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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: Ex Parte Order to Survey and Secure Records

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

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**IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 Caney Guest Home, Inc.)
 a corporation DBA Caney Nursing Center)
 and)
 James R. Laidler,)
 an individual)
)
 Defendants.)
_____)

**EX PARTE ORDER TO SURVEY AND SECURE RECORDS
AND ENJOINING DEFENDANTS FROM ENGAGING IN ACTS AND PRACTICES
IN VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT**

NOW, on this date there comes before the Court Plaintiff's *Ex Parte* Motion for Temporary Restraining Order to Survey and Seize Records and Enjoining Defendants from Engaging in Acts and Practices in Violation of the Consumer Protection Act, pursuant to K.S.A. 50-632. Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, by and through counsel Assistant Attorney General Kathryn Carter. There are no other appearances.

Whereupon the Court considers Plaintiff's motion, verified affidavit and accompanying exhibits, and memorandum in support of its requests. Being duly advised in the premises, the Court finds the authorities presented support the following conclusions of law and the verified affidavit and accompanying exhibits indicate the Plaintiff is likely to succeed in presenting evidence that will permit the Court to conclude, after a trial on the merits, as follows:

1. The above-captioned matter was commenced by the State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, against Defendants Caney Guest Home, Inc. and Defendant James Laidler, an individual.

2. Plaintiff filed its *ex parte* motion for temporary restraining order and memorandum in support along with Plaintiff's petition on December 4, 2017.

3. Defendant Caney Guest Home, Inc. is a Kansas corporation is a Foreign For Profit Corporation which had its principal office address at the site of Caney Nursing Center at 615 S. High in Caney, KS.

4. Defendant James Laidler is an individual who resides at 4611 N. Free King Highway, Pittsburg, KS 66762. James Laidler is the President of Defendant Caney Guest Home, Inc.

5. Defendants Caney Guest Home, Inc. and James Laidler were, at all times relevant hereto, suppliers within the definition of K.S.A. 50-624(l).

6. Defendants Caney Guest Home, Inc. and James Laidler are persons within the definition of K.S.A. 2017 Supp. 50-6,139b(a)(2).

7. Defendants are holders, within the definition of K.S.A. 2017 Supp. 50-6,139b(a)(1), of personal information, within the definition of K.S.A. 2017 Supp. 50-6,139b(a)(3).

8. Defendants, at all times relevant hereto, had in their custody or control records within the definition of K.S.A. 2017 Supp. 50-6,139(a)(4), which contained personal information of persons, including persons other than the Defendants.

9. K.S.A. 50-632(a)(2) authorizes the Attorney General to seek a temporary restraining order against a defendant who “has violated, is violating, or is otherwise likely to violate” the Kansas Consumer Protection Act.

10. This Court has authority pursuant to K.S.A. 50-632(c)(6) to issue the Temporary Restraining Order requested by the Attorney General.

11. Plaintiff has satisfied its burden of proof for obtaining a temporary restraining order as required by K.S.A. 50-632(a)(2).

12. Defendants have engaged, or are currently engaging, or are otherwise likely to engage in acts and practices in violation of the Wayne Owen Act, K.S.A. 2017 Supp. 50,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act.

13. In light of the foregoing, and the risk that Defendants may further harm persons through the unlawful handling of personal information in the future, a temporary restraining order is appropriate.

14. A temporary restraining order is necessary to ensure the Defendants’ compliance with the Wayne Owen Act and the KCPA during the pendency of this matter.

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants, and the Defendants’ officers, agents, employees, and any persons acting in concert or participation with the Defendants are temporarily:

1. Enjoined from engaging in acts and conduct which violate the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and, specifically, the Wayne Owen Act, K.S.A. 2017 Supp. 50-6,139 *et seq.*
2. Required to secure, within twenty (20) days, to the standard dictated by HIPPA requirements and CMS Policy for Information Security and Privacy, and as approved by Plaintiff, all records containing personal information located at the Caney Nursing Center site at 615 S. High in Caney, KS.
3. Required to inventory within sixty (60) days all records containing personal information, including electronic records, which are currently located at the Caney Nursing Center site at 615 S. High in Caney, KS, and recording that inventory in a spreadsheet reflecting the names of the individuals, the personal information, nature of the record (e.g. employee record, resident record), specific location of the record (e.g. room X, file cabinet Y, drawer Z), location of the individuals if known, or in the alternative, last known location of the individual, the date when the record can be destroyed vis á vis applicable law.
4. Required to deliver the spreadsheet described in paragraph 3 to Plaintiff, in its native electronic format.
5. Enjoined from destroying any records which are currently located at the Caney Nursing Center site at 615 S. High in Caney, KS,, and required to preserve the records (e.g. maintain the utilities to avoid damage to the records).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is authorized to enter immediately onto the premises of the Caney Nursing Center site at 615 S.

High in Caney, KS to secure those records containing personal information, pending Defendants' compliance with paragraph 2. Plaintiff is further authorized to perform a cursory survey of the records, and to copy selected records as deemed necessary and appropriate by Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court authorizes agents and attorneys of the Office of the Kansas Attorney General to monitor the Defendants' compliance with this Order pending further order of this Court or final resolution of this matter

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction over this matter.

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

Respectfully submitted,

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**IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
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 Plaintiff,)
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v.)
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Caney Guest Home, Inc.)
a corporation DBA Caney Nursing Center)
and)
James R. Laidler,)
 an individual)
)
 Defendants.)
_____)

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER
TO SURVEY AND SECURE RECORDS
AND TO ENJOIN DEFENDANTS FROM ENGAGING IN ACTS AND PRACTICES IN
VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT
INCLUDING MEMORANDUM IN SUPPORT

COMES NOW Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney
General, by and through counsel Assistant Attorney General Kathryn Carter, and moves this
Court, pursuant to K.S.A. 50-632(a)(2), for an *Ex Parte* Temporary Restraining Order enjoining

Defendants from any and all acts or conduct that violate the Wayne Owen Act, K.S.A. 50-6,139 *et seq.* and for authority to enter onto and into the premises of Caney Nursing Center, located at 615 S. High Street, Caney, KS 67333 to take survey and secure all records found therein which contain personal information, as that term is defined at K.S.A. 50-6,139b(a)(3) and K.S.A. 50-7a01

WHEREFORE Plaintiff respectfully requests the Court issue orders as recited herein, and further authorize and direct agents and attorneys of the Office of the Attorney General of Kansas to monitor compliance with this order, pending further order of this Court.

MEMORANDUM IN SUPPORT

I. Nature of the Case

In 2016, the Kansas Legislature amended the Wayne Owen Act, K.S.A. 2017 Supp. 50-6,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, to include K.S.A. 2017 Supp. 50-6,139b. That new provision created a civil cause of action that may be brought by the Attorney General against a holder of personal information for failing to implement and maintain reasonable procedures and practices appropriate to protect the personal information of any other person; failing to exercise reasonable care to protect the personal information from unauthorized access, use, modification or disclosure; or failing to take reasonable steps to destroy or arrange for the destruction of any records containing personal information, by shredding, erasing or otherwise rendering the personal information unreadable or undecipherable through any means, when the holder no longer intends to maintain or possess such records. K.S.A. 2017 Supp. 50-6,139b(b).

On November 21, 2017, Plaintiff received information that patient and employee records, containing personal information, were observed in a closed nursing home in Caney, Kansas. The nursing home, Caney Nursing Center, located at 615 S. High Street, Caney, KS 67333, has been broken into and vandalized since it closed in February, 2017. Those records are accessible and vulnerable to unauthorized access, use, modification or disclosure. *See attached affidavit of SAC Hutchings.*

Concurrent with the filing of this motion, Plaintiff files a Petition for relief under the Wayne Owen Act and the KCPA.

II. Violations of the Wayne Owen Act and the Kansas Consumer Protection Act

As holders of personal information, Defendants are subject to the requirements of the Wayne Owen Act, specifically the duties imposed by K.S.A. 2017 Supp. 50-6,139b(b)(1) and (2). Defendants have failed to comply with those requirements by failing to implement and maintain reasonable procedures and practices to protect personal information, failing to exercise reasonable care to protect personal information, and failing to take reasonable steps to destroy or arrange for the destruction of records containing personal information. Most concerning, those files are being stored in an unsecured building that has been burglarized by unknown parties.

Each of Defendants' violations of K.S.A. 50-6,139b(b)(1) and (2) is an unconscionable act in violation of K.S.A. 50-627. See K.S.A. 2017 Supp. 50-6,139b(d). Each record that Defendants failed to destroy in compliance with K.S.A. 2017 Supp. 50-6,139b(b)(2) is a separate and distinct unconscionable act within the meaning of K.S.A. 50-627. Each day Defendants fail to implement and maintain reasonable procedures or to exercise reasonable care in the handling the personal information of others, as required by K.S.A. 2017 Supp. 50-6,139b(b)(1), is a separate violation

of the Kansas Consumer Protection Act, as provided by K.S.A. 50-636(d).

III. Argument and Authorities

In light of the nature and the extent of Defendants' violation of those laws which were enacted to safeguard personal information and protect persons from identity theft, and to prevent further risk of unlawful disclosure of personal information during the pendency of this action, Plaintiff respectfully requests that the Court enter an *ex parte* order as set out herein.

The Kansas Consumer Protection Act is designed to protect consumers from suppliers like Defendants, and the public policy is specifically articulated: this act shall be construed liberally to promote the policy to protect consumers from suppliers who commit deceptive and unconscionable practices. K.S.A. 50-623(b).

Statute provides that "the court may, without requiring bond of the Attorney General make such orders or judgments as may be necessary to prevent the use or employment by a supplier of any practices declared to be a violation of this act". K.S.A. 50-632(c)(1).

Numerous Kansas courts have recognized this rule of construction. See *Dale v. King Lincoln-Mercury, Inc.*, 234 Kan. 840, 676 P.2d 744 (1984); *Stair v. Gaylord*, 232 Kan 765, 659 P.2d 178 (1983); *J&W Equipment, Inc. v. Weingartner*, 5 Kan.App.2d 466, 618 P.2d 862 (1980); *Bell v. Kent-Brown Chevrolet Co.*, 1 Kan.App.2d 131, 561 P.2d 907 (1977).

K.S.A. 50-632 outlines the authority for the court to issue the temporary relief requested by Plaintiff. Pursuant to K.S.A. 50-632(a)(2), the Attorney General may bring an action "to enjoin, or to obtain a restraining order against a supplier who has violated, is violating, or is otherwise likely to violate this act[.]"

The authority for the Court to grant the temporary relief requested by the Attorney General is set forth in the provisions of K.S.A. 50-632(c). First, K.S.A. 50-632(c)(1) provides, in relevant part:

“In any action brought by the attorney general. . . the court may . . . [m]ake such orders . . . as may be necessary to prevent the use or employment by a supplier of any practices declared to be a violation of this act.” K.S.A. 50-632(c)(1).

An order authorizing Plaintiff to enter onto the subject premises, make a cursory survey of those records, copy select records, and secure all records containing personal information and further enjoining Defendants to comply with the law, specifically with the Wayne Owen Act, in their handling of personal information during the pendency of this action is authorized by this subsection because acts that violate the Wayne Owen Act constitute violations of the KCPA.

Further, K.S.A. 50-632(c)(8) provides that the court may “grant other appropriate relief.” In light of Defendants’ failure to exercise reasonable care to protect the personal information of Caney Nursing Center residents and employees from unauthorized access, use, modification or disclosure, the order requested by Plaintiff that Defendants protect and preserve those records containing personal information is certainly “appropriate.”

Thus, the Attorney General is authorized to seek, and the Court authorized to enter, the orders requested herein.

Plaintiff seeks a restraining order as authorized by statute in the KCPA, therefore the traditional standard of review for a restraining order does not apply. Rather, as discussed in *Atchison, Topeka and Santa Fe Railway Co. v. Lennen*, 640 F.2d 255 (10th Cir. 1981), a different standard is utilized when an injunction is authorized by a state statute:

"[w]here an injunction is authorized by statute it is unnecessary for [P]laintiff to plead and prove the existence of the usual equitable grounds, irreparable injury and absence of

an adequate remedy at law. It is enough if the requirements of the statutes are satisfied. [quoting *Shadid v. Fleming*, 160 F.2d 752 (10th Cir. 1947)]." *Atchison, Topeka and Santa Fe Railway Co. v. Lennen*, 640 F.2d 255, 260 (10th Cir. 1981).

Hence, the Attorney General need not prove irreparable injury in the absence of an adequate remedy at law. *Id.* Instead, the Attorney General need only satisfy the elements of the statute for which it seeks the order. The issue here is whether Defendants have violated, are violating, or are otherwise likely to violate the Kansas Consumer Protection Act. The facts presented clearly demonstrate that violations have occurred and continue to the present. Plaintiff has thereby satisfied the statutory requirements for a temporary restraining order as set out herein, pursuant to K.S.A. 50-632(c)(1) and (c)(8).

IV. Conclusion

WHEREFORE Plaintiff requests that this Court grant its motion and issue an *ex parte* order as follows:

1. Enjoining Defendants from engaging in acts and conduct which violate the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and, specifically, the Wayne Owen Act, K.S.A. 2017 Supp. 50-6,139 *et seq.*
2. Requiring Defendants to secure, within twenty (20) days, to the standard dictated by HIPPA requirements and CMS Policy for Information Security and Privacy, and as approved by Plaintiff, all records containing personal information located at the Caney Nursing Center site at 615 S. High in Caney, KS.
3. Requiring Defendants to inventory within sixty (60) days all records containing personal information, including electronic records, which are currently located at the Caney Nursing Center site at 615 S. High in Caney, KS, and recording that inventory

in a spreadsheet reflecting the names of the individuals, the personal information, nature of the record (e.g. employee record, resident record), specific location of the record (e.g. file cabinet X, drawer A), location of the individuals if known, or in the alternative, last known location of the individual, the date when the record can be destroyed vis á vis applicable law.

4. Requiring Defendants to deliver the spreadsheet described in paragraph 3 to Plaintiff, in its native electronic format.
5. Enjoining Defendants from destroying any records which are currently located at the Caney Nursing Center site at 615 S. High in Caney, KS, and requiring Defendants to preserve those records.
6. Allowing Plaintiff to enter immediately onto the premises of the Caney Nursing Center site at 615 S. High in Caney, KS to secure those records pending Defendants' compliance with paragraph 2.
7. Allowing Plaintiff to perform a cursory survey of the records, and to copy selected records as deemed necessary and appropriate by Plaintiff.
8. Allowing Plaintiff to monitor the security of those records.
9. Such other orders as the Court deems just and appropriate.

Respectfully submitted,

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**IN THE DISTRICT COURT OF MONTGOMERY COUNTY, KANSAS
FOURTEENTH JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
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 Plaintiff,)
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Caney Guest Home, Inc.)
a corporation DBA Caney Nursing Center)
and)
James R. Laidler,)
 an individual)
)
 Defendants.)

(Pursuant to K.S.A. Chapter 60)

PETITION

COMES NOW Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, by and through counsel, Assistant Attorney General Kathryn Carter, and for its cause of action against Defendants alleges and states as follows:

PARTIES

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 statutory and common law 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. is a Kansas For Profit Corporation; Defendant Caney Guest Home, Inc. can be served by serving its Resident Agent: Steven Angermayer, 222 National Bank Blvd, Pittsburg, KS 66762.

4. Defendant James R. Laidler is an individual who resides at 4611 N. Free King Highway, Pittsburg, KS 66762 and can be served at that address.

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

JURISDICTION AND VENUE

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).

7. Venue is proper in Montgomery County, pursuant to K.S.A. 50-638(b).

NATURE OF ACTION

8. Defendant Caney Guest Home, Inc. owned and operated Caney Nursing Center, located at 615 S. High Street, Caney, KS 67333, at all times relevant hereto. Caney Nursing Center ceased operations in February, 2017.

9. Defendant James Laidler is the President, Secretary and Treasurer of Defendant Caney Guest Home, Inc.

10. In the course of operating Defendant Caney Guest Home, Inc., Defendants engaged in the handling and processing of documents for the employees and residents of the nursing home, and, in the ordinary course of business have collected, maintained and possessed records

containing the personal information of other persons. Thus, Defendants are subject to at least the following legal duties: To implement and maintain reasonable procedures and practices to protect the personal information in their custody from unauthorized access, use, modification or disclosure; to exercise reasonable care to protect the personal information from unauthorized access, use, modification or disclosure; and to 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, pursuant to the Wayne Owen Act at K.S.A. 50-6,139 *et seq.*

11. Defendants have breached each of these duties in violation of the Wayne Owen Act and the Kansas Consumer Protection Act.

12. Effective July 1, 2016, the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act, expressly imposed on Defendants the duties described in Paragraph 10 and made a breach of such duties a violation of the Kansas Consumer Protection Act.

13. At all times relevant hereto, the Kansas Consumer Protection Act has prohibited Defendants, as suppliers, from engaging in unconscionable acts or practices in connection with a consumer transaction.

14. The State brings this action for temporary and permanent injunctive relief, civil penalties, consumer restitution, reasonable expenses and investigative fees under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, for Defendants' violations of the KCPA.

ALLEGATIONS COMMON TO ALL COUNTS

15. All foregoing paragraphs are hereby incorporated by reference.

16. At all times relevant hereto, and in the ordinary course of business, Defendants

acted as “suppliers,” as that term is defined by K.S.A. 50-624(1).

17. At all times relevant hereto, and in the ordinary course of business, Defendants were “persons,” as that term is defined by K.S.A. 2017 Supp. 50-6,139b(a)(2).

18. At all times relevant hereto, and in the ordinary course of business, Defendants engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

19. At all times relevant hereto, and in the ordinary course of business, Defendants acted as “holders,” as that term is defined in K.S.A. 2017 Supp. 50-6,139b(a)(1), of “personal information,” as that term is defined by K.S.A. 2017 Supp. 50-6,139b(a)(3).

20. At all times relevant hereto, and in the ordinary course of business, Defendants had in their custody or control “records,” as that term is defined by K.S.A. 2017 Supp. 50-6,139(a)(4), containing the personal information of any person, including persons other than Defendants.

21. At all times relevant hereto, Defendants owned and operated Defendant Caney Guest Home, Inc. at 615 S. High Street in Caney, KS.

22. At all times relevant hereto, Defendants in the ordinary course of business did receive, collect, maintain and possess records that contain, in part, personal information of their residents and their employees.

23. At all times relevant hereto, said records were received, collected, maintained and possessed on a daily basis at Caney Guest Home, Inc. at 615 S. High Street in Caney, KS.

24. At all times relevant hereto, and continuing until the filing of this petition, Defendants possessed or caused to be possessed said records at the site of Caney Guest Home, Inc. at 615 S. High Street in Caney, KS. Those documents are stored in boxes and unsecured filing cabinets in unsecured rooms in an unsecured building.

25. The building at the site of Caney Guest Home, Inc. at 615 S. High Street in Caney,

KS has been broken into, burgled, vandalized and left unsecured.

26. Defendant Caney Guest Home, Inc. and Defendant Laidler have not properly secured or disposed of the aforementioned documents.

CLAIMS

COUNT I

The Wayne Owen Act – Failure to Have Reasonable Procedures and Practices to Protect Personal Information

29. All of the foregoing paragraphs are hereby incorporated by reference.

30. At all times relevant hereto, Defendants failed to implement and maintain reasonable procedures and practices appropriate to the nature of the personal information possessed, or caused to be possessed by Defendants, in violation of K.S.A. 2017 Supp. 50-6,139b(b)(1).

31. As provided by K.S.A. 2017 Supp. 50-6,139b(d), Defendants' failure to implement and maintain reasonable procedures and practices as required by K.S.A. 2017 Supp. 50-6,139b(b)(1) constitutes an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

32. Each day Defendants failed to implement and maintain such reasonable procedures and practices is a separate violation of the Kansas Consumer Protection Act as provided by K.S.A. 50-636(d).

33. Defendants' acts or practices are violations of the KCPA for which the Court has authority to assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636.

34. Defendants shall be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

COUNT II

The Wayne Owen Act – Failure to Exercise Reasonable Care to Protect Personal Information

35. All of the foregoing paragraphs are hereby incorporated by reference.

36. At all times relevant hereto, Defendants failed to exercise reasonable care to protect the personal information possessed or caused to be possessed by Defendants from unauthorized access, use, modification or disclosure, in violation of K.S.A. 2017 Supp. 50-6,139b(b)(1).

37. As provided by K.S.A. 2017 Supp. 50-6,139b(d), Defendants' failure to exercise reasonable care to protect personal information as required by K.S.A. 2017 Supp. 50-6,139b(b)(1) constitutes an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

38. Each day Defendants failed to exercise such reasonable care is a separate violation of the Kansas Consumer Protection Act as provided by K.S.A. 50-636(d).

39. Defendants' acts or practices are violations of the KCPA for which the Court has authority to assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636.

40. Defendants shall be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

COUNT III

The Wayne Owen Act – Failure to Take Reasonable Steps to Destroy or Arrange Destruction of Records Containing Personal Information

41. All of the foregoing paragraphs are hereby incorporated by reference.

42. At all times relevant hereto, Defendants failed to take reasonable steps to destroy or arrange for the destruction of any records within Defendants' custody or control containing any person's personal information when Defendants no longer intended to maintain or possess such records, in violation of K.S.A. 2017 Supp. 50-6,139b(b)(2).

43. As provided by K.S.A. 2017 Supp. 50-6,139b(d), Defendants' failure to shred, erase or otherwise modify the personal identifying information in such records to make the personal information unreadable or undecipherable through any means constitutes an unconscionable act or practice under the Kansas Consumer Protection Act, in violation of K.S.A. 50-627.

44. Each record which Defendants failed to destroy in compliance with K.S.A. 2017 Supp. 50-6,139b(b)(2) constitutes a separate unconscionable act within the meaning of K.S.A. 50-627 as provided by K.S.A. 2017 Supp. 50-6,139b(d).

45. Defendants' acts or practices are violations of the KCPA for which the Court has authority to assess a penalty in the amount of \$10,000.00 per violation, pursuant to K.S.A. 50-636.

46. Defendants shall be held jointly and severally liable for the aforementioned violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. The above-mentioned acts and practices recited above shall be declared unconscionable acts, in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 2017 Supp. 50-6,139b(d), K.S.A. 50-632(a)(1) and K.S.A. 50-632(c)(1);

B. Defendants be temporarily and permanently enjoined from these and other practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(2) and K.S.A. 50-632(c);

C. Defendants pay restitution to all consumers referenced in this Petition or revealed during the course of discovery, pursuant to K.S.A. 50-632(a)(3) and K.S.A. 50-632(c);

D. Defendants pay reasonable investigative fees and expenses to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632(a)(4), K.S.A. 50-632(c) and K.S.A. 50-636(c);

E. Defendants pay civil penalties of \$10,000.00 for each violation of the Kansas Consumer Protection Act, or such other amount as the Court deems just and equitable, pursuant to K.S.A. 50-636, assessed jointly and severally;

F. Defendants pay all Court costs and all costs associated with distributing and executing on any restitution or judgment made by this Court.

Respectfully submitted,

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/s/ Kathryn Carter
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Fax: 785-291-3699
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury for all issues raised by this pleading which are so triable.

/s/ Kathryn Carter
Kathryn Carter, #12969