

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203	DATE FILED: March 11, 2021 10:44 AM FILING ID: 7BFE0D86BC693 CASE NUMBER: 2021CV30835
STATE OF COLORADO, ex rel., PHILIP J. WEISER, ATTORNEY GENERAL Plaintiff, v. RETRIEVAL-MASTERS CREDITORS BUREAU, INC.; a New York Corporation, d/b/a AMERICAN MEDICAL COLLECTION AGENCY, Defendant(s)	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: Div.:
AGREED FINAL JUDGMENT	

Plaintiff, the State of Colorado through its Attorney General Philip J. Weiser, and Retrieval-Masters Creditors Bureau, Inc., d/b/a American Medical Collection Agency, have agreed to the stipulations and terms of this Agreed Final Judgment (Agreed Judgment) without admission of any facts or liability of any kind as alleged in Plaintiff's civil enforcement action.

A. PARTIES

1. Plaintiff is the State of Colorado represented by Philip J. Weiser, Attorney General. The Attorney General is authorized to enforce the State's consumer protection laws and applicable Personal Information Protection laws as alleged in Plaintiff's civil enforcement action and for convenience, noted here in Appendix A.

2. Defendant Retrieval-Masters Creditors Bureau, Inc. (RMCB) is a New

York corporation with its principal place of business located at 200 Pemberwick Road, Greenwich, CT 06831. Previously Defendant's principal place of business was 4 Westchester Plaza, Suite 110, Elmsford, NY 10523. As further detailed and stipulated below, Defendant also conducts business under the assumed name American Medical Collection Agency (AMCA).

B. DEFINITIONS

3. "Consumer Protection Acts" refers to the relevant state laws of the Participating States as cited in Appendix A.

4. "Business Associate" shall be defined in accordance with 45 C.F.R. § 160.103 and refers to a person or entity that provides certain services for or performs functions on behalf of "Covered Entities," and requires access to Protected Health Information to provide such services or perform such functions.

5. "Controlling interest" shall be defined as the holding of a majority or any degree of the ownership of a business sufficient to give the holder a means of exercising control over the management or operations of the business.

6. "Covered Entity" or "Covered Entities" shall be defined in accordance with 45 C.F.R. § 160.103 and is a health care clearinghouse, health plan, or health care provider that transmits health information in electronic form in connection with a transaction for which the United States Department of Health and Human Services has adopted standards and on whose behalf Defendant engaged in debt collection activities.

7. "Data Breach" refers to the intrusion into the Defendant's computer systems disclosed by the Defendant on or about June 2019 when Defendant

announced that an unauthorized user had gained access to Defendant's internal system between August 1, 2018 and March 30, 2019.

8. "Effective Date" shall be April 12, 2021.

9. "HIPAA" shall mean "Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and its implementing regulations, 45 C.F.R. §§ 160, 162, and 164," and includes (a) the "HIPAA Privacy Rule" which shall refer to the HIPAA Regulations that establish national standards to safeguard individuals' medical records and other Protected Health Information as defined at 45 C.F.R. Parts 160 and subparts A and E of Part 164 and (b) the "HIPAA Security Rule" which shall refer to the HIPAA regulations that establish national standards to safeguard individuals' Electronic Protected Health Information as defined at 45 C.F.R. Parts 160 and subparts A and C of Part 164.

10. "MDL" means the pending multi-district litigation, *In re: American Medical Collection Agency, Inc., Customer Data Security Breach Litigation*, 2:19-md-02904-MCA-MAH (D.N.J.) before Judge Madeline Arleo.

11. "Minimum Necessary Standard" shall refer to the requirements of the Privacy Rule as defined in 45 C.F.R. §§ 164.502(b) and 164.514(d).

12. "Participating States" or "States" refers to the states identified in Appendix A which is incorporated here for all purposes.

13. "Personal Information" or "PI" shall have the same definition as "Personal Identifying Information" as set forth in the Personal Information Protection Acts of the Participating States.

14. "Protected Health Information" or "PHI" is defined in accordance with

45 C.F.R. § 160.103.

15. “Personal Information Protection Acts” refers to the state laws of the Participating States as cited in Appendix A.

16. “Security Event” shall mean any compromise, or threat that gives rise to a reasonable likelihood of compromise, by unauthorized access or inadvertent disclosure impacting the confidentiality, integrity, or availability of Personal Information of consumers where such Personal Information is held or stored within Defendant’s networks, including but not limited to a data breach.

17. “Servers” refers to the physical computing device(s) used by Defendant to process, store and/or communicate data by and between multiple devices, including external devices as described by Defendant in its supplementary CID production of August 11, 2020.

18. “Third-Party Assessor” refers to an individual qualified as a Certified Information Systems Auditor or as a Certified Information Systems Security Professional who has at least five (5) years of experience evaluating the effectiveness of information system security or computer networks of Covered Entities.

C. STIPULATIONS

19. Plaintiff and Defendant agree to and do not contest the entry of this judgment and further agree that this Court has jurisdiction over this matter and waive all rights to appeal or otherwise challenge or contest the validity of this Agreed Final Judgment.

20. On or about June 2019 Defendant disclosed that an unauthorized user

had gained access to Defendant's internal system between August 1, 2018 and March 30, 2019. The Defendant's system included records with the personal information of over 20 million individuals from whom Defendant was attempting to collect a debt on behalf of various medical providers. The information in these records included names, dates of birth, social security numbers, financial information, and medical information of over 20 million individuals. On or about June 6, 2019, Defendant began mailing notice of the Data Breach to over seven million consumers. These notices offered consumers credit monitoring for a two-year period.

21. On the date that Defendant disclosed the Breach its principals were as follows: Russell H. Fuchs, President, Chief Executive Officer, Treasurer, Secretary, and Jeffrey S. Wollman, Chief Financial Officer (hereafter "Principals").

22. Defendant engaged in debt collection, and its debt collection activities included collection of medical debt under the trade name American Medical Collection Agency on behalf of Covered Entities as defined by HIPAA. As such, Defendant functioned as a Business Associate subject to the requirements of HIPAA and its Privacy Rules and Security Rules.

23. At all times relevant to this matter Defendant engaged in trade and commerce affecting consumers in the Participating States. Therefore, Defendant is subject to the States' consumer protection laws and applicable Personal Information Protection laws of the Participating States (*see* Appendix A).

24. The terms of this Agreed Final Judgment reflect a good faith agreement between Defendant and the Participating States to resolve the States' claims against Defendant related to the Data Breach. Defendant has agreed to enter into separate

judgments with substantially similar terms with each of the Participating States. Further, Defendant has agreed to make a total payment of \$21 million to the Participating States and the specific amount ordered by this judgment is recited below in paragraph 45. Plaintiff has agreed to release claims related to the Data Breach against Defendant as specifically recited below.

PROCEDURAL HISTORY IN RELATED BANKRUPTCY

25. On or about June 17, 2019, Defendant filed a Chapter 11 petition, *Voluntary Pet. for Non-Individuals Filing for Bankruptcy, In re: Retrieval-Masters Creditors Bureau, Inc., June 17, 2019, Doc. 1 19-23185-rdd (S.D.N.Y.)* (hereafter “the Bankruptcy Proceeding” or “Defendant’s Bankruptcy Proceeding”). For purposes of that proceeding Bradley E. Scher was appointed to serve as Defendant’s Chief Oversight Officer. Subsequently, Defendant and the States of Indiana and Texas filed a *Joint Motion to Adjourn Certain Motions Sine Die and Approving Related Agreement* in the bankruptcy court commemorating the parties’ agreement to proceed with the states’ request for Defendant to produce documents related to their investigation of the Data Breach.

26. On March 19, 2020, Defendant filed a Motion to Dismiss with structured settlement which was subsequently granted by the Bankruptcy Court.

27. Prior to entry of the order dismissing Defendant’s Bankruptcy Proceeding, Defendant filed Notice in the Bankruptcy Court of the proposed settlement terms reflected in this Agreed Final Judgment. After due consideration, on October 27, 2020 the court entered the attached *Order Pursuant to Fed. R. Bankr.*

P. 9019(a) Approving Settlement and Authorizing Acceptance of Form of Agreed Final Judgment Between the Debtor and Participating State Attorneys General

approving of these terms and of their filing and further ordered that “. . . for the avoidance of doubt, Debtor’s principal, Russell Fuchs, is authorized to execute the Judgment on behalf of Debtor, and that State Courts have jurisdiction to enter any Judgment that is signed by Debtor, Debtor’s counsel and the appropriate representative for the respective State.” (*see*, Appendix B).

D. INJUNCTIVE RELIEF

a. Compliance with State and Federal Laws

28. Defendant shall comply with the Consumer Protection Acts, the Personal Information Protection Acts, and the HIPAA Privacy and Security Rules, to the extent they each are applicable to the Defendant, in connection with its collection, maintenance, and safeguarding of Personal Information and Protected Health Information from any future breach of security involving the unauthorized disclosure of PI or PHI. As part of compliance with the Consumer Protection Acts, the Defendant shall not make any misrepresentations to consumers or to Covered Entities about the extent to which the Defendant can maintain the privacy and security of PI or PHI.

b. Information Security Program

29. To the extent that Defendant or its Principals currently or in the future manage or have principal responsibility or oversight for data security or privacy compliance in a business or have a controlling or managing interest in a business which collects or maintains Personal Information or Protected Health Information,

they shall within sixty (60) days of the effective date develop, implement, and maintain a written information security program (“Information Security Program” or “Program”) that is reasonably designed to protect the security, integrity, and confidentiality of PI and PHI that they collect, store, transmit, and/or maintain. At a minimum, the Program shall include the information security requirements in Paragraphs 30 through 33 below.

30. The Program must be documented, in writing, and must contain administrative, technical, and physical safeguards appropriate to (i) the size and complexity of the business; and (ii) the sensitivity of the PI and PHI that Defendant collects, stores, transmits, and/or maintains.

31. The Program shall permit users access to PI and PHI only to the extent necessary for each user to perform job functions and assignments.

32. The Program shall require the employment of a person who will serve the function of a Chief Information Security Officer (CISO) with responsibility to implement, maintain, and monitor the Program. The CISO shall have appropriate training, expertise, and experience in the field of information security to oversee the Program and further, will be charged with regular and direct reporting to the Chief Executive Officer regarding the status of the Program, the security risks faced, resources required for implementation of the Program, and the security implications of Defendant’s business decisions. At a minimum, the CISO shall provide a written report to the Board or Chief Executive Officer and Chief Financial Officer on a quarterly basis.

33. The Program shall include a documented written incident response plan

to prepare for and respond to any future Security Events. At a minimum, this plan shall provide for the following phases of a response: Preparation; Detection and Analysis; Containment; Notification and Coordination with Law Enforcement and Regulators; Recovery; Consumer Notification and Remediation; and Post-Incident Analysis.

c. Information Security Program Assessment

34. Within one hundred twenty (120) days of the Effective Date and annually for seven (7) years thereafter, with respect to any business which Defendant owns, has a controlling interest in, manages, or controls, Defendant shall obtain an annual assessment of its Program pertaining to the collection, storage, maintenance, transmission, and disposal of PI and PHI from a Third-Party Assessor.

35. The Third-Party Assessor shall prepare a report of findings (“Report”) and such report must include an assessment of Defendant’s compliance with each of the requirements of this Judgment; an assessment of Defendant’s response to any Security Events which may have occurred since the Effective Date; and documentation of the basis of the Report.

36. Each report shall be provided to the Connecticut Attorney General no later than fifteen (15) days after its completion. The Attorney General’s office shall, to the extent permitted by state law, treat each report as exempt from disclosure as applicable under the relevant public records laws of its state, provided that the Attorney General may provide a copy of each report to any of the Participating States which request the report. Each participating State requesting the report shall, to the extent permitted by its State’s law, treat such report and letter as exempt from

disclosure as applicable under the relevant public records laws of the requesting State.

E. COOPERATION WITH ATTORNEY GENERAL

37. **IT IS FURTHER ORDERED** that Defendant shall cooperate in good faith with the Plaintiff in connection with any other investigation or litigation related to or associated with the Data Breach described in Plaintiff's Complaint. More specifically, Defendant and its Principals' cooperation shall include, but not be limited to, the following:

- a. Responding to all reasonable inquiries for information from the State;
- b. Providing documents and other materials, including records and other tangible evidence reasonably requested by the States, including documents which Defendant was ordered to produce to MDL Parties pursuant to the order entered on June 17, 2020 in the Bankruptcy Proceeding (*Order Granting Joint Motion and Determining, On Conditions Set Forth Herein, That the Automatic Stay Does Not Prevent Service Of Third Party Subpoenas On The Debtor*).
- c. Providing the State with access to the Servers including access so that these can be imaged at the expense of the States and at a date and time agreed to by the Parties;
- d. Providing truthful declarations, affidavits, certification, and written testimony that may be reasonably requested by the State;
- e. Appearing, or causing its Principals to appear, and provide truthful testimony in interviews by telephone or video conferencing including at any trial,

deposition, or other proceeding, without the service of a subpoena, as may be reasonably requested by the Attorney General's Office and at the expense of the Attorney General's office; and

f. Making a good faith effort to cause or otherwise facilitate its Chief Oversight Officer, employees, representative or agents to similarly appear and provide testimony including by providing the State with contact information (e.g. address, email address and cell phone number) of such employees, representatives or agents.

38. For the avoidance of doubt, Defendant's obligation agreed to in the preceding paragraph is intended to incorporate the requirements of the June 17th Order such that:

a. Defendant shall promptly produce to the States copies of all electronically stored information and all hard copy documents in repositories, in each case in its possession that may contain documents or information responsive to the Subpoenas issued by the MDL parties as identified in the June 17th Order. Provided, however, that this paragraph requires Defendant to produce only such documents and information as Defendant produced to the MDL Parties and that production to the Participating States will be coordinated with the States of Indiana, Connecticut and Texas which, in accordance with their respective state laws and procedures, will make the documents available to other states. In the event that a single production to the States will require Defendant to incur costs in excess of \$1,000.00 or that the total costs of all production pursuant to this paragraph require Defendant to incur costs in excess of \$ 2,500.00, Defendant will provide notice of such to the States of

Indiana, Connecticut and Texas prior to incurring such. Defendant and these State agree to confer regarding mutually acceptable options to reduce or eliminate such costs for the Defendant, including, but not limited to, modifying the production request, finding alternative means of production, and/or the States bearing such costs. If Defendant and these States are unable to agree regarding a mutually acceptable means to reduce or eliminate such cost, the Participating States shall not deem Defendant's failure to produce a failure to cooperate as required by this Section.

b. Defendant shall preserve all repositories that may contain documents responsive to the Subpoenas.

c. Further, this specific production shall be deemed a supplementary response to the Civil Investigative Demand (CID) issued to the Defendant by the State of Indiana on June 10, 2019 subject to the relevant state law including the confidentiality protections of that state and any disputes which may arise regarding compliance with the CID or the rights and obligations of the Parties shall be determined by the appropriate state court of the issuing state consistent with the terms of this Agreed Final Judgment.

39. Defendant shall maintain the Servers in a secure manner at the locations disclosed in Defendant's supplemental CID response of August 2020. In the event that Defendant intends to relocate the Servers from locations reported in that response, Defendant shall provide notice of that proposed relocation to the Attorneys General of Indiana, Connecticut, and Texas at least ten (10) business days prior to that relocation. In the event that Defendant loses ownership, leasehold, or control of

such location or that the Servers are damaged, destroyed or compromised, Defendant shall provide notice and details promptly to the Attorneys General of Indiana, Connecticut, and Texas.

40. Defendant shall securely maintain all documents, reports, and records containing information or data evidencing and related to the Data Breach including data which reflects:

a. the names and related or associated information of all consumers whose information was compromised in the Data Breach (Consumer Information);

b. the policies and procedures related to any aspect of Defendant's information security program as it existed prior to the date of the Data Breach;

c. logs, internal, and external communications related to data security issues or concerns including communications with or regarding the Covered Entities on whose behalf Defendant engaged in debt collection activities; and

d. any audits performed by Covered Entities and communications to and from Covered Entities regarding the Data Breach or relating to data security.

41. **IT IS FURTHER ORDERED** that Defendant shall notify Plaintiff at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this Judgment, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment; the proposed filing of a bankruptcy petition; or a change in the corporate name or

address.

E. RELEASE

42. Plaintiff hereby releases Defendant and its Principals in their capacities as officers, directors, or employees of Defendant from any and all civil claims that the Attorney General could have brought that are related to and/or arising from the Data Breach, including but not limited to, any claims under the Consumer Protection Act, Personal Information Protection Act, and HIPAA. Nothing contained in this paragraph shall be construed to limit the ability of the Attorney General to enforce the obligations that Defendant, its officers, subsidiaries, affiliates, agents, representatives, employees, successors, and assigns have under this Judgment.

43. Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the Released Claims:

a. any criminal liability that Defendant has or may have in the Participating State;

b. any civil or administrative liability that Defendant has or may have to the Participating State under any statute, regulation or rule not expressly covered by the release in the preceding paragraph 42, including but not limited to, any and all of the following claims:

1. state or federal antitrust violations,
2. state or federal securities violations, and
3. state or federal tax claims.

44. This release shall be binding only upon Defendant and does not extend to, release, cover, or in any way apply to any entities on whose behalf Defendant

acted as an agent or Business Associate or on whose behalf it engaged in debt collection activities.

F. PAYMENT TO STATES

45. Judgment is hereby rendered against Defendant and in favor of the Plaintiff in the total amount of \$378,422.96. Collection of this civil penalty is suspended subject to the provisions noted below:

a. The Plaintiff's agreement to suspend collection of this judgment is expressly premised on the truth and accuracy of all sworn statements, declarations, and related documents submitted to the Bankruptcy Court by the Defendant.

b. Suspension of judgment will be lifted if, upon motion by the Plaintiff, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatements or omissions in its representations filed in the Bankruptcy Proceeding.

c. Suspension of judgment will be lifted if, upon motion by the Plaintiff, the Court finds that Defendant has failed to comply with the requirement of Section E, provided that prior to filing such motion, Plaintiff shall provide Defendant with written notice of the alleged failure and fifteen (15) business days to cure the failure or provide a written response to include documentation of compliance.

d. If this suspension is lifted, the Judgment amount becomes immediately due and payable to Plaintiff.

G. NOTICES

46. Unless otherwise provided, any notices or documents required to be sent to the Parties pursuant to this Judgment (including requests related to the

Cooperation requirements of the preceding Section E) shall be sent to the following address via overnight courier and electronic mail (unless after the Effective Date, a different address is communicated in writing by the party requesting a change of designee or address):

a. For the Attorney General: Chelsea A. Kelleher, Assistant Attorney General Fellow, 1300 Broadway, 10th Floor, Denver, CO 80203, 720-508-6202, chelsea.kelleher@coag.gov; Mark T. Bailey, Senior Assistant Attorney General II, 1300 Broadway, 10th Floor, Denver, CO 80203, 720-508-6202, mark.bailey@coag.gov.

b. For Defendant: Richard D. Weinberg, Esq.; Morvillo Abramowitz, P.C. RWeinberg@maglaw.com; 565 Fifth Avenue, New York, NY 10017.

I. GENERAL PROVISIONS

47. The Participating States will to the extent practicable coordinate their requests for cooperation directed to the Defendant with the goal of avoiding unnecessary expense.

48. Defendant shall not transfer, sell, or use Consumer PI or PHI for any purpose, provided that this does not prohibit Defendant from complying with its requirements under law, nor transferring PI to the owner pursuant to contract or PHI pursuant to a Business Associate Agreement.

49. The terms of this Judgment are not intended to be construed as an admission or concession or evidence of liability or wrongdoing on the part of Defendant.

50. Acceptance and entry of this Judgment is not an approval of any of Defendant's business practices and Defendant is enjoined from making any representations regarding such approval.

51. Defendant will not participate in any activity to form a separate entity for the purpose of engaging in acts or practices prohibited by this Judgment or for any other purpose that would circumvent this Judgment.

52. Subject to the release included herein, nothing in this Judgment shall be construed to limit the authority of the State to protect the interests of the State or its citizens, or to enforce any laws, regulations, or rules against Defendant.

53. Subject to the release recited herein, this Judgment does not affect any private right of action that any consumer, person, entity, or federal, state, or local governmental entity may have against Defendant.

54. Nothing in this Judgment waives or affects any claims of sovereign immunity by the State.

55. Defendant expressly waives any rights, remedies, appeals, or other interests related to a jury trial or any related or derivative rights under the Colorado or United States Constitutions or other laws as to this Judgment.

56. If any provision of this Judgment shall be held unenforceable, the Judgment shall be construed as if such provision did not exist.

57. This Judgment may be executed in counterparts that, together, will constitute one whole document.

58. Within 30 days of this Judgment's entry, Defendant shall provide a copy of this Judgment to each of its officers and directors, owners, employees, and

applicable agents. Once provided, Defendant shall, within 45 days of this Judgment's entry, provide a certification under oath to the State that affirms compliance with this paragraph.

59. All costs associated with this action and Judgment shall be borne by the party incurring same.

60. This Judgment sets forth the entire agreement between the parties.

IT IS SO ORDERED.

District Court Judge

APPROVED:

DEFENDANT, RETRIEVAL-MASTERS CREDITORS BUREAU, INC.

By: _____ - Date: _____

Russell Fuchs

Chief Executive Officer, Treasurer, and Secretary

[Additional approvals on separate pages]

APPROVED:

COUNSEL FOR DEFENDANT, RETRIEVAL-MASTERS CREDITORS
BUREAU, INC.

Date: _____

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[Additional approvals on separate pages]

APPROVED:

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[Additional approvals on separate pages]

List of Appendices

Appendix A:

Column A: List of Participating States

Column B: Citations for relevant state consumer protection laws

Column C: Citations for relevant state Personal Information Protection Acts

APPENDIX B:

Order of the Bankruptcy Court