



F I L E D

Superior Court of California
County of San Francisco

OCT 01 2018

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 305

A. DOE, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

A.J. BOGGS & COMPANY,

Defendant.

Case No. CGC-18-565456

ORDER OVERRULING DEFENDANT'S
DEMURRER TO FIRST AMENDED
COMPLAINT

Defendant A.J. Boggs & Company ("Defendant") demurred to Plaintiff A. Doe's ("Plaintiff") individual and class claims asserted in Plaintiff's First Amended Complaint ("FAC") pursuant to Code of Civil Procedure sections 430.10(d) and (e). The demurrer came on for hearing on September 25, 2018, and appearances are as noted in the record. Having considered the materials submitted in support and opposition and the oral argument of counsel, the Court overrules the demurrer.

I. REQUEST FOR JUDICIAL NOTICE

The Court rules on Defendant's requests for judicial notice as follows:

Defendant's request that this Court take judicial notice of Senate Bill No. 19 (as introduced on December 7, 1998) is granted pursuant to Evidence Code sections 452(c) and 453.

Defendant's request that this Court take judicial notice of the original Complaint and First Amended Complaint in this action is denied because such documents are part of the Court's record in this

1 case and therefore judicial notice is unnecessary.

2 Defendant's request that this Court take judicial notice of Defendant's counsel May 14, 2018 meet
3 and confer letter is denied.

4 **II. FIRST AMENDED COMPLAINT**

5 California's AIDS Drug Assistance Program ("ADAP") is a program that helps ensure that certain
6 low income people living with HIV have access to HIV medications. FAC ¶ 14. Approximately 30,000
7 people with HIV, including Plaintiff, are currently enrolled in ADAP. *Id.* ¶ 15.

8 Sometime in 2016, the California Department of Public Health ("CDPH") contracted with
9 Defendant to "administer the enrollment services" for ADAP. *Id.* ¶ 20. One of Defendant's duties was to
10 provide an "ADAP enrollment portal," which would allow case managers to perform a variety of tasks,
11 such as, enrolling clients in ADAP, entering medical information into the system, and accessing medical
12 information. *Id.* ¶ 22. The system was intended to maintain the private health information of ADAP
13 clients in a secure online database, accessible only by case managers and ADAP enrollees. *Id.* ¶ 23.

14 However, almost immediately after Defendant introduced its enrollment system on July 1, 2016,
15 the system began experiencing problems. *Id.* ¶¶ 28-29. Between August 2016 and November 2016, the
16 private health information of ADAP enrollees was "left vulnerable to unauthorized third-party access"
17 due to a "security vulnerability" in the system. *Id.* ¶ 30. On or about February 7, 2017, CDPH allegedly
18 discovered that sometime during the second half of 2016, unauthorized third parties accessed and viewed
19 the private health information of at least 93 ADAP enrollees, including Plaintiff. *Id.* ¶¶ 33-34. Plaintiff
20 received a letter dated April 7, 2017 captioned "Notice of Data Breach," which informing him that his
21 private health information, along with that of 92 other ADAP enrollees, might have been improperly
22 accessed via the enrollment website maintained by Defendant. *See* FAC, Ex. 1.

23 Based on the above allegations, Plaintiff asserts causes of action based on (1) Violation of the
24 California AIDS Public Health Records Confidentiality Act (Health & Safety Code § 121025), and (2)
25 Violation of the California Confidentiality of Medical Information Act ("CMIA") (Civil Code § 56 *et*
26 *seq.*). Plaintiff asserts these claims on behalf of himself and a class of persons whose "personal
27 information was held in the ADAP portal and accessed by unauthorized persons between July 2016 and
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1 November 2017.” *Id.* ¶ 41.

2 **II. LEGAL STANDARD**

3 A demurrer lies where “the pleading does not state facts sufficient to constitute a cause of action.”
4 Code Civ. Proc., § 430.10, subd. (e). The plaintiff “must set forth factual allegations that sufficiently state
5 all required elements of [a] cause of action ... and, [a]llegations must be factual and specific, not vague or
6 conclusory.” *Rakestraw v. Cal. Physicians’ Serv.* (2000) 81 Cal.App.4th 39, 43, citation omitted. In
7 general, “material facts alleged in the complaint are treated as true for the purpose of ruling on the
8 demurrer.” *C&H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1062. A pleading is
9 adequate so long as it apprises the defendant of the factual basis for plaintiff’s claim. *McKell v.*
10 *Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-70. Finally, allegations in a pleading must be
11 liberally construed, with a view to substantial justice between the parties. Code Civ. Proc., § 452.

12 With regard to the sufficiency of class allegations, there is a policy in favor of allowing class
13 allegations to survive the pleading stage. *Gutierrez v. California Commerce Club, Inc.* (2010) 187
14 Cal.App.4th 969, 976-79 citing *Tarkington v. California Unemployment Insurance Appeals Board* (2009)
15 172 Cal.App.4th 1494, 1510-11; *Beckstead v. Sup. Ct.* (1971) 21 Cal.App.3d 780, 783. Indeed, courts
16 have declined to determine class sufficiency at the pleading stage where it appears from the face of the
17 complaint that all liability issues can be determined on a class-wide basis. *See e.g., Gutierrez, supra*, 187
18 Cal.App.4th at 979. A demurrer to class allegations may only be sustained where, “assuming the truth of
19 the *factual allegations* in the complaint, there is no reasonable possibility that the requirements for class
20 certification will be satisfied.” *Schermer v. Tatum* (2016) 245 Cal.App.4th 912, 923 (emphasis in
21 original).

22 **III. ANALYSIS**

23 Defendant demurs to the FAC on the grounds that (1) Defendant is not subject to CMIA liability
24 because it is not a “provider of health care,” “health care service plan,” “pharmaceutical company,” or
25 “contractor;” (2) Plaintiff failed to allege an “actual breach” of medical information privacy, which is
26 required to state causes of action based on the CMIA and Health & Safety Code; and (3) Plaintiff’s claims
27 are not suitable for class treatment. For the reasons stated below, the Court disagrees with each of
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1 Defendant's contentions, and finds that Plaintiff sufficiently alleged his individual and class claims.

2 First, Plaintiff sufficiently alleged Defendant's status as "provider of health care" subject to the
3 CMIA. Civil Code section 56.06 provides as follows:

4 (a) Any business organized for the purpose of maintaining medical information...in order
5 to make the information available to an individual or to a provider of health care...for
6 purposes of allowing the individual to manage his or her information, or for the diagnosis
and treatment of the individual, shall be deemed to be a provider of health care subject to
the requirements of [the CMIA]." Civ. Code § 56.06.

7 Plaintiff alleges that the CDPH contracted with Defendant to administer enrollment services for ADAP,
8 and to provide an enrollment portal, which would allow ADAP enrollees and case managers to enter and
9 access private medical information in an online database. FAC ¶¶ 20-23. These allegations are sufficient
10 to demonstrate that Defendant, as a "business organized for the purpose of maintaining medical
11 information," is deemed a "provider of health care" subject to CMIA liability pursuant to Civil Code
12 section 56.06.

13 Second, Plaintiff sufficiently alleged an "actual breach" with respect to his private medical
14 information for purposes of CMIA and Health and Safety Code liability. Defendant argues that Plaintiff
15 failed to allege an actual breach with respect to Plaintiff's private medical information, which is necessary
16 to state claims based upon the CMIA and Health and Safety Code, and that Plaintiff merely alleged a
17 "risk" or "potential" breach. However, Plaintiff alleged that "the private health information of at least
18 ninety-three specific ADAP clients, including Plaintiff, was improperly accessed and viewed by at least
19 one unauthorized third party between July 2016 and November 2016." FAC ¶ 34. Taken as true, this
20 allegation is sufficient at this stage to state an actual breach of the private medical information of Plaintiff
21 and the putative class.

22 Third, the Court finds that Plaintiff sufficiently alleged claims that are suitable for class treatment.
23 As stated above, there is a policy in favor of allowing class allegations to survive the pleading stage, and
24 that a demurrer to class allegations may only be sustained where, there is no reasonable possibility that the
25 requirements for class certification will be satisfied. *See Gutierrez, supra*, 187 Cal.App.4th at 976-79;
26 *Schermer, supra*, 245 Cal.App.4th at 923. Here, Plaintiff's claims are based upon Defendant's alleged
27 negligent conduct that allegedly harmed all class members, including Plaintiff, in the same manner. In
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1 particular, Plaintiffs allege Defendant's ADAP enrollment portal allegedly failed to secure the online
2 privacy of the putative class' private medical information for a specific period of time, and that such
3 failure resulted in unauthorized third party access to that information. Indeed, common issues in this case
4 include whether there was a security breach of Defendant's ADAP database, and whether class members
5 are entitled to statutory damages/penalties as a result of such breach. These issues, the existence of any
6 individual defenses, and whether the class action vehicle is the superior method of adjudicating the
7 putative class members' claims, should not be determined at the pleading stage.

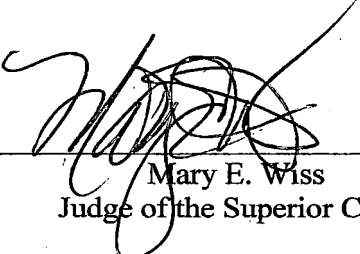
8 Lastly, the Court rejects Defendant's argument that the CMIA and Health and Safety Code
9 preclude this case from proceeding as a class action. Nothing in either statutory scheme's language
10 express any legislative intent to preclude class actions based upon violations of the CMIA and/or Health
11 and Safety Code. The cases cited by Defendant in its papers are distinguishable in that they do not
12 involve class actions, and they merely support the proposition that a party may not assert privacy
13 violations on behalf of third parties. *See Lugosi v. Universal Pictures* (1979) 25 Cal.3d 813; *Moreno v.*
14 *Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125. But the situation here is entirely different. Plaintiff
15 merely seeks to assert claims on behalf of a class of similarly situated individuals, who themselves, have
16 standing to assert such claims on their own behalves.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Defendant's demurrer is overruled. Defendant has 30 days from the
19 date of this Order to file a responsive pleading.

20 IT IS SO ORDERED.

21 Dated: October 1, 2018

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23 _____
24 Mary E. Wiss
25 Judge of the Superior Court
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Superior Court of California
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A. DOE, individually and on behalf of all
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**CERTIFICATE OF ELECTRONIC
SERVICE**

(CCP 1010.6(6) & CRC 2.260(g))

I, T. Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 1, 2018, I electronically served the ORDER OVERRULING DEFENDANT'S DEMURRER TO FIRST AMENDED COMPLAINT via File&ServeXPress® on the recipients designated on the Transaction Receipt located on the File&ServeXPress® website.

Dated: October 1, 2018

T. Michael Yuen, Clerk

By: 

Sean Kane, Deputy Clerk