

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

Sherry Russell, Individually, and on behalf  
of All Others Similarly Situated,

Plaintiff,

- against -

Healthalliance Hospital Broadway Campus,  
and Ciox Health, LLC,,

Defendants.

ECF Case 1:20-cv-1204 (GLS/ATB)

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441(a), 1446, and 1453, Defendant Ciox Health, LLC (“Ciox”), expressly reserving all rights otherwise to respond to this lawsuit, including but not limited to any objection to improper venue, hereby remove the above-captioned case, which was filed in the Supreme Court, County of Ulster, State of New York, and captioned No. EF2020-2203, to the United States District Court for the Northern District of New York.<sup>1</sup>

This action is removable on two separate and independent grounds. *First*, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff seeks relief for alleged violations of federal law, including the Health Insurance Portability and Accountability Act (“HIPAA”), Pub. L. No. 104-191, 110 Stat. 1936 (1996); its implementing regulations, Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462 (Dec. 28, 2000) (codified at 45 C.F.R. § 164.500 *et seq.*) (the “Privacy Rule”); and the Health Information Technology for Economic and Clinical Health Act (“HITECH”), Pub. L. No. 111-5, 123 Stat. 115 (2009) (codified

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<sup>1</sup> Defendant Healthalliance Hospital Broadway Campus has consented to removal.

at 42 U.S.C. § 17931 *et seq.*). *Second*, this Court has jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), and thus removal is proper under 28 U.S.C. §§ 1441 and 1453.

### REMOVAL JURISDICTION

1. Plaintiff Sherry Russell filed this putative class action on September 4, 2020 in the New York State Supreme Court for the County of Ulster. (*See* Compl. at 1) (attached as Ex. A.) Plaintiff caused Ciox to be served by way of Ciox’s registered agent on September 10, 2020, and caused Healthalliance Hospital Broadway Campus (“Healthalliance”) to be served on September 11, 2020.

2. Removal is timely under 28 U.S.C. § 1446(b). Ciox has filed this Notice of Removal within thirty (30) days of being served on September 10, 2020. *See Pietrangelo v. Alvas Corp.*, 686 F.3d 62, 65 (2d Cir. 2012) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999)).

3. Removal to this Court is proper because the New York State Supreme Court for the County of Ulster is within the geographic reach of the United States District Court for the Northern District of New York. 28 U.S.C. § 1441(a).

4. As required by 28 U.S.C. § 1446(a), Ciox has attached to this notice “a copy of all process, pleadings, and orders served upon” it. More specifically, attached are Plaintiff’s Summons and Complaint, as no other process, pleadings, or orders have been served in this case.

5. Upon filing this Notice of Removal, Ciox will provide written notification to Plaintiff’s counsel and will file a Notification of Removal (attaching a copy of this Notice of Removal) with the New York State Supreme Court for the County of Ulster.

## BACKGROUND

6. Plaintiff Sherry Russell, is a resident of the County of Ulster, State of New York and, upon information and belief, a citizen of New York. (Compl. ¶ 1.)

7. Defendant Ciox is a Georgia limited liability company with a principal place of business in Georgia, with Smart Holdings Corp. as its sole member. (See Compl. ¶ 11.) Smart Holdings Corp. is a Delaware corporation with its principal place of business in Georgia. As a result, Ciox is a citizen of Georgia and Delaware for purposes of diversity jurisdiction. See *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (holding that a corporation is a citizen of its place of incorporation and its “principal place of business,” which is “the actual center of direction, control, and coordination” of a corporation’s activities); *Bayerische Landesbank, N.Y. Branch v. Aladdin Cap. Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012) (“[A] limited liability company . . . takes the citizenship of each of its members.”).

8. Defendant Healthalliance Hospital Broadway Campus is a corporation organized and existing under the laws of the State of New York with a principle place of business in Ulster County, New York. (Compl. ¶ 5.)

9. On September 4, 2020, Plaintiff filed a Complaint in the New York State Supreme Court for the Count of Ulster, captioned *Sherry Russell, et al. v. Healthalliance Hospital Broadway Campus, and Ciox Health, LLC*, No. EF2020-2203. (See Compl.) Plaintiff caused Ciox to be served on September 10, 2020, and caused Healthalliance to be served on September 11, 2020.

10. Plaintiff is the wife of decedent Charles Russell. (Compl. ¶ 2.) As alleged, Mr. Russell had received care from Healthalliance, where he was allegedly belatedly diagnosed with the lung cancer that caused his death on October 28, 2019. (*Id.* ¶ 13.) After engaging the law firm of John H. Fischer, P.C. to pursue a potential lawsuit against Healthalliance for the delayed diagnosis, Plaintiff allegedly executed a medical release form on behalf of her late husband and

sought to obtain Mr. Russell’s medical records in electronic form from Healthalliance (*Id.* ¶¶ 13–15.) At all relevant times, Ciox allegedly had contracted with Healthalliance to “assume[] the duty of responding to medical records requests” made to Healthalliance. (*Id.* ¶ 10.) Plaintiff alleges that between April and September 2020, she made multiple requests for her late husband’s medical records from Healthalliance, and that nevertheless Healthalliance and Ciox “have failed and refused to provide” Mr. Russell’s medical records to Plaintiff. (*Id.* ¶ 18–19.) And although Plaintiff does not clearly allege that Ciox ever charged her for medical records or that she paid for such records—indeed, such an allegation would appear inconsistent with Plaintiff’s assertion that Defendants “failed and refused” to provide those records in the first instance—Plaintiff alleges that Ciox overcharged her for those records by “insist[ing] upon the payment of photocopy fees applicable to physical copies of medical records” despite the fact that Plaintiff sought only electronic records. (Compl. ¶¶ 28–29; *id.* ¶ 53 (“Defendants illegally charged \$.75 cent per page fee for electronic copies of medical records, which are distinct from paper copies and photocopies.”); *id.* ¶ 49 (“The plaintiffs were harmed by having to pay the defendant’s improper charges for simply obtaining electronic medical records.”).)

11. Plaintiff alleges that Ciox’s conduct in allegedly charging Plaintiff an inflated per-page fee for medical records in electronic format violates various provisions of federal law.<sup>2</sup> Specifically, Plaintiff claims that Ciox’s alleged charge of 75 cents per page of electronic records violated the “customary fee of \$6.50” that Plaintiff says HITECH, HIPAA and the Privacy Rule, 45 C.F.R. § 164.524(c)(4), establish for “direct requests” for their electronic records “made by a patient.” (Compl. ¶¶ 24, 52–54.)

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<sup>2</sup> Plaintiff does not appear to assert any claims based on Ciox and Healthalliance’s alleged refusal to provide Mr. Russell’s records in response to Plaintiff’s request for them, although Plaintiff asserts that this delay, too, violated federal and state law. (Compl. ¶ 16–17.)

12. Plaintiff filed this putative class action seeking to represent an apparently nationwide class defined as follows:

All adult patients or guardians of adult patients (or of the adult patient’s estate), parents or guardians of minor patients, or personal representatives or distributees of deceased patients, who: (a) requested medical records from the Kingston Hospital and/or Ciox Health, LLC; (b) by themselves, or through an attorney or any other individual or entity with the appropriate authorization; and (c) were charged by Kingston Hospital and/or Ciox Health, LLC, an unreasonable fee in excess of federal and/or New York State law for electronic copies of medical records, which are distinct from paper copies and photocopies.

(*Id.* ¶ 34.)

13. Plaintiff alleges that the members of putative class have suffered “economic harm” as a result of Ciox’s charges (*id.* ¶¶ 48, 54), and seeks monetary, compensatory, statutory, and putative damages—including an alleged statutory entitlement to damages of \$50,000 per violation—as well as injunctive relief (*id.* at p. 10).

#### FEDERAL QUESTION JURISDICTION

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (granting district courts original jurisdiction of all civil actions arising under the laws of the United States). Plaintiff’s two causes of action, respectively, seek relief based on Defendants’ alleged “violation of federal law by overcharging plaintiff for the plaintiff’s decedent’s electronic medical records” and for “violat[ing] the HITECH Act of 2019 when they overcharged the plaintiff.” (Compl. ¶¶ 48, 52.) “A case ‘aris[es] under’ federal law within the meaning of § 1331 . . . if ‘a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006) (quoting *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983)). Because Plaintiff’s claims, to the extent they differ, unambiguously arise under federal law—both because Plaintiff appears to allege that HITECH provides the cause of action

under which she seeks recovery, and because Plaintiff's claim "necessarily depends" upon a resolution of the scope of federal law—this Court has removal jurisdiction over this action.

### **JURISDICTION EXISTS UNDER THE CLASS ACTION FAIRNESS ACT**

15. Congress enacted CAFA to "ensur[e] 'Federal court consideration of interstate cases of national importance.'" *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (quoting Class Action Fairness Act of 2005, Pub. L. 109–2, § 2(b)(2), 119 Stat. 4, 5)). To further Congress' intent, the Supreme Court recently made clear that CAFA must be interpreted "broadly" in favor of removal and that "no antiremoval presumption" applies in "cases invoking CAFA." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). A "defendant bears the burden of establishing federal subject matter jurisdiction' by showing that there is a 'reasonable probability' that each of the jurisdictional prerequisites is satisfied." *Wurtz v. Rawlings Co., LLC*, 761 F.3d 232, 239 (2d Cir. 2014) (quoting *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56–57 (2d Cir. 2006)). However, "Defendants do not need to prove to a legal certainty that the amount in controversy requirement has been met. Rather, defendants may simply allege or assert [it] has been met . . . . In case of a dispute, the district court must make findings of jurisdictional fact to which the preponderance standard applies." *Dart*, 574 U.S. at 88–89 (quoting H.R. Rep. No. 112–10, p. 16 (2011)).

16. Under CAFA an action is removable to federal court if (1) there is minimal diversity; (2) the proposed class contains at least 100 members; and (3) the amount in controversy is at least \$5,000,000 in the aggregate. *See* 28 U.S.C. § 1332(d). All three requirements are satisfied here.

17. **Minimal Diversity of Citizenship.** Minimal diversity exists because Plaintiff is, upon information and belief, a citizen of New York and Ciox is not, but is rather a citizen of Georgia and Delaware. *See supra* ¶¶ 6–7; 28 U.S.C. § 1332(d)(2)(A) (minimal diversity met where

“any member of a class of plaintiffs is a citizen of a State different from any defendant”); *see Blockbuster*, 472 F.3d at 59 (same). Moreover, because Healthalliance is a citizen of New York—not of Georgia or Delaware—to the extent any class member shares citizenship with either Ciox or Healthalliance, that class member by definition will be “a citizen of a State different from” the other defendant. *See Blockbuster*, 472 F.3d at 58–59 (quoting 28 U.S.C. § 1332(d)(2)(A)).

18. **Proposed Class Contains At Least 100 Members.** Plaintiff brings this action on behalf of herself and an expansive class of “All adult patients or guardians of adult patients (or of the adult patient’s estate), parents or guardians of minor patients, or personal representatives or distributees of deceased patients”—meaning all people—who “themselves, or through an attorney or any other individual or entity with the appropriate authorization” “requested medical records” in electronic form from “the Kingston Hospital and/or Ciox Health, LLC” and who were charged “in excess of federal and/or New York State law for electronic copies,” which Plaintiff asserts is capped at \$6.50 per request. (Compl. ¶¶ 24, 34.) As Plaintiff explicitly (and correctly) pleads, “[t]he Class is comprised of hundreds, if not thousands, of individuals” (*id.* ¶ 36). *See Wurtz*, 761 F.3d at 239 (explaining that “jurisdictional facts” are evaluated “on the basis of the pleadings”).

19. **Matter In Controversy Exceeds The Sum Or Value Of \$5,000,000.** Plaintiff’s proposed class purports to include all individuals nationwide who themselves or through a third party requested electronic copies of medical records but were charged by Ciox in excess of \$6.50. Although not expressly stated, because the applicable statute of limitations is six years, *see* N.Y. C.P.L.R. 213(1), this class extends from 2014 to 2020. Because—pursuant to federal law, *see Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30 (D.D.C. 2020)—the \$6.50 cap that Plaintiff identifies does not apply to the vast majority of requestors that Plaintiff includes within her class definition, Ciox has, consistent with state and federal law, charged many thousands of requestors above \$6.50

for their requests each year. Across the six-year class period, the charges in excess of \$6.50 amount to well over \$5 million. This simple conclusion is borne out by the face of the Complaint. Plaintiff alleges that instead of the \$6.50 cap applicable to electronic records requests by the many thousands of class members, Ciox charges 75 cents per page. (Compl. ¶ 53.) Basic math shows that producing just 9 pages at that rate would exceed the purported federal fee cap by 25 cents. But it goes without saying that the records for someone like Mr. Russell—who was treated for lung cancer—and most anyone else who seeks medical records, far surpass just 9 pages. Indeed, even assuming Plaintiff’s class was limited only to New York-based requests that Ciox handled, Plaintiff’s class would encompass a significant number requests in which Ciox charged above \$6.50, and the total value of such charges that are in excess of the alleged \$6.50 maximum charge would easily exceed \$5 million. Of course, this is just the amount of total alleged overcharge for which the class would seek reimbursement; it does not include the compensatory or punitive damages that Plaintiff seeks, nor the legal fees or the impact of the injunction Plaintiff seeks that would bar Ciox from charging in excess of \$6.50 for all class members on any future request. *See, e.g., Acevado v. Citibank, N.A.*, No. 10 Civ. 8030 (PGG), 2019 WL 1437575, at \*12 (S.D.N.Y. Mar. 31, 2019) (“[T]he value of the requested relief is the monetary value of the benefit that would flow to the plaintiff if injunctive . . . relief were granted.” (quoting *Am. Standard, Inc. v. Oakfabco, Inc.*, 498 F. Supp. 2d 711, 717 (S.D.N.Y. 2007))).<sup>3</sup> Given the size of the putative class, the

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<sup>3</sup> Plaintiff also explicitly asserts an entitlement of \$50,000 per violation, up to \$1.5 million per year. (Compl. ¶ 32; *id.* p. 10.) Defendants’ calculation of the amount in controversy does not include this sum, which self-evidently would independently surpass the \$5 million amount in controversy threshold. This is because the provision upon which Plaintiff relies for these penalties—42 U.S.C. § 1320d-5—specifically provides that only “the Secretary shall impose” these penalties. Accordingly, they are not sums that plausibly can be recovered by the putative class in this action and so cannot count toward calculating the amount in controversy. *See, e.g., Kurzon v. Democratic Nat’l Comm.*, No. 16-CV-4114 (JPO), 2017 WL 2414834, at \*2 (S.D.N.Y. June 2, 2017) (holding that “implausible” allegation of quantum of punitive



monetary value of these requests, and the categories and types of damages sought by plaintiff, CAFA's amount in controversy requirement is unquestionably met. *See Dart*, 574 U.S. at 89 (holding that the “notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

20. None of CAFA's narrow exceptions apply. The local-controversy exception does not apply, for at least two reasons. First, Plaintiff's class definition is on its face not limited to New York citizens, but rather includes requestors nationwide, and so as pleaded it is not the case that “greater than two-thirds of the members” in the proposed class are citizens of New York, which is a prerequisite of invoking this exception. *See* 28 U.S.C. § 1332(d)(4)(A)(i)(I). Second, although Healthalliance is a New York citizen, its “alleged conduct”—contracting with Ciox—does not “form[] a significant basis for the claims asserted by the proposed plaintiff class.” *Id.* § 1332(d)(4)(A)(II)(bb). Rather, the sole causes of action are based on Ciox's alleged charging practices, in which Healthalliance is not alleged to have participated. (*See* Compl. ¶ 29 (listing only “Ciox Health, LLC” as the entity responsible for the improper fee); *id.* ¶ 27 (alleging that Healthalliance is only liable by virtue of Ciox's conduct as Healthalliance's agent).) The home-state controversy exception and discretionary exception do not apply for the same reason. *See* 28 U.S.C. § 1332(d)(4)(B) (requiring that “two-thirds or more of the members” of the plaintiff class and “the primary defendants, are citizens of the State in which the action was originally filed” for the home-state controversy exception); 28 U.S.C. § 1332(d)(3) (requiring in part that “the primary defendants are citizens of the State in which the action was originally filed” for the discretionary exception).

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damages does not “satisf[y] the amount in controversy requirement by a preponderance of the evidence”). Of course, to the extent the Court concludes otherwise, these sums alone suffice to satisfy CAFA's amount in controversy requirement.

**CONCLUSION**

For the foregoing reasons, Ciox removes this action from the New York State Supreme Court for the County of Ulster, to the United States District Court for the Northern District of New York.

Dated: September 30, 2020

Respectfully submitted,

*/s Jay P. Lefkowitz*

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*Attorneys for Defendant Ciox Health, LLC*

# Exhibit A

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ULSTER

Sherry Russell, Individually, and on behalf of All  
Others Similarly Situated,

Plaintiffs,

SUMMONS

vs.

Index No.

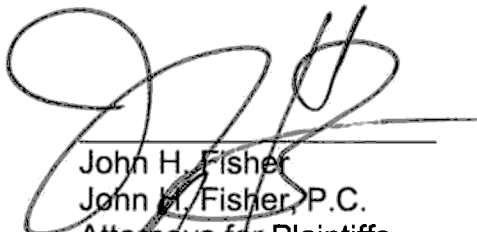
Healthalliance Hospital Broadway Campus, and  
Ciox Health, LLC,

Defendants.

To the above-named defendants:

**YOU ARE HEREBY SUMMONED** and required to serve upon plaintiffs' attorneys an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: September 4, 2020

  
John H. Fisher  
John H. Fisher, P.C.  
Attorneys for Plaintiffs  
278 Wall Street  
Kingston, New York 12401  
(845) 802-0047

Trial is desired in the County of Ulster.

The basis of venue designated above is that the plaintiff, Sherry Russell, resides in Ulster County.

**STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ULSTER**

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**Sherry Russell, Individually, and on behalf of All  
Others Similarly Situated,**

**Plaintiffs,**

**VERIFIED COMPLAINT**

**vs.**

**Index No.:**

**Healthalliance Hospital Broadway Campus, and  
Ciox Health, LLC,**

**Defendants.**

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Plaintiff, Sherry Russell, individually and on behalf of all others similarly situated, by and through her attorneys, John H. Fisher, P.C., as and for a verified complaint against the defendant, alleges as follows:

1. Plaintiff resides in the County of Ulster, State of New York.
2. Plaintiff, Sherry Russell, was the wife of Charles Russell.
3. Charles Russell died on October 28, 2019.
4. Plaintiff's decedent, Charles Russell, received nursing care, treatment, examinations, and assessment through defendant, Healthalliance Hospital Broadway Campus, through its physicians, agents, servants, employees, associates, and subcontractors between 2017 and 2019.
5. Upon information and belief, defendant, Healthalliance Hospital Broadway Campus, is and was a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York, with a principal place of business in Ulster County, State of New York.

6. Defendant, Healthalliance Hospital Broadway Campus, was and is engaged in conducting the business of operating a hospital and medical care facility in the City of Kingston, County of Ulster, State of New York.
7. In the furtherance of its business, the defendant, Healthalliance Hospital Broadway Campus, through its agents, servants, employees, and/or designees, would examine, diagnose, treat, and provide health care to patients admitted to its facility.
8. In the furtherance of its business, the defendant, Healthalliance Hospital Broadway Campus, through its agents, servants, employees, and/or designees, would examine, diagnose, treat, and provide health care to patients admitted to its facility.
9. Upon information and belief, defendant, Healthalliance Hospital Broadway Campus, held itself out to the general public in Kingston, New York, and its environs, to be a competent and skilled medical care facility for the purpose of providing and rendering medical care and treatment.
10. Upon information and belief, Healthalliance Hospital Broadway Campus entered into an agreement with Ciox Health, LLC (hereinafter "Ciox"), pursuant to which Ciox assumed the duty of responding to medical records requests.
11. Ciox Health, LLC is a Georgia corporation authorized to do business in New York and whose principal place of business is in Fulton County, State of Georgia.
12. The plaintiff's decedent was admitted to the Healthalliance Hospital Broadway Campus and received treatment at the Healthalliance Hospital Broadway Campus.

13. The plaintiff engaged the undersigned attorneys for representation in a potential lawsuit regarding the alleged delay in the diagnosis and treatment of lung cancer at the Healthalliance Hospital Broadway Campus, which resulted in the death of Charles Russell on October 28, 2019.
14. Plaintiff ordered the plaintiff's decedent's medical records from the Healthalliance Hospital Broadway Campus in April, 2020.
15. Plaintiff's request for the plaintiff's decedent's electronic medical records included a properly executed release authorization, power of attorney and certified death certificate.
16. 45 C.F.R. section 164.524(b)(2) states that the healthcare provider has 30 days to comply with the request for medical records.
17. Section 18 of New York's Public Health law states that the healthcare provider has 10 days to comply with the request for medical records.
18. On numerous occasions between April, 2020 and September 3, 2020, plaintiff contacted the Healthalliance Hospital Broadway Campus and Ciox Health, LLC to obtain the plaintiff's decedent's medical records.
19. To date, the Healthalliance Hospital Broadway Campus and Ciox Health, LLC have failed and refused to provide the plaintiff's decedent's medical records to the plaintiff.
20. The HITECH Act of 2009 specifically provides that the individual, not the healthcare provider, gets to choose the method for obtaining the medical records. 42 C.F.R. section 164.524(b)(1).

21. The HITECH Act of 2009 grants the individual the right to obtain their medical records in an electronic format. 42 C.F.R. section 164.524(b)(1).
22. When an individual requests access to private health information that the covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format. 45 C.F.R. section 164.524(c)(2)(i).
23. The fees that a healthcare provider can charge to respond to a HITECH medical records request are limited by 45 C.F.R. section 164.524(c)(4).
24. When direct requests are made by a patient, they have the right to insist upon the production of electronic medical records for the customary fee of \$6.50, pursuant to the HITECH Act of 2009. 45 C.F.R. section 164.524(c)(4).
25. Defendant, Healthalliance Hospital Broadway Campus, attempted to assign the responsibility of responding to patients' requests for their medical records to Ciox Health, LLC, a medical records management company based in the State of Georgia.
26. Defendant, Healthalliance Hospital Broadway Campus, is a covered entity under the HIPAA and the HITECH Act.
27. Defendant, Healthalliance Hospital Broadway Campus is liable for the violations of its business associate, Ciox Health, LLC, when they act as the covered entity's agent. 45 C.F.R. section 160.402(c).
28. Ciox Health, LLC refused to comply with the plaintiff's requests for the plaintiff's electronic medical records.



29. Ciox Health, LLC insisted upon the payment of photocopy fees applicable to physical copies of medical records.
30. Neither plaintiff, nor her attorneys, hired Ciox Health, LLC as their agent.
31. Neither plaintiff, nor her attorneys, consented to Ciox Health, LLC's charges.
32. 42 U.S.C. section 1320d-5 specifically provides for penalties of \$50,000 per violation up to a maximum of \$1,500,000 of fines for each calendar year.
33. Pursuant to Article 9 of the Civil Practice Law and Rules, plaintiff brings this action on her own behalf, and on behalf of all others similarly situated.
34. The Class represented by plaintiff, Sherry Russell, consists of: All adult patients or guardians of adult patients (or of the adult patient's estate), parents or guardians of minor patients, or personal representatives or distributees of deceased patients, who: (a) requested medical records from the Kingston Hospital and/or Ciox Health, LLC; (b) by themselves, or through an attorney or any other individual or entity with the appropriate authorization; and (c) were charged by Kingston Hospital and/or Ciox Health, LLC, an unreasonable fee in excess of federal and/or New York State law for electronic copies of medical records, which are distinct from paper copies and photocopies.
35. Class certification is appropriate for the benefit of the plaintiff and Class Members, under Article 9 of the Civil Practice Law and Rules, because: (a) members of the class are so numerous that joinder of all members is impractical; (b) there are questions of law and fact common to the Class; (c) the claims of the plaintiff are typical of the claims of the Class; and (d) plaintiff will adequately protect the interests of the Class.

36. The Class is comprised of hundreds, if not thousands, of individuals who were overcharged for the retrieval and copying of their electronic medical records, making joinder impractical.
37. The Class is composed of an easily ascertainable set of persons who were overcharged for the retrieval and copying of electronic medical records.
38. Class members are easily identifiable from records maintained by, and in the possession, of the defendant, or otherwise readily obtainable from third parties.
39. Questions of law and fact that are common to the plaintiff and Class Members' claims include: (a) whether defendant's conduct violated the HITECH Act of 2009; (b) whether plaintiff and the Class Members are entitled to equitable relief, and if so, the nature of such relief; (c) whether compensatory or other damages should be awarded to plaintiff and Class Members.
40. The plaintiff's claims are typical of the claims of the Class and these common claims predominate over any questions affecting only individuals.
41. The plaintiff, Sherry Russell, has the same interests as other members of the Class and will vigorously prosecute those interests on behalf of the Class.
42. Class certification is appropriate under CPLR section 901 because the defendant has acted, and refused to act, on grounds generally applicable to the Class, making relief appropriate for the benefit of the plaintiff and the Class.
43. Plaintiff and the Class seek injunctive relief in the form of defendant being enjoined from charging unreasonable fees for medical records in the future.
44. A class action is superior to other methods of adjudicating this controversy under Article 9 of the CPLR because: (a) the small amount of damages substantially

- limits Class Members' ability and motive to prosecute the action individually; (b) there has been little, if any, litigation already commenced by members of the Class to determine the questions presented; (c) even if any individual Class Members could afford separate litigation, it would be economically inefficient and unduly burdensome to the court, in which the individual cases would proceed; and (d) due to the fact that plaintiff and Class Members' claims arise from a common nucleus of operative facts, the class action device will provide the benefits of economies of scale and comprehensive adjudication by a single court.
45. The defendants' clear, knowing, grossly negligent and/or intentional violation of federal and New York law by overcharging plaintiff/Class Members for the electronic medical records has caused plaintiff/Class Members damages, including economic harm, a loss of interest and litigation fees and costs.
46. One or more of the exceptions, including the non-delegable duty and respondeat superior set forth in CPLR Section Sixteen Hundred Two, part 2(iv), applies to this action or claim for damages.

**AS AND FOR A FIRST CAUSE OF ACTION**

47. Plaintiff repeats and realleges those allegations in the complaint marked and designated as paragraphs "1" through "46" above, with the same force and effect as if more fully set forth herein, and further alleges:
48. Defendants' clear, knowing, grossly negligent and/or intentional violation of federal law by overcharging plaintiff for the plaintiff's decedent's electronic medical records has caused plaintiff damages, including, but not limited to, economic harm, a loss of interest, and litigation fees and costs.

49. The plaintiffs were harmed by having to pay the defendant's improper charges for simply obtaining electronic medical records.
50. By reasons of the foregoing, plaintiffs have been damaged in a sum of money having a present value that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction of this matter.

**AS AND FOR A SECOND CAUSE OF ACTION**

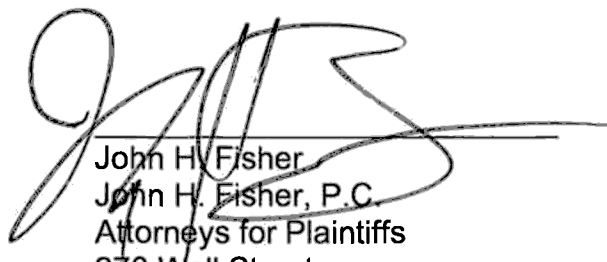
51. Plaintiffs repeat and reallege those allegations in the complaint marked and designated as paragraphs "1" through "50" above, with the same force and effect as if more fully set forth herein, and further allege:
52. Defendants violated the HITECH Act of 2019 when they overcharged the plaintiff.
53. Defendants illegally charged \$.75 cent per page fee for electronic copies of medical records, which are distinct from paper copies and photocopies.
54. As a direct and proximate cause of defendants' violation of HIPPA and the HITECH Act, plaintiff has suffered economic harm.
55. By reasons of the foregoing, plaintiffs have been damaged in a sum of money having a present value that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction of this matter.

**WHEREFORE**, the plaintiffs demand judgment against the defendants for the following relief:

- (a) Certifying a class of all persons who have been wrongfully denied access to their medical records by the defendants, pursuant to Article 9 of the Civil Practice Law and Rules;

- (b) For an order establishing a system to identify the Class Members. The details of such system should be evaluated after initial discovery has been conducted;
- (c) For an order directing the defendant to return to the Class Members all monies overcharged for copies of their medical records;
- (d) Enjoining the defendants from denying access to electronic medical records to the plaintiff and others similarly situated.
- (e) For an order prohibiting defendants from continuing to charge unreasonable fees in contravention of the HITECH Act of 2009;
- (f) For monetary damages of \$50,000 sustained per violation as a result of defendants' violation of HIPAA and/or the HITECH Act, and attorney's fees and costs reasonable incurred in this litigation;
- (g) For a reasonable sum of money to compensate the plaintiff for attorneys' fees, disbursements and costs incurred incident to the prosecution of this action; and
- (h) For punitive damages in an amount sufficient to deter and serve as an example to other entities not to engage in similar conduct.

Dated: September 4, 2020



John H. Fisher  
John H. Fisher, P.C.  
Attorneys for Plaintiffs  
278 Wall Street  
Kingston, New York 12401  
(845) 802-0047



CIVIL COVER SHEET

1:20-cv-1204

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Sherry Russell, Individually, and on behalf of All Others Similarly Situated (b) County of Residence of First Listed Plaintiff Ulster County (c) Attorneys John H. Fischer, P.C. 78 Wall Street, Kingston, New York 12401 (845) 802-0047

DEFENDANTS HealthAlliance Hospital Broadway Campus, and Ciox Health, LLC County of Residence of First Listed Defendant NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys Jay P. Lefkowitz, P.C. Kirkland & Ellis LLP 601 Lexington Ave, New York, NY 10022, (212) 446-4800

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF 1 1 2 2 3 3 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT REAL PROPERTY TORTS CIVIL RIGHTS PRISONER PETITIONS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Health Information Technology for Economic and Clinical Health Act ("HITECH"), 42 U.S.C. § 17931 et seq. Plaintiff alleges Defendants charged fees for providing medical records, in excess of limits allegedly set in HITECH

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 09/30/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Jay P. Lefkowitz

FOR OFFICE USE ONLY ANYNDC-5262706 RECEIPT # AMOUNT \$400.00 APPLYING IFP JUDGE GLS MAG. JUDGE ATB

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kingston, NY Hospital, Ciox Health Charged 'Excessive Fees' for Electronic Medical Records, Case Alleges](#)

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