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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SACRAMENTO**

14 KAREN PARDIECK, on behalf of herself and  
15 all others similarly situated.

16 Plaintiffs,

17 v.

18 SUTTER HEALTH, a not for profit  
19 corporation, SUTTER MEDICAL  
20 FOUNDATION, and SUTTER PHYSICIAN  
21 SERVICES, DOES NOS. 1-100,

22 Defendants.

Case No.

**CLASS ACTION COMPLAINT**

Department  
Assignments

Case Management 44  
Law and Motion 53  
Minors Compromise 45

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**11/21/2011**  
jrbover  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2011-00114396**

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**CLASS ACTION COMPLAINT**

1 For her complaint against Defendants SUTTER HEALTH, a not for profit corporation,  
2 SUTTER MEDICAL FOUNDATION, SUTTER PHYSICIAN SERVICES, (collectively  
3 referred to herein as "Sutter") and Does Nos. 1-100, Plaintiff KAREN PARDIECK hereby  
4 alleges as follows:

5 **INTRODUCTION**

6 1. Sometime on or around October 15, 2011, a computer laptop containing the  
7 protected health information and personally identifiable information – PHI and PII i of more than  
8 4 million individuals went missing from offices belonging to Sutter Medical Foundation.  
9 Apparently, the laptop was stolen by a thief or thieves who also stole monitors and keyboards  
10 from the same office.

11 2. Sutter's failure to safeguard and secure its patients' private information violates  
12 California's Confidentiality of Medical Information Act (CMIA), which recognizes that  
13 unnecessary disclosures of medical data to third parties and negligent storage practices lead to an  
14 increased risk of serious data breaches.

15 3. Plaintiff is among the more than 4 million California residents whose private  
16 information was compromised by Sutter. She brings this lawsuit for injunctive relief and  
17 statutory penalties to ensure that in the future Sutter takes reasonable steps to protect patients'  
18 confidential medical information.

19 **JURISDICTION AND VENUE**

20 4. This Court has personal and subject matter jurisdiction over all causes of action  
21 asserted herein.

22 5. Venue is proper in Sacramento County under Code of Civil Procedure 395(a)  
23 based on the facts, without limitation, that Defendant resides in and conducts substantial business  
24 in this county, and the acts and omissions upon which this action is based occurred in part in this  
25 county.

26 **PARTIES**

27 6. Plaintiff Karen Pardieck is a California citizen residing in Sacramento, California.

28 7. Defendant Sutter Medical Foundation is a California corporation with its principal

1 place of business in Sacramento, California.

2 8. Defendant Sutter Health is a California corporation with its principal place of  
3 business in Sacramento, California.

4 9. Defendant Sutter Physician Services is a California corporation with its principal  
5 place of business in Sacramento, California.

6 10. The true names and capacities, whether individual, corporate, associate, or  
7 otherwise, of Defendants, DOES 1 through 100, inclusive, are unknown to Plaintiffs, who  
8 therefore sue such Defendants by fictitious names. Plaintiffs will amend this complaint to show  
9 the Defendants' true names and capacities when the same have been ascertained. Plaintiffs  
10 allege, upon information and belief, that each of the Defendants, DOES 1 through 100, inclusive,  
11 are legally responsible in some manner, negligently, in warranty, strictly, intentionally, or  
12 otherwise, for the events and happenings herein referred to and each of the Defendants  
13 proximately caused injuries and damages to Plaintiffs as herein alleged.

14 11. At all times herein mentioned, each of the Defendants was the agent, employee,  
15 principal, or employer of each remaining Defendants and was at all times relevant acting within  
16 the course and scope of said relationships and each Defendant has authorized, ratified and  
17 approved the acts of each of the remaining Defendants.

18 **BACKGROUND ALLEGATIONS**

19 12. Plaintiff is an individual whose healthcare records were in the possession of Sutter  
20 Health, a network of affiliated doctors and hospitals that treat patients throughout Northern  
21 California.

22 13. In the regular course of its business, Defendants collect and maintain a wide  
23 variety of personal information about patients, including information about their identities,  
24 finances, health, and medical history.

25 14. Sutter Physician Services (SPS) is an organization that provides billing and  
26 managed care services for health care providers with which it contracts, including facilities  
27 within the Sutter Health network.

28 15. Sutter Medical Foundation is a health-care provider within the Sutter Health

1 network. The Sutter Medical Foundation includes: Sutter Medical Group, Sutter Independent  
2 Physicians and Sutter North Medical Group.

3 16. In late November 2011, Plaintiff and at least 944,000 other individuals received a  
4 letter dated November 16, 2011 from Sutter Medical Foundation CEO Tom Blinn.

5 17. The stated purpose of the letters was to inform patients of an incident involving  
6 the personal information of Sutter patients.

7 18. The letter stated that "During the weekend of October 15-16, 2011, a password-  
8 protected unencrypted desktop computer was stolen from [Sutter]'s administrative offices in  
9 Sacramento. We discovered the theft on Monday, October 17, 2011, and immediately reported it  
10 to the Sacramento Police Department and began a thorough internal investigation."

11 19. The letter told Plaintiff and each proposed class member that the stolen computer  
12 did "contain some of your personal information, including name, address, date of birth,  
13 telephone number, email address (if one was provided to us), medical record number, dates of  
14 services, a description of your medical diagnoses and/or procedures used for billing purposes,  
15 and the name of your health insurance plan."

16 20. The breach was the result of a physical taking of the unencrypted laptop after a  
17 rock was thrown through the window of the Sutter Medical Foundation's administrative offices.

18 21. This is not the first time the Sutter system has been involved with a breach of  
19 privacy. The Sutter Gould Medical Foundation lost the medical information of 1,192 individuals  
20 in California as recently as May 23, 2005.

21 **CLASS ACTION ALLEGATIONS**

22 22. This action is brought behalf of the named Plaintiff and identified above and all  
23 similarly situated California citizens initially defined as:

24 All current California residents who were notified by a letter from  
25 Sutter Medical Foundation hat their health information was  
26 included on a missing Sutter Health laptop computer and all  
27 current California residents whose medical information was lost on  
28 the same laptop computer and who were not contacted by Sutter  
Medical Foundation.

Excluded from the Class are Defendants, any agent, affiliate, parent, or subsidiary of Defendants;

1 any entity in which Defendants have a controlling interest; any officer or director of Defendants;  
2 any successor or assign of Defendants; and any Judge to whom this case is assigned as well as  
3 his or her staff and immediate family.

4 23. This action is brought as a class action and may properly be so maintained  
5 pursuant to California Code of Civil Procedure section 382 and applicable case law. In addition  
6 to injunctive relief, this action seeks recovery of statutory damages.

7 24. **Numerosity.** The proposed class consists of more than 944,000 Sutter patients—  
8 far too many to join in a single action.

9 25. **Commonality.** Plaintiff's and class members' claims raise predominantly  
10 common factual and legal questions that can be answered for all class patients through a single  
11 class-wide proceeding. For example, to resolve any class member's claims, it will be necessary  
12 to answer the following questions. The answer to each of these questions will necessarily be the  
13 same for each class member.

- 14 a. Does Sutter's inability to locate the Sutter computer containing patient health  
15 care information constitute a disclosure of medical information under the  
16 CMIA?
- 17 b. Did Sutter act negligently in maintaining the unencrypted medical information  
18 of hundreds of thousands of patients on a single laptop computer?
- 19 c. Did Sutter negligently physically secure the laptop computer that contained  
20 the unencrypted medical information of hundreds of thousands of patients on  
21 a single laptop computer?
- 22 d. Did Sutter timely notify, in the most expedient time possible and without  
23 unreasonable delay, the patients whose medical information was  
24 compromised?

25 26. **Typicality.** Plaintiff's claims are typical of class members' claims because each  
26 arises from the same "information security incident," and the same alleged negligence on the part  
27 of Sutter in handling and securing its patients' medical information.

28 27. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class.

1 Their interests do not conflict with class patients' interests and they have retained counsel  
2 experienced in complex class action litigation and medical data privacy to vigorously prosecute  
3 this action on behalf of the class.

4 28. **Superiority.** Under the facts and circumstances set forth above, class action  
5 proceedings are superior to any other methods available for both fair and efficient adjudication of  
6 the rights of each member of the class, because joinder of individual members of the class is not  
7 practical and, if the same were practical, said class members could not individually afford the  
8 litigation, such that an individual litigation would be inappropriately burdensome, not only to  
9 said citizens, but also the courts of the nation.

10 29. Common questions of law and fact predominate over any questions affecting only  
11 individual patients and a class action is superior to individual litigation. The statutory damages  
12 available to individual plaintiffs are insufficient to make litigation addressing Defendants'  
13 medical privacy practices economically feasible in the absence of the class action procedure.

14 30. To process individual cases would both increase the expenses and cause delay not  
15 only to class members, but also to Defendants and the Court.

16 31. In contrast, a class action of this matter will avoid case management difficulties  
17 and provide multiple benefits to the litigating parties, including efficiency, economy of scale,  
18 unitary adjudication with consistent results and equal protection of the rights of each class  
19 member, all by way of the comprehensive and efficient supervision of the litigation by a single  
20 court.

21 32. Notice of the pendency of the action and of any result or resolution of the  
22 litigation can be provided to class members by the usual forms of publication or such other  
23 methods of notice as deemed appropriate by the Court.

24 33. Without class certification, the prosecution of separate actions by individual  
25 members of the classes described above would create a risk of:

- 26 a. Inconsistent or varying adjudications with respect to individual members  
27 of the classes that would establish incompatible standards of conduct for defendants; or  
28 b. Adjudications with respect to the individual members of the classes that

1 would, as a practical matter, be dispositive of the interests of the other members not  
2 parties to the adjudication, or would substantially impair or impede their ability to protect  
3 their interest.

4 34. In the alternative, class certification is appropriate because Defendants have acted  
5 or refused to act on grounds generally applicable to the class, thereby making final injunctive  
6 relief appropriate with respect to the patients of the class as a whole.

7 **FIRST CAUSE OF ACTION**

8 **Against Sutter For Violation of the Confidentiality of Medical Information Act**

9 35. Plaintiffs incorporate by reference and reallege all paragraphs alleged herein.

10 36. California's Confidentiality of Medical Information Act (CMIA), Cal. Civ. Code  
11 § 56 et seq., requires health care service plans like Sutter to protect its subscribers' confidential  
12 medical information and avoid disclosing the information to third parties except under very  
13 limited circumstances.

14 37. Sutter is a provider of health care subject to the CMIA under section 56.05(j) and  
15 56.06.

16 38. Sutter is responsible for losing or otherwise allowing unauthorized parties access  
17 to medical information of Plaintiff and the members of the proposed class. The loss and/or  
18 failure to properly secure this medical information constitutes an independent unauthorized  
19 release and disclosure or improper attainment of confidential medical information in violation of  
20 section 56.10 of the CMIA.

21 39. Sutter did not obtain Plaintiffs' or class members' written authorization to  
22 disclose their medical information to whomever obtained Sutter's laptop containing the  
23 healthcare information of Sutter patients. Pursuant to section 56.11 such disclosure must meet of  
24 the following requirements:

- 25 a. The authorization must be handwritten by the patient who signs it or in  
26 typeface no smaller than 14 point font;
- 27 b. The authorization must be clearly separate from any other language on the  
28 same page and must be executed by a signature that serves no other purpose

1 other than to execute the authorization;

2 c. The authorization must be signed by the patient or the patient's legal  
3 representative;

4 d. The authorization must specify the uses and limitations on the medical  
5 information to be disclosed;

6 e. The authorization must state the name or functions of the health care provider  
7 or service plan disclosing the information, the persons or entities authorized to  
8 receive the medical information, and the specific uses and limitations on the  
9 use of the medical information by the persons or entities authorized to receive  
10 the medical information;

11 f. The authorization must specify the date after which the recipient is no longer  
12 entitled to use the information; and

13 g. The authorization must advise the person signing the authorization of the right  
14 to receive a copy of the authorization.

15 40. Sutter has also or alternatively violated section 56.101 of the CMIA, which  
16 prohibits the negligent creation, maintenance, preservation, storage, abandonment, destruction,  
17 or disposal of confidential medical information.

18 41. Sutter failed to reasonably secure a single laptop that contained the personal  
19 health care information of 4.4 million patients treated by Sutter since 1995. Sutter cannot  
20 account for the laptop or explain what happened to it. This is the type of security incident and  
21 breach that cannot occur without negligence on the part of Sutter.

22 42. Among other things, Sutter is and was negligent by failing to store its patients'  
23 medical information in an encrypted form; failing to use reasonable security procedures to  
24 prevent unauthorized access to the computer; failing to use reasonable authentication procedures  
25 so that the medical information could be tracked in case of a security breach; and failing to  
26 implement and maintain reasonable security and tracking procedures to protect medical  
27 information from unauthorized access and disclosure.

28 43. Sutter is liable for its negligent handling of its patients' medical information.





1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiffs request of this Court the following prayer for relief, on  
3 behalf of themselves and the proposed class:

- 4 a. An order certifying the proposed class pursuant to California Civil Code section
- 5 382 appointing Plaintiffs and their counsel to represent the class;
- 6 b. Appropriate injunctive relief and/or declaratory relief, including an order
- 7 requiring Sutter secure and encrypt patient medical information and to stop
- 8 negligently storing, handling, and securing its patients' medical information, and
- 9 to notify patients whose medical information is lost in the most expedient and
- 10 timely manner without unreasonable delay.
- 11 c. Statutory damages of up to \$1,000.00 for each class member;
- 12 d. Attorneys' fees and costs of suit, including expert witness fees; and
- 13 e. Such other relief as the Court may deem appropriate.

14 DEMAND FOR JURY TRIAL

15 Plaintiffs hereby demand a trial by jury on all claims so triable.

16 DATED: November 21, 2011

Respectfully submitted,

17 By: 

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