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CLERK OF THE MONTGOMERY-COFFEYVILLE DISTRICT COURT
CASE NUMBER: 2017-CV-000059C



Court: Montgomery-Coffeyville District Court
Case Number: 2017-CV-000059C
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Caney Guest Home, Inc, et al.
Type: Consent Judgment

SO ORDERED.

A handwritten signature in cursive script, followed by a circular official seal. The seal contains the text "MONTGOMERY CO. DISTRICT COURT" and "SEAL" in the center.

/s/ Honorable Jeffrey Gossard, District Court Judge

1. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the common law and statutes of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*, and the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act.

3. Defendant Caney Guest Home, Inc. was a Kansas For Profit Corporation registered with the Kansas Secretary of State at the time relevant to Plaintiff's claims, although registration was subsequently forfeited.

4. Defendant James R. Laidler is an individual who resides at 4611 N. Free King Highway, Pittsburg, KS 66762.

5. All references to Defendants herein include Defendants individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors of Defendants.

6. This Court has personal and subject matter jurisdiction over this controversy through the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a) and venue is proper in Montgomery County, pursuant to K.S.A. 50-638(b).

7. The Parties are each represented by counsel and have cooperated in the preparation of this consent judgment. The terms and conditions of this consent judgment shall not be interpreted or construed against or in favor of any party based on the identity, interest, or affiliation of its preparer.

8. On November 3, 2017, Plaintiff filed a Petition herein against Defendants Caney Guest Home, Inc. and James R. Laidler (“Defendants”) alleging Defendants have breached the requirements of the Wayne Owen Act, deemed unconscionable acts and Defendants have thereby violated the Kansas Consumer Protection Act.

9. The parties have reached an agreement resolving the issues before the Court and the parties intend to resolve all potential violations of the Kansas Consumer Protection Act and Wayne Owen Act as it relates to Caney Guest Home, Inc. d/b/a Caney Nursing Center’s collecting, processing, maintaining or possessing records containing personal information as defined by K.S.A. 50-7a01(g) and related statutes prior to the effective date of this consent judgment.

10. The violations by the Defendants are declared unconscionable acts and violations of the Kansas Consumer Protection Act.

INJUNCTIVE RELIEF

11. Defendants and their officers, agents, employees, and all other persons in active concert or participation with any of them, whether acting directly or indirectly, are permanently restrained and enjoined from violating the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which specifically requires Defendants, when engaged in the handling and processing of documents for a nursing home or any endeavor which entails the collection, maintenance and/or possession of records containing the personal information of other persons, to at least:

- a. implement and maintain reasonable procedures and practices to protect the personal information in their custody from unauthorized access, use, modification or disclosure;

- b. exercise reasonable care to protect the personal information from unauthorized access, use, modification or disclosure; and
- c. take reasonable steps to destroy or arrange for the destruction of any records within Defendants' custody or control containing personal information when Defendants no longer intended to maintain or possess those records.

12. Defendants are ordered to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, refrain, and to be permanently enjoined, from violating the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

13. Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly, are permanently are ordered and required to follow licensure, local, State and Federal laws and regulations applicable to the health care services which they provide, specifically including, but not limited to HIPPA requirements and CMS Policy for Information Security and Privacy.

14. Defendants shall require their employees, agents, independent contractors, and representatives to comply with the terms set forth in this Consent Judgment within fifteen (15) days of the execution of this Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities, specifically by amending or updating pertinent training and compliance materials and making available and/or disclosing the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment.

15. Defendants agree to be, and are, permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

16. Defendants agree to be, and are so ordered, to dispose of all records retrieved from the Caney Nursing Center site, now in storage in a third-party storage unit under a lock provided by the Kansas Attorney General's Office, in a manner consistent with the Wayne Owen Act and all applicable state and federal requirements. Destruction shall be by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means. Within sixty (60) day of the effective date of this judgment, Defendants shall provide Plaintiff the plan for destruction of the records. The plan will take into account Defendant Caney's remaining obligation to retain any records pursuant to records retention requirements. Plaintiff will not unreasonably withhold approval of the plan. Upon approval by Plaintiff and under the supervision of Plaintiff, Defendants may proceed with the plan for destruction. Plaintiff agrees to make a representative reasonably available to supervise the destruction in accordance with the submitted and approved plan and not unreasonably delay the execution of the plan. In the event Defendants fail to dispose of those records in a reasonable time in accordance with the submitted and approved plan and after giving notice of not less than thirty (30) days, Plaintiff shall destroy the Caney Nursing Center records described above. In that event, Plaintiff may move to modify this judgment, and the Court shall retain jurisdiction to modify this judgment, to provide for reimbursement of expenses incurred by Plaintiff for records destruction, after notice to Defendants.

MONITORING AND COMPLIANCE

17. For five years Defendants shall deliver at least annually a copy of this agreement to officers, agents, employees, and all other persons in active concert or participation with any of them, whether acting directly or indirectly, involved in collecting, maintaining, possessing, or processing records containing personal information as defined at K.S.A. 50-7a01(g), and maintain documentation thereof.

18. Within 30 days of becoming aware of a violation, Defendants shall provide notice to the Attorney General of any violation of any statute related to information security by any officer, agent, employee, and any other person in active concert or participation with any of them, whether acting directly or indirectly, involved in collecting, maintaining, possessing, or processing records containing personal information.

MONETARY JUDGMENT

19. Judgment is entered in favor of Plaintiff in the amount of \$150,000 in civil penalties, subject to suspension of \$100,000 on the condition of compliance with the terms of the judgment; Defendants shall pay a total amount of fifty thousand dollars (\$50,000) to the Kansas Attorney General for enforcement and implementation of consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General.

20. Judgment is entered in favor of Plaintiff in the amount of \$6,379.28 in investigative fees and expenses.

21. Payment of the \$50,000, plus \$6,379.28 in investigative fees and expenses (total payment of \$56,379.28) shall be made as follows: Defendants shall pay \$6,379.28 on or before July 1, 2020; Defendants shall thereafter pay \$1,000 per month, on or before the fifth day of each

month, until the total amount of \$56,379.28 is paid. However, Defendants expect to receive payment of insurance proceeds from the Missouri Department of Insurance (the Receiver for Lumbermen's Insurance Company, declared insolvent May 23, 2016, Proof of Claim No. 1-00389; Policy No. 335552; Claim No. 380739). Upon receipt of said insurance proceeds, Defendants will, within 10 days of the receipt and deposit of said insurance proceeds, pay the entire outstanding balance owed by Defendants pursuant to this agreement.

22. Each payment shall be in the form of a cashier's check, money order or other certified funds payable to the **Office of the Kansas Attorney General**, marked **CP-17-3458** and delivered to:

Office of the Kansas Attorney General
Attn: DAG Kathryn Carter
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

GENERAL PROVISIONS

23. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

24. Defendants shall not cause third parties, acting on their behalf, to engage in practices from which Defendants are prohibited by the agreement.

25. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

26. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

27. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

28. Any failure by any party to this agreement to insist upon the strict performance by any other party of any of the provisions of this agreement shall not be deemed a waiver of any of the provisions of this agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this agreement. The agreement shall represent the full and complete terms of the settlement entered into by the parties hereto.

29. No party shall be deemed the drafter of this agreement and, in construing the agreement, no provision shall be construed in favor of one party on the ground that such provision was drafted by the other.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the stipulation and

agreement of the parties contained herein, are hereby adopted and approved as the orders of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants, jointly and severally, and in favor of Plaintiff in the amount of \$156,379.28, subject to the suspension of penalties recited in paragraph 21.

IT IS SO ORDERED. This Order is effective on the date and time shown by the electronic file stamp.

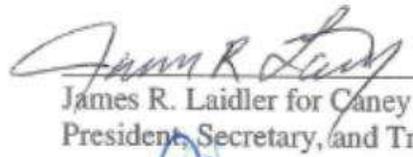
PLAINTIFF:

/s/ Derek Schmidt
Derek Schmidt, KS #17781
Kansas Attorney General

/s/ Kathryn Carter
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DEFENDANTS:


James R. Laidler, Individually


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President, Secretary, and Treasurer


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