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27 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
28 FOR THE COUNTY OF SAN FRANCISCO

19 A. DOE, individually and on behalf of all others  
20 similarly situated,

21 Plaintiff(s),

22 v.

23 A.J. BOGGS & COMPANY,

24 Defendant.

**FILED**  
San Francisco County Superior Court  
APR 03 2018

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

**CGC-18-565456**

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR DAMAGES**

1. Violation of the California AIDS Public Health Records Confidentiality Act (Health & Safety Code § 121025)
2. Violation of Confidentiality of Medical Information Act (Civil Code § 56, *et seq.*)

*[Jury Trial Demanded]*

CASE No.:

1 **CLASS ACTION COMPLAINT**

2 Plaintiff ALAN DOE (“Plaintiff”), a pseudonym used to protect the privacy of the named  
3 plaintiff, brings this class action on behalf of himself and all others similarly situated against  
4 defendant A.J. Boggs & Company (“A.J. Boggs”) and alleges as follows:

5 **INTRODUCTION**

6 1. This class action is brought to vindicate the privacy rights of Plaintiff and all other  
7 persons living with HIV whose identities, personal data, and medical information were accessed by  
8 unauthorized individuals because Defendant A.J. Boggs failed to adequately protect and secure this  
9 highly sensitive information.

10 2. Between August 2016 and November 2016, Plaintiff and the putative class members  
11 were participants in California’s AIDS Drug Assistance Program (“ADAP”). The program  
12 participants relied on A.J. Boggs, the company contracted to administer program enrollment, to aid  
13 them in procuring life-saving medications to keep HIV under control.

14 3. Plaintiff and other program participants trusted A.J. Boggs—and A.J. Boggs had a  
15 legal obligation—to keep their personal medical information, including their identities as HIV-  
16 positive individuals, strictly confidential.

17 4. Instead of treating the private health information of its clients with the care it was due,  
18 A.J. Boggs left the database containing this information open to exploitation. As a result of A.J.  
19 Boggs’s negligent or willful conduct, ninety-three participants in California’s ADAP program had  
20 their private information accessed by individuals who subsequently could reveal participants’ HIV  
21 status to an unknown number of additional individuals.

22 5. Public health officials and others working in the field understand that HIV-related  
23 stigmas are key drivers of the HIV/AIDS epidemic. Such stigmas disincentivize people from  
24 learning their HIV status, discourage them from engaging in care after being diagnosed with HIV,  
25 and make it more difficult for those engaged in care to remain adherent to their HIV medications.

26 6. While HIV-related stigma has abated somewhat within the general population, it has  
27 been dishearteningly persistent—particularly within communities most affected by the disease—

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1 even as scientific and medical knowledge about HIV and our collective ability to combat the disease  
2 have grown exponentially.

3 7. The California AIDS Public Health Records Confidentiality Act and the California  
4 Confidentiality of Medical Information Act provide important protections for people living with HIV  
5 as a bulwark against the public disclosure of confidential medical information that is potentially  
6 highly stigmatizing.

7 8. Though more people are making the choice to live openly with HIV today than ever  
8 before, this statutory scheme ensures that people living with HIV—as well as those living with other  
9 stigmatized medical conditions—are in control of their personal and private medical information and  
10 are allowed to choose to whom and when they disclose this extremely sensitive information.

11 9. A.J. Boggs's ineptitude took that choice away from Plaintiff and other program  
12 participants, compromised the confidentiality of their medical information, and violated the trust  
13 placed in A.J. Boggs to protect program participants' privacy regarding their HIV status.

14 **JURISDICTION AND VENUE**

15 10. This Court has jurisdiction over Defendant A.J. Boggs because it is a corporation  
16 authorized to do business in California that conducts substantial business in the State, and all claims  
17 arise from A.J. Boggs's activity within the State.

18 11. Venue is proper in San Francisco County under California Code of Civil Procedure §  
19 395 because Defendant does not reside in the State, enabling this action to be tried in the superior  
20 court in any county that Plaintiff designates in the complaint.

21 **PARTIES**

22 12. Plaintiff is a resident and domiciliary of the State of California, and is a person living  
23 with HIV. At all times relevant to this action, Plaintiff was enrolled in California's AIDS Drug  
24 Assistance Program, a federally funded program to help manage the cost of his HIV treatment.

25 13. Defendant A.J. Boggs & Company was the private contractor responsible for  
26 administering California's ADAP enrollment services from April 2016 to March 2017. A.J. Boggs  
27 has its headquarters in East Lansing, MI.

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1 STATEMENT OF FACTS

2 14. Under the Ryan White CARE Act, 42 U.S.C. § 300ff *et seq.*, each state is eligible to  
3 receive federal funding to conduct a program that helps ensure access to HIV medications for lower-  
4 income people living with HIV who are not eligible for Medicaid and do not have an alternative  
5 source to obtain HIV medications at a reasonable cost. A program authorized under this section of  
6 the Ryan White CARE Act is called an AIDS Drug Assistance Program. 42 U.S.C. § 300ff-21 *et*  
7 *seq.*

8 15. California has approximately 30,000 people, including Plaintiff, enrolled in its  
9 ADAP. At all relevant times, all people enrolled in California’s ADAP were people living with HIV.

10 16. Enrollment in ADAP requires applicants to provide detailed information about their  
11 HIV-related health care, as well as access to their medical records.

12 17. Prior to March 2017, the State of California contracted with a private vendor selected  
13 through a bidding process to administer the State’s ADAP.

14 18. Based on information and belief, from 1997 to 2016, California’s ADAP was  
15 administered solely by Ramsell Corporation (“Ramsell”).

16 19. Prior to the expiration of Ramsell’s contract with the State in 2016, the California  
17 Department of Public Health (“CDPH”) decided to restructure its ADAP administration system by  
18 dividing various functions among different entities.

19 20. In the ensuing bidding process, A.J. Boggs was chosen to administer the enrollment  
20 services for California’s ADAP. As the ADAP enrollment contractor, A.J. Boggs was privy to  
21 Plaintiff’s private health information.

22 21. As a custodian of the private health information of its clients, the ADAP administrator  
23 is required by state law to ensure that such information is not disclosed or disseminated without the  
24 clients’ consent.

25 22. Among the services that A.J. Boggs was contracted to provide was an “ADAP  
26 enrollment portal.” The ADAP enrollment portal allows case managers to enroll clients in ADAP,  
27 to enter aspects of their clients’ private medical information into the system, and to subsequently  
28 access the private health information of individuals enrolled through the organization for which the

1 case manager works. A.J. Boggs chose to build this online ADAP enrollment and management  
2 system itself from the ground up.

3 23. Upon information and belief, A.J. Boggs expected to make its enrollment services  
4 platform, including the ADAP enrollment portal, fully functional on July 1, 2016.

5 24. On April 6, 2016, several nonprofits whose staff members enroll community members  
6 in ADAP wrote a letter to CDPH articulating their concerns about the proposed rollout of a new  
7 ADAP enrollment system. One important concern was that the enrollment system, less than twelve  
8 weeks from launching, had not been beta tested to ensure its functionality and security.

9 25. On June 14, 2016, those same nonprofits wrote a second letter to CDPH, this time  
10 explicitly requesting a three-month delay of the rollout of A.J. Boggs's ADAP enrollment system.  
11 With less than three weeks before the system went live, the nonprofits reiterated their concern that  
12 the new system was still not beta tested.

13 26. The next day, on June 15, 2016, the Los Angeles County Department of Public Health  
14 sent a letter to CDPH voicing the same concerns about the lack of testing and requesting a six-month  
15 delay in the rollout of the new system.

16 27. CDPH provided assurances to the HIV nonprofits that the new enrollment system  
17 would be fully functional by the rollout date. In spite of the repeated protestations of community  
18 stakeholders, A.J. Boggs introduced the new enrollment system as scheduled on July 1, 2016.

19 28. The new ADAP enrollment system began experiencing problems almost  
20 immediately, including treatment interruptions for clients, inadequate communication between A.J.  
21 Boggs and the pharmacy benefits contractor, and overall poor system functionality.

22 29. On information and belief, a security vulnerability in the enrollment portal was  
23 exploited on August 16, 2016, and the private health information of ADAP clients, including  
24 Plaintiff, was left vulnerable to unauthorized third-party access. On information and belief, this  
25 security vulnerability went unnoticed by A.J. Boggs until November 2016.

26 30. On November 29, 2016, the online enrollment portal was taken offline due to the  
27 information security vulnerabilities in the system.

28

1           31.    On December 7, 2016, the security vulnerability allegedly was fixed. However, based  
2 on information and belief, the online enrollment portal created by A.J. Boggs was never brought  
3 back online for use by case managers or other enrollment workers.

4           32.    On information and belief, on or about February 7, 2017, CDPH discovered that  
5 sometime between August 16, 2017, and December 7, 2017, unauthorized third parties accessed  
6 Plaintiff's private health information, along with the private health information of at least ninety-two  
7 other ADAP clients.

8           33.    The private health information of at least ninety-three specific ADAP clients,  
9 including Plaintiff, was improperly accessed and viewed by at least one unauthorized third party  
10 between July 2016 and November 2016.

11          34.    On information and belief, CDPH hired a consulting firm to investigate, analyze and  
12 report on the breaches that occurred.

13          35.    According to CDPH, the investigation identified the IP addresses of the third parties  
14 who accessed the private medical information, but the consulting firm was unable to uncover their  
15 locations or identities.

16          36.    On March 1, 2017, CDPH announced it was cancelling its contract with A.J. Boggs,  
17 effective March 31, 2017. On March 6, 2017, CDPH began processing ADAP enrollment  
18 applications on its own, without the assistance of an outside contractor.

19          37.    Plaintiff received a letter on April 7, 2017, alerting him that his private health  
20 information, along with the private health information of ninety-two other people, was improperly  
21 accessed by at least one unauthorized third party. *See* Exhibit 1.

22          38.    Identification of Plaintiff in the ADAP enrollment database would necessarily reveal  
23 his HIV status to any outside party accessing that database.

24          39.    A person's HIV status is singularly sensitive information and sharing that status with  
25 others is an intensely personal choice. Any person living with HIV should have full control over  
26 when and with whom this information is shared. However, as a result of A.J. Bogg's failures,  
27 knowledge of Plaintiff's HIV status is now in the hands of unauthorized, unknown persons. In  
28

1 addition to breaching the trust of ADAP participants and their caseworkers, A.J. Boggs's conduct  
2 violated two California statutes.

3 **CLASS ACTION ALLEGATIONS**

4 40. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382 and  
5 Civil Code § 1781, on behalf of himself and all others similarly situated (the "Class"), and seeks  
6 certification of a Class consisting of: all persons residing in the State of California whose personal  
7 information was held in the ADAP portal and accessed by unauthorized persons between July 2016  
8 and November 2016. Excluded from the Class is Defendant, including any of its officers, directors,  
9 employees, affiliates, legal representatives, attorneys, heirs, and assigns, and any entity in which  
10 Defendant has a controlling interest. Judicial officers presiding over this case, its staff, and  
11 immediate family members, are also excluded from the Class.

12 41. *Numerosity.* The members of the Class are so numerous that their individual joinder  
13 is impractical. While the exact number of Class members is unknown to Plaintiff at this time,  
14 Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains at least  
15 ninety-three members. Joinder is made more impractical by the fact that the identities of these  
16 individuals are unknown, that their status as people living with HIV make their identities subject to  
17 additional confidentiality restrictions, and that many of them—for obvious reasons—may not want  
18 to step forward in public to advance their rights to privacy and confidentiality through a lawsuit.  
19 Defendant is able to ascertain the precise size of the Class and possesses records that include the  
20 contact information for all Class members, enabling proper notice to all Class members of the  
21 pendency of this action.

22 42. *Predominance and Commonality.* Defendant violated the State of California's  
23 medical privacy laws relative to the entire Class, giving rise to common questions of law and fact of  
24 common or general interest to all Class members' claims for relief. Common questions of law and  
25 fact predominate over any potential questions affecting only individual Class members, including,  
26 but not limited to, the following:

- 27 a. Whether Defendant was negligent in storing, maintaining, preserving,  
28 securing, and encrypting Plaintiff's and Class members' private information

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in violation of Civil Code § 56.101;

- b. Whether Defendant negligently or willfully disclosed or released Plaintiff's and Class members' private information to unauthorized persons in violation of Health and Safety Code § 121025;
- c. Whether Plaintiff and Class members are entitled to statutory damages and/or civil penalties;
- d. Whether Plaintiff and Class members are entitled to recover their costs and attorneys' fees related to this class action.

43. *Typicality.* Plaintiff's claims are typical of those of all other Class members because Defendant disclosed, misused, or improperly allowed access to Plaintiff's and the entire Class's private information. Plaintiff suffers from the same violations of the State of California's medical privacy laws as all other Class members, their claims for relief are based on the same legal theories and result from Defendant's same unlawful conduct, and their injuries are the same.

44. *Adequacy of Representation.* Plaintiff's claims are typical of all Class members' claims and Plaintiff can and will fairly and adequately represent and protect the interests of all Class members. Plaintiff retained competent counsel with substantial experience in litigating complex consumer class actions as well as HIV-related privacy breaches, and Plaintiff, represented by counsel, is committed to prosecute this action vigorously. Neither Plaintiff nor its counsel have any adverse interests to the rest of the Class.

45. *Superiority.* A class action is superior to all other available means of fairly and efficiently adjudicating this controversy since individual litigation of the claims for each Class member would be impracticable. The burdens and expenses of individual litigation for each Class member would be prohibitively high relative to the small potential for recovery available to each Class member. Denial of class certification, therefore, would cause Class members' injuries, which include substantial damages in the aggregate, to go unremedied. It would also be unduly burdensome on the Court to litigate all Class members' claims individually in spite of their same factual issues. The as-yet-unknown identities of other Class members, along with the additional confidentiality concerns inherent in the case, makes joinder impractical. There are no known or anticipated



1 difficulties in managing this litigation as a class action that would preclude it from proceeding in this  
2 manner. Individual litigation of Class members' claims would result in repetitive adjudication of  
3 common questions of law and fact that could create inconsistent, varying, or contradictory judgments  
4 and establish incompatible or inconsistent standards of conduct.

5 46. This action is suitable to be litigated as a class action under Code of Civil Procedure  
6 § 382 since the Class is easily ascertainable and there exists a well-defined community of interest in  
7 the litigation.

8 **FIRST COUNT**

9 **Violations of the California AIDS Public Health Records Confidentiality Act**  
10 **(California Health & Safety Code § 121025)**

11 47. Plaintiff reincorporates the previous allegations as if fully set forth herein.

12 48. Defendant was an agent of the California Department of Public Health. As an agent  
13 of a state public health agency, Defendant is subject to the requirements of the California AIDS  
14 Public Health Records and Confidentiality Act, Cal. Health & Safety Code § 121025.

15 49. Plaintiff and Class members entrusted Defendant with individualized private health  
16 information, including their HIV status. Defendant had a legal duty to preserve the confidentiality  
17 of the records of Plaintiff and Class members.

18 50. The private health information that Plaintiff and Class members entrusted to  
19 Defendant, including their status as individuals living with HIV, that Defendant negligently,  
20 willfully, or maliciously disclosed constituted "confidential public health records" within the  
21 meaning of Health & Safety Code § 121035. Defendant had an obligation to prevent the disclosure  
22 of this information to unauthorized third parties without written authorization from Plaintiff or Class  
23 members.

24 51. Defendant's improper conduct with respect to this private information made it  
25 accessible, available, viewable and/or downloadable over the internet to unauthorized individuals.  
26 The private health information of Plaintiff and ninety-two others was in fact improperly accessed by  
27 at least one or more unauthorized individuals as a result of Defendant's wrongful conduct.  
28

1 52. As a direct and proximate result of Defendant's acts and omissions in violation of  
2 § 121025, Plaintiff and Class members were injured within the meaning of the California AIDS  
3 Public Health Records Confidentiality Act and are entitled to civil penalties of up to \$25,000 each  
4 plus court costs pursuant to § 121025(e)(1).

5 **SECOND COUNT**

6 **Violations of the California Confidentiality of Medical Information Act**  
7 **(California Civil Code § 56 et seq.)**

8 53. Plaintiff reincorporates the previous allegations as if fully set forth herein.

9 54. Defendants are subject to the requirements and mandates of the California  
10 Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 et seq. ("CMIA").

11 55. As a healthcare contractor, Defendant is subject to the confidentiality requirements of  
12 § 56.101 of the CMIA.

13 56. Under § 56.101 of the CMIA, health care providers and contractors are required to  
14 maintain, preserve, and store medical information "in a manner that preserves the confidentiality of  
15 the information contained therein." Electronic medical record systems are required to "protect and  
16 preserve the integrity of electronic medical information."

17 57. The negligent maintenance or storage of medical information by a contractor is  
18 prohibited, and contractors who negligently maintain their systems are liable for damages and  
19 penalties under Civil Code § 56.36.

20 58. Under § 56.36 of the CMIA, a person or entity that knowingly and willfully obtains  
21 and discloses medical information in violation of that section is liable for a civil penalty not to  
22 exceed \$25,000 per violation.

23 59. Plaintiff and Class members entrusted Defendant with their private information and,  
24 at all relevant times, Defendant had a legal duty to protect and exercise reasonable care in preserving  
25 the confidentiality of Plaintiff's and other Class members' private information.

26 60. The private information, which included Plaintiff and Class members' HIV status,  
27 was improperly accessed and viewed by one or more unauthorized individuals as a result of  
28 Defendant's wrongful conduct as set forth above.

1 61. Plaintiff's and Class members' private information was accessed and viewed without  
2 ever obtaining their authorization for the disclosure of such information.

3 62. Defendant negligently created, maintained, preserved, and stored Plaintiff's and Class  
4 members' private medical information, and/or obtained and knowingly and willfully disclosed  
5 Plaintiff's and Class members' private medical information without their written authorization.

6 63. As a direct and proximate result of Defendant's acts and omissions in violation of  
7 § 56.101, Plaintiff and Class members were injured within the meaning of the CMIA and are entitled  
8 to statutory damages of \$1,000 each, as well as any actual damages suffered by Plaintiff and the  
9 Class members as a result of Defendant's conduct, pursuant to § 56.36(b).

10 64. Pursuant to § 56.36(c), Defendant is also liable, irrespective of the damage to Plaintiff  
11 and the Class members, in the form of a civil penalty of up to \$25,000 per violation.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff respectfully prays that this Court grant the following relief:

- 14 A. Certify this action as a class action and appoint Plaintiff and his counsel to represent  
15 the Class;
- 16 B. Award statutory damages and actual damages;
- 17 C. Impose civil penalties and court costs as specified in the respective statutes;
- 18 D. Award Plaintiff and Class members their reasonable costs and attorneys' fees;
- 19 E. Grant any other and further relief that this Court may deem fit and proper.

20 Dated: April 3, 2018

Respectfully submitted,

21 By:   
22 Lawrence S. Gordon  
23 COZEN O'CONNOR

24 Anthony Pinggera  
LAMBDA LEGAL DEFENSE &  
EDUCATION FUND, INC.

25 Scott Schoettes  
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*Attorneys for Plaintiff, A. DOE*

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all claims to the extent authorized by law.

Dated: April 3, 2018

Respectfully submitted,

By:   
Lawrence S. Gordon  
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