

ENDORSED  
FILED  
San Francisco County Superior Court

MAY - 1 2013

CLERK OF THE COURT  
DENNIS TOYAMA  
BY: \_\_\_\_\_  
Deputy Clerk

1 Lori E. Andrus (SBN 205816)  
2 Jennie Lee Anderson (SBN 203586)  
3 ANDRUS ANDERSON LLP  
4 155 Montgomery Street, Suite 900  
5 San Francisco, CA 94104  
6 Telephone: (415) 986-1400  
7 Facsimile: (415) 986-1474  
8 lori@andrusanderson.com  
9 jennie@andrusanderson.com

6 Mark Burton  
7 Hersh & Hersh, P.C.  
8 601 Van Ness Avenue, Suite 2080  
9 San Francisco, CA 94102  
10 Telephone: 415-441-5544  
11 Facsimile: (415) 441-7586  
12 mark@hershlaw.com

13 *Attorneys for Plaintiff and the Proposed Class.*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF SAN FRANCISCO

16 KRISTEN NICODEMUS, On Behalf of  
17 Herself and All Others Similarly Situated,

18 Plaintiff,

19 v.

20 SAINT FRANCIS MEMORIAL  
21 HOSPITAL, HEALTHPORT  
22 TECHNOLOGIES, LLC, and DOES 1-  
23 100, inclusive,

24 Defendants.

Civil Case No.: CGC-13-531076

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

25 Plaintiff Kristen Nicodemus ("Plaintiff") brings this action against Defendants Saint  
26 Francis Memorial Hospital, and HealthPort Technologies, LLC ("HealthPort") (collectively  
27 "Defendants") on behalf of herself and all others similarly situated, and alleges on information  
28 and belief as follows:

///

1 **INTRODUCTION**

2 1. Plaintiff brings this action for injunctive, declaratory and equitable relief,  
3 damages, restitution and/or disgorgement of profits, and additional relief as may be appropriate,  
4 on behalf of herself and all others similarly situated (the “Class” or “Class Members”), more  
5 specifically defined below, who were charged more than the allowable amounts under California  
6 Evidence Code §1158 for retrieval and copying of medical records from four years prior to the  
7 filing of this complaint.  
8

9 **THE PARTIES**

10 2. Plaintiff Kristen Nicodemus (“Plaintiff”) is above the age of eighteen and  
11 at all relevant times has been a resident of San Francisco County, California. On or around  
12 August 16, 2012, Plaintiff’s attorney representative ordered copies of her medical records from  
13 St. Francis prior to the filing of any action or the appearance of a defendant in an action.  
14

15 3. Defendant Saint Francis Memorial Hospital (“St. Francis”) is a California  
16 corporation with its principal place of business in San Francisco County, California.

17 4. HealthPort Technologies, LLC is a Georgia corporation with its principal  
18 place of business in Alpharetta, Georgia.

19 5. HealthPort pioneered the release of information (“ROI”) industry.  
20 HealthPort was originally established in 1978 (as Smart Corporation) by founder John Smart.  
21 HealthPort was created to take advantage of the growing need in releasing protected health  
22 information (“PHI”). HealthPort has grown exponentially and with the introduction of the Health  
23 Insurance Portability and Accountability Act (“HIPAA”) in 1996. Today, HealthPort serves over  
24 10,000 healthcare facilities and more than one third of all hospitals nationwide. HealthPort  
25 processes over 62,000 medical record requests per day and more than 1,800,000 requests per  
26 year.  
27  
28

1           6.       HealthPort’s stated Vision is “to be the leading provider of technology and  
2 strategic solutions for the healthcare community.” Its Mission is “to partner with healthcare  
3 providers to improve patient care, business processes, and financial results by providing quality  
4 service, proven solutions, and trusted expertise.”

5           7.       HealthPort offers more to its healthcare provider customers than just  
6 administrative support. Indeed, HealthPort touts the fact that medical records requests can  
7 “generate revenue” for its ROI partners, including health care facilities and physicians’ offices.  
8 HealthPort encourages medical records departments to “become a revenue-generating  
9 department.”

10           8.       Plaintiff is ignorant of the true names or capacities of the defendants sued  
11 herein under the fictitious names DOES 1-100, inclusive.

12           9.       The true names, identities and capacities of Defendants DOES 1 through  
13 100, inclusive, whether individual, associate, corporate or otherwise, are unknown to Plaintiff at  
14 this time, who therefore sues said Defendants by fictitious names. When the true names and  
15 capacities of the fictitiously-designated Defendants are ascertained, Plaintiff will amend this  
16 Complaint to insert their true names, identities and capacities, together with the proper charging  
17 allegations. Plaintiff is informed and believe and thereon allege that each of the Defendants sued  
18 herein as a DOE is responsible in some actionable manner for the events and happenings herein  
19 alleged and thereby directly and legally responsible for causing the injuries and damages to the  
20 Plaintiff, as hereinafter set forth.

21           10.      At all times herein mentioned, Defendants, and each of them, were the  
22 agents, alter egos, servants, joint venturers, or employees for, and with the consent of his/her said  
23 Co-Defendants, and as such, acted within the course, purpose and scope of said agency, service or  
24 employment and said conduct was ratified by Defendants, and each of them.



**FACTUAL ALLEGATIONS**

1  
2           16.     On June 30, 2011, Plaintiff was admitted to St. Francis for treatment of  
3 injuries sustained when Plaintiff was burned by exploding fuel gel from a firepot.

4           17.     Thereafter, Plaintiff engaged an attorney for representation in a potential  
5 lawsuit.

6           18.     Plaintiff's attorney representative, or the attorney's agents and employees,  
7 caused Plaintiff's medical records to be ordered from St. Francis on or about August 16, 2012.  
8 Included with the request for records was an authorization form signed by Plaintiff.

9           19.     St. Francis did not respond to the request within five (5) days, as required  
10 by California Evidence Code § 1158.

11           20.     On August 29, 2012, Plaintiff's attorney sent St. Francis a letter asking if  
12 she should send her own copy service to copy the requested records. Plaintiff's attorney never  
13 received a response to this letter.

14           21.     On September 4, 2012, Plaintiff's attorney received an invoice from  
15 HealthPort in the amount of \$86.52 for Plaintiff's medical records.

16           22.     The \$86.52 included a \$30.00 "basic fee," a \$15.00 "retrieval fee." The  
17 invoice also reflected a charge of \$.25 per page for 101 pages of medical records (totaling  
18 \$25.25). The invoice also included a charge of \$10.30 for "shipping" and \$5.97 for "sales tax."

19           23.     HealthPort's invoice provided no explanation of the actual amount of  
20 clerical time spent identifying and collecting the medical records.

21           24.     California Evidence Code §1158 provides that only reasonable actual costs  
22 may be charged when an attorney orders medical records in advance of litigation. Those  
23 "reasonable costs" are specifically defined as: ten cents (\$0.10) per page for standard  
24 reproduction of documents of a size 8½ x 14 inch or less; twenty cents (\$0.20) per page for  
25 copying of documents from microfilm; reasonable clerical costs incurred in locating and making  
26 the records available to be billed at the maximum rate of sixteen dollars (\$16.00) per hour,  
27 counted on the basis of four dollars (\$4.00) per quarter hour or fraction thereof.

28           25.     Plaintiff's attorney promptly paid on Plaintiff's behalf in order to

1 expeditiously obtain the records, noting on the check that the payment was made “under protest -  
2 in violation of CA Evidence Code 1158.”

3 26. Neither Plaintiff, nor her attorney, hired HealthPort as their agent.

4 27. Neither Plaintiff, nor her attorney, voluntarily consented to HealthPort’s  
5 charges.

6 **CLASS ACTION ALLEGATIONS**

7 28. Plaintiff brings this lawsuit as a class action on behalf of herself and all  
8 other similarly situated members of the Class defined below pursuant to the Code of Civil  
9 Procedure §382. This action satisfies the ascertainability, numerosity, commonality, typicality,  
10 adequacy, predominance and superiority requirements of class actions. The Class is defined as  
11 follows:

12 All adult patients, guardians or conservators of adult patients (or of the adult  
13 patient’s estate), parents or guardians of minor patients, or personal representatives  
14 or heirs of deceased patients, who: (1) requested medical records from a hospital  
15 or other medical provider or employer (as enumerated in California Evidence Code  
16 §1158) located in California; (2) through an attorney at law or his/her  
17 representative; (3) prior to litigation, and (4) were charged by HealthPort more  
18 than: (a) ten cents (\$0.10) per page for reproduction of medical records 8½ x 14  
19 inches or less, (b) twenty cents (\$0.20) per page for reproduction of medical  
20 records from microfilm, (c) \$16.00 per hour (computed on the basis of four dollars  
21 per quarter hour or fraction thereof) for clerical costs, (d) actual postage charges,  
22 and/or (e) actual costs charged by a third person, from four years prior to the filing  
23 of this action.

24 29. Excluded from the Class are: (1) Defendants, any entity or division in  
25 which Defendants have a controlling interest, and its/their legal representatives, officers,  
26 directors, assigns and successors; (2) the judge to whom this case is assigned and any member of  
27 the judge’s immediate family; and (3) claims for personal injury, wrongful death and emotional  
28 distress and claims of consequential property damage and loss.

**Numerosity & Ascertainability**

30. The Class is comprised of tens of thousands, if not hundreds of thousands,  
of individuals who were overcharged for the retrieval and copying of their medical records,  
making joinder impracticable.



1 **Adequacy**

2 36. Plaintiff will fairly and adequately represent and protect the interests of the  
3 Class. Plaintiff has retained counsel highly experienced in prosecuting class actions.

4 37. Plaintiff and her counsel are committed to vigorously prosecuting this  
5 action on behalf of Class members and have the resources to do so. Neither Plaintiff nor her  
6 counsel has any interests adverse to those of the Class.

7 **Superiority**

8 38. A class action is superior to all other available methods for the fair and  
9 efficient adjudication of this controversy. Because of the relatively small size of the individual  
10 Class members' claims, absent a class action most Class members would likely find the cost of  
11 litigating their claims against Defendants to be prohibitive. The class treatment of common  
12 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in  
13 that it conserves the resources of the courts and the litigants, and promotes consistency and  
14 efficiency of adjudication.

15 39. The consideration of common questions of fact and law will conserve  
16 judicial resources and promote a fair and consistent resolution of this consumer problem.

17 40. Plaintiff and Class members were overcharged for the retrieval and  
18 copying of their medical records in California. Thus, the acts and omissions giving rise to  
19 Plaintiff's and the Class' claims arose in California. California's interest in this action and the  
20 conduct of corporations doing business in, contracting and effectuating business decisions in  
21 California is greater than that of any other state, and Class members are entitled to application of  
22 California law to their claims.

23 **FIRST CAUSE OF ACTION**

24 **Violations of California Evidence Code §1158**

25 41. Plaintiff incorporates by reference the allegations contained in the  
26 preceding paragraphs of this Complaint.

27 42. California Evidence Code §1158 provides:  
28



1 Whenever, prior to the filing of any action or the appearance of a defendant in an  
2 action, an attorney at law or his or her representative presents a written  
3 authorization therefor signed by an adult patient, by the guardian or conservator of  
4 his or her person or estate, or, in the case of a minor, by a parent or guardian of the  
5 minor, or by the personal representative or an heir of a deceased patient, or a copy  
6 thereof, a physician and surgeon, dentist, registered nurse, dispensing optician,  
7 registered physical therapist, podiatrist, licensed psychologist, osteopathic  
8 physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical  
laboratory technologist, or pharmacist or pharmacy, duly licensed as such under  
the laws of the state, or a licensed hospital, shall make all of the patient's records  
under his, hers or its custody or control available for inspection and copying by the  
attorney at law or his, or her, representative, promptly upon the presentation of the  
written authorization.

9 No copying may be performed by any medical provider or employer enumerated  
10 above, or by an agent thereof, when the requesting attorney has employed a  
11 professional photocopier or anyone identified in Section 22451 of the Business and  
12 Professions Code as his or her representative to obtain or review the records on his  
or her behalf. The presentation of the authorization by the agent on behalf of the  
attorney shall be sufficient proof that the agent is the attorney's representative.

13 Failure to make the records available, during business hours, within five days after  
14 the presentation of the written authorization, may subject the person or entity  
15 having custody or control of the records to liability for all reasonable expenses,  
including attorney's fees, incurred in any proceeding to enforce this section.

16 All reasonable costs incurred by any person or entity enumerated above in making  
17 patient records available pursuant to this section may be charged against the  
person whose written authorization required the availability of the records.

18 "Reasonable cost," as used in this section, shall include, but not be limited to, the  
19 following specific costs: ten cents (\$0.10) per page for standard reproduction of  
20 documents of a size 8 1/2 by 14 inches or less; twenty cents (\$0.20) per page for  
21 copying of documents from microfilm; actual costs for the reproduction of  
22 oversize documents or the reproduction of documents requiring special processing  
23 which are made in response to an authorization; reasonable clerical costs incurred  
24 in locating and making the records available to be billed at the maximum rate of  
sixteen dollars (\$16) per hour per person, computed on the basis of four dollars  
(\$4) per quarter hour or fraction thereof; actual postage charges; and actual costs,  
if any, charged to the witness by a third person for the retrieval and return of  
records held by that third person.

25 Where the records are delivered to the attorney or the attorney's representative for  
26 inspection or photocopying at the record custodian's place of business, the only fee  
27 for complying with the authorization shall not exceed fifteen dollars (\$15), plus  
28 actual costs, if any, charged to the record custodian by a third person for retrieval  
and return of records held offsite by the third person.



1 disgorgement of funds paid by Plaintiff and Class Members in excess of the allowable amounts  
2 under California Evidence Code §1158.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself and the members of the Class, demands  
5 judgment against Defendants as follows:

6 a. An order certifying the Class and any other appropriate subclasses,  
7 and designating Plaintiff as the Representative of the Class and Plaintiff's counsel as Class  
8 Counsel;

9 b. Restitution and disgorgement to the extent permitted by applicable  
10 law, together with interest thereon from the date of payment, to the victims of such violations;

11 c. Monetary damages, including, but not limited to any compensatory,  
12 incidental or consequential damages commensurate with proof at trial for the acts complained of  
13 herein;

14 d. To the extent that Defendants have continued to overcharge  
15 individuals in the manner challenged in this action, an order requiring Defendants to immediately  
16 cease their wrongful conduct as set forth above, as well as enjoining Defendants from continuing  
17 to overcharged individuals via the unlawful and unfair business acts and practices complained of  
18 herein;

19 e. A declaration that Defendants are financially responsible for  
20 notifying all Class members of the pendency of this action;

21 f. Reasonable costs and attorneys' fees;

22 g. Statutory pre-judgment interest; and

23 h. All other relief the Court deems just and appropriate.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff, on behalf of herself and the Class, demands a jury trial in this action for all of the  
26 claims so triable.

27 //


28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATE: May 1, 2013

ANDRUS ANDERSON LLP

By:

  
Lori E. Andrus

Lori E. Andrus (SBN 205816)  
Jennie Lee Anderson (SBN 203586)  
ANDRUS ANDERSON LLP  
155 Montgomery Street, Suite 900  
San Francisco, CA 94104  
Telephone: (415) 986-1400  
Facsimile: (415) 986-1474  
[lori@andrusanderson.com](mailto:lori@andrusanderson.com)  
[jennie@andrusanderson.com](mailto:jennie@andrusanderson.com)

Mark Burton  
Hersh & Hersh, P.C.  
601 Van Ness Avenue, Suite 2080  
San Francisco, CA 94102  
Telephone: 415-441-5544  
Facsimile: (415) 441-7586  
[mark@hershlaw.com](mailto:mark@hershlaw.com)

*Attorneys for Plaintiff and the Class*