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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>COLORADO CASUALTY INSURANCE COMPANY, a Colorado corporation,</p> <p>Plaintiff,</p> <p>vs.</p> <p>PERPETUAL STORAGE, INC., a California corporation; UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah, on behalf of UNIVERSITY OF UTAH HOSPITALS AND CLINICS and UNIVERSITY OF UTAH HEALTH SCIENCES CENTER,</p> <p>Defendants.</p>	<p>Case No. 2:10-cv-00316-BCW</p> <p>COMPLAINT FOR DECLARATORY JUDGMENT</p>
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Plaintiff, Colorado Casualty Insurance Company (hereinafter “Colorado Casualty”), for its Complaint against Defendants alleges as follows:

I.

This action is brought pursuant to 28 U.S.C. § 2201 *et seq.*, the Federal Declaratory Judgment Act.

II.

Plaintiff Colorado Casualty is a Colorado corporation with its principal place of business in Colorado and is authorized to do business in the State of Utah.

III.

Based upon information and belief, Perpetual Storage, Inc. (hereinafter “Perpetual Storage”) is a California corporation with its principal place of business in Utah.

IV.

Based upon information and belief, the University of Utah (hereinafter “the University”) is a body politic and corporate of the State of Utah, with its principal place of business in Utah.

V.

This Court has jurisdiction over the parties and subject matter of this litigation pursuant to 28 U.S.C. §1332, because there is diversity of citizenship and more than \$75,000 is in controversy.

VI.

The alleged acts giving rise to this suit all occurred within the District of Utah. For that reason, and also because Perpetual Storage and the University both have their principal place of business within the District of Utah, venue is proper in this Court pursuant to 28 U.S.C. § 1391.

VII.

Colorado Casualty Insurance Company issued commercial package policy, Policy No. CPP 430653707, to Perpetual Storage with a policy term running from May 31, 2008 to May 31, 2009. Colorado Casualty Insurance Company also issued commercial liability umbrella policy, Policy No. CUP4300125, to Perpetual Storage with a policy term running from May 31, 2008 to May 31, 2009 (hereinafter collectively referred to as the "Policies").

VIII.

Based upon information and belief, the University and Perpetual Storage entered into a Record Storage Agreement effective December 6, 1996 ("Storage Agreement") which provided that Perpetual Storage would store certain records, including hardcopies, microfilm, microfiche, and magnetic computer tape on behalf of the University in exchange for payment.

IX.

Based upon information and belief, the University owns and operates the University of Utah Hospitals and Clinics ("UUHC") and the University of Utah Health Sciences Center ("UUHSC").

X.

Based upon information and belief, UUHC and UUHSC together include several hospitals such as the main University Hospital, Huntsman Cancer Institute, Huntsman Cancer Hospital, the Moran Eye Center, the University Orthopedic Center, numerous outlying clinics, and a group of approximately 1,000 physicians, and several thousand additional licensed health care providers such as nurses and social workers.

XI.

Based upon information and belief, UUHC and UUHSC maintain records, including electronic records, of patients treated at UUHC and UUHSC. Based upon

information and belief, these electronic records are regularly backed up onto backup tapes for data recovery purposes and stored offsite by Perpetual Storage.

XII.

The University alleges that patient records contain demographic information on patients such as name and address as well as billing and diagnostic information, and in most cases social security numbers.

XIII.

Based upon information and belief, Perpetual Storage made pickups at the University of backup storage tapes owned by the University.

XIV.

Based upon information and belief, on or about June 1, 2008, an employee of Perpetual Storage picked up backup storage tapes at the University.

XV.

The University alleges that the backup storage tapes picked up by Perpetual Storage on June 1, 2008 contained identifying information for approximately 1.7 million University patients and guarantors, covering a time period of approximately 16 years.

XVI.

The University alleges that approximately 1.1 million names on the backup storage tapes picked up by Perpetual Storage on June 1, 2008 were associated with social security numbers and all approximately 1.7 million names were associated with protected health information.

XVII.

Based upon information and belief, on or about June 1, 2008, the backup storage tapes picked up by an employee of Perpetual Storage were stolen from the employee's personal vehicle (the "Incident").

XVIII.

The University alleges that as a result of the Incident, it issued personal letters to each of the affected individuals at its own expense to notify these individuals of the compromise to their medical or financial information.

XIX.

The University alleges that as a result of the Incident, it had to establish both in-house and external calling centers to handle the massive influx of calls from concerned individuals. The University alleges that it responded to or outsourced more than 11,000 phone calls related to the Incident during a two-week period during the summer of 2008.

XX.

The University alleges that as a result of the Incident, it offered, at its own expense, one-year free credit monitoring to any individual whose social security number had been compromised.

XXI.

The University alleges that as a result of the Incident, it expended at least 6,232 personnel hours in responding to this Incident.

XXII.

Based upon information and belief, on or about July 1, 2009, law enforcement officials recovered the stolen backup storage tapes.

XXIII.

The University alleges that as a result of the Incident, it has expended \$3,354,753.00 in relation to this Incident, consisting of: (1) \$2,483,057.00 related to credit monitoring expenses; (2) \$646,149.00 related to printing and mailing costs; (3) \$81,389.00 related to phone bank costs; and (4) \$144,158.00 in miscellaneous costs.

XXIV.

The University has demanded that Perpetual Storage reimburse the University for the amounts of money it allegedly expended as a result of the Incident.

XXV.

Perpetual Storage has made a demand upon Colorado Casualty to defend and provide coverage for the allegations being made by the University against Perpetual Storage in relation to the Incident.

XXVI.

Colorado Casualty is not obligated to defend Perpetual Storage against the claims made by the University in relation to the Incident.

XXVII.

There is no coverage for Perpetual Storage under the Policies for the claims made by the University in relation to the Incident.

XXVIII.

Colorado Casualty is not obligated under its Policies to indemnify Perpetual Storage for any part of any judgment awarding damages in favor of the University that the University may obtain in relation to the Incident.

XXIX.

Colorado Casualty is not obligated under its Policies to pay or otherwise satisfy any judgment the University may obtain against Perpetual Storage in relation to the Incident.

XXX.

Colorado Casualty is entitled to a judgment against Perpetual Storage declaring that there is no coverage under the Colorado Casualty Policies for the damages alleged by the University in relation to the Incident.

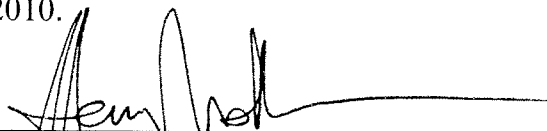
XXXI.

A justiciable controversy exists as to whether or not Colorado Casualty's Policies provide coverage for the claims made by the University against Perpetual Storage and, therefore, Colorado Casualty does hereby request that this Court exercise its jurisdiction under 28 U.S.C. § 2201 *et seq.*, the Federal Declaratory Judgment Act, to adjudicate and declare Colorado Casualty's obligations under the Colorado Casualty Policies.

WHEREFORE, Plaintiff Colorado Casualty Insurance Company prays for judgment against Defendants adjudicating and declaring:

1. That the Colorado Casualty Policies do not provide coverage for the claims made against Perpetual Storage by the University in relation to the Incident;
2. That Colorado Casualty is not obligated to indemnify or pay any judgment or award of damages against Perpetual Storage in relation to the Incident;
3. That Colorado Casualty does not have an obligation to defend Perpetual Storage against the claims made by the University in relation to the Incident; and
4. For such other further relief as the Court deems just.

DATED this 9th day of April, 2010.


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Steven Plitt
Joshua D. Rogers
KUNZ PLITT HYLAND DEMLONG &
KLEIFIELD

Attorneys for Plaintiff

CIVIL COVER SHEET

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

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
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.