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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN DIEGO**

17
18 LINDA CAMUS and DEANNA FRANKLIN-
PITTMAN, on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 v.

22 SHARP HEALTHCARE,

23 Defendant.
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Case No.: 37-2022-00048546-CU-NP-CTL

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Linda Camus and Deanna Franklin-Pittman on behalf of themselves and all others
2 similarly situated (the “Class Members”), by and through their attorneys, make the following allegations
3 based on personal knowledge and the investigation of counsel, and on information and belief as to all
4 other allegations.

5 **NATURE OF THE ACTION**

6 1. This is a data privacy class action suit brought on behalf of all California residents who
7 have accessed www.sharp.com, a website that Defendant owns and operates, and who had their
8 personally identifiable information and/or protected health information improperly disclosed to
9 Facebook as a result of using Defendant’s website.

10 2. Defendant aids, employs, agrees, and conspires with Facebook to intercept
11 communications sent and received by Plaintiffs and Class Members, including communications
12 containing protected medical information.

13 3. Plaintiffs and Class Members used www.sharp.com to search and locate physicians,
14 schedule medical appointments, and find treatment options. Defendant encouraged its patients to use
15 additional web features—such as a general search—to enter targeted search queries regarding their
16 medical conditions and health care options.

17 4. Unbeknownst to Plaintiffs and Class Members, and pursuant to the systematic process
18 described herein, patients’ private and protected communications with www.sharp.com were
19 automatically transmitted and communicated to Facebook, alongside other information—including but
20 not limited to individual patients’ IP addresses, physical locations, and unique and persistent Facebook
21 ID—as a result of Defendant’s decision to install and use tracking pixels on its website.

22 5. As a result of Defendant’s unauthorized transmission of its patients’ identities and online
23 activity, including information and search results related to their private medical treatment, to a third
24 party, Plaintiffs bring this action for legal and equitable remedies resulting from the violations of the
25 California Invasion of Privacy Act, the California Confidentiality of Medical Information Act, and for
26 the Invasion of Privacy under California’s Constitution.

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JURISDICTION AND VENUE

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2 6. The Court has personal jurisdiction over Defendant because Defendant resides in and
3 does business in the State of California.

4 7. This is a class action brought pursuant to Code of Civil Procedure section 382, and this
5 Court has jurisdiction over Plaintiffs’ claims because the amount in controversy exceeds this Court’s
6 jurisdictional minimum.

7 8. Federal jurisdiction under the Class Action Fairness Action, 28 U.S.C. §1332(d), is
8 lacking because the proposed class of plaintiffs is limited to citizens of the state of California.

9 9. Venue is proper under Code of Civil Procedure sections 395(a) and 395.5 because a
10 substantial part of the events or omissions giving rise to the claims asserted herein occurred in this
11 county.

THE PARTIES

12
13 10. Sharp HealthCare (“Sharp”) is registered as a nonprofit regional health care group
14 located in San Diego. Sharp includes four acute care hospitals—Sharp Memorial Hospital being the
15 largest—as well as three specialty hospitals, three affiliated medical groups and a health plan. As the
16 owner and operator of Sharp Memorial Hospital, among other medical centers and operations, Sharp
17 offers a full range of medical services, including primary and outpatient care, and treats hundreds of
18 thousands of patients each year.

19 11. Plaintiff Linda Camus is an adult citizen of the state of California and is domiciled in San
20 Diego, California. On numerous occasions from 2012 to 2022, Plaintiff Camus accessed
21 www.sharp.com on her phone and computer, and used the website to look for providers. Plaintiff Camus
22 has used and continues to use the same devices to maintain and access an active Facebook account
23 throughout the relevant period in this case. Pursuant to the systematic process described herein, Sharp
24 assisted Facebook with intercepting Plaintiff Camus’s communications, including those that contained
25 personally identifiable information, protected health information, and related confidential information.
26 Sharp assisted these interceptions without Plaintiff Camus’s knowledge, consent, or express written
27 authorization. By failing to receive the requisite consent, Defendant breached confidentiality and
28

1 unlawfully disclosed Plaintiff Camus’s personally identifiable information and protected health
2 information.

3 12. Plaintiff Deanna Franklin-Pittman is an adult citizen of the state of California and is
4 domiciled in San Diego, California. On numerous occasions from 2016 to 2022, Plaintiff Franklin-
5 Pittman accessed www.sharp.com on her phone, computer, and tablet, and used the website to look for
6 providers and to book appointments. Plaintiff Franklin-Pittman has used and continues to use her phone
7 to maintain and access an active Facebook account throughout the relevant period in this case. Pursuant
8 to the systematic process described herein, Sharp assisted Facebook with intercepting Plaintiff Franklin-
9 Pittman’s communications, including those that contained personally identifiable information, protected
10 health information, and related confidential information. Sharp assisted these interceptions without
11 Plaintiff Franklin-Pittman’s knowledge, consent, or express written authorization. By failing to receive
12 the requisite consent, Defendant breached confidentiality and unlawfully disclosed Plaintiff Franklin-
13 Pittman’s personally identifiable information and protected health information.

14 **FACTUAL ALLEGATIONS**

15 **A. Background of the California Information Privacy Act (“CIPA”)**

16 13. The CIPA, Cal. Penal Code §§ 630, *et seq.*, prohibits aiding or permitting another person
17 to willfully—and without the consent of all parties to a communication—read or learn the contents or
18 meaning of any message, report, or communication while the same is in transit or passing over any
19 wire, line, or cable, or is being sent from or received at any place within California.

20 14. To establish liability under section 631(a), a plaintiff need only establish that the
21 defendant, “by means of any machine, instrument, contrivance, or in any other manner,” does any of
22 the following:

- 23 • Intentionally taps, or makes any unauthorized connection, whether physically,
24 electrically, acoustically, inductively or otherwise, with any telegraph or telephone wire,
25 line, cable, or instrument, including the wire, line, cable, or instrument of any internal
26 telephonic communication system; or
27 • Willfully and without the consent of all parties to the communication, or in any
28 unauthorized manner, reads or attempts to read or learn the contents or meaning of any
message, report, or communication while the same is in transit or passing over any wire,
line or cable or is being sent from or received at any place within this state; or

- Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained; or
- Aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section.

15. Section 631(a) is not limited to phone lines, but also applies to “new technologies” such as computers, the Internet, and email. *See Matera v. Google Inc.*, No. 15-cv-4062-LHK, 2016 WL 8200619, at *21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, No. 06-cv-5289-WHA, 2006 WL 3798134, at *5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs “electronic communications”); *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of CIPA and common law privacy claims based on Facebook’s collection of consumers’ internet browsing history).

16. Under California Penal Code section 637.2, Plaintiffs and Class Members may seek injunctive relief and statutory damages of \$2,500 per violation.

B. Background of the California Confidentiality of Medical Information Act (“CMIA”)

17. Pursuant to the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.*, “A provider of health care . . . shall not disclose medical information regarding a patient of the provider of health care . . . without first obtaining an authorization, except as provided in subdivision (b) or (c).” Cal. Civ. Code § 56.10(a).¹ “An authorization for the release of medical information . . . shall be valid if it:

- (a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.
- (b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.
- (c) Is signed and dated . . .

¹ Subdivisions (b) and (c) are not relevant to this case but permit the disclosure of medical information in situations where a government investigation or lawsuit is taking place. For example, Sharp could bypass the authorization requirement if patient medical information was requested pursuant to a lawful court order or by a party to a proceeding before a court or administrative agency pursuant to a subpoena. *See* Cal. Civ. Code §§ 56.10(b)(3), 56.10(b)(6).

- 1 (d) States the specific uses and limitations on the types of medical information to be disclosed.
- 2
- 3 (e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.
- 4
- 5 (f) States the name or functions of the persons or entities authorized to receive the medical information.
- 6
- 7 (g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.
- 8
- 9 (h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.
- 10
- 11 (i) Advises the person signing the authorization of the right to receive a copy of the authorization.

12 Cal. Civ. Code § 56.11.

13 18. Moreover, a health care provider that maintains information for purposes covered by the
14 CMIA is liable for negligent disclosures that arise as the result of an affirmative act—such as
15 implementing a system that records and discloses online patients’ personally identifiable information
16 and protected health information. Cal. Civ. Code § 56.36(c).² Similarly, if a negligent release occurs
17 and medical information concerning a patient is improperly viewed or otherwise accessed, the
18 individual need not suffer actual damages. Cal. Civ. Code § 56.36(b).

19 19. “In addition to any other remedies available at law, any individual may bring an action
20 against any person or entity who has negligently released confidential information or records
21 concerning him or her in violation of this part, for either or both of the following: [¶] (1) ... nominal
22 damages of one thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be
23 necessary that the plaintiff suffered or was threatened with actual damages. [¶] (2) The amount of actual

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26 ² “Every provider of health care . . . who creates, maintains, preserves, stores, abandons, destroys, or
27 disposes of medical information shall do so in a manner that preserves the confidentiality of the
28 information contained therein. Any provider of health care . . . who negligently creates, maintains,
preserves, stores, abandons, destroys, or disposes of medical information shall be subject to the remedies
and penalties provided under subdivisions (b) and (c) of Section 56.36.” Cal. Civ. Code § 56.101(a).

1 damages, if any, sustained by the patient.” *Sutter Health v. Superior Ct.*, 227 Cal. App. 4th 1546, 1551,
2 (2014) (quoting Cal. Civ. Code § 56.36(b)).

3 **C. Sharp’s Website**

4 20. Sharp is the leading health care provider in San Diego, California, with four acute-
5 care hospitals, three specialty hospitals, and three affiliated medical groups. Sharp also owns and
6 operates a full spectrum of other facilities and services, such as: cancer centers, imaging centers, labs,
7 mental health centers, urgent care centers, skilled nursing centers, pharmacies, and rehabilitation and
8 physical therapy. To staff Sharp’s extensive health plan, Sharp employs approximately 2,700 physicians
9 and another 19,000 additional employees.

10 21. Sharp touts itself as San Diego’s most comprehensive health care system and offers a
11 broad range of services, including: advance care planning, alcohol and drug dependency, bloodless
12 medicine, cancer treatment, clinical trials, diabetes, ear nose and throat, eating disorders, emergency and
13 urgent care, endoscopy, executive health, eye care, flu care, gastroenterology and liver health, heart and
14 vascular care, home health, hospice, internal medicine, laboratory services, LGBTQ+ friendly care,
15 men’s health, mental health, nutrition, occupational health, orthopedics, pediatrics, plastic and
16 reconstructive surgery, pregnancy and child birth, primary care and family health, radiology and
17 diagnostic imaging, rehabilitation and physical therapy, senior care, skilled nursing, sleeping disorders,
18 stroke and neurology, transplant, urology, weight-loss and weight management services, women’s care,
19 and wound and hyperbaric care.

20 22. Sharp’s website, www.sharp.com, is accessible on mobile devices and desktop
21 computers, which includes an online chat function that connects users with a Sharp care specialist in
22 real-time. Sharp also allows users to interact with its health system via a mobile application, the Best
23 Health app, which is available for download on Android and iPhone devices.

1 **D. Facebook’s Platform and its Business Tools**

2 23. Facebook describes itself as a “real identity platform,”³ meaning users are allowed only
3 one account and must share “the name they go by in everyday life.”⁴ To that end, when creating an
4 account, users must provide their first and last name, along with their birthday and gender.⁵

5 24. In 2021, Facebook generated \$117 billion in revenue.⁶ Roughly 97% of that came from
6 selling advertising space.⁷

7 25. Facebook sells advertising space by highlighting its ability to target users.⁸ Facebook
8 can target users so effectively because it surveils user activity both on and off its site.⁹ This allows
9 Facebook to make inferences about users beyond what they explicitly disclose, like their “interests,”
10 “behavior,” and “connections.”¹⁰ Facebook compiles this information into a generalized dataset called
11 “Core Audiences,” which advertisers use to apply highly specific filters and parameters for their
12 targeted advertisements.¹¹

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14
15 ³ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles*
16 *to Figure It Out*, WALL. ST. J. (Oct. 21, 2021), <https://www.wsj.com/articles/how-many-users-does-facebook-have-the-company-struggles-to-figure-it-out-11634846701>.

17 ⁴ *Facebook Community Standards: Account Integrity and Authentic Identity*, FACEBOOK, [https://](https://transparency.fb.com/policies/community-standards/account-integrity-and-authentic-identity/)
18 transparency.fb.com/policies/community-standards/account-integrity-and-authentic-identity/ (last
19 visited Nov. 29, 2022).

20 ⁵ *Sign Up*, FACEBOOK, <https://www.facebook.com/> (last visited Nov. 29, 2022).

21 ⁶ *Meta Reports Fourth Quarter and Full Year 2021 Results*, FACEBOOK (Feb. 2, 2022), [https://investor.](https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx)
22 [fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-](https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx)
23 [Results/default.aspx](https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx).

24 ⁷ *Id.*

25 ⁸ *Why Advertise on Facebook, Instagram or other Meta technologies*, FACEBOOK,
26 <https://www.facebook.com/business/help/205029060038706> (last visited Nov. 29, 2022).

27 ⁹ *About Meta Pixel*, FACEBOOK, [https://www.facebook.com/business/help/742478679120153?id=1205](https://www.facebook.com/business/help/742478679120153?id=1205376682832142)
28 [376682832142](https://www.facebook.com/business/help/742478679120153?id=1205376682832142) (last visited Nov. 29, 2022).

¹⁰ *Ad Targeting. Help your ads vind the people who will love your business*, FACEBOOK, [https://www.](https://www.facebook.com/business/ads/ad-targeting)
[facebook.com/business/ads/ad-targeting](https://www.facebook.com/business/ads/ad-targeting) (last visited Nov. 29, 2022).

¹¹ *Core Audiences*, FACEBOOK, <https://www.facebook.com/business/news/Core-Audiences> (last visited
Nov. 29, 2022).

1 26. Advertisers can also build “Custom Audiences.”¹² Custom Audiences enables
2 advertisers to reach “people who have already shown interest in [their] business, whether they’re loyal
3 customers or people who have used [their] app or visited [their] website.”¹³ With Custom Audiences,
4 advertisers can target existing customers directly, and they can also build a “Lookalike Audiences,”
5 which “leverages information such as demographics, interests, and behavior from your source audience
6 to find new people who share similar qualities.”¹⁴ Unlike Core Audiences, advertisers can build Custom
7 Audiences and Lookalike Audiences only if they first supply Facebook with the underlying data. They
8 can do so through two mechanisms: by manually uploading contact information for customers, or by
9 utilizing Facebook’s “Business Tools.”¹⁵

10 27. As Facebook puts it, the Business Tools “help website owners and publishers, app
11 developers and business partners, including advertisers and others, integrate with Meta, understand and
12 measure their products and services, and better reach and serve people who might be interested in their
13 products and services.”¹⁶ Put more succinctly, Facebook’s Business Tools are bits of code that
14 advertisers can integrate into their website, mobile applications, and servers, thereby enabling Facebook
15 to intercept and collect user activity on those platforms.

16 28. The Business Tools are automatically configured to capture certain data, like when a
17 user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and metadata, or when a
18

19 ¹² *About Custom Audiences*, FACEBOOK, [https://www.facebook.com/business/help/744354708981227?](https://www.facebook.com/business/help/744354708981227?id=2469097953376494)
20 [id=2469097953376494](https://www.facebook.com/business/help/744354708981227?id=2469097953376494) (last visited Nov. 29, 2022).

21 ¹³ *Ad Targeting: Help your ads vind the people who will love your business*, FACEBOOK, [https://www.](https://www.facebook.com/business/ads/ad-targeting)
22 [facebook.com/business/ads/ad-targeting](https://www.facebook.com/business/ads/ad-targeting) (last visited Nov. 29, 2022).

23 ¹⁴ *About Lookalike Audiences*, FACEBOOK, [https://www.facebook.com/business/help/16474900701353](https://www.facebook.com/business/help/164749007013531?id=401668390442328)
24 [1?id=401668390442328](https://www.facebook.com/business/help/164749007013531?id=401668390442328) (last visited Nov. 29, 2022).

25 ¹⁵ *Create a customer list Custom Audience*, FACEBOOK, [https://www.facebook.com/business/help/1704](https://www.facebook.com/business/help/170456843145568?id=2469097953376494)
26 [56843145568?id=2469097953376494](https://www.facebook.com/business/help/170456843145568?id=2469097953376494) (last visited Nov. 29, 2022); *Create a Website Custom*
27 *Audience*, FACEBOOK,
28 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494> (last visited
Nov. 29, 2022).

¹⁶ *The Meta Business Tools*, FACEBOOK, <https://www.facebook.com/help/331509497253087> (last
visited Nov. 29, 2022).

1 user downloads a mobile application or makes a purchase.¹⁷ Facebook’s Business Tools can also track
 2 other events. Facebook offers a menu of “standard events” from which advertisers can choose,
 3 including what content a visitor views or purchases.¹⁸ Advertisers can even create their own tracking
 4 parameters by building a “custom event.”¹⁹

5 29. One such Business Tool is the Facebook Tracking Pixel. Facebook offers this piece of
 6 code to advertisers, like Sharp, to integrate into their website. As the name implies, the Facebook Pixel
 7 “tracks the people and type of actions they take.”²⁰ When a user accesses a website that has installed
 8 the Facebook Pixel into its code, Facebook’s software script surreptitiously directs the user’s browser
 9 to send a separate message to Facebook’s servers. This second, secret transmission contains the original
 10 GET request sent to the host website, along with additional data that the Facebook Pixel is configured
 11 to collect. This transmission is initiated by Facebook code and concurrent with the communications
 12 with the host website. Two sets of code are thus automatically run as part of the browser’s attempt to
 13 load and read Defendant’s websites—Defendant’s own code, and Facebook’s embedded code.

14 30. An example illustrates the point. When an individual navigates to www.sharp.com and
 15 clicks on a particular physician’s profile—or any other webpage installed with Facebook Pixel—the
 16 individual’s browser sends a GET request to Defendant’s server requesting that server to load the
 17 particular webpage. Facebook Pixel, via cookies and embedded code, silently instructs the user’s
 18 browser to duplicate and transmit the user’s communications with www.sharp.com, sending the

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 20 ¹⁷ See *Meta Pixel. Advanced*, FACEBOOK, [https://developers.facebook.com/docs/facebook-pixel/](https://developers.facebook.com/docs/facebook-pixel/advanced/)
 21 [advanced/](https://developers.facebook.com/docs/facebook-pixel/advanced/) (last visited Nov. 29, 2022); see also *Best practices for Meta Pixel setup*, FACEBOOK,
 22 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142> (last visited Nov.
 23 29, 2022); *App Events API*, FACEBOOK, [https://developers.facebook.com/docs/marketing-api/app-](https://developers.facebook.com/docs/marketing-api/app-event-api/)
 24 [event-api/](https://developers.facebook.com/docs/marketing-api/app-event-api/) (last visited Nov. 29, 2022).

25 ¹⁸ *Specifications for Meta Pixel standard events*, FACEBOOK, [https://www.facebook.com/business/help/](https://www.facebook.com/business/help/402791146561655?id=1205376682832142)
 26 [402791146561655?id=1205376682832142](https://www.facebook.com/business/help/402791146561655?id=1205376682832142) (Nov. 29, 2022).

27 ¹⁹ *About standard and custom website events*, FACEBOOK, [https://www.facebook.com/business/help/96](https://www.facebook.com/business/help/964258670337005?id=1205376682832142)
 28 [4258670337005?id=1205376682832142](https://www.facebook.com/business/help/964258670337005?id=1205376682832142) (Nov. 29, 2022); *App Events API*, FACEBOOK, [https://](https://developers.facebook.com/docs/marketing-api/app-event-api/)
 29 developers.facebook.com/docs/marketing-api/app-event-api/ (Nov. 29, 2022).

30 ²⁰ *Retargeting*, FACEBOOK, <https://www.facebook.com/business/goals/retargeting> (last visited Nov. 29,
 31 2022).

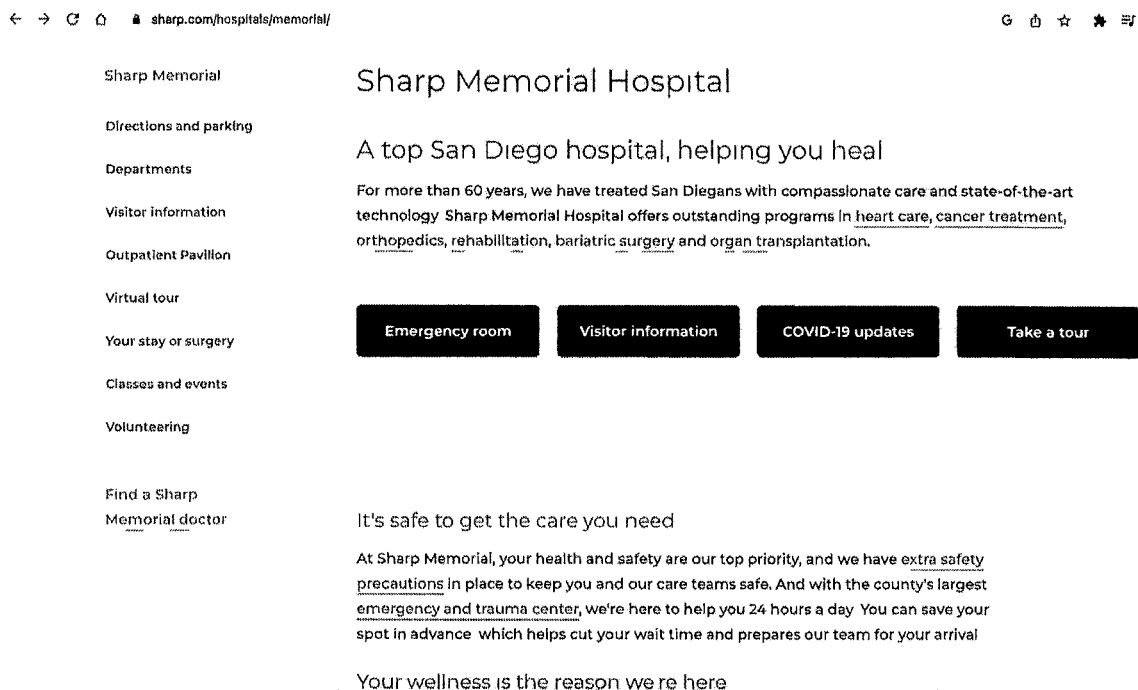
1 corresponding data to Facebook’s servers, alongside additional information that transcribes the
2 communication’s content and the individual’s identity.

3 31. After collecting and intercepting this information, Facebook processes it, analyzes it,
4 and assimilates it into datasets like Core Audiences and Custom Audiences.

5 **E. How Sharp Discloses Class Members Protected Health Information and Assists with**
6 **Intercepting Communications**

7 32. Through the Facebook Pixel, Sharp shares its patients’ identities and online activity,
8 including information and search results related to their private medical treatment.

9 33. For example, when a patient enters www.sharp.com/hospitals/memorial and searches
10 for a doctor, they select the “Find a Sharp Memorial doctor,” which takes them to the “San Diego
11 Doctors” page.



22 **Figure 1.** Image of www.sharp.com/hospitals/memorial’s landing page

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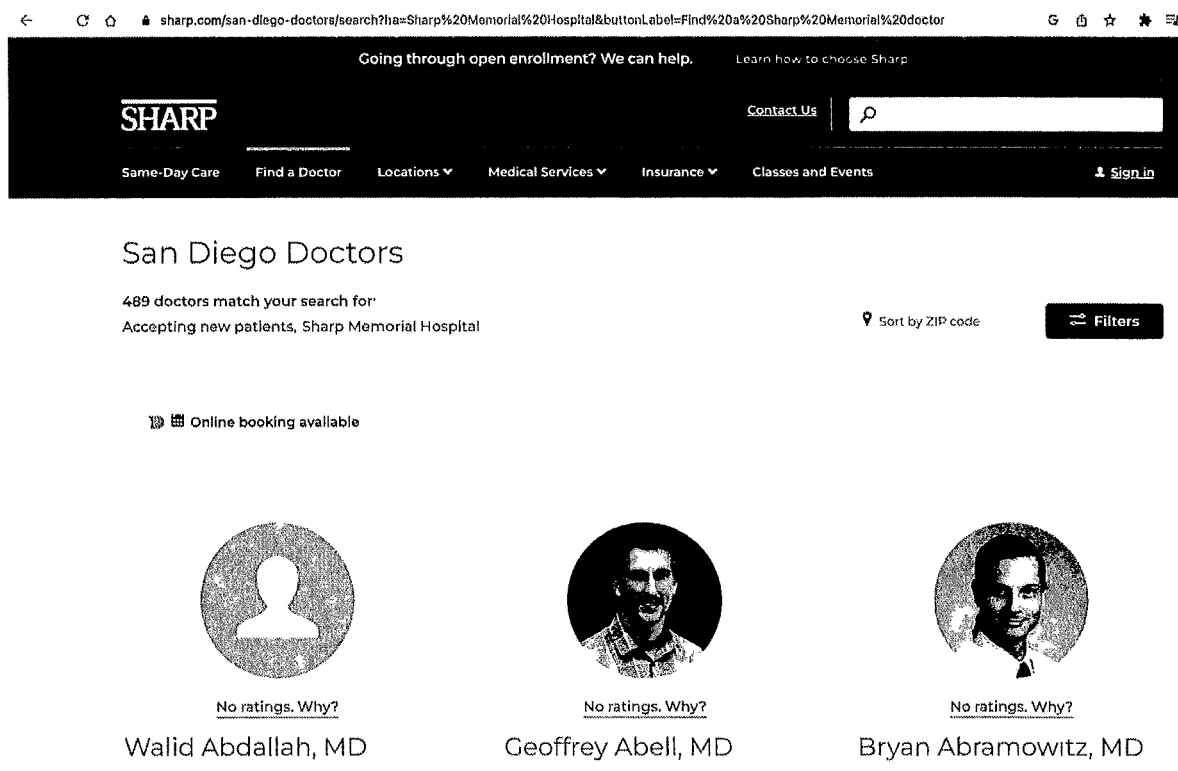


Figure 2. Defendant directs patients to its “San Diego Doctors” webpage.

34. If a patient selects the pre-determined filters on Defendant’s website or uses the websites’ general search bar or chat, the terms and phrases are transmitted to Facebook, even if they contain a patient’s treatment, procedures, medical conditions, and related queries.

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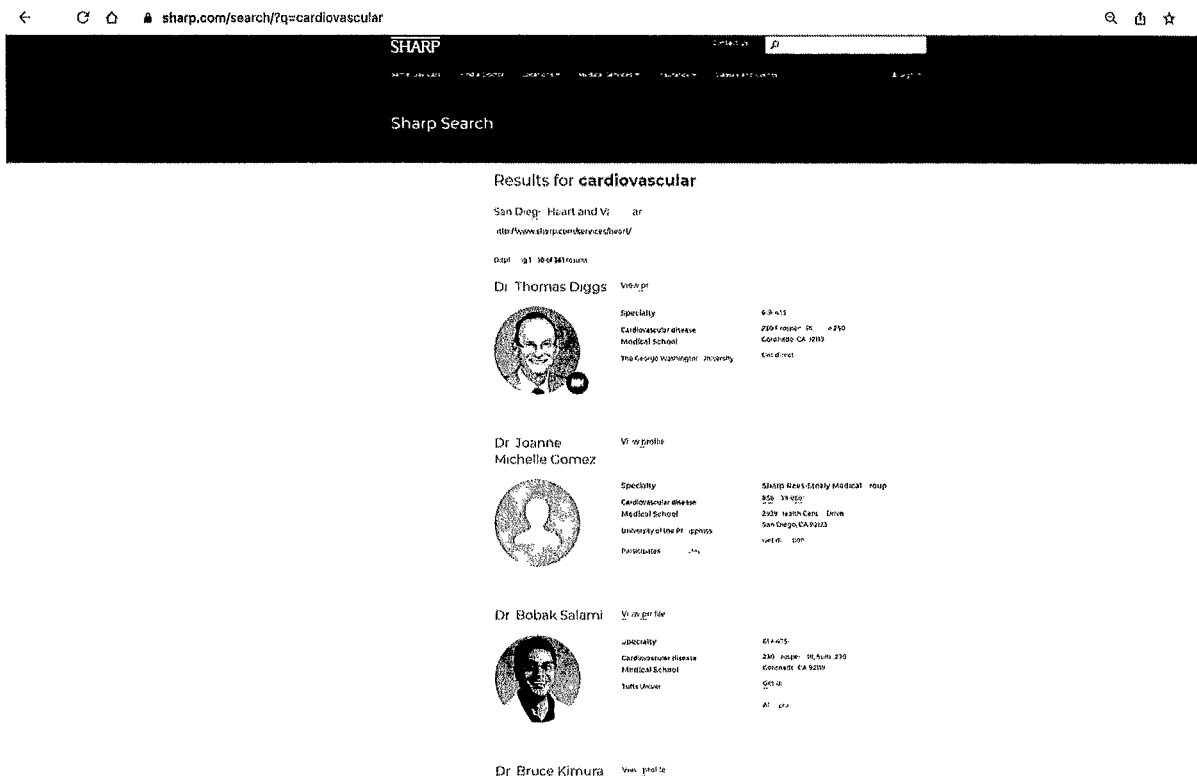
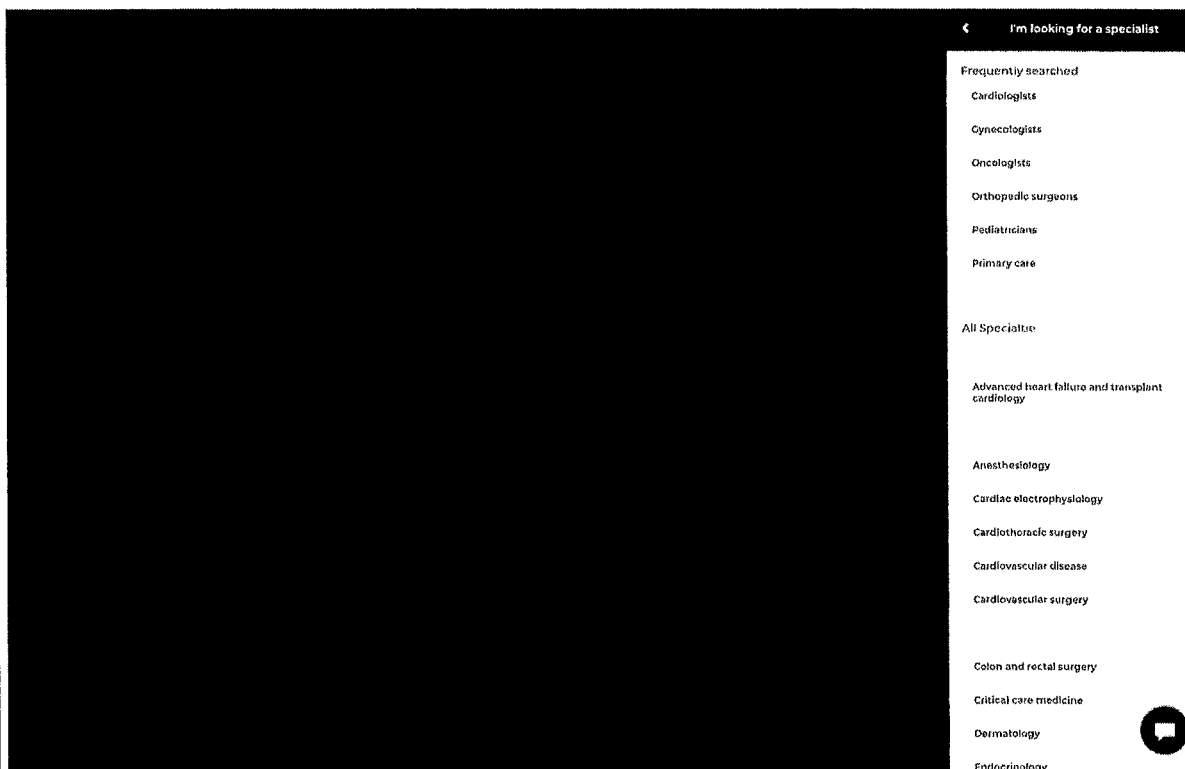
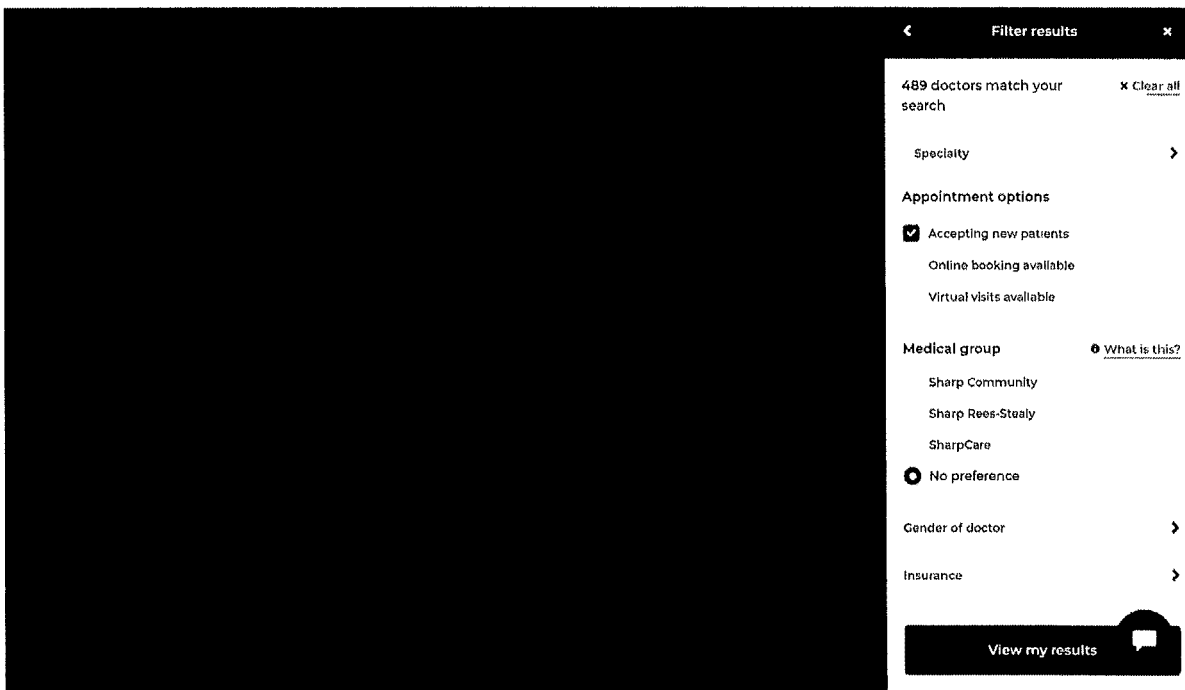


Figure 3²¹

35. Patients may also conduct searches through filters that allow them to narrow search results based on distance from a particular location, “Specialty,” “Appointment Options,” and “Medical Group.” Patients can also narrow their search results based on the provider’s gender and spoken languages.

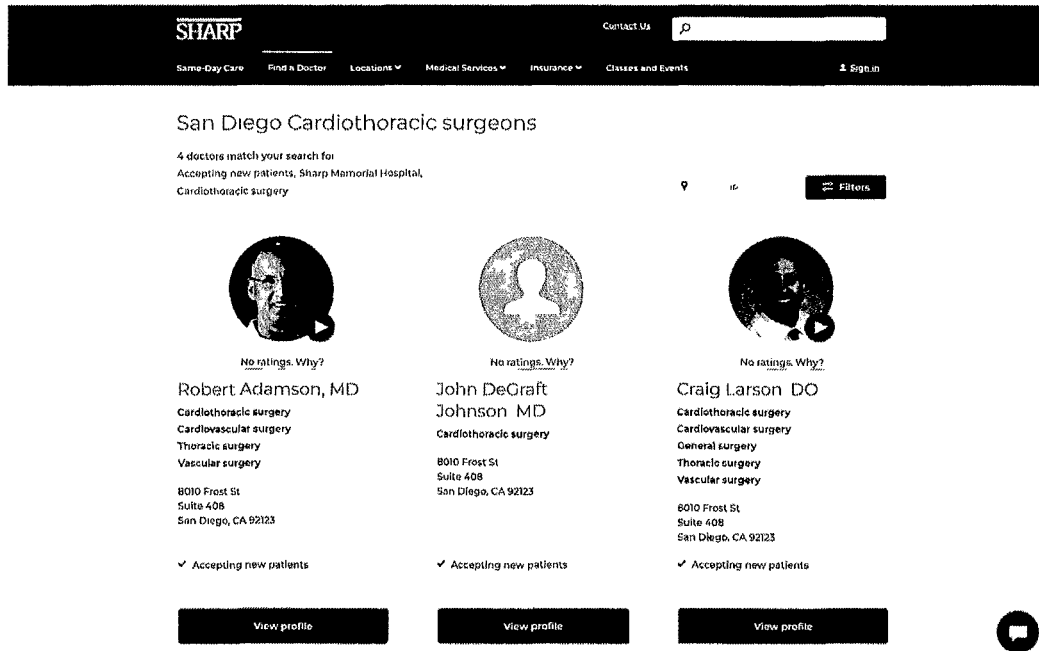
²¹ On information and belief, the text users type into the search bar is transmitted and included in the web address and URL that corresponds with the search results. *See, e.g.,* <https://www.sharp.com/search/?q=cardiovascular> (last accessed Nov. 29, 2022).

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Figures 4 & 5

1 36. After taking any of these actions on the Find a Doctor page, patients are subsequently
 2 directed to the provider search results page, and their selections or search parameters are automatically
 3 transmitted.



16 **Figure 6.** Defendant’s provider search results webpage identifies doctors that fit the patient’s
 17 search criteria.

18 37. Once a patient chooses a doctor, all of the information that patient has submitted on
 19 Sharp’s website is automatically sent directly to Facebook. On information and belief, and using the
 20 following graphic as an example, the information transmitted to Facebook includes: (1) the patient’s
 21 unique and persistent Facebook ID (c_user ID), (2) the fact that the patient clicked on a specific
 22 provider’s profile page (Dr. Allison Diamant in the example below), (3) the patient’s search parameters
 23 (demonstrating they specifically searched for a female doctor, specialized in Internal Medicine, who is
 24 also recognized as an “LGBTQ Champion,”), and (4) the patient’s location filter (demonstrating the
 25 patient sought a provider located in Santa Monica).
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1 † https://www.facebook.com/tr/?id=222836392271290&ev=Microdata&dl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fallison-diamant&rl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fsearch%3Ff%255B0%255D%3Dbook-online%253A1%26f%255B1%255D%3Dgender%253Afemale%26f%255B2%255D%3Dlgbtq-champion%253A1%26f%255B3%255D%3Dspecialty%253A48291%26s%3Dsanta%2520monica&if=false&ts=1642513633375&cd[DataLayer]=%5B%5D&cd[Meta]=%7B%22title%22%3A%22Allison%20L.%20Diamant%2C%20MD%2C%20MHS%20%7C%20Internal%20Medicine%20-%20Santa%20Monica%2C%20CA%22%7D&cd[OpenGraph]=%7B%7D&cd[Schema.org]=%5B%5D&cd[JSON-LD]=%5B%5D&sw=1536&sh=864&v=2.9.48&r=stable&ec=1&o=30&fbp=fb.1.1642500078069.168398461&it=1642513631801&coo=false&dpo=LDU&dpcoco=0&dpost=0&es=automatic&tm=3&exp=p1&rqm=GET
2
3
4 HEADERS
5 † accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
6 † accept-encoding: gzip, deflate, br
7 † accept-language: en-US,en;q=0.9
8 † connection: keep-alive
9 † cookie: sb=pI_mYbDjWuo9xLOujLYAqmgj; datr=pY_mYUQlzBjV0goTvf8Fc5kk; dpr=1.25; c_user=100077463362; xs=31%3AixsejnhZuCR64w%3A2%3A1642500031%3A-1%3A-1; fr=0lFW0ez5zBqyosnvK.AWUQOz3006Xiyeb4ABdDft7tfpw.Bh5o-k.XV.AAA.0.0.Bh5o-_.AWWrZTrctzQ; spin=r.1004946732_b,trunk_t.1642500037_s.1_v.2_
10 † host: www.facebook.com
11 † referer: https://www.uclahealth.org/

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Figure 7²²

38. Defendant’s website includes a feature that allows patients to book appointments through a particular doctor’s profile page. Once the patient clicks on the “Book Appointment” button, this action is immediately communicated and shared with Facebook. Facebook classifies this event as a “SubscribedButtonClick,” which indicates that the patient clicked the specific button (in order to book an appointment with the specific doctor). Similarly, each doctor's profile page provides a direct link that allows a patient to call the doctor's office, and, upon clicking the telephone number button, the patient’s click is shared with Facebook.

39. Sharp’s website allows online patients to request an appointment with certain doctors they have not been to before by selecting “Book an Appointment” button and completing an online form. Upon doing this, Defendant shares the patient’s selection immediately with Facebook.

²² The screenshot above serves as example and demonstrates the types of data transmitted during an HTTP single communication session. This information is automatically sent from the patient’s device to Facebook, and it reveals the patients FID (c_user field) along with each search filter the patient selected.


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1 † https://www.facebook.com/tr/?id=222836392271290&ev=SubscribedButtonClick&dl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fallison-diamant&rl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2
2 Fsearch%3Ff%255B0%255D%3Dbook-online%253A1%26f%255B1%255D%3Dgender%253Afemale%26f%255B2%255D%3Dl
3 gbtq-champion%253A1%26f%255B3%255D%3Dspecialty%253A48291%26s%3Dsanta%2520monica&if=false&ts=1642
4 515885628&cd[buttonFeatures]=%7B%22classList%22%3A%22button%20button--primary-alt%20button--small
5 l%22%2C%22destination%22%3A%22%22%2C%22id%22%3A%22%22%2C%22imageUrl%22%3A%22%22%2C%22innerText%2
6 2%3A%22Book%20an%20Appointment%22%2C%22numChildButtons%22%3A0%2C%22tag%22%3A%22button%22%2C%22na
7 me%22%3A%22%22%2C%22value%22%3A%22%22%7D&cd[buttonText]=Book%20an%20Appointment&cd[formFeatures]
8 =%5B%5D&cd[pageFeatures]=%7B%22title%22%3A%22Allison%20L.%20Diamant%2C%20MD%2C%20MSHS%20%7C%20In
9 ternal%20Medicine%20-%20Santa%20Monica%2C%20CA%22%7D&cd[parameters]=%5B%5D&sw=1920&sh=1080&v=2.
10 9.48&r=stable&ec=2&o=30&fbp=fb.1.1642500078069.168398461&it=1642513631801&coo=false&dpo=LDU&dpc
11 o=0&dpost=0&es=automatic&tm=3&exp=p1&rqm=GET
12
13 HEADERS
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15 † accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
16
17 † accept-encoding: gzip, deflate, br
18
19 † accept-language: en-US,en;q=0.9
20
21 † connection: keep-alive
22
23 † cookie: sb=pI_mYbDjWuo9xLOujLYAqmgj; datr=pY_mYUQlzBjV0goTvf8Fc5kk; dpr=1.25;
24 c_user=10007[REDACTED]; xs=31%3AixsejnhZuCR64w%3A2%3A1642500031%3A-1%3A-
25 1; fr=0lFW0ez5zBqyosnvK.AWUQOz3006Xiyeb4ABdDft7tftpw.Bh5o-
26 k.XV.AAA.0.0.Bh5o-_.AWWrZTrctzQ;
27 spin=r.1004946732_b.trunk_t.1642500037_s.1_v.2_
28
29 † host: www.facebook.com
30
31 † referer: https://www.uclahealth.org/

```

Figure 8²³

²³ The screenshot above serves as example and demonstrates the types of data transmitted during an HTTP single communication session. This information is automatically sent from the patient’s device to Facebook, and it reveals the patients FID (c_user field) along with information indicating that the user booked an appointment with a particular physician.

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Request URL: https://www.facebook.com/tr/?id=222836392271290&ev=SubscribedButtonClick&dl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fkathleen-brennan&rl=https%
3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fsearch%3F%3DLos%2BAngeles%26F%25B0%2550%3Dgender%253AFemale%26F%2550%3D%3Digtq-chemist%253A1%26F%2550%3D%3Dspe
cialty%253A48676&if=false&ts=1642517431276&cd[buttonFeatures]=%7B%22classList%22%3A%22button%20button-secondary%20button-small%22%2C%22destination%22%3A%22http
%3A%2F%2Fwww.uclahealth.org%2Fnews%2Fpatient-appointment-request%3Futm_source%3Duclah_organic%26utm_content%3Dkathleen-brennan%26utm_campaign%3Dreproductive-endocrin
ology-and-infertility_aq_request-appointment%26utm_medium%3Dprovider-profile%22%2C%22id%22%3A%22%2C%22imageUrl%22%3A%22%2C%22innerText%22%3A%22Request%20a
n%20Appointment%22%2C%22numChildButtons%22%3A0%2C%22tag%22%3A%22%2C%22name%22%3A%22%2C%22%7D&cd[buttonText]=Request%20an%20Appointment&cd[formFeatures]=%5B%5D&cd[
pageFeatures]=%7B%22title%22%3A%22Kathleen%20M%20Brennan%2C%20MD%20X7%20Reproductive%20Endocrinology%20and%20Infertility%20%20Santa%20Monica%2C%20CA%22%270&c
d[parameters]=%5B%5D&sw=1920&sh=1080&v=2.9.48&r=stable&ec=2&o=30&fbp=fb.1.164250078069.168398461&it=1642517394391&coop=false&dpo=LDU&dpo=0&dpost=0&es=automatic
&tm=3&exp=p0&rqm=GET
Request Method: GET
Status Code: 200 OK
Remote Address: 127.0.0.1:8080
Referrer Policy: strict-origin-when-cross-origin

Response Headers View source
alt-svc: h3="443"; ma=3600, h3-29="443"; ma=3600
cache-control: no-cache, must-revalidate, max-age=0
connection: keep-alive
content-length: 44
content-type: image/gif
cross-origin-resource-policy: cross-origin
date: Tue, 18 Jan 2022 14:50:31 GMT
expires: Tue, 18 Jan 2022 14:50:31 GMT
last-modified: Fri, 21 Dec 2012 00:00:01 GMT
server: proxygen-bolt
set-cookie:
strict-transport-security: max-age=31536000; includeSubDomains

Request Headers View source
Accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
Accept-Encoding: gzip, deflate, br
Accept-Language: en-US,en;q=0.9
Connection: keep-alive
Cookie: sb=p1_mY0Djhuo9xL0UjLYaQgJ; datr=pYmYUQ1z0jV0gTvF8F5kK; dpr=1.25; c_user=1007[REDACTED]; xs=31%3A1%3EjnhZuCR64w%3A2%3A1642500031%3A1%3A1; fr=01FU0e

```

Figure 9

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:path: /tr/?id=222836392271290&ev=Microdata&dl=https%3A%2F%2Fwww.uclahealth.org%2Fsearch%3F%3D%3D
DHIV%2520medicine%26F%2550%255D%3Dtype%253Aprovider&rl=https%3A%2F%2Fwww.uclahealth.org%2Fse
arch%3F%3D%3D%3DHIV%2Bmedicine&if=false&ts=1642515745868&cd[DataLayer]=%5B%5D&cd[Meta]=%7B%22titl
e%22%3A%22Search%20%7C%20UCLA%20Health%22%7D&cd[OpenGraph]=%7B%7D&cd[Schema.org]=%5B%5D&cd[JS
ON-LD]=%5B%5D&sw=1536&sh=864&v=2.9.48&r=stable&ec=1&o=30&fbp=fb.1.1640625648232.661784334&it=
1642515743709&coop=false&dpo=LDU&dpo=0&dpost=0&es=automatic&tm=3&exp=p0&rqm=GET

:scheme: https

accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
accept-encoding: gzip, deflate, br
accept-language: en-US,en;q=0.9,he-IL;q=0.8,he;q=0.7
cookie: sb=qw4iYt-Z_p8ybnDz7VKkxq52; datr=qw4iYVv80fZIyfpI_z08FMZV; c_user=1007[REDACTED]; xs
=37%3AJEnZ42UJabsIFA%3A2%3A1640864938%3A-1%3A15115%3A%3AAcWemPx7dfxnqoAvSk8IUPvioF-7BcofON1zd
WMTOA; fr=05JHLDPPaBUVMeth5.AkVpgo6XJQAt2aEm_xHvepF2Fog.Bh3rts.tx.AAA.0.0.Bh3rts.AMW_E1mH7nY,
dpr=1.25

```

Figure 10²⁴

²⁴ Figures 9 and 10 are not specific to Defendant's web page or to Plaintiff's search queries but nonetheless demonstrate *how* and *what* is communicated via the Facebook Pixel. Importantly, this occurred without Plaintiff's knowledge or consent because patients' communications with (footnote continued)

1 40. Each time Defendant sends this activity data, it also discloses a patient’s personally
 2 identifiable information.

3 41. A user who accesses Defendant’s website while logged into Facebook will have the
 4 c_user cookie transmitted to Facebook, which contains that user’s unencrypted Facebook ID. Some of
 5 the cookies Facebook may receive are visible here:

presence	C%7B...	.facebook.com
xs	3%3Ar...	.facebook.com
c_user	10003...	.facebook.com
fr	00ZpYJ...	.facebook.com
datr	MalzYj...	.facebook.com
sb	qqAzY...	.facebook.com

6
7
8
9
10 **Figure 11**

11 42. When a visitor’s browser has recently logged out of an account, Facebook compels
 12 the visitor’s browser to send a smaller set of cookies.²⁵

fr	00Zp...	.facebook.com
wd	1156...	.facebook.com
sb	qqAz...	.facebook.com
datr	Malz...	.facebook.com

13
14
15
16 **Figure 12**

17 43. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.²⁶
 18 Facebook, at a minimum, uses the fr cookie to identify users.²⁷ At each stage, Defendant also utilizes
 19 the _fbp cookie, which attaches to a browser as a first-party cookie, and which Facebook uses to identify
 20 a browser and a user.²⁸
 21

22
 23 www.sharp.com are simultaneously duplicated and transmitted to Facebook, alongside their unique
 24 Facebook ID (c_user ID), during a single HTTP communication session.

25 ²⁵ Not pictured here and in the preceding image is the _fbp cookie, which is transmitted as a first-party
 26 cookie. . .

26 ²⁶ *Facebook Ireland Ltd: Report of Re-Audit*, DATA PROTECTION COMMISSIONER (Sept. 21, 2012),
http://www.europe-v-facebook.org/ODPC_Review.pdf.

27 ²⁷ *Cookies Policy*, FACEBOOK, <https://www.facebook.com/policy/cookies/> (last visited Nov. 29, 2022).

28 ²⁸ *Id.*

1 44. The fr cookie expires after 90 days unless the visitor’s browser logs back into Facebook
2 or it is otherwise used to visit the same website.²⁹ If that happens, the time resets, and another 90 days
3 begins to accrue.³⁰

4 45. The Facebook Tracking Pixel uses both first and third-party cookies. A first-party
5 cookie is “created by the website the user is visiting”—i.e., www.sharp.com.³¹ A third-party cookie is
6 “created by a website with a domain name other than the one the user is currently visiting”—i.e.,
7 Facebook.³² The _fbp cookie is always transmitted as a first-party cookie. A duplicate _fbp cookie is
8 sometimes sent as a third-party cookie, depending on whether the browser has recently logged into
9 Facebook.

10 46. Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to Facebook IDs
11 and corresponding Facebook profiles, and, as shown in the above figures, Defendant sends these
12 identifiers alongside the event data.

13 47. Plaintiffs never consented, agreed, authorized, or otherwise permitted Sharp to disclose
14 their personally identifiable information and protected health information and assist with intercepting
15 their communications. Plaintiffs were never provided with any written notice that Defendant discloses
16 their website users’ protected health information, nor were they provided any means of opting out of such
17 disclosures. Defendant nonetheless knowingly disclosed Plaintiffs’ protected health information to
18 Facebook.
19
20

21 48. By law, Plaintiffs are entitled to privacy in their protected health information and
22 confidential communications. Sharp deprived Plaintiffs of their privacy rights when it: (1) implemented
23

24 ²⁹ *Id.*

25 ³⁰ Confirmable through developer tools.

26 ³¹ *First-party cookie*, PC MAG, <https://www.pcmag.com/encyclopedia/term/first-party-cookie> (last
27 visited Nov. 29, 2022). This is confirmable by using developer tools to inspect a website’s cookies and
28 track network activity.

³² *Id.* This is also confirmable by tracking network activity.

1 a system that surreptitiously tracked, recorded, and disclosed Plaintiffs’ and other online patients’
2 confidential communications, personally identifiable information, and protected health information; (2)
3 disclosed patients’ protected information to Facebook—an unauthorized third-party eavesdropper; and
4 (3) undertook this pattern of conduct without notifying Plaintiffs’ and without obtaining their express
5 written consent. Plaintiffs did not discover until November of 2022 that Sharp disclosed their personally
6 identifiable information and protected health information to Facebook and assisted Facebook with
7 intercepting their communications.
8

9 **CLASS ACTION ALLEGATIONS**

10 49. **Class Definition:** Pursuant to section 382 of the Code of Civil Procedure, Plaintiffs
11 bring this action on behalf of themselves and other similarly situated individuals (the “Class”), defined
12 as California citizens who, during the class period, had their personally identifiable information or
13 protected health information improperly disclosed to Facebook through the use of the Facebook Pixel
14 tracking tool as a result of or in connection with using www.sharp.com. Plaintiffs reserve the right to
15 modify the class definitions or add sub-classes as necessary prior to filing a motion for class certification.
16

17 50. The “Class Period” is the time period beginning on the date established by the Court’s
18 determination of any applicable statute of limitations, after consideration of any tolling, concealment,
19 and accrual issues, and ending on the date of entry of judgment.

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

24 52. **Numerosity/Ascertainability.** Members of the Class are so numerous that joinder of
25 all members would be unfeasible and not practicable. The exact number of Class members is unknown
26 to Plaintiffs at this time; however, it is estimated that there are hundreds of thousands of individuals in
27 the Class. The identity of such membership is readily ascertainable from Sharp’s records and non-party
28 Facebook’s records.

1 53. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs
2 used www.sharp.com and had their personally identifiable information and protected health
3 information disclosed to Facebook without their express written authorization or knowledge. Plaintiffs’
4 claims are based on the same legal theories as the claims of other Class members.

5 54. **Adequacy.** Plaintiffs are fully prepared to take all necessary steps to represent fairly and
6 adequately the interests of the Class members. Plaintiffs’ interests are coincident with, and not
7 antagonistic to, those of the members of the Class. Plaintiffs are represented by attorneys with
8 experience in the prosecution of class action litigation generally and in the emerging field of digital
9 privacy litigation specifically. Plaintiffs’ attorneys are committed to vigorously prosecuting this action
10 on behalf of the members of the Class.

11 55. **Common Questions of Law and Fact Predominate/Well Defined Community of**
12 **Interest.** Questions of law and fact common to the members of the Class predominate over questions
13 that may affect only individual members of the Class because Defendant has acted on grounds generally
14 applicable to the Class. Such generally applicable conduct is inherent in Defendant’s wrongful conduct.
15 Questions of law and fact common to the Classes include:

- 16 (a) Whether Defendant intentionally tapped the lines of internet communication between
17 patients and their medical providers;
- 18 (b) Whether Defendant’s website surreptitiously records personally identifiable
19 information, protected health information, and related communications and
20 subsequently, or simultaneously, discloses that information to Facebook;
- 21 (c) Whether Facebook is a third-party eavesdropper;
- 22 (d) Whether Defendant’s disclosures of personally identifiable information, protected
23 health information, and related communications constitute an affirmative act of
24 communication;
- 25 (e) Whether Defendant’s conduct, which allowed Facebook—an unauthorized person—to
26 view Plaintiffs’ and Class members’ personally identifiable information and protected
27 health information, resulted in a breach of confidentiality;
- 28

- 1 (f) Whether Defendant violated Plaintiffs’ and Class members’ privacy rights by using
- 2 Facebook’s tracking pixel to record and communicate online patients’ FIDs alongside
- 3 their confidential medical communications;
- 4 (g) Whether Plaintiffs and Class members are entitled to damages under CIPA, the CMIA,
- 5 or any other relevant statute;
- 6 (h) Whether Defendant’s actions violate Plaintiffs’ and Class members’ privacy rights as
- 7 provided by the California Constitution;

8 56. **Superiority.** Class action treatment is a superior method for the fair and efficient
 9 adjudication of the controversy. Such treatment will permit a large number of similarly situated persons
 10 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
 11 unnecessary duplication of evidence, effort, or expense that numerous individual actions would
 12 engender. The benefits of proceeding through the class mechanism, including providing injured persons
 13 or entities a method for obtaining redress on claims that could not practicably be pursued individually,
 14 substantially outweighs potential difficulties in management of this class action. Plaintiffs know of no
 15 special difficulty to be encountered in litigating this action that would preclude its maintenance as a
 16 class action.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**
 19 **Violations of the California Invasion of Privacy Act,**
 20 **Cal. Penal Code § 631**

21 57. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth
 22 herein and bring this Count individually and on behalf of the members of the Class.

23 58. The California Invasion of Privacy Act (“CIPA”) is codified at Cal. Penal Code §§ 630
 24 to 638. The Act begins with its statement of purpose.

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

Cal. Penal Code § 630.

1 59. California penal Code section 631(a) provides, in pertinent part:

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

12 Cal. Penal Code § 631(a) (emphasis added).

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

14 61. At all relevant times, Defendant aided, agreed with, and conspired with Facebook to
15 track and intercept Plaintiffs' and Class Members' internet communications while accessing
16 www.sharp.com. They intercepted these communications without authorization and consent from
17 Plaintiffs and Class Members.

18 62. Defendant, when aiding and assisting Facebook's eavesdropping, intended to help
19 Facebook learn some meaning of the content in the URLs and the content the visitor requested.

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

- 23 a. The computer codes and programs Facebook used to track Plaintiffs' and the Class
24 Members' communications while they were navigating www.sharp.com;
- 25 b. The Plaintiffs' and Class Member's browsers;
- 26 c. The Plaintiffs' and Class Members' computing and mobile devices;
- 27 d. Facebook's web and ad servers;
- 28 e. The web and ad-servers from which Facebook tracked and intercepted the Plaintiffs'
and Class Members' communications while they were using a web browser to access or
navigate the www.sharp.com;

1 f. The computer codes and programs used by Facebook to effectuate its tracking and
2 interception of the Plaintiffs' and Class Members' communications while they were
3 using a browser to visit Defendant's website; and

4 g. The plan Facebook carried out to effectuate its tracking and interception of the Plaintiffs'
5 and Class Members' communications while they were using a web browser or mobile
6 application to visit Defendant's website.

7 64. Defendant failed to disclose that it is used Facebook Pixel specifically to track and
8 automatically transmit its patients' private and confidential communications to a third party, i.e.,
9 Facebook. Moreover, the Patient Privacy Notice states that sharing information about patients for
10 marketing or sale of health information requires patients' authorization (as it does for every disclosure
11 of health information not provided for under the Privacy Policy).

12 65. The patient communication information that Defendant transmitted using Facebook
13 Pixel, such as doctor appointment booking information, constitutes protected health information.

14 66. As demonstrated hereinabove, Defendant violated CIPA by aiding and permitting third
15 parties to receive its patients' online communications through its website without their consent.

16 67. By disclosing Plaintiffs' and the Class's Private Health Information, Defendant violated
17 Plaintiffs' and Class Members' statutorily protected right to privacy.

18 68. As a result of the above violations, Defendant is liable to the Plaintiffs and other Class
19 Members for actual damages related to their loss of privacy in an amount to be determined at trial or
20 alternatively for "liquidated damages not less than \$2,500 per plaintiff." Pursuant to CIPA Section
21 637.2, any person who has been injured by a violation of CIPA may recover \$5,000 dollars per violation
22 or three times the amount of actual damages (the greater of these two options). Additionally, Section
23 637.2 specifically states that "[it] is not a necessary prerequisite to an action pursuant to this section
24 that the plaintiffs has suffered, or be threatened with, actual damages."

25 69. Under the statute, Defendant is also liable for reasonable attorney's fees, and other
26 litigation costs, injunctive and declaratory relief, and punitive damages in an amount to be determined
27 by a jury, but sufficient to prevent the same or similar conduct by the Defendant in the future.
28

COUNT II
Violations Of the California Confidentiality of Medical Information Act
Cal. Civ. Code § 56.10

1
2
3 70. Under the California Confidentiality of Medical Information Act (“CMIA”) section
4 56.10, providers of health care are prohibited from disclosing medical information relating to their
5 patients, without a patient’s authorization. Medical information refers to “any individually identifiable
6 information, in electronic or physical form, in possession of or derived from a provider of health care.
7 . . . regarding a patient’s medical history, mental or physical condition, or treatment. ‘Individually
8 Identifiable’ means that the medical information includes or contains any element of personal
9 identifying information sufficient to allow identification of the individual . . .” Cal. Civ. Code § 56.05.

10 71. Plaintiffs and Class Members are patients, and, as a health care provider, Defendant has
11 an ongoing obligation to comply with the CMIA’s requirements.

12 72. As set forth hereinabove, Facebook ID is an identifier sufficient to allow identification
13 of an individual. Along with patients’ Facebook ID, Sharp discloses to Facebook several pieces of
14 information regarding its patients’ use of its website, which includes, but is not limited to: patient
15 medical conditions, medical concerns, treatment patients are seeking, doctor appointments, medical
16 specialty of the doctor(s) searched for by patients, and patient information regarding COVID-19.

17 73. This patient information is derived from a provider of health care regarding patients’
18 medical treatment and physical condition. Accordingly, it constitutes medical information pursuant to
19 the CMIA.

20 74. As demonstrated hereinabove, Sharp failed to obtain its patients’ authorization for the
21 disclosure of medical information and failed to disclose in its Privacy Policy and Privacy Practices that
22 it shares protected health information for marketing purposes.

23 75. Pursuant to CMIA section 56.11, a valid authorization for disclosure of medical
24 information must be (1) “clearly separate from any other language present on the same page and is
25 executed by a signature which serves no other purpose than to execute the authorization” (2) signed
26 and dated by the patient or his representative (3) state the name and function of the third party that
27 receives the information (4) state a specific date after which the authorization expires. Accordingly, the
28

1 information set forth in Sharp's Notice of Privacy Practices, Patient's Rights, and Website Terms of
2 Use do not qualify as a valid authorization.

3 76. Based on the above, Sharp violated the CMIA by disclosing its patients' medical
4 information with Facebook along with the patients' Facebook ID.

5 77. Under the CMIA, a patient may recover compensatory damages, punitive damages not
6 to exceed \$3,000 dollars and attorneys' fees not to exceed \$1,000, and the costs of litigation for any
7 violating disclosure of medical information. Alternatively, a patient may recover nominal damages of
8 \$1,000 for any negligent release of medical information.

9 **COUNT III**

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

11 78. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth
12 herein and bring this claim individually and on behalf of the members of the proposed Class.

13 79. Plaintiffs and Class Members have an interest in: (1) precluding the dissemination
14 and/or misuse of their sensitive, confidential communications and protected health information; and (2)
15 making personal decisions and/or conducting personal activities without observation, intrusion or
16 interference, including, but not limited to, the right to visit and interact with various internet sites
17 without being subjected to wiretaps without Plaintiffs' and Class Members' knowledge or consent.

18 80. At all relevant times, by using Facebook's tracking pixel to record and communicate
19 patients' FIDs alongside their confidential medical communications, Sharp intentionally invaded
20 Plaintiffs' and Class Members' privacy rights under the California Constitution.

21 81. Plaintiffs and Class Members had a reasonable expectation that their communications,
22 identity, health information, and other data would remain confidential and that Sharp would not install
23 wiretaps on www.sharp.com.

24 82. Plaintiffs and Class Members did not authorize Sharp to record and transmit Plaintiffs'
25 and Class Members' private medical communications alongside their personally identifiable health
26 information.

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

4 84. Accordingly, Plaintiffs and Class Members seek all relief available for invasion of
5 privacy claims under California's Constitution.

6 **COUNT IV**

7 **Breach of Fiduciary Duty**

8 85. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth
9 herein and bring this claim individually and on behalf of the members of the proposed Class.

10 86. Plaintiffs and Class Members provided Defendant their sensitive information
11 through Defendant's website in confidence in connection with obtaining medical treatment,
12 believing that Sharp would protect that information. Plaintiffs and Class Members would not have
13 provided Sharp with this information had they known it would not be adequately protected and
14 that it would be transmitted to unauthorized third parties, namely Facebook. Sharp's acceptance
15 and storage of Plaintiffs' and Class members' sensitive health information created a fiduciary
16 relationship between Sharp and Plaintiffs and Class members. In light of this relationship, Sharp
17 must act primarily for the benefit of its patients, which includes safeguarding and protecting their
18 sensitive information and not disclosing it to unauthorized parties or persons.

19 87. Sharp has a fiduciary duty to act for the benefit of Plaintiffs and Class Members
20 upon matters within the scope of their relationship. It breached that duty by failing to properly
21 protect the integrity of Plaintiffs' and Class Members' sensitive health information, failing to
22 comply with the data security guidelines set forth by HIPAA, transmitting the information it
23 received through its website to third parties without authorization, and otherwise failing to keep
24 confidential Plaintiffs' and Class members' sensitive information.

25 88. As a direct and proximate result of Sharp's breaches of its fiduciary duties, Plaintiffs
26 and Class members have suffered and will suffer injury, including, but not limited to the
27 compromise and publication of their sensitive information and an intrusion upon their right to
28 privacy.

RELIEF REQUESTED

1
2 89. Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that the
3 Court grant the following relief:

4 (a) Certification of this action as a class action and appointment of Plaintiffs and
5 Plaintiffs' counsel to represent the Class;

6 (b) A declaratory judgment that Defendant violated the California Invasion of
7 Privacy Act, Cal. Penal Code § 631(a);

8 (c) A declaratory judgment that Defendant violated the California Confidentiality
9 of Medical Information Act, Cal. Civ. Code §§ 56, *et seq.*;

10 (d) A declaratory judgment that Defendant violated Plaintiffs' and Class Members'
11 privacy rights as provided at common law and pursuant to the California Constitution;

12 (e) An order enjoining Defendant from engaging in the unlawful practices and
13 illegal acts described herein;

14 (f) For actual or statutory damages;

15 (g) For punitive damages, as warranted, in an amount to be determined at trial;

16 (h) For prejudgment interest on all amounts awarded;

17 (i) For injunctive relief as pleaded or as the Court may deem proper;

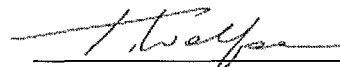
18 (j) For an order awarding Plaintiffs and the Class their reasonable attorneys' fees
19 and expenses and costs of suit pursuant to California Code of Civil Procedure section 1021.5 and/or
20 other applicable law; and

21 (k) Such other and further relief as the Court may deem appropriate.

22 **DEMAND FOR JURY TRIAL**

23 90. Plaintiffs, on behalf of themselves and the proposed Class, demand a trial by jury for all
24 of the claims asserted in this Complaint so triable.

25
26
27 Dated: December 2, 2022



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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sharp.com Visitors' Personal, Health Information Secretly Passed to Facebook, Class Action Claims](#)
