

COPY

NO. 08-01-21154

STATE OF TEXAS,

Plaintiff,

v.

SELECT MEDICAL CORPORATION
And SELECT PHYSICAL THERAPY
TEXAS LIMITED PARTNERSHIP,

Defendants.

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IN THE DISTRICT COURT OF

HOCKLEY COUNTY, TEXAS

286 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through the Attorney General of Texas, GREG ABBOTT (hereinafter "Attorney General"), complaining of SELECT MEDICAL CORPORATION and SELECT PHYSICAL THERAPY TEXAS LIMITED PARTNERSHIP (hereinafter "DEFENDANTS") and would respectfully show the court as follows:

I. DISCOVERY CONTROL PLAN

1.1 Discovery in this case should be conducted under LEVEL 2, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

II. JURISDICTION

2.1 The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against DEFENDANTS for violations of Tex. Bus. & Com. Code Ann. §35.48 (hereinafter "Section 35.48")

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District Court Clerk, Hockley Co., TX
By ML Deputy

and the Identity Theft Enforcement and Protection Act, Chapter 48¹ of the Tex. Bus. & Com. Code Ann §48.001, *et seq.* (hereinafter "Chapter 48"). Section 35.48 grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions.

III. DEFENDANTS

3.1 Defendant, SELECT MEDICAL CORPORATION, a foreign corporation organized and existing under the laws of the State of Delaware, whose principal office is located at 4716 Old Gettysburg Road, Mechanicsburg, Pennsylvania, 17055, may be served with process by serving its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801.

3.2 Defendant, SELECT PHYSICAL THERAPY TEXAS LIMITED PARTNERSHIP, a foreign limited partnership organized and existing under the laws of the State of Alabama, whose principal office is located at One HealthSouth Parkway, Birmingham, Alabama 35243, may be served with process by serving its registered agent for service of process, CT Corporation System, 350 N. St. Paul Street, Dallas County, Dallas, Texas 75201. SELECT PHYSICAL THERAPY TEXAS LIMITED PARTNERSHIP operates in the State of Texas under the assumed name of Select Physical Therapy a.k.a. HealthSouth Rehabilitation Center.

IV. VENUE

4.1 Venue of this suit lies in Hockley County, Texas, for the following reasons:

- A. Under Tex. Bus. & Com. Code Ann. §48.201(c)(1), venue is proper insofar as the violation occurred in Hockley County, Texas; and

¹ In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled "Identity Theft Enforcement and Protection Act" by Tex. S.B. 122, 79th Leg. R.S. (2005).

B. Under Tex. Civ. Prac. & Rem. Code Ann. §15.002(a)(1), venue is proper insofar as all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Hockley County, Texas.

V. PUBLIC INTEREST

5.1 Plaintiff, STATE OF TEXAS, has reason to believe that DEFENDANTS are engaging in, have engaged in, or are about to engage in acts or practices, which violate the State of Texas' identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure sensitive personal information collected or maintained by DEFENDANTS in the regular course of business. Because these unlawful acts or practices expose DEFENDANTS' patients and business clients to the risk of identity theft, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

5.2 In 2005, the Texas Legislature amended §35.48 and also enacted the Identity Theft Enforcement and Protection Act to protect citizens from identity theft. In so doing, the legislature noted that identity theft is one of the fastest growing crimes in the country, and that Texas has one of the highest rates of identity theft in the United States.² Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400.00 or more, trying to clear their names.³ Identity theft also imposes a substantial cost on businesses - in 2002 the total cost of

² See Tex.C.S.H.B. 698, 79th Leg. R.S.(2005)(Committee Report Substituted), and Tex. S.B. 122, 79th Leg. R. S. (2005)(Committee Report Unamended).

³ *Id.*

losses to businesses due to identity theft in the United States was estimated at almost \$50 billion.⁴ The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.⁵

VI. ACTS OF AGENTS

- 6.1 Whenever in this petition it is alleged that DEFENDANTS did any act it is meant that:
- A. DEFENDANTS performed or participated in the act, or
 - B. DEFENDANTS’ officers, agents, trustees, employees, representatives, or successors performed or participated in the act on behalf of and under the authority of the DEFENDANTS.

VII. NATURE OF DEFENDANTS’ OPERATIONS

7.1 On May 1, 2007, Defendant, SELECT MEDICAL CORPORATION purchased the HealthSouth Rehabilitation Division, which now totals 1,110 outpatient rehabilitation clinics and operates approximately 89 specialty hospitals in 37 states and the District of Columbia. DEFENDANTS provide rehabilitation services on a contract basis to nursing homes, hospitals, assisted living and senior care centers, schools, private homes and work sites. It is a privately held company with more than 21,000 employees throughout the United States.⁶ DEFENDANT SELECT MEDICAL CORPORATION operates clinics in approximately 30 counties in the State of Texas under their subsidiary, SELECT PHYSICAL THERAPY TEXAS LIMITED PARTNERSHIP.⁷

⁴ *Id.*

⁵ See Tex.C.S.H.B. 698, 79th Leg. R.S. (2005)(Committee Report Substituted).

⁶ Source: www.selectmedicalcorporation.com.

⁷ Source: Texas Secretary of State.

VIII. FACTUAL ALLEGATIONS

8.1 In the regular course of its business operations, DEFENDANTS collect a large amount of sensitive personal identifying information from its patients and business clients. For example, when a patient is referred to DEFENDANTS by their physician, the patient's medical information including name, address, telephone number, account number, insurance information, social security number and date of birth is transferred to the DEFENDANTS. DEFENDANTS conduct physical evaluations of patients and include in their evaluations, the names, addresses, telephone numbers, social security numbers, and dates of birth along with a description of their patients' medical treatments and diagnoses. DEFENDANTS provide referral services for social and vocational therapy for their patients and collect their names, telephone numbers and dates of birth on the Social/Vocational Survey. DEFENDANTS also conduct physical examinations and drug testing of potential employees for various employers in the community. DEFENDANTS request that potential employees provide their names, addresses, telephone numbers, social security numbers, dates of birth, drivers' license numbers, medical histories and make copies of their social security cards and drivers' licenses. In their business operations, DEFENDANTS maintain copies of checks from patients and business clients which display the names, addresses, telephone numbers, drivers' license numbers and bank routing and account numbers.

8.2 On October 25, 2007, thousands of pages of DEFENDANTS' business records containing the sensitive personal information of its patients and business clients, including personal identifying information, were discovered in and around a dumpster located behind the DEFENDANTS' place of business at 604 College Avenue, Hockley County, Levelland, Texas. These dumped documents included records, such as: Charge Slip for Industrial Clients, Drug and Alcohol Testing Verification,

with copies of patients' social security cards and drivers' licenses attached, Social/Vocational Service Questionnaires, Daily Balance Sheets, with copies of patients' checks and credit card numbers attached, Patient Account Receivables, with copies of patients' checks attached, Business Invoices and Employer Billing Patient Data Sheet, with copies of business clients' checks attached. Also included in the dumped documents were medical records, such as: Initial Evaluation, Plan of Care, Progress Notes, Re-Evaluation, Discharge Summary, Insurance Verification Sheet, and Patient Data Sheet, which contained the names, addresses, telephone numbers, social security numbers and dates of birth of DEFENDANTS' patients.

8.3 Although the dumped business records bore sensitive personal information that could be used to steal the identities of its patients and business clients, DEFENDANTS failed to shred, erase, or otherwise make the sensitive personal information unreadable or undecipherable. Instead, these business records were placed in a dumpster that was readily accessible to the public.

IX. BUSINESS & COMMERCE CODE VIOLATIONS

9.1 DEFENDANTS, as alleged above, failed to safeguard the personal identifying information of its patients and business clients by shredding, erasing, or by other means, to make it unreadable or undecipherable before disposing of its business records, in violation of Tex. Bus. & Com. Code Ann. §35.48(d).

9.2 DEFENDANTS, as alleged above, failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, in violation of Tex. Bus. & Com. Code Ann §48.102(a).

9.3 DEFENDANTS, as alleged above, failed to destroy or arrange for the destruction of its

patients' and business clients' records containing sensitive personal information within its control that were not retained by it, in violation of Tex. Bus. & Com. Code Ann §48.102(b).

X. REQUEST FOR TRIAL BY JURY

10.1 Plaintiff, STATE OF TEXAS, requests a jury trial of this matter and tenders the jury fee to the Hockey County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code Ann. §51.604.

XI. PRAYER

11.1 WHEREFORE, Plaintiff, STATE OF TEXAS, prays that DEFENDANTS be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining DEFENDANTS, their successors, assigns, officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with DEFENDANTS from engaging in the following acts or practices:

- A. Disposing of business records that contain personal identifying information or sensitive personal information without first shredding or erasing it to make it unreadable or undecipherable;
- B. Violating DEFENDANTS duty to protect and safeguard sensitive personal identifying information from unlawful use or disclosure by exposing such data to the risk of identity theft.

11.2 As an alternative to the relief required in Paragraph 11.1 A., Plaintiff requests that DEFENDANTS be ordered to dispose of its patients' and business clients' records containing sensitive personal identifying information by contracting with a business that is engaged in the disposal of confidential patient and business records.

11.3 Plaintiff further requests that DEFENDANTS be ordered to adopt, implement and maintain a comprehensive information security program that is fully documented and in writing, and which protects and safeguards from unlawful use, disposal, or disclosure any personal identifying information or sensitive personal information collected, maintained or accessible by DEFENDANTS' employees or agents in the regular course of business.

11.4 In addition, Plaintiff, STATE OF TEXAS, respectfully prays that upon final hearing this Court will:

A. Adjudge civil penalties in favor of Plaintiff, STATE OF TEXAS, in the amount of up to \$500 against DEFENDANTS for each record containing personal identifying information which was dumped without shredding or making the record undecipherable, pursuant to Tex. Bus. & Com. Code Ann. §35.48(f);

B. Adjudge civil penalties in favor of Plaintiff, STATE OF TEXAS, of at least \$2,000, but not more than \$50,000 against DEFENDANTS per each violation of the Texas Identity Theft Enforcement and Protection Act, pursuant to Tex. Bus. & Com. Code Ann §48.201(a);

C. Order DEFENDANTS to pay Plaintiff, STATE OF TEXAS, reasonable attorneys' fees, investigatory costs, and court costs pursuant to Tex. Gov't. Code Ann. §402.006(c); and

D. Order such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division

A handwritten signature in black ink, appearing to read 'Sharon B. Shaw', written over a horizontal line.

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