

# Exhibit A1

HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re MCG Health Data Security Issue Litigation

Case No. 2:22-cv-00849-RSM-DWC

**CONSOLIDATED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Diana Saiki, Kenneth Hensley, as legal guardian of R.H., Linda Crawford, Julie Mack, Linda Booth, Candace Daugherty, Leo Thorbecke, Cynthia Strecker, Michael Price, Blanca Garcia, Joanne Mullins, Marjorita Dean, Kelly Batt, Jay Taylor, Shelley Taylor, and Gaye Ictech (“Plaintiffs”) individually and on behalf of all others similarly situated, and by and through their undersigned counsel file this Consolidated Class Action Complaint against Defendant MCG Health, LLC (“MCG” or “Defendant”) and allege the following based upon personal knowledge of the facts, and upon information and belief based on the investigation of counsel as to all other matters.

**I. NATURE OF THE ACTION**

1. Defendant MCG Health is a healthcare consulting company that provides patient care guidelines and health plans that include care strategies, analytics, software solutions, and

1 other services to hospitals, government programs, and health plans across the country. In this  
2 role, Defendant operates as a covered business associate as defined by the Health Insurance  
3 Portability and Accountability Act (“HIPAA”) and is required to comply with HIPAA  
4 regulations. *See* 45 CFR 160.103.

5           2. As a condition of receiving services, MCG’s client’s and their patients are  
6 required to provide and entrust MCG with sensitive and private information, including  
7 personally identifiable information (“PII”) and protected health information (“PHI”)  
8 (collectively, “Private Information”). The PII and PHI that Defendant collects and maintains  
9 includes, but is not limited to, patient names, genders, telephone numbers, addresses, email  
10 addresses, dates of birth, Social Security numbers, and medical code information.

11           3. On June 10, 2022, MCG publicly disclosed that on March 25, 2022, it detected  
12 that an unauthorized individual had obtained Private Information stored on MCG’s computer  
13 network pertaining to approximately 1,100,000 persons (the “Data Breach”). Roughly two and  
14 half months after discovering that criminals had obtained the Private Information of over a  
15 million victims of the Data Breach, MCG began sending notice letters to States Attorneys  
16 General, Plaintiffs, and Class Members (the “Notice”).

17           4. MCG’s Notice provided scant detail, particularly considering the size and scope  
18 of the Data Breach and the sensitivity of Plaintiffs’ and Class Members’ compromised  
19 information. MCG’s Notice stated, in relevant part, “that an unauthorized party previously  
20 obtained certain of your personal information that matched data stored on MCG’s systems,” that  
21 MCG “took steps to understand [the Data Breach’s] nature and scope,” and that MCG had  
22 “deployed additional monitoring tools and will continue to enhance the security of our systems.”  
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1           5.       MCG’s Notice did not disclose when the Data Breach began or how long  
2 criminals had access to its systems, the means and mechanism of the cyberattack, the reason for  
3 the two-and-a-half month delay in notifying Plaintiffs and the Class of the Data Breach, how  
4 MCG determined that the Private Information had been “obtained,” and, importantly, what steps  
5 MCG took following the Data Breach to secure its systems and prevent further cyberattacks.

6           6.       MCG informed the Maine Attorney General that “the data may have been  
7 acquired by an unauthorized party on or around February 25-26, 2020” but “there is uncertainty  
8 regarding the date the breach occurred.”<sup>1</sup> That the Data Breach went undetected for over two  
9 years by a sophisticated provider of data management services and software solutions to the  
10 healthcare industry makes Defendant’s security failure all the more egregious.

11           7.       The Data Breach was a direct result of Defendant’s failure to implement adequate  
12 and reasonable cyber-security procedures and protocols necessary to protect patients’ and  
13 employees’ Private Information from the foreseeable threat of a cyberattack.

14           8.       By taking possession and control of Plaintiffs’ and Class Members’ Private  
15 Information for its own pecuniary benefit, Defendant assumed a duty to securely store and  
16 protect the Private Information in its custody from the risk of a cyber intrusion. Defendant also  
17 had a duty to adequately safeguard this Private Information under industry standards and duties  
18 imposed by statutes, including HIPAA regulations and Section 5 of the Federal Trade  
19 Commission Act (“FTA Act”).

20           9.       As a result of MCG’s failure to implement adequate data security practices,  
21 Plaintiffs and over a million Class Members suffered injury and ascertainable losses in the form  
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<sup>1</sup> <https://apps.web.maine.gov/online/aeviewer/ME/40/1948d82a-0cdb-4b37-a988-b4189351176b.shtml>

1 of out-of-pocket expenses, loss of value of their time reasonably incurred to remedy or mitigate  
2 the effects of the attack, the diminution in value of their personal information from its exposure,  
3 and the present and imminent threat of fraud and identity theft.

4 10. The injury to Plaintiffs and Class Members was compounded by the fact that  
5 Defendant did not notify patients that their Private Information was subject to unauthorized  
6 access and exfiltration until June 10, 2022, nearly two-and-a-half months after the Data Breach  
7 was discovered. Defendant's failure to timely notify the victims of its Data Breach meant that  
8 Plaintiffs and Class Members were unable to take affirmative measures to prevent or mitigate the  
9 resulting harm.  
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11 11. Despite having been accessed and exfiltrated by unauthorized criminal actors,  
12 Plaintiffs' and Class Members' sensitive and confidential Private Information still remains in the  
13 possession of Defendant. Absent additional safeguards and independent review and oversight,  
14 the information remains vulnerable to further cyberattacks and theft.  
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16 12. Defendant disregarded the rights of Plaintiffs and Class Members by, *inter alia*,  
17 failing to take adequate and reasonable measures to ensure its data systems were protected  
18 against unauthorized intrusions; failing to disclose that it did not have adequately robust  
19 computer systems and security practices to safeguard patient Private Information; failing to take  
20 standard and reasonably available steps to prevent the Data Breach; failing to properly train its  
21 staff and employees on proper security measures; and failing to provide Plaintiffs and Class  
22 Members prompt and adequate notice of the Data Breach.  
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1           13.     In addition, Defendant and its employees failed to properly monitor the computer  
2 network and systems that housed the Private Information. Had Defendant properly monitored  
3 these electronic systems, it would have discovered the intrusion sooner or prevented it altogether.

4           14.     The security of Plaintiffs' and Class Members' identities is now at risk because of  
5 Defendant's wrongful conduct as the Private Information that Defendant collected and  
6 maintained is now in the hands of data thieves. This present risk will continue for their course of  
7 their lives.

8           15.     Armed with the Private Information accessed in the Data Breach, data thieves can  
9 commit a wide range of crimes including, for example, opening new financial accounts in Class  
10 Members' names, taking out loans in their names, using Class Members' identities to obtain  
11 medical services, using Class Members' information to obtain government benefits, filing  
12 fraudulent tax returns using their information, obtaining driver's licenses in Class Members'  
13 names, and giving false information to police during an arrest.

14           16.     As a result of the Data Breach, Plaintiffs and Class Members have been exposed  
15 to a present and imminent risk of fraud and identity theft. Among other measures, Plaintiffs and  
16 Class Members must now and in the future closely monitor their financial accounts and medical  
17 records to guard against identity theft. Further, Plaintiffs and Class Members will incur out-of-  
18 pocket costs to purchase credit monitoring and identity theft protection and insurance services,  
19 credit freezes, credit reports, or other protective measures to deter and detect identity theft.  
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21           17.     Plaintiffs and Class Members will also be forced to expend additional time to  
22 review credit reports and monitor their financial accounts and medical records for fraud or  
23 identity theft. And because the exposed information includes their Social Security numbers and  
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1 other immutable personal details, the risk of identity theft and fraud will persist throughout their  
2 lives.

3 18. Through this action, Plaintiffs and Class Members seek to hold Defendant  
4 responsible for the harms resulting from the massive and preventable disclosure of such sensitive  
5 and personal information. Plaintiffs seek to remedy the harms resulting from the Data Breach on  
6 behalf of themselves and all similarly situated individuals whose Private Information was  
7 accessed and exfiltrated during the Data Breach.  
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9 19. Plaintiffs and Class Members thus seek actual damages, statutory damages,  
10 restitution, and injunctive and declaratory relief (including significant improvements to  
11 Defendant's data security protocols and employee training practices), reasonable attorney's fees,  
12 costs, and expenses incurred in bringing this action, and all other remedies this Court deems just  
13 and proper.  
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## 15 **II. THE PARTIES**

16 20. Plaintiff Diana Saiki is a resident and citizen of the State of Indiana.

17 21. Plaintiff Leo Thorbecke is a resident and citizen of the State of Indiana.

18 22. Plaintiff Kenneth Hensley, as legal guardian of R.H., is a resident and citizen of the  
19 State of Indiana.

20 23. Plaintiff Michael Price is a resident and citizen of the State of Illinois.

21 24. Plaintiff Linda Crawford is a resident and citizen of the State of Kansas.

22 25. Plaintiff Kelly Batt is a resident and citizen of the State of California.

23 26. Plaintiff Shelley Taylor is a resident and citizen of the State of Kentucky.

24 27. Plaintiff Jay Taylor is a resident and citizen of the State of Kentucky.  
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1 28. Plaintiff Gaye Ictech is a resident and citizen of the State of Louisiana.

2 29. Plaintiff Cynthia Strecker is a resident and citizen of the State of Louisiana.

3 30. Plaintiff Candace Daugherty is a resident and citizen of the State of Mississippi.

4 31. Plaintiff Linda Booth is a resident and citizen of the State of New Mexico.

5 32. Plaintiff Blanca Garcia is a resident and citizen of the State of New Mexico.

6 33. Plaintiff Marjorita Dean is a resident and citizen of the State of Ohio.

7 34. Plaintiff Julie Mack is a resident and citizen of the State of Texas.

8 35. Plaintiff Joanne Mullins is a resident and citizen of the State of Texas.

9 36. Defendant MCG Health is a Washington limited liability company with its  
10 principal place of business at 901 Fifth Avenue, Suite 120, Seattle, WA 98164.

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12 **III. JURISDICTION AND VENUE**

13 37. This Court has subject matter jurisdiction pursuant to the Class Action Fairness  
14 Act of 2005 (“CAFA”), 28 U.S.C. §1332(d). The amount in controversy exceeds the sum of  
15 \$5,000,000 exclusive of interest and costs, there are more than one hundred putative class  
16 members, and minimal diversity exists because many putative class members are citizens of a  
17 different state than Defendant.

18  
19 38. This Court has personal jurisdiction over Defendant because Defendant is  
20 headquartered in this District and Defendant conducts substantial business in Washington and  
21 this District through its headquarters and offices; engaged in the conduct at issue herein from and  
22 within this District; and otherwise has substantial contacts with this District and purposely  
23 availed itself of the Courts in this District.



1 39. Venue is proper in this District under 28 U.S.C. §§ 1391(a)(2), 1391(b)(2), and  
2 1391(c)(2) as a substantial part of the events giving rise to the claims emanated from activities  
3 within this District, and Defendant's principal place of business is in this District.

4 **IV. FACTUAL ALLEGATIONS**

5 **A. Defendant is a HIPAA covered business associate.**

6 40. Defendant is a HIPAA covered business associate that provides software and  
7 other services to various health care providers and health plans (i.e., HIPAA "Covered Entities").  
8 As a regular and necessary part of its business collects and custodies the highly sensitive Private  
9 Information of its clients' patients and health plan members. Defendant is required under federal  
10 and state law to maintain the strictest confidentiality of the patient's and plan members' Private  
11 Information that it requires, receives, and collects, and Defendant is further required to maintain  
12 sufficient safeguards to protect that Private Information from being accessed by unauthorized  
13 third parties.  
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15 41. As a HIPAA covered business entity, Defendant is required to enter into contracts  
16 with its Covered Entities to ensure that it will implement adequate safeguards to prevent  
17 unauthorized use or disclosure of Private Information, including by implementing requirements  
18 of the HIPAA Security Rule<sup>2</sup> and to report to the Covered Entities any unauthorized use or  
19 disclosure of Private Information, including incidents that constitute breaches of unsecured  
20 protected health information as in the case of the Data Breach complained of herein.  
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23 \_\_\_\_\_  
24 <sup>2</sup> The HIPAA Security Rule establishes national standards to protect individuals' electronic personal  
25 health information that is created, received, used, or maintained by a covered entity. The Security Rule  
26 requires appropriate administrative, physical, and technical safeguards to ensure the confidentiality,  
integrity, and security of electronic protected health information. See 45 C.F.R. Part 160 and Part 164,  
Subparts A and C.

1           42.     As a condition of receiving Defendant’s services, Defendant requires that  
2 Covered Entities and their patients and plan members, including Plaintiffs and Class Members,  
3 entrust it with highly sensitive personal information. Due to the nature of Defendant’s business,  
4 which includes providing patient care guidelines, health plans, consulting, analytics, and  
5 software solutions, Defendant would be unable to engage in its regular business activities  
6 without collecting and aggregating Private Information that it knows and understands to be  
7 sensitive and confidential.  
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9           **B. The Data Breach compromised Private Information.**

10           43.     On March 25, 2022, according to the Notice MCG provided to Plaintiffs and  
11 Class Members, MCG determined that cybercriminals had gained unauthorized access to its  
12 systems and “*obtained*” confidential personal information about patients and plan members  
13 whose Private Information was stored on Defendant’s systems. As reflected by Defendant’s  
14 disclosure of the Data Breach to the Maine Attorney General, Defendant was unable to  
15 determine when its systems were actually compromised as Defendant acknowledged that “the  
16 data may have been acquired by an unauthorized party on or around February 25-26, 2020” but  
17 “there is uncertainty regarding the date the breach occurred.” Defendant’s lack of adequate data  
18 security practices is evidenced by the fact that Defendant did not discover that its systems were  
19 compromised for two years following the Data Breach.  
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21           44.     In the letter sent to Plaintiffs and Class Members, two years after its systems were  
22 compromised and two and a half months following its discovery of the Data Breach, Defendant  
23 finally acknowledged, in a roundabout way, that:  
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25           an unauthorized party previously obtained certain of your personal information that  
26           matched data stored on [MCG’s] systems. The affected patient or member data

1 included some or all of the following data elements: names, Social Security  
2 numbers, medical codes,<sup>3</sup> postal addresses, telephone numbers, email addresses,  
3 dates of birth, and gender.<sup>4</sup>

4 45. Defendant's Notice letter also vaguely describes the measures it took following its  
5 belated discovery of the Data Breach stating only that:

6 Upon learning of this issue, we took steps to understand its nature and scope. A  
7 leading forensic investigation firm was retained to assist in the investigation.  
8 Additionally, we are coordinating with the FBI. We have deployed additional  
9 monitoring tools and will continue to enhance the security of our systems.

10 46. Tellingly, Defendant's Notice omits that fact that it was unable to determine when  
11 its systems were first breached but that it believes the Data Breach to have occurred two years  
12 earlier, on or about February 25 or 26 of 2020.

13 47. Defendant's Notice omits pertinent information including how long criminals had  
14 access to its systems, the means and mechanism of the cyberattack, the reason for the two and a  
15 half month delay in noticing Plaintiffs and Class Members of the Data Breach, how it determined  
16 that the Private Information had been "obtained," why it us unable to determine when its systems  
17 were first compromised, and of particular importance to Plaintiffs and Class Members, what  
18 actual steps MCG took following the Data Breach to secure its systems and prevent further  
19 cyberattacks.

20 48. Based on Defendant's acknowledgement that the Private Information that it  
21 collected was "obtained" by cybercriminals, it is evident that unauthorized criminal actors did in  
22 fact access Defendant's network and exfiltrate Plaintiffs' and Class Members' Private

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24 <sup>3</sup> Medical codes are alphanumeric designators used to document patient diagnoses, treatments, services,  
25 and supplies provided to the patient and circumstances or medical conditions relevant to treatments and  
26 services the patient receives.

<sup>4</sup> [https://www.mcg.com/wp-content/uploads/2022/06/MCG-Website-Notice\\_90273447\\_1-6.8.22481312.4-004.pdf](https://www.mcg.com/wp-content/uploads/2022/06/MCG-Website-Notice_90273447_1-6.8.22481312.4-004.pdf).

1 Information in an attack designed to acquire that sensitive, confidential, and valuable  
2 information.

3 49. The Private Information contained in the files accessed by cybercriminals appears  
4 not to have been encrypted because if properly encrypted, the attackers would have acquired  
5 unintelligible data and would not have “obtained” Plaintiffs and Class Members Private  
6 Information.

7 50. As a HIPAA associated business entity that collects, creates, and maintains  
8 significant volumes of Private Information, the targeted attack was a foreseeable risk of which  
9 Defendant was aware and knew it had a duty to guard against.

10 51. The targeted attack was expressly designed to gain access to and exfiltrate private  
11 and confidential data, including (among other things) the Private Information of patients and/or  
12 plan members, like Plaintiffs and Class Members.

13 52. Despite failing to detect the Data Breach for more than two years after  
14 Defendant’s systems were compromised, Defendant waited more than two months following the  
15 completion of its investigation to notify the impacted individuals of the Data Breach and of the  
16 need for them to protect themselves against fraud and identity theft. Defendant was, of course,  
17 too late in the discovery and notification of the Data Breach.  
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19 53. Due to Defendant’s inadequate security measures and its delayed notice to  
20 victims, Plaintiffs and Class Members now face a present, immediate, and ongoing risk of fraud  
21 and identity theft and must deal with that threat forever.  
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1           54. Defendant had obligations created by HIPAA, contract, industry standards and  
2 common law made to Plaintiffs and Class Members to keep their Private Information  
3 confidential and to protect it from unauthorized access and disclosure.

4           55. Plaintiffs and Class Members entrusted their Private Information to Defendant's  
5 clients with the reasonable expectation and mutual understanding that Defendant or anyone who  
6 used their Private Information in conjunction with the healthcare services they received would  
7 comply with obligations to keep such information confidential and secure from unauthorized  
8 access after it received such information.

9           56. By obtaining, collecting, using, and deriving a benefit from Plaintiffs' and Class  
10 Members' Private Information, Defendant assumed legal and equitable duties and knew or  
11 should have known that it was responsible for protecting Plaintiffs' and Class Members' Private  
12 Information from unauthorized disclosure.

13           57. Plaintiffs and the Class Members have taken reasonable steps to maintain the  
14 confidentiality of their personal information. Plaintiffs and Class Members would not have  
15 allowed Defendant or anyone in Defendant's position to receive their Private Information had  
16 they known that Defendant would fail to implement industry standard protections for that  
17 sensitive information.

18           58. As a result of Defendant's negligent and wrongful conduct, Plaintiffs' and Class  
19 Members' highly confidential and sensitive Private Information was left exposed to  
20 cybercriminals.  
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1           **C. Defendant was obliged under HIPAA to safeguard the Private Information.**

2           59. Defendant is a covered business associate under HIPAA (45 C.F.R. § 160.102)  
3 and is required to comply with the HIPAA Privacy Rule and Security Rule, 45 C.F.R. Part 160  
4 and Part 164, Subparts A and E (“Standards for Privacy of Individually Identifiable Health  
5 Information”), and Security Rule (“Security Standards for the Protection of Electronic Protected  
6 Health Information”), 45 C.F.R. Part 160 and Part 164, Subparts A and C.

7           60. Defendant is subject to the rules and regulations for safeguarding electronic forms  
8 of medical information pursuant to the Health Information Technology Act (“HITECH”).<sup>5</sup> See  
9 42 U.S.C. §17921, 45 C.F.R. § 160.103.

10           61. HIPAA’s Privacy Rule or *Standards for Privacy of Individually Identifiable*  
11 *Health Information* establishes national standards for the protection of health information.

12           62. HIPAA’s Privacy Rule or *Security Standards for the Protection of Electronic*  
13 *Protected Health Information* establishes a national set of security standards for protecting health  
14 information that is kept or transferred in electronic form.

15           63. HIPAA requires “compl[iance] with the applicable standards, implementation  
16 specifications, and requirements” of HIPAA “with respect to electronic protected health  
17 information.” 45 C.F.R. § 164.302.

18           64. “Electronic protected health information” is “individually identifiable health  
19 information ... that is (i) transmitted by electronic media; maintained in electronic media.” 45  
20 C.F.R. § 160.103.

21           65. HIPAA’s Security Rule requires Defendant to do the following:  
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26 <sup>5</sup> HIPAA and HITECH work in tandem to provide guidelines and rules for maintaining protected health information. HITECH references and incorporates HIPAA.

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

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

67. HIPAA and HITECH also obligated Defendant to implement policies and procedures to prevent, detect, contain, and correct security violations, and to protect against uses or disclosures of electronic protected health information that are reasonably anticipated but not permitted by the privacy rules. *See* 45 C.F.R. § 164.306(a)(1) and § 164.306(a)(3); *see also* 42 U.S.C. §17902.

1           68.     The HIPAA Breach Notification Rule, 45 C.F.R. §§ 164.400-414, also requires  
2 Defendant to provide notice of the Data Breach to each affected individual “without  
3 unreasonable delay and *in no case later than 60 days following discovery of the breach.*”<sup>6</sup>

4           69.     HIPAA requires a covered entity to have and apply appropriate sanctions against  
5 members of its workforce who fail to comply with the privacy policies and procedures of the  
6 covered entity or the requirements of 45 C.F.R. Part 164, Subparts D or E. *See* 45 C.F.R. §  
7 164.530(e).

8           70.     HIPAA requires a covered entity to mitigate, to the extent practicable, any  
9 harmful effect that is known to the covered entity of a use or disclosure of protected health  
10 information in violation of its policies and procedures or the requirements of 45 C.F.R. Part 164,  
11 Subpart E by the covered entity or its business associate. *See* 45 C.F.R. § 164.530(f).

12           71.     HIPAA also requires the Office of Civil Rights (“OCR”), within the Department  
13 of Health and Human Services (“HHS”), to issue annual guidance documents on the provisions  
14 in the HIPAA Security Rule. *See* 45 C.F.R. §§ 164.302-164.318. For example, “HHS has  
15 developed guidance and tools to assist HIPAA covered entities in identifying and implementing  
16 the most cost effective and appropriate administrative, physical, and technical safeguards to  
17 protect the confidentiality, integrity, and availability of e-PHI and comply with the risk analysis  
18 requirements of the Security Rule.” US Department of Health & Human Services, Security Rule  
19 Guidance Material.<sup>7</sup> The list of resources includes a link to guidelines set by the National  
20 Institute of Standards and Technology (NIST), which OCR says “represent the industry standard  
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25 <sup>6</sup> Breach Notification Rule, U.S. Dep’t of Health & Human Services, <https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html> (emphasis added).

26 <sup>7</sup> <http://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>.



1 for good business practices with respect to standards for securing e-PHI.” US Department of  
2 Health & Human Services, Guidance on Risk Analysis.<sup>8</sup>

3 **D. Defendant failed to follow FTC guidelines.**

4 72. Defendant was also prohibited by the Federal Trade Commission Act (the “FTC  
5 Act”) (15 U.S.C. § 45) from engaging in “unfair or deceptive acts or practices in or affecting  
6 commerce.” The Federal Trade Commission (the “FTC”) has concluded that a company’s failure  
7 to maintain reasonable and appropriate data security for consumers’ sensitive personal  
8 information is an “unfair practice” in violation of the FTC Act. *See, e.g., FTC v. Wyndham*  
9 *Worldwide Corp.*, 799 F.3d 236 (3d Cir. 2015).  
10

11 73. The FTC has promulgated numerous guides for businesses which highlight the  
12 importance of implementing reasonable data security practices.

13 74. According to the FTC, the need for data security should be factored into all business  
14 decision-making.

15 75. In 2016, the FTC updated its publication, Protecting Personal Information: A  
16 Guide for Business, which established cyber-security guidelines for businesses.

17 76. The guidelines note that businesses should protect the personal patient  
18 information that they keep; properly dispose of personal information that is no longer needed;  
19 encrypt information stored on computer networks; understand their network’s vulnerabilities;  
20 and implement policies to correct any security problems.  
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22 77. The guidelines also recommend that businesses use an intrusion detection system  
23 to expose a breach as soon as it occurs; monitor all incoming traffic for activity indicating  
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26 <sup>8</sup> <https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-analysis/index.html>

1 someone is attempting to hack the system; watch for large amounts of data being transmitted  
2 from the system; and have a response plan ready in the event of a breach.

3 78. The FTC further recommends that companies not maintain Private Information  
4 longer than is needed for authorization of a transaction; limit access to sensitive data; require  
5 complex passwords to be used on networks; use industry-tested methods for security; monitor for  
6 suspicious activity on the network; and verify that third-party service providers have  
7 implemented reasonable security measures.  
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9 79. The FTC has brought enforcement actions against businesses for failing to  
10 adequately and reasonably protect patient data, treating the failure to employ reasonable and  
11 appropriate measures to protect against unauthorized access to confidential consumer data as an  
12 unfair act or practice prohibited by Section 5 of the FTC Act, 15 U.S.C. § 45. Orders resulting  
13 from these actions further clarify the measures businesses must take to meet their data security  
14 obligations.  
15

16 80. Defendant failed to properly implement basic data security practices.

17 81. Defendant's failure to employ reasonable and appropriate measures to protect  
18 against unauthorized access to patients' and plan members Private Information constitutes an  
19 unfair act or practice prohibited by Section 5 of the FTC Act, 15 U.S.C. § 45.  
20

21 82. Defendant was at all times fully aware of its obligation to protect the Private  
22 Information of the patients and plan members about whom it stored Private Information. Defendant  
23 was also aware of the significant repercussions that would result from its failure to do so.  
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**E. Defendant failed to comply with industry standards.**

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2 83. As described above, experts studying cyber security routinely identify healthcare  
3 providers and their business associates as being particularly vulnerable to cyberattacks because  
4 of the value of the PII and PHI which they collect and maintain.

5 84. Several best practices have been identified that at a minimum should be  
6 implemented by HIPAA covered business entities like Defendant, including but not limited to:  
7 educating all employees; strong passwords; multi-layer security, including firewalls, anti-virus,  
8 and anti-malware software; encryption, making data unreadable without a key; multi-factor  
9 authentication; backup data; and limiting which employees can access sensitive data.

10  
11 85. Other best cybersecurity practices that are standard in the healthcare industry  
12 include installing appropriate malware detection software; monitoring and limiting the network  
13 ports; protecting web browsers and email management systems; setting up network systems such  
14 as firewalls, switches, and routers; monitoring and protection of physical security systems;  
15 protection against any possible communication system; and training staff regarding critical  
16 points.

17  
18 86. Defendant failed to meet the minimum standards of any of the following  
19 frameworks: the NIST Cybersecurity Framework Version 1.1 (including without limitation  
20 PR.AC-1, PR.AC-3, PR.AC-4, PR.AC-5, PR.AC-6, PR.AC-7, PR.AT-1, PR.DS-1, PR.DS-5,  
21 PR.PT-1, PR.PT-3, DE.CM-1, DE.CM-4, DE.CM-7, DE.CM-8, and RS.CO-2), and the Center  
22 for Internet Security's Critical Security Controls (CIS CSC), which are all established standards  
23 in reasonable cybersecurity readiness.  
24  
25  
26

1           87.     These foregoing frameworks are existing and applicable industry standards in the  
2 healthcare industry, and Defendant failed to comply with these accepted standards, thereby  
3 opening the door to cybercriminals and causing the Data Breach.

4           **F. Defendant owed Plaintiffs and Class Members a duty to safeguard their Private**  
5           **Information.**

6           88.     In addition to its obligations under federal and state laws, Defendant owed a duty  
7 to Plaintiffs and Class Members to exercise reasonable care in obtaining, retaining, securing,  
8 safeguarding, deleting, and protecting the Private Information in its possession from being  
9 compromised, lost, stolen, accessed, and misused by unauthorized persons. Defendant owed a  
10 duty to Plaintiffs and Class Members to provide reasonable security, including consistency with  
11 industry standards and requirements, and to ensure that its computer systems, networks, and  
12 protocols adequately protected the Private Information of Class Members.

13           89.     Defendant owed a duty to Plaintiffs and Class Members to create and implement  
14 reasonable data security practices and procedures to protect the Private Information in its  
15 possession, including adequately training its employees and others who accessed Private  
16 Information within its computer systems on how to adequately protect Private Information.

17           90.     Defendant owed a duty to Plaintiffs and Class Members to implement processes  
18 that would detect a compromise of Private Information in a timely manner.  
19

20           91.     Defendant owed a duty to Plaintiffs and Class Members to act upon data security  
21 warnings and alerts in a timely fashion.  
22

23           92.     Defendant owed a duty to Plaintiffs and Class Members to disclose in a timely  
24 and accurate manner when and how the Data Breach occurred.  
25  
26

1           93. Defendant owed a duty of care to Plaintiffs and Class Members because they were  
2 foreseeable and probable victims of any inadequate data security practices.

3           **G. The Data Breach and its consequences were readily foreseeable risks to MCG.**

4           94. Defendant's data security obligations were particularly important given the  
5 substantial increase in cyberattacks and/or data breaches in the healthcare industry and other  
6 industries holding significant amounts of PII and PHI preceding the date of the breach.

7           95. In 2021, a record 1,862 data breaches occurred, resulting in approximately  
8 293,927,708 sensitive records being exposed, a 68% increase from 2020.<sup>9</sup> Of the 1,862 recorded  
9 data breaches, 330 of them, or 17.7% were in the medical or healthcare industry.<sup>10</sup> The 330  
10 reported breaches reported in 2021 exposed nearly 30 million sensitive records (28,045,658),  
11 compared to only 306 breaches that exposed nearly 10 million sensitive records (9,700,238) in  
12 2020.<sup>11</sup>

13  
14           96. In light of recent high profile cybersecurity incidents at other healthcare partner  
15 and provider companies, including American Medical Collection Agency (25 million patients,  
16 March 2019), University of Washington Medicine (974,000 patients, December 2018), Florida  
17 Orthopedic Institute (640,000 patients, July 2020), Wolverine Solutions Group (600,000 patients,  
18 September 2018), Oregon Department of Human Services (645,000 patients, March 2019), Elite  
19 Emergency Physicians (550,000 patients, June 2020), Magellan Health (365,000 patients, April  
20  
21  
22  
23

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24 <sup>9</sup> See 2021 Data Breach Annual Report (ITRC, Jan. 2022), available at <https://notified.idtheftcenter.org/s/>,  
25 at 6.

26 <sup>10</sup> *Id.*

<sup>11</sup> *Id.*

1 2020), and BJC Health System (286,876 patients, March 2020), Defendant knew or should have  
2 known that its electronic records would be targeted by cybercriminals.

3 97. Indeed, cyberattacks against the healthcare industry have been common for over  
4 ten years with the Federal Bureau of Investigation (“FBI”) warning as early as 2011 that  
5 cybercriminals were “advancing their abilities to attack a system remotely” and “[o]nce a system  
6 is compromised, cyber criminals will use their accesses to obtain PII.” The FBI further warned  
7 that that “the increasing sophistication of cyber criminals will no doubt lead to an escalation in  
8 cybercrime.”<sup>12</sup>

9  
10 98. Cyberattacks have become so notorious that the FBI and U.S. Secret Service have  
11 issued a warning to potential targets so they are aware of, and prepared for, a potential attack. As  
12 one report explained, “[e]ntities like smaller municipalities and hospitals are attractive to  
13 ransomware criminals... because they often have lesser IT defenses and a high incentive to  
14 regain access to their data quickly.”<sup>13</sup>

15  
16 99. In fact, according to the cybersecurity firm Mimecast, 90% of healthcare  
17 organizations experienced cyberattacks in the past year.<sup>14</sup>

18 100. Defendant was on notice that the FBI has recently been concerned about data  
19 security in the healthcare industry. In August 2014, after a cyberattack on Community Health  
20 Systems, Inc., the FBI warned companies within the healthcare industry that hackers were  
21

22  
23 <sup>12</sup> Gordon M. Snow, *Statement before the House Financial Services Committee, Subcommittee on*  
*Financial Institutions and Consumer Credit*, FBI (Sept. 14, 2011),  
24 <https://archives.fbi.gov/archives/news/testimony/cyber-security-threats-to-the-financial-sector>.

25 <sup>13</sup> *FBI, Secret Service Warn of Targeted*, Law360 (Nov. 18, 2019), [https://www.law360.arn-of-targeted-](https://www.law360.arn-of-targeted-ransomware)  
[ransomware](https://www.law360.arn-of-targeted-ransomware) (last visited July 2, 2021).

26 <sup>14</sup> See Maria Henriquez, *Iowa City Hospital Suffers Phishing Attack*, *Security Magazine* (Nov. 23, 2020),  
<https://www.securitymagazine.com/articles/93988-iowa-city-hospital-suffers-phishing-attack>

1 targeting them. The warning stated that “[t]he FBI has observed malicious actors targeting  
2 healthcare related systems, perhaps for the purpose of obtaining the Protected Healthcare  
3 Information (PHI) and/or Personally Identifiable Information (PII).”<sup>15</sup>

4 101. The American Medical Association (“AMA”) has also warned healthcare  
5 companies about the importance of protecting their patients’ confidential information:

6 Cybersecurity is not just a technical issue; it’s a patient safety issue. AMA research  
7 has revealed that 83% of physicians work in a practice that has experienced some  
8 kind of cyberattack. Unfortunately, practices are learning that cyberattacks not only  
9 threaten the privacy and security of patients’ health and financial information, but  
also patient access to care.<sup>16</sup>

10 102. As implied by the above AMA quote, stolen Private Information can be used to  
11 interrupt important medical services. This is an imminent and certainly impending risk for  
12 Plaintiffs and Class Members.

13 103. Defendant was on notice that the federal government has been concerned about  
14 healthcare company data encryption practices. Defendant knew its employees accessed and  
15 utilized protected health information in the regular course of their duties, yet it appears that  
16 information was not encrypted.

17 104. The OCR urges the use of encryption of data containing sensitive personal  
18 information. As long ago as 2014, the Department fined two healthcare companies  
19 approximately two million dollars for failing to encrypt laptops containing sensitive personal  
20 information.

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22  
23 <sup>15</sup> Jim Finkle, *FBI Warns Healthcare Firms that they are Targeted by Hackers*, REUTERS (Aug. 2014),  
24 <https://www.reuters.com/article/us-cybersecurity-healthcare-fbi/fbi-warns-healthcare-firms-they-are-targeted-by-hackers-idUSKBN0GK24U20140820>.

25 <sup>16</sup> Andis Robeznieks, *Cybersecurity: Ransomware attacks shut down clinics, hospitals*, AM. MED. ASS’N  
26 (Oct. 4, 2019), <https://www.ama-assn.org/practice-management/sustainability/cybersecurity-ransomware-attacks-shut-down-clinics-hospitals>.

1 information. In announcing the fines, Susan McAndrew, OCR’s deputy director of health  
2 information privacy, stated “[o]ur message to these organizations is simple: encryption is your  
3 best defense against these incidents.”<sup>17</sup>

4 105. As a HIPAA covered business associate, Defendant should have known about its  
5 data security vulnerabilities and implemented enhanced and adequate protection, particularly  
6 given the nature of the Private Information stored in its unprotected files.

7  
8 **H. Data Breaches place Consumers at an immediate risk of fraud and identity theft.**

9 106. Plaintiffs’ and Class Members’ Private Information is of great value to cyber  
10 criminals, and the data stolen in the Data Breach has been used and will continue to be used by  
11 criminals to exploit Plaintiffs and the Class Members and to profit off the Private Information  
12 stolen from Defendant in the Data Breach.

13 107. Each year, identity theft causes tens of billions of dollars of losses to victims in  
14 the United States.<sup>18</sup> For example, with the Private Information stolen in the Data Breach, which  
15 includes Social Security numbers, identity thieves can open financial accounts, commit medical  
16 fraud, apply for credit, file fraudulent tax returns, commit crimes, create false driver’s licenses  
17 and other forms of identification and sell them to other criminals or undocumented immigrants,  
18 steal government benefits, give breach victims’ names to police during arrests, and many other  
19  
20  
21

22  
23 <sup>17</sup> “Stolen Laptops Lead to Important HIPAA Settlements,” U.S. Dep’t of Health and Human Services  
24 (Apr. 22, 2014), available at [https://wayback.archive-  
it.org/3926/20170127085330/https://www.hhs.gov/about/news/2014/04/22/stolen-laptops-lead-to-  
important-hipaa-settlements.html](https://wayback.archive-it.org/3926/20170127085330/https://www.hhs.gov/about/news/2014/04/22/stolen-laptops-lead-to-important-hipaa-settlements.html).

25 <sup>18</sup> “Facts + Statistics: Identity Theft and Cybercrime,” Insurance Info. Inst., [https://www.iii.org/fact-  
statistic/facts-statistics-identity-theft-and-cybercrime](https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime) (discussing Javelin Strategy & Research’s report  
26 “2018 Identity Fraud: Fraud Enters a New Era of Complexity”).



1 harmful forms of identity theft.<sup>19</sup> These criminal activities have and will result in devastating  
2 financial and personal losses to Plaintiffs and Class Members.

3 108. Private Information is such a valuable commodity to identity thieves that once it  
4 has been compromised, criminals will use it and trade the information on dark web black-  
5 markets for years.<sup>20</sup>

6 109. For example, it is believed that certain highly sensitive personal information  
7 compromised in the 2017 Experian data breach was being used, three years later, by identity  
8 thieves to apply for COVID-19-related unemployment benefits.<sup>21</sup>

9 110. The Private Information exposed in this Data Breach is valuable to identity  
10 thieves for use in the kinds of criminal activity described herein. These risks are both certainly  
11 impending and substantial. As the FTC has reported, if cyber thieves get access to a person's  
12 highly sensitive information, they will use it.<sup>22</sup>

13 111. Cyber criminals may not use the information right away. According to the U.S.  
14 Government Accountability Office, which conducted a study regarding data breaches:  
15

16 [I]n some cases, stolen data may be held for up to a year or more before being used  
17 to commit identity theft. Further, once stolen data have been sold or posted on the  
18 Web, fraudulent use of that information may continue for years. As a result, studies  
19 that attempt to measure the harm resulting from data breaches cannot necessarily  
20 rule out all future harm.<sup>23</sup>

21 <sup>19</sup> See, e.g., Christine DiGangi, *5 Ways an Identity Thief Can Use Your Social Security Number*, Nov. 2,  
22 2017, <https://blog.credit.com/2017/11/5-things-an-identity-thief-can-do-with-your-social-security-number-108597/>

23 <sup>20</sup> *Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However, the Full  
Extent Is Unknown*, GAO, July 5, 2007, <https://www.gao.gov/assets/270/262904.html>.

24 <sup>21</sup> See <https://www.engadget.com/stolen-data-used-for-unemployment-fraud-ring-174618050.html>; see  
25 also <https://www.wired.com/story/nigerian-scammers-unemployment-system-scattered-canary/>.

26 <sup>22</sup> Ari Lazarus, *How fast will identity thieves use stolen info?*, FED. TRADE COMM'N (May 24, 2017),  
<https://www.consumer.ftc.gov/blog/2017/05/how-fast-will-identity-thieves-use-stolen-info>.

<sup>23</sup> *Data Breaches Are Frequent*, *supra* note 11.

1           112. For instance, with a stolen Social Security number, which is only one subset of  
2 the Private Information compromised in the Data Breach, someone can open financial accounts,  
3 get medical care, file fraudulent tax returns, commit crimes, and steal benefits.<sup>24</sup>

4           113. Identity thieves can use Social Security numbers to obtain a driver's license or  
5 official identification card in the victim's name but with the thief's picture; use the victim's  
6 name and Social Security number to obtain government benefits; or file a fraudulent tax return  
7 using the victim's information. In addition, identity thieves may obtain a job using the victim's  
8 Social Security number, rent a house or receive medical services in the victim's name, and may  
9 even give the victim's personal information to police during an arrest resulting in an arrest  
10 warrant being issued in the victim's name.

11           114. Moreover, it is not an easy task to change or cancel a stolen Social Security  
12 number. An individual cannot obtain a new Social Security number without significant  
13 paperwork and evidence of actual misuse. Even then, a new Social Security number may not be  
14 effective, as “[t]he credit bureaus and banks are able to link the new number very quickly to the  
15 old number, so all of that old bad information is quickly inherited into the new Social Security  
16 number.”

17           115. This data demands a much higher price on the black market. Martin Walter,  
18 senior director at cybersecurity firm RedSeal, explained, “[c]ompared to credit card information,  
19 personally identifiable information and Social Security Numbers are worth more than 10x on the  
20 black market.”  
21  
22  
23

24  
25 <sup>24</sup> See, e.g., Christine DiGangi, *5 Ways an Identity Thief Can Use Your Social Security Number*, Nov. 2,  
26 2017, <https://blog.credit.com/2017/11/5-things-an-identity-thief-can-do-with-your-social-security-number-108597/>.

1           116. Medical information is especially valuable to identity thieves. According to  
2 account monitoring company LogDog, coveted Social Security numbers were selling on the dark  
3 web for just \$1 in 2016—the same as a Facebook account.<sup>25</sup> That pales in comparison with the  
4 asking price for medical data, which was selling for \$50 and up.<sup>26</sup>

5           117. Identity thieves can use the Private Information stolen from Plaintiffs and Class  
6 Members to qualify for expensive medical care and leave them and their health insurers on the  
7 hook for massive medical bills. Medical identity theft is one of the most common, most  
8 expensive, and most difficult-to-prevent forms of identity theft. According to Kaiser Health  
9 News, “medical-related identity theft accounted for 43 percent of all identity thefts reported in  
10 the United States in 2013,” which is more than identity thefts involving banking and finance, the  
11 government and the military, or education.<sup>27</sup> “Medical identity theft is a growing and dangerous  
12 crime that leaves its victims with little to no recourse for recovery,” reported Pam Dixon,  
13 executive director of World Privacy Forum. “Victims often experience financial repercussions  
14 and worse yet, they frequently discover erroneous information has been added to their personal  
15 medical files due to the thief’s activities.”<sup>28</sup>

16           118. Fraud and identity theft resulting from the Data Breach may go undetected until  
17 debt collection calls commence months, or even years, later. An individual may not know that  
18 his or her Social Security Number was used to file for unemployment benefits until law  
19  
20  
21  
22

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23 <sup>25</sup> See Omri Toppol, Email Security: How You Are Doing It Wrong & Paying Too Much, LogDog (Feb.  
24 14, 2016), <https://getlogdog.com/blogdog/email-security-you-are-doing-it-wrong/>

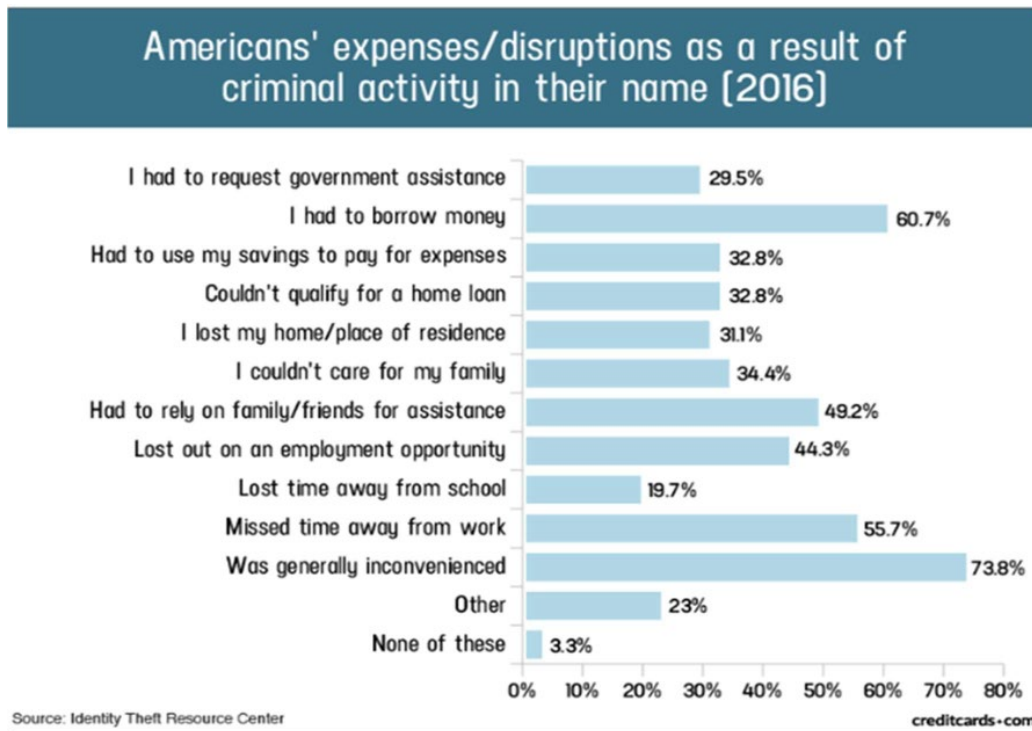
<sup>26</sup> See Vaas, Cyberattacks, *supra*, n. 28.

<sup>27</sup> Michael Ollove, “The Rise of Medical Identity Theft in Healthcare,” Kaiser Health News, Feb. 7, 2014,  
25 <https://khn.org/news/rise-of-indentity-theft/>

<sup>28</sup> *Id.*

1 enforcement notifies the individual's employer of the suspected fraud. Fraudulent tax returns are  
 2 typically discovered only when an individual's authentic tax return is rejected.

3 119. A study by the Identity Theft Resource Center shows the multitude of harms  
 4 caused by fraudulent use of personal and financial information.<sup>29</sup>



17

18 120. Victims of the Data Breach, like Plaintiffs and Class Members, must spend many  
 19 hours and large amounts of money protecting themselves from the current and future negative  
 20 impacts to their privacy and credit because of the Data Breach.<sup>30</sup>

21 121. As a direct and proximate result of the Data Breach, Plaintiffs and Class Members  
 22 have been placed at an imminent, immediate, and continuing increased risk of harm from fraud  
 23

24 <sup>29</sup> See Jason Steele, Credit Card and ID Theft Statistics, CreditCards.com (Oct. 23, 2020) <https://www.creditcards.com/credit-card-news/credit-card-security-id-theft-fraud-statistics-1276.php>.

25 <sup>30</sup> "Guide for Assisting Identity Theft Victims," Federal Trade Commission, 4 (Sept. 2013),  
 26 <http://www.consumer.ftc.gov/articles/pdf-0119-guide-assisting-id-theft-victims.pdf>.

1 and identity theft. Plaintiffs and Class Members must now take the time and effort (and spend  
2 the money) to mitigate the actual and potential impact of the Data Breach on their everyday  
3 lives, including purchasing identity theft and credit monitoring services every year for the rest of  
4 their lives, placing “freezes” and “alerts” with credit reporting agencies, contacting their  
5 financial institutions and healthcare providers, closing or modifying financial accounts, and  
6 closely reviewing and monitoring bank accounts, credit reports, and health insurance account  
7 information for unauthorized activity for years to come.  
8

9 122. Plaintiffs and Class Members have suffered or will suffer actual harms for which  
10 they are entitled to compensation, including but not limited to the following:

- 11 a. Trespass, damage to, and theft of their personal property, including Private  
12 Information;
- 13 b. Improper disclosure of their Private Information;
- 14 c. The imminent and certainly impending injury flowing from actual and potential  
15 future fraud and identity theft posed by their Private Information being in the  
16 hands of criminals and having already been misused;
- 17 d. The imminent and certainly impending risk of having their confidential medical  
18 information used against them by spam callers to defraud them;
- 19 e. Damages flowing from Defendant’s untimely and inadequate notification of the  
20 Data Breach;
- 21 f. Loss of privacy suffered as a result of the Data Breach;
- 22 g. Ascertainable losses in the form of out-of-pocket expenses and the value of their  
23 time reasonably expended to remedy or mitigate the effects of the data breach;  
24  
25  
26

- 1 h. Ascertainable losses in the form of deprivation of the value of patients’ personal  
2 information for which there is a well-established and quantifiable national and  
3 international market;
- 4 i. The loss of use of and access to their credit, accounts, and/or funds;
- 5 j. Damage to their credit due to fraudulent use of their Private Information; and  
6
- 7 k. Increased cost of borrowing, insurance, deposits, and other items which are  
8 adversely affected by a reduced credit score.

9 123. Moreover, Plaintiffs and Class Members have an interest in ensuring that their  
10 Private Information, which remains in the possession of Defendant, is protected from further  
11 public disclosure by the implementation of better employee training and industry standard and  
12 statutorily compliant security measures and safeguards. Defendant has shown itself to be wholly  
13 incapable of protecting Plaintiffs’ and Class Members’ Private Information.

14 124. Because of the value of its collected and stored data, the medical industry has  
15 experienced disproportionately higher numbers of data theft events than other industries. For this  
16 reason, Defendant knew or should have known about these dangers and strengthened its data  
17 security accordingly. Defendant was put on notice of the substantial and foreseeable risk of harm  
18 from a data breach, yet it failed to properly prepare for that risk.

19  
20 **I. The Data Breach was foreseeable and preventable.**

21 125. Data disclosures and data breaches are preventable.<sup>31</sup> As Lucy Thompson wrote  
22 in the Data Breach and Encryption Handbook, “In almost all cases, the data breaches that  
23

24  
25 

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<sup>31</sup> Lucy L. Thompson, “Despite the Alarming Trends, Data Breaches Are Preventable,” *in* DATA BREACH  
26 AND ENCRYPTION HANDBOOK (Lucy Thompson, ed., 2012).

1 occurred could have been prevented by proper planning and the correct design and  
2 implementation of appropriate security solutions.”<sup>32</sup> She added that “[o]rganizations that collect,  
3 use, store, and share sensitive personal data must accept responsibility for protecting the  
4 information and ensuring that it is not compromised . . . .”<sup>33</sup>

5 126. “Most of the reported data breaches are a result of lax security and the failure to  
6 create or enforce appropriate security policies, rules, and procedures . . . Appropriate information  
7 security controls, including encryption, must be implemented and enforced in a rigorous and  
8 disciplined manner so that a *data breach never occurs*.”<sup>34</sup>

9 127. Plaintiffs and Class Members entrusted their Private Information to Defendant as  
10 a condition of receiving healthcare related services from Defendant’s clients. Plaintiffs and Class  
11 Members understood and expected that Defendant or anyone in Defendant’s position would  
12 safeguard their PII and PHI against cyberattacks, delete or destroy Private Information that  
13 Defendant was no longer required to maintain, and timely and accurately notify them if their  
14 Private Information was compromised.

15  
16  
17 **J. Plaintiffs’ and Class Members damages.**

18 128. To date, Defendant has done nothing to provide Plaintiffs and Class Members  
19 with relief for the damages they have suffered as a result of the Data Breach. Defendant has  
20 merely offered Plaintiffs and Class Members identity protection and credit monitoring services  
21 for two years, but this service does nothing to compensate them for damages incurred and time  
22 spent dealing with the Data Breach. Moreover, following the expiration of the two-year  
23

24  
25 <sup>32</sup> *Id.* at 17.

<sup>33</sup> *Id.* at 28.

26 <sup>34</sup> *Id.*

1 subscription, Plaintiffs and Class Members will be required to pay for credit monitoring services  
2 out of their own pocket which they will require as the threat of identity theft and fraud does not  
3 extinguish after a two-year period but persists for the remainder of Plaintiffs' and Class  
4 Members' lives.

5 129. Plaintiffs and Class Members have been damaged by the compromise of their  
6 Private Information in the Data Breach.

7 130. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class  
8 Members have been placed at an imminent, immediate, and continuing increased risk of harm  
9 from fraud and identity theft. Plaintiffs and Class Members face substantial risk of out-of-pocket  
10 fraud losses such as loans opened in their names, medical services billed in their names, tax  
11 return fraud, utility bills opened in their names, credit card fraud, and similar identity theft.

12 131. Plaintiffs and Class Members face substantial risk of being targeted for future  
13 phishing, data intrusion, and other illegal schemes based on their Private Information as potential  
14 fraudsters could use that information to target such schemes more effectively to Plaintiffs and  
15 Class Members.

16 132. Plaintiffs and Class Members have and will also incur out-of-pocket costs for  
17 protective measures such as credit monitoring fees, credit report fees, credit freeze fees, and  
18 similar costs directly or indirectly related to the Data Breach.

19 133. Plaintiffs and Class Members have suffered or will suffer actual injury as a direct  
20 result of the Data Breach. Many victims suffered ascertainable losses in the form of out-of-  
21 pocket expenses and the value of their time reasonably incurred to remedy or mitigate the effects  
22 of the Data Breach relating to:  
23  
24  
25  
26



- a. Reviewing and monitoring financial and other sensitive accounts and finding fraudulent insurance claims, loans, and/or government benefits claims;
- b. Purchasing credit monitoring and identity theft prevention;
- c. Placing “freezes” and “alerts” with reporting agencies;
- d. Spending time on the phone with or at financial institutions, healthcare providers, and/or government agencies to dispute unauthorized and fraudulent activity in their name;
- e. Contacting financial institutions and closing or modifying financial accounts; and
- f. Closely reviewing and monitoring Social Security Number, medical insurance accounts, bank accounts, and credit reports for unauthorized activity for years to come.

134. Plaintiffs and Class Members suffered actual injury from having their Private Information compromised as a result of the Data Breach including, but not limited to: (a) damage to and diminution in the value of their Private Information, a form of property that MCG obtained from Plaintiffs and Class Members; (b) violation of their privacy rights; (c) imminent and impending injury arising from the increased risk of identity theft and fraud; and (d) emotional distress.

135. Further, as a result of Defendant’s conduct, Plaintiffs and Class Members are forced to live with the anxiety that their Private Information may be disclosed to the entire world, thereby subjecting them to embarrassment and depriving them of any right to privacy with respect to that information.

1           136. As a direct and proximate result of Defendant's actions and inactions, Plaintiffs  
2 and Class Members have suffered a loss of privacy and are at a present and imminent and  
3 increased risk of future harm.

4           137. Moreover, Plaintiffs and Class Members have an interest in ensuring that their  
5 Private Information, which is believed to remain in the possession of Defendant, is protected  
6 from further breaches by the implementation of security measures and safeguards, including but  
7 not limited to, making sure that the storage of data or documents containing Private Information  
8 is not accessible online, is properly encrypted, and that access to such data is password protected.  
9

10           138. Many failures laid the groundwork for the occurrence of the Data Breach, starting  
11 with Defendant's failure to incur the costs necessary to implement adequate and reasonable  
12 cyber security training, procedures and protocols that were necessary to protect Plaintiff's and  
13 Class Members' Private Information.

14           139. Defendant maintained the Private Information in an objectively reckless manner,  
15 making the Private Information vulnerable to unauthorized disclosure.  
16

17           140. Defendant knew, or reasonably should have known, of the importance of  
18 safeguarding Private Information and of the foreseeable consequences that would result if  
19 Plaintiffs' and Class Members' Private Information was stolen, including the significant costs  
20 that would be placed on Plaintiffs and Class Members as a result of a breach.

21           141. The risk of improper disclosure of Plaintiffs' and Class Members' Private  
22 Information was a known risk to Defendant, and thus Defendant was on notice that failing to  
23 take necessary steps to secure Plaintiffs' and Class Members' Private Information from that risk  
24 left the Private Information in a dangerous condition.  
25  
26

1           142. Defendant disregarded the rights of Plaintiffs and Class Members by, *inter alia*,  
2 (i) intentionally, willfully, recklessly, or negligently failing to take adequate and reasonable  
3 measures to ensure that the Private Information was protected against unauthorized intrusions;  
4 (ii) failing to disclose that it did not have adequately robust security protocols and training  
5 practices in place to adequately safeguard Plaintiffs' and Class Members' Private Information;  
6 (iii) failing to take standard and reasonably available steps to prevent the Data Breach; (iv)  
7 concealing the existence and extent of the Data Breach for an unreasonable duration of time; and  
8 (v) failing to provide Plaintiffs and Class Members prompt and accurate notice of the Data  
9 Breach.  
10

11           **K. Plaintiffs' Experiences**

12                   *Plaintiff Diana Saiki*

13           143. Plaintiff Saiki is a patient of IU Health, an Indiana University Health Affiliated  
14 Covered Entity. She provided her personal and health information to IU Health in order to  
15 receive medical services. MCG provides patient care guidelines to health care providers and  
16 health plans, including IU Health. MCG received Plaintiff's personal and health information in  
17 connection with providing those services to IU Health.  
18

19           144. Plaintiff Saiki received a letter dated June 10, 2022 from MCG concerning the  
20 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Saiki's personal  
21 information from data stored on MCG's systems. The compromised information includes names,  
22 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
23 dates of birth, and gender.  
24  
25  
26

1           145. In response to receiving the letter, Plaintiff Saiki has spent at least two hours  
2 checking credit reports, financial accounts, and ordering a credit report.

3           146. Plaintiff Saiki paid for her medical services and medical insurance with the  
4 expectation that her medical providers, medical insurance company, and its service providers,  
5 like MCG, would keep her information secure and inaccessible from unauthorized parties.

6           147. Plaintiff Saiki suffers stress and anxiety as a result of the Data Breach and from  
7 the loss of her privacy.  
8

9           148. Plaintiff Saiki also suffered injury in the form of damage to and diminution in the  
10 value of her confidential personal information—a form of property that Plaintiff entrusted to  
11 MCG, which was compromised as a result of the Data Breach it failed to prevent.

12           149. Plaintiff Saiki suffers a present injury from the existing and continuing risk of  
13 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
14 Security number and medical information—being placed in the hands of unauthorized third  
15 parties. Plaintiff Saiki has a continuing interest in ensuring that her personal information is  
16 protected and safeguarded from future breaches.  
17

18           ***Plaintiff Leo Thorbecke***

19           150. Plaintiff Leo Thorbecke is a patient of IU Health, an Indiana University Health  
20 Affiliated Covered Entity. Mr. Thorbecke provided his personal and health information to IU  
21 Health in order to receive healthcare services. MCG provides patient care guidelines to Indiana  
22 University Health Affiliated Covered Entities, and received Mr. Thorbecke’s personal and health  
23 information in connection with providing those services.  
24  
25  
26

1           151. Plaintiff Thorbecke received a letter dated June 10, 2022 from MCG concerning  
2 the Data Breach. The letter stated that an unauthorized party obtained his personal information  
3 from data stored on MCG’s systems. The compromised information includes names, Social  
4 Security numbers, medical codes, postal addresses, telephone numbers, email addresses, dates of  
5 birth, and gender.

6           152. Since being notified of the Data Breach, Mr. Thorbecke has spent approximately  
7 eight hours attempting to mitigate the impact of his stolen personal and medical information.  
8

9           153. Plaintiff Thorbecke paid for medical services with the expectation that his  
10 healthcare provider and its service providers, including MCG, would keep his information secure  
11 and inaccessible from unauthorized parties.

12           154. Plaintiff Thorbecke suffers stress and frustration as a result of the Data Breach  
13 and from the loss of his privacy.

14           155. Plaintiff Thorbecke also suffered injury in the form of damage to and diminution  
15 in the value of his confidential personal information—a form of property that Plaintiff Thorbecke  
16 entrusted to MCG, which was compromised as a result of the Data Breach it failed to prevent.  
17

18           156. Plaintiff Thorbecke suffers a present injury from the existing and continuing risk  
19 of fraud, identity theft, and misuse resulting from his personal information—especially his Social  
20 Security number and medical information—being placed in the hands of unauthorized third  
21 parties. Plaintiff Thorbecke has a continuing interest in ensuring that his personal information is  
22 protected and safeguarded from future breaches.  
23  
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*Plaintiff Kenneth Hensley's minor child R.H.*

1  
2 157. Plaintiff Hensley received a letter from MCG Health dated June 10, 2022,  
3 advising that his minor child R.H.'s information was acquired by cybercriminals in the Data  
4 Breach. The letter advised that the information of R.H.'s that has been compromised in the Data  
5 Breach includes some or all of the following PII and PHI: name, Social Security number, date of  
6 birth, medical codes, postal address, telephone numbers, email addresses, and gender.

7  
8 158. As required in order to obtain medical services, Plaintiff Hensley provided R.H.'s  
9 highly sensitive personal and health information, including the Private Information that was  
10 compromised in the Data Breach.

11 159. Because of Defendant's negligence and failure to properly secure the Private  
12 Information in its possession, which negligence and failure led to the Data Breach, R.H.'s Private  
13 Information has been obtained by cybercriminals.

14 160. Plaintiff Hensley has received alerts through Experian that the phone number  
15 associated with R.H. was found on the dark web on February 4, 2022 and June 17, 2022.

16  
17 161. R.H. is now under an imminent risk of subsequent identity theft and fraud and  
18 will remain under such risk for the rest of R.H.'s life. The imminent risk of identity theft and  
19 fraud R.H. now faces is substantial, certainly impending, continuous, and ongoing because of the  
20 negligence of Defendant in its failure to implement adequate data security protocols, which  
21 negligence led to the Data Breach.

22 162. As a result of the Data Breach, Plaintiff Hensley has already expended time and  
23 suffered loss of productivity from taking time to address and attempt to ameliorate, mitigate, and  
24 address the future consequences of the Data Breach for R.H., including investigating the Data  
25  
26

1 Breach, investigating how best to ensure that R.H. is protected from identity theft, and securing  
2 identity theft protection services for R.H.

3 163. As a direct and proximate result of the Data Breach, Plaintiff Hensley will need to  
4 pay for identity theft protection for the rest of R.H.'s lifetime.

5 164. Plaintiff Hensley suffers stress and anxiety as a result of the Data Breach and  
6 from the loss of his minor child's privacy

7 165. R.H. has suffered additional injury directly and proximately caused by the Data  
8 Breach, including damages and diminution in the value of R.H.'s Private Information that was  
9 entrusted to Defendant for the sole purpose of obtaining medical services necessary for R.H.'s  
10 health and well-being, with the understanding that Defendant would safeguard this information  
11 against unauthorized disclosure. Additionally, R.H.'s Private Information is at continued risk of  
12 compromise and unauthorized disclosure as it remains in the possession of Defendant and is  
13 subject to future wrongful disclosures and/or security breaches so long as Defendant fails to  
14 undertake appropriate and adequate measures, including the implementation of enhanced  
15 employee training and data security protocols, to protect it.  
16  
17

18 ***Plaintiff Michael Price***

19 166. Plaintiff Price was a patient of IU Health, an Indiana University Health Affiliated  
20 Covered Entity. Plaintiff Price provided his personal and health information to IU Health in  
21 order to receive medical services. MCG provides patient care guidelines to IU Health and  
22 received Plaintiff Price's personal and health information in connection with providing those  
23 services.  
24  
25  
26

1           167. Plaintiff Price received a letter in June 2022 from MCG concerning the Data  
2 Breach. The letter stated that an unauthorized party obtained Plaintiff Price’s Private Information  
3 from data stored on MCG’s systems. The compromised information includes names, Social  
4 Security numbers, medical codes, postal addresses, telephone numbers, email addresses, dates of  
5 birth, and gender.

6           168. Plaintiff Price paid for medical services with the expectation that his healthcare  
7 provider and its service providers, like MCG, would keep his information secure and  
8 inaccessible from unauthorized parties.

9           169. Plaintiff Price suffers stress and anxiety as a result of the Data Breach and from  
10 the loss of his privacy.

11           170. Plaintiff Price also suffered injury in the form of damage to and diminution in the  
12 value of his confidential personal information—a form of property that Plaintiff Price entrusted  
13 to MCG, which was compromised as a result of the Data Breach it failed to prevent.

14           171. Plaintiff Price estimates that he spent approximately 10 hours researching the  
15 Data Breach, scrutinizing his accounts, examining his records and credit scores and otherwise  
16 addressing the Data Breach.

17           172. Plaintiff Price suffers a present injury from the existing and continuing risk of  
18 fraud, identity theft, and misuse resulting from his personal information—especially his Social  
19 Security number and medical information—being placed in the hands of unauthorized third  
20 parties. Plaintiff Price has a continuing interest in ensuring that his personal information is  
21 protected and safeguarded from future breaches.  
22  
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*Plaintiff Linda Crawford*

1  
2 173. Plaintiff Crawford is a member of Medicare Advantage through Aetna and  
3 obtained medical care through Newman Regional Health in Burlington, KS. Plaintiff Crawford  
4 provided her personal and health information to Aetna and Newman Regional Health in order to  
5 receive health insurance and medical care. MCG provides patient care guidelines to Aetna and  
6 Newman Regional Health, and received Plaintiff Crawford's personal and health information in  
7 connection with providing those services.  
8

9 174. Plaintiff Crawford received a letter from MCG concerning the Data Breach. The  
10 letter stated that an unauthorized party obtained Plaintiff Crawford's personal information from  
11 data stored on MCG's systems. The compromised information includes names, Social Security  
12 numbers, medical codes, postal addresses, telephone numbers, email addresses, dates of birth,  
13 and gender.  
14

15 175. In or around late 2021 or early 2022, Plaintiff Crawford experienced identity theft  
16 and credit fraud when loans were opened in her name. Plaintiff Crawford also received a fraud  
17 alert on August 30, 2022. As a result, Plaintiff Crawford's credit rating fell 80 points, and  
18 Plaintiff Crawford purchased credit monitoring. Plaintiff Crawford has spent at least 20 hours  
19 disputing the fraudulent accounts and reviewing account statements, credit reports, and  
20 monitoring services since the Data Breach.  
21

22 176. Plaintiff Crawford had not experienced any instances of identity theft, fraud, or  
23 credit fraud before February 2020 and has not received notification from any other company that  
24 her personal information may have been exposed.  
25  
26

1           177. Plaintiff Crawford paid for medical services and health insurance with the  
2 expectation that Aetna and Newman Regional Health and their service providers, like MCG,  
3 would keep her information secure and inaccessible from unauthorized parties.

4           178. Plaintiff Crawford suffers stress and anxiety as a result of the Data Breach and  
5 from the loss of her privacy.

6           179. Plaintiff Crawford also suffered injury in the form of damage to and diminution in  
7 the value of her confidential personal information—a form of property that Plaintiff entrusted to  
8 MCG, which was compromised as a result of the Data Breach it failed to prevent.

9           180. Plaintiff Crawford suffers a present injury from the existing and continuing risk of  
10 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
11 Security number and medical information—being placed in the hands of unauthorized third  
12 parties. Plaintiff has a continuing interest in ensuring that her personal information is protected  
13 and safeguarded from future breaches.

14  
15           ***Plaintiff Kelly Batt***

16           181. Plaintiff Batt is a patient of Centinela Hospital Medical Center. Plaintiff Batt  
17 provided her personal and health information to Centinela Hospital Medical Center in order to  
18 receive medical services. MCG provides patient care guidelines to Centinela Hospital Medical  
19 Center, and received Plaintiff Batt’s personal and health information in connection with  
20 providing those services.

21           182. Plaintiff Batt received a letter dated June 10, 2022 from MCG concerning the  
22 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Batt’s personal  
23 information from data stored on MCG’s systems. The compromised information includes names,  
24  
25  
26

1 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
2 dates of birth, and gender.

3 183. Plaintiff Batt obtained medical services with the expectation that Centinela  
4 Hospital Medical Center and its service providers, like MCG, would keep her information secure  
5 and inaccessible from unauthorized parties.

6 184. Plaintiff Batt suffers stress, anxiety, and frustration as a result of the Data Breach  
7 and from the loss of her privacy.  
8

9 185. Plaintiff Batt has already expended time to address the Data Breach and to  
10 attempt to ameliorate and mitigate the future consequences of the Data Breach, including  
11 investigating the Data Breach and options for how to protect her interests in response to the Data  
12 Breach.

13 186. Plaintiff Batt also suffered injury in the form of damage to and diminution in the  
14 value of her confidential personal information—a form of property that Plaintiff Batt entrusted to  
15 MCG, which was compromised as a result of the Data Breach it failed to prevent.

16 187. Plaintiff Batt suffers a present injury from the existing and continuing risk of  
17 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
18 Security number and medical information—being placed in the hands of unauthorized third  
19 parties. Plaintiff has a continuing interest in ensuring that her personal information is protected  
20 and safeguarded from future breaches.  
21

22 ***Plaintiff Shelley Taylor***

23 188. Plaintiff Shelley Taylor is a patient of Catholic Health Initiative. Patient Shelley  
24 Taylor provided her personal and health information to Catholic Health Initiative in order to  
25  
26

1 receive medical services. MCG provides patient care guidelines to Catholic Health Initiative and  
2 received Plaintiff Shelley Taylor's personal and health information in connection with providing  
3 those services.

4 189. Plaintiff Shelley Taylor received a letter dated June 10, 2022 from MCG  
5 concerning the Data Breach. The letter stated that an unauthorized party obtained Plaintiff  
6 Shelley Taylor's personal information from data stored on MCG's systems. The compromised  
7 information includes names, Social Security numbers, medical codes, postal addresses, telephone  
8 numbers, email addresses, dates of birth, and gender.

9  
10 190. In response to the Data Breach, Plaintiff Shelley Taylor spent approximately 15  
11 hours searching the Internet for information about the Data Breach, signing up for credit  
12 monitoring, searching for credit monitoring services, changing passwords, and checking  
13 financial accounts for potential fraud.

14 191. Plaintiff Shelley Taylor paid for medical services with the expectation that  
15 Catholic Health Initiative and its service providers, like MCG, would keep her information  
16 secure and inaccessible from unauthorized parties.

17 192. Plaintiff Shelley Taylor suffers stress and anxiety as a result of the Data Breach  
18 and from the loss of her privacy.

19 193. Plaintiff Shelley Taylor also suffered injury in the form of damage to and  
20 diminution in the value of her confidential personal information—a form of property that  
21 Plaintiff Shelley Taylor entrusted to MCG, which was compromised as a result of the Data  
22 Breach it failed to prevent.  
23  
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1           194. Plaintiff Shelley Taylor suffers a present injury from the existing and continuing  
2 risk of fraud, identity theft, and misuse resulting from her personal information—especially her  
3 Social Security number and medical information—being placed in the hands of unauthorized  
4 third parties. Plaintiff has a continuing interest in ensuring that her personal information is  
5 protected and safeguarded from future breaches.

6           ***Plaintiff Jay Taylor***

7           195. Plaintiff Jay Taylor is a patient of Catholic Health Initiative. Patient Jay Taylor  
8 provided his personal and health information to Catholic Health Initiative in order to receive  
9 medical services. MCG provides patient care guidelines to Catholic Health Initiative and  
10 received Plaintiff's personal and health information in connection with providing those services.

11           196. Plaintiff Taylor received a letter dated June 10, 2022 from MCG concerning the  
12 Data Breach. The letter stated that an unauthorized party obtained Plaintiff's personal  
13 information from data stored on MCG's systems. The compromised information includes names,  
14 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
15 dates of birth, and gender.

16           197. In response to the Data Breach, Plaintiff Taylor spent approximately 12 hours  
17 searching the Internet for information about the Data Breach, attempting to get on the Experian  
18 website to sign up for credit monitoring, searching for credit monitoring services, changing  
19 passwords, and checking financial accounts for potential fraud.

20           198. Plaintiff Taylor paid for medical services with the expectation that Catholic  
21 Health Initiative and its service providers, like MCG, would keep his information secure and  
22 inaccessible from unauthorized parties.

1           199. Plaintiff Taylor suffers stress and anxiety as a result of the Data Breach and from  
2 the loss of his privacy.

3           200. Plaintiff Taylor also suffered injury in the form of damage to and diminution in  
4 the value of his confidential personal information—a form of property that Plaintiff entrusted to  
5 MCG, which was compromised as a result of the Data Breach it failed to prevent.

6           201. Plaintiff Taylor suffers a present injury from the existing and continuing risk of  
7 fraud, identity theft, and misuse resulting from his personal information—especially his Social  
8 Security number and medical information—being placed in the hands of unauthorized third  
9 parties. Plaintiff has a continuing interest in ensuring that his personal information is protected  
10 and safeguarded from future breaches.

11  
12           ***Plaintiff Gaye Ictech***

13           202. Upon information and belief, Plaintiff Ictech is a patient of healthcare provider,  
14 health insurance company, or health plan that utilizes MCG’s services. Plaintiff Ictech provided  
15 her personal and health information to the MCG affiliated healthcare provider, health insurance  
16 company, or health plan in order to receive medical services and/or health insurance. MCG  
17 received Plaintiff Ictech’s personal and health information in connection with providing its  
18 services to one of more of Plaintiff Ictech’s health providers, health plan, or health insurance  
19 company.

20  
21           203. Plaintiff Ictech received a letter dated June 10, 2022 from MCG concerning the  
22 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Ictech’s personal  
23 information from data stored on MCG’s systems. The compromised information includes names,  
24  
25  
26

1 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
2 dates of birth, and gender.

3 204. In response to the letter, Plaintiff Ictech has spent approximately twenty (20)  
4 hours addressing the Data Breach, signing up for the offered credit monitoring service, and  
5 searching for fraudulent activity on financial accounts. Moreover, Plaintiff Ictech experienced an  
6 increase in targeted and suspicious spam calls that caused additional loss of time and annoyance.

7  
8 205. Furthermore, in March, 2021 and March 2022, Plaintiff Ictech experienced  
9 multiple fraudulent charges on her debit card, which she then had to cancel in response to the  
10 fraud. This card was provided to and used to pay for health services and health insurance  
11 premiums prior to the Data Breach.

12 206. Plaintiff Ictech paid for medical services and health insurance with the  
13 expectation that healthcare provider and insurer and its service providers, like MCG, would keep  
14 her information secure and inaccessible from unauthorized parties.

15  
16 207. Plaintiff Ictech suffers stress and anxiety as a result of the Data Breach and from  
17 the loss of her privacy.

18 208. Plaintiff Ictech also suffered injury in the form of damage to and diminution in the  
19 value of her confidential personal information—a form of property that Plaintiff entrusted to  
20 MCG, which was compromised as a result of the Data Breach it failed to prevent.

21 209. Plaintiff Ictech suffers a present injury from the existing and continuing risk of  
22 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
23 Security number and medical information—being placed in the hands of unauthorized third  
24  
25  
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1 parties. Plaintiff Ictech has a continuing interest in ensuring that her personal information is  
2 protected and safeguarded from future breaches.

3 ***Plaintiff Cynthia Strecker***

4 210. Plaintiff Strecker is a patient of healthcare provider, health insurance company, or  
5 health plan that utilizes MCG's services. Plaintiff Strecker provided her personal and health  
6 information to the MCG affiliated healthcare provider, health insurance company, or health in  
7 order to receive medical services and/or health insurance. MCG received Plaintiff Strecker's  
8 personal and health information in connection with providing its services to one of more of  
9 Plaintiff Strecker's health providers, health plan, or health insurance company.

10  
11 211. Plaintiff Strecker received a letter dated June 10, 2022 from MCG concerning the  
12 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Strecker's personal  
13 information from data stored on MCG's systems. The compromised information includes names,  
14 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
15 dates of birth, and gender.

16  
17 212. In response to receiving the letter from MCG, Plaintiff Strecker spent  
18 approximately five hours of time researching the Data Breach, and reviewing financial accounts.

19 213. Plaintiff Strecker paid for medical services and health insurance with the  
20 expectation that healthcare provider and medical insurer and their respective service providers,  
21 like MCG, would keep her information secure and inaccessible from unauthorized parties.

22 214. Plaintiff Strecker suffers stress and anxiety as a result of the Data Breach and  
23 from the loss of her privacy.  
24  
25  
26



1           215. Plaintiff Strecker also suffered injury in the form of damage to and diminution in  
2 the value of her confidential personal information—a form of property that Plaintiff Strecker  
3 entrusted to MCG, which was compromised as a result of the Data Breach it failed to prevent.

4           216. Plaintiff Strecker suffers a present injury from the existing and continuing risk of  
5 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
6 Security number and medical information—being placed in the hands of unauthorized third  
7 parties. Plaintiff has a continuing interest in ensuring that her personal information is protected  
8 and safeguarded from future breaches.  
9

10           ***Plaintiff Candace Daugherty***

11           217. Plaintiff Daugherty is a patient of Southern Surgery Center and Plaintiff's health  
12 insurance provider is Blue Cross Blue Shield. Plaintiff Daugherty provided her personal and  
13 health information to Southern Surgery Center and Blue Cross Blue Shield in order to receive  
14 medical services and health insurance. MCG provides patient care guidelines to Southern  
15 Surgery Center and Blue Cross Blue Shield, and received Plaintiff Daugherty's personal and  
16 health information in connection with providing those services.  
17

18           218. Plaintiff Daugherty received a letter dated June 10, 2022 from MCG concerning  
19 the Data Breach. The letter stated that an unauthorized party obtained Plaintiff Daugherty's  
20 personal information from data stored on MCG's systems. The compromised information  
21 includes names, Social Security numbers, medical codes, postal addresses, telephone numbers,  
22 email addresses, dates of birth, and gender.  
23

24           219. Since the Data Breach, Plaintiff Daugherty experienced attempted identity theft  
25 and credit fraud when hackers attempted to log into her bank account and credit union account.  
26

1 Plaintiff Daugherty found two unauthorized charges on her bank account. An unauthorized  
2 person also attempted to create an eBay account under Plaintiff Daugherty's name multiple  
3 times. Plaintiff Daugherty must constantly reset her email password because of failed log in  
4 attempts from unknown individuals.

5 220. Plaintiff Daugherty paid for medical services and health insurance with the  
6 expectation that they and their service providers, like MCG, would keep her information secure  
7 and inaccessible from unauthorized parties.  
8

9 221. Plaintiff Daugherty suffers stress and anxiety as a result of the Data Breach and  
10 from the loss of her privacy.

11 222. Plaintiff Daugherty also suffered injury in the form of damage to and diminution  
12 in the value of her confidential personal information—a form of property that Plaintiff  
13 Daugherty entrusted to MCG, which was compromised as a result of the Data Breach it failed to  
14 prevent.  
15

16 223. Plaintiff Daugherty suffers a present injury from the existing and continuing risk  
17 of fraud, identity theft, and misuse resulting from her personal information—especially her  
18 Social Security number and medical information—being placed in the hands of unauthorized  
19 third parties. Plaintiff Daugherty has a continuing interest in ensuring that her personal  
20 information is protected and safeguarded from future breaches.  
21

22 ***Plaintiff Linda Booth***

23 224. Plaintiff Booth is a member of Christus Health Plan. Plaintiff Booth provided her  
24 personal and health information to Christus Health Plan in order to receive health insurance.  
25  
26

1 MCG provides patient care guidelines to Christus Health Plan and received Plaintiff Booth's  
2 personal and health information in connection with providing those services.

3 225. Plaintiff Booth received a letter dated June 10, 2022 from MCG concerning the  
4 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Booth's personal  
5 information from data stored on MCG's systems. The compromised information includes names,  
6 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
7 dates of birth, and gender.

8  
9 226. Plaintiff Booth paid for health insurance with the expectation that Christus Health  
10 Plan and its service providers, like MCG, would keep her information secure and inaccessible  
11 from unauthorized parties.

12 227. As a result of the Data Breach, Plaintiff Booth upgraded her Norton identity theft  
13 protection subscription.

14 228. Plaintiff Booth estimates she spent nearly 40 hours investigating and otherwise  
15 addressing the Data Breach, including researching the breach, placing freezes on her credit  
16 report, contacting Social Security to lock her social security number, and reviewing her credit  
17 reports thoroughly.

18  
19 229. Plaintiff Booth suffers stress and anxiety as a result of the Data Breach and from  
20 the loss of her privacy and she worries about criminals having access to her medical information.

21 230. Plaintiff Booth also suffered injury in the form of damage to and diminution in the  
22 value of her confidential personal information—a form of property that Plaintiff Booth entrusted  
23 to MCG, which was compromised as a result of the Data Breach it failed to prevent.  
24  
25  
26

1           231. Plaintiff Booth suffers a present injury from the existing and continuing risk of  
2 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
3 Security number and medical information—being placed in the hands of unauthorized third  
4 parties. Plaintiff has a continuing interest in ensuring that her personal information is protected  
5 and safeguarded from future breaches.

6                   ***Plaintiff Blanca Garcia***

7           232. Plaintiff Garcia was a patient of El Paso Specialty Hospital (“El Paso”). Plaintiff  
8 Garcia provided her personal and health information to in order to receive medical services.  
9 MCG provides patient care guidelines to El Paso and received Plaintiff Garcia’s personal and  
10 health information in connection with providing those services.

11           233. Plaintiff Garcia received a letter dated June 3rd, 2022 from Surgery Partners, a  
12 former affiliate of El Paso, concerning the Data Breach. The letter stated that an unauthorized  
13 party obtained Plaintiff Garcia’s personal information from data stored on MCG’s systems. The  
14 compromised information includes names, Social Security numbers, medical codes, postal  
15 addresses, telephone numbers, email addresses, dates of birth, and gender.

16           234. In response to receiving the letter, Plaintiff Garcia has spent approximately four to  
17 five hours reviewing accounts and looking for fraudulent activity.

18           235. Furthermore, Since February, 2020, she has noticed unauthorized charges on her  
19 credit cards. She spent additional time addressing the charges and cancelling her cards.

20           236. Plaintiff Garcia paid for medical services with El Paso with the expectation that  
21 her healthcare provider and its service providers, like MCG, would keep her information secure  
22 and inaccessible from unauthorized parties.  
23  
24  
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1           237. Plaintiff Garcia suffers stress and anxiety as a result of the Data Breach and from  
2 the loss of her privacy.

3           238. Plaintiff Garcia also suffered injury in the form of damage to and diminution in  
4 the value of her confidential personal information—a form of property that Plaintiff entrusted to  
5 MCG, which was compromised as a result of the Data Breach it failed to prevent.

6           239. Plaintiff Garcia suffers a present injury from the existing and continuing risk of  
7 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
8 Security number and medical information—being placed in the hands of unauthorized third  
9 parties. Plaintiff Garcia has a continuing interest in ensuring that her personal information is  
10 protected and safeguarded from future breaches.  
11

12           ***Plaintiff Marjorita Dean***

13           240. Plaintiff Dean is a patient of Sheltering Arms Hospital Foundation, Inc.  
14 (“Sheltering Arms”), operating under OhioHealth O’Bleness Memorial Hospital. Plaintiff Dean  
15 provided her personal and health information to Sheltering Arms in order to receive medical  
16 services. MCG provides patient care guidelines to Sheltering Arms and received Plaintiff Dean’s  
17 personal and health information in connection with providing those services.  
18

19           241. Plaintiff Dean received a letter on or around June 16, 2022 from MCG concerning  
20 the Data Breach. The letter stated that an unauthorized party obtained Plaintiff Dean’s personal  
21 information from data stored on MCG’s systems. The compromised information includes names,  
22 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
23 dates of birth, and gender.  
24  
25  
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1           242. Plaintiff Dean paid for medical services with the expectation that her healthcare  
2 provider and its service providers, like MCG, would keep her information secure and  
3 inaccessible from unauthorized parties.

4           243. Plaintiff Dean suffers stress and anxiety as a result of the Data Breach and from  
5 the loss of her privacy, particularly stress about how the exfiltration of her private information  
6 could impact her family business.

7           244. Plaintiff Dean also suffered injury in the form of damage to and diminution in the  
8 value of her confidential personal information—a form of property that Plaintiff Dean entrusted  
9 to MCG, which was compromised as a result of the Data Breach it failed to prevent.

10           245. Plaintiff Dean estimates that she spent approximately 5 hours researching the  
11 Data Breach, checking her accounts, scrutinizing her records and credit scores, signing up for  
12 identity theft protection through MCG and otherwise addressing the Data Breach.

13           246. Plaintiff Dean suffers a present injury from the existing and continuing risk of  
14 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
15 Security number and medical information—being placed in the hands of unauthorized third  
16 parties. Plaintiff Dean has a continuing interest in ensuring that her personal information is  
17 protected and safeguarded from future breaches.

18  
19  
20           ***Plaintiff Julie Mack***

21           247. Plaintiff Mack is a patient of Dallas Medical Center. Patient provided her personal  
22 and health information to Dallas Medical Center in order to receive medical services. MCG  
23 provides patient care guidelines to Dallas Medical Center and received Plaintiff Mack’s personal  
24 and health information in connection with providing those services.

1           248. Plaintiff Mack received a letter dated June 20, 2022 from MCG concerning the  
2 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Mack’s personal  
3 information from data stored on MCG’s systems. The compromised information includes names,  
4 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
5 dates of birth, and gender.

6           249. On August 23, 2022, Plaintiff Mack received an alert through McAfee that her  
7 email address was found on the dark web.

8           250. Plaintiff Mack paid for medical services with the expectation that healthcare  
9 provider and its service providers, like MCG, would keep her information secure and  
10 inaccessible from unauthorized parties.

11           251. Plaintiff Mack suffers stress and anxiety as a result of the Data Breach and from  
12 the loss of her privacy.

13           252. Plaintiff Mack also suffered injury in the form of damage to and diminution in the  
14 value of her confidential personal information—a form of property that Plaintiff Mack entrusted  
15 to MCG, which was compromised as a result of the Data Breach it failed to prevent.

16           253. Plaintiff Mack estimates that she spent approximately 30 hours researching the  
17 Data Breach, looking over her accounts, scrutinizing her records and credit scores and otherwise  
18 addressing the Data Breach.

19           254. Plaintiff Mack suffers a present injury from the existing and continuing risk of  
20 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
21 Security number and medical information—being placed in the hands of unauthorized third  
22  
23  
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26

1 parties. Plaintiff Mack has a continuing interest in ensuring that her personal information is  
2 protected and safeguarded from future breaches.

3 ***Plaintiff Joanne Mullins***

4 255. Plaintiff Mullins is a patient of Catholic Health Initiatives (“CHI”). Ms. Mullins  
5 provided her personal and health information to CHI in order to receive medical services. MCG  
6 provides patient care guidelines to CHI and its Affiliates, and received Plaintiff Mullin’s  
7 personal and protected health information in connection with providing those services.  
8

9 256. Plaintiff Mullins received a letter dated June 10, 2022 from MCG concerning the  
10 Data Breach. The letter stated that an unauthorized party obtained Plaintiff Mullin’s personal  
11 information from data stored on MCG’s systems. The compromised information includes names,  
12 Social Security numbers, medical codes, postal addresses, telephone numbers, email addresses,  
13 dates of birth, and gender.

14 257. On September 23, 2021, an unauthorized actor used Plaintiff Mullins’ email address  
15 and PayPal account to charge \$375 for a denim jacket from a vendor called “Axel Arigato AB.”  
16 Plaintiff Mullins did not make or authorize the charges  
17

18 258. Since receiving the June 10, 2022 letter from MCG concerning the Data Breach,  
19 Ms. Mullins has spent 3-5 hours attempting to mitigate the impact of the Data Breach.

20 259. Plaintiff Mullins paid for medical services with the expectation that her healthcare  
21 provider and its service providers, including MCG, would keep her information secure and  
22 inaccessible from unauthorized parties.  
23

24 260. Plaintiff Mullins suffers stress and anxiety as a result of the Data Breach and from  
25 the loss of her privacy.  
26



1 261. Plaintiff Mullins also suffered injury in the form of damage to and diminution in  
2 the value of her confidential personal information—a form of property that Plaintiff Mullins  
3 entrusted to MCG, which was compromised as a result of the Data Breach it failed to prevent.

4 262. Plaintiff Mullins suffers a present injury from the existing and continuing risk of  
5 fraud, identity theft, and misuse resulting from her personal information—especially her Social  
6 Security number, email address and medical information—being placed in the hands of  
7 unauthorized third parties. Plaintiff Mullins has a continuing interest in ensuring that her personal  
8 information is protected and safeguarded from future breaches.  
9

10 **V. CLASS ALLEGATIONS**

11 263. Plaintiffs bring this lawsuit as a class action on behalf of themselves and on behalf  
12 of all other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and  
13 (b)(2), (b)(3), and/or (c)(4). This action satisfies the numerosity, commonality, typicality,  
14 adequacy, predominance, and superiority requirements.  
15

16 264. The proposed Class is defined as:

17 All United States residents whose Private Information was accessed or acquired  
18 during the Data Breach (the “Nationwide Class” or “Class”).

19 265. Plaintiffs also seek to represent the following state subclasses defined as:

20 All California residents whose Private Information was accessed or acquired during  
21 the Data Breach (the “California Subclass”);

22 All Illinois residents whose Private Information was accessed or acquired during  
23 the Data Breach (the Illinois Subclass”);

24 All Indiana residents whose Private Information was accessed or acquired during  
25 the Data Breach (the “Indiana Subclass”);  
26

1 All Kansas residents whose Private Information was accessed or acquired during  
the Data Breach (the “Kansas Subclass”);

2 All Kentucky residents whose Private Information was accessed or acquired during  
3 the Data Breach (the “Kentucky Subclass”);

4 All Louisiana residents whose Private Information was accessed or acquired during  
5 the Data Breach (the “Louisiana Subclass”);

6 All Mississippi residents whose Private Information was accessed or acquired  
7 during the Data Breach (the “Mississippi Subclass”);

8 All New Mexico residents whose Private Information was accessed or acquired  
during the Data Breach (the “New Mexico Subclass”);

9 All Ohio residents whose Private Information was accessed or acquired during the  
10 Data Breach (the “Ohio Subclass”); and

11 All Texas residents whose Private Information was accessed or acquired during the  
12 Data Breach (the “Texas Subclass”).

13 266. The Nationwide Class and the state Subclasses are referred to collectively as the  
14 Class. Excluded from the Class are Defendant, any entity in which Defendant has a controlling  
15 interest, and Defendant’s officers, directors, legal representatives, successors, subsidiaries, and  
16 assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this  
17 matter and members of their immediate families and judicial staff.

18 267. Plaintiffs reserve the right to modify, change, or expand the Class and Subclass  
19 definitions, including by proposing additional subclasses, based on discovery and further  
20 investigation.  
21

22 268. Numerosity: The members of the Class are so numerous that joinder of all of them  
23 is impracticable. While the exact number of Class Members is unknown to Plaintiffs at this time,  
24 based on Defendant’s disclosures to State Attorneys general, the Class consists of approximately  
25 1,100,000 individuals whose sensitive data was compromised in Data Breach.  
26

1           269. Typicality: Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs and  
2 all members of the Class were injured through Defendant’s uniform misconduct. The same event  
3 and conduct that gave rise to Plaintiffs’ claims are identical to those that give rise to the claims of  
4 every other Class Member because Plaintiffs and each member of the Class had their sensitive  
5 Private Information compromised in the same way by the same conduct of Defendant.

6           270. Adequacy: Plaintiffs are adequate representatives of the Class because Plaintiffs’  
7 interests do not conflict with the interests of the Class they seek to represent; Plaintiffs have  
8 retained counsel competent and highly experienced in data breach class action litigation; and  
9 Plaintiffs and Plaintiffs’ counsel intend to prosecute this action vigorously. The interests of the  
10 Class will be fairly and adequately protected by Plaintiffs and their counsel.

11           271. Superiority: A class action is superior to other alternatives for the fair and  
12 efficient adjudication of this controversy. The injury suffered by each individual class member is  
13 relatively small in comparison to the burden and expense of individual prosecution of complex  
14 and expensive litigation. It would be very difficult, if not impossible, for members of the Class  
15 individually to effectively redress Defendant’s wrongdoing. Even if Class Members could afford  
16 such individual litigation, the court system could not. Individualized litigation presents a  
17 potential for inconsistent or contradictory judgments. Individualized litigation increases the delay  
18 and expense to all parties, and to the court system, presented by the complex legal and factual  
19 issues of the case. By contrast, the class action device presents far fewer management difficulties  
20 and provides benefits of single adjudication, economy of scale, and comprehensive supervision  
21 by a single court.  
22  
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1           272. Commonality and Predominance: Defendant has engaged in a common course of  
2 conduct toward Plaintiffs and Class Members, in that all the Plaintiffs' and Class Members' data  
3 was stored on the same computer system and unlawfully accessed in the same way. The common  
4 issues arising from Defendant's conduct affecting Class Members set out below predominate  
5 over any individualized issues. Adjudication of these common issues in a single action has  
6 important and desirable advantages of judicial economy.

7  
8           273. There are many questions of law and fact common to the claims of Plaintiffs and  
9 the other members of the Class, and those questions predominate over any questions that may  
10 affect individual members of the Class. Common questions for the Class include:

- 11           a. Whether Defendant engaged in the wrongful conduct alleged herein;
- 12           b. Whether Defendant failed to adequately safeguard Plaintiffs' and Class  
13           Members' Private Information;
- 14           c. Whether Defendant's computer systems and data security practices used to  
15           protect Plaintiffs' and Class Members' Private Information violated the  
16           FTC Act and/or HIPAA, and/or state laws and/or Defendant's other duties  
17           discussed herein;
- 18           d. Whether Defendant owed a duty to Plaintiffs and Class Members to  
19           adequately protect their Private Information, and whether it breached this  
20           duty;
- 21           e. Whether Defendant knew or should have known that its computer and  
22           network security systems were vulnerable to a data breach or disclosure;
- 23           f. Whether Defendant's conduct, including its failure to act, resulted in or was  
24           the proximate cause of the Data Breach;
- 25  
26

- 1 g. Whether Defendant breached contractual duties regarding Plaintiffs and
- 2 Class Members to use reasonable care in protecting their Private
- 3 Information;
- 4 h. Whether Defendant failed to adequately respond to the Data Breach,
- 5 including failing to investigate it diligently and notify affected individuals
- 6 in the most expedient time possible and without unreasonable delay, and
- 7 whether this caused damages to Plaintiffs and Class Members;
- 8 i. Whether Plaintiffs and Class Members suffered injury as a proximate result
- 9 of Defendant's negligent actions or failures to act;
- 10 j. Whether Plaintiffs and Class Members are entitled to recover damages,
- 11 equitable relief, and other relief;
- 12 k. Whether injunctive relief is appropriate and, if so, what injunctive relief is
- 13 necessary to redress the imminent and currently ongoing harm faced by
- 14 Plaintiffs and Class Members;
- 15 l. Whether Defendant's actions and inactions alleged herein constitute gross
- 16 negligence; and
- 17 m. Whether Plaintiffs and Class Members are entitled to statutory damages.

18 274. Defendant has engaged in a common course of conduct toward Plaintiffs and  
19 Class Members, in that all the Plaintiffs' and Class Members' data was stored on the same  
20 computer system and unlawfully accessed in the same way. The common issues arising from  
21 Defendant's conduct affecting Class Members set out above predominate over any  
22 individualized issues. Adjudication of these common issues in a single action has important and  
23 desirable advantages of judicial economy.  
24  
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1 275. Defendant has acted or refused to act on grounds generally applicable to the entire  
2 Class, making injunctive and corresponding declaratory relief appropriate with respect to the  
3 Class as a whole.

4 **VI. CAUSES OF ACTION**

5 **COUNT I**  
6 **NEGLIGENCE**

7 **(On behalf of Plaintiffs and the Class)**

8 276. Plaintiffs incorporate by reference the foregoing allegations of fact as if fully set  
9 forth herein.

10 277. Defendant gathered and stored the Private Information of Plaintiffs and Class  
11 Members as part of the regular course of its business operations. Plaintiffs and Class Members  
12 were entirely dependent on Defendant to use reasonable measures to safeguard their Private  
13 Information and were vulnerable to the foreseeable harm described herein should Defendant fail  
14 to safeguard their Private Information.

15 278. By collecting and storing this data in its computer property, and sharing it, and  
16 using it for commercial gain, Defendant assumed a duty of care to use reasonable means to  
17 secure and safeguard their computer property—and Class Members' Private Information held  
18 within it—to prevent disclosure of the information, and to safeguard the information from theft.  
19 Defendant's duty included a responsibility to implement processes by which it could detect a  
20 breach of their security systems in a reasonably expeditious period of time and to give prompt  
21 notice to those affected in the case of a Data Breach.

22 279. Defendant owed a duty of care to Plaintiffs and Class Members to provide data  
23 security consistent with industry standards and other requirements discussed herein, and to  
24  
25  
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1 ensure that its systems and networks, and the personnel responsible for them, adequately  
2 protected the Private Information.

3 280. Defendant's duty to use reasonable security measures under HIPAA required  
4 Defendant to "reasonably protect" confidential data from "any intentional or unintentional use or  
5 disclosure" and to "have in place appropriate administrative, technical, and physical safeguards  
6 to protect the privacy of protected health information." 45 C.F.R. § 164.530(c)(1). Some or all of  
7 the healthcare and/or medical information at issue in this case constitutes "protected health  
8 information" within the meaning of HIPAA.  
9

10 281. Additionally, Defendant had a duty to promptly and adequately notify Plaintiffs  
11 and the Class of the Data Breach. For instance, HIPAA required Defendant to notify victims of  
12 the Breach within 60 days of the discovery of the Data Breach. Defendant did not begin to  
13 notify Plaintiffs or Class Members of the Data Breach until June 10, 2022, despite knowing by  
14 March 25, 2022 that unauthorized persons had accessed and acquired the private, protected,  
15 personal information of Plaintiffs and the Class.  
16

17 282. In addition, Defendant had a duty to employ reasonable security measures under  
18 Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits "unfair ... practices in or affecting  
19 commerce," including, as interpreted and enforced by the FTC, the unfair practice of failing to  
20 use reasonable measures to protect confidential data.  
21

22 283. Plaintiffs and the Class are within the class of persons that the FTC Act and  
23 HIPAA were intended to protect.

24 284. The harm that occurred as a result of the Data Breach is the type of harm the FTC  
25 Act and HIPAA were intended to guard against. The FTC has pursued enforcement actions  
26

1 against businesses, which, as a result of their failure to employ reasonable data security measures  
2 and avoid unfair and deceptive practices, caused the same harm as that suffered by Plaintiffs and  
3 the Class.

4 285. Defendant gathered and stored the Private Information of Plaintiffs and Class  
5 Members as part of its business of soliciting its services to its clients and its clients' patients,  
6 which solicitations and services affect commerce.

7 286. Defendant violated the FTC Act by failing to use reasonable measures to protect  
8 the Private Information of Plaintiffs and Class Members and by not complying with applicable  
9 industry standards, as described herein.

10 287. Defendant breached its duties to Plaintiffs and Class Members under the FTC Act  
11 and HIPAA by failing to provide fair, reasonable, or adequate computer systems and/or data  
12 security practices to safeguard Plaintiffs' and Class Members' Private Information, and by  
13 failing to provide prompt notice without reasonable delay.

14 288. Defendant's multiple failures to comply with applicable laws and regulations  
15 constitutes negligence *per se*.

16 289. Defendant's duty to use reasonable care in protecting confidential data arose not  
17 only as a result of the statutes and regulations described above, but also because Defendant is  
18 bound by industry standards to protect confidential Private Information.

19 290. Defendant had full knowledge of the sensitivity of the Private Information, the  
20 types of harm that Plaintiffs and Class Members could and would suffer if the Private  
21 Information was wrongfully disclosed, and the importance of adequate security.  
22  
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1           291. Plaintiffs and Class Members were the foreseeable victims of any inadequate  
2 safety and security practices. Plaintiffs and the Class members had no ability to protect their  
3 Private Information that was in Defendant' possession.

4           292. Defendant was in a special relationship with Plaintiffs and Class Members with  
5 respect to the hacked information because the aim of Defendant's data security measures was to  
6 benefit Plaintiffs and Class Members by ensuring that their personal information would remain  
7 protected and secure. Only Defendant was in a position to ensure that its systems were  
8 sufficiently secure to protect Plaintiffs' and Class Members' personal and medical information.  
9 The harm to Plaintiffs and Class members from its exposure was highly foreseeable to  
10 Defendant.

11           293. Defendant owed Plaintiffs and Class Members a common law duty to use  
12 reasonable care to avoid causing foreseeable risk of harm to Plaintiffs and the Class when  
13 obtaining, storing, using, and managing their Private Information, including taking action to  
14 reasonably safeguard such data and providing notification to Plaintiffs and the Class Members of  
15 any breach in a timely manner so that appropriate action could be taken to minimize losses.  
16

17           294. Defendant's duty extended to protecting Plaintiffs and the Class from the risk of  
18 foreseeable criminal conduct of third parties, which has been recognized in situations where the  
19 actor's own conduct or misconduct exposes another to the risk or defeats protections put in place  
20 to guard against the risk, or where the parties are in a special relationship. *See* Restatement  
21 (Second) of Torts § 302B. Numerous courts and legislatures have also recognized the existence  
22 of a specific duty to reasonably safeguard personal information.  
23  
24  
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1           295. Defendant had duties to protect and safeguard the Private Information of Plaintiffs  
2 and the Class from being vulnerable to compromise by taking common-sense precautions when  
3 dealing with sensitive Private Information. Additional duties that Defendant owed Plaintiffs and  
4 the Class include:

- 5           a. To exercise reasonable care in designing, implementing, maintaining,  
6           monitoring, and testing Defendant' networks, systems, protocols, policies,  
7           procedures and practices to ensure that Plaintiffs' and Class members' Private  
8           Information was adequately secured from impermissible release, disclosure,  
9           and publication;  
10           b. To protect Plaintiffs' and Class Members' Private Information in its possession  
11           by using reasonable and adequate security procedures and systems; and  
12           c. To promptly notify Plaintiffs and Class Members of any breach, security  
13           incident, unauthorized disclosure, or intrusion that affected or may have  
14           affected their Private Information.  
15

16           296. Only Defendant was in a position to ensure that its systems and protocols were  
17 sufficient to protect the Private Information that had been entrusted to them.  
18

19           297. Defendant breached its duties of care by failing to adequately protect Plaintiffs'  
20 and Class Members' Private Information. Defendant breached its duties by, among other things:

- 21           a. Failing to exercise reasonable care in obtaining, retaining, securing,  
22           safeguarding, protecting, and deleting the Private Information in its possession;  
23           b. Failing to protect the Private Information in its possession using reasonable  
24           and adequate security procedures and systems;  
25

- c. Failing to adequately and properly audit, test, and train its employees regarding how to properly and securely transmit and store Private Information;
- d. Failing to adequately train its employees to not store unencrypted Private Information in their personal files longer than absolutely necessary for the specific purpose that it was sent or received;
- e. Failing to consistently enforce security policies aimed at protecting Plaintiffs' and Class Members' Private Information;
- f. Failing to mitigate the harm caused to Plaintiffs and the Class Members;
- g. Failing to implement processes to quickly detect data breaches, security incidents, or intrusions; and
- h. Failing to promptly notify Plaintiffs and Class Members of the Data Breach that affected their Private Information.

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

299. As a proximate and foreseeable result of Defendant's grossly negligent conduct, Plaintiffs and Class Members have suffered damages and are at imminent risk of additional harms and damages (as alleged above).

300. Through Defendant's acts and omissions described herein, including but not limited to Defendant's failure to protect the Private Information of Plaintiffs and Class Members from being stolen and misused, Defendant unlawfully breached its duty to use reasonable care to adequately protect and secure the Private Information of Plaintiffs and Class Members while it was within Defendant's possession and control.

1 301. Further, through its failure to provide timely and clear notification of the Data  
2 Breach to Plaintiffs and Class Members, Defendant prevented Plaintiffs and Class Members  
3 from taking meaningful, proactive steps to securing their Private Information and mitigating  
4 damages.

5 302. As a result of the Data Breach, Plaintiffs and Class Members have spent time,  
6 effort, and money to mitigate the actual and potential impact of the Data Breach on their lives,  
7 including but not limited to, responding to the fraudulent use of the Private Information, and  
8 closely reviewing and monitoring bank accounts, credit reports, and statements sent from  
9 providers and their insurance companies.

10 303. Defendant's wrongful actions, inaction, and omissions constituted (and continue  
11 to constitute) common law negligence.

12 304. The damages Plaintiffs and the Class have suffered (as alleged above) and will  
13 suffer were and are the direct and proximate result of Defendant's grossly negligent conduct.

14 305. Plaintiffs and the Class have suffered injury and are entitled to actual damages in  
15 amounts to be proven at trial.

16  
17  
18 **COUNT II**  
19 **BREACH OF THIRD-PARTY BENEFICIARY CONTRACT**  
20 **(On behalf of Plaintiffs and the Class)**

21 306. Plaintiffs incorporate by reference the foregoing allegations of fact as if fully set  
22 forth herein.

23 307. Defendant entered into written contracts, including HIPAA Business Associate  
24 Agreements, with its clients to perform services that include, but are not limited to, providing  
25 care strategies, consulting, analytics, and other services. Upon information and belief, these  
26

1 contracts are virtually identical between and among MCG Health and its medical provider  
2 customers around the country whose patients were affected by the Data Breach.

3 308. In exchange, Defendant agreed, in part, to implement adequate security measures  
4 to safeguard the Private Information of Plaintiffs and the Class and to timely and adequately  
5 notify them of the Data Breach.

6 309. These contracts were made expressly for the benefit of Plaintiffs and the Class, as  
7 Plaintiffs and Class Members were the intended third-party beneficiaries of the contracts entered  
8 into between Defendant and its clients. Defendant knew that if it were to breach these contracts  
9 with its clients, the clients' patients or plan members—Plaintiffs and Class Members—would be  
10 harmed.

11 310. Defendant breached the contracts it entered into with its clients by, among other  
12 things, failing to (i) use reasonable data security measures, (ii) implement adequate protocols and  
13 employee training sufficient to protect Plaintiffs' Private Information from unauthorized  
14 disclosure to third parties, and (iii) promptly and adequately notify Plaintiffs and Class Members  
15 of the Data Breach.

16 311. Plaintiffs and the Class were harmed by Defendant's breach of its contracts with  
17 its clients, as such breach is alleged herein, and are entitled to the losses and damages they have  
18 sustained as a direct and proximate result thereof.

19 312. Plaintiffs and Class Members are also entitled to their costs and attorney's fees  
20 incurred in this action.

**COUNT III**  
**BREACH OF CONFIDENCE**  
**(On behalf of Plaintiffs and the Class)**

1  
2  
3 313. Plaintiffs incorporate by reference the foregoing allegations of fact as if fully set  
4 forth herein.

5 314. At all times Defendant collected and maintained Plaintiffs' and the Class  
6 Members' Private Information, Defendant was fully aware of the confidential and sensitive  
7 nature of the Private Information that Plaintiffs and the Class provided to Defendant.

8 315. As alleged herein and above, Defendant's relationship with Plaintiffs and Class  
9 Members was governed by terms and expectations that Plaintiffs' and the Class Members'  
10 Private Information would be collected, stored, and protected in confidence, and would not be  
11 disclosed to unauthorized third parties.  
12

13 316. Plaintiffs and Class Members entrusted their Private Information to Defendant  
14 with the implicit understanding that Defendant or anyone in Defendant's position would protect  
15 and not permit the Private Information to be disseminated to any unauthorized third parties.

16 317. Plaintiffs and Class Members also entrusted their Private Information to  
17 Defendant with the implicit understanding that Defendant or anyone in Defendant's position  
18 would take precautions to protect that Private Information from unauthorized disclosure.  
19

20 318. Defendant voluntarily received in confidence Plaintiffs' and the Class Members'  
21 Private Information with the understanding that Private Information would not be disclosed or  
22 disseminated to the public or any unauthorized third parties.

23 319. Due to Defendant's failure to prevent and avoid the Data Breach from occurring,  
24 Plaintiffs' and the Class Members' Private Information was disclosed and misappropriated to  
25  
26

1 unauthorized third parties beyond Plaintiffs' and the Class Members' confidence, and without  
2 their express permission.

3 320. As a direct and proximate cause of Defendant's actions and/or omissions,  
4 Plaintiffs and Class Members have suffered damages.

5 321. But for Defendant's disclosure of Plaintiffs' and the Class Members' Private  
6 Information in violation of Defendant's assumption of a duty of confidence, their Private  
7 Information would not have been compromised, stolen, viewed, accessed, and used by  
8 unauthorized third parties. Defendant's Data Breach was the direct and legal cause of the theft of  
9 Plaintiffs' and the Class Members' Private Information as well as the resulting damages.

10 322. The injury and harm Plaintiffs and Class Members suffered was the reasonably  
11 foreseeable result of Defendant's unauthorized disclosure of Plaintiffs' and the Class Members'  
12 Private Information. Defendant knew or should have known its methods of accepting and  
13 securing Plaintiffs' and the Class Members' Private Information was inadequate as it relates to,  
14 at the very least, securing servers and other equipment containing Plaintiffs' and the Class  
15 Members' Private Information.  
16

17 323. As a direct and proximate result of Defendant's breach of its confidence with  
18 Plaintiffs and the Class, Plaintiffs and Class Members have suffered and will suffer injury,  
19 including but not limited to: (i) actual identity theft; (ii) the loss of the opportunity how their PII  
20 and PHI is used; (iii) the compromise, publication, and/or theft of their PII and PHI; (iv) out-of-  
21 pocket expenses associated with the prevention, detection, and recovery from identity theft, tax  
22 fraud, and/or unauthorized use of their Private Information; (v) lost opportunity costs associated  
23 with effort expended and the loss of productivity addressing and attempting to mitigate the actual  
24  
25  
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1 present and future consequences of the Data Breach, including but not limited to efforts spent  
2 researching how to prevent, detect, contest, and recover from tax fraud and identity theft; (vi)  
3 costs associated with placing freezes on credit reports; (vii) the continued risk to their Private  
4 Information, which remain in Defendant's possession and is subject to further unauthorized  
5 disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect  
6 the Private Information of current and former patients and their beneficiaries and dependents;  
7 and (viii) present and future costs in terms of time, effort, and money that will be expended to  
8 prevent, detect, contest, and repair the impact of the Private Information compromised as a result  
9 of the Data Breach for the remainder of the lives of Plaintiffs and the Class.

11 324. As a direct and proximate result of Defendant's breaches of confidence, Plaintiffs  
12 and Class Members have suffered and will continue to suffer other forms of injury and/or harm,  
13 including, but not limited to, anxiety, emotional distress, loss of privacy, and other economic and  
14 non-economic losses.

15  
16 **COUNT IV**  
17 **UNJUST ENRICHMENT**  
18 **(On behalf of Plaintiffs and the Class)**

19 325. Plaintiffs incorporate by reference the foregoing allegations of fact as if fully set  
20 forth herein.

21 326. This Count is pleaded in the alternative to the breach of contract count above.

22 327. Upon information and belief, Defendant funds its data security measures entirely  
23 from its general revenue, including payments on behalf of or for the benefit of Plaintiffs and  
24 Class Members.

25 328. As such, a portion of the payments made for the benefit of or on behalf of  
26 Plaintiffs and Class Members is to be used to provide a reasonable level of data security, and the



1 amount of the portion of each payment made that is allocated to data security is known to  
2 Defendant.

3 329. Plaintiffs and Class Members conferred a monetary benefit on Defendant.  
4 Specifically, they paid for services from Defendant and/or its agents and in so doing also  
5 provided Defendant with their Private Information. In exchange, Plaintiffs and Class Members  
6 should have received from Defendant the services that were the subject of the transaction and  
7 should have had their Private Information protected with adequate data security.  
8

9 330. Defendant knew that Plaintiffs and Class Members conferred a benefit on it in the  
10 form their Private Information as well as payments made on their behalf as a necessary part of  
11 their receiving healthcare services. Defendant appreciated and accepted that benefit. Defendant  
12 profited from these transactions and used the Private Information of Plaintiffs and Class  
13 Members for business purposes.

14 331. Defendant would not be able to carry out an essential function of its regular  
15 business without the Private Information of Plaintiffs and Class Members and derived revenue  
16 by using it for business purposes. Plaintiffs and Class Members expected that Defendant or  
17 anyone in Defendant's position would use a portion of that revenue to fund adequate data  
18 security practices.  
19

20 332. Defendant enriched itself by saving the costs it reasonably should have expended  
21 on data security measures to secure Plaintiffs' and Class Members' Personal Information. Instead  
22 of providing a reasonable level of security that would have prevented the hacking incident,  
23 Defendant instead calculated to increase its own profit at the expense of Plaintiffs and Class  
24 Members by utilizing cheaper, ineffective security measures and diverting those funds to its own  
25  
26

1 profit. Plaintiffs and Class Members, on the other hand, suffered as a direct and proximate result  
2 of Defendant's decision to prioritize its own profits over the requisite security and the safety of  
3 their Private Information.

4 333. Under the principles of equity and good conscience, Defendant should not be  
5 permitted to retain the money wrongfully obtained Plaintiffs and Class Members, because  
6 Defendant failed to implement appropriate data management and security measures that are  
7 mandated by industry standards.  
8

9 334. Defendant failed to secure Plaintiffs' and Class Members' Private Information  
10 and, therefore, did not provide adequate data security in return for the benefit Plaintiffs and Class  
11 Members provided.

12 335. Defendant acquired the Private Information through inequitable means in that it  
13 failed to disclose the inadequate security practices previously alleged.

14 336. If Plaintiffs and Class Members knew that Defendant had not reasonably secured  
15 their Private Information, they would not have allowed their Private Information to be provided  
16 to Defendant.  
17

18 337. Plaintiffs and Class Members have no adequate remedy at law.

19 338. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class  
20 Members have suffered and will suffer injury, including but not limited to: (a) actual identity  
21 theft; (b) the loss of the opportunity of how their Private Information is used; (c) the  
22 compromise, publication, and/or theft of their Private Information; (d) out-of-pocket expenses  
23 associated with the prevention, detection, and recovery from identity theft, and/or unauthorized  
24 use of their Private Information; (e) lost opportunity costs associated with efforts expended and  
25  
26

1 the loss of productivity addressing and attempting to mitigate the actual and future consequences  
2 of the Data Breach, including but not limited to efforts spent researching how to prevent, detect,  
3 contest, and recover from identity theft; (f) the continued risk to their Private Information, which  
4 remains in Defendant's possession and is subject to further unauthorized disclosures so long as  
5 Defendant fails to undertake appropriate and adequate measures to protect Private Information in  
6 its continued possession; and (g) future costs in terms of time, effort, and money that will be  
7 expended to prevent, detect, contest, and repair the impact of the Private Information  
8 compromised as a result of the Data Breach for the remainder of the lives of Plaintiffs and Class  
9 Members.  
10

11 339. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class  
12 Members have suffered and will continue to suffer other forms of injury and/or harm.

13 340. Defendant should be compelled to disgorge into a common fund or constructive  
14 trust, for the benefit of Plaintiffs and Class Members, proceeds that they unjustly received from  
15 them. In the alternative, Defendant should be compelled to refund the amounts that Plaintiffs and  
16 Class Members overpaid for Defendant's services.  
17

18 **COUNT V**  
19 **INVASION OF PRIVACY**  
20 **(On behalf of Plaintiffs and the Class)**

21 341. Plaintiffs incorporate by reference the foregoing allegations of fact as if fully set  
22 forth herein.

23 342. Plaintiffs and Class Members reasonably expected that the sensitive Private  
24 Information entrusted to Defendant would be kept private and secure and would not be disclosed  
25 to any unauthorized third party or for any improper purpose.  
26

1           343. Defendant unlawfully invaded the privacy rights of Plaintiffs and Class Members  
2 by:

- 3           a. Failing to adequately secure their sensitive Private Information from disclosure to  
4           unauthorized third parties or for improper purposes;
- 5           b. Enabling the disclosure of personal and sensitive facts and information about them  
6           in a manner highly offensive to a reasonable person; and
- 7           c. Enabling the disclosure of personal and sensitive facts about them without their  
8           informed, voluntary, affirmative, and clear consent.  
9

10           344. A reasonable person would find it highly offensive that Defendant, having  
11 collected Plaintiffs' and Class Members' sensitive Private Information, failed to protect such  
12 Private Information from unauthorized disclosure to third parties.

13           345. Indeed, such disclosure goes against the public policies of the State of  
14 Washington. For example, RCW 70.02.005 provides: "Persons other than health care providers  
15 obtain, use, and disclose health record information in many different contexts and for many  
16 different purposes. It is the public policy of this state that a patient's interest in the proper use  
17 and disclosure of the patient's health care information survives even when the information is  
18 held by persons other than health care providers."  
19

20           346. In failing to adequately protect Plaintiffs' and Class Members' sensitive personal  
21 information, Defendant acted in reckless disregard of their privacy rights. Defendant knew or  
22 should have known that its ineffective security measures, and the foreseeable consequences  
23 thereof, are highly offensive to a reasonable person in Plaintiffs' and Class Members' position.  
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1 that Defendant’s practices were injurious to the public interest because they injured other  
2 persons, had the capacity to injure other persons, and have the capacity to injure other persons.

3 354. In the course of conducting their business, Defendant committed “unfair or  
4 deceptive acts or practices” by, inter alia, knowingly failing to design, adopt, implement, control,  
5 direct, oversee, manage, monitor and audit appropriate data security processes, controls, policies,  
6 procedures, protocols, and software and hardware systems to safeguard and protect Plaintiffs’  
7 and Class Members’ Private Information, and violating the common law alleged herein in the  
8 process. Plaintiffs and Class Members reserve the right to allege other violations of law by  
9 Defendant constituting other unlawful business acts or practices. As described above,  
10 Defendant’s wrongful actions, inaction, omissions, and want of ordinary care are ongoing and  
11 continue to this date.

12  
13 355. Defendant also violated the CPA by failing to timely notify and concealing from  
14 Plaintiffs and Class Members information regarding the unauthorized release and disclosure of  
15 their Private Information. If Plaintiffs and Class Members had been notified in an appropriate  
16 fashion, and had the information not been hidden from them, they could have taken precautions  
17 to safeguard and protect their Private Information, medical information, and identities.

18  
19 356. Defendant’s above-described wrongful actions, inaction, omissions, want of  
20 ordinary care, misrepresentations, practices, and non-disclosures also constitute “unfair or  
21 deceptive acts or practices” in violation of the CPA in that Defendant’s wrongful conduct is  
22 substantially injurious to other persons, had the capacity to injure other persons, and has the  
23 capacity to injure other persons.  
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1           357. The gravity of Defendant’s wrongful conduct outweighs any alleged benefits  
2 attributable to such conduct. There were reasonably available alternatives to further Defendant’s  
3 legitimate business interests other than engaging in the above-described wrongful conduct.

4           358. As a direct and proximate result of Defendant’s above-described wrongful  
5 actions, inaction, omissions, and want of ordinary care that directly and proximately caused the  
6 Data Breach and their violations of the CPA, Plaintiffs and Class Members have suffered, and  
7 will continue to suffer, economic damages and other injury and actual harm in the form of, inter  
8 alia, (1) an imminent, immediate and the continuing increased risk of identity theft, identity fraud  
9 and medical fraud—risks justifying expenditures for protective and remedial services for which  
10 they are entitled to compensation; (2) invasion of privacy; (3) breach of the confidentiality of  
11 their Private Information; (5) deprivation of the value of their Private Information, for which  
12 there is a well-established national and international market; and/or (6) the financial and  
13 temporal cost of monitoring credit, monitoring financial accounts, and mitigating damages.  
14

15           359. Unless restrained and enjoined, Defendant will continue to engage in the above-  
16 described wrongful conduct and more data breaches will occur. Plaintiffs, therefore, on behalf of  
17 themselves and the Class, seek restitution and an injunction prohibiting Defendant from  
18 continuing such wrongful conduct, and requiring Defendant to design, adopt, implement, control,  
19 direct, oversee, manage, monitor and audit appropriate data security processes, controls, policies,  
20 procedures protocols, and software and hardware systems to safeguard and protect the Private  
21 Information entrusted to it.  
22

23           360. Plaintiffs, on behalf of themselves and Class Members, also seek to recover actual  
24 damages sustained by each Class Member together with the costs of the suit, including  
25  
26

1 reasonable attorney fees. In addition, Plaintiffs, on behalf of themselves and Class Members,  
2 request that this Court use its discretion, pursuant to RCW 19.86.090, to increase the damages  
3 award for each Class Member by three times the actual damages sustained not to exceed  
4 \$25,000.00 per Class Member.

5 **COUNT VII**  
6 **VIOLATION OF THE WASHINGTON UNIFORM HEALTH INFORMATION ACT**  
7 **RCW § 70.02, et seq.**  
8 **(On behalf of Plaintiffs and the Class)**

9 361. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth  
10 herein.

11 362. Section 70.02.02 of the Revised Code of Washington provides that:

12 Except as authorized elsewhere in this chapter, a health care provider, an individual  
13 who assists a health care provider in the delivery of health care, or an agent and  
14 employee of a health care provider may not disclose health care information about  
15 a patient to any other person without the patient's written authorization. A  
16 disclosure made under a patient's written authorization must conform to the  
17 authorization.

18 363. Defendant is an entity “who assists a health care provider in the delivery of health  
19 care, or an agent and employee of a health care provider” as defined by RCW § 70.02.020(1).

20 364. At all relevant times, Defendant collected, stored, managed, and transmitted  
21 Plaintiffs’ and Class Members’ Private Information.

22 365. Plaintiffs’ and Class Members’ Private Information is “Health Care Information”  
23 under RCW 70.02.010(17) in that it identifies or can be readily associated with the identity of a  
24 patient and directly relates to the patient’s health care.

25 366. The Revised Code of Washington requires Defendant to implement and maintain  
26 standards of confidentiality with respect to all individually identifiable PHI disclosed to them



1 and maintained by them. Specifically, RCW 70.20.020 prohibits Defendant from disclosing  
2 Plaintiffs' and Class Members' PHI without first obtaining their authorization to do so.

3 367. RCW 70.20.020-030 specifies the manner in which authorization must be  
4 obtained before PHI is released. Defendant, however, failed to obtain any authorization—let  
5 alone, proper authorization—from Plaintiffs and Class Members before releasing and disclosing  
6 their PHI. As mandatorily required by RCW 70.20.150 (Security safeguards), Defendant also  
7 failed to effect reasonable safeguards for the security of all health care information it maintains,  
8 including but not limited to failing to identify, implement, maintain and monitor the proper data  
9 security measures, policies, procedures, protocols, and software and hardware systems to  
10 safeguard and protect Plaintiffs' and Class Members' PHI. As a direct and proximate result of  
11 Defendant's wrongful actions, inaction, omissions, and want of ordinary care, Plaintiffs' and  
12 Class Members' PHI was disclosed. By disclosing Plaintiffs and Class Members' PHI without  
13 their written authorization. Defendant violated RCW 70.20.10 *et seq.*, and their legal duty to  
14 protect the confidentiality of such information.  
15

16  
17 368. As a direct and proximate result of Defendant's above-described wrongful actions,  
18 inaction, omissions, and want of ordinary care that directly and proximately caused the Data  
19 Breach and their violation of the RCW 70.20, pursuant to RCW 70.20.170, Plaintiffs and Class  
20 Members also are entitled to (1) actual damages per each Plaintiff and each Class Member, and;  
21 (2) reasonable attorneys' fees and all other expenses.  
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**COUNT VIII**  
**VIOLATION OF THE CALIFORNIA CONFIDENTIALITY OF MEDICAL**  
**INFORMATION ACT**  
**(Cal. Civ. Code § 56, et seq.)**  
**(On behalf of Plaintiff Batt and the California Subclass)**

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369. Plaintiff Batt re-alleges and incorporates by reference all preceding factual allegations as if fully set forth herein.

370. Plaintiff Batt (“Plaintiff” for the purposes of this Count) brings this Count on her own behalf and on behalf of the California Subclass.

371. Section 56.10(a) of the California Civil Code provides that “[a] provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization[.]”

372. Defendant is a “contractor” within the meaning of Civil Code § 56.05(d) within the meaning of Civil Code § 56.06 and/or a “business organized for the purpose of maintaining medical information” and/or a “business that offers software or hardware to consumers . . . that is designed to maintain medical information” within the meaning of Civil Code § 56.06(a) and (b), and maintained and continues to maintain “medical information,” within the meaning of Civil Code § 56.05(j), for “patients” of Defendant, within the meaning of Civil Code § 56.05(k).

373. Plaintiff and California Subclass members are “patients” within the meaning of Civil Code § 56.05(k) and are “endanger[ed]” within the meaning of Civil Code § 56.05(e) because Plaintiff and California Subclass members fear that disclosure of their medical information could subject them to harassment or abuse.

1           374. Plaintiff and California Subclass members, as patients, had their individually  
2 identifiable “medical information,” within the meaning of Civil Code § 56.05(j), created,  
3 maintained, preserved, and stored on Defendant’s computer network at the time of the breach.

4           375. Defendant, through inadequate security, allowed unauthorized third-party access  
5 to Plaintiff’s and California Subclass members’ medical information, without the prior written  
6 authorization of Plaintiff and California Subclass members, as required by Civil Code § 56.10 of  
7 the CMIA.  
8

9           376. In violation of Civil Code § 56.10(a), Defendant disclosed Plaintiff’s and  
10 California Subclass members’ medical information without first obtaining an authorization.  
11 Plaintiff’s and California Subclass members’ medical information was viewed by unauthorized  
12 individuals as a direct and proximate result of Defendant’s violation of Civil Code § 56.10(a).

13           377. In violation of Civil Code § 56.10(e), Defendant further disclosed Plaintiff’s and  
14 California Subclass members’ medical information to persons or entities not engaged in  
15 providing direct health care services to Plaintiff or California Subclass members, or to their  
16 providers of health care or health care service plans or their insurers or self-insured employers.  
17

18           378. Defendant violated Civil Code § 56.101 of the CMIA through its willful and  
19 knowing failure to maintain and preserve the confidentiality of the medical information of  
20 Plaintiff and the California Subclass. Defendant’s conduct with respect to the disclosure of  
21 confidential PII/PHI was willful and knowing because Defendant designed and implemented the  
22 computer network and security practices that gave rise to the Data Breach.  
23

24           379. In violation of Civil Code § 56.101(a), Defendant created, maintained, preserved,  
25 stored, abandoned, destroyed, or disposed of Plaintiff’s and California Subclass members’  
26

1 medical information in a manner that failed to preserve and breached the confidentiality of the  
2 information contained therein. Plaintiff's and California Subclass members' medical information  
3 was viewed by unauthorized individuals as a direct and proximate result of Defendant's violation  
4 of Civil Code § 56.101(a).

5 380. In violation of Civil Code § 56.101(a), Defendant negligently created, maintained,  
6 preserved, stored, abandoned, destroyed, or disposed of Plaintiff's and California Subclass  
7 members' medical information. Plaintiff's and California Subclass members' medical  
8 information was viewed by unauthorized individuals as a direct and proximate result of  
9 Defendant's violation of Civil Code § 56.101(a).

10 381. Plaintiff's and California Subclass members' medical information that was the  
11 subject of the Data Breach included "electronic medical records" or "electronic health records"  
12 as referenced by Civil Code § 56.101(c) and defined by 42 U.S.C. § 17921(5).

13 382. In violation of Civil Code § 56.101(b)(1)(A), Defendant's electronic health record  
14 system or electronic medical record system failed to protect and preserve the integrity of  
15 electronic medical information. Plaintiff's and California Subclass members' medical  
16 information was viewed by unauthorized individuals as a direct and proximate result of  
17 Defendant's violation of Civil Code § 56.101(b)(1)(A).

18 383. Defendant violated Civil Code § 56.36 of the CMIA through its failure to  
19 maintain and preserve the confidentiality of the medical information of Plaintiffs and the  
20 California Subclass.

21 384. As a result of Defendant's above-described conduct, Plaintiff and California  
22 Subclass members have suffered damages from the unauthorized disclosure and release of their  
23  
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1 individual identifiable “medical information” made unlawful by Civil Code §§ 56.10, 56.101,  
2 56.36.

3 385. As a direct and proximate result of Defendant’s above-described wrongful  
4 actions, inaction, omissions, and want of ordinary care that directly and proximately caused the  
5 Data Breach, and violation of the CMIA, Plaintiff and California Subclass members have  
6 suffered (and will continue to suffer) economic damages and other injury and actual harm in the  
7 form of, inter alia, (i) an imminent, immediate and the continuing increased risk of identity theft,  
8 identity fraud and medical fraud—risks justifying expenditures for protective and remedial  
9 services for which they are entitled to compensation, (ii) invasion of privacy, (iii) breach of the  
10 confidentiality of their PII/PHI, (iv) statutory damages under the California CMIA,  
11 (v) deprivation of the value of their PII/PHI, for which there is a well-established national and  
12 international market, and/or (vi) the financial and temporal cost of monitoring their credit,  
13 monitoring their financial accounts, and mitigating their damages.  
14

15 386. Plaintiff, individually and for each member of the California Subclass, seeks  
16 nominal damages of one thousand dollars (\$1,000) for each violation under Civil Code  
17 § 56.36(b)(1), and actual damages suffered, if any, pursuant to Civil Code  
18 § 56.36(b)(2), injunctive relief, as well as punitive damages of up to \$3,000 per Plaintiff and  
19 each California Subclass members, and attorneys’ fees, litigation expenses and court costs,  
20 pursuant to Civil Code § 56.35.  
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**COUNT IX**  
**VIOLATION OF THE CALIFORNIA CONSUMER PRIVACY ACT (“CCPA”)**  
**Cal. Civ. Code § 1798, et seq.**  
**(On behalf of Plaintiff Batt and the California Subclass)**

387. Plaintiff Batt re-alleges and incorporates by reference all preceding factual allegations as if fully set forth herein.

388. Plaintiff Batt (“Plaintiff” for the purposes of this Count) brings this Count on her own behalf and on behalf of the California Subclass.

389. The California Legislature has explained: “The unauthorized disclosure of personal information and the loss of privacy can have devastating effects for individuals, ranging from financial fraud, identity theft, and unnecessary costs to personal time and finances, to destruction of property, harassment, reputational damage, emotional stress, and even potential physical harm.”<sup>35</sup>

390. The CCPA imposes an affirmative duty on businesses that maintain personal information about California residents to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the information collected. Defendant failed to implement such procedures which resulted in the Data Breach.

391. It also requires “[a] business that discloses personal information about a California resident pursuant to a contract with a nonaffiliated third party . . . [to] require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from

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<sup>35</sup> California Consumer Privacy Act (CCPA) Compliance, <https://buyergenomics.com/ccpa-compliance/>.

1 unauthorized access, destruction, use, modification, or disclosure.” Cal. Civ. Code §  
2 1798.81.5(c).

3 392. Section 1798.150(a)(1) of the CCPA provides: “Any consumer whose  
4 nonencrypted or nonredacted personal information, as defined [by the CCPA] is subject to an  
5 unauthorized access and exfiltration, theft, or disclosure as a result of the business’ violation of  
6 the duty to implement and maintain reasonable security procedures and practices appropriate to  
7 the nature of the information to protect the personal information may institute a civil action for”  
8 statutory or actual damages, injunctive or declaratory relief, and any other relief the court deems  
9 proper.  
10

11 393. Plaintiff and California Subclass members are “consumer[s]” as defined by Civ.  
12 Code § 1798.140(g) because they are “natural person[s] who [are] California resident[s], as  
13 defined in Section 17014 of Title 18 of the California Code of Regulations, as that section read  
14 on September 1, 2017.”  
15

16 394. Defendant is a “business” as defined by Civ. Code § 1798.140(c) because  
17 Defendant:

- 18 a. is a “sole proprietorship, partnership, limited liability company, corporation,  
19 association, or other legal entity that is organized or operated for the profit or  
20 financial benefit of its shareholders or other owners”;
- 21 b. “collects consumers’ personal information, or on the behalf of which is collected  
22 and that alone, or jointly with others, determines the purposes and means of the  
23 processing of consumers’ personal information”;
- 24 c. does business in California; and  
25  
26

1 d. has annual gross revenues in excess of \$25 million; annually buys, receives for  
2 the business' commercial purposes, sells or shares for commercial purposes, alone  
3 or in combination, the personal information of 50,000 or more consumers,  
4 households, or devices; or derives 50 percent or more of its annual revenues from  
5 selling consumers' personal information.

6 395. The Private Information taken in the Data Breach is personal information as  
7 defined by Civil Code § 1798.81.5(d)(1)(A) because it contains Plaintiff's and California  
8 Subclass members' unencrypted first and last names and Social Security numbers among other  
9 information.  
10

11 396. Plaintiff and California Subclass members' Private Information was subject to  
12 unauthorized access and exfiltration, theft, or disclosure because their PII, including name and  
13 contact information was wrongfully taken, accessed, and viewed by unauthorized third parties.  
14

15 397. The Data Breach occurred as a result of Defendant's failure to implement and  
16 maintain reasonable security procedures and practices appropriate to the nature of the  
17 information to protect Plaintiff's and California Subclass members' PII. Defendant failed to  
18 implement reasonable security procedures to prevent an attack on their server or network,  
19 including its email system, by hackers and to prevent unauthorized access of Plaintiff's and  
20 California Subclass members' PII as a result of this attack.

21 398. On June 29, 2022, Plaintiff provided Defendant with written notice of its  
22 violations of the CCPA, pursuant to Civil Code § 1798.150(b)(1). Defendant failed to respond  
23 and has not cured or is unable to cure the violation described therein. Plaintiff seeks all relief  
24 available under the CCPA including damages to be measured as the greater of actual damages or  
25  
26



1 statutory damages in an amount up to seven hundred and fifty dollars (\$750) per consumer per  
2 incident. See Cal. Civ. Code § 1798.150(a)(1)(A) & (b).

3 399. As a result of Defendant’s failure to implement and maintain reasonable security  
4 procedures and practices that resulted in the Data Breach, Plaintiff seeks injunctive relief,  
5 including public injunctive relief, declaratory relief, and any other relief as deemed appropriate  
6 by the Court.

7  
8 **COUNT X**  
9 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)**  
10 **Cal. Bus. & Prof. Code § 17200, et seq.**  
11 **(On behalf of Plaintiff Batt and the California Subclass)**

12 400. Plaintiff Batt re-alleges and incorporates by reference all preceding factual  
13 allegations as if fully set forth herein.

14 401. Plaintiff Batt (“Plaintiff” for the purposes of this Count) brings this Count on her  
15 own behalf and on behalf of the California Subclass.

16 402. The UCL prohibits any “unlawful” or “unfair” business act or practice, as those  
17 terms are defined by the UCL and relevant case law. By virtue of the above-described wrongful  
18 actions, inaction, omissions, and want of ordinary care that directly and proximately caused the  
19 Data Breach, Defendant engaged in unlawful and unfair practices within the meaning, and in  
20 violation, of the UCL.

21 403. In the course of conducting its business, Defendant committed “unlawful”  
22 business practices by, inter alia, knowingly failing to design, adopt, implement, control, direct,  
23 oversee, manage, monitor and audit appropriate data security processes, controls, policies,  
24 procedures, protocols, and software and hardware systems to safeguard and protect Plaintiff’s  
25 and California Subclass members’ Private Information, and by violating the statutory and  
26

1 common law alleged herein, including, inter alia, the California Consumer Privacy Act of 2018  
2 (Cal. Civ. Code § 1798.100, et seq.), Article I, Section 1 of the California Constitution  
3 (California’s constitutional right to privacy), Cal. Civil Code § 1798.81.5, 45 C.F.R. § 164, et  
4 seq., and Section 5 of the FTC Act. Plaintiff and California Subclass members reserve the right  
5 to allege other violations of law by Defendant constituting other unlawful business acts or  
6 practices. Defendant’s above-described wrongful actions, inaction, omissions, and want of  
7 ordinary care are ongoing and continue to this date.  
8

9 404. Defendant also violated the UCL by failing to timely notify Plaintiff and  
10 California Subclass members pursuant to Civil Code § 1798.82(a) regarding the unauthorized  
11 access and disclosure of their Private Information. If Plaintiff and California Subclass members  
12 had been notified in an appropriate fashion, they could have taken precautions to safeguard and  
13 protect their Private Information and identities.

14 405. Defendant violated the unfair prong of the UCL by establishing the sub-standard  
15 security practices and procedures described herein; by soliciting and collecting Plaintiff’s and  
16 California Subclass members’ Private Information with knowledge that the information would  
17 not be adequately protected; and by storing Plaintiff’s and California Subclass members’ Private  
18 Information in an unsecure electronic environment. These unfair acts and practices were  
19 immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to  
20 Plaintiff and California Subclass members. They were likely to deceive the public into believing  
21 their Private Information was securely stored when it was not. The harm these practices caused  
22 to Plaintiff and California Subclass members outweighed their utility, if any.  
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1           406. Defendant’s above-described wrongful actions, inaction, omissions, want of  
2 ordinary care, misrepresentations, practices, and non-disclosures also constitute “unfair” business  
3 acts and practices in violation of the UCL in that Defendant’s wrongful conduct is substantially  
4 injurious to consumers, offends legislatively-declared public policy, and is immoral, unethical,  
5 oppressive, and unscrupulous. Defendant’s practices are also contrary to legislatively declared  
6 and public policies that seek to protect Private Information and ensure that entities who solicit or  
7 are entrusted with personal data utilize appropriate security measures, as reflected by laws such  
8 as the CCPA, CMIA, HIPAA and the FTC Act (15 U.S.C. § 45). The gravity of Defendant’s  
9 wrongful conduct outweighs any alleged benefits attributable to such conduct. There were  
10 reasonably available alternatives to further Defendant’s legitimate business interests other than  
11 engaging in the above-described wrongful conduct.  
12

13           407. Plaintiff and California Subclass members suffered injury in fact and lost money  
14 or property as a result of Defendant’s violations of statutory and common law. Plaintiff and the  
15 California Subclass suffered from overpaying for services that should have included adequate  
16 data security for their Private Information, by experiencing a diminution of value in their Private  
17 Information as a result if its theft by cybercriminals, the loss of Plaintiff’s and California  
18 Subclass members’ legally protected interest in the confidentiality and privacy of their Private  
19 Information, and additional losses as described above.  
20

21           408. Plaintiff and California Subclass members have also suffered (and will continue  
22 to suffer) economic damages and other injury and actual harm in the form of, *inter alia*, (i) an  
23 imminent, immediate and the continuing increased risk of identity theft and identity fraud—risks  
24 justifying expenditures for protective and remedial services for which they are entitled to  
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1 compensation, (ii) invasion of privacy, (iii) breach of the confidentiality of their PII,  
2 (iv) deprivation of the value of their PII for which there is a well-established national and  
3 international market, and/or (v) the financial and temporal cost of monitoring their credit,  
4 monitoring financial accounts, and mitigating damages.

5 409. Unless restrained and enjoined, Defendant will continue to engage in the above-  
6 described wrongful conduct and more data breaches will occur. As such, Plaintiff, on behalf of  
7 herself and California Subclass members, seeks restitution and an injunction, including public  
8 injunctive relief prohibiting Defendant from continuing such wrongful conduct, and requiring  
9 Defendant to modify its corporate culture and design, adopt, implement, control, direct, oversee,  
10 manage, monitor and audit appropriate data security processes, controls, policies, procedures  
11 protocols, and software and hardware systems to safeguard and protect the Private Information  
12 entrusted to it, as well as all other relief the Court deems appropriate, consistent with Bus. &  
13 Prof. Code § 17203. To the extent any of these remedies are equitable, Plaintiff and the Class  
14 seek them in the alternative to any adequate remedy at law they may have.  
15  
16

17 **COUNT XI**  
18 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT, 815 Ill. Comp. Stat. §**  
19 **505/1, et seq. (“CFA”)**  
20 **(On behalf of Plaintiff Price and the Illinois Subclass)**

21 410. Plaintiff Price re-alleges and incorporates by reference all preceding factual  
22 allegations as if fully set forth herein.

23 411. Plaintiff Price (“Plaintiff” for the purposes of this Count) brings this Count on his  
24 own behalf and on behalf of the Illinois Subclass.  
25  
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1           412. Plaintiff and the Illinois Subclass are “consumers” as defined in 815 Ill. Comp.  
2 Stat. § 505/1(e). Plaintiff, the Illinois Subclass, and Defendant are “persons” as defined in 815  
3 Ill. Comp. Stat. § 505/1(c).

4           413. Defendant is engaged in “trade” or “commerce,” including the provision of  
5 services, as defined under 815 Ill. Comp. Stat. § 505/1(f). Defendant engages in the sale of  
6 “merchandise” (including services) as defined by 815 Ill. Comp. Stat. § 505/1(b) and (d).

7           414. Defendant engaged in deceptive and unfair acts and practices in connection with  
8 the sale and advertisement of its services in violation of the CFA, by, inter alia, failing to comply  
9 with applicable state and federal laws and industry standards pertaining to data security,  
10 including the FTC Act, soliciting and collecting Plaintiff’s and the Illinois Subclass members’  
11 Private Information with knowledge that the information would not be adequately protected,  
12 storing Plaintiff’s and Illinois Subclass members’ Private Information in an unsecure electronic  
13 environment, and failing to take proper action following the Data Breach to enact adequate  
14 privacy and security measures and protect Plaintiff’s and the Illinois Subclass’s PII and other  
15 personal information from further unauthorized disclosure, release, and data breaches.  
16

17           415. Defendant also violated the CFA by failing to timely notify and concealing from  
18 Plaintiffs and Class Members information regarding the unauthorized release and disclosure of  
19 their Private Information. If Plaintiffs and Class Members had been notified in an appropriate  
20 fashion, and had the information not been hidden from them, they could have taken precautions  
21 to safeguard and protect their Private Information, medical information, and identities.  
22

23           416. These actions also constitute deceptive and unfair acts or practices because  
24 Defendant was aware that its inadequate data security and failure to comply with applicable state  
25  
26

1 and federal laws and industry standards would be unknown to and not easily discoverable by  
2 Plaintiff and the Illinois Subclass and defeat their reasonable expectations about the security of  
3 their PII.

4 417. Defendant intended that Plaintiff and the Illinois Subclass rely on its deceptive  
5 and unfair acts and practices in connection with its offering of goods and services.

6 418. Defendant's wrongful practices were and are injurious to the public because they  
7 were part of its generalized course of conduct that applied to the Illinois Subclass. Plaintiff and  
8 the Illinois Subclass have been adversely affected by Defendant's conduct and the public was  
9 and is at risk as a result thereof.

10 419. Defendants also violated 815 ILCS 505/2 by failing to immediately notify  
11 Plaintiff and the Illinois Subclass of the nature and extent of the Data Breach pursuant to the  
12 Illinois Personal Information Protection Act, 815 ILCS 530/1, *et seq.*

13 420. As a result of Defendant's wrongful conduct, Plaintiff and the Illinois Subclass  
14 were injured in that they never would have provided their PII to Defendant, or purchased  
15 Defendant's services, had they known or been told that Defendant failed to maintain sufficient  
16 security to keep their PII from being hacked and taken and misused by others.

17 421. As a direct and proximate result of Defendant's violations of the CFA, Plaintiff  
18 and the Illinois Subclass have suffered harm, including actual instances of identity theft; loss of  
19 time and money resolving fraudulent charges; loss of time and money obtaining protections  
20 against future identity theft; financial losses related to the payments or services made to  
21 Defendant that Plaintiff and the Illinois Subclass would not have made had they known of  
22 Defendants' inadequate data security; lost control over the value of their PII; unreimbursed  
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1 losses relating to fraudulent charges; harm resulting from damaged credit scores and information;  
2 and other harm resulting from the unauthorized use or threat of unauthorized use of stolen PII,  
3 entitling them to damages in an amount to be proven at trial.

4 422. Pursuant to 815 Ill. Comp. Stat. § 505/10a(a), Plaintiff and the Illinois Subclass  
5 seek actual and compensatory damages, injunctive relief, and court costs and attorneys' fees as a  
6 result of Defendants' violations of the CFA.

7  
8 **COUNT XII**  
9 **VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT,**  
10 **Ind. Code § 24-5-0.5-1, et seq. ("IDCSA")**  
11 **(On behalf of Plaintiffs Saiki, Thorbecke, and Hensley and the Indiana Subclass)**

12 423. Plaintiffs Saiki, Thorbecke, and Hensley re-allege and incorporate by reference all  
13 preceding factual allegations as if fully set forth herein.

14 424. Plaintiffs Saiki, Thorbecke, and Hensley ("Plaintiffs" for the purposes of this  
15 Count) bring this Count on their own behalf and on behalf of the Indiana Subclass.

16 425. Ind. Code § 24-5-0.5-3(a) prohibits suppliers from engaging in deceptive, unfair,  
17 and abusive acts or omissions in consumer transactions.

18 426. Defendant is a "supplier" who engaged in deceptive, unfair, and unlawful trade  
19 acts or practices in the conduct of "consumer transactions," in violation of the IDCSA. As a  
20 regular part of its business, Defendants provides health-care related services to individuals  
21 residing in Indiana.

22 427. In connection with its consumer transactions, Defendant engaged in unfair,  
23 abusive or deceptive acts, omissions or practices by, inter alia, failing to comply with applicable  
24 state and federal laws and industry standards pertaining to data security, including the FTC Act,  
25 soliciting and collecting Plaintiffs' and the Indiana Subclass members' Private Information with  
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1 knowledge that the information would not be adequately protected, storing Plaintiffs' and  
2 Indiana Subclass members' Private Information in an unsecure electronic environment, and  
3 failing to take proper action following the Data Breach to enact adequate privacy and security  
4 measures and protect Plaintiffs' and the Indiana Subclass's PII and other personal information  
5 from further unauthorized disclosure, release, and data breaches.

6 428. Defendant knew that its computer systems and data security practices were  
7 inadequate to safeguard the PII of Plaintiffs and the Indiana Subclass members, and that risk of a  
8 data breach or theft was highly likely. Nevertheless, it did nothing to warn its clients and their  
9 customers about their data insecurities, in order to encourage them to use its services.

10 429. The above unfair and deceptive practices and acts by Defendant were done as part  
11 of a scheme, artifice, or device with intent to defraud or mislead and constitute incurable  
12 deceptive acts under the IDCSA.  
13

14 430. As a direct and proximate result of Defendant's deceptive trade practices,  
15 Plaintiffs and the Indiana Subclass members suffered injuries, including the loss of their legally  
16 protected interest in the confidentiality and privacy of their financial and personal information  
17 and damages.  
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19 431. Plaintiffs and the Indiana Subclass members seek relief under Ind. Code § 24-5-  
20 0.5-4, including, but not limited to, the maximum statutory damages available under the IDCSA,  
21 restitution, penalties, injunctive relief, and/or attorneys' fees and costs.  
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**COUNT XIII**  
**VIOLATION OF THE KANSAS DATA BREACH REQUIREMENTS ACT**  
**Kan. Stat. Ann. §§ 50-7a02(a), et seq.**  
**(On behalf of Plaintiff Crawford and the Kansas Subclass)**

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432. Plaintiff Crawford re-alleges and incorporates by reference all preceding factual allegations as if fully set forth herein.

433. Plaintiff Crawford (“Plaintiff” for the purposes of this Count) brings this Count on her own behalf and on behalf of the Kansas Subclass.

434. Defendant is a business that owns or licenses computerized data that includes Personal Information as defined by Kan. Stat. Ann. §§ 50-7a02(a).

435. Plaintiff’s and Kansas Subclass members’ PII constitute Personal Information under Kan. Stat. Ann. §§ 50-7a02(a).

436. Kansas law requires Defendant to notify, in the most expedient time possible and without unreasonable delay, Plaintiff and Kansas Subclass members if it becomes aware of a breach of its data security system that was reasonably likely to have caused misuse of Plaintiff’s and Kansas Subclass members’ Personal Information, in the most expedient time possible and without unreasonable delay.

437. Because Defendant was aware of a breach of its security system that was reasonably likely to have caused misuse of Plaintiff’s and Kansas Subclass members’ Personal Information, it was required to disclose the data breach in a timely and accurate fashion under Kan. Stat. Ann. § 50- 7a02(a).

438. By failing to disclose the data breach in a timely and accurate manner, Defendant violated Kan. Stat. Ann. § 50-7a02(a).

1 439. As a direct and proximate result of Defendant’s violations of Kan. Stat. Ann. §  
2 50-7a02(a), Plaintiff and Kansas Subclass members suffered damages, as described above.

3 440. Plaintiff and Kansas Subclass members seek relief under Kan. Stat. Ann. § 50-  
4 7a02(g), including equitable relief.

5 **COUNT XIV**  
6 **VIOLATION OF THE KANSAS CONSUMER PROTECTION ACT,**  
7 **K.S.A. §§ 50-623, et seq.**  
8 **(On behalf of Plaintiff Crawford and the Kansas Subclass)**

9 441. Plaintiff Crawford re-alleges and incorporates by reference all preceding factual  
10 allegations as if fully set forth herein.

11 442. Plaintiff Crawford (“Plaintiff” for the purposes of this Count) brings this Count on  
12 her own behalf and on behalf of the Kansas Subclass.

13 443. Plaintiff and Kansas Subclass members are “consumers” as defined by K.S.A. §  
14 50-624(b).

15 444. The acts and practices described herein are “consumer transactions,” as defined  
16 by K.S.A. § 50-624(c).

17 445. Defendant is a “supplier” as defined by K.S.A. § 50-624(l). It advertised, offered,  
18 or sold goods or services in Kansas and engaged in trade or commerce directly or indirectly  
19 affecting the people of Kansas.

20 446. In connection with its consumer transactions, Defendant engaged in unfair,  
21 deceptive, or unconscionable practices and acts by, inter alia, failing to comply with applicable  
22 state and federal laws and industry standards pertaining to data security, including the FTC Act,  
23 soliciting and collecting Plaintiff’s and the Kansas Subclass Members’ Private Information with  
24 knowledge that the information would not be adequately protected, storing Plaintiff’s and Kansas  
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1 Subclass members' Private Information in an unsecure electronic environment, and failing to  
2 take proper action following the Data Breach to enact adequate privacy and security measures  
3 and protect Plaintiff's and the Kansas Subclass's PII and other personal information from further  
4 unauthorized disclosure, release, and data breaches.

5 447. Defendant's unfair, deceptive, and unconscionable practices and acts were  
6 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to  
7 Plaintiff and Kansas Subclass members that they could not reasonably avoid; this substantial  
8 injury outweighed any benefits to consumers or to competition.

9 448. Defendant acted intentionally, knowingly, and maliciously in violating the Act,  
10 and recklessly disregarded Plaintiff and Kansas Subclass members' rights. Only Defendant was  
11 aware of the security deficiencies in its data systems. Consumers, including Plaintiffs and Kansas  
12 Subclass members, lacked this knowledge and consumers lack expertise in information security.  
13 Even if they did have this expertise, consumers do not have access to Defendant's data systems  
14 to ensure the security of their PII.

15 449. As a direct and proximate result of Defendant's unfair, deceptive, and  
16 unconscionable trade practices, Plaintiff and Kansas Subclass members have suffered and will  
17 continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
18 monetary damages, including from fraud and identity theft; time and expenses related to  
19 monitoring their financial accounts for fraudulent activity; an increased, imminent risk of fraud  
20 and identity theft; and loss of value of their Personal Information.

1 450. Plaintiff and Kansas Subclass members seek all monetary and nonmonetary relief  
2 allowed by law, including civil penalties or actual damages (whichever is greater), under K.S.A.  
3 §§ 50-634 and 50-636; injunctive relief; and reasonable attorneys' fees and costs.

4 **COUNT XV**  
5 **VIOLATION OF THE KENTUCKY COMPUTER SECURITY BREACH**  
6 **NOTIFICATION ACT,**  
7 **Ky. Rev. Stat. Ann. §§ 365.732, et seq.**  
8 **(On behalf of Plaintiffs Jay Taylor and Shelley Taylor and the Kentucky Subclass)**

9 451. Plaintiffs Jay Taylor and Shelley Taylor re-allege and incorporate by reference all  
10 preceding factual allegations as if fully set forth herein.

11 452. Plaintiffs Jay Taylor and Shelley Taylor ("Plaintiffs" for the purposes of this  
12 Count) brings this Count on their own behalf and on behalf of the Kentucky Subclass.

13 453. Under Ky. Rev. Stat. Ann. § 365.732(2), Defendant was required accurately  
14 notify, in the most expedient time possible and without unreasonable delay, Plaintiffs and  
15 Kentucky Subclass members if it became aware of a breach of its data security system that was  
16 reasonably likely to have caused unauthorized persons to acquire Plaintiff's and Kentucky  
17 Subclass members' Personal Information.

18 454. Defendant is a business that holds computerized data that includes Personal  
19 Information as defined by Ky. Rev. Stat. Ann. § 365.732(2).

20 455. Plaintiffs' and Kentucky Subclass members' PII constitute Personal Information  
21 under Ky. Rev. Stat. Ann. § 365.732(2).

22 456. Because Defendant was aware of a breach of its security system that was  
23 reasonably likely to have caused misuse of Plaintiffs' and Kentucky Subclass members' Personal  
24 Information, Defendant is liable for the breach.

1 Information, it was required to disclose the data breach in a timely and accurate fashion under  
2 Ky. Rev. Stat. Ann. § 365.732(2).

3 457. By failing to disclose the data breach in a timely and accurate manner, Defendant  
4 violated Ky. Rev. Stat. Ann. § 365.732(2).

5 458. As a direct and proximate result of Defendant's violations of Ky. Rev. Stat. Ann.  
6 § 365.732(2), Plaintiffs and Kentucky Subclass members suffered damages as described above.

7 459. Plaintiffs and Kentucky Subclass members seek relief under Ky. Rev. Stat. Ann. §  
8 446.070, including actual damages.  
9

10 **COUNT XVI**  
11 **VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT,**  
12 **Ky. Rev. Stat. Ann. §§ 365.732, et seq.**  
13 **(On behalf of Plaintiffs Jay Taylor and Shelley Taylor and the Kentucky Subclass)**

14 460. Plaintiffs Jay Taylor and Shelley Taylor re-allege and incorporate by reference all  
15 preceding factual allegations as if fully set forth herein.

16 461. Plaintiffs Jay Taylor and Shelley Taylor ("Plaintiffs" for the purposes of this  
17 Count) bring this Count on their own behalf and on behalf of the Kentucky Subclass.

18 462. Defendant is a "person" as defined by Ky. Rev. Stat. § 367.110(1).

19 463. Defendant advertised, offered, or sold goods or services in Kentucky and engaged  
20 in trade or commerce directly or indirectly affecting the people of Kentucky, as defined by Ky.  
21 Rev. Stat. 367.110(2).

22 464. Defendant engaged in unfair, false, misleading, deceptive, and unconscionable  
23 practices and acts by, inter alia, failing to comply with applicable state and federal laws and  
24 industry standards pertaining to data security, including the FTC Act, soliciting and collecting  
25 Plaintiffs' and Kentucky Subclass Members' Private Information with knowledge that the  
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1 information would not be adequately protected, storing Plaintiffs' and Kansas Subclass  
2 members' Private Information in an unsecure electronic environment, and failing to take proper  
3 action following the Data Breach to enact adequate privacy and security measures and protect  
4 Plaintiffs' and Kentucky Subclass's PII and other personal information from further  
5 unauthorized disclosure, release, and data breaches.

6 465. Defendant's unfair, deceptive, and unconscionable practices and acts were  
7 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to  
8 Plaintiffs and Kentucky Subclass members that they could not reasonably avoid; this substantial  
9 injury outweighed any benefits to consumers or to competition.

10 466. Defendant acted intentionally, knowingly, and maliciously in violating the Act,  
11 and recklessly disregarded Plaintiffs' and Kentucky Subclass members' rights. Only Defendant  
12 was aware of the security deficiencies in its data systems. Consumers, including Plaintiffs and  
13 Kentucky Subclass members, lacked this knowledge and consumers lack expertise in information  
14 security. Even if they did have this expertise, consumers do not have access to Defendant's data  
15 systems to ensure the security of their PII.

16 467. As a direct and proximate result of Defendant's unfair, deceptive, and  
17 unconscionable trade practices, Plaintiffs and Kentucky Subclass members have suffered and  
18 will continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
19 monetary damages, including from fraud and identity theft; time and expenses related to  
20 monitoring their financial accounts for fraudulent activity; an increased, imminent risk of fraud  
21 and identity theft; and loss of value of their Personal Information.

1 468. Plaintiffs and Kentucky Subclass members seek all monetary and non-monetary  
2 relief allowed by law, including damages, punitive damages, restitution or other equitable relief,  
3 injunctive relief, and reasonable attorneys' fees and costs.

4 **COUNT XVII**  
5 **VIOLATION OF THE LOUISIANA DATABASE SECURITY BREACH**  
6 **NOTIFICATION LAW**

7 **La. Rev. Stat. Ann. §§ 51:3074(A), et seq.**  
8 **(On behalf of Plaintiffs Strecker and Ictech and the Louisiana Subclass)**

9 469. Plaintiffs Strecker and Ictech re-allege and incorporate by reference all preceding  
10 factual allegations as if fully set forth herein.

11 470. Plaintiffs Strecker and Ictech ("Plaintiffs" for the purposes of this Count) bring  
12 this Count on their own behalf and on behalf of the Louisiana Subclass.

13 471. Defendant is a business that owns or licenses computerized data that includes  
14 Personal Information as defined by La. Rev. Stat. Ann. § 51:3074(C).

15 472. Plaintiffs' and Louisiana Subclass members' PII includes Personal Information as  
16 covered under La. Rev. Stat. Ann. § 51:3074(C).

17 473. Under La. Rev. Stat. Ann. § 51:3074(C), Defendant was required accurately  
18 notify, in the most expedient time possible and without unreasonable delay, Plaintiffs and  
19 Louisiana Subclass members if it became aware of a breach of its data security system that was  
20 reasonably likely to have caused unauthorized persons to acquire Plaintiffs' and Louisiana  
21 Subclass members' Personal Information.

22 474. Because Defendant was aware of a breach of its security system that was  
23 reasonably likely to have caused misuse of Plaintiffs' and Louisiana Subclass members' Personal  
24 Information, Defendant is liable to Plaintiffs and Louisiana Subclass members for the  
25 damages and costs incurred by Plaintiffs and Louisiana Subclass members as a result of  
26 the breach.

1 Information, it was required to disclose the data breach in a timely and accurate fashion under  
2 La. Rev. Stat. Ann. § 51:3074(C).

3 475. By failing to disclose the data breach in a timely and accurate manner, Defendant  
4 violated La. Rev. Stat. Ann. § 51:3074(C)).

5 476. As a direct and proximate result of Defendant's violations of La. Rev. Stat. Ann. §  
6 51:3074(C), Plaintiffs and Louisiana Subclass members suffered damages as described above.

7 477. Plaintiffs and Louisiana Subclass members seek relief under La. Rev. Stat. Ann. §  
8 51:3075, including actual damages.  
9

10 **COUNT XVIII**  
11 **VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER**  
12 **PROTECTION LAW**

13 **La. Rev. Stat. Ann. §§ 51:1401, et seq.**  
14 **(On behalf of Plaintiffs Strecker and Ictech and the Louisiana Subclass)**

15 478. Plaintiffs Strecker and Ictech re-allege and incorporate by reference all preceding  
16 factual allegations as if fully set forth herein.

17 479. Plaintiff Strecker ("Plaintiffs" for the purposes of this Count) bring this Count on  
18 their own behalf and on behalf of the Louisiana Subclass.

19 480. Defendant, Plaintiffs, and Louisiana Subclass members are "persons" within the  
20 meaning of the La. Rev. Stat. Ann. § 51:1402(8).

21 481. Plaintiffs and Louisiana Subclass members are "consumers" within the meaning  
22 of La. Rev. Stat. Ann. § 51:1402(1).

23 482. Defendant engaged in "trade" or "commerce" within the meaning of La. Rev. Stat.  
24 Ann. § 51:1402(10).  
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1           483. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana  
2 CPL”) makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or  
3 commerce.” La. Rev. Stat. Ann. § 51:1405(A). Unfair acts are those that offend established  
4 public policy.

5           484. Defendant engaged in unfair practices and acts by, inter alia, failing to comply  
6 with applicable state and federal laws and industry standards pertaining to data security,  
7 including the FTC Act, soliciting and collecting Plaintiffs’ and Louisiana Subclass Members’  
8 Private Information with knowledge that the information would not be adequately protected,  
9 storing Plaintiffs’ and Louisiana Subclass members’ Private Information in an unsecure  
10 electronic environment, and failing to take proper action following the Data Breach to enact  
11 adequate privacy and security measures and protect Plaintiffs’ and Louisiana Subclass’s PII and  
12 other personal information from further unauthorized disclosure, release, and data breaches.

13           485. Defendant’s unfair practices and acts were immoral, unethical, oppressive, and  
14 unscrupulous. These acts caused substantial injury to Plaintiffs and Louisiana Subclass members  
15 that they could not reasonably avoid; this substantial injury outweighed any benefits to  
16 consumers or to competition.

17           486. Defendant acted intentionally, knowingly, and maliciously in violating the Law,  
18 and recklessly disregarded Plaintiffs’ and Louisiana Subclass members’ rights. Only Defendant  
19 was aware of the security deficiencies in its data systems. Consumers, including Plaintiffs and  
20 Louisiana Subclass members, lacked this knowledge and consumers lack expertise in  
21 information security. Even if they did have this expertise, consumers do not have access to  
22 Defendant’s data systems to ensure the security of their PII.  
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1 487. As a direct and proximate result of Defendant’s unfair, deceptive, and  
2 unconscionable trade practices, Plaintiffs and Louisiana Subclass members have suffered and  
3 will continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
4 monetary damages, including from fraud and identity theft; time and expenses related to  
5 monitoring their financial accounts for fraudulent activity; an increased, imminent risk of fraud  
6 and identity theft; and loss of value of their Personal Information.

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8 488. Plaintiffs and Louisiana Subclass members seek all monetary and non-monetary  
9 relief allowed by law, including actual damages, treble damages for Defendant’s knowing  
10 violations, declaratory relief, and reasonable attorneys’ fees and costs, and any other relief that is  
11 just and proper.

12 **COUNT XIX**  
13 **VIOLATION OF THE MISSISSIPPI CONSUMER PROTECTION ACT,**  
14 **Miss. Code §§ 75-24-1, et seq.**  
15 **(On behalf of Plaintiff Daugherty and the Mississippi Subclass)**

16 489. Plaintiff Daugherty re-alleges and incorporates by reference all preceding factual  
17 allegations as if fully set forth herein.

18 490. Plaintiff Daugherty (“Plaintiff” for the purposes of this Count) brings this Count  
19 on her own behalf and on behalf of the Mississippi Subclass

20 491. Defendant is a “person” under Miss. Code §§ 75-24-3.

21 492. Defendant advertised, offered, or sold goods or services in Mississippi and  
22 engaged in trade or commerce directly or indirectly affecting the people of Mississippi as defined  
23 under Miss. Code §§ 75-24-3.

24 493. Plaintiff has complied with all pre-conditions for bringing a private action under  
25 Miss. Code §§ 75-24-3.  
26

1           494. Defendant engaged in unfair and deceptive acts and practices by, inter alia, failing  
2 to comply with applicable state and federal laws and industry standards pertaining to data  
3 security, including the FTC Act, soliciting and collecting Plaintiff's and Mississippi Subclass  
4 Members' Private Information with knowledge that the information would not be adequately  
5 protected, storing Plaintiff's and Mississippi Subclass members' Private Information in an  
6 unsecure electronic environment, and failing to take proper action following the Data Breach to  
7 enact adequate privacy and security measures and protect Plaintiff's and Mississippi Subclass's  
8 PII and other personal information from further unauthorized disclosure, release, and data  
9 breaches.  
10

11           495. The above-described conduct violated Miss. Code Ann. § 75-24-5(2).

12           496. Defendant acted intentionally, knowingly, and maliciously in violating the Act  
13 and recklessly disregarded Plaintiff and Mississippi Subclass members' rights. Only Defendant  
14 was aware of the security deficiencies in its data systems. Consumers, including Plaintiffs and  
15 Mississippi Subclass members, lacked this knowledge and consumers lack expertise in  
16 information security. Even if they did have this expertise, consumers do not have access to  
17 Defendant's data systems to ensure the security of their PII.  
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19           497. As a direct and proximate result of Defendant's unfair, deceptive, and  
20 unconscionable trade practices, Plaintiff and Mississippi Subclass members have suffered and  
21 will continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
22 monetary damages, including from fraud and identity theft; time and expenses related to  
23 monitoring their financial accounts for fraudulent activity; an increased, imminent risk of fraud  
24 and identity theft; and loss of value of their Personal Information.  
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1 498. Defendant’s violations presenting a continuing risk to Plaintiff and Mississippi  
2 subclass members as well as to the general public.

3 499. Plaintiff and Mississippi Subclass members seek all monetary and non-monetary  
4 relief allowed by law, including actual damages, restitution and other relief under Miss. Code §  
5 75-24-11, injunctive relief, punitive damages, and reasonable attorneys’ fees and costs.

6 **COUNT XX**  
7 **VIOLATION OF THE NEW MEXICO UNFAIR PRACTICES ACT,**  
8 **N.M. Stat. Ann. §§ 57-12-2, et seq.**  
9 **(On behalf of Plaintiffs Booth and Garcia and the New Mexico Subclass)**

10 500. Plaintiffs Booth and Garcia re-allege and incorporate by reference all preceding  
11 factual allegations as if fully set forth herein.

12 501. Plaintiffs Booth and Garcia (“Plaintiffs” for the purposes of this Count) bring this  
13 Count on their own behalf and on behalf of the New Mexico Subclass

14 502. Defendant is a “person” under N.M. Stat. Ann. § 57-12-2.

15 503. Defendant was engaged in “trade” and “commerce” under N.M. Stat. Ann. § 57-  
16 12-2(C).

17 504. New Mexico law prohibits both unfair or deceptive trade practices and  
18 unconscionable trade practices in the conduct of any trade or commerce.

19 505. Defendant engaged in unfair, deceptive, and unconscionable acts and practices by,  
20 inter alia, failing to comply with applicable state and federal laws and industry standards  
21 pertaining to data security, including the FTC Act, soliciting and collecting Plaintiffs’ and New  
22 Mexico Subclass Members’ Private Information with knowledge that the information would not  
23 be adequately protected, storing Plaintiff’s and New Mexico Subclass members’ Private  
24 Information in an unsecure electronic environment, and failing to take proper action following  
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1 the Data Breach to enact adequate privacy and security measures and protect Plaintiff's and New  
2 Mexico Subclass's PII and other personal information from further unauthorized disclosure,  
3 release, and data breaches.

4 506. Defendant acted intentionally, knowingly, and maliciously in violating the Act  
5 and recklessly disregarded Plaintiffs and New Mexico Subclass members' rights. Only  
6 Defendant was aware of the security deficiencies in its data systems. Consumers, including  
7 Plaintiffs and New Mexico members, lacked this knowledge and consumers lack expertise in  
8 information security. Even if they did have this expertise, consumers do not have access to  
9 Defendant's data systems to ensure the security of their PII.

11 507. As a direct and proximate result of Defendant's unfair, deceptive, and  
12 unconscionable trade practices, Plaintiffs and New Mexico Subclass members have suffered and  
13 will continue to suffer injury, ascertainable losses of money or property, and monetary and non-  
14 monetary damages, including from fraud and identity theft; time and expenses related to  
15 monitoring their financial accounts for fraudulent activity; an increased, imminent risk of fraud  
16 and identity theft; and loss of value of their Personal Information.

18 508. Plaintiffs and New Mexico Subclass members seek all monetary and non-  
19 monetary relief allowed by law, including actual damages or statutory damages of \$100  
20 (whichever is greater), treble damages or statutory damages of \$300 (which is greater),  
21 injunctive relief, and reasonable attorneys' fees and costs.

**COUNT XXI**  
**VIOLATION OF THE OHIO DECEPTIVE TRADE PRACTICES ACT,**  
**Ohio Rev. Code §§ 4165.01, et seq.**  
**(On behalf of Plaintiff Dean and the Ohio Subclass)**

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509. Plaintiff Dean re-alleges and incorporates by reference all preceding factual allegations as if fully set forth herein.

510. Plaintiff Dean (“Plaintiff” for the purposes of this Count) brings this Count on her own behalf and on behalf of the Ohio Subclass

511. Defendant, Plaintiff, and Ohio Subclass members are a “person” under Ohio Rev. Code § 4165.01(D).

512. Defendant advertised, offered, or sold goods or services in Ohio and engaged in trade or commerce directly or indirectly affecting the people of Ohio.

513. Defendant engaged in deceptive trade practices by, inter alia, failing to comply with applicable state and federal laws and industry standards pertaining to data security, including the FTC Act, soliciting and collecting Plaintiff’s and New Mexico Subclass Members’ Private Information with knowledge that the information would not be adequately protected, storing Plaintiff’s and New Mexico Subclass members’ Private Information in an unsecure electronic environment, and failing to take proper action following the Data Breach to enact adequate privacy and security measures and protect Plaintiff’s and New Mexico Subclass’s PII and other personal information from further unauthorized disclosure, release, and data breaches.

514. The foregoing practices violated Ohio Rev. Code § 4165.02.

515. Defendant acted intentionally, knowingly, and maliciously in violating the Act and recklessly disregarded Plaintiff and Ohio Subclass members’ rights. Only Defendant was aware of the security deficiencies in its data systems. Consumers, including Plaintiffs and Ohio

1 Subclass members, lacked this knowledge and consumers lack expertise in information security.  
2 Even if they did have this expertise, consumers do not have access to Defendant's data systems  
3 to ensure the security of their PII.

4 516. As a direct and proximate result of Defendant's deceptive trade practices, Plaintiff  
5 and Ohio Subclass members have suffered and will continue to suffer injury, ascertainable losses  
6 of money or property, and monetary and non-monetary damages, including from fraud and  
7 identity theft; time and expenses related to monitoring their financial accounts for fraudulent  
8 activity; an increased, imminent risk of fraud and identity theft; and loss of value of their  
9 Personal Information.  
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11 517. Plaintiff and Ohio Subclass members seek all monetary and non-monetary relief  
12 allowed by law, including actual damages, injunctive relief, and reasonable attorneys' fees and  
13 costs, and any other relief that is just and proper.  
14

15 **COUNT XXII**  
16 **DECLARATORY AND INJUNCTIVE RELIEF**  
17 **(On behalf of Plaintiffs and the Class)**

18 518. Plaintiffs incorporate by reference the foregoing factual allegations as if fully set  
19 forth herein.

20 519. This count is brought under the Federal Declaratory Judgment Act, 28 U.S.C.  
21 § 2201.

22 520. Defendant owes a duty of care to Plaintiffs and Class members that require it to  
23 adequately secure Plaintiff's and Class members' Private Information.

24 521. Defendant still possesses the Private Information of Plaintiffs and the Class  
25 members.  
26

1           522. Defendant has not satisfied its contractual obligations and legal duties to Plaintiffs  
2 and the Class Members.

3           523. Actual harm has arisen in the wake of the Data Breach regarding Defendant's  
4 contractual obligations and duties of care to provide security measures to Plaintiffs and Class  
5 Members. Further, Plaintiffs and Class Members are at risk of additional or further harm due to  
6 the exposure of their Private Information and Defendant's failure to address the security failings  
7 that led to such exposure.  
8

9           524. There is no reason to believe that Defendant's employee training and security  
10 measures are any more adequate now than they were before the breach to meet Defendant's  
11 contractual obligations and legal duties.

12           525. Plaintiffs therefore, seek a declaration (1) that Defendant's existing data security  
13 measures do not comply with its contractual obligations and duties of care to provide adequate  
14 data security, and (2) that to comply with its contractual obligations and duties of care,  
15 Defendant must implement and maintain reasonable security measures, including, but not limited  
16 to, the following:  
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- 18           a. Ordering that Defendant engage internal security personnel to conduct testing,  
19 including audits on Defendant's systems, on a periodic basis, and ordering  
20 Defendant to promptly correct any problems or issues detected by such third-party  
21 security auditors;  
22           b. Ordering that Defendant engage third-party security auditors and internal personnel  
23 to run automated security monitoring;  
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26



- 1 c. Ordering that Defendant audit, test, and train its security personnel and employees  
2 regarding any new or modified data security policies and procedures;
- 3 d. Ordering that Defendant purge, delete, and destroy, in a reasonably secure manner,  
4 any Private Information not necessary for its provision of services;
- 5 e. Ordering that Defendant conduct regular database scanning and security checks;  
6 and  
7
- 8 f. Ordering that Defendant routinely and continually conduct internal training and  
9 education to inform internal security personnel and employees how to safely share  
10 and maintain highly sensitive personal information, including but not limited to,  
11 patient personally identifiable information and patient protected health information.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs and the Class and Subclasses pray for judgment against Defendant as  
14 follows:

- 15 a. An order certifying this action as a class action under Fed. R. Civ. P. 23 on behalf  
16 of the Class and Subclasses defined herein, appointing the undersigned as Class  
17 counsel, and finding that Plaintiffs are proper representatives of the Class and  
18 Subclasses;
- 19 b. A judgment in favor of Plaintiffs and the Class and Subclasses awarding them  
20 appropriate monetary relief, including actual damages, treble damages, attorney  
21 fees, expenses, costs, and such other and further relief as is just and proper;  
22
- 23 c. An order providing injunctive and other equitable relief as necessary to protect the  
24 interests of the Class and Subclasses as requested herein;  
25  
26

- 1 d. An order requiring Defendant to pay the costs involved in notifying the Class  
2 Members about the judgment and administering the claims process;
- 3 e. A judgment in favor of Plaintiffs and the Class and Subclasses awarding them pre-  
4 judgment and post-judgment interest, reasonable attorneys' fees, costs and  
5 expenses as allowable by law; and
- 6 f. An award of such other and further relief as this Court may deem just and proper.  
7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demand a trial by jury on all appropriate issues raised in this Class  
10 Action Complaint.

11 Dated: September 16, 2022

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