixon

Paul J. Doolittle for Summer Mixon

Blake Garrett Abbott for Summer Mixon

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Caresouth Carolina Inc

ClassAction.org
