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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
BURLINGTON COUNTY
DOCKET NO.: BUR-C- 90 -18

GURBIR S. GREWAL, Attorney General of
the State of New Jersey, and PAUL R.
RODRÍGUEZ, Acting Director of the New
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

ATA CONSULTING LLC d/b/a BEST
MEDICAL TRANSCRIPTION; TUSHAR
MATHUR, individually and as owner,
officer, director, manager, agent and
representative of ATA CONSULTING LLC
d/b/a Best Medical Transcription,

Defendants.

FINAL CONSENT JUDGMENT

Plaintiffs Gurbir S. Grewal, Attorney General of the State of New Jersey (“Attorney General”) and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs (“Director”) (collectively, “Plaintiffs”) have commenced this action by filing the Complaint herein.

WHEREAS the Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Director is charged with administering the CFA on behalf of the Attorney General;

WHEREAS the Attorney General, as parens patriae for the State and in its sovereign capacity, may, pursuant to 42 U.S.C. §1320d-5(d), enforce the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended by the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, and the Department of Health and Human Services Regulations, 45 C.F.R. §160 et seq. (collectively, “HIPAA”);

WHEREAS Plaintiffs have alleged that defendants ATA Consulting LLC d/b/a Best Medical Transcription (“Best Medical Transcription”) and Tushar Mathur (collectively, “Defendants”) have engaged in conduct in violation of HIPAA and the CFA in connection with the public exposure of doctors’ letters, medical notes and other reports concerning 1,654 individuals, including 1,617 New Jersey residents;

WHEREAS Defendants deny the allegations contained in the Complaint and maintain that they have been and continue to be in compliance with all applicable laws;

WHEREAS Plaintiffs and Defendants (collectively, “Parties”) have reached an amicable agreement hereby resolving the issues in controversy without the need for further action and to avoid the expenses associated with further investigation or litigation. As evidenced by their signatures below, the Parties do consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any

wrongdoing or admission of any violations of the CFA, HIPAA, or any other law as alleged by Plaintiffs.

The Court has reviewed the terms of this Consent Judgment and based upon the Parties' agreement and for good cause shown:

IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

JURISDICTION

1. The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to the Court at any time for such further order and relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

VENUE

2. Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Burlington County.

EFFECTIVE DATE

3. This Consent Judgment shall be effective on the date it is entered by the Court ("Effective Date").

DEFINITIONS

As used in this Consent Judgment, the following capitalized words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Judgment:

4. "Action" shall refer to the matter titled Gurbir S. Grewal, Attorney General of the State of New Jersey, and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs v. ATA Consulting LLC d/b/a Best Medical Transcription and Tushar Mathur, Superior Court of New Jersey, Chancery Division, Burlington County, Docket No.: BUR - C - 90-18, and all pleadings and proceeding related thereto, including the Complaint filed October 24, 2018.

5. "Administrative Safeguards" shall be defined in accordance with 45 C.F.R. §164.304 and are administrative actions, and policies and procedures, to manage the selection, development, implementation and maintenance of security measures to protect ePHI and to manage the conduct of the Covered Entity's or business associate's workforce in relation to the protection of the information.

6. "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

7. "Breach Notification Rule" shall refer to the HIPAA regulations that require Covered Entities to notify affected individuals of a breach of unsecured PHI, and Business Associates to notify Covered Entities of a breach of unsecured PHI, specifically 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and D.

8. "Business Associate" shall be defined in accordance with 45 C.F.R. §160.103 and includes Best Medical Transcription.

9. "Business Associate Agreement" or "BAA" shall mean the contract or other arrangement required by 45 C.F.R. §164.502(e)(2) and meeting the requirements of 45 C.F.R. §164.504(e).

10. "Covered Entity" shall be defined in accordance with 45 C.F.R. §160.103 and Includes VMG.

11. "Division" or "Division of Consumer Affairs" shall refer to the New Jersey Division of Consumer Affairs.

12. "Electronic Protected Health Information" or "ePHI" shall be defined in accordance with 45 C.F.R. §160.103, and Includes any information transmitted or maintained in electronic media that is created or received by a Covered Entity relating to the physical or mental health of an individual and for which there is a reasonable basis to believe the information can be used to identify the individual.

13. "Including" shall be construed as broadly as possible and shall mean "without limitation." This definition applies to other forms of the word "Including" such as "Include[s]."

14. "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c).

15. "New Jersey" or "State" shall refer to the State of New Jersey.

16. "Physical Safeguards" shall be defined in accordance with 45 C.F.R. §164.304 and are physical measures, policies and procedures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and from unauthorized intrusion.

17. "Privacy Rule" shall refer to the HIPAA regulations that establish national standards to safeguard individuals' medical records and other PHI that is created, received, used or maintained by a Covered Entity, specifically 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

18. “Protected Health Information” or “PHI” shall be defined in accordance with 45 C.F.R. §106.103, and Includes any information created or received by a Covered Entity relating to the physical or mental health of an individual and for which there is a reasonable basis to believe the information can be used to identify the individual.

19. “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

20. “Security Rule” shall refer to the HIPAA regulations that establish national standards to safeguard individuals’ ePHI that is created, received, used or maintained by a Covered Entity, specifically 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and C.

21. “Technical Safeguards” shall be defined in accordance with 45 C.F.R. §164.304 and means the technology and the policy and procedures that protect ePHI and control access to it.

PLAINTIFFS’ ALLEGATIONS

A. Background:

22. Virtua Medical Group, P.C. (“VMG”) is a New Jersey captive Professional Association of Virtua Health Inc. (“Virtua”), with headquarters located at 303 Lippincott Drive, Marlton, New Jersey 08053.

23. VMG is a network of physicians exclusively affiliated with Virtua, owning and operating more than fifty (50) medical and surgical practices located throughout southern New Jersey, including Virtua Gynecological Oncology Specialists with a main business address of 200 Bowman Drive, Voorhees, New Jersey; Virtua Surgical Group with a main business address of 212 Creek Crossing Boulevard, Hainesport, New Jersey; and Virtua Pain and Spine

Specialists with a main business address of 805 Cooper Road, Voorhees, New Jersey (collectively, "Affected VMG Practices").

24. ATA Consulting LLC d/b/a Best Medical Transcription ("Best Medical Transcription") is a now-dissolved State of Georgia for-profit company that previously held a main business address in Cumming, Georgia, which provided medical transcription services to the Affected VMG Practices. Best Medical Transcription and VMG entered into a BAA on May 26, 2011, which continued until March 3, 2016.

25. Tojo-Vikas International Pvt. Ltd. ("Tojo-Vikas") is a New Delhi, India company with a main business address of 4 Adchini, Mehrauli Road, New Delhi, Delhi 110017, India that Best Medical Transcription subcontracted with to perform medical transcription services for the Affected VMG Practices.

26. Upon information and belief, Tushar Mathur ("Mathur") is an individual who solely owned, operated and controlled Best Medical Transcription. Mathur maintains an address in Cumming, Georgia.

27. Upon information and belief, from 2011 through January 2016, the Affected VMG Practices submitted dictations of doctors' letters, medical notes and other reports to Best Medical Transcription through a telephone recording service. Best Medical Transcription then uploaded the recorded sound files (.wav) to a password protected File Transfer Protocol site. Tojo-Vikas logged into the FTP Site, listened to the sound files and transcribed the dictations into text documents (.doc), which were subsequently posted on the FTP Site. To obtain the documents, personnel at the Affected VMG Practices clicked a desktop icon and entered a user

name and password that logged them into the FTP Site. VMG did not have administrative access to the FTP Site, but Mathur did.

28. Upon information and belief, Defendants never entered into a BAA with Tojo-Vikas concerning the ePHI transmitted to it.

B. Exposure of Patient Treatment Records:

29. Upon information and belief, in or around January 1, 2016, the FTP Site was inadvertently reconfigured by Mathur during a software update, which changed security restrictions to permit anonymous access to the FTP Site, *i.e.*, no password was needed to access the files stored on the site.

30. After the FTP Site became unsecured, a web crawler from Google crawled and indexed the FTP Site using an algorithmic process. As a result, an individual searching Google using search terms that happened to be contained within the dictation information (*e.g.*, patients' names, doctors' names or the Affected VMG Practices' names) could have obtained search results with links to the files contained on the FTP Site. By clicking those links, individuals could download the complete files.

31. Upon information and belief, in or around January 15, 2016, Mathur identified that the FTP Site was permitting anonymous access, corrected the server misconfiguration, removed the files that had been on the FTP Site, and reset the password protection. Mathur's removal of the files rendered the links to those files inactive.

32. However, as shown below, Google retained cached indexes of the crawled files:

Oct 9, 2015 - I am writing this letter to introduce you to [REDACTED] who is a 74-year-old lady who was recently discharged from the hospital at Virtua ...

[DOC]12162013 [REDACTED].Ltr.doc - Tojo-Vikas International
[ftp://tojovikas.com/virtua.../12162013%20\[REDACTED\].Ltr.doc](ftp://tojovikas.com/virtua.../12162013%20[REDACTED].Ltr.doc)

↳ Cached

She remains under the care of Dr. Barucco of the Virtua Cardiology Group. In general, she has no symptoms related to her oncologic condition. She denies ...

[DOC] [REDACTED]-09222015-Ltr.doc - Tojo-Vikas International
[ftp://tojovikas.com/virtua.../Dr...\[REDACTED\]-09222015-Ltr.doc](ftp://tojovikas.com/virtua.../Dr...[REDACTED]-09222015-Ltr.doc)

↳ Cached

PHYSICIAN: Kavita Patel, MSN FAX: Virtua Family Medicine. PATIENT: [REDACTED] DATE: 08/22/2015. DATE OF BIRTH: [REDACTED] DEAR Ms. Patel, Ms.

[DOC]072911 [REDACTED].doc - Tojo-Vikas International
[ftp://tojovikas.com/virtua/Dr.../July-2011/.../072911 \[REDACTED\].doc](ftp://tojovikas.com/virtua/Dr.../July-2011/.../072911 [REDACTED].doc)

33. Upon information and belief, on January 22, 2016 at 9:30 a.m., VMG received a phone call from a patient indicating that her daughter had found portions of her medical records from Virtua Gynecological Oncology Specialists on Google. VMG followed up with the patient's daughter and the patient and began an investigation. At the time, VMG was not aware of the source of the information viewed by the patient's daughter.

34. Upon information and belief, on February 4, 2016, once VMG's internal investigation determined the source of the information reported by the patient's daughter and also determined that additional patients' information may have been indexed by Google, VMG contacted the New Jersey State Police. On the same day, VMG contacted the Newark Federal Bureau of Investigation ("FBI") to report the security incident and placed a request to remove the entire FTP Site from Google's cache.

35. Upon information and belief, on February 5, 2016, VMG e-mailed info@tojovikas.com to alert Tojo-Vikas that the FTP Site had apparently been compromised. Mathur responded to the e-mail, and VMG requested that Mathur contact Google to remove the cached information associated with the FTP Site. Additionally, VMG went to each of the 462

indexed VMG patient records it had found and identified on Google, and over a period of many hours, successfully removed them, one at a time, from Google.

36. Upon information and belief, Best Medical Transcription supplied VMG with a list of names of the VMG patients whose information may have been contained on the FTP Site at the time the FTP Site was allowing anonymous access. However, Mathur subsequently claimed that all of the files stored on the FTP Site were deleted, so the full extent of the exposed ePHI cannot be conclusively determined.

37. Moreover, upon information and belief, Mathur also claimed that the FTP Site log files were not maintained, so it cannot be conclusively determined how many users, if any accessed the FTP Site while it permitted anonymous access.

38. Additionally, upon information and belief, Plaintiffs have been unable to corroborate investigative findings made by Mathur, including how the FTP Site was reconfigured during an automatic update; the date the FTP Site was reconfigured to permit anonymous access; the date the FTP Site was reset with password protection; the date the files were removed from the FTP Site; and the date the files that were publicly exposed during the security incident were permanently deleted.

39. On March 11, 2016, VMG notified 1,654 potentially affected patients by mail and substitute notice, including 1,617 New Jersey residents, in accordance with HIPAA.

C. Alleged Violations of Law:

40. At all relevant times, Best Medical Transcription has been a Business Associate within the meaning of HIPAA. As a Business Associate, Best Medical Transcription was

required to comply with the HIPAA federal standards that govern the privacy of PHI and/or ePHI, including the Security Rule, the Breach Notification Rule and the Privacy Rule.

41. The Security Rule establishes national standards required to safeguard individuals' ePHI that is created, received, used or maintained by Covered Entities, and applies to Business Associates' handling of such ePHI.

42. The Breach Notification Rule establishes national standards that require Covered Entities to notify affected individuals of a breach of unsecured PHI, and Business Associates to notify Covered Entities of a breach of unsecured PHI.

43. The Privacy Rule establishes national standards required to safeguard individuals' medical records and other PHI that is created, received, used or maintained by Covered Entities, and select provisions apply to Business Associates' handling of such ePHI.

44. The Plaintiffs' investigation identified that Best Medical Transcription, as described above, engaged in multiple violations of the CFA, HIPAA, the Security Rule, the Breach Notification Rule and the Privacy Rule.

45. Best Medical Transcription failed to comply with the Security Rule's general rules, specifically:

- a. Best Medical Transcription failed to review and modify security measures as needed to continue the provision of reasonable and appropriate protection of ePHI in accordance with the implementation specifications of the Security Rule, in violation of 45 C.F.R. §164.306(e).

46. Best Medical Transcription failed to comply with the Security Rule's Administrative Safeguards, specifically:

- a. Best Medical Transcription failed to conduct an accurate and thorough risk assessment of the potential risks and vulnerabilities to the

confidentiality, integrity, and availability of ePHI it held, in violation of 45 C.F.R. §164.308(a)(1)(ii)(A);

- b. Best Medical Transcription failed to implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with the Security Rule, in violation of 45 C.F.R. §164.308(a)(1)(ii)(B);
- c. Best Medical Transcription failed to implement procedures to regularly review records of information system activity, such as audit logs, access reports and security incident tracking reports, in violation of 45 C.F.R. §164.308(a)(1)(ii)(D);
- d. Best Medical Transcription failed to implement procedures for the authorization and/or supervision of workforce members who work with ePHI or in locations where it might be accessed, in violation of 45 C.F.R. §164.308(a)(3)(ii)(A);
- e. Best Medical Transcription failed to implement procedures to determine that the access of a workforce member to ePHI is appropriate, in violation of 45 C.F.R. §164.308(a)(3)(ii)(B);
- f. Best Medical Transcription failed to implement procedures for terminating access to ePHI when the employment of, or other arrangement with, a workforce member ends, in violation of 45 C.F.R. §164.308(a)(3)(ii)(C);
- g. Best Medical Transcription failed to implement policies and procedures for granting access to ePHI, for example, through access to a workstation, transaction, program or process;
- h. Best Medical Transcription failed to implement policies and procedures that, based upon its access authorization policies, establish, document, review and modify a user's right of access to a workstation, transaction, program or process that includes ePHI, in violation of 45 C.F.R. §164.308(a)(4)(ii)(C);
- i. Best Medical Transcription failed to implement a security awareness and training program for all members of its workforce (including management), in violation of 45 C.F.R. §164.308(a)(5)(i);
- j. Best Medical Transcription failed to identify and respond to suspected or known security incidents; mitigate, to the extent practicable, harmful effects of security incidents that were known to it; and

document security incidents and their outcomes, in violation of 45 C.F.R. §164.308(a)(6)(ii);

- k. Best Medical Transcription failed to establish and implement procedures to create and maintain retrievable exact copies of ePHI, in violation of 45 C.F.R. §164.308(a)(7)(ii)(A);
- l. Best Medical Transcription failed to establish (and implement as needed) procedures to restore any loss of data, in violation of 45 C.F.R. §164.308(a)(7)(ii)(B);
- m. Best Medical Transcription failed to implement a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of ePHI that establishes the extent to which its security policies and procedures meet the requirements of the Security Rule, in violation of 45 C.F.R. §164.308(a)(8); and
- n. Best Medical Transcription failed to document a satisfactory BAA with its subcontractor through a written contract or other arrangement that meets the applicable requirements of the Privacy Rule, in violation of 45 C.F.R. §164.308(b)(3).

47. Best Medical Transcription failed to comply with the Security Rule's Physical Safeguards, specifically:

- a. Best Medical Transcription failed to implement procedures to control and validate a person's access to facilities based on their role or function, including control of access to software programs for testing and revision in violation of 45 C.F.R. §164.310(a)(2)(iii);
- b. Best Medical Transcription failed to implement policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation that can access ePHI, in violation of 45 C.F.R. §164.310(b); and
- c. Best Medical Transcription failed to implement physical safeguards for all workstations that access ePHI, to restrict access to authorized users, in violation of 45 C.F.R. §164.310(c).

48. Best Medical Transcription failed to comply with the Security Rule's Technical Safeguards, specifically:

- a. Best Medical Transcription failed to assign a unique name and/or number for identifying and tracking user identity, in violation of 45 C.F.R. §164.312(a)(2)(i);
- b. Best Medical Transcription failed to implement electronic procedures that terminate an electronic session after a predetermined time of inactivity, in violation of 45 C.F.R. §164.312(a)(2)(iii);
- c. Best Medical Transcription failed to implement a mechanism to encrypt and decrypt ePHI, in violation of 45 C.F.R. §164.312(a)(2)(iv);
- d. Best Medical Transcription failed to implement hardware, software and/or procedural mechanisms that record and examine activity that contain or use ePHI, in violation of 45 C.F.R. §164.312(b);
- e. Best Medical Transcription failed to implement policies and procedures to protect ePHI from improper alteration or destruction, in violation of 45 C.F.R. §164.312(c)(1);
- f. Best Medical Transcription failed to implement procedures to verify that a person or entity seeking access to ePHI is the one claimed, in violation of 45 C.F.R. §164.312(d);
- g. Best Medical Transcription failed to implement security measures to ensure that electronically transmitted ePHI is not improperly modified without detection until disposed of, in violation of 45 C.F.R. §164.312(e)(2)(i);
- h. Best Medical Transcription failed to implement a mechanism to encrypt ePHI in transmission whenever deemed appropriate, in violation of 45 C.F.R. §164.312(e)(2)(ii); and
- i. Best Medical Transcription failed to enter into a contract or other arrangement with its subcontractor that meets the applicable organizational requirements, in violation of 45 C.F.R. §164.314(a)(2)(iii).

49. Best Medical Transcription failed to comply with the Security Rule's policies and procedures and documentation requirements, specifically:

- a. Best Medical Transcription failed to retain for six years documentation of the policies and procedures implemented to comply with the Security Rule, in violation of 45 C.F.R. §164.316(b)(2)(i);
- b. Best Medical Transcription failed to make documentation of policies and procedures implemented to comply with the Security Rule available to those persons responsible for implementation, in violation of 45 C.F.R. §164.316(b)(2)(ii); and
- c. Best Medical Transcription failed to periodically review, and update as needed, documentation of policies and procedures implemented to comply with the Security Rule, in violation of 45 C.F.R. §164.316(b)(2)(iii).

50. Best Medical Transcription failed to comply with the Breach Notification Rule, specifically: Best Medical Transcription failed to notify VMG of the breach of unsecured PHI, in violation of 45 C.F.R. §164.410(a)(1).

51. Best Medical Transcription failed to comply with the Privacy Rule, specifically: Best Medical Transcription improperly used and/or disclosed PHI in contravention of its obligations under its BAA with VMG, in violation of 45 C.F.R. §164.502(a)(3);

52. At all relevant times, Defendants have offered for Sale and Sold Merchandise within the meaning of the CFA, specifically medical transcription services.

53. Defendants' public exposure of at least 462 patients' doctors' letters, medical notes and other reports constitutes separate and additional unconscionable commercial practices, in violation of the CFA, N.J.S.A. 56:8-2.

54. Further, Defendants' conduct described at Paragraphs 45, 46, 47, 48, 49, 50, and 51 constitutes separate and additional unconscionable commercial practices in violation of the CFA, N.J.S.A. 56:8-2.

BUSINESS PRACTICES AND INJUNCTIVE RELIEF

55. Best Medical Transcription shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended Including the CFA and HIPAA.

56. Best Medical Transcription shall not engage in conduct in violation of the CFA, HIPAA, the Security Rule, the Breach Notification Rule and/or the Privacy Rule.

57. Defendants represent and warrant that they initiated proceedings for the dissolution of Best Medical Transcription, Including the payment of creditors, liquidation of assets, winding down of affairs and filing of a certificate of dissolution, and have completed the dissolution of Best Medical Transcription prior to the Effective Date.

58. After the Effective Date, Mathur shall not manage or own any business in New Jersey, or serve as an officer, director, trustee, member of an executive board or similar governing body, principal, manager or stockholder owning 10% or more of the aggregate outstanding capital stock of all classes of any corporation in New Jersey.

SETTLEMENT AMOUNT

59. The Parties have agreed to a settlement of this Action in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) ("Settlement Amount").

60. The Settlement Amount comprises One Hundred Ninety One Thousand Four Hundred Ninety Two and 00/100 Dollars (\$191,492.00) in civil penalties, pursuant to N.J.S.A. 56:8-13 and HIPAA, and Eight Thousand Five Hundred Eight and 00/100 Dollars (\$8,508.00) in reimbursement of Plaintiffs' attorneys fees and investigative costs, pursuant to N.J.S.A. 56:8-11, N.J.S.A. 56:8-19 and HIPAA.

61. Defendants shall pay Thirty Thousand Five Hundred Eight and 00/100 Dollars (\$30,508.00) ("Settlement Payment") within 30 days of the Effective Date.

62. The Settlement Payment shall be made by credit card, wire transfer, bank check, money order, certified check, or cashier's check payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Elliott Siebers, Deputy Attorney General
New Jersey Department of Law and Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

63. Upon making the Settlement Payment, Defendants shall be immediately fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

64. Based on the Defendants' agreement to the business practices and permanent injunctive relief set forth at Paragraphs 55-58, as well as their representations regarding their current financial condition as set forth in financial disclosure forms submitted to the Plaintiffs, dated June 6, 2017 and June 14, 2017, Plaintiffs agree to suspend the balance of the Settlement

Amount, totaling One Hundred Sixty-Nine Thousand Four Hundred Ninety-Two and 00/100 Dollars (\$169,492.00) ("Suspended Penalty"), which shall be automatically vacated at the expiration of two (2) years provided:

- a. Defendants comply in all material respects with the terms and conditions set forth in this Consent Judgment;
- b. Defendants do not engage in any acts or practices in violation of the CFA and/or HIPAA; and
- c. Defendants make the Settlement Payment in accordance with Paragraph 61 of this Consent Judgment.

65. In the event Defendants fail to comply with Paragraphs 55-58, Plaintiffs shall provide the Defendants with written notice of default or noncompliance ("Notice of Noncompliance"), seeking payment of the entire Suspended Penalty. In any such Notice of Noncompliance, Plaintiffs shall provide the Defendants with the specific details of the alleged default or noncompliance, as well as any supporting documents, and shall afford Defendants thirty (30) days from receipt of the Notice of Noncompliance within which to cure the default or noncompliance ("Cure Period").

66. In the event of the Defendants' failure to cure any such default or noncompliance within the Cure Period, Defendants consent to the entry of a judgment for the entire Suspended Penalty, as well as any unpaid portion of the Settlement Payment. Upon entry by the Court of any such judgment, Plaintiffs shall then arrange for entry of such judgment as a State-wide lien in New Jersey and elsewhere, as appropriate.

DISMISSAL OF ACTION

67. The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

GENERAL PROVISIONS

68. This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

69. This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of this State.

70. The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of the Consent Judgment.

71. This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Plaintiffs and Defendants.

72. Except as otherwise explicitly provided for in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

73. If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

74. This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment avoid compliance with this Consent Judgment.

75. This Consent Judgment is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in, this Consent Judgment nor

any action taken hereunder shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Defendants; or (b) an admission by Defendants that any of their acts or practices described herein or prohibited by this Consent Judgment are unfair or deceptive or violate the CFA and/or HIPAA. This Consent Judgment is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all terms of this Consent Judgment; or (b) any action or proceeding by one of the Parties involving a Released Claim (as defined in Paragraphs 79 and 80) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

76. Nothing contained in this Consent Judgment shall be construed to limit or otherwise affect the rights of any persons who are not Parties to this Consent Judgment with respect to any of the matters contained herein.

77. The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

78. Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

RELEASE

79. In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Judgment and conditioned on Defendants making the Settlement Payment in accordance with Paragraphs 61 and 62, Plaintiffs hereby agree to release Defendants

from any and all civil claims or consumer related administrative claims, to the extent permitted by State law, which Plaintiffs could have brought prior to the Effective Date against Defendants for violations of the CFA and/or HIPAA arising out of the facts and allegations in the Complaint, as well as all of the matters specifically addressed in this Consent Judgment (“Released Claims”).

80. Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Judgment; and (c) any claims against Defendants by any other agency or subdivision of the State.

PENALTIES FOR FAILURE TO COMPLY

81. The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Judgment or to seek violations hereof or both.

COMPLIANCE WITH ALL LAWS

82. Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendants of their obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendants pursuant to any State or Federal law, regulations or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Defendants may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

NOTICES UNDER THIS CONSENT JUDGMENT

83. Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States Mail, Certified Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Plaintiffs:

Elliott M. Siebers
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street, 5th Floor
Newark, New Jersey 07102

For Defendants:

Laura A. Siclari, Esq.
McCusker, Anselmi, Rosen & Carvelli, P.C.
210 Park Avenue, Suite 301
Florham Park, New Jersey 07932

IT IS ON THE 30th DAY OF October, 2018 SO ORDERED,
ADJUDGED AND DECREED.



Paula T. Dow, P.J. Ch.

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY: