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8 Attorneys for Representative Plaintiff
and the Plaintiff Classes
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

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13 ULYSSES NAVARRO, individually, and
on behalf of all others similarly situated,
14

15 Plaintiff,

16 vs.

17 CLINIVATE, LLC,

18 Defendant.
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Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND EQUITABLE RELIEF
FOR:**

- 1. NEGLIGENCE;
- 2. CONFIDENTIALITY OF MEDICAL INFORMATION ACT (CAL. CIV. CODE §56);
- 3. INVASION OF PRIVACY;
- 4. BREACH OF IMPLIED CONTRACT;
- 5. UNFAIR BUSINESS PRACTICES;
- 6. UNJUST ENRICHMENT

[JURY TRIAL DEMANDED]

1 Representative Plaintiff alleges as follows:
2

3 **INTRODUCTION**

4 1. Representative Plaintiff Ulysses Navarro (“Representative Plaintiff”)
5 brings this class action against Defendant Clinivate, LLC (“Defendant” or
6 “Clinivate”) for its failure to properly secure and safeguard Representative
7 Plaintiff’s and Class Members’ personally identifiable information stored within
8 Defendant’s information network, including, without limitation, medical
9 information such as, information regarding medical treatments, provider names,
10 dates of service, diagnosis/procedure information, (these types of information, *inter*
11 *alia*, being hereafter referred to, collectively, as “personal health information” or
12 “PHI”),¹ account and/or record numbers, names, and dates of birth (these latter types
13 of information, *inter alia*, being hereafter referred to, collectively, as “personally
14 identifiable information” or “PII”).²

15 2. With this action, Representative Plaintiff seeks to hold Defendant
16 responsible for the harms it caused and will continue to cause Representative
17 Plaintiff and the countless other similarly situated persons in the massive and
18 preventable cyberattack beginning as early as March 12, 2022 and discovered by
19 Defendant on May 25, 2022, by which cybercriminals infiltrated Defendant’s
20 inadequately protected network servers and accessed highly sensitive PHI/PII and
21 financial information which was being kept unprotected (the “Data Breach”).

22 _____
23 ¹ Personal health information (“PHI”) is a category of information that refers to an
24 individual’s medical records and history, which is protected under the Health
25 Insurance Portability and Accountability Act. *Inter alia*, PHI includes test results,
26 procedure descriptions, diagnoses, personal or family medical histories and data
27 points applied to a set of demographic information for a particular patient.

28 ² Personally identifiable information (“PII”) generally incorporates information
that can be used to distinguish or trace an individual’s identity, either alone or
when combined with other personal or identifying information. 2 C.F.R. § 200.79.
At a minimum, it includes all information that on its face expressly identifies an
individual. PII also is generally defined to include certain identifiers that do not on
its face name an individual, but that are considered to be particularly sensitive
and/or valuable if in the wrong hands (for example, Social Security numbers,
passport numbers, driver’s license numbers, financial account numbers).

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1 3. Representative Plaintiff further seeks to hold Defendant responsible for
2 not ensuring that the PHI/PII was maintained in a manner consistent with industry,
3 the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) Privacy
4 Rule (45 CFR, Parts 160 and 164(A) and (E)), the HIPPA Security Rule (45 CFR,
5 Parts 160 and 164(A) and (C)), and other relevant standards.

6 4. While Defendant claims to have discovered the breach as early as May
7 25, 2022, Defendant did not begin informing victims of the Data Breach until July
8 2022. Indeed, Representative Plaintiff and Class Members were wholly unaware of
9 the Data Breach until she/they received letter(s) from Defendant informing them of
10 it. In particular, the letter Representative Plaintiff received was dated July 22, 2022.

11 5. Defendant acquired, collected and stored Representative Plaintiff’s and
12 Class Members’ PHI/PII and/or financial information in its ordinary course of
13 business. Therefore, at all relevant times, Defendant knew, or should have known,
14 that Representative Plaintiff and Class Members would use Defendant’s networks to
15 store and/or share sensitive data, including highly confidential PHI/PII.

16 6. HIPAA establishes national minimum standards for the protection of
17 individuals’ medical records and other personal health information. HIPAA,
18 generally, applies to health plans/insurers, health care clearinghouses, and those
19 health care providers that conduct certain health care transactions electronically, and
20 sets minimum standards for Defendant’s maintenance of Representative Plaintiff’s
21 and Class Members’ PHI/PII. More specifically, HIPAA requires appropriate
22 safeguards be maintained by organizations such as Defendant to protect the privacy
23 of personal health information and sets limits and conditions on the uses and
24 disclosures that may be made of such information without customer/patient
25 authorization. HIPAA also establishes a series of rights over Representative
26 Plaintiff’s and Class Members’ PHI/PII, including rights to examine and obtain
27 copies of their health records, and to request corrections thereto.

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1 7. Additionally, the HIPAA Security Rule establishes national standards
2 to protect individuals’ electronic personal health information that is created,
3 received, used, or maintained by a covered entity. The HIPAA Security Rule
4 requires appropriate administrative, physical and technical safeguards to ensure the
5 confidentiality, integrity, and security of electronic protected health information.

6 8. By obtaining, collecting, using, and deriving a benefit from
7 Representative Plaintiff’s and Class Members’ PHI/PII, Defendant assumed legal
8 and equitable duties to those individuals. These duties arise from HIPAA and other
9 state and federal statutes and regulations as well as common law principles.
10 Representative Plaintiff does not bring claims in this action for direct violations of
11 HIPAA, but charges Defendant with various legal violations merely predicated upon
12 the duties set forth in HIPAA.

13 9. Defendant disregarded the rights of Representative Plaintiff and Class
14 Members by intentionally, willfully, recklessly, or negligently failing to take and
15 implement adequate and reasonable measures to ensure that Representative
16 Plaintiff’s and Class Members’ PHI/PII was safeguarded, failing to take available
17 steps to prevent an unauthorized disclosure of data, and failing to follow applicable,
18 required, and appropriate protocols, policies, and procedures regarding the
19 encryption of data, even for internal use. As a result, the PHI/PII of Representative
20 Plaintiff and Class Members was compromised through disclosure to an unknown
21 and unauthorized third party—an undoubtedly nefarious third party that seeks to
22 profit off this disclosure by defrauding Representative Plaintiff and Class Members
23 in the future. Representative Plaintiff and Class Members have a continuing interest
24 in ensuring that their information is and remains safe, and they are entitled to
25 injunctive and other equitable relief.

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JURISDICTION AND VENUE

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2 10. Jurisdiction is proper in this Court under 28 U.S.C. §1332 (diversity
3 jurisdiction). Specifically, this Court has subject matter and diversity jurisdiction
4 over this action under 28 U.S.C. § 1332(d) because this is a class action where the
5 amount in controversy exceeds the sum or value of \$5 million, exclusive of interest
6 and costs, there are more than 100 members in the proposed class, and at least one
7 other Class Member is a citizen of a state different from Defendants.

8 11. Supplemental jurisdiction to adjudicate issues pertaining to California
9 state law is proper in this Court under 28 U.S.C. §1367.

10 12. Defendant routinely conducts business in California, has sufficient
11 minimum contacts in California and has intentionally availed itself of this
12 jurisdiction by marketing and selling products and services, and by accepting and
13 processing payments for those products and services within California.

14 13. Venue is proper in this Court under 28 U.S.C. § 1391 because the events
15 that gave rise to Representative Plaintiff’s claims took place within the Northern
16 District of California, and Defendant does business in this Judicial District.

PLAINTIFF

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19 14. Representative Plaintiff is an adult individual and, at all relevant times
20 herein, a resident of the State of California. Representative Plaintiff is a victim of
21 the Data Breach.

22 15. Defendant received highly sensitive personal, medical, and financial
23 information from Representative Plaintiff in connection with her receipt of medical
24 care and related medical and/or behavioral health services from one of Defendant’s
25 clients, Special Service for Groups, a non-profit health and human service
26 organization for which Defendant is the electronic health records vendor.³

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³ See Defendant’s Notice of Data Breach letter, dated July 22, 2022; ssg.org.

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1 16. Representative Plaintiff received—and was a “consumer” for purposes
2 of obtaining—medical care from Defendant within the State of California.

3 17. At all times herein relevant, Representative Plaintiff is and was a
4 member of each of the Classes.

5 18. As required in order to obtain services from Defendant, Representative
6 Plaintiff provided Defendant with highly sensitive personal, financial, health, and
7 insurance information.

8 19. Representative Plaintiff’s PHI/PII was exposed in the Data Breach
9 because Defendant stored and/or shared Representative Plaintiff’s PHI/PII and
10 financial information. Her PHI/PII and financial information was within the
11 possession and control of Defendant at the time of the Data Breach.

12 20. Representative Plaintiff received a letter from Defendant, dated July 22,
13 2022, informing her that her PHI/PII and/or financial information was involved in
14 the Data Breach (the “Notice”).

15 21. As a result, Representative Plaintiff spent time dealing with the
16 consequences of the Data Breach, which included and continues to include, time
17 spent verifying the legitimacy and impact of the Data Breach, exploring credit
18 monitoring and identity theft insurance options, self-monitoring her accounts, and
19 seeking legal counsel regarding her options for remedying and/or mitigating the
20 effects of the Data Breach. This time has been lost forever and cannot be recaptured.

21 22. Representative Plaintiff suffered actual injury in the form of damages
22 to and diminution in the value of her PHI/PII—a form of intangible property that she
23 entrusted to Defendant, which was compromised in and as a result of the Data
24 Breach.

25 23. Representative Plaintiff suffered lost time, annoyance, interference, and
26 inconvenience as a result of the Data Breach and has anxiety and increased concerns
27 for the loss of her privacy, as well as anxiety over the impact of cybercriminals
28 accessing and using her PHI/PII and/or financial information.

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1 24. Representative Plaintiff has suffered imminent and impending injury
2 arising from the substantially increased risk of fraud, identity theft, and misuse
3 resulting from her PHI/PII and financial information, in combination with her name,
4 being placed in the hands of unauthorized third parties/criminals.

5 25. Representative Plaintiff has a continuing interest in ensuring that her
6 PHI/PII and financial information, which, upon information and belief, remains
7 backed up in Defendant’s possession, is protected and safeguarded from future
8 breaches.

9
10 **DEFENDANT**

11 26. Defendant is a California corporation with a principal place of business
12 located at 99 S. Lake Ave., Suite 17 Pasadena, California 91101.

13 27. Clinivate creates software solutions for behavioral health providers,
14 clinicians and managers. Clinavate is the electronic health records vendor for one
15 such health provider, Special Service for Groups,⁴ a non-profit health and human
16 service organization.⁵ Recognizing the need for software necessary to today’s
17 behavioral health agencies, Clinivate is “a company dedicated to creating easy-to-
18 use, flexible, yet powerful tools for the documentation, tracking, and management
19 of behavioral healthcare services.”⁶

20 28. The true names and capacities of persons or entities, whether
21 individual, corporate, associate, or otherwise, who may be responsible for some of
22 the claims alleged here are currently unknown to Representative Plaintiff.
23 Representative Plaintiff will seek leave of court to amend this Complaint to reflect
24 the true names and capacities of such other responsible parties when their identities
25 become known.

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28 ⁴ See Defendant’s Notice of Data Breach letter, dated July 22, 2022.

⁵ See Ssg.org

⁶ See https://clinivate.com/?page_id=55

CLASS ACTION ALLEGATIONS

29. Representative Plaintiff brings this action pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and the following classes/subclass(es) (collectively, the “Class”):

Nationwide Class:

“All individuals within the United States of America whose PHI/PII and/or financial information was exposed to unauthorized third-parties as a result of the data breach occurring between March 12, 2022 and March 21, 2022.”

California Subclass:

“All individuals within the State of California whose PII/PHI was stored by Defendant and/or was exposed to unauthorized third parties as a result of the data breach occurring between March 12, 2022 and March 21, 2022.”

30. Excluded from the Classes are the following individuals and/or entities: Defendant and Defendant’s parents, subsidiaries, affiliates, officers and directors, and any entity in which Defendant has a controlling interest; all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out; any and all federal, state, or local governments, including but not limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

31. Also, in the alternative, Representative Plaintiff requests additional Subclasses as necessary based on the types of PII/PHI that were compromised.

32. Representative Plaintiff reserves the right to amend the above definition or to propose subclasses in subsequent pleadings and motions for class certification.

33. This action has been brought and may properly be maintained as a class action under Federal Rule of Civil Procedure Rule 23 because there is a well-defined community of interest in the litigation and membership in the proposed classes is easily ascertainable.

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- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible. Representative Plaintiff is informed and believe and, on that basis, allege that the total number of Class Members is in the hundreds of thousands of individuals. Membership in the classes will be determined by analysis of Defendant’s records.

- b. Commonality: Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
 - 1) Whether Defendant had a legal duty to Representative Plaintiff and the Classes to exercise due care in collecting, storing, using, and/or safeguarding their PII/PHI;
 - 2) Whether Defendant knew or should have known of the susceptibility of its data security systems to a data breach;
 - 3) Whether Defendant’s security procedures and practices to protect its systems were reasonable in light of the measures recommended by data security experts;
 - 4) Whether Defendant’s failure to implement adequate data security measures allowed the Data Breach to occur;
 - 5) Whether Defendant failed to comply with its own policies and applicable laws, regulations, and industry standards relating to data security;
 - 6) Whether Defendant adequately, promptly, and accurately informed Representative Plaintiff and Class Members that their PII/PHI had been compromised;
 - 7) How and when Defendant actually learned of the Data Breach;
 - 8) Whether Defendant’s conduct, including its failure to act, resulted in or was the proximate cause of the breach of its systems, resulting in the loss of the PII/PHI of Representative Plaintiff and Class Members;
 - 9) Whether Defendant adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur;
 - 10) Whether Defendant engaged in unfair, unlawful, or deceptive practices by failing to safeguard the PII/PHI of Representative Plaintiff and Class Members;
 - 11) Whether Representative Plaintiff and Class Members are entitled to actual and/or statutory damages and/or whether injunctive, corrective and/or declaratory relief and/or an accounting is/are appropriate as a result of Defendant’s wrongful conduct;

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12) Whether Representative Plaintiff and Class Members are entitled to restitution as a result of Defendant’s wrongful conduct.

c. Typicality: Representative Plaintiff’s claims are typical of the claims of the Plaintiff Classes. Representative Plaintiff and all members of the Plaintiff Classes sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: Representative Plaintiff in this class action is an adequate representative of each of the Plaintiff Classes in that Representative Plaintiff has the same interest in the litigation of this case as the Class Members, is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other Class Members or the classes in its entirety. Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought, by each individual member of the Plaintiff classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

34. This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to Class Members, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the Class Members and making final injunctive relief appropriate with respect to the Class(es) in its/their entirety. Defendant’s policies and practices challenged herein apply to and affect Class Members uniformly and Representative Plaintiff’s challenge of these policies and practices hinges on Defendant’s conduct with respect to the Class(es) in its/their entirety, not on facts or law applicable only to Representative Plaintiff.

1 35. Unless a Class-wide injunction is issued, Defendant may continue in its
2 failure to properly secure the PHI/PII and/or financial information of Class
3 Members, and Defendant may continue to act unlawfully as set forth in this
4 Complaint.

5 36. Further, Defendant has acted or refused to act on grounds generally
6 applicable to the Classes and, accordingly, final injunctive or corresponding
7 declaratory relief with regard to the Class Members as a whole is appropriate under
8 Rule 23(b)(2) of the Federal Rules of Civil Procedure.

9
10 **COMMON FACTUAL ALLEGATIONS**

11 **The Cyberattack**

12 37. In the course of the Data Breach, one or more unauthorized third-parties
13 accessed Class Members' sensitive data including, but not limited to, medical
14 information, account or record information, names, and dates of birth.
15 Representative Plaintiff was among the individuals whose data was accessed in the
16 Data Breach.

17 38. Representative Plaintiff was provided the information detailed above
18 upon her receipt of a letter from Defendant, dated July 22, 2022. She was not aware
19 of the Data Breach until receiving that letter.

20
21 **Defendant's Failed Response to the Breach**

22 39. Not until roughly nine months after it claims to have discovered the
23 Data Breach did Defendant begin sending the Notice to persons whose PHI/PII
24 and/or financial information Defendant confirmed was potentially compromised as
25 a result of the Data Breach. The Notice provided basic details of the Data Breach
26 and Defendant' recommended next steps.

27 40. The Notice included, *inter alia*, the claims that Defendant had
28 "identified unusual activity on certain systems within its network" on September 26,

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1 2021, had taken steps to respond, and was continuing to investigate. It claimed that
2 Defendant took measures to contain the attack and engaged outside cyber security
3 experts to aid its investigation.

4 41. Upon information and belief, the unauthorized third-party
5 cybercriminals gained access to Representative Plaintiff’s and Class Members’
6 PHI/PII and financial information with the intent of engaging in misuse of the
7 PHI/PII and financial information, including marketing and selling Representative
8 Plaintiff’s and Class Members’ PHI/PII.

9 42. Defendant had and continues to have obligations created by HIPAA,
10 the California Confidentiality of Medical Information Act (“CMIA”), reasonable
11 industry standards, common law, state statutory law, and its own assurances and
12 representations to keep Representative Plaintiff’s and Class Members’ PHI/PII
13 confidential and to protect such PHI/PII from unauthorized access.

14 43. Representative Plaintiff and Class Members were required to provide
15 their PHI/PII and financial information to Defendant with the reasonable expectation
16 and mutual understanding that Defendant would comply with its obligations to keep
17 such information confidential and secure from unauthorized access.

18 44. Despite this, Representative Plaintiff and the Class Members remain,
19 even today, in the dark regarding what particular data was stolen, the particular
20 malware used, and what steps are being taken, if any, to secure their PHI/PII and
21 financial information going forward. Representative Plaintiff and Class Members
22 are left to speculate as to the full impact of the Data Breach and how exactly
23 Defendant intends to enhance its information security systems and monitoring
24 capabilities so as to prevent further breaches.

25 45. Representative Plaintiff’s and Class Members’ PHI/PII and financial
26 information may end up for sale on the dark web, or simply fall into the hands of
27 companies that will use the detailed PHI/PII and financial information for targeted
28 marketing without the approval of Representative Plaintiff and/or Class Members.

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1 Either way, unauthorized individuals can now easily access the PHI/PII and/or
2 financial information of Representative Plaintiff and Class Members.

3
4 **Defendant Collected/Stored Class Members' PHI/PII**

5 46. Defendant acquired, collected, and stored, and assured reasonable
6 security over, Representative Plaintiff's and Class Members' PHI/PII and financial
7 information.

8 47. As a condition of its relationships with Representative Plaintiff and
9 Class Members, Defendant required that Representative Plaintiff and Class
10 Members entrust Defendant with highly sensitive and confidential PHI/PII and
11 financial information. Defendant, in turn, stored that information on its system that
12 was ultimately affected by the Data Breach.

13 48. By obtaining, collecting, and storing Representative Plaintiff's and
14 Class Members' PHI/PII and financial information, Defendant assumed legal and
15 equitable duties and knew, or should have known, that they were thereafter
16 responsible for protecting Representative Plaintiff's and Class Members' PHI/PII
17 and financial information from unauthorized disclosure.

18 49. Representative Plaintiff and Class Members have taken reasonable
19 steps to maintain the confidentiality of their PHI/PII and financial information.
20 Representative Plaintiff and Class Members relied on Defendant to keep their
21 PHI/PII and financial information confidential and securely maintained, to use this
22 information for business and healthcare purposes only, and to make only authorized
23 disclosures of this information.

24 50. Defendant could have prevented the Data Breach by properly securing
25 and encrypting and/or more securely encrypting its servers generally, as well as
26 Representative Plaintiff's and Class Members' PHI/PII and financial information.

27 51. Defendant's negligence in safeguarding Representative Plaintiff's and
28 Class Members' PHI/PII and financial information is exacerbated by repeated

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1 warnings and alerts directed to protecting and securing sensitive data, as evidenced
2 by the trending data breach attacks in recent years.

3 52. The healthcare industry in particular has experienced a large number of
4 high-profile cyberattacks even in just the short period preceding the filing of this
5 Complaint and cyberattacks, generally, have become increasingly more common.
6 More healthcare data breaches were reported in 2020 than in any other year, showing
7 a 25% increase.⁷ Additionally, according to the HIPAA Journal, the largest
8 healthcare data breaches have been reported beginning in April 2021.⁸

9 53. For example, Universal Health Services experienced a cyberattack on
10 September 29, 2020 that appears similar to the attack on Defendant. As a result of
11 this attack, Universal Health Services suffered a four-week outage of its systems
12 which caused as much as \$67 million in recovery costs and lost revenue.⁹ Similarly,
13 in 2021, Scripps Health suffered a cyberattack, an event which effectively shut down
14 critical health care services for a month and left numerous patients unable to speak
15 to its physicians or access vital medical and prescription records.¹⁰ A few months
16 later, University of San Diego Health suffered a similar attack.¹¹

17 54. Due to the high-profile nature of these breaches, and other breaches of
18 its kind, Defendant was and/or certainly should have been on notice and aware of
19 such attacks occurring in the healthcare industry and, therefore, should have
20 assumed and adequately performed the duty of preparing for such an imminent
21

22
23 ⁷ <https://www.hipaajournal.com/2020-healthcare-data-breach-report-us/> (last
24 accessed November 5, 2021).
⁸ <https://www.hipaajournal.com/april-2021-healthcare-data-breach-report/> (last
25 accessed November 5, 2021).
⁹ [https://ir.uhsinc.com/news-releases/news-release-details/universal-health-
26 services-inc-reports-2020-fourth-quarter-and](https://ir.uhsinc.com/news-releases/news-release-details/universal-health-services-inc-reports-2020-fourth-quarter-and) (last accessed November 5, 2021).
¹⁰ [https://www.nbcsandiego.com/news/local/scripps-health-employees-regaining-
27 access-to-internal-systems-hit-by-cyberattack-2/2619540/](https://www.nbcsandiego.com/news/local/scripps-health-employees-regaining-access-to-internal-systems-hit-by-cyberattack-2/2619540/) (last accessed November
28 5, 2021).
¹¹ [https://www.nbcsandiego.com/news/local/data-breach-at-uc-san-diego-health-
some-employee-email-accounts-impacted/2670302/](https://www.nbcsandiego.com/news/local/data-breach-at-uc-san-diego-health-some-employee-email-accounts-impacted/2670302/) (last accessed November 5,
2021).

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1 attack. This is especially true given that Defendant is a large, sophisticated operation
2 with the resources to put adequate data security protocols in place.

3 55. Yet, despite the prevalence of public announcements of data breach and
4 data security compromises, Defendant failed to take appropriate steps to protect
5 Representative Plaintiff’s and Class Members’ PHI/PII and financial information
6 from being compromised.

7
8 **Defendant Had an Obligation to Protect the Stolen Information**

9 56. Defendant’s failure to adequately secure Representative Plaintiff’s and
10 Class Members’ sensitive data breaches duties it owes Representative Plaintiff and
11 Class Members under statutory and common law. Under HIPAA, health insurance
12 providers have an affirmative duty to keep patients’ Protected Health Information
13 private. As a covered entity, Defendant has a statutory duty under HIPAA and other
14 federal and state statutes to safeguard Representative Plaintiff’s and Class Members’
15 data. Moreover, Representative Plaintiff and Class Members surrendered their
16 highly sensitive personal data to Defendant under the implied condition that
17 Defendant would keep it private and secure. Accordingly, Defendant also has an
18 implied duty to safeguard their data, independent of any statute.

19 57. Because Defendant is covered by HIPAA (45 C.F.R. § 160.102), it is
20 required to comply with the HIPAA Privacy Rule, 45 C.F.R. Part 160 and Part 164,
21 Subparts A and E (“Standards for Privacy of Individually Identifiable Health
22 Information”), and Security Rule (“Security Standards for the Protection of
23 Electronic Protected Health Information”), 45 C.F.R. Part 160 and Part 164,
24 Subparts A and C.

25 58. HIPAA’s Privacy Rule or Standards for Privacy of Individually
26 Identifiable Health Information establishes national standards for the protection of
27 health information.

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1 59. HIPAA’s Privacy Rule or Security Standards for the Protection of
2 Electronic Protected Health Information establishes a national set of security
3 standards for protecting health information that is kept or transferred in electronic
4 form.

5 60. HIPAA requires Defendant to “comply with the applicable standards,
6 implementation specifications, and requirements” of HIPAA “with respect to
7 electronic protected health information.” 45 C.F.R. § 164.302.

8 61. “Electronic protected health information” is “individually identifiable
9 health information ... that is (i) transmitted by electronic media; maintained in
10 electronic media.” 45 C.F.R. § 160.103.

11 62. HIPAA’s Security Rule requires Defendant to do the following:

- 12 a. Ensure the confidentiality, integrity, and availability of all electronic
13 protected health information the covered entity or business associate
 creates, receives, maintains, or transmits;
- 14 b. Protect against any reasonably anticipated threats or hazards to the
15 security or integrity of such information;
- 16 c. Protect against any reasonably anticipated uses or disclosures of
 such information that are not permitted; and
- 17 d. Ensure compliance by its workforce.

18 63. HIPAA also requires Defendant to “review and modify the security
19 measures implemented ... as needed to continue provision of reasonable and
20 appropriate protection of electronic protected health information” under 45 C.F.R. §
21 164.306(e), and to “[i]mplement technical policies and procedures for electronic
22 information systems that maintain electronic protected health information to allow
23 access only to those persons or software programs that have been granted access
24 rights.” 45 C.F.R. § 164.312(a)(1).

25 64. Moreover, the HIPAA Breach Notification Rule, 45 C.F.R. §§ 164.400-
26 414, requires Defendant to provide notice of the Data Breach to each affected
27 individual “without unreasonable delay and in no case later than 60 days following
28 discovery of the breach.”

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1 65. Defendant was also prohibited by the Federal Trade Commission Act
2 (the “FTC Act”) (15 U.S.C. § 45) from engaging in “unfair or deceptive acts or
3 practices in or affecting commerce.” The Federal Trade Commission (the “FTC”)
4 has concluded that a company’s failure to maintain reasonable and appropriate data
5 security for consumers’ sensitive personal information is an “unfair practice” in
6 violation of the FTC Act. See, e.g., *FTC v. Wyndham Worldwide Corp.*, 799 F.3d
7 236 (3d Cir. 2015).

8 66. In addition to its obligations under federal and state laws, Defendant
9 owed a duty to Representative Plaintiff and Class Members to exercise reasonable
10 care in obtaining, retaining, securing, safeguarding, deleting, and protecting the
11 PHI/PII and financial information in Defendant’s possession from being
12 compromised, lost, stolen, accessed, and misused by unauthorized persons.
13 Defendant owed a duty to Representative Plaintiff and Class Members to provide
14 reasonable security, including consistency with industry standards and requirements,
15 and to ensure that its computer systems, networks, and protocols adequately
16 protected the PHI/PII and financial information of Representative Plaintiff and Class
17 Members.

18 67. Defendant owed a duty to Representative Plaintiff and Class Members
19 to design, maintain, and test its computer systems, servers and networks to ensure
20 that the PHI/PII and financial information in its possession was adequately secured
21 and protected.

22 68. Defendant owed a duty to Representative Plaintiff and Class Members
23 to create and implement reasonable data security practices and procedures to protect
24 the PHI/PII and financial information in its possession, including not sharing
25 information with other entities who maintained sub-standard data security systems.

26 69. Defendant owed a duty to Representative Plaintiff and Class Members
27 to implement processes that would immediately detect a breach on its data security
28 systems in a timely manner.

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1 70. Defendant owed a duty to Representative Plaintiff and Class Members
2 to act upon data security warnings and alerts in a timely fashion.

3 71. Defendant owed a duty to Representative Plaintiff and Class Members
4 to disclose if its computer systems and data security practices were inadequate to
5 safeguard individuals' PHI/PII and/or financial information from theft because such
6 an inadequacy would be a material fact in the decision to entrust this PHI/PII and/or
7 financial information to Defendants.

8 72. Defendant owed a duty of care to Representative Plaintiff and Class
9 Members because they were foreseeable and probable victims of any inadequate data
10 security practices.

11 73. Defendant owed a duty to Representative Plaintiff and Class Members
12 to encrypt and/or more reliably encrypt Representative Plaintiff's and Class
13 Members' PHI/PII and financial information and monitor user behavior and activity
14 in order to identify possible threats.

15
16 **Value of the Relevant Sensitive Information**

17 74. While the greater efficiency of electronic health records translates to
18 cost savings for providers, it also comes with the risk of privacy breaches. These
19 electronic health records contain a plethora of sensitive information (e.g., patient
20 data, patient diagnosis, lab results, RX's, treatment plans) that is valuable to cyber
21 criminals. One patient's complete record can be sold for hundreds of dollars on the
22 dark web. As such, PHI/PII and financial information are valuable commodities for
23 which a "cyber black market" exists in which criminals openly post stolen payment
24 card numbers, Social Security numbers, and other personal information on a number
25 of underground internet websites. Unsurprisingly, the healthcare industry is at high
26 risk for and acutely affected by cyberattacks.

27 75. The high value of PHI/PII and financial information to criminals is
28 further evidenced by the prices they will pay through the dark web. Numerous

1 sources cite dark web pricing for stolen identity credentials. For example, personal
 2 information can be sold at a price ranging from \$40 to \$200, and bank details have
 3 a price range of \$50 to \$200.¹² Experian reports that a stolen credit or debit card
 4 number can sell for \$5 to \$110 on the dark web.¹³ Criminals can also purchase access
 5 to entire company data breaches from \$999 to \$4,995.¹⁴

6 76. Between 2005 and 2019, at least 249 million people were affected by
 7 health care data breaches.¹⁵ Indeed, during 2019 alone, over 41 million healthcare
 8 records were exposed, stolen, or unlawfully disclosed in 505 data breaches.¹⁶ In
 9 short, these sorts of data breaches are increasingly common, especially among
 10 healthcare systems, which account for 30.03% of overall health data breaches,
 11 according to cybersecurity firm Tenable.¹⁷

12 77. These criminal activities have and will result in devastating financial
 13 and personal losses to Representative Plaintiff and Class Members. For example, it
 14 is believed that certain PHI/PII compromised in the 2017 Experian data breach was
 15 being used, three years later, by identity thieves to apply for COVID-19-related
 16 benefits in the state of Oklahoma. Such fraud will be an omnipresent threat for
 17 Representative Plaintiff and Class Members for the rest of their lives. They will need
 18 to remain constantly vigilant.

19
 20 ¹² *Your personal data is for sale on the dark web. Here's how much it costs*, Digital
 Trends, Oct. 16, 2019, available at:

21 <https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/> (last accessed July 28, 2021).

22 ¹³ *Here's How Much Your Personal Information Is Selling for on the Dark Web*,
 Experian, Dec. 6, 2017, available at: <https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/> (last accessed November 5, 2021).

24 ¹⁴ *In the Dark*, VPNOverview, 2019, available at:
 25 <https://vpnoverview.com/privacy/anonymous-browsing/in-the-dark/> (last accessed January 21, 2022).

26 ¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7349636/#B5-healthcare-08-00133> (last accessed January 21, 2022).

27 ¹⁶ <https://www.hipaajournal.com/december-2019-healthcare-data-breach-report/>
 (last accessed January 21, 2022).

28 ¹⁷ <https://www.tenable.com/blog/healthcare-security-ransomware-plays-a-prominent-role-in-covid-19-era-breaches> (last accessed January 21, 2022).

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1 78. The FTC defines identity theft as “a fraud committed or attempted using
2 the identifying information of another person without authority.” The FTC describes
3 “identifying information” as “any name or number that may be used, alone or in
4 conjunction with any other information, to identify a specific person,” including,
5 among other things, “[n]ame, Social Security number, date of birth, official State or
6 government issued driver’s license or identification number, alien registration
7 number, government passport number, employer or taxpayer identification number.”

8 79. Identity thieves can use PHI/PII and financial information, such as that
9 of Representative Plaintiff and Class Members which Defendant failed to keep
10 secure, to perpetrate a variety of crimes that harm victims. For instance, identity
11 thieves may commit various types of government fraud such as immigration fraud,
12 obtaining a driver’s license or identification card in the victim’s name but with
13 another’s picture, using the victim’s information to obtain government benefits, or
14 filing a fraudulent tax return using the victim’s information to obtain a fraudulent
15 refund.

16 80. The ramifications of Defendant’s failure to keep secure Representative
17 Plaintiff’s and Class Members’ PHI/PII and financial information are long lasting
18 and severe. Once PHI/PII and financial information is stolen, particularly
19 identification numbers, fraudulent use of that information and damage to victims
20 may continue for years. Indeed, the PHI/PII and/or financial information of
21 Representative Plaintiff and Class Members was taken by hackers to engage in
22 identity theft or to sell it to other criminals who will purchase the PHI/PII and/or
23 financial information for that purpose. The fraudulent activity resulting from the
24 Data Breach may not come to light for years.

25 81. There may be a time lag between when harm occurs versus when it is
26 discovered, and also between when PHI/PII and/or financial information is stolen
27 and when it is used. According to the U.S. Government Accountability Office
28 (“GAO”), which conducted a study regarding data breaches:

1 [L]aw enforcement officials told us that in some cases, stolen data may
 2 be held for up to a year or more before being used to commit identity
 3 theft. Further, once stolen data have been sold or posted on the Web,
 4 fraudulent use of that information may continue for years. As a result,
 studies that attempt to measure the harm resulting from data breaches
 cannot necessarily rule out all future harm.¹⁸

5 82. The harm to Representative Plaintiff and Class Members is especially
 6 acute given the nature of the leaked data. Medical identity theft is one of the most
 7 common, most expensive, and most difficult-to-prevent forms of identity theft.
 8 According to Kaiser Health News, “medical-related identity theft accounted for 43
 9 percent of all identity thefts reported in the United States in 2013,” which is more
 10 than identity thefts involving banking and finance, the government and the military,
 11 or education.¹⁹

12 83. “Medical identity theft is a growing and dangerous crime that leaves its
 13 victims with little to no recourse for recovery,” reported Pam Dixon, executive
 14 director of World Privacy Forum. “Victims often experience financial repercussions
 15 and worse yet, they frequently discover erroneous information has been added to
 16 their personal medical files due to the thief’s activities.”²⁰

17 84. If cyber criminals manage to access financial information, health
 18 insurance information and other personally sensitive data—as they did here—there
 19 is no limit to the amount of fraud to which Defendant may have exposed
 20 Representative Plaintiff and Class Members.

21 85. A study by Experian found that the average total cost of medical
 22 identity theft is “about \$20,000” per incident, and that a majority of victims of
 23 medical identity theft were forced to pay out-of-pocket costs for healthcare they did
 24

25
 26 ¹⁸ *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:
<http://www.gao.gov/new.items/d07737.pdf> (last accessed January 21, 2022).

27 ¹⁹ Michael Ollove, “The Rise of Medical Identity Theft in Healthcare,” Kaiser
 28 Health News, Feb. 7, 2014, <https://khn.org/news/rise-of-identity-theft/> (last
 accessed January 21, 2022).

²⁰ *Id.*

1 not receive in order to restore coverage.²¹ Almost half of medical identity theft
 2 victims lose their healthcare coverage as a result of the incident, while nearly one-
 3 third saw their insurance premiums rise, and forty percent were never able to resolve
 4 their identity theft at all.²²

5 86. And data breaches are preventable.²³ As Lucy Thompson wrote in the
 6 DATA BREACH AND ENCRYPTION HANDBOOK, “[i]n almost all cases, the data
 7 breaches that occurred could have been prevented by proper planning and the correct
 8 design and implementation of appropriate security solutions.”²⁴ She added that
 9 “[o]rganizations that collect, use, store, and share sensitive personal data must accept
 10 responsibility for protecting the information and ensuring that it is not compromised
 11”²⁵

12 87. Most of the reported data breaches are a result of lax security and the
 13 failure to create or enforce appropriate security policies, rules, and procedures . . .
 14 Appropriate information security controls, including encryption, must be
 15 implemented and enforced in a rigorous and disciplined manner so that a *data breach*
 16 *never occurs.*²⁶

17 88. Here, Defendant knew of the importance of safeguarding PHI/PII and
 18 financial information and of the foreseeable consequences that would occur if
 19 Representative Plaintiff’s and Class Members’ PHI/PII and financial information
 20 was stolen, including the significant costs that would be placed on Representative
 21 Plaintiff and Class Members as a result of a breach of this magnitude. As detailed

22
 23 ²¹ See Elinor Mills, “Study: Medical Identity Theft is Costly for Victims,” CNET
 (Mar. 3, 2010), <https://www.cnet.com/news/study-medical-identity-theft-is-costly-for-victims/> (last accessed January 21, 2022).

24 ²² *Id.*; see also Healthcare Data Breach: What to Know About them and What to
 Do After One, EXPERIAN, <https://www.experian.com/blogs/ask-experian/healthcare-data-breach-what-to-know-about-them-and-what-to-do-after-one/> (last accessed January 21, 2022).

25 ²³ Lucy L. Thompson, “Despite the Alarming Trends, Data Breaches Are
 Preventable,” in DATA BREACH AND ENCRYPTION HANDBOOK (Lucy Thompson,
 26 ed., 2012)

27 ²⁴ *Id.* at 17.

28 ²⁵ *Id.* at 28.

²⁶ *Id.*

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1 above, Defendant is a large, sophisticated organization with the resources to deploy
2 robust cybersecurity protocols. It knew, or should have known, that the development
3 and use of such protocols were necessary to fulfill its statutory and common law
4 duties to Representative Plaintiff and Class Members. Its failure to do so is,
5 therefore, intentional, willful, reckless, and/or grossly negligent.

6 89. Defendant disregarded the rights of Representative Plaintiff and Class
7 Members by, *inter alia*, (i) intentionally, willfully, recklessly, or negligently failing
8 to take adequate and reasonable measures to ensure that its network servers were
9 protected against unauthorized intrusions; (ii) failing to disclose that it did not have
10 adequately robust security protocols and training practices in place to adequately
11 safeguard Representative Plaintiff’s and Class Members’ PHI/PII and/or financial
12 information; (iii) failing to take standard and reasonably available steps to prevent
13 the Data Breach; (iv) concealing the existence and extent of the Data Breach for an
14 unreasonable duration of time; and (v) failing to provide Representative Plaintiff and
15 Class Members prompt and accurate notice of the Data Breach.

16
17 **FIRST CLAIM FOR RELIEF**
18 **Negligence**
19 **(On behalf of the Nationwide Class)**

20 90. Each and every allegation of the preceding paragraphs is incorporated
21 in this cause of action with the same force and effect as though fully set forth herein.

22 91. At all times herein relevant, Defendant owed Representative Plaintiff
23 and Class Members a duty of care, *inter alia*, to act with reasonable care to secure
24 and safeguard their PHI/PII and financial information and to use commercially
25 reasonable methods to do so. Defendant took on this obligation upon accepting and
26 storing the PHI/PII and financial information of Representative Plaintiff and Class
27 Members in its computer systems and on its networks.

28 92. Among these duties, Defendant were expected:

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- 1 a. to exercise reasonable care in obtaining, retaining, securing,
2 safeguarding, deleting and protecting the PHI/PII and financial
3 information in its possession;
- 4 b. to protect Representative Plaintiff's and Class Members' PHI/PII
5 and financial information using reasonable and adequate security
6 procedures and systems that were/are compliant with industry-
7 standard practices;
- 8 c. to implement processes to quickly detect the Data Breach and to
9 timely act on warnings about data breaches; and
- 10 d. to promptly notify Representative Plaintiff and Class Members
11 of any data breach, security incident, or intrusion that affected or
12 may have affected its PHI/PII and financial information.

13 93. Defendant knew that the PHI/PII and financial information was private
14 and confidential and should be protected as private and confidential and, thus,
15 Defendant owed a duty of care not to subject Representative Plaintiff and Class
16 Members to an unreasonable risk of harm because they were foreseeable and
17 probable victims of any inadequate security practices.

18 94. Defendant knew, or should have known, of the risks inherent in
19 collecting and storing PHI/PII and financial information, the vulnerabilities of its
20 data security systems, and the importance of adequate security. Defendant knew
21 about numerous, well-publicized data breaches.

22 95. Defendant knew, or should have known, that its data systems and
23 networks did not adequately safeguard Representative Plaintiff's and Class
24 Members' PHI/PII and financial information.

25 96. Only Defendant was in the position to ensure that its systems and
26 protocols were sufficient to protect the PHI/PII and financial information that
27 Representative Plaintiff and Class Members had entrusted to it.

28 97. Defendant breached its duties to Representative Plaintiff and Class
Members by failing to provide fair, reasonable, or adequate computer systems and
data security practices to safeguard the PHI/PII and financial information of
Representative Plaintiff and Class Members.

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1 98. Because Defendant knew that a breach of its systems could damage
2 thousands of individuals, including Representative Plaintiff and Class Members,
3 Defendant had a duty to adequately protect its data systems and the PHI/PII and
4 financial information contained thereon.

5 99. Representative Plaintiff’s and Class Members’ willingness to entrust
6 Defendant with its PHI/PII and financial information was predicated on the
7 understanding that Defendant would take adequate security precautions. Moreover,
8 only Defendant had the ability to protect its systems and the PHI/PII and financial
9 information they stored on them from attack. Thus, Defendant had a special
10 relationship with Representative Plaintiff and Class Members.

11 100. Defendant also had independent duties under state and federal laws that
12 required Defendant to reasonably safeguard Representative Plaintiff’s and Class
13 Members’ PHI/PII and financial information and promptly notify them about the
14 Data Breach. These “independent duties” are untethered to any contract between
15 Defendant and Representative Plaintiff and/or the remaining Class Members.

16 101. Defendant breached its general duty of care to Representative Plaintiff
17 and Class Members in, but not necessarily limited to, the following ways:

- 18
- 19 a. by failing to provide fair, reasonable, or adequate computer
20 systems and data security practices to safeguard the PHI/PII and
21 financial information of Representative Plaintiff and Class
22 Members;
 - 23 b. by failing to timely and accurately disclose that Representative
24 Plaintiff’s and Class Members’ PHI/PII and financial
25 information had been improperly acquired or accessed;
 - 26 c. by failing to adequately protect and safeguard the PHI/PII and
27 financial information by knowingly disregarding standard
28 information security principles, despite obvious risks, and by
allowing unmonitored and unrestricted access to unsecured
PHI/PII and financial information;
 - d. by failing to provide adequate supervision and oversight of the
PHI/PII and financial information with which they were and are
entrusted, in spite of the known risk and foreseeable likelihood
of breach and misuse, which permitted an unknown third party
to gather PHI/PII and financial information of Representative

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- 1 Plaintiff and Class Members, misuse the PHI/PII and
2 intentionally disclose it to others without consent.
- 3 e. by failing to adequately train its employees to not store PHI/PII
4 and financial information longer than absolutely necessary;
 - 5 f. by failing to consistently enforce security policies aimed at
6 protecting Representative Plaintiff's and the Class Members'
7 PHI/PII and financial information;
 - 8 g. by failing to implement processes to quickly detect data
9 breaches, security incidents, or intrusions; and
 - 10 h. by failing to encrypt Representative Plaintiff's and Class
11 Members' PHI/PII and financial information and monitor user
12 behavior and activity in order to identify possible threats.

13 102. Defendant's willful failure to abide by these duties was wrongful,
14 reckless, and grossly negligent in light of the foreseeable risks and known threats.

15 103. As a proximate and foreseeable result of Defendant's grossly negligent
16 conduct, Representative Plaintiff and Class Members have suffered damages and are
17 at imminent risk of additional harms and damages (as alleged above).

18 104. The law further imposes an affirmative duty on Defendant to timely
19 disclose the unauthorized access and theft of the PHI/PII and financial information
20 to Representative Plaintiff and Class Members so that they could and/or still can take
21 appropriate measures to mitigate damages, protect against adverse consequences,
22 and thwart future misuse of their PHI/PII and financial information.

23 105. Defendant breached its duty to notify Representative Plaintiff and Class
24 Members of the unauthorized access by waiting months after learning of the Data
25 Breach to notify Representative Plaintiff and Class Members and then by failing and
26 continuing to fail to provide Representative Plaintiff and Class Members sufficient
27 information regarding the breach. To date, Defendant has not provided sufficient
28 information to Representative Plaintiff and Class Members regarding the extent of
the unauthorized access and continues to breach its disclosure obligations to
Representative Plaintiff and Class Members.

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1 106. Further, through its failure to provide timely and clear notification of
2 the Data Breach to Representative Plaintiff and Class Members, Defendant
3 prevented Representative Plaintiff and Class Members from taking meaningful,
4 proactive steps to secure their PHI/PII and financial information, and to access their
5 medical records and histories.

6 107. There is a close causal connection between Defendant’s failure to
7 implement security measures to protect the PHI/PII and financial information of
8 Representative Plaintiff and Class Members and the harm suffered, or risk of
9 imminent harm suffered by Representative Plaintiff and Class Members.
10 Representative Plaintiff’s and Class Members’ PHI/PII and financial information
11 was accessed as the proximate result of Defendant’s failure to exercise reasonable
12 care in safeguarding such PHI/PII and financial information by adopting,
13 implementing, and maintaining appropriate security measures.

14 108. Defendant’s wrongful actions, inactions, and omissions constituted
15 (and continue to constitute) common law negligence.

16 109. The damages Representative Plaintiff and Class Members have
17 suffered (as alleged above) and will suffer were and are the direct and proximate
18 result of Defendant’s grossly negligent conduct.

19 110. Additionally, 15 U.S.C. §45 (FTC Act, Section 5) prohibits “unfair . . .
20 practices in or affecting commerce,” including, as interpreted and enforced by the
21 FTC, the unfair act or practice by businesses, such as Defendant, of failing to use
22 reasonable measures to protect PHI/PII and financial information. The FTC
23 publications and orders described above also form part of the basis of Defendant’s
24 duty in this regard.

25 111. Defendant violated 15 U.S.C. §45 by failing to use reasonable measures
26 to protect PHI/PII and financial information and not complying with applicable
27 industry standards, as described in detail herein. Defendant’s conduct was
28 particularly unreasonable given the nature and amount of PHI/PII and financial

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1 information it obtained and stored and the foreseeable consequences of the immense
2 damages that would result to Representative Plaintiff and Class Members.

3 112. Defendant’s violation of 15 U.S.C. §45 constitutes negligence *per se*.
4 Defendant also violated the HIPAA Privacy and Security rules which, likewise,
5 constitutes negligence *per se*.

6 113. As a direct and proximate result of Defendant’s negligence and
7 negligence *per se*, Representative Plaintiff and Class Members have suffered and
8 will suffer injury, including but not limited to: (i) actual identity theft; (ii) the loss
9 of the opportunity of how their PHI/PII and financial information is used; (iii) the
10 compromise, publication, and/or theft of their PHI/PII and financial information; (iv)
11 out-of-pocket expenses associated with the prevention, detection, and recovery from
12 identity theft, tax fraud, and/or unauthorized use of their PHI/PII and financial
13 information; (v) lost opportunity costs associated with effort expended and the loss
14 of productivity addressing and attempting to mitigate the actual and future
15 consequences of the Data Breach, including but not limited to, efforts spent
16 researching how to prevent, detect, contest, and recover from embarrassment and
17 identity theft; (vi) lost continuity in relation to its healthcare; (vii) the continued risk
18 to its PHI/PII and financial information, which may remain in Defendant’s
19 possession and is subject to further unauthorized disclosures so long as Defendant
20 fails to undertake appropriate and adequate measures to protect Representative
21 Plaintiff’s and Class Members’ PHI/PII and financial information in its continued
22 possession; and (viii) future costs in terms of time, effort, and money that will be
23 expended to prevent, detect, contest, and repair the impact of the PHI/PII and
24 financial information compromised as a result of the Data Breach for the remainder
25 of the lives of Representative Plaintiff and Class Members.

26 114. As a direct and proximate result of Defendant’s negligence and
27 negligence *per se*, Representative Plaintiff and Class Members have suffered and
28 will continue to suffer other forms of injury and/or harm, including, but not limited

1 to, anxiety, emotional distress, loss of privacy, and other economic and non-
2 economic losses.

3 115. Additionally, as a direct and proximate result of Defendant’s
4 negligence and negligence *per se*, Representative Plaintiff and Class Members have
5 suffered and will suffer the continued risks of exposure of their PHI/PII and financial
6 information, which remain in Defendant’s possession and are subject to further
7 unauthorized disclosures so long as Defendant fails to undertake appropriate and
8 adequate measures to protect the PHI/PII and financial information in its continued
9 possession.

10
11 **SECOND CLAIM FOR RELIEF**
12 **Confidentiality of Medical Information Act**
13 **(Cal. Civ. Code §56, *et seq.*)**
14 **(On behalf of the California Subclass)**

15 116. Each and every allegation of the preceding paragraphs is incorporated
16 in this cause of action with the same force and effect as though fully set forth herein.

17 117. Under California Civil Code §56.06, Defendant is deemed a “provider
18 of health care, health care service plan, or contractor” and is, therefore, subject to
19 the CMIA, California Civil Code §§ 56.10(a), (d) (e), 56.36(b), 56.101(a) and (b).

20 118. Under the CMIA, California Civil Code §56.05(k), Representative
21 Plaintiff and California Subclass Members (except employees of Defendant whose
22 records may have been accessed) are deemed “patients.”

23 119. As defined in the CMIA, California Civil Code §56.05(j), Defendant
24 disclosed “medical information” to unauthorized persons without obtaining consent,
25 in violation of §56.10(a). Defendant’s misconduct, including failure to adequately
26 detect, protect, and prevent unauthorized disclosure, directly resulted in the
27 unauthorized disclosure of Representative Plaintiff’s and California Subclass
28 Members’ PHI/PII and financial information to unauthorized persons.

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1 120. Defendant’s misconduct, including protecting and preserving the
2 confidential integrity of its patients’/customers’ PHI/PII and financial information,
3 resulted in unauthorized disclosure of sensitive and confidential PII that belongs to
4 Representative Plaintiff and California Subclass Members to unauthorized persons,
5 breaching the confidentiality of that information, thereby violating California Civil
6 Code §§ 56.06 and 56.101(a).

7 121. As a result of the Data Breach, unauthorized third parties viewed
8 Representative Plaintiff’s and Class Members’ protected medical information.

9 122. Representative Plaintiff and California Subclass Members have all been
10 and continue to be harmed as a direct, foreseeable, and proximate result of
11 Defendant’s breach because Representative Plaintiff and California Subclass
12 Members face, now and in the future, an imminent threat of identity theft, fraud, and
13 for ransom demands. They must now spend time, effort, and money to constantly
14 monitor their accounts and credit to surveille for any fraudulent activity.

15 123. Representative Plaintiff and California Subclass Members were injured
16 and have suffered damages, as described above, from Defendant’s illegal disclosure
17 and negligent release of their PHI/PII and financial information in violation of Cal.
18 Civ. Code §§ 56.10 and 56.101 and, therefore, seek relief under Civ. Code §§ 56.35
19 and 56.36, including actual damages, nominal statutory damages of \$1,000, punitive
20 damages of \$3,000, injunctive relief, and attorneys’ fees and costs.

21
22 **THIRD CLAIM FOR RELIEF**
23 **Invasion of Privacy**
24 **(On behalf of the Nationwide Class)**

25 124. Each and every allegation of the preceding paragraphs is incorporated
26 in this cause of action with the same force and effect as though fully set forth herein.

27 125. Representative Plaintiff and Class Members had a legitimate
28 expectation of privacy in their PHI/PII and financial information and were entitled
to the protection of this information against disclosure to unauthorized third-parties.

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1 126. Defendant owed a duty to Representative Plaintiff and Class Members
2 to keep their PHI/PII and financial information confidential.

3 127. Defendant failed to protect and released to unknown and unauthorized
4 third parties the PHI/PII and financial information of Representative Plaintiff and
5 Class Members.

6 128. Defendant allowed unauthorized and unknown third parties access to
7 and examination of the PHI/PII and financial information of Representative Plaintiff
8 and Class Members, by way of Defendant’s failure to protect the PHI/PII and
9 financial information.

10 129. The unauthorized release to, custody of, and examination by
11 unauthorized third-parties of the PHI/PII and financial information of Representative
12 Plaintiff and Class Members is highly offensive to a reasonable person.

13 130. The unauthorized intrusion was into a place or thing which was private
14 and is entitled to be private. Representative Plaintiff and Class Members disclosed
15 their PHI/PII and financial information to Defendant as part of obtaining services
16 from Defendant, but privately with an intention that the PHI/PII and financial
17 information would be kept confidential and would be protected from unauthorized
18 disclosure. Representative Plaintiff and Class Members were reasonable in their
19 belief that such information would be kept private and would not be disclosed
20 without their authorization.

21 131. The Data Breach constitutes an intentional interference with
22 Representative Plaintiff’s and Class Members’ interests in solitude or seclusion,
23 either as to their persons or as to their private affairs or concerns, of a kind that would
24 be highly offensive to a reasonable person.

25 132. Defendant acted with a knowing state of mind when it permitted the
26 Data Breach to occur because it was with actual knowledge that its information
27 security practices were inadequate and insufficient.

28

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1 133. Because Defendant acted with this knowing state of mind, it had notice
2 and knew its inadequate and insufficient information security practices would cause
3 injury and harm to Representative Plaintiff and Class Members.

4 134. As a proximate result of the above acts and omissions of Defendants,
5 the PHI/PII and financial information of Representative Plaintiff and Class Members
6 was disclosed to third-parties without authorization, causing Representative Plaintiff
7 and Class Members to suffer damages.

8 135. Unless and until enjoined, and restrained by order of this Court,
9 Defendant’s wrongful conduct will continue to cause great and irreparable injury to
10 Representative Plaintiff and Class Members in that the PHI/PII and financial
11 information maintained by Defendant can be viewed, distributed, and used by
12 unauthorized persons for years to come. Representative Plaintiff and Class Members
13 have no adequate remedy at law for the injuries in that a judgment for monetary
14 damages will not end the invasion of privacy for Representative Plaintiff and/or
15 Class Members.

16
17 **FOURTH CLAIM FOR RELIEF**
18 **Breach of Implied Contract**
(On behalf of the Nationwide Class)

19 136. Each and every allegation of the preceding paragraphs is incorporated
20 in this cause of action with the same force and effect as though fully set forth herein.

21 137. Through its course of conduct, Defendant, Representative Plaintiff, and
22 Class Members entered into implied contracts for Defendant to implement data
23 security adequate to safeguard and protect the privacy of Representative Plaintiff’s
24 and Class Members’ PHI/PII and financial information.

25 138. Defendant required Representative Plaintiff and Class Members to
26 provide and entrust their PHI/PII and financial information, including medical
27 information, record or account numbers, names and dates of birth.
28

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1 139. Defendant solicited and invited Representative Plaintiff and Class
2 Members to provide their PHI/PII and financial information as part of Defendant's
3 regular business practices. Representative Plaintiff and Class Members accepted
4 Defendant's offers and provided their PHI/PII and financial information to
5 Defendants.

6 140. As a condition of being direct customers/patients of Defendants,
7 Representative Plaintiff and Class Members provided and entrusted their PHI/PII
8 and financial information to Defendants. In so doing, Representative Plaintiff and
9 Class Members entered into implied contracts with Defendant by which Defendant
10 agreed to safeguard and protect such non-public information, to keep such
11 information secure and confidential, and to timely and accurately notify
12 Representative Plaintiff and Class Members if its data had been breached and
13 compromised or stolen.

14 141. A meeting of the minds occurred when Representative Plaintiff and
15 Class Members agreed to, and did, provide its PHI/PII and financial information to
16 Defendants, in exchange for, amongst other things, the protection of its PHI/PII and
17 financial information.

18 142. Representative Plaintiff and Class Members fully performed their
19 obligations under the implied contracts with Defendant.

20 143. Defendant breached the implied contracts it made with Representative
21 Plaintiff and Class Members by failing to safeguard and protect their PHI/PII and
22 financial information and by failing to provide timely and accurate notice to them
23 that their PHI/PII and financial information was compromised as a result of the Data
24 Breach.

25 144. As a direct and proximate result of Defendant's above-described breach
26 of implied contract, Representative Plaintiff and Class Members have suffered (and
27 will continue to suffer) (a) ongoing, imminent, and impending threat of identity theft
28 crimes, fraud, and abuse, resulting in monetary loss and economic harm; (b) actual

1 identity theft crimes, fraud, and abuse, resulting in monetary loss and economic
2 harm; (c) loss of the confidentiality of the stolen confidential data; (d) the illegal sale
3 of the compromised data on the dark web; (e) lost work time; and (f) other economic
4 and non-economic harm.

5
6 **FIFTH CLAIM FOR RELIEF**
7 **Unfair Business Practices**
8 **(Cal. Bus. & Prof. Code, §17200, et seq.)**
9 **(On behalf of the California Subclass)**

10 145. Each and every allegation of the preceding paragraphs is incorporated
11 in this cause of action with the same force and effect as though fully set forth herein.

12 146. Representative Plaintiff and California Subclass Members further bring
13 this cause of action, seeking equitable and statutory relief to stop the misconduct of
14 Defendant, as complained of herein.

15 147. Defendant has engaged in unfair competition within the meaning of
16 California Business & Professions Code §§17200, et seq., because Defendant’s
17 conduct is unlawful, unfair, and/or fraudulent, as herein alleged.

18 148. Representative Plaintiff, the California Subclass Members, and
19 Defendant are each a “person” or “persons” within the meaning of § 17201 of the
20 California Unfair Competition Law (“UCL”).

21 149. The knowing conduct of Defendant, as alleged herein, constitutes an
22 unlawful and/or fraudulent business practice, as set forth in California Business &
23 Professions Code §§17200-17208. Specifically, Defendant conducted business
24 activities while failing to comply with the legal mandates cited herein, including
25 HIPAA. Such violations include, but are not necessarily limited to:

- 26 a. failure to maintain adequate computer systems and data security
27 practices to safeguard PHI/PII and financial information;
- 28 b. failure to disclose that its computer systems and data security
practices were inadequate to safeguard PHI/PII and financial
information from theft;
- c. failure to timely and accurately disclose the Data Breach to
Representative Plaintiff and California Subclass Members;

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- d. continued acceptance of PHI/PII and financial information and storage of other personal information after Defendant knew or should have known of the security vulnerabilities of the systems that were exploited in the Data Breach; and
- e. continued acceptance of PHI/PII and financial information and storage of other personal information after Defendant knew or should have known of the Data Breach and before they allegedly remediated the Data Breach.

150. Defendant knew, or should have known, that its computer systems and data security practices were inadequate to safeguard the PHI/PII and financial information of Representative Plaintiff and California Subclass Members, deter hackers, and detect a breach within a reasonable time and that the risk of a data breach was highly likely.

151. In engaging in these unlawful business practices, Defendant has enjoyed an advantage over its competition and a resultant disadvantage to the public and California Subclass Members.

152. Defendant’s knowing failure to adopt policies in accordance with and/or adhere to these laws, all of which are binding upon and burdensome to Defendant’s competitors, engenders an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as set forth in California Business & Professions Code §§17200-17208.

153. Defendant has clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to Representative Plaintiff and California Subclass Members herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business practices ordinarily borne by responsible competitors of Defendant and as set forth in legislation and the judicial record.

154. The UCL is, by its express terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under

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1 separate statutory schemes and/or common law remedies, such as those alleged in
2 the other causes of action of this Complaint. *See* Cal. Bus. & Prof. Code § 17205.

3 155. Representative Plaintiff and California Subclass Members request that
4 this Court enter such orders or judgments as may be necessary to enjoin Defendant
5 from continuing its unfair, unlawful, and/or deceptive practices and to restore to
6 Representative Plaintiff and California Subclass Members any money Defendant
7 acquired by unfair competition, including restitution and/or equitable relief,
8 including disgorgement of ill-gotten gains, refunds of moneys, interest, reasonable
9 attorneys’ fees, and the costs of prosecuting this class action, as well as any and all
10 other relief that may be available at law or equity.

11
12 **SIXTH CLAIM FOR RELIEF**
13 **Unjust Enrichment**
14 **(On behalf of the Nationwide Class)**

15 156. Each and every allegation of the preceding paragraphs is incorporated
16 in this cause of action with the same force and effect as though fully set forth herein.

17 157. By its wrongful acts and omissions described herein, Defendant has
18 obtained a benefit by unduly taking advantage of Representative Plaintiff and Class
19 Members.

20 158. Defendants, prior to and at the time Representative Plaintiff and Class
21 Members entrusted their PHI/PII and financial information to Defendant for the
22 purpose of obtaining health services, caused Representative Plaintiff and Class
23 Members to reasonably believe that Defendant would keep such PHI/PII and
24 financial information secure.

25 159. Defendant was aware, or should have been aware, that reasonable
26 patients and consumers would have wanted their PHI/PII and financial information
27 kept secure and would not have contracted with Defendant, directly or indirectly,
28 had they known that Defendant’s information systems were sub-standard for that
purpose.

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1 160. Defendant was also aware that, if the substandard condition of and
2 vulnerabilities in its information systems were disclosed, it would negatively affect
3 Representative Plaintiff's and Class Members' decisions to seek services therefrom.

4 161. Defendant failed to disclose facts pertaining to its substandard
5 information systems, defects, and vulnerabilities therein before Representative
6 Plaintiff and Class Members made their decisions to make purchases, engage in
7 commerce therewith, and seek services or information. Instead, Defendant
8 suppressed and concealed such information. By concealing and suppressing that
9 information, Defendant denied Representative Plaintiff and Class Members the
10 ability to make a rational and informed purchasing and health care decision and took
11 undue advantage of Representative Plaintiff and Class Members.

12 162. Defendant was unjustly enriched at the expense of Representative
13 Plaintiff and Class Members. Defendant received profits, benefits, and
14 compensation, in part, at the expense of Representative Plaintiff and Class Members.
15 By contrast, Representative Plaintiff and Class Members did not receive the benefit
16 of their bargain because they paid for products and/or health care services that did
17 not satisfy the purposes for which they bought/sought them.

18 163. Since Defendant's profits, benefits, and other compensation were
19 obtained by improper means, Defendant is not legally or equitably entitled to retain
20 any of the benefits, compensation, or profits it realized from these transactions.

21 164. Representative Plaintiff and Class Members seek an Order of this
22 Court requiring Defendant to refund, disgorge, and pay as restitution any profits,
23 benefits, and other compensation obtained by Defendant from its wrongful conduct
24 and/or the establishment of a constructive trust from which Representative Plaintiff
25 and Class Members may seek restitution.

26
27
28

RELIEF SOUGHT

WHEREFORE, Representative Plaintiff, on behalf of herself and each member of the proposed National Class and the California Subclass, respectfully requests that the Court enter judgment in their favor and for the following specific relief against Defendant as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P. Rule 23 (b)(1), (b)(2), and/or (b)(3), including appointment of Representative Plaintiff’s counsel as Class Counsel;

2. For an award of damages, including actual, nominal, and consequential damages, as allowed by law in an amount to be determined;

3. That the Court enjoin Defendant, ordering them to cease and desist from unlawful activities in further violation of California Business and Professions Code §17200, *et seq.*;

4. For equitable relief enjoining Defendant from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Representative Plaintiff’s and Class Members’ PII/PHI, and from refusing to issue prompt, complete, any accurate disclosures to Representative Plaintiff and Class Members;

5. For injunctive relief requested by Representative Plaintiff, including but not limited to, injunctive and other equitable relief as is necessary to protect the interests of Representative Plaintiff and Class Members, including but not limited to an Order:

- a. prohibiting Defendant from engaging in the wrongful and unlawful acts described herein;
- b. requiring Defendant to protect, including through encryption, all data collected through the course of business in accordance with all applicable regulations, industry standards, and federal, state or local laws;

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- 1 c. requiring Defendant to delete and purge the PII/PHI of
2 Representative Plaintiff and Class Members unless Defendant
3 can provide to the Court reasonable justification for the retention
4 and use of such information when weighed against the privacy
5 interests of Representative Plaintiff and Class Members;
- 6 d. requiring Defendant to implement and maintain a comprehensive
7 Information Security Program designed to protect the
8 confidentiality and integrity of Representative Plaintiff's and
9 Class Members' PII/PHI;
- 10 e. requiring Defendant to engage independent third-party security
11 auditors and internal personnel to run automated security
12 monitoring, simulated attacks, penetration tests, and audits on
13 Defendant's systems on a periodic basis;
- 14 f. prohibiting Defendant from maintaining Representative
15 Plaintiff's and Class Members' PII/PHI on a cloud-based
16 database;
- 17 g. requiring Defendant to segment data by creating firewalls and
18 access controls so that, if one area of Defendant's network is
19 compromised, hackers cannot gain access to other portions of
20 Defendant's systems;
- 21 h. requiring Defendant to conduct regular database scanning and
22 securing checks;
- 23 i. requiring Defendant to establish an information security training
24 program that includes at least annual information security
25 training for all employees, with additional training to be provided
26 as appropriate based upon the employees' respective
27 responsibilities with handling PII/PHI, as well as protecting the
28 PII/PHI of Representative Plaintiff and Class Members;
- 29 j. requiring Defendant to implement a system of tests to assess its
30 respective employees' knowledge of the education programs
31 discussed in the preceding subparagraphs, as well as randomly
32 and periodically testing employees' compliance with
33 Defendant's policies, programs, and systems for protecting
34 personal identifying information;
- 35 k. requiring Defendant to implement, maintain, review, and revise
36 as necessary a threat management program to appropriately
37 monitor Defendant's networks for internal and external threats,
38 and assess whether monitoring tools are properly configured,
39 tested, and updated;
- 40 l. requiring Defendant to meaningfully educate all Class Members
41 about the threats that they face as a result of the loss of its
42 confidential personal identifying information to third parties, as
43 well as the steps affected individuals must take to protect
44 themselves.

1 6. For prejudgment interest on all amounts awarded, at the prevailing legal
2 rate;

3 7. For an award of attorneys’ fees, costs, and litigation expenses, as
4 allowed by law;

5 8. For all other Orders, findings, and determinations identified and sought
6 in this Complaint.

7
8
9 **JURY DEMAND**

10 Representative Plaintiff, individually and on behalf of the Plaintiff Class(es)
11 and/or Subclass(es), hereby demands a trial by jury for all issues triable by jury.

12
13 Dated: July 26, 2022

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14
15 By: /s/ Cody A. Bolce
16 Cody A. Bolce, Esq.
17 Attorneys for Representative Plaintiff
18 and the Plaintiff Classes
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