

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202 Telephone: (720) 865-8301	DATE FILED: January 22, 2014 4:24 PM FILING ID: B0A3948426522 CASE NUMBER: 2014CV30282
Plaintiff: JANICE BRASHIER v. Defendants: COLORADO PERMANENTE MEDICAL GROUP, P.C., and KAISER FOUNDATION HEALTH PLAN OF COLORADO	▲ COURT USE ONLY ▲
<i>Attorneys for Plaintiff Janice Brashier:</i> Bradley A. Levin, No. 13095 Elisabeth L. Owen, No. 42556 ROBERTS LEVIN ROSENBERG PC 1512 Larimer, Suite 650 Denver, CO 80202 Telephone: (303) 575-9390 Facsimile: (303) 575-9385 E-Mail: bal@robertslevin.com elo@robertslevin.com	Case No: Division:
COMPLAINT AND JURY DEMAND	

Plaintiff, Janice Brashier, by and through her attorneys, **ROBERTS LEVIN ROSENBERG PC**, for her Complaint against Defendants Colorado Permanente Medical Group, P.C., and Kaiser Foundation Health Plan of Colorado, alleges and avers as follows:

PARTIES AND JURISDICTION

1. Plaintiff Janice Brashier ("Plaintiff" or "Ms. Brashier") is, and at all times pertinent herein was, a citizen of the State of Colorado.
2. Defendant Colorado Permanente Medical Group, P.C. ("CPMG") is a for-profit Colorado professional service corporation for the practice of medicine.
3. Defendant CPMG contracts with Defendant Kaiser Foundation Health Plan of Colorado ("Kaiser Foundation") to form Kaiser Permanente ("Kaiser"), Colorado's largest group-practice health care organization.

4. This Court has jurisdiction over the subject matter of this action.

5. Pursuant to C.R.C.P. 98(c), venue is proper in Denver County, which Ms. Brashier designates as the place of trial.

GENERAL ALLEGATIONS

6. In May 2008, Ms. Brashier was diagnosed with breast cancer, which has recurred.

7. Although Ms. Brashier's cancer appeared to be in remission for a number of months, she has recently learned that it has metastasized.

8. Prior to her diagnoses and still today, Ms. Brashier is employed as a Registered Nurse ("RN") at Kaiser's Highlands Ranch Medical Center.

9. Because Ms. Brashier is a Kaiser employee, she receives health care treatment and services through the Kaiser health care network.

10. Ms. Brashier receives her cancer treatment through Kaiser.

11. Kaiser maintains all patients' health care records electronically.

12. Kaiser's electronic health care records are accessible by most, if not all, Kaiser employees.

13. On February 24, 2009, while at work, Ms. Brashier reported a Kaiser Call Center employee's violation of a Kaiser policy based upon the federal Health Insurance Portability and Accountability Act ("HIPAA") to the Medical Office Administrator, Katy Hoxworth, as required by Kaiser policy.

14. Specifically, Ms. Brashier believed that the Call Center employee, Julie Velvin ("Ms. Velvin"), had violated the Kaiser HIPAA policy by using her position with Kaiser to access Ms. Velvin's child's confidential health information without the child's consent.

15. Within short order, and unbeknownst to her, Ms. Brashier's identity as the person who had reported the violation became known to Ms. Velvin.

16. On information and belief, Ms. Velvin identified Ms. Brashier as the person who had reported the HIPAA policy violation by accessing the routing history—an electronic record of all Kaiser employees who look at or work on any patient chart—of her son's chart.

17. Pursuant to Kaiser policy, anonymity of employees who report HIPAA and other ethics violations should be maintained.

18. Kaiser took no steps to ensure the confidentiality of Ms. Brashier's identity after she reported Ms. Velvin's HIPAA policy violation.

19. Pursuant to Kaiser policy, Kaiser employees are prohibited from retaliating against reporters of HIPAA policy violations.

20. Upon learning of Ms. Brashier's identity, Ms. Velvin began a vicious campaign of harassment designed to wreak devastation on Ms. Brashier's life. Ms. Brashier, however, was unaware of who was engaging in these acts.

21. Specifically, on March 15, 2009, shortly after Ms. Velvin was disciplined for violating Kaiser HIPAA policy, Ms. Brashier's house and car were vandalized with green paint.

22. Ms. Brashier filed a police report, but because she was unaware that her identity had been disclosed to Ms. Velvin, she was unable to provide the police with any leads as to the perpetrator. The investigation was closed.

23. On April 11, 2009, Ms. Brashier began to receive multiple book and magazine club subscriptions, accompanied by bills, none of which she had ordered. In total, Ms. Brashier received approximately 45 subscriptions.

24. Some of the books and magazines were pornographic and vulgar, which Ms. Brashier found particularly offensive as a mother of two daughters.

25. In addition to book and magazine subscriptions, on August 23, 2009, Ms. Brashier received a "Dolly Tea Set" in the mail, accompanied by a bill, which she also had not ordered.

26. Ms. Brashier estimates that she spent up to 20 hours per week during her recovery from breast cancer surgery in researching the dozens of magazines and publishing companies in order to contact them.

27. Many of the companies Ms. Brashier contacted provided a copy of the original order form, each of which was completed in unknown handwriting. Ms. Brashier later learned that the handwriting was Ms. Velvin's.

28. In the meantime, Ms. Brashier received threats from the publishers to turn her unpaid account over to collection agencies.

29. In her understandably fragile state, Ms. Brashier was forced to spend exorbitant amounts of time and energy protecting her credit. She also lost significant sleep and became anxious.

30. During October 2009, Ms. Brashier received both typed and hand-written letters through the mail. Several of the letters made vicious references to her cancer and impending death.

31. Although she was unaware of this fact at the time, Ms. Brashier later learned that it was Ms. Velvin who had sent the threatening letters.

32. Upon information and belief, Ms. Velvin had learned of Ms. Brashier's medical conditions by repeatedly accessing Ms. Brashier's confidential health information through Kaiser's electronic record-keeping system.

33. After approximately October 2009, the harassment abruptly stopped.

34. In the spring of 2012, however, Ms. Brashier again began to receive harassing and threatening letters. By this point, Ms. Brashier had remarried and consequently changed addresses. The letters she received were sent to her new address, demonstrating that whoever was sending them had been able to obtain Ms. Brashier's updated contact information.

35. Ms. Brashier also started to receive numerous calls from hospice facilities, mortuaries, and crematoriums inquiring about end of life care and funeral pre-planning for herself.

36. Apparently, these service providers had been contacted by someone pretending to be a friend or relative of Ms. Brashier's and requesting that they reach out to Ms. Brashier in her final days.

37. Ms. Brashier had only learned of her second cancer diagnosis days before receiving the series of above-referenced phone calls.

38. Upon inquiry to the service providers, Ms. Brashier learned that the calls from her purported friend or relative had been placed from Ms. Velvin's extension at Kaiser's Call Center in Aurora, Colorado.

39. On April 17, 2012, Ms. Brashier contacted Kaiser security and filed a Douglas County Sheriff's Office report concerning the harassing phone calls and mail she had been receiving.

40. Kaiser identified Ms. Velvin as the person who had called some of the mortuaries and crematoriums, as well as the magazine and book publishers, to request that information be sent or phone calls be made to Ms. Brashier.

41. On information and belief, Kaiser then collected approximately six hours of recorded phone conversations between Ms. Velvin and these service providers.

42. On April 19, 2012, Kaiser notified Ms. Velvin that she would be required to participate in "Joint Objective Discovery" ("JOD") concerning the incidents described above. Ms. Velvin was advised to bring union representation to the JOD.

43. On April 20, 2012, Ms. Velvin called and resigned her position with Kaiser, obviating the necessity of the JOD meeting.

44. Ms. Velvin reportedly admitted to a Kaiser Employee and Labor Relations Consultant, Jerron Lowe, that she felt ashamed of what she had done to Ms. Brashier.

45. Subsequently, the Douglas County District Attorney initiated criminal charges against Ms. Velvin. Specifically, Ms. Velvin was charged with theft of medical information and criminal stalking.

46. On information and belief, Ms. Velvin pled guilty to theft of medical information.

47. The packets of information Ms. Brashier received from hospice organizations, funeral homes, and mortuaries were particularly distressing to both Ms. Brashier and her young teen daughters, whom she had reassured she was doing well with her second bout of cancer.

48. Through the campaign of harassment, Ms. Brashier was constantly reminded of the potentially terminal nature of her breast cancer. Also, she feared for the lives of her children and fiancé.

49. Ms. Brashier's life and routine were dramatically affected by Ms. Velvin's vicious and targeted actions, which invaded Ms. Brashier's innate sense of security and changed her from the happy and trusting person she had been.

50. Ms. Brashier has suffered physical manifestations of the emotional harm she has suffered as a result of the harassment, including insomnia, and potentially the recurrence and spread of her cancer.

51. Kaiser failed to protect Ms. Brashier from the significant injuries she suffered when it failed to protect against disclosure of Ms. Brashier's identity as a whistleblower and failed to prevent Ms. Velvin from accessing Ms. Brashier's confidential medical information hundreds of times.

CLAIM FOR RELIEF
(Negligence)

52. Ms. Brashier hereby incorporates paragraphs 1-51 above as if fully set forth herein.

53. Kaiser had a duty to protect Ms. Brashier's identity as a reporter of a Kaiser policy violation. In addition, as Ms. Brashier's health care provider, Kaiser had a duty to protect against the unauthorized disclosure of Ms. Brashier's confidential health information.

54. Kaiser breached its duty of care because it failed to protect Ms. Brashier's anonymity as the party who had reported Ms. Velvin's ethical and HIPAA violation.

55. Kaiser also breached its duty of care because it failed to prevent the unauthorized disclosure of Ms. Brashier's confidential health information to Ms. Velvin.

56. Kaiser failed to put in place adequate systems and protections that would protect Ms. Brashier's anonymity as the reporter of a HIPAA policy violation committed by another employee and that would protect against the unauthorized disclosure of confidential health information.

57. As a direct and proximate result of Kaiser's actions, Ms. Brashier has suffered in the past, and will suffer in the future, injuries, damages, and losses in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Janice Brashier requests that this Court enter judgment in her favor and against the Defendants, and each of them, and award the following:

- A. Economic and non-economic damages in amounts to be proven at trial;
- B. All costs of this action, including expert witness fees and other proper costs;
- C. All interest, including prejudgment interest from the date of the injuries until satisfaction of judgment, and post-judgment interest on any award of damages to the extent permitted by law; and
- D. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands trial to a jury of six on all issues herein so triable.

Dated this 22nd day of January 2014.

ROBERTS LEVIN ROSENBERG PC

s/ Elisabeth L. Owen

Bradley A. Levin
Elisabeth L. Owen

ATTORNEYS FOR PLAINTIFF

Plaintiff's Address:

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