

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BARBARA A. DITTMAN, GARY R. : CIVIL DIVISION – CASE NO. GD-14-003285
DOUGLAS, ALICE PASTIRIK, JOANN :
DECOLATI, TINA SORRENTINO, : **SECOND AMENDED CLASS ACTION**
KRISTEN CUSHMAN, and SHANNON : **COMPLAINT**
MOLYNEAUX, individually and on :
behalf of all others similarly situated, : JURY TRIAL DEMANDED

Plaintiffs,

v.

UPMC d/b/a THE UNIVERSITY OF
PITTSBURGH MEDICAL CENTER,
and UPMC MCKEESPORT,

Defendants.

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Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Second Amended Class Action Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

**LAWYER REFERAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
3RD FLOOR, KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH PENNSYLVANIA 15219
TELEPHONE: 412-261-5555**

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Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT

NOW COME Plaintiffs, Barbara A. Dittman, Gary R. Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kristen Cushman, and Shannon Molyneaux (collectively “Plaintiffs”), by and through their undersigned counsel, individually and on behalf of all others similarly situated, and hereby file this Second Amended Class Action Complaint against UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport (collectively “UPMC” or “Defendants”). In support thereof, Plaintiffs state and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this Second Amended Class Action Complaint on behalf of themselves and all other current and former UPMC workers whose personal and financial information was stolen from the computer systems of UPMC (the “Data Breach”).

2. As a result of UPMC’s failure to protect this confidential data, the personal and financial information of Plaintiffs and the members of the proposed Classes was used, *inter alia*, to file fraudulent tax returns.

3. UPMC had a duty to protect the private, highly sensitive, confidential personal and financial information and the tax documents of Plaintiffs and the members of the proposed Classes.

4. UPMC failed to safeguard and prevent vulnerabilities from being taken advantage of in its computer system.

5. When UPMC first confirmed the identity thefts in February 2014, it stated that only 22 workers were affected by the Data Breach. By March 5, 2014, UPMC reported that 322 of its employees' personal and financial information had been stolen. By April 17, 2014, UPMC admitted as many as 27,000 workers' personal and financial information has been compromised, and that at least 788 employees have been the victims of tax fraud. Most recently, on May 30, 2014, the health care conglomerate announced that the Data Breach may have affected all 62,000 of its workers.

THE PARTIES

6. Plaintiff, Barbara A. Dittman, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Dittman is a citizen of the Commonwealth of Pennsylvania. Plaintiff Dittman is employed by UPMC and works at UPMC McKeesport.

7. Plaintiff, Gary R. Douglas, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Douglas is a citizen of the Commonwealth of Pennsylvania. Plaintiff Douglas is employed by UPMC and works at UPMC McKeesport.

8. Plaintiff, Alice Pastirik, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Pastirik is a citizen of the Commonwealth of Pennsylvania. Plaintiff Pastirik is employed by UPMC and works at UPMC McKeesport.

9. Plaintiff, Joann Decolati, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Decolati is a citizen of the Commonwealth of Pennsylvania. Plaintiff Decolati was employed by UPMC and worked at UPMC McKeesport.

10. Plaintiff, Tina Sorrentino, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Sorrentino is a citizen of the Commonwealth of Pennsylvania. Plaintiff Sorrentino was employed by UPMC and worked at UPMC McKeesport.

11. Plaintiff, Kristen Cushman, is an adult individual residing in Allegheny County, Pennsylvania. Plaintiff Cushman is a citizen of the Commonwealth of Pennsylvania. Plaintiff Cushman is employed by UPMC and works at Bellefield Towers.

12. Plaintiff, Shannon Molyneaux, is an adult individual residing in Westmoreland County, Pennsylvania. Plaintiff Molyneaux is a citizen of the Commonwealth of Pennsylvania. Plaintiff Molyneaux was employed by UPMC and worked at UPMC Shadyside.

13. Defendant UPMC d/b/a the University of Pittsburgh Medical Center is an integrated global health enterprise, and one of the leading nonprofit health systems in the United States. UPMC is comprised of 22 hospitals, 400 doctors' offices and outpatient sites, various long-term care facilities, and a major health insurance services division. UPMC serves the health needs of approximately 4 million people each year.

14. UPMC is headquartered at 600 Grant Street, Pittsburgh, Pennsylvania.

15. UPMC is the parent corporation of approximately 35 subsidiaries, including UPMC McKeesport and various other subsidiary hospital entities.

16. UPMC is Pennsylvania's largest non-governmental employer with more than 62,000 employees.

17. UPMC reported \$10 billion in operating revenue and \$9.9 billion in assets in fiscal year 2013.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 42 Pa. C.S. § 931 because the matters complained of herein occurred within the County of Allegheny, and this Court has original jurisdiction over all cases not exclusively assigned to another court.

19. This action arises under Pennsylvania common law. Thus, there is no federal question jurisdiction under 28 U.S.C. § 1331.

20. The allegations set forth herein do not provide a basis for federal jurisdiction. Indeed, no federal question is asserted, and no diversity jurisdiction exists because Defendants and, by definition, all members of the proposed Plaintiff Classes, are citizens of the Commonwealth of Pennsylvania.

FACTUAL BACKGROUND

21. As a condition of their employment, Plaintiffs and the members of the proposed Classes, current and former employees of UPMC, were required to provide UPMC with highly sensitive, private, and confidential personal and financial information, including their full legal names, addresses, Social Security numbers, and dates of birth.

22. The personal and financial information of Plaintiffs and the members of the proposed Classes, as well as their W-2 tax forms, while under the control of UPMC, was accessed without the authorization of Plaintiffs and the members of the proposed Classes.

23. The personal and financial information of Plaintiffs and the members of the proposed Classes has been used to, *inter alia*, file fraudulent tax returns.

24. When UPMC first confirmed the identity thefts in February, 2014, the hospital network stated that only 22 workers were affected by the Data Breach.

25. By March 5, 2014, UPMC reported that 322 of its employees' personal and financial information had been stolen.

26. On or about April 17, 2014, UPMC confirmed that as many as 27,000 workers' personal and financial information has been compromised, and that at least 788 employees have been the victims of tax fraud.

27. On May 30, 2014, the health care conglomerate announced that the Data Breach compromised the personal and financial information of all 62,000 of its workers.

28. UPMC had a duty to protect the private, highly sensitive, confidential personal and financial information and the tax documents of Plaintiffs and the members of the proposed Classes.

29. UPMC failed to safeguard and prevent vulnerabilities from being taken advantage of in its computer system.

30. The 2013 Identity Fraud Report released by Javelin Strategy & Research reports that in 2012 identity fraud incidents increased by more than one million victims and fraudsters stole nearly \$21 billion. The study found 12.6 million victims of identity fraud in the United States in the past year, which equates to 1 victim every 3 seconds. The report also found that nearly 1 in 4 data breach letter recipients became a victim of identity fraud, with breaches involving Social Security numbers to be the most damaging.

31. To assist companies in protecting the security of sensitive personal and financial information, the Federal Trade Commission ("FTC") has issued a publication entitled "Protecting Personal Information: A Guide for Business" (the "FTC Report"). In this

publication, the FTC provides guidelines for businesses on how to develop a “sound data security plan” to protect against crimes of identity theft.

32. To protect the personal sensitive information in their files, the FTC Report instructs businesses to follow the following guidelines:

- a) Keep inventory of all computers and laptops where the company stores sensitive data;
- b) Do not collect personal information if there is no legitimate business need. If there is a legitimate business need, only keep the information as long as necessary;
- c) Use social security numbers only for required and lawful purposes and do not store these numbers unnecessarily, such as for an employee or customer identification number;
- d) Encrypt the personal information, particularly if the sensitive information is shipped to outside carriers or contractors. In addition, the business should keep an inventory of all the information it ships;
- e) Do not store sensitive computer data on any computer with an Internet connection or access unless it is essential for conducting the business;
- f) Control access to sensitive information by requiring that employees use “strong” passwords; and
- g) Implement information disposal practices that are reasonable and appropriate to prevent unauthorized access to personally identifying information.

33. UPMC violated administrative guidelines and failed to meet current data security industry standards by failing to ensure adequate security over Plaintiffs’ and the members of the

proposed Classes' personal and financial information and by failing to retain Plaintiffs' and the members of the proposed Classes' personal and financial information in a secure and safe manner.

34. By way of illustration and without limitation, on information and belief, UPMC failed to properly encrypt data, failed to establish adequate firewalls to handle a server intrusion contingency, and failed to implement adequate authentication protocol to protect the confidential information contained in its computer network.

35. As a direct result of UPMC's failure to maintain reasonable and adequate security procedures to protect against the theft of Plaintiffs' and the members of the proposed Classes' personal and financial information, Plaintiffs and the members of the proposed Classes have suffered actual damages in that the personal and financial information of Plaintiffs and the members of the proposed Classes has been used to file fraudulent tax returns.

36. UPMC's failure to maintain reasonable and adequate security procedures to protect against the theft of Plaintiffs' and the members of the proposed Classes' personal and financial information has also put members of the proposed Classes at an increased and imminent risk of becoming victims of identity theft crimes, fraud and abuse.

37. In addition, Plaintiffs and the members of the proposed Classes have spent, or will need to spend, considerable time and money to protect themselves as a result of UPMC's conduct.

CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this action on their own behalf and on behalf all other persons similarly situated pursuant to Pennsylvania Rule of Civil Procedure 1701 *et seq.*

39. Plaintiffs bring this action on behalf of two separate, but overlapping, groups of similarly situated persons defined as follows:

All persons who currently work or formerly worked at UPMC and/or its subsidiary entities who are citizens of the Commonwealth of Pennsylvania, whose personal and financial information was contained in or on the UPMC computer system, whose personal and financial information was stolen or otherwise misappropriated as a result of the Data Breach, and whose personal and financial information was used to file fraudulent tax returns or otherwise misused in a manner which resulted in financial harm.

All persons who currently work or formerly worked at UPMC and/or its subsidiary entities who are citizens of the Commonwealth of Pennsylvania, whose personal and financial information was contained in or on the UPMC computer system and whose personal and financial information was stolen or otherwise misappropriated as a result of the Data Breach, who are at an increased and imminent risk of becoming victims of identity theft crimes, fraud and abuse as a result of the Data Breach. (collectively, the "Classes")

40. Plaintiffs are members of the Classes they seek to represent.

41. The Classes are so numerous that joinder of all members is impracticable, as approximately 62,000 individuals' personal and financial information has been compromised, and that at least 788 individuals have already been victimized by tax fraud.

42. The members of the Classes are readily ascertainable, as they can be identified by records maintained by Defendants. Notice can be provided by means permissible under the Pennsylvania Rules of Civil Procedure.

43. Plaintiffs' claims are typical of the claims of all members of the Classes. Specifically, Plaintiffs' and members of the Classes' claims arise from UPMC's failure to install and maintain reasonable security measures to protect Plaintiffs' and members of the Classes' personal and financial information.

44. The conduct of UPMC has caused injury and/or imminent threat of injury to Plaintiffs and members of the Classes.

45. UPMC has acted and refused to act on grounds generally applicable to the Classes described herein.

46. Prosecuting separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for UPMC.

47. Plaintiffs will fairly and adequately represent the interests of the members of the Classes. Plaintiffs have no interests antagonistic to or in conflict with those of the proposed members of the Classes and therefore are adequate representatives for the proposed members of the Classes.

48. Plaintiffs are represented by experienced counsel who are qualified to litigate this case.

49. A class action is superior to other available methods for a fair and efficient adjudication of this controversy since joinder of all members of the Classes is impracticable. Furthermore, the damages suffered by individual class members may be relatively small in comparison with the expense and burden associated with individual litigation, which make it impossible for them to individually redress the harm done to them. Proceeding as a class action will permit an orderly and expeditious administration of the claims of Class members, will foster economies of time, effort and expense and will ensure uniformity of decision. Then, once UPMC's liability is established, the Court and a jury can determine the claims of each member of the Classes. There will also be no difficulty in the management of this litigation as a class

action. Therefore, certification of the Classes under Pennsylvania Rule of Civil Procedure 1708(c) is appropriate.

50. Alternatively, certification of the Classes under Pennsylvania Rule of Civil Procedure 1708(b) is appropriate. Indeed, Plaintiffs and the Classes they seek to represent have suffered and will continue to suffer irreparable damage from UPMC's conduct.

51. Common questions of law and fact predominate over individualized questions. These predominate factual and legal questions include, without limitation:

- a) Whether UPMC failed to provide adequate security and/or protection for its computer systems containing Plaintiffs' and the proposed members of the Classes' financial and personal data;
- b) Whether UPMC owed a legal duty to Plaintiffs and the proposed members of the Classes to protect their personal and financial information and whether UPMC breached this duty;
- c) Whether the conduct of UPMC resulted in the unauthorized breach of its computer systems containing Plaintiffs' and the proposed member of the Classes financial and personal data;
- d) Whether Plaintiffs and the members of the proposed Classes have been injured by UPMC's conduct;
- e) Whether Plaintiffs and members of the proposed Classes are at an increased risk of identity theft as a result of UPMC's failure to protect Plaintiffs' and the proposed Class members' personal and financial information;
- f) Whether UPMC was negligent;

- g) Whether UPMC is in breach of contract;
- h) Whether Plaintiffs and the members of the proposed Classes are entitled to injunctive relief; and
- i) Whether Plaintiffs and the members of the proposed Classes are entitled to damages, and the measure of such damages.

COUNT I
NEGLIGENCE

52. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

53. UPMC had a duty to exercise reasonable care to protect and secure Plaintiffs' and the members of the proposed Classes' personal and financial information within its possession or control from being compromised, lost, stolen, misused, and/or disclosed to unauthorized parties. This highly confidential personal and financial information includes but is not limited to Social Security numbers, dates of birth, full legal names, addresses, bank account information, and other personal information.

54. UPMC's duty included, among other things, designing, maintaining, and testing its security systems to ensure that Plaintiffs' and the members of the proposed Classes personal and financial information in their possession was adequately secured and protected.

55. UPMC further had a duty to implement processes that would detect a breach of its security systems in a timely manner.

56. In light of the special relationship between Plaintiffs and members of the proposed Classes and UPMC, whereby UPMC required Plaintiffs and members of the proposed Classes to provide highly sensitive confidential personal and financial information as a condition of their employment, UPMC undertook a duty of care to ensure the security of such information.

57. Through its acts or omissions, UPMC breached its duty to use reasonable care to protect and secure Plaintiffs' and the members of the proposed Classes' personal and financial information within its possession or control. UPMC breached its duty by failing to adopt, implement, and maintain adequate security measures to safeguard Plaintiffs' and members of the proposed Classes' personal and financial information, failing to adequately monitor the security of its network, allowing unauthorized access to Plaintiffs' and the members of the proposed Classes' personal and financial information, and failing to recognize in a timely manner that Plaintiffs' and members of the proposed Classes' personal and financial information had been compromised.

58. UPMC's failure to comply with widespread industry standards relating to data security, as well as the delay between the date of the intrusion and the date Plaintiffs and members of the proposed Classes were informed of the Data Breach further evidence UPMC's negligence in failing to exercise reasonable care in safeguarding and protecting Plaintiffs' and the members of the proposed Classes' personal and financial information in its possession or control.

59. But for UPMC's wrongful and negligent breach of the duties owed to Plaintiffs and the members of the proposed Classes, the Data Breach would not have occurred and Plaintiffs' and the members of the proposed Classes' personal and financial information would not have been compromised.

60. The injury and harm suffered by Plaintiffs and the members of the proposed Classes was the reasonably foreseeable and probable result of UPMC's failure to exercise reasonable care in safeguarding and protecting Plaintiffs' and the members of the proposed Classes' personal and financial information in its possession or control. UPMC knew or should

have known that its systems and technologies for processing and securing Plaintiffs' and members of the proposed Classes' personal and financial information had significant vulnerabilities.

61. As a result of UPMC's negligence, Plaintiffs and the members of the proposed Classes have incurred damages relating to fraudulently filed tax returns.

62. As a result of UPMC's negligence, Plaintiffs and the members of the proposed Classes are at an increased and imminent risk of becoming victims of identity theft crimes, fraud and abuse.

COUNT II
BREACH OF CONTRACT

63. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

64. When UPMC required Plaintiffs and the members of the proposed Classes to supply their personal and financial information, UPMC entered into implied contracts with Plaintiffs and the members of the proposed Classes to protect the security of such information.

65. Such implied contracts arose from the course of conduct between Plaintiffs and the members of the proposed Classes and UPMC.

66. The implied contracts required UPMC to safeguard and protect Plaintiffs' and the members of the proposed Classes' personal and financial information from being compromised and/or stolen.

67. UPMC did not safeguard or protect Plaintiffs' and the proposed Class members' personal and financial information from being accessed, compromised, and/or stolen. UPMC did not maintain sufficient security measures and procedures to prevent unauthorized access to Plaintiffs' and the proposed Class members' personal and financial information.

68. Because UPMC failed to safeguard and/or protect Plaintiffs' and the proposed Class members' personal and financial information from being compromised or stolen, UPMC breach its contracts with Plaintiffs and the members of the proposed Classes.

69. Plaintiffs and the members of the proposed Classes have suffered and will continue to suffer damages as the result of UPMC's breach.

PRAYER FOR RELIEF

70. Plaintiffs request that this Court enter judgment against UPMC and in favor of Plaintiffs and the members of the proposed Classes and award the following relief:

- a) That this action be certified as a class action pursuant to Pennsylvania Rule of Civil Procedure 1701, *et seq.*, declaring Plaintiffs as representatives of the Classes and Plaintiffs' counsel as counsel for the Classes;
- b) Monetary damages in excess of \$25,000;
- c) Injunctive relief, including but not limited to the provision of credit monitoring services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, the provision of bank monitoring services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, the provision of credit restoration services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, and the provision of identity theft insurance for Plaintiffs and the proposed Class members for a period of at least twenty-five years;
- d) Reasonable attorneys' fees and expenses, including those related to experts and consultants;

- e) Costs;
- f) Pre and post judgment interest;
- g) Such other relief as this Court may deem just and proper.

JURY DEMAND

71. Plaintiff hereby demand a trial by jury on all causes of action asserted in this action.

Dated: June 25, 2014

By: /s/ Sunshine R. Fellows

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Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 5-14-14

Barbara A. Dittman

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 5-14-14

Gary R. Jones

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 5/14/14

Alice Pastirik

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 6-17-14

Joann Decolati

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 6/13/14

Rina Sorrentino

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.


Date: 6/24/14

Kristen Cushman

Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 6/12/14



CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2014, a copy of the foregoing *Second Amended Class Action Complaint* was served upon the following counsel of record via U.S. FIRST CLASS MAIL, postage pre-paid:

**John Conti, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh PA 15222-5402**

/s/ Sunshine R. Fellows
Sunshine R. Fellows