

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
FILEFAX, INC., a domestic corporation,)
)
Defendant.)

NO. 2015CH07339
CALENDAR/ROOM 06
TIME 00:00
Injunction

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, bringing this action complaining of Defendant, FILEFAX, INC., and states as follows:

PUBLIC INTEREST

1. The Illinois Attorney General believes this action to be in the public interest of the citizens of the State of Illinois and brings this lawsuit pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/7(a).

JURISDICTION AND VENUE

2. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Cook County, Illinois, pursuant to Sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, 735 ILCS 5/2-

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CHANCERY DIVISION

102(a), in that Defendant, FILEFAX, INC., (hereinafter referred to as "FILEFAX") is doing business in Cook County, Illinois.

PARTIES

4. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*

5. Defendant, FILEFAX, is a domestic corporation organized under the Illinois Business Corporation Act. Defendant is headquartered in Northbrook, Illinois. Specifically, FILEFAX does business out of an office located at 3405 Commercial Avenue, Northbrook, Illinois 60062. FILEFAX is a duly registered corporation in the State of Illinois.

6. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendant FILEFAX shall mean that such acts and practices are by and through the acts of Defendant FILEFAX's officers, members, owners, directors, employees, salespersons, representatives and/or other agents.

TRADE AND COMMERCE

7. Subsection 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

8. The Defendant FILEFAX was at all times relevant hereto, engaged in trade and commerce in the State of Illinois by advertising, offering for sale and providing document

collection, document retention, document storage, and document destruction services to Illinois companies.

DEFENDANT'S UNFAIR AND DECEPTIVE BUSINESS PRACTICES

9. As described below, in the course of trade or commerce in the State of Illinois, Defendant FILEFAX has engaged in acts or practices that violate Illinois law. Defendant's conduct is ongoing and has the potential to impact Illinois consumers whose healthcare provider uses or has used FILEFAX's services.

10. Defendant FILEFAX is a commercial document/record service provider that provides document/record collection, document/record retention, document/record storage, and document/record destruction services to Illinois companies, including Suburban Lung Associates, S.C. (hereinafter referred to as "Suburban Lung").

11. Defendant FILEFAX represents to its clients and to Illinois consumers that it will ensure the safe, secure and proper collection, retention, storage and destruction of documents and records, including documents and records that contain personal health information and other sensitive personal and financial information. FILEFAX intends that its clients and Illinois consumers will rely on those representations.

12. Suburban Lung is a healthcare practice group that offers healthcare services to Illinois consumers in various locations in Illinois.

13. In the regular course of business, Suburban Lung collects sensitive personal and financial information, such as names, addresses, birthdates, Social Security numbers, and credit card and/or bank account numbers, from Illinois consumers.

14. In the regular course of business, Suburban Lung creates and/or records protected health information, such as patient medical records and health insurance information, about Illinois consumers.

15. Upon information and belief, Defendant FILEFAX entered into an Agreement (the "Agreement") with Suburban Lung pursuant to which Defendant FILEFAX agreed to provide the safe, secure and proper collection, retention, storage and destruction of Suburban Lung documents and records pertaining to Suburban Lung's patients and containing personal health information and sensitive personal and financial information (hereinafter referred to as "Suburban Lung Records").

16. Upon information and belief, pursuant to this Agreement, Defendant FILEFAX was required to implement and maintain policies and procedures related to the safe, secure and proper collection, retention, storage and destruction of Suburban Lung Records.

17. Upon information and belief, pursuant to this Agreement, Defendant FILEFAX was required to take reasonable measures to protect and store Suburban Lung Records.

18. Upon information and belief, pursuant to this Agreement, Defendant FILEFAX was required to store Suburban Lung Records in a safe place, inaccessible by the general public.

19. Defendant FILEFAX was required to properly store and destroy Suburban Lung Records in a manner consistent with its obligations under the Personal Information Protection Act, 815 ILCS 530 *et seq.*, ("PIPA").

20. Defendant FILEFAX was required by state and federal regulations, including PIPA, to maintain and comply with policies and procedures related to document/record access, storage, transportation and destruction.

21. Despite its obligations under state and federal regulations, including PIPA, Defendant FILEFAX failed to maintain and comply with policies and procedures related to document/record access, storage, transportation and destruction.

22. In some instances, instead of storing and disposing of records in compliance with the Agreement and contrary to its obligations under state and federal regulations, Defendant FILEFAX disposed of Suburban Lung Records in an unlocked garbage dumpster outside of its facility that was accessible to the general public.

23. In some instances, instead of destroying records in compliance with the Agreement and contrary to its obligations under Illinois' Personal Information Protection Act ("PIPA") and the federal, Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule, Defendant FILEFAX discarded Suburban Lung Records in an unlocked garbage dumpster outside of its facility that was accessible to the general public.

24. On or about February 6, 2015, an individual by the name of Halina Bysiek went to a commercial and residential document recycling business, Shred Spot, located at 3141 MacArthur Boulevard Northbrook, Illinois 60062, to recycle approximately 1,100 pounds of Suburban Lung Records that she retrieved from an unlocked dumpster outside of Defendant FILEFAX's facility.

25. Prior to taking the Suburban Lung Records, Ms. Bysiek sought permission from a FILEFAX employee to take the Suburban Lung Records that had been placed in the unlocked dumpster outside of Defendant FILEFAX's facility.

26. The FILEFAX employee informed Ms. Bysiek that FILEFAX's manager was not available and requested that Ms. Bysiek return to obtain permission from FILEFAX's manager.

27. Ms. Bysiek returned later on or about February 6, 2015 to request permission from Defendant FILEFAX to take the Suburban Lung Records she found in the unlocked dumpster outside of Defendant FILEFAX's facility.

28. Upon her return, the FILEFAX employee informed Ms. Bysiek that she had permission to take the Suburban Lung Records from the unlocked dumpster outside of Defendant FILEFAX's facility.

29. After receiving permission from FILEFAX to take the Suburban Lung Records, Ms. Bysiek made multiple trips to take the records from the unlocked dumpster outside of Defendant FILEFAX's facility to the Shred Spot facility.

30. Because of the sensitive personal and financial information and the protected health information contained in the Suburban Lung Records, Shred Spot refused to recycle the documents and instead, only maintained control over same.

31. Several days later, on or about February 9th or 10th, 2015, an investigative reporter for CBS Chicago went to Defendant FILEFAX's facility and video recorded the dumpster outside of the FILEFAX facility.

32. On or about February 9th or 10th, 2015, the reporter found that the dumpster outside of Defendant FILEFAX's facility remained full of Suburban Lung Records and remained unlocked, accessible by the general public.

33. On or about February 9th or 10th, 2015, the CBS reporter, as part of his investigative reporting, accessed some of the Suburban Lung Records.

34. On March 6, 2015, the Attorney General and the federal Health and Human Services agency conducted a site visit of the Shred Spot facility in order to document the tender of the Suburban Lung Records at the Shred Spot facility to Suburban Lung.

35. There had been approximately 1,500 Suburban Lung Records that contained sensitive personal and financial information and protected health information.

COUNT I - CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

APPLICABLE STATUTE

36. The People re-allege and incorporate by reference the allegations in Paragraphs 1 through 35.

37. Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the "Uniform Deceptive Trade Practices Act", approved August 6, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

A. VIOLATIONS OF THE CONSUMER FRAUD ACT – UNFAIR PRACTICES

38. The People re-allege and incorporate by reference the allegations in Paragraphs 1 through 35.

39. While engaged in trade or commerce, Defendant FILEFAX, has committed unfair practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:

- a. failing to protect sensitive personal and protected health information in a manner consistent with Illinois' PIPA and HIPAA's Privacy Rule when it placed the Suburban Lung Records in an unlocked garbage dumpster outside of its facility that was accessible by the general public for at least several days;

- b. failing to store sensitive personal and protected health information in a manner consistent with state and federal regulations when it allowed members of the general public to access and obtain possession of the Suburban Lung Records;
- c. failing to implement and maintain policies and procedures to prohibit unauthorized access to or acquisition of or use of sensitive personal and protected health information in a manner consistent with state and federal regulations when it allowed members of the general public to access and obtain possession of the Suburban Lung Records;
- d. failing to implement and maintain policies and procedures regarding the safe transport of sensitive personal and protected health information in a manner consistent with state and federal regulations when it allowed members of the general public to transport the Suburban Lung Records from an unlocked garbage dumpster outside of its facility;
- e. failing to destroy sensitive personal and protected health information in a manner consistent with state and federal regulations when it placed the Suburban Lung Records in an unlocked garbage dumpster outside of its facility that was accessible by the general public for at least several days;
- f. failing to destroy sensitive personal and protected health information in a manner consistent with state and federal regulations when it allowed a member of the general public to take possession of the Suburban Lung Records for purposes of recycling same; and
- g. failing to implement and maintain policies and procedures regarding the safe and proper destruction of sensitive personal and protected health information in a manner consistent with state and federal regulations.

B. VIOLATIONS OF THE CONSUMER FRAUD ACT – DECEPTIVE ACTS

40. The People re-allege and incorporate by reference the allegations in Paragraphs 1 through 35.

41. While engaged in trade or commerce, Defendant FILEFAX, has committed deceptive practices declared unlawful under Section 2 of the Consumer Fraud Act, 815 ILCS 505/2, by:

- a. representing either expressly or by implication to Illinois businesses and consumers that it would maintain physical and procedural safeguards that comply with state and federal regulations to guard sensitive personal and protected health information, when in fact, such safeguards were not maintained and sensitive personal and protected health information was not guarded against unlawful access or use;
- b. representing either expressly or by implication to Illinois businesses and consumers that it would implement and maintain policies and procedures to prohibit the unauthorized access of sensitive personal and protected health information in a manner consistent with state and federal regulations, when in fact, it had no such policies or procedures;
- c. representing either expressly or by implication to Illinois businesses and consumers that it would implement and maintain policies and procedures that would govern the transport of sensitive personal and protected health information in a manner consistent with state and federal regulations, when in fact, it had no such policies or procedures;
- d. representing either expressly or by implication to Illinois businesses and consumers that it would destroy sensitive personal and protected health information in a manner consistent with state and federal regulations, when in fact, it did not comply with state and federal regulations;
- e. representing either expressly or by implication to Illinois businesses and consumers that it would implement and maintain policies and procedures governing the safe destruction of sensitive personal and protected health information in a manner consistent with state and federal regulations, when in fact, it had no such policies or procedures; and
- f. representing either expressly or by implication to Illinois businesses and consumers that the privacy of consumers'

sensitive personal and protected health information would be protected, when in fact, Defendant FILEFAX disposed of the Suburban Lung Records in an unlocked garbage dumpster accessible by members of the public over the course of at least several days.

REMEDIES

42. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

(a) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

(b) In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

43. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides that “[i]n any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.”

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court enter an Order:

A. Finding that Defendant FILEFAX has violated Section 2 of the Consumer Fraud Act, 815 ILCS 505/1, by, but not limited to, the unlawful acts and practices alleged herein;

B. Preliminarily and permanently enjoining Defendant FILEFAX from engaging in the deceptive and unfair acts and practices alleged herein;

C. Assessing a civil penalty of \$50,000 for each instance in which the Court finds Defendant FILEFAX has engaged in methods, acts or practices declared unlawful by the Consumer Fraud Act without the intent to defraud; if the Court finds Defendant FILEFAX has engaged in methods, acts or practices declared unlawful by the Act with the intent to defraud, then assessing a statutory civil penalty of \$50,000, as provided in Section 7 of the Consumer Fraud Act, 815 ILCS 505/7;

D. Ordering Defendant to pay an additional civil penalty of \$10,000 for each violation of the Consumer Fraud Act found to have been committed against a senior citizen;

E. Requiring the defendant to pay all costs for the prosecution and investigation of this action, as provided by Section 10 of the Consumer Fraud Act, 815 ILCS 505/10; and;

F. Providing such other and further equitable relief as justice and equity may require.

COUNT II – PERSONAL INFORMATION PROTECTION ACT

44. People re-allege and incorporate by reference the allegations in Paragraphs 1 through 35.

APPLICABLE STATUTE

45. Section 5 of the Personal Information Protection Act, 815 ILCS 530/5, defines “Data Collector” as “[P]rivately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic personal information.”

46. Section 5 of the Personal Information Protection Act, 815 ILCS 530/5, defines “Personal information” as “an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: (1) Social Security number. (2) Driver’s license number or State identification card number. (3) Account number or credit or debit card number, or an account number or credit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account.”

47. Section 40 of PIPA, 815 ILCS 530/40, governs the disposal of materials containing personal information and in subsection (a) defines “person” as “a natural person; a corporation, partnership, association, or other legal entity[.]”

48. Section 40(b)(1) of PIPA, 815 ILCS 530/40, further governs the manner in which materials containing personal information are to be disposed and provides, in relevant part, “A person must dispose of the materials containing personal information in a manner that renders the personal information unreadable, unusable, and undecipherable. Proper disposal methods include, but are not limited to, the following: (1) Paper documents containing personal information may be either redacted, burned, pulverized, or shredded so that personal information cannot practicably be read or reconstructed.”

49. Section 40(c) of PIPA, 815 ILCS 530/40(c), also provides that “Any person disposing of materials containing personal information may contract with a third party to dispose of such materials in accordance with this Section. Any third party that contracts with a person to dispose of materials containing personal information must implement and monitor compliance with policies and procedures that prohibit unauthorized access to or acquisition of or use of

personal information during the collection, transportation, and disposal of materials containing personal information.”

50. In addition, pursuant to Sections 40(d) and (e) of PIPA, 815 ILCS 530/40(d), (e), the Attorney General is authorized to impose a civil penalty and “bring an action in the circuit court to remedy a violation of this Section, seeking any appropriate relief.”

VIOLATIONS OF THE PERSONAL INFORMATION PROTECTION ACT

51. Defendant FILEFAX, as a commercial document/record service provider that provides document/record collection, document/record retention, document/record storage, and document/record destruction services, is a “data collector” under PIPA, 815 ILCS 530/5.

52. Defendant FILEFAX, as a commercial document/record service provider that provides document/record collection, document/record retention, document/record storage, and document/record destruction services for Illinois businesses, including Suburban Lung, handles “personal information” as defined by PIPA, 815 ILCS 530/5.

53. As a result of its Agreement with Suburban Lung, Defendant FILEFAX is a third party who was required under Section 40(c) of PIPA, to dispose of materials containing personal information in a manner authorized under PIPA.

54. As a third party under contract to dispose of materials containing personal information in a manner authorized under PIPA, Defendant FILEFAX was required to “implement and monitor compliance with policies and procedures that prohibit unauthorized access to or acquisition of or use of personal information during the collection, transportation, and disposal of materials containing personal information.” 815 ILCS 530/40(c).

55. Instead, Defendant FILEFAX violated PIPA by:

- a. failing to properly dispose of paper documents containing personal information in a manner that renders the personal information unreadable, unusable, and undecipherable;
- b. failing to properly dispose of paper documents containing personal information either by way of redaction, burning, pulverizing or shredding so that personal information cannot practicably be read or reconstructed; and
- c. failing to implement and monitor compliance with policies and procedures that prohibit unauthorized access to or acquisition of or use of personal information during the collection, storage, transportation, and disposal of materials containing personal information.

REMEDIES

56. Sections 40(d) and 40(e) of the Personal Information Protection Act, 815 ILCS 530/40(d), (e), provides:

(d) Any person, including but not limited to a third party referenced in subsection (c), who violates this Section is subject to a civil penalty of not more than \$100 for each individual with respect to whom personal information is disposed of in violation of this Section. A civil penalty may not, however, exceed \$50,000 for each instance of improper disposal of materials containing personal information. The Attorney General may impose a civil penalty after notice to the person accused of violating this Section and an opportunity for that person to be heard in the matter. The Attorney General may file a civil action in the circuit court to recover any penalty imposed under this Section.

(e) In addition to the authority to impose a civil penalty under subsection (d), the Attorney General may bring an action in the circuit court to remedy a violation of this Section, seeking any appropriate relief.


PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court enter an Order:

A. Finding that Defendant FILEFAX has violated Section 40 of the Personal Information Protection Act, 815 ILCS 530/40, by, but not limited to, the unlawful acts and practices alleged herein;

- B. Preliminarily and permanently enjoining Defendant FILEFAX from engaging in the unlawful acts and practices alleged herein;
- C. Assessing a civil penalty of \$50,000 in which this Court finds Defendant FILEFAX improperly disposed of sensitive personal information and protected health information;
- D. Providing such other and further equitable relief as justice and equity may require.

Respectfully Submitted,
THE PEOPLE OF THE STATE OF ILLINOIS, by
LISA MADIGAN
ATTORNEY GENERAL OF ILLINOIS

By:  _____

Attorney No. 99000

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