

NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	LIBERTY COUNTY, TEXAS
	§	
CVS PHARMACY, INC.	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION
AND APPLICATION FOR INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (hereinafter “Attorney General”), complaining of CVS PHARMACY, INC. (hereinafter “Defendant”) and would respectfully show the court as follows:

I. DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under a LEVEL 2 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

II. JURISDICTION

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendant for violations of Tex. Bus. & Com. Code Ann. § 35.48 (hereinafter “Section 35.48”) and the Identity Theft Enforcement and Protection Act, Chapter 48¹ of the Tex. Bus. & Com. Code Ann § 48.001, *et seq.* (hereinafter “Chapter 48”). Section 35.48 grants authority to the Attorney General

¹ In 2005, the Texas Legislature enacted three Chapters 48. The chapter cited above was titled “Identity Theft Enforcement and Protection Act” by Tex. S.B. 122, 79th Leg. R.S. (2005).

to seek injunctive relief and civil penalties for violations of their provisions.

III. DEFENDANT

3. Defendant, CVS PHARMACY, INC., a foreign corporation organized and existing under the laws of the State of Rhode Island, whose principal office is located at One CVS Drive, Woonsocket, Rhode Island 02895, Providence County, State of Rhode Island, is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, CT Corporation System, at 350 North St. Paul Street, Dallas, Dallas County, Texas, 75201.

IV. VENUE

4. Venue of this suit lies in Liberty County, Texas, for the following reasons:
- A. Under Tex. Bus. & Com. Code Ann. § 48.201(c)(1), venue is proper insofar as the violation occurred in Liberty County, Texas; and
 - B. Under Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1), venue is proper insofar as all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred in Liberty County, Texas.

V. PUBLIC INTEREST

5. Plaintiff, STATE OF TEXAS, has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in acts or practices, which violate Texas identity theft prevention laws, as set forth below, namely failing to protect and safeguard from unlawful use or disclosure sensitive personal information collected or maintained by Defendant in the regular course of business. Because these unlawful acts or practices expose Defendant's customers to the risk of identity theft, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public

interest.

5.1 The Texas Legislature in 2005 amended Section 35.48 and enacted the Identity Theft Enforcement and Protection Act to protect this public interest, noting that identity theft is one of the fastest growing crimes in the country, and Texas has one of the highest rates of identity theft in the United States.² Moreover, victims of identity theft spend an average of 600 hours over a two to four year period, as well as \$1,400 or more, trying to clear their names.³ Identity theft also imposes a substantial cost on businesses - in 2002 the total cost to businesses in the United States was estimated at almost \$50 billion⁴. The Legislature specifically recognized “dumpster diving” for discarded business records as a significant means through which identity theft is committed.⁵

VI. ACTS OF AGENTS

6. Whenever in this petition it is alleged that Defendant did any act it is meant that:
- A. Defendant performed or participated in the act, or
 - B. Defendant’s officers, agents, trustees, employees, representatives, or successors performed or participated in the act on behalf of and under the authority of the Defendant.

² See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted), and Tex. S.B. 122, 79th Leg. R.S. (2005) (Committee Report Unamended).

³ *Id.*

⁴ *Id.*

⁵ See Tex. C.S.H.B. 698, 79th Leg. R.S. (2005) (Committee Report Substituted).

VII. NATURE OF DEFENDANT'S OPERATION

7. Defendant is one of the largest retail store and pharmacy chains in the United States. Defendant operates about 6,200 stores in 43 states. It primarily engages in the retail sale of household consumer goods and prescription drugs.

VIII. FACTUAL ALLEGATIONS

8. In the regular course of its business operations, Defendant collects a large amount of personally identifiable information from its customers. Correspondingly, Defendant maintains copies of sales receipts and refund slips. In addition, as an active pharmacy, Defendant maintains health information such as prescription drug labels. Defendant in its "Notice of Privacy Practices" assures consumers as follows: "CVS/pharmacy wants you to know that nothing is more central to our operations than maintaining the privacy of your health information."

8.1 Based on information and belief, on or about March 19, 2007, thousands of Defendant's business records containing sensitive personal information of its customers, including personal identifying information, were found in a trash dumpster behind a CVS/pharmacy store located at 2321 N. Main Street in Liberty, Liberty County, Texas, that was either vacant or being vacated. These business records that were dumped included documents that contain the personal information of numerous CVS/pharmacy customers such as copies of sales receipts containing the customer's name, credit card account number, and expiration date, and copies of refund slips containing the customer's name, driver's license number, and telephone number. There were also several copies of prescription drug labels that contain the customer's name, date of birth, address, and telephone number, the prescriber's name address, and telephone number, the prescription identification number, the name of the customer's insurance company, and the name of the medicine as well as its

intended uses and other drug information.

8.2 Although the dumped business records bore sensitive personal information that could be used to steal the identities of its customers, Defendant failed to shred, erase, or otherwise make the sensitive personal information unreadable or undecipherable. Instead, these business records were placed in a trash dumpster that was readily accessible to the public.

IX. BUSINESS & COMMERCE CODE VIOLATIONS

9. Defendant, as alleged above, failed to safeguard the personal identifying information of its customers by shredding, erasing, or by other means, to make it unreadable or undecipherable before disposing of its business records, in violation of Tex. Bus. & Com. Code Ann. § 35.48(d).

9.1 Defendant, as alleged above, failed to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information that it collected or maintained in the regular course of business, in violation of Tex. Bus. & Com. Code Ann § 48.102(a).

9.2 Defendant, as alleged above, failed to destroy or arrange for the destruction of its customer records containing sensitive personal information within its control that were not retained by it, in violation of Tex. Bus. & Com. Code Ann § 48.102(b).

X. REQUEST FOR TRIAL BY JURY

10. Plaintiff, STATE OF TEXAS, requests a jury trial of this matter and tenders the jury fee to the Liberty County District Clerk's office pursuant to Tex. R. Civ. P. 216 and Tex. Gov't Code Ann. § 51.604.

XI. PRAYER

11. WHEREFORE, Plaintiff, STATE OF TEXAS, prays that Defendant be cited according to

Plaintiff's Original Petition

law to appear and answer herein, and upon trial of this cause, a PERMANENT INJUNCTION be issued restraining and enjoining Defendant, its successors, assigns, officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendant from disposing of business records that contain personal identifying information or sensitive personal information unless:

- A. Defendant modifies the personal identifying information by shredding or erasing it to make it unreadable or undecipherable;
- B. Defendant destroys its customer records containing sensitive personal information;
or
- C. Defendant arranges for the destruction of its customer records containing sensitive personal information by contracting with a business that is engaged in the disposal of confidential business records.

11.1 Plaintiff, STATE OF TEXAS, further prays that Defendant be required to implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by it in the regular course of business.

11.2 In addition, Plaintiff, STATE OF TEXAS, respectfully prays that upon final hearing this Court will:

- A. Order Defendant to pay civil penalties in favor of Plaintiff, STATE OF TEXAS, pursuant to Tex. Bus. & Com. Code Ann. § 35.48(f) and/or Tex. Bus. & Com. Code Ann § 48.201(a);
- B. Order Defendant to pay Plaintiff, STATE OF TEXAS, reasonable attorneys' fees, investigatory costs, and court costs pursuant to Tex. Gov't. Code Ann. § 402.006(c);

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and

C. Order Defendant to pay all prejudgment interest on all awards of civil penalties as provided by law; and

11.3 Further, Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff, STATE OF TEXAS, may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

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Deputy First Assistant Attorney General

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SPIN NO. 99999928
ATTORNEYS FOR THE STATE OF TEXAS

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, the undersigned Notary Public, on this day personally appeared Rodney Booker, who, after being duly sworn, stated under oath that he is an investigator for Plaintiff in this action, that he has read the factual allegations in the foregoing petition and has reason to believe, based on information and belief, that each and all said factual allegations are true and correct.

RODNEY BOOKER
INVESTIGATOR

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of _____, 2007.

NOTARY PUBLIC
State of Texas