

Electronically FILED by Superior Court of California, County of Los Angeles on 11/07/2022 07:46 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF LOS ANGELES**
17

18 LAURA MOORE, on behalf of herself and
all others similarly situated,

19 Plaintiff,

20 v.

21 MEMORIALCARE MEDICAL GROUP d/b/a
22 MEMORIALCARE,

23 Defendant.
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Case No.: **22STCV35388**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Laura Moore (“Plaintiff”), on behalf of herself and all others similarly situated (the
2 “Class Members”), by and through her attorneys, makes the following allegations based on knowledge
3 as to herself and upon information and belief, including further investigation conducted by Plaintiff’s
4 counsel, as to all other matters.

5 **NATURE OF THE ACTION**

6 1. This is a data privacy class action lawsuit brought on behalf of all California residents
7 who have accessed www.memorialcare.org, a website 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 Plaintiff and Class Members, including communications
12 containing protected medical information.

13 3. Plaintiffs and Class Members used www.memorialcare.org to search and locate
14 physicians, schedule medical appointments, and find treatment options. Defendant also encouraged its
15 patients to use additional web features—such as the general search bar and chat feature—to enter search
16 queries and ask specific questions regarding their medical conditions and healthcare options.

17 4. Unbeknownst to Plaintiff and Class Members, and pursuant to the systematic process
18 described herein, patients’ private and protected communications with www.memorialcare.org 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, Plaintiff brings 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.

JURISDICTION AND VENUE

1
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 the Plaintiff’s claims because the amount in controversy exceeds this
6 Court’s 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 and Civil
10 Code section 1780(c) because a substantial part of the events or omissions giving rise to the claims
11 asserted herein occurred in this county. Attached to this Complaint is a Consumer Legal Remedies Act
12 Affidavit of Venue demonstrating that this Court is the proper venue for Plaintiff’s claims.

13 **THE PARTIES**

14 10. MemorialCare Medical Group d/b/a MemorialCare (“MemorialCare” or “Defendant”) is
15 registered as a nonprofit entity with its principal place of business in California. Defendant employs
16 approximately 11,000 individuals, with over 3,000 medical staff physicians, and, as of June 30, 2021,
17 had an annual revenue of approximately \$732,000,000. As the owner and operator of MemorialCare
18 Long Beach Medical Center among other medical centers and operations, Defendant offers a full range
19 of medical services, including primary and outpatient care, and treats thousands of patients each year.

20 11. Plaintiff Laura Moore is an adult citizen of the state of California and is domiciled in
21 Long Beach, California. On numerous occasions from 2016 to 2021, Plaintiff Moore accessed
22 www.memorialcare.org on her phone and desktop and used the website to look for health care
23 providers. Plaintiff Moore has used and continues to use the same devices to maintain and access an
24 active Facebook account throughout the relevant period in this case. Pursuant to the systematic process
25 described herein, MemorialCare assisted Facebook with intercepting Plaintiff Moore’s
26 communications, including those that contained personally identifiable information, protected health
27 information, and related confidential information. MemorialCare assisted these interceptions without
28 Plaintiff Moore’s knowledge, consent, or express written authorization. By failing to receive the

1 requisite consent, Defendant breached confidentiality and unlawfully disclosed Plaintiff Moore’s
2 personally identifiable information and protected health information.

3 **FACTUAL ALLEGATIONS**

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

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

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

- 12 • Intentionally taps, or makes any unauthorized connection, whether physically,
13 electrically, acoustically, inductively or otherwise, with any telegraph or telephone wire,
14 line, cable, or instrument, including the wire, line, cable, or instrument of any internal
15 telephonic communication system; or
- 16 • Willfully and without the consent of all parties to the communication, or in any
17 unauthorized manner, reads or attempts to read or learn the contents or meaning of any
18 message, report, or communication while the same is in transit or passing over any wire,
19 line or cable or is being sent from or received at any place within this state; or
- 20 • Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any
21 way, any information so obtained; or
- 22 • Aids, agrees with, employs, or conspires with any person or persons to unlawfully do,
23 or permit, or cause to be done any of the acts or things mentioned above in this section.

24 14. Section 631(a) is not limited to phone lines, but also applies to “new technologies” such
25 as computers, the Internet, and email. *See Matera v. Google Inc.*, No. 15-cv-4062-LHK, 2016 WL
26 8200619, at *21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed
27 broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, No. 06-cv-
28 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).

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

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

4 16. Pursuant to the California Confidentiality of Medical Information Act, Cal. Civ. Code
5 §§ 56, *et seq.*, “A provider of health care . . . shall not disclose medical information regarding a patient
6 of the provider of health care . . . without first obtaining an authorization, except as provided in
7 subdivision (b) or (c).” Cal. Civ. Code § 56.10(a).¹ “An authorization for the release of medical
8 information . . . shall be valid if it:

9 (a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point
10 type.

11 (b) Is clearly separate from any other language present on the same page and is executed
12 by a signature which serves no other purpose than to execute the authorization.

13 (c) Is signed and dated . . .

14 (d) States the specific uses and limitations on the types of medical information to be
15 disclosed.

16 (e) States the name or functions of the provider of health care, health care service plan,
17 pharmaceutical company, or contractor that may disclose the medical information.

18 (f) States the name or functions of the persons or entities authorized to receive the
19 medical information.

20 (g) States the specific uses and limitations on the use of the medical information by the
21 persons or entities authorized to receive the medical information.

22 (h) States a specific date after which the provider of health care, health care service plan,
23 pharmaceutical company, or contractor is no longer authorized to disclose the medical
24 information.

25 (i) Advises the person signing the authorization of the right to receive a copy of the
26 authorization.

26 ¹ Subdivisions (b) and (c) are not relevant to this case but permit the disclosure of medical information
27 in situations where a government investigation or lawsuit is taking place. For example, MemorialCare
28 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 Cal. Civ. Code § 56.11.

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

8 18. “In addition to any other remedies available at law, any individual may bring an action
9 against any person or entity who has negligently released confidential information or records
10 concerning him or her in violation of this part, for either or both of the following: [¶] (1) ... nominal
11 damages of one thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be
12 necessary that the plaintiff suffered or was threatened with actual damages. [¶] (2) The amount of actual
13 damages, if any, sustained by the patient.” *Sutter Health v. Superior Ct.*, 227 Cal. App. 4th 1546, 1551,
14 (2014) (quoting Cal. Civ. Code § 56.36(b)).

15 **C. MemorialCare’s Website**

16 19. MemorialCare is the largest health system headquartered in Orange County, California.
17 MemorialCare’s network includes several hospitals (Orange Coast Medical Center, Saddleback
18 Medical Center, Long Beach Medical Center and Miller Children’s & Women’s Hospital Long Beach),
19 MemorialCare Medical Group and Greater Newport Physicians, MemorialCare Research,
20 MemorialCare Select Health Plan, and numerous outpatient ambulatory surgery, and specialty care
21 centers.

22 20. MemorialCare Long Beach Medical Center, for example, is a 435-bed regional medical
23 center that offers a full range of medical services, including primary and outpatient care. MemorialCare
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25 _____
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 Long Beach Medical Center’s services, include, but are not limited to: blood donation, breast care,
2 cancer care, diabetes care, digestive care, emergency care, gynecological care, heart and vascular care,
3 hospice services, imaging and radiology, joint replacement, laboratory services, lung and respiratory
4 care, mental health, nursing services, orthopedic care, palliative care, physical therapy and
5 rehabilitation services. Defendant’s coverage area includes 23 zip codes, representing 12 cities and
6 communities, and it provides medical services to 1,059,713 people each year, based on Defendant’s
7 own estimates as of 2021.

8 21. Defendant’s website, www.memorialcare.org, is accessible on mobile devices and
9 desktop computers. MemorialCare also allows users to interact with its health system via several mobile
10 applications available for download on Android and iPhone devices.

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

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

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

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

23 ⁴ *Facebook Community Standards: Account Integrity and Authentic Identity*, FACEBOOK, [https://](https://transparency.fb.com/policies/community-standards/account-integrity-and-authentic-identity/)
24 transparency.fb.com/policies/community-standards/account-integrity-and-authentic-identity/ (last
visited Nov. 7, 2022).

25 ⁵ *Sign Up*, FACEBOOK, <https://www.facebook.com/> (last visited Nov. 7, 2022).

26 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)
27 [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)
Results/default.aspx.

28 ⁷ *Id.*

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

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

17
18 ⁸ *Why Advertise on Facebook, Instagram or other Meta technologies*, FACEBOOK, <https://www.facebook.com/business/help/205029060038706> (last visited Nov. 7, 2022).

19 ⁹ *About Meta Pixel*, FACEBOOK, <https://www.facebook.com/business/help/742478679120153?id=1205376682832142> (last visited Nov. 7, 2022).

20 ¹⁰ *Ad Targeting: Help your ads vind the people who will love your business*, FACEBOOK, <https://www.facebook.com/business/ads/ad-targeting> (last visited Nov. 7, 2022).

21 ¹¹ *Core Audiences*, FACEBOOK, <https://www.facebook.com/business/news/Core-Audiences> (last visited Nov. 7, 2022).

22 ¹² *About Custom Audiences*, FACEBOOK, <https://www.facebook.com/business/help/744354708981227?id=2469097953376494> (last visited Nov. 7, 2022).

23 ¹³ *Ad Targeting: Help your ads vind the people who will love your business*, FACEBOOK, <https://www.facebook.com/business/ads/ad-targeting> (last visited Nov. 7, 2022).

24 ¹⁴ *About Lookalike Audiences*, FACEBOOK, <https://www.facebook.com/business/help/164749007013531?id=401668390442328> (last visited Nov. 7, 2022).

25 ¹⁵ *Create a customer list Custom Audience*, FACEBOOK, <https://www.facebook.com/business/help/1704>
26 (footnote continued)

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

7 27. The Business Tools are automatically configured to capture certain data, like when a
8 user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and metadata, or when a
9 user downloads a mobile application or makes a purchase.¹⁷ Facebook’s Business Tools can also track
10 other events. Facebook offers a menu of “standard events” from which advertisers can choose,
11 including what content a visitor views or purchases.¹⁸ Advertisers can even create their own tracking
12 parameters by building a “custom event.”¹⁹

13 28. One such Business Tool is the Facebook Tracking Pixel. Facebook offers this piece of
14 code to advertisers, like MemorialCare, to integrate into their website. As the name implies, the
15 Facebook Pixel “tracks the people and type of actions they take.”²⁰ When a user accesses a website
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17 56843145568?id=2469097953376494 (last visited Nov. 7, 2022); *Create a Website Custom Audience*,
18 FACEBOOK, <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
19 (last visited Nov. 7, 2022).

20 ¹⁶ *The Meta Business Tools*, FACEBOOK, <https://www.facebook.com/help/331509497253087> (last
visited Nov. 7, 2022).

21 ¹⁷ *See Meta Pixel: Advanced*: FACEBOOK, [https://developers.facebook.com/docs/facebook-pixel/
advanced/](https://developers.facebook.com/docs/facebook-pixel/advanced/) (last visited Nov. 7, 2022); *see also Best practices for Meta Pixel setup*, FACEBOOK,
22 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142> (last visited Nov.
23 7, 2022); *App Events API*, FACEBOOK, [https://developers.facebook.com/docs/marketing-api/app-event-
api/](https://developers.facebook.com/docs/marketing-api/app-event-api/) (last visited Nov. 7, 2022).

24 ¹⁸ *Specifications for Meta Pixel standard events*, FACEBOOK, [https://www.facebook.com/business/help/
402791146561655?id=1205376682832142](https://www.facebook.com/business/help/402791146561655?id=1205376682832142) (Nov. 7, 2022).

25 ¹⁹ *About standard and custom website events*, FACEBOOK, [https://www.facebook.com/business/help/96
4258670337005?id=1205376682832142](https://www.facebook.com/business/help/964258670337005?id=1205376682832142) (Nov. 7, 2022); *App Events API*, FACEBOOK, [https://
26 developers.facebook.com/docs/marketing-api/app-event-api/](https://developers.facebook.com/docs/marketing-api/app-event-api/) (Nov. 7, 2022).

27 ²⁰ *Retargeting*, FACEBOOK, <https://www.facebook.com/business/goals/retargeting> (last visited Nov. 7,
28 2022).

1 that has installed the Facebook Pixel into its code, Facebook’s software script surreptitiously directs
2 the user’s browser to send a separate message to Facebook’s servers. This second, secret transmission
3 contains the original GET request sent to the host website, along with additional data that the Facebook
4 Pixel is configured to collect. This transmission is initiated by Facebook code and concurrent with the
5 communications with the host website. Two sets of code are thus automatically run as part of the
6 browser’s attempt to load and read Defendant’s websites—Defendant’s own code, and Facebook’s
7 embedded code.

8 29. An example illustrates the point. When an individual navigates to
9 www.memorialcare.org and clicks on a particular physician’s profile—or any other webpage installed
10 with Facebook Pixel—the individual’s browser sends a GET request to Defendant’s server requesting
11 that server to load the particular webpage. Facebook Pixel, via cookies and embedded code, silently
12 instructs the user’s browser to duplicate and transmit the user’s communications with
13 www.memorialcare.org, sending the corresponding data to Facebook’s servers, alongside additional
14 information that transcribes the communication’s content and the individual’s identity.

15 30. After collecting and intercepting this information, Facebook processes it, analyzes it,
16 and assimilates it into datasets like Core Audiences and Custom Audiences.

17 **E. How MemorialCare Discloses Class Members Protected Health Information and Assists**
18 **with Intercepting Communications**

19 31. Through the Facebook Pixel, Defendant shares its patients’ identities and online activity,
20 including information and search results related to their private medical treatment.

21 32. For example, when a patient visits www.memorialcare.org to search for a doctor, they
22 may select the “Find a Provider” button, which takes them to the “Find a Provider” page.

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Figure 1. Image of www.memorialcare.org's landing page.

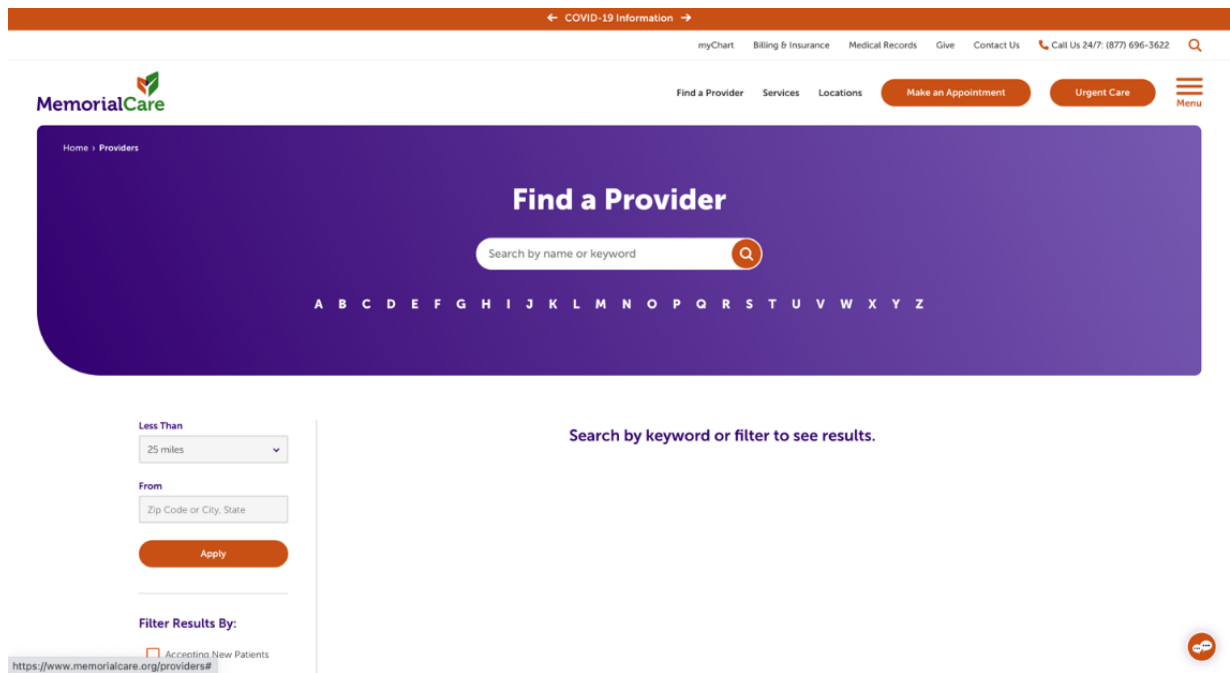
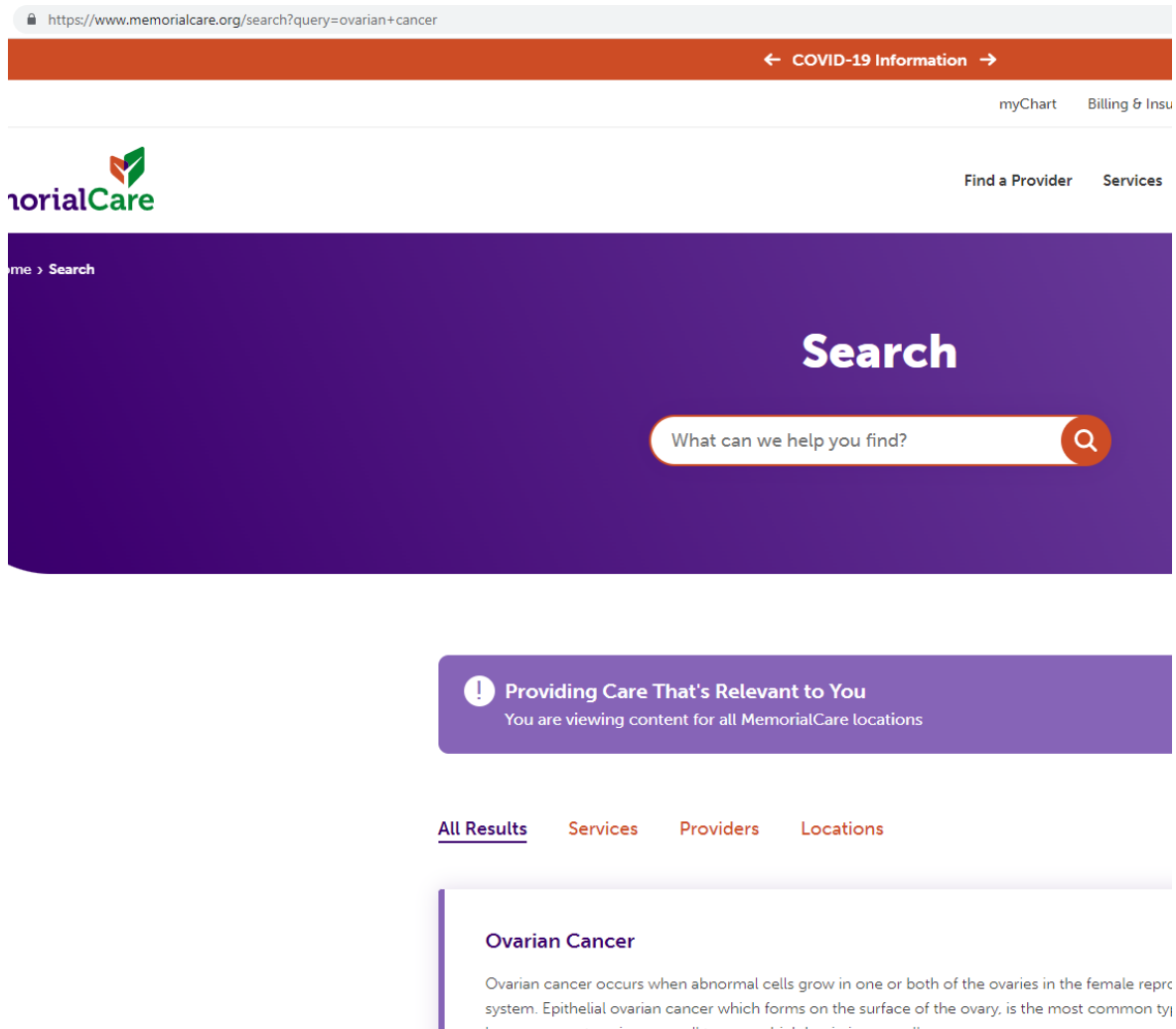


Figure 2. Defendant directs patients to its "Find a Provider" webpage.

33. If a patient selects filters or enters keywords into the search bar on the "Find a Provider" webpage, the filters and search terms are transmitted via the Facebook Pixel. Similarly, if a patient uses the website's general search bar or chat, the terms and phrases the patient types are transmitted to

1 Facebook, even if they contain a patient’s treatment, procedures, medical conditions, and related
2 queries.



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20 **Figure 3.**²¹

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27 ²¹ On information and belief, the text users type into the search bar is transmitted and included in the
28 web address and URL that corresponds with the search results.
https://www.memorialcare.org/search?query=ovarian+cancer (last accessed Nov. 1, 2022).

1 34. The “Find a Provider” page also allows patients to narrow search results based on
 2 distance from a particular location, “Hospital,” “Medical Group,” and the provider’s “Specialty.”
 3 Patients can also narrow their search results based on the provider’s gender and spoken languages.

The screenshot displays a search filter interface with the following elements:

- Less Than:** A dropdown menu currently showing "25 miles".
- From:** A text input field labeled "Zip Code or City, State".
- Apply:** A prominent orange rounded rectangular button.
- Hospital:** A search input field labeled "Search or Select".
- Medical Group:** A list of three options, each with an unchecked checkbox:
 - MemorialCare Medical Group
 - Greater Newport Physicians
 - Edinger Medical Group
- Filter Results By:** A section with three unchecked checkboxes:
 - Accepting New Patients
 - Accepting Virtual Visits
 - Book Appointment Online
- Specialty:** A search input field labeled "Search or Select".
- Insurances Accepted:** A search input field labeled "Search or Select" with a note below it: "Medical Group is required".
- Language:** A search input field labeled "Search or Select".
- Gender:** Two radio button options: "Male" and "Female".

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20 *Figures 4 & 5.*

21
22 35. After taking any of these actions on the Find a Provider page, patients are subsequently
 23 directed to the “Provider Search Results” page, and their selections or search parameters are
 24 automatically transmitted.

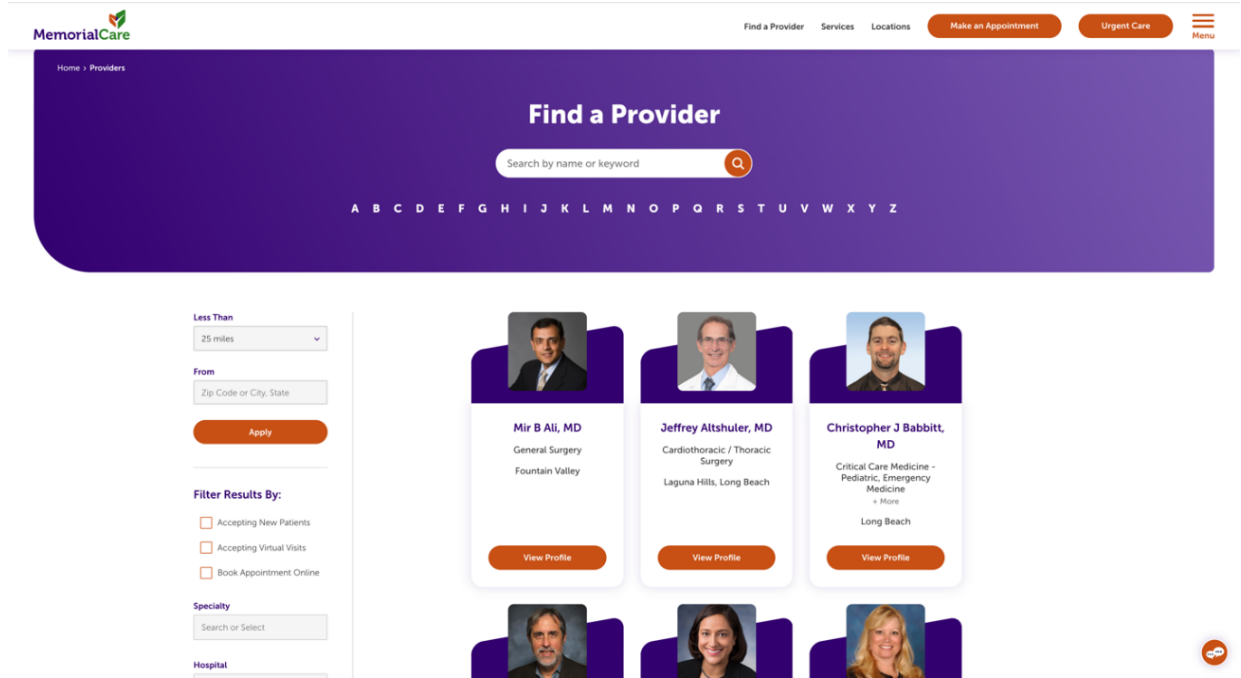


Figure 7. Defendant’s “Find a Provider” webpage identifies doctors that fit the patient’s search criteria.

36. Once a patient chooses a doctor, all of the information that patient has submitted is automatically sent directly to Facebook. On information and belief, the information transmitted to Facebook includes: (1) the patient’s unique and persistent Facebook ID (c_user ID), (2) the fact that the patient clicked on a specific provider’s profile page (Dr. Allison Diamant in the example below), (3) the patient’s search parameters (demonstrating they specifically searched for a female doctor, specialized in Internal Medicine, who is also recognized as an “LGBTQ Champion,”), and (4) the patient’s location filter (demonstrating the 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%2Ffallison-diamant&rl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2Fsearch%3Ff%25B0%25D%3Dbook-online%25A1%26f%25B1%25D%3Dgender%253Afemale%26f%255B2%25D%3Dlgbtq-champion%253A1%26f%255B3%25D%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%20MSHS%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.1.16425000780069.168398461&it=1642513631801&coo=false&dpo=LDU&dpoco=0&dpoc=0&es=automatic&tm=3&exp=p1&rqm=GET

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HEADERS

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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_mYbDjWuo9xL0ujLYAqmgj; datr=pY_mYUQLzBjV0goTvf8Fc5kk; dpr=1.25;
c_user=1000709450000; 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_
+ host: www.facebook.com
+ referer: https://www.uclahealth.org/

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Figure 8.²²

37. Defendant’s website also includes a feature that allows patients to book appointments through a particular doctor’s profile page. If a patient clicks on the “Schedule an Appointment” button, this action is 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 the appointment). Similarly, each doctor’s profile page includes a direct link that allows patient to call the doctor's office, and, upon clicking the telephone number button, the patient’s click is shared 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.

38. MemorialCare’s website allows online patients to request an appointment with a doctor they have not been to before by completing an online form and selecting the “Make an Appointment” button. Upon doing this, Defendant shares the patient’s selection immediately with Facebook.

*Figure 9.*²³

```
+ https://www.facebook.com/tr/?id=222836392271290&ev=SubscribedButtonClick&dl=https%3A%2F%2Fwww.uclahealth.org%2Fproviders%2F%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=1642515885628&cd[buttonFeatures]=%7B%22classList%22%3A%22button%20button--primary-alt%20button--small%22%2C%22destination%22%3A%22%22%2C%22id%22%3A%22%22%2C%22imageUrl%22%3A%22%22%2C%22innerText%22%3A%22Book%20an%20Appointment%22%2C%22numChildButtons%22%3A0%2C%22tag%22%3A%22button%22%2C%22name%22%3A%22%22%2C%22value%22%3A%22%22%2C%22%7D&cd[buttonText]=Book%20an%20Appointment&cd[formFeatures]=%5B%5D&cd[pageFeatures]=%7B%22title%22%3A%22Allison%20L.%20Diamant%2C%20MD%2C%20MSHS%20%7C%20Internal%20Medicine%20-%20Santa%20Monica%2C%20CA%22%7D&cd[parameters]=%5B%5D&sw=1920&sh=1080&v=2.9.48&r=stable&ec=2&o=30&fbp=fb.1.1642500078069.168398461&it=1642513631801&ico=false&dpo=LDU&dpo=0&dpost=0&es=automatic&tm=3&exp=p1&rqm=GET
```

HEADERS

```
+ 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=pI_mYbDjWuo9xL0ujLYAqmgj; datr=pY_mYUQlzbjV0goTvf8Fc5kk; dpr=1.25; c_user=10007[REDACTED]; xs=31%3AixsejnhZuCR64w%3A2%3A1642500031%3A-1%3A-1; fr=0LFW0ez5zBqyosnvK.AWUQz3006Xiyeb4ABDft7tftpw.Bh5o-k.XV.AAA.0.0.Bh5o-_.AWWrZTrctzQ; spin=r.1004946732_b.trunk_t.1642500037_s.1_v.2_
+ host: www.facebook.com
+ referer: https://www.uclahealth.org/
```

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.

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

3 40. A user who accesses Defendant’s website while logged into Facebook will transmit the
 4 c_user cookie to Facebook, which contains that user’s unencrypted Facebook ID. When accessing
 5 memorialcare.org, for example, Facebook receives even cookies, six of which 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
11 **Figure 14**

12 41. When a visitor’s browser has recently logged out of an account, Facebook compels
 13 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

14
15
16
17 **Figure 15**

18 42. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.²⁶
 19 Facebook, at a minimum, uses the fr cookie to identify users.²⁷ At each stage, Defendant also utilizes
 20
 21

22
 23 occurred without Plaintiff’s knowledge or consent because patients’ communications with
 24 www.memorialcare.org are simultaneously duplicated and transmitted to Facebook, alongside their
 unique 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.

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

28 ²⁷ Cookies Policy, FACEBOOK, <https://www.facebook.com/policy/cookies/> (last visited Nov. 7, 2022).

1 the _fbp cookie, which attaches to a browser as a first-party cookie, and which Facebook uses to
2 identify a browser and a user.²⁸

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

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

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

15 46. Plaintiff never consented, agreed, authorized, or otherwise permitted Defendant to
16 disclose her personally identifiable information and protected health information and assist with
17 intercepting her communications. Plaintiff was never provided with any written notice that Defendant
18 discloses its website users’ protected health information, nor was she provided any means of opting out
19 of such disclosures. Defendant nonetheless knowingly disclosed Plaintiff’s protected health
20 information to Facebook.

21
22
23 _____
²⁸ *Id.*

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. 7, 2022). This is confirmable by using developer tools to inspect a website’s cookies and
track network activity.

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

1 47. By law, Plaintiff is entitled to privacy in her protected health information and
2 confidential communications. MemorialCare deprived Plaintiff of her privacy rights when it: (1)
3 implemented a system that surreptitiously tracked, recorded, and disclosed Plaintiff's and other online
4 patients' confidential communications, personally identifiable information, and protected health
5 information; (2) disclosed patients' protected information to Facebook—an unauthorized third-party
6 eavesdropper; and (3) undertook this pattern of conduct without notifying Plaintiff and without
7 obtaining her express written consent. Plaintiff did not discover until October of 2022 that Defendant
8 disclosed her personally identifiable information and protected health information to Facebook and
9 assisted Facebook with intercepting her communications.

10 **CLASS ACTION ALLEGATIONS**

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

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

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

25 51. **Numerosity/Ascertainability.** Members of the Class are so numerous that joinder of
26 all members would be unfeasible and not practicable. The exact number of Class members is unknown
27 to Plaintiff at this time; however, it is estimated that there are hundreds of thousands of individuals in
28

1 the Class. The identity of such membership is readily ascertainable from MemorialCare's records and
2 non-party Facebook's records.

3 52. **Typicality.** Plaintiff's claims are typical of the claims of the Class because Plaintiff used
4 www.memorialcare.org and had her personally identifiable information and protected health
5 information disclosed to Facebook without her express written authorization or knowledge. Plaintiff's
6 claims are based on the same legal theories as the claims of other Class members.

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

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

- 18 (a) Whether Defendant intentionally tapped the lines of internet communication between
19 patients and their medical providers;
- 20 (b) Whether Defendant's website surreptitiously records personally identifiable
21 information, protected health information, and related communications and
22 subsequently, or simultaneously, discloses that information to Facebook;
- 23 (c) Whether Facebook is a third-party eavesdropper;
- 24 (d) Whether Defendant's disclosures of personally identifiable information, protected
25 health information, and related communications constitute an affirmative act of
26 communication;
- 27
- 28

- 1 (e) Whether Defendant’s conduct, which allowed Facebook—an unauthorized person—to
2 view Plaintiff’s and Class members’ personally identifiable information and protected
3 health information, resulted in a breach of confidentiality;
- 4 (f) Whether Defendant violated Plaintiff’s and Class members’ privacy rights by using
5 Facebook’s tracking pixel to record and communicate online patients’ FIDs alongside
6 their confidential medical communications;
- 7 (g) Whether Plaintiff and Class members are entitled to damages under CIPA, the CMIA,
8 or any other relevant statute;
- 9 (h) Whether Defendant’s actions violate Plaintiff’s and Class members’ privacy rights as
10 provided by the California Constitution;

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

20 **CLAIMS FOR RELIEF**

21 **COUNT I**

22 **Violations of the California Invasion of Privacy Act,
23 Cal. Penal Code § 631**

24 56. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth
25 herein and bring this Count individually and on behalf of the members of the Class.

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

28 The Legislature hereby declares that advances in science and technology have led
to the development of new devices and techniques for the purpose of

1 eavesdropping upon private communications and that the invasion of privacy
2 resulting from the continual and increasing use of such devices and techniques has
3 created a serious threat to the free exercise of personal liberties and cannot be
tolerated in a free and civilized society.

4 Cal. Penal Code § 630.

5 58. California penal Code section 631(a) provides, in pertinent part:

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

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

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

15 60. At all relevant times, Defendant aided, agreed with, and conspired with Facebook to
16 track and intercept Plaintiff's and Class Members' internet communications while accessing
17 www.memorialcare.org. They intercepted these communications without authorization and consent
18 from Plaintiff and Class Members.

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

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

- 24 a. The computer codes and programs Facebook used to track Plaintiff's and the Class
25 Members' communications while they were navigating memorialcare.org;
- 26 b. The Plaintiff's and Class Member's browsers;
- 27 c. The Plaintiff's and Class Members' computing and mobile devices;
- 28 d. Facebook's web and ad servers;

1 e. The web and ad-servers from which Facebook tracked and intercepted the Plaintiff's
2 and Class Members' communications while they were using a web browser to access or
3 navigate the memorialcare.org;

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

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

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

15 64. The patient communication information that Defendant transmitted using Facebook
16 Pixel, such as doctor appointment booking information, constitutes protected health information.

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

19 66. By disclosing Plaintiff's and the Class's Private Health Information, Defendant violated
20 Plaintiff's and Class Members' statutorily protected right to privacy.

21 67. As a result of the above violations, Defendant is liable to the Plaintiff and other Class
22 Members for actual damages related to their loss of privacy in an amount to be determined at trial or
23 alternatively for "liquidated damages not less than \$2,500 per plaintiff." Pursuant to CIPA Section
24 637.2, any person who has been injured by a violation of CIPA may recover \$5,000 dollars per violation
25 or three times the amount of actual damages (the greater of these two options). Additionally, Section
26 637.2 specifically states that "[it] is not a necessary prerequisite to an action pursuant to this section
27 that the plaintiffs has suffered, or be threatened with, actual damages."
28

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

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

7 69. Under the California Confidentiality of Medical Information Act ("CMIA") section
8 56.10, providers of health care are prohibited from disclosing medical information relating to their
9 patients, without a patient's authorization. Medical information refers to "any individually identifiable
10 information, in electronic or physical form, in possession of or derived from a provider of health care
11 . . . regarding a patient's medical history, mental or physical condition, or treatment. 'Individually
12 Identifiable' means that the medical information includes or contains any element of personal
13 identifying information sufficient to allow identification of the individual" Cal. Civ. Code § 56.05.

14 70. Plaintiff and Class Members are patients, and, as a health care provider, Defendant has
15 an ongoing obligation to comply with the CMIA's requirements.

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

21 72. This patient information is derived from a provider of health care regarding patients'
22 medical treatment and physical condition. Accordingly, it constitutes medical information pursuant to
23 the CMIA.

24 73. As demonstrated hereinabove, MemorialCare failed to obtain its patients' authorization
25 for the disclosure of medical information and failed to disclose in its Privacy Policy and Privacy
26 Practices that it shares protected health information for marketing purposes.

27 74. Pursuant to CMIA section 56.11, a valid authorization for disclosure of medical
28 information must be (1) "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" (2) signed

1 and dated by the patient or his representative (3) state the name and function of the third party that
2 receives the information (4) state a specific date after which the authorization expires. Accordingly, the
3 information set forth in MemorialCare's Privacy Policy, Patient Privacy Notice, and Terms of Use do
4 not qualify as a valid authorization.

5 75. Based on the above, MemorialCare violated the CMIA by disclosing its patients'
6 medical information with Facebook along with the patients' Facebook ID.

7 76. Under the CMIA, a patient may recover compensatory damages, punitive damages not
8 to exceed \$3,000 dollars and attorneys' fees not to exceed \$1,000, and the costs of litigation for any
9 violating disclosure of medical information. Alternatively, a patient may recover nominal damages of
10 \$1,000 for any negligent release of medical information.

11 **COUNT III**
12 **Invasion of Privacy Under California's Constitution**

13 77. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth
14 herein and bring this claim individually and on behalf of the members of the proposed Class.

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

20 79. At all relevant times, by using Facebook's tracking pixel to record and communicate
21 patients' FIDs alongside their confidential medical communications, MemorialCare intentionally
22 invaded Plaintiff's and Class Members' privacy rights under the California Constitution.

23 80. Plaintiff and Class Members had a reasonable expectation that their communications,
24 identity, health information, and other data would remain confidential and that MemorialCare would
25 not install wiretaps on www.memorialcare.org.

26 81. Plaintiff and Class Members did not authorize MemorialCare to record and transmit
27 Plaintiff's and Class Members' private medical communications alongside their personally identifiable
28 health information.

1 82. 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 83. Accordingly, Plaintiff and Class Members seek all relief available for invasion of
5 privacy claims under California's Constitution.

6 **RELIEF REQUESTED**

7 84. Plaintiff, on behalf of herself and the proposed Class, respectfully requests that the Court
8 grant the following relief:

9 (a) Certification of this action as a class action and appointment of Plaintiff and
10 Plaintiff's counsel to represent the Class;

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

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

15 (d) A declaratory judgment that Defendant violated Plaintiff's and Class Members'
16 privacy rights as provided at common law and pursuant to the California Constitution;

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

19 (f) For actual or statutory damages;

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

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

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

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

26 (k) Such other and further relief as the Court may deem appropriate.
27
28

DEMAND FOR JURY TRIAL

85. Plaintiff, on behalf of herself and the proposed Class, demand a trial by jury for all of the claims asserted in this Complaint so triable.

Dated: November 7, 2022



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**Pro hac vice application forthcoming*

Attorneys for Plaintiff and the Putative Class

ClassAction.org

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