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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **SOLANO COUNTY**

22 DEON ISAAC, *individually and on behalf of*
23 *all others similarly situated,*

24 *Plaintiff,*

25 v.

26 NORTHBAY HEALTHCARE, a Nonprofit
27 Corporation; and DOES 1 through 25,
28 inclusive,

Defendants.

Case No. _____

**CLASS ACTION COMPLAINT
FOR:**

**1. VIOLATION OF CAL. PENAL
CODE §§ 630, *et seq.*;**

**2. VIOLATION OF CAL. CIVIL
CODE §§ 56, *et seq.*;**

**3. VIOLATION OF CAL. CONST.
ART. 1 § 1; AND**

**4. INTRUSION UPON
SECLUSION**

JURY TRIAL DEMANDED

1 **COMPLAINT**

2 Plaintiff Deon Isaac (“Plaintiff”) brings this class action complaint individually
3 and on behalf of all others similarly situated (the “Class Members”) against NorthBay
4 Healthcare (“NorthBay” or “Defendant”). The allegations contained in this class action
5 complaint are based on Plaintiff’s personal knowledge, due investigation and, where
6 indicated, upon information and good faith belief.

7 **NATURE OF THE ACTION**

8 1. This is a class action lawsuit brought on behalf of all California citizens who
9 had their personally identifiable information (PII”) and/or protected health information
10 (“PHI” and with PII, the “Private Information”) improperly disclosed to Facebook as a
11 result of accessing Defendant’s website, www.Northbay.org (the “Website”).

12 2. Defendant aids, employs, agrees and conspires with Facebook to allow
13 Facebook to intercept sensitive and private communications sent and received by Plaintiff
14 and Class Members, including communications containing and regarding protected
15 medical information.¹

16 3. Plaintiff Isaac has accessed and used the Website to seek medical treatment
17 and/or advice as recently as this year, 2022. Plaintiff Isaac reasonably expected that his
18 communications with NorthBay via the Website were confidential, solely between himself
19 and NorthBay, and that such communications would *not* be transmitted to or intercepted
20 by any third party without his full knowledge and informed consent.

21 4. As described more fully herein, NorthBay sent Plaintiff Isaac’s private
22

23 ¹ ““Medical information’ means any individually identifiable information, in
24 electronic or physical form, in possession of or derived from a provider of health care, health
25 care service plan, pharmaceutical company, or contractor regarding a patient’s medical
26 history, mental or physical condition, or treatment. ‘Individually identifiable’ means that
27 the medical information includes or contains any element of personal identifying
28 information sufficient to allow identification of the individual, such as the patient’s name,
address, electronic mail address, telephone number, or social security number, or other
information that, alone or in combination with other publicly available information, reveals
the identity of the individual.” CAL. CIV CODE § 56.05(i).

1 medical information and other individually identifiable information to Facebook² when he
2 used the Website, looked for providers, booked appointments, and interacted with
3 healthcare providers through the Website.

4 5. Additionally, the information sent by NorthBay to Facebook was linked to
5 Plaintiff Isaac's Facebook username ("Facebook ID" or "FID") such that there was no
6 anonymity in that Facebook and/or any third parties who were able to access the
7 information would be able to associate it with Plaintiff.³

8 6. NorthBay further assisted Facebook with intercepting Plaintiff Isaac's
9 communications through a systematic process described below, including communications
10 that contained PII, PHI and related confidential information.

11 7. NorthBay facilitated these interceptions without Plaintiff Isaac's knowledge,
12 consent, or express written authorization.

13 8. NorthBay breached confidentiality and violated Plaintiff's privacy when it
14 did not seek and certainly did not receive any consent for disclosure of personal and
15 medical information and unlawfully disclosed Plaintiff Isaac's PII and PHI.

16 9. Plaintiff therefore brings this class action lawsuit for legal and equitable
17 remedies resulting from the illegal actions described herein.

18 **JURISDICTION AND VENUE**

19 10. The Court has personal jurisdiction over Defendant NorthBay because it is
20 domiciled in the State of California based on its principal place of business and location of
21 its headquarters in Fairfield, California, and it regularly engages in extensive business in
22 the State of California.

23 11. This Court has subject matter jurisdiction over each cause of action raised in
24 this Complaint pursuant to Article 6, section 10 of the California Constitution.

25 ² Plaintiff Isaac has (and has had at all relevant times) an active Facebook account.

26 ³ The same is true for all putative class members in that their information was
27 likewise to Facebook in tandem with their FID.
28

12. This is a class action lawsuit brought pursuant to Code of Civil Procedure § 382, and this Court has jurisdiction over Plaintiff's claims because the amount in controversy exceeds this Court's jurisdictional minimum.

13. There is no federal jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because the proposed Class is limited to citizens of the State of California.

14. Venue is proper under Code of Civil Procedure §§ 395(a) and 395.5, and Civil Code § 1780(c) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this county.

THE PARTIES

15. Plaintiff Deon Isaac is, and at all relevant times was, an individual residing in La Jolla, San Diego County, in the State of California.

16. Defendant NorthBay is registered as a nonprofit entity with its principal place of business in Fairfield, Solano County, California. Defendant offers a full range of medical services and treats thousands of patients each year in the State of California.

17. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1 to 25, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of said Defendants when ascertained. Plaintiff is informed and reasonably believes and thereon alleges that each of the fictitiously named Defendants is, or will be, responsible in some manner for the occurrences alleged herein, and that Plaintiff's injuries, both existing and prospective, were, are, and will be caused by the acts of said Defendants.

18. Plaintiff is informed and reasonably believes, and thereon alleges that all times herein mentioned, Defendants, including the fictitiously named Doe Defendants, and each of them, and its subsidiaries, affiliates, and other related entities, and its respective employees were the agents, servants, employees, representatives, owners, managers, operators, and/or shareholders of their co-defendants, and were acting at all times within

1 the course and scope of such relationship and with the knowledge, consent, or ratification
2 of the other Defendants, and each of the acts or omissions alleged herein were performed
3 within the course and scope of that relationship as well as their respective individual
4 capacities, and all Defendants in some manner are directly or indirectly responsible for
5 Plaintiff's injuries and wrongs complained of herein.

6 **FACTUAL ALLEGATIONS**

7 **A. NorthBay Website**

8 19. Based on information and belief, NorthBay employs 120 primary and
9 specialty care providers, and more than 100 hospital-based providers.

10 20. NorthBay includes two acute care hospitals with 24/7/365 Emergency
11 Departments, three primary care centers, two Urgent Care Centers and a same-day surgery
12 center, in Solano County.

13 21. NorthBay is the most comprehensive medical group in Solano County,
14 offering services from oncology, neuroscience, and cardiovascular to orthopedics, robotic
15 surgery and sports medicine.

16 22. NorthBay operates a website, www.northbay.org (the "Website"), that
17 allows patients to search for doctors with a particular specialty⁴ and perform other
18 healthcare-related functions.⁵

19 23. NorthBay's Website is accessible on mobile devices and desktop computers
20 and gives patients the option to search for providers or search for a specialist based on
21 specific treatments or conditions, request medical records, and access the MyNorthbay
22 patient portal.⁶

23 24. NorthBay embeds Facebook's Tracking Pixel (the "Pixel") into the pages of
24

25 ⁴ <https://www.northbay.org/index.cfm> (last visited Nov. 15, 2022).

26 ⁵ <https://www.northbay.org/mynorthbaydoc/index.cfm>;
27 <https://www.northbay.org/patients-visitors/online-bill-payment.cfm> (last visited Nov. 15,
2022).

28 ⁶ <https://www.northbay.org/index.cfm> (last visited Nov. 15, 2022).

1 its Website, allowing it to monitor how patients and visitors interact with its Website.

2 25. The Pixel, developed by Facebook, tracks users as they navigate through the
3 Website and logs which pages are visited, which buttons are clicked, specific information
4 users enter into forms (e.g., name, home address, phone number, email address), search
5 queries (e.g., “do I have covid”), and other information including a patient’s IP address.⁷

6 26. As explained below, this interactive information is collected by Facebook,
7 not just by NorthBay, because the Pixel embedded in the Website simultaneously transmits
8 all the information NorthBay receives to Facebook. If a patient is also a Facebook user,
9 Facebook in turn links the information they receive from the Website to the patient’s
10 Facebook profile, which includes other identifying information.

11 27. Defendant’s Privacy Policy acknowledges that NorthBay is required by law
12 to make sure that medical information that identifies patients is kept private, and describes
13 some of the legally permitted ways for Defendant to use and to disclose patients’ medical
14 information.⁸

15 28. Patients and other visitors to the Website are not informed and have not
16 consented to the collection of their Personal Health Information *and* Website activity and
17 provision of that information to a third party.

18 29. NorthBay’s Marketing Privacy Policy acknowledges as much and states:

19 **Personal Information We Collect**

20 You provide personal information to us in a number of ways when you visit
21 our Site. For example, you provide us with personal information when you
22 sign up for our email list or electronic newsletters, fill out a form or enter
23 information on our site. We may collect your name, mailing address, email
24 address and phone number to help you with your experience.

25 ...

26 **How We Use Personal Information**

27 ⁷ <https://developers.facebook.com/docs/meta-pixel/> (last visited Nov. 15, 2022).

28 ⁸ <https://www.northbay.org/patients-visitors/privacy-policy.cfm> (last visited Nov. 15, 2022).

We use the collected information primarily for our own internal purposes, such as providing, maintaining, evaluating, and improving our services and Website, fulfilling requests for information, and providing customer support.

...

Pixel tags on our site may be used to collect information about your visit, including the pages you view, the features you use, the links you click, and other actions you take in connection with the site. This information may include your computer's IP address, your browser type, your operating system, date and time information, and other technical information about your computer.

...

We also work with business partners that use tracking technologies to deliver advertisements on our behalf across the Internet. These companies may collect information about your visits to our site and your interaction with our advertising and other communications.

We may combine the information we collect through cookies and pixel tags with other information we have collected from you. This information may be used to improve our website, to personalize your online experience, to help us deliver information to you, to determine the effectiveness of our advertising, and for other internal business purposes.

...

Cookies, Web Beacons, and Other Similar Technologies

...

When you visit our website, we may use both a session and a persistent cookie. These cookies may contain information (such as a unique user ID) that is used to track your usage of our website.

A web beacon, or tracking pixel, is a small string of code that represents a clear graphic image and is used in conjunction with a cookie. A web beacon allows us to capture certain additional types of information about a visitor's actions on a web site, such as a visitor's cookie number, the time, date, duration and number of page views, a description of the page where the Web beacon is placed, and details about any items that were purchased. Web beacons help us analyze our customers' online behavior and measure the effectiveness of our website and our advertising. We work with service providers that help us track, collect and analyze this information.

We use cookies and web beacons to identify your device, distinguish you from other visitors, record your IP address and operating system, understand your use of our site, determine the time and date of your visit and keep track of advertisements. This helps us understand your preferences based on previous or current site activity, which enables us to provide you with

improved services. We also use these technologies to help us compile aggregate data about site traffic and site interaction so that we can offer better site experiences and tools in the future. We do not otherwise track any information about your use of other websites.

...

Third Party Advertising Partners

We use third-party service providers to serve advertisements (banners or links) on our behalf across the Internet.

*These advertising service providers may collect non-identifiable information about your visits to our website, and your interactions with our products and services. **Such non-identifiable information does not include your name, address, e-mail address or other personal information.** The information is collected through the use of cookies and pixel tags* (also known as action tags), which is industry-standard technology used by most major websites.

...

Currently, we use third party-placed tracking pixels and cookies from the following advertising delivery partners: AdTaxi, Adcellerant, Facebook and Google.

...

Facebook

We may display interest-based ads to you when you are using Facebook through a tool offered by Facebook called the Custom Audience Tool. This tool allows us to personalize our ads based on your experience with us. **We do not share any of your personal information with Facebook.** The tool lets NorthBay Healthcare convert your email address to a unique number that Facebook uses to match to unique numbers Facebook generates from email addresses of its users.⁹

30. NorthBay's promise that its advertising service providers use pixels and cookies to collect only non-identifiable information about patients (and not their PII), and that NorthBay does not share its patients' personal information with Facebook, is false.

31. The Pixel, which is embedded in and throughout the Website, collects search queries regarding medical conditions, treatment, and/or specific providers. Even non-Facebook users can be individually identified via the information gathered on the Website

⁹ <https://www.northbay.org/patients-visitors/marketing-privacy-policy.cfm> (emphasis added) (last visited Nov. 15, 2022).

1 like an IP address or personal device identifying information.

2 32. This is precisely the type of information that HIPAA requires healthcare
3 providers to utilize de-identification techniques to protect the privacy of patients.¹⁰

4 33. Additionally, NorthBay’s Marketing Privacy Policy provides:

5 **Sharing of Personal Information**

6 *We do not sell, trade, or otherwise transfer to outside parties your Personally*
7 *Identifiable Information.* We do share information with parties who assist us
8 *with providing education and information to our users so long as those*
9 *parties agree to keep this information confidential.* We are not responsible
10 for any additional information you provide directly to these parties, and we
11 encourage you to become familiar with their practices before disclosing
information directly to them. We may also release information when it's
appropriate to comply with the law, enforce our site policies, or protect ours
or others’ rights, property or safety.¹¹

12 34. Despite a lack of disclosure, Defendant allows Facebook to “listen in” on
13 patients’ confidential communications and to intercept and use for advertising purposes the
14 very information that it promises to keep private.

15 **B. Facebook’s Platform and its Business Tools**

16 35. Facebook describes itself as a “real identity platform,”¹² meaning users are
17 allowed only one account and must share “the name they go by in everyday life.”¹³

18 36. To that end, when creating an account, users must provide their first and last
19 name, date of birth, and gender.¹⁴

20 37. In 2021, Facebook generated more than \$117 billion in revenue.¹⁵ Roughly

21
22 ¹⁰ <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html> (last visited Nov. 15, 2022).

23 ¹¹ <https://www.northbay.org/patients-visitors/marketing-privacy-policy.cfm> (emphasis
24 added) (last visited Nov. 15, 2022).

25 ¹² Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

26 ¹³ *Community Standards, Part IV Integrity and Authenticity*, FACEBOOK.COM, <https://transparency.fb.com/policies/community-standards/account-integrity-and-authentic-identity/> (last visited Nov. 15, 2022).

27 ¹⁴ *Sign Up*, FACEBOOK.COM, <https://www.facebook.com/> (last visited Nov. 14, 2022).

28 ¹⁵ *Meta Reports Fourth Quarter and Full Year 2021 Results*, FACEBOOK.COM,

1 97% of that came from selling advertising space.¹⁶

2 38. Facebook sells advertising space by emphasizing its ability to target users.¹⁷
3 Facebook is especially effective at targeting users because it surveils user activity both on
4 and off its site.¹⁸

5 39. This allows Facebook to make inferences about users beyond what they
6 explicitly disclose, including their “interests,” “behavior,” “demographics,” and
7 “connections.”¹⁹

8 40. Facebook compiles this information into a generalized dataset called “Core
9 Audiences,” which advertisers use to apply highly specific filters and parameters for their
10 targeted advertisements.²⁰

11 41. Advertisers can also build “Custom Audiences,”²¹ which helps them reach
12 “people who have already shown interest in [their] business, whether they’re loyal
13 customers or people who have used [their] app or visited [their] website.”²²

14 42. With Custom Audiences, advertisers can target existing customers directly,
15

16 [https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-](https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx)
17 [and-Full-Year-2021-Results/default.aspx](https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx) (last visited Nov. 14, 2022).

18 ¹⁶ *Id.*

19 ¹⁷ *Why Advertise on Facebook*, INSTAGRAM OR OTHER META TECHNOLOGIES, FACEBOOK.COM, <https://www.facebook.com/business/help/205029060038706> (last visited Nov. 14, 2022).

20 ¹⁸ *About Meta Pixel*, FACEBOOK.COM, <https://www.facebook.com/business/help/742478679120153?id=1205376682832142> (last
21 visited Nov. 14, 2022).

22 ¹⁹ *Ad Targeting: Help your ads find the people who will love your business*, FACEBOOK.COM,
23 <https://www.facebook.com/business/ads/ad-targeting> (last visited Nov. 14, 2022).

24 ²⁰ *Easier, More Effective Ways to Reach the Right People on Facebook*, FACEBOOK.COM, <https://www.facebook.com/business/news/Core-Audiences> (last visited Nov. 14, 2022).

25 ²¹ *About Custom Audiences*, FACEBOOK.COM, <https://www.facebook.com/business/help/744354708981227?id=2469097953376494> (last
26 visited Nov. 14, 2022).

27 ²² *Ad Targeting: Help your ads find the people who will love your business*, FACEBOOK.COM,
28 <https://www.facebook.com/business/ads/ad-targeting> (last accessed 11/14/2022).

1 and they can also build “Lookalike Audiences,” which “leverages information such as
2 demographics, interests, and behavior from your source audience to find new people who
3 share similar qualities.”²³

4 43. Unlike Core Audiences, Custom Audiences and Lookalike Audiences are
5 only available if the advertiser has sent its underlying data to Facebook. This data can be
6 supplied to Facebook by manually uploading contact information for customers or by
7 utilizing Facebook’s “Business Tools.”²⁴

8 44. As Facebook puts it, the Business Tools “help website owners and
9 publishers, app developers, and business partners, including advertisers and others,
10 integrate with Meta, understand and measure their products and services, and better reach
11 and serve people who use or might be interested in their products and services.”²⁵

12 45. Put more succinctly, Facebook’s Business Tools are bits of code that
13 advertisers can integrate into their websites, mobile applications, and servers, thereby
14 enabling Facebook to intercept and collect user activity on those platforms.

15 46. The Business Tools are configured to automatically capture certain data, like
16 when a user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and
17 metadata, or when a user downloads a mobile application or makes a purchase.²⁶

18
19 ²³ *About lookalike audiences*, FACEBOOK.COM,
20 <https://www.facebook.com/business/help/164749007013531?id=401668390442328> (last
21 accessed 11/14/2022).

22 ²⁴ *Create a customer list Custom Audience*, FACEBOOK.COM,
23 <https://www.facebook.com/business/help/170456843145568?id=2469097953376494> (last
24 visited Nov. 14, 2022); *Create a website Custom Audience*, FACEBOOK.COM,
25 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
26 (last visited Nov. 14, 2022).

27 ²⁵ *The Meta Business Tools*, FACEBOOK.COM,
28 <https://www.facebook.com/help/331509497253087> (last visited Nov. 14, 2022).

²⁶ *See Meta Pixel: Get Started*, FACEBOOK.COM,
<https://developers.facebook.com/docs/meta-pixel/get-started> (last visited Nov. 14, 2022);
Meta Pixel: Guides for the Meta Pixel, Accurate Event Tracking, Advanced,
FACEBOOK.COM,
<https://developers.facebook.com/docs/facebook-pixel/advanced/> (last visited Nov. 14,
2022); *see also Best practices for Meta Pixel setup*, FACEBOOK.COM,

1 47. Facebook’s Business Tools can track additional events, including the content
2 a visitor views and purchases, and Facebook’s menu of “standard events” allows
3 advertisers to choose which types of content are tracked.²⁷

4 48. Advertisers can even create their own tracking parameters by building a
5 “custom event.”²⁸

6 49. One such Business Tool is the Facebook Tracking Pixel which is a piece of
7 code that advertisers or website operators, such as Defendant, can integrate into their
8 websites. As the name implies, the Facebook Pixel “tracks the people and type of actions
9 they take.”²⁹

10 50. When a user accesses a website hosting the Facebook Pixel, Facebook’s
11 software script surreptitiously directs the user’s browser to send a separate message to
12 Facebook’s servers.

13 51. This second, secret transmission contains the original GET request that was
14 sent to the host website and any additional data that the Facebook Pixel is configured to
15 collect.

16 52. Facebook’s code simultaneously initiates this second transmission as
17 communications occur with the host website. Thus, two sets of code are automatically
18 created as part of the browser’s attempt to load and read Defendant’s Website—

19 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142> (last
20 visited Nov. 14, 2022); *App Events API*, FACEBOOK.COM,
21 <https://developers.facebook.com/docs/marketing-api/app-event-api/> (last visited Nov. 14,
22 2022).

22 ²⁷ *Specifications for Meta Pixel standard events*, FACEBOOK.COM,
23 <https://www.facebook.com/business/help/402791146561655?id=1205376682832142> (last
24 visited Nov. 14, 2022).

24 ²⁸ *See About standard and custom website events*, FACEBOOK.COM,
25 <https://www.facebook.com/business/help/964258670337005?id=1205376682832142> (last
26 visited Nov. 14, 2022); *see also*, *App Events API*, FACEBOOK.COM,
27 <https://developers.facebook.com/docs/marketing-api/app-event-api/> (last visited Nov. 14,
28 2022).

²⁹ *Retargeting*, FACEBOOK.COM, <https://www.facebook.com/business/goals/retargeting>
(last visited Nov. 14, 2022).

1 Defendant's own code, and Facebook's embedded code.

2 53. An example illustrates the point. Take an individual who navigates to
3 Defendant's Website and clicks on a tab for pain management. When that tab is clicked,
4 the individual's browser sends a GET request to Defendant's server requesting that server
5 to load the particular webpage.

6 54. Because Defendant utilizes the Facebook Pixel, Facebook's embedded code,
7 written in JavaScript, sends secret instructions back to the individual's browser, without
8 alerting the individual that this is happening.

9 55. Facebook instructs the browser to secretly duplicate the unwitting
10 individual's communication with Defendant, transmitting it to Facebook's servers,
11 alongside additional information that transcribes the communication's content and the
12 individual's identity.

13 56. After collecting and intercepting this information, Facebook processes it,
14 analyzes it, and assimilates it into datasets like Core Audiences and Custom Audiences.

15 **C. How NorthBay Discloses Plaintiff's and Class Members' Protected Health**
16 **Information and Assists with Intercepting Communications.**

17 57. Through the Facebook Pixel, Defendant shares its patients' identities and
18 online activity, including information and search results related to their private medical
19 treatment.

20 58. When they visit www.northbay.org, patients can search for a doctor by
21 selecting the "Find a Doctor" button. Patients are then directed to the "Find a Doctor" pop-
22 up shown below where they can search for a doctor by specialty and location or by simply
23 entering a particular doctor's name.

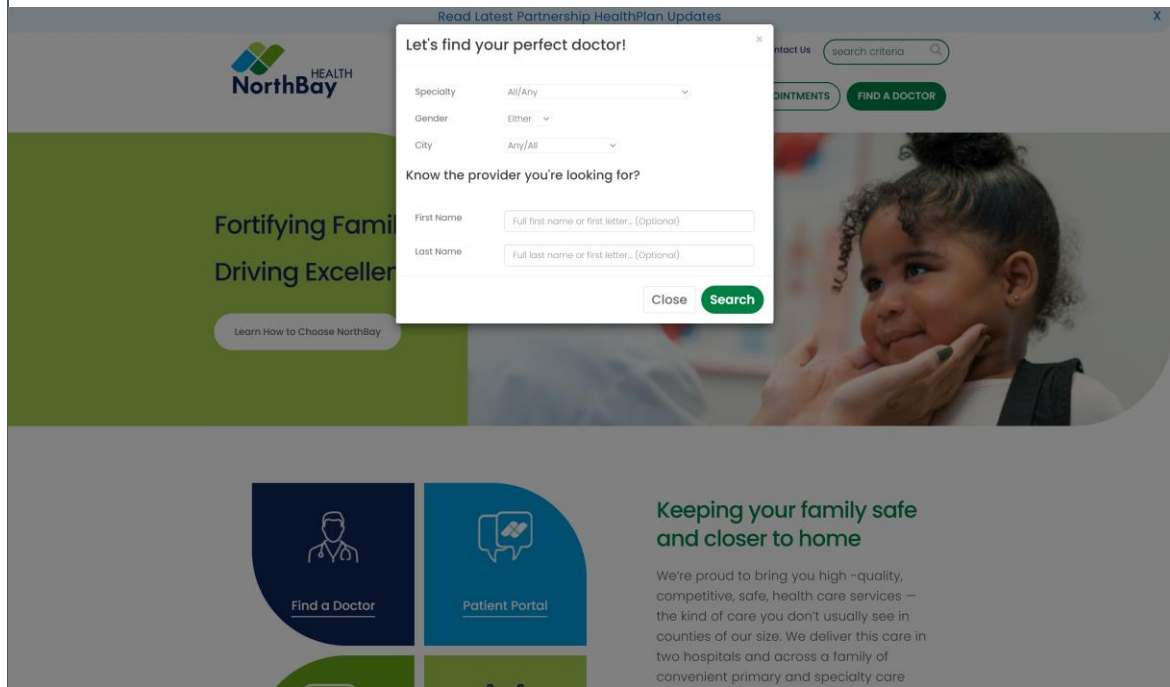


Figure 1. The drop-down tabs allow patients to narrow their search results and select physicians who specialize in a particular type of condition or treatment.

59. When a patient searches for a doctor, the search information is sent directly to Facebook. For example, when a patient searches for a female cancer (oncology/hematology) specialist in a specified location, that information is sent to Facebook, along with which doctors are shown in search results.

Figure 2(b). Network transmission to Facebook showing search terms, search results displayed to patients, and the patient's c_user information.

60. When patients select a doctor, this information is automatically sent directly to Facebook. For example, when a patient clicks on a particular physician name, they are directed to that physician's profile. At that time, the information is automatically sent directly to Facebook, alongside the particular patient's Facebook ID ("FID"), as depicted in Figure 3 below.

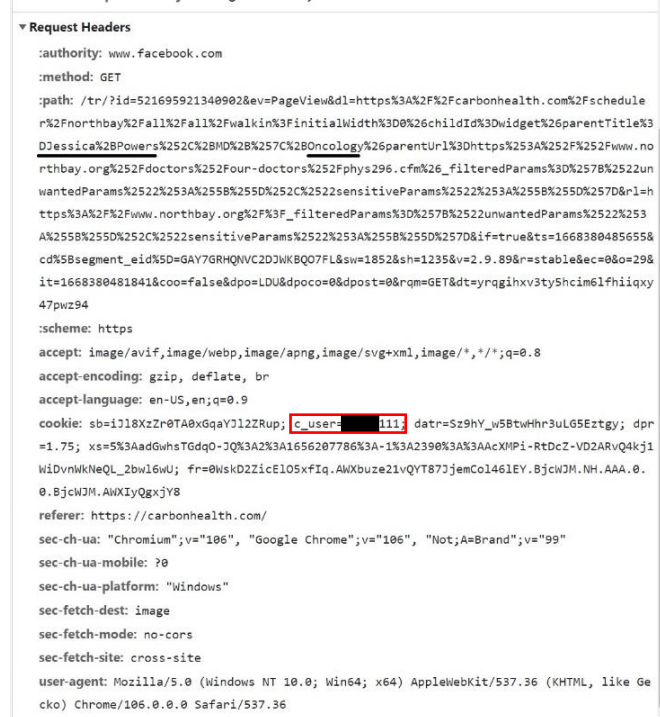


Figure 3. An HTTP single communication session sent from the device to Facebook, that reveals the search parameters and the patient's FID (c user field).

61. Here, the search parameters set by the patient and the patient's FID number are being shared together, thereby allowing Facebook to make the direct connection between the search parameters and each individual patient's FID. Even without the FID, other identifying information like IP address or device identifier is captured by

1 Facebook Pixel and transmitted to Facebook.

2 62. Facebook categorizes this event as a “PageView,” which indicates that the
3 patient viewed the webpage.

4 63. The information Defendant shares with Facebook during a patient’s use of
5 the appointment booking tool and “find a doctor” tool, enables Facebook to identify what
6 type of doctor each patient is searching for, and Defendant is sharing this information
7 without its patients’ knowledge or consent.

8 64. Every time Defendant sends a patient’s Website activity data to Facebook,
9 that patient’s personally identifiable information is also disclosed, including their FID. An
10 FID is a unique and persistent identifier that Facebook assigns to each user. With it, anyone
11 can look up the user’s Facebook profile and name. Notably, while Facebook can easily
12 identify any individual on its Facebook platform with only their unique FID, so too can any
13 ordinary person who knows or has acquired someone’s FID. Facebook admits as much on
14 its website. Indeed, ordinary persons who come to acquire an FID can connect to the
15 corresponding Facebook profile.

16 65. A user who accesses Defendant’s Website while logged into Facebook will
17 transmit the c_user cookie to Facebook, which contains that user’s unencrypted Facebook
18 ID. When accessing www.northbay.org, for example, Facebook receives six cookies,
19 several of which are visible in the example here:
20
21
22
23
24
25
26
27
28

X Headers Payload Preview Response Initiator Timing Cookies												
Request Cookies <input type="checkbox"/> show filtered out request cookies												
Name	Value	D..	Pa..	Ex..	Size	Ht..	Se..	Sa..	Pa..	P..		
sb	Uj5XzZr0TA0xGqeYJlZ2Rup	.fa...	/	20...	26	✓	✓	N..		M...		
c_user	111	.fa...	/	20...	14	✓	✓	N..		M...		
datr	Sz3mY_wSBwHhr3uLG5Ezt...	.fa...	/	20...	28	✓	✓	N..		M...		
dpr	1.75	.fa...	/	20...	7	✓	✓	N..		M...		
xs	5%3AadGwhsTGdqO-JCQ%...	.fa...	/	20...	98	✓	✓	N..		M...		
fr	0WskD2ZicEIO5xfiqAWXb...	.fa...	/	20...	84	✓	✓	N..		M...		

Figure 4. Representation of information shared with Facebook.

66. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.³⁰ Facebook, at a minimum, uses the fr cookie to identify users.³¹

67. If a visitor has never created an account, an even smaller set of cookies are transmitted, as shown in the typical example below.

sb	IAiFYIM_RxZ...	.facebook.com
fr	0mBnQXleH...	.facebook.com

68. At each stage, Defendant also utilizes the _fbp cookie, which attaches to a browser as a first-party cookie, and which Facebook uses to identify a browser and a user:³²

_fbp	fb.1.1668379360716.1607067350	.northbay.org
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69. The fr cookie expires after 90 days unless the visitor's browser logs back into Facebook.³³

70. If that happens, the time resets, and another 90 days begins to accrue.³⁴

71. The _fbp cookie expires after 90 days unless the visitor's browser accesses the same website.³⁵

³⁰ Data Protection Commissioner, *Facebook Ireland Ltd: Report of Re-Audit* (Sept. 21, 2012), p. 33, http://www.europe-v-facebook.org/ODPC_Review.pdf (last visited Nov. 14, 2022).

³¹ *Cookies & other storage technologies*, FACEBOOK.COM, <https://www.facebook.com/policy/cookies/> (last visited Nov. 14, 2022).

³² *Id.*

³³ *Id.*

³⁴ Confirmable through developer tools.

³⁵ *Cookies & other storage technologies*, FACEBOOK.COM, <https://www.facebook.com/policy/cookies/> (last visited Nov. 14, 2022).

1 72. If that happens, the time resets, and another 90 days begins to accrue.³⁶

2 73. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-
3 party cookie is “created by the website the user is visiting”—i.e., Defendant.³⁷

4 74. A third-party cookie is “created by a website with a domain name other than
5 the one the user is currently visiting”—i.e., Facebook.³⁸

6 75. The _fbp cookie is always transmitted as a first-party cookie. A duplicate
7 _fbp cookie is sometimes sent as a third-party cookie, depending on whether the browser
8 has recently logged into Facebook.

9 76. Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to FIDs
10 and corresponding Facebook profiles.

11 77. As shown in the above figures, Defendant sends these identifiers with the
12 event data.

13 78. Plaintiff never consented, agreed, authorized, or otherwise permitted
14 Defendant to disclose his personally identifiable information and protected health
15 information; nor did he authorize any assistance with intercepting his communications.
16 Plaintiff was never provided with any written notice that Defendant discloses its Website
17 users’ protected health information, nor was he provided any means of opting out of such
18 disclosures. Despite this, Defendant knowingly disclosed Plaintiff’s protected health
19 information to Facebook.

20 79. By law, Plaintiff is entitled to privacy in his protected health information and
21 confidential communications. Defendant deprived Plaintiff and Class Members of their
22 privacy rights when it: (1) implemented a system that surreptitiously tracked, recorded, and

23 ³⁶ Confirmable through developer tools.

24 ³⁷ *First-Party Cookie*, PCMAG.COM, [https://www.pcmag.com/encyclopedia/term/first-](https://www.pcmag.com/encyclopedia/term/first-party-cookie)
25 [party-cookie](https://www.pcmag.com/encyclopedia/term/first-party-cookie) (last visited Nov. 14, 2022). This is confirmable by using developer tools to
inspect a website’s cookies and track network activity.

26 ³⁸ *Third-Party Cookie*, PCMAG.COM, [https://www.pcmag.com/encyclopedia/term/third-](https://www.pcmag.com/encyclopedia/term/third-party-cookie)
27 [party-cookie](https://www.pcmag.com/encyclopedia/term/third-party-cookie) (last visited Nov. 14, 2022). This is also confirmable by tracking network
activity.

disclosed Plaintiff's and Class Members' confidential communications, personally identifiable information, and protected health information to a third party; (2) disclosed patients' protected information to Facebook – an unauthorized third-party eavesdropper; and (3) undertook this pattern of conduct without notifying Plaintiff and Class Members and without obtaining their express written consent. Plaintiff did not discover that Defendant disclosed his personally identifiable information and protected health information to Facebook, and assisted Facebook with intercepting his communications, until January 2022.

CLASS ACTION ALLEGATIONS

80. Class Definition: Pursuant to Section 382 of the Code of Civil Procedure, Plaintiff brings this action on behalf of himself and other similarly situated individuals (the "Class"), defined as follows:

All California citizens who, during the class period, had their personally identifiable information or protected health information disclosed to Facebook as a result of using www.northbay.org.

81. Plaintiff reserves the right to modify the class definition or add sub-classes as necessary prior to filing a motion for class certification.

82. The "Class Period" is the time period beginning on the date established by the Court's determination of any applicable statute of limitations, after consideration of any tolling, concealment, and accrual issues, and ending on the date of entry of judgment.

83. Excluded from the Class is Defendant; any affiliate, parent, or subsidiary of Defendant; any entity in which Defendant has a controlling interest; any officer director, or employee of Defendant; any successor or assign of Defendant; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse and immediate family members; and members of the judge's staff.

84. Numerosity/Ascertainability. Members of the Class are so numerous that joinder of all members would be unfeasible and not practicable. The exact number of Class

Members is unknown to Plaintiff at this time. However, it is estimated that there are at least thousands of individuals in the Class. The identity of such membership is readily ascertainable from Defendant's records and non-party Facebook's records.

85. Typicality. Plaintiff's claims are typical of the claims of the Class because Plaintiff used www.northbay.com and had his personally identifiable information and protected health information disclosed to Facebook without his express written authorization or knowledge. Plaintiff's claims are based on the same legal theories as the claims of other Class Members.

86. Adequacy. Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class Members. Plaintiff's interests are coincident with, and not antagonistic to, those of the Class Members. Plaintiff is represented by attorneys with experience in the prosecution of class action litigation generally and in the emerging field of digital privacy litigation specifically. Plaintiff's attorneys are committed to vigorously prosecuting this action on behalf of the Class Members.

87. Common Questions of Law and Fact Predominate/Well Defined Community of Interest. Questions of law and fact common to the Class Members predominate over questions that may affect only individual Class Members because Defendant has acted on grounds generally applicable to the Class. Such generally applicable conduct is inherent in Defendant's wrongful conduct. The following questions of law and fact are common to the Class:

- a. Whether Defendant intentionally tapped the lines of internet communication between patients and their medical providers;
- b. Whether Defendant's Website surreptitiously records personally identifiable information, protected health information, and related communications and subsequently, or simultaneously, discloses that information to Facebook;
- c. Whether Facebook is a third-party eavesdropper;
- d. Whether Defendant's disclosures of personally identifiable information, protected health information, and related

communications constitute an affirmative act of communication;

- e. Whether Defendant's conduct, which allowed Facebook unauthorized view Plaintiff's and Class Members' personally identifiable information and protected health information, resulted in a breach of confidentiality;
- f. Whether Defendant violated Plaintiff's and Class Members' privacy rights by using Facebook's tracking pixel to record and communicate online patients' FIDs alongside their confidential medical communications;
- g. Whether Plaintiff and Class Members are entitled to damages under CIPA, the CMIA, or any other relevant statute; and
- h. Whether Defendant's actions violate Plaintiff's and Class Members' privacy rights as provided by the California Constitution.

88. Superiority. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action. Plaintiff is unaware of any special difficulty to be encountered in litigating this action that would preclude its maintenance as a class action.

1 **CLAIMS FOR RELIEF**

2 **COUNT I**

3 **Violation of the California Invasion of Privacy Act**
4 **Cal. Penal Code §§ 630, et. seq.**

5 89. Plaintiff repeats the allegations contained in the paragraphs above as if fully
6 set forth herein and brings this count individually and on behalf of the proposed Class.

7 90. The California Invasion of Privacy Act ("CIPA") is codified at California
8 Penal Code §§ 630 to 638.

9 91. CIPA begins with its statement of purpose.

10 The Legislature hereby declares that advances in science and
11 technology have led to the development of new devices and
12 techniques for the purpose of eavesdropping upon private
13 communications and that the invasion of privacy resulting from the
14 continual and increasing use of such devices and techniques has
15 created a serious threat to the free exercise of personal liberties and
16 cannot be tolerated in a free and civilized society.

17 CAL. PENAL CODE § 630.

18 92. California Penal Code § 631(a) provides, in pertinent part:

19 Any person who, by means of any machine, instrument, or
20 contrivance, or in any other manner . . . willfully and without the
21 consent of all parties to the communication, or in any unauthorized
22 manner, reads, or attempts to read, or to learn the contents or
23 meaning of any message, report, or communication while the same
24 is in transit or passing over any wire, line, or cable, or is being sent
25 from, or received at any place within this state; or who uses, or
26 attempts to use, in any manner, or for any purpose, or to
27 communicate in any way, any information so obtained, or who aids,
28 agrees with, employs, or conspires with any person or persons to
unlawfully do, or permit, or cause to be done any of the acts or things
mentioned above in this section, is punishable by a fine not
exceeding two thousand five hundred dollars (\$2,500)[.]

93. A defendant must show it had the consent of *all* parties to a communication.

94. At all relevant times, Defendant aided, employed, agreed with, and conspired
with Facebook to track and intercept Plaintiff's and Class Members' internet

1 communications while using www.Northbay.org. These communications were
2 intercepted by a third party during the communications and without the knowledge,
3 authorization, or consent of Plaintiff and Class Members.

4 95. Defendant intentionally inserted an electronic device into its Website that,
5 without the knowledge and consent of Plaintiff and Class members, recorded and
6 transmitted the substance of their confidential communications with Defendant to a third
7 party.

8 96. Defendant willingly facilitated Facebook's interception and collection of
9 Plaintiff's and Class Members' private medical information by embedding the Facebook
10 Pixel(s) on the Website, thereby assisting Facebook's eavesdropping.

11 97. The following items constitute "machine[s], instrument[s], or
12 contrivance[s]" under the CIPA, and even if they do not, the Facebook Tracking Pixel falls
13 under the broad catch-all category of "any other manner":
14

- 15 a. The computer codes and programs Facebook used to track Plaintiff's
16 and Class Members' communications while they were navigating the
17 Website;
- 18 b. Plaintiff's and Class Members' browsers;
- 19 c. Plaintiff's and Class Members' computing and mobile devices;
- 20 d. Facebook's web and ad servers;
- 21 e. The web and ad servers from which Facebook tracked and
22 intercepted Plaintiff's and Class Members' communications while
23 they were using a web browser to access or navigate the Website;
- 24 f. The computer codes and programs used by Facebook to effectuate its
25 tracking and interception of Plaintiff's and Class Members'
26 communications while they were using a browser to visit the
27 Website; and
- 28 g. The plan Facebook carried out to effectuate its tracking and
interception of Plaintiff's and Class Members' communications
while they were using a web browser or mobile application to visit
the Website.

98. Defendant fails to disclose that it is using Facebook Pixel to track and

1 automatically and simultaneously transmit highly sensitive personal communications to a
2 third party. Defendant is necessarily aware that these communications are confidential as
3 its Website Privacy Notice acknowledges the confidential nature of private medical
4 information and disclaims that it is being shared with unidentified third parties without
5 Plaintiff's and Class Members' express authorization.

6 99. The patient communication information that Defendant transmits while
7 using Facebook Pixel constitutes protected health information.

8 100. As demonstrated hereinabove, Defendant violates CIPA by aiding and
9 permitting third parties to receive its patients' online communications in real time through
10 its Website without their consent.

11 101. By disclosing Plaintiff's and Class Members' private health information,
12 Defendant violated Plaintiff's and Class Members' statutorily protected right to privacy.

13 102. As a result of the above violations and pursuant to CIPA Section 637.2,
14 Defendant is liable to Plaintiff and Class Members for treble actual damages related to their
15 loss of privacy in an amount to be determined at trial, or for statutory damages in the
16 amount of \$5,000 per violation. Section 637.2 specifically states that "[i]t is not a necessary
17 prerequisite to an action pursuant to this section that the Plaintiff has suffered, or be
18 threatened with, actual damages."

19 103. Under the statute, Defendant is also liable for reasonable attorney's fees,
20 litigation costs, injunctive and declaratory relief, and punitive damages in an amount to be
21 determined by a jury, but sufficient to prevent the same or similar conduct by the Defendant
22 in the future.

23 **COUNT II**

24 **Violation Of the California Confidentiality of Medical Information Act** 25 **Cal. Civ. Code §§ 56, et seq.**

26 104. Plaintiff repeats the allegations contained in the foregoing paragraphs as if
27 fully set forth herein and brings this claim individually and on behalf of the proposed Class.

1 105. The California Confidentiality of Medical Information Act, California Civil
2 Code §§ 56, *et seq.* (“CMIA”) prohibits health care providers from disclosing medical
3 information relating to their patients without patient authorization. “Medical information”
4 refers to “any individually identifiable information, in electronic or physical form, in
5 possession of or derived from a provider of health care . . . regarding a patient’s medical
6 history, mental or physical condition, or treatment. ‘Individually Identifiable’ means that
7 the medical information includes or contains any element of personal identifying
8 information sufficient to allow identification of the individual[.]” CAL. CIV. CODE § 56.05.

9 106. Defendant is a “provider of health care” as defined by California Civil Code
10 § 56.06(b).

11 107. Plaintiff and Class Members are patients, and, as a health care provider,
12 Defendant has an ongoing obligation to comply with the CMIA’s requirements. As set forth
13 above, device identifiers, web URLs, Internet Protocol (IP) addresses, and other
14 characteristics that can uniquely identify Plaintiff and Class Members are transmitted to
15 Defendant in combination with patient medical conditions, medical concerns, treatment(s)
16 sought by the patients, and doctors viewed along with the medical specialty of the doctor(s)
17 searched for and viewed by patients. This is protected health information under the CMIA.

18 108. This private medical information is intercepted and transmitted to Facebook
19 via Defendant’s knowing and intentional decision to embed enabling software into its
20 Website. Facebook ID is also an identifier sufficient to allow identification of an individual.
21 Along with patients’ Facebook ID, Defendant discloses to Facebook several pieces of
22 information regarding patient use of its Website, including but not limited to the following:
23 patient medical conditions, medical concerns, treatment(s) sought by the patients, medical
24 specialty of the doctor(s) searched for by patients, and patient information regarding
25 COVID-19.

26 109. The information described above constitutes medical information pursuant
27 to the CMIA because it is patient information derived from a provider of health care
28

1 regarding patients' medical treatment and physical condition, and this medical information
2 is linked with individually identifying information. CAL. CIV. CODE § 56.05(i).

3 110. As demonstrated hereinabove, Defendant fails to obtain its patients'
4 authorization for the disclosure of medical information and fails to disclose in its Website
5 Privacy Notice that it shares protected health information with Facebook or other third
6 parties for marketing purposes.

7 111. Pursuant to CMIA Section 56.11, a valid authorization for disclosure of
8 medical information must be: (1) "Clearly separate from any other language present on the
9 same page and is executed by a signature which serves no other purpose than to execute
10 the authorization;" (2) signed and dated by the patient or his representative; (3) state the
11 name and function of the third party that receives the information; and (4) state a specific
12 date after which the authorization expires. Accordingly, the information set forth in
13 Defendant's Website Privacy Notice do not qualify as a valid authorization.

14 112. As described above, Defendant is violating the CMIA by disclosing its
15 patients' medical information to Facebook along with the patients' individually identifying
16 information. Accordingly, Plaintiff and Class Members seek all relief available for
17 Defendant's CMIA violations.

18 113. Plaintiff and members of the Class seek nominal damages, compensatory
19 damages, punitive damages, attorney fees, and costs of litigation for Defendant's
20 violation(s) of the CMIA.

21 **COUNT III**

22 **Invasion of Privacy Under California's Constitution**

23 114. Plaintiff repeats the allegations contained in the foregoing paragraphs as if
24 fully set forth herein and brings this claim individually and on behalf of the proposed Class.

25 115. Plaintiff and Class Members have an interest in: (1) precluding the
26 dissemination and/or misuse of their sensitive, confidential communications and protected
27 health information; and (2) making personal decisions and/or conducting personal
28

1 activities without observation, intrusion or interference, including, but not limited to, the
2 right to visit and interact with various internet sites without being subjected to wiretaps
3 without Plaintiff's and Class Members' knowledge or consent.

4 116. At all relevant times, by using Facebook's tracking pixel to record and
5 communicate patients' FIDs and other individually identifying information alongside their
6 confidential medical communications, Defendant intentionally invaded Plaintiff's and
7 Class Members' privacy rights under the California Constitution.

8 117. Plaintiff and Class Members had a reasonable expectation that their
9 communications, identity, health information, and other data would remain confidential,
10 and that Defendant would not install wiretaps on its Website to secretly transmit
11 communications to a third party.

12 118. Plaintiff and Class Members did not authorize Defendant to record and
13 transmit Plaintiff's and Class Members' private medical communications alongside their
14 personally identifiable health information.

15 119. This invasion of privacy is serious in nature, scope, and impact because it
16 relates to patients' private medical communications. Moreover, it constitutes an egregious
17 breach of the societal norms underlying the privacy right.

18 120. As a result of Defendant's actions, Plaintiff and Class Members have
19 suffered harm and injury, including but not limited to an invasion of their privacy rights.

20 121. Plaintiff and Class Members have been damaged as a direct and proximate
21 result of Defendant's invasion of their privacy and are entitled to just compensation,
22 including monetary damages.

23 122. Plaintiff and Class Members seek appropriate relief for their injuries,
24 including but not limited to damages that will reasonably compensate Plaintiff and Class
25 Members for the harm to their privacy interests as a result of the intrusion(s) upon
26 Plaintiff's and Class Members' privacy.

27 123. Plaintiff and Class Members are further entitled to punitive damages
28

1 resulting from the malicious, willful, and intentional nature of Defendant's actions,
2 directed at injuring Plaintiff and Class Members in conscious disregard of their rights. Such
3 damages are needed to deter Defendant from engaging in such conduct in the future.

4 124. Plaintiff seeks all other relief as the Court may deem just, proper, and
5 available for invasion of privacy under the California Constitution.

6 **COUNT IV**

7 **Common Law Invasion of Privacy – Intrusion Upon Seclusion**

8 125. Plaintiff repeats the allegations contained in the foregoing paragraphs as if
9 fully set forth herein and brings this claim individually and on behalf of the proposed Class.

10 126. Plaintiff and Class Members had a reasonable expectation of privacy in their
11 communications with Defendant via its Website and the communication platforms and
12 services therein.

13 127. Plaintiff and Class Members communicated sensitive and protected medical
14 information and individually identifiable information that they intended for only Defendant
15 to receive and that they understood Defendant would keep private.

16 128. Defendant's disclosure of the substance and nature of those communications
17 to third parties without the knowledge and consent of Plaintiff and Class Members is an
18 intentional intrusion on Plaintiff's and Class Members' solitude or seclusion.

19 129. Plaintiff and Class Members had a reasonable expectation of privacy because
20 Defendant's Website Privacy Notice states that they can expect such privacy. Moreover,
21 Plaintiff and Class Members have a general expectation that their communications
22 regarding healthcare with their healthcare providers will be kept confidential. Defendant's
23 disclosure of private medical information coupled with individually identifying
24 information is highly offensive to the reasonable person.

25 130. As a result of Defendant's actions, Plaintiff and Class Members have
26 suffered harm and injury, including but not limited to an invasion of their privacy rights.

27 131. Plaintiff and Class Members have been damaged as a direct and proximate
28

1 result of Defendant's invasion of their privacy and are entitled to just compensation,
2 including monetary damages.

3 132. Plaintiff and Class Members seek appropriate relief for these injuries,
4 including but not limited to damages that will reasonably compensate Plaintiff and Class
5 Members for the harm to their privacy interests as a result of the intrusion(s) upon
6 Plaintiff's and Class Members' privacy.

7 133. Plaintiff and Class Members are also entitled to punitive damages resulting
8 from the malicious, willful, and intentional nature of Defendant's actions, directed at
9 injuring Plaintiff and Class Members in conscious disregard of their rights. Such damages
10 are needed to deter Defendant from engaging in such conduct in the future.

11 134. Plaintiff seeks all other relief as the Court may deem just and proper.

12 **RELIEF REQUESTED**

13 135. Plaintiff, individually and on behalf of the proposed Class, respectfully
14 requests that the Court grant the following relief:
15

- 16 a. Certification of this action as a class action and appointment of
17 Plaintiff and Plaintiff's counsel to represent the Class;
- 18 b. A declaratory judgment that Defendant violated: (1) the
19 California Invasion of Privacy Act; (2) the California Confidentiality
20 of Medical Information Act; and (3) Plaintiff' and Class Members'
21 privacy rights as provided at common law and pursuant to the
22 California Constitution;
- 23 c. An order enjoining Defendant from engaging in the unlawful
24 practices and illegal acts described herein; and
- 25 d. An order awarding Plaintiff and the Class: (1) actual or statutory
26 damages; (2) punitive damages – as warranted – in an amount to be
27 determined at trial; (3) prejudgment interest on all amounts awarded;
28 (4) injunctive relief as the Court may deem proper; (5) reasonable
attorney fees and expenses and costs of suit pursuant to California
Code of Civil Procedure § 1021.5 and/or other applicable law; and
(6) Such other and further relief as the Court may deem
appropriate.

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