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FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DISTRICT
TOPEKA, KS
2018 JAN 12 A 10:18

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7**

STATE OF KANSAS, *ex rel.*)
Derek Schmidt, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
)
 Pearlie Mae's Compassion and Care LLC,)
 A corporation)
 And)
 Ann Marie Kaiser, an individual)
 Jenell Jones, an individual)
)
 Defendants.)

Case No. 2017-CV-429

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

CONSENT JUDGMENT

COMES NOW BEFORE THE COURT Plaintiff's Petition for Approval of Consent Judgment pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Kathryn Carter. Defendants appear by Kevin Shepherd of Kevin Shepherd Law Office.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

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, K.S.A. 50-623, *et seq.*

3. Defendant Pearlie Mae's Compassion and Care LLC is a corporation organized under the laws of the State of Kansas with a registered office address of 2956 SW Seabrook Avenue, Topeka, KS, 66614.

4. Defendant Ann Marie Kaiser is an individual who resides at 4217 SW Shenandoah Road, Topeka, KS, 66610; Defendant Kaiser is co-owner of Defendant Pearlie Mae's Compassion and Care LLC.

5. Defendant Jenell Jones is an individual who resides at 2956 SW Seabrook Avenue, Topeka, KS, 66614; Defendant Jones is co-owner of Defendant Pearlie Mae's Compassion and Care LLC.

6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction.

7. Defendants stipulate and admit that venue is proper in this Court pursuant to K.S.A. 50-638(b).

ALLEGATIONS

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

9. Defendants are persons within the definition at K.S.A. 50-6,139b(a)(2).
10. Defendants are holders, pursuant to the definition at K.S.A. 50-6,139b(a)(1), of personal information, pursuant to the definition at K.S.A. 50-6,139b(a)(3).
11. Defendants, at all times relevant hereto and in the ordinary course of business, had in their custody or control records within the definition at K.S.A. 50-6,139(a)(4), which contained personal information of persons, including persons other than Defendants.
12. Upon information and belief, the State alleges that Defendants Anne Kaiser and Jenell Jones own and operate the health care service Pearlie Mae's Compassion and Care LLC, which has operated, at least in part, out of Defendant Kaiser's home at 4217 SW Shenandoah Road, Topeka, KS, 66610. They provide care for disabled consumers as licensed by Kansas Department for Aging and Disabilities Services. In the course of operating Pearlie Mae's Compassion and Care LLC, individually and on behalf of Defendant Pearlie Mae's Compassion and Care LLC, Defendants engaged in the handling and processing of documents for the employees and for the consumers whom they serve, and, in the ordinary course of business, have collected, maintained and possessed records containing the personal information of other persons.
13. Plaintiff alleges that, at all times relevant hereto, Defendants violated the mandates of K.S.A. 50-6,139b which violations include, but are not limited to:
 - a. failing 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. 50-6,139b(b)(1).
 - b. failing 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. 50-6,139b(b)(1).
 - c. failing 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. 50-6,139b(b)(2).

14. Those acts and practices set out in paragraph thirteen (13) are deemed unconscionable acts and practices, pursuant to K.S.A. 50-6,139b(d), and constitute violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-627.

15. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of settlement.

INJUNCTIVE RELIEF

16. Defendants agree to be and are required to exercise reasonable care to protect the personal information of any person or persons, other than Defendants, that is collected, maintained or possessed by Defendants or that Defendants cause to be collected, maintained or possessed.

17. Defendants agree to be and are restrained from disposing of, or causing to be disposed of, any records in Defendants' custody or control that contain personal information except by shredding or otherwise modifying all personal information in the records to make it unreadable or undecipherable through any means.

18. Defendants agree to be and are enjoined from having any records containing personal information of others in the home of either Defendant Jones or Defendant Kaiser, except when secured in a secure container that is not accessible by any person other than Defendants.

19. Defendants agree to be and are required to retain all records containing personal information of others at the office of Defendant Pearlie Mae's Compassion and Care, LLC located at 2914 SW Plass Court, Suite A, Topeka, (phone 785-215-8995) except as is necessary to the provision of services.

20. Defendants agree to be and are required until December 31, 2019, to notify Plaintiff within 24 hours of any change in the location of the office or the phone number of Defendant Pearlie Mae's Compassion and Care, LLC as referenced in the previous paragraph.

21. Defendants agree to be and are required to subscribe to and enable encryption software to protect the electronic records containing personal information of others.

22. Defendants agree to be and are required to subscribe to and enable password management software to protect the electronic records containing personal information of others.

23. Defendants agree to be and are required to carry all local, State and Federal licenses, permits, and certificates, or similar documentation of authorization, required for and appropriate to the services which they provide.

24. Defendants agree to be and are required to follow local, State and Federal laws and regulations applicable to the health care services which they provide and licensure, as described in paragraph H, specifically including, but not limited to HIPPA requirements and CMS Policy for Information Security and Privacy.

25. Defendants agree and are required to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13), and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

26. Defendants agree and are required to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* and the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*

27. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against Defendant.

28. Defendants agree to 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.

29. Defendants agree and are required to make available and/or disclose the provisions of this Consent Judgment to each employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities.

30. Defendants agree and are required to require any and all independent contractors to comply with the terms set forth in this Consent Judgment.

31. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

32. Defendants agree to pay to the Office of the Kansas Attorney General one thousand two hundred fifty dollars (\$1,250) in investigative fees and eight thousand seven hundred fifty dollars (\$8,750) in civil penalties for violations of the Wayne Owen Act and the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(c)(7), subject to suspension of

\$5,000 of the civil penalties upon compliance with the payment term of this Consent Judgment set out in the following paragraph.

33. Defendants agree and are required to pay on or before January 31, 2018, the judgment in the amount of five thousand dollars (\$5,000), consisting of one thousand two hundred fifty dollars (\$1,250) in investigative fees and three thousand seven hundred fifty dollars (\$3,750) in civil penalties. 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-17-1788 and delivered to Kathryn Carter, Assistant Attorney General, Office of the Kansas Attorney General, 120 SW 10th Ave., 2nd Floor, Topeka, KS 66612. Upon receipt of the payment recited in this paragraph, Plaintiff agrees to release and discharge Defendants from payment of the balance of the judgment of \$5,000, and all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the Wayne Owen Act, K.S.A. 50-6,139 *et seq.* based on Defendant's conduct prior to the effective date of this Consent Judgment. Defendants agree that failure by Defendants to make payment as set out in this paragraph is deemed a violation of this consent judgment.

OTHER PROVISIONS

34. 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.

35. 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.

36. 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.

37. 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.

38. Defendants represent that they have had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

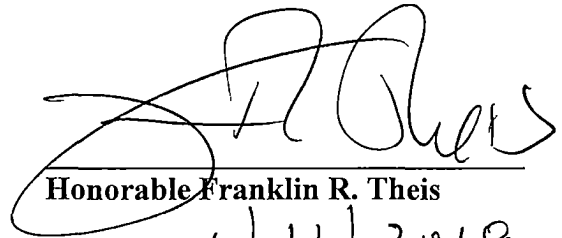
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing. The acts and practices alleged herein are declared to be unconscionable acts and practices, pursuant to K.S.A. 50-6,139b(d) and, further, to be violations of the Kansas Consumer Protection Act.

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 \$10,000.00, subject to suspension of \$5,000 as set out in paragraphs 32 and 33.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

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

IT IS SO ORDERED.



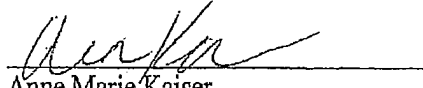
Honorable Franklin R. Theis
11/11/2018

Prepared and approved by:
PLAINTIFF:

/s/ Derek Schmidt
Derek Schmidt, KS #17781
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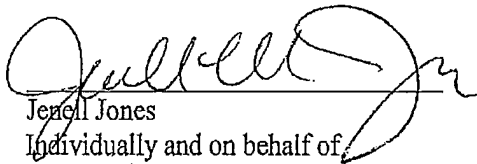
/s/ Kathryn Carter
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Attorney for Plaintiff

DEFENDANT:



Anne Marie Kaiser

Individually and on behalf of
Pearlie Mae's Compassion and Care LLC



Jerrell Jones

Individually and on behalf of
Pearlie Mae's Compassion and Care LLC

/s/ Kevin Shepherd

Kevin Shepherd KS#19947

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Attorney for All Defendants