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Attorneys for Plaintiff, MICHAEL ALLEN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL ALLEN, individually
and on behalf of all others
similarly situated,

Plaintiffs,

v.

UCLA HEALTH SYSTEMS
AUXILIARY, a California
Corporation; THE REGENTS OF
THE UNIVERSITY OF
CALIFORNIA, a California
Corporation; and Does 1 through
10, inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

1. Confidential Medical Information Act;
2. Unlawful, Fraudulent and Unfair Business Practices;
3. Invasion of Privacy;
4. Constructive Fraud;
5. Breach of Contract;
6. Negligence Per Se;
7. Negligence;
8. Breach of Implied Contract; and
9. Unjust Enrichment.

Jury Trial Demanded As To Claims That
Are So Triable

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1 Plaintiff Michael Allen (hereinafter “Plaintiff” or “Mr. Allen”), individually
2 and on behalf of all others similarly situated, based upon personal knowledge as to
3 himself and his own acts, and upon information and belief as to all other matters
4 alleges as follows:

5 **I**

6 **NATURE OF THE ACTION**

7 1. This class action arises from UCLA HEALTH SYSTEMS
8 AUXILIARY’s and THE REGENTS OF THE UNIVERSITY OF
9 CALIFORNIA’s (collectively “Defendants”) failure to adequately secure the
10 private, personal financial information of Plaintiff and all other persons similarly
11 situated. Plaintiff and all other persons similarly situated, who were patients at
12 Defendants’ and their subsidiaries’ hospitals, provided their private and health
13 information for the purpose of receiving health care. When Plaintiff and all other
14 persons similarly situated provided their personal and health information to
15 Defendants and their subsidiaries, they did so with the understanding and
16 contractual promise that Defendants and their subsidiaries would safeguard the
17 information from being stolen by cyber thieves. Unfortunately for patients of
18 Defendants and their subsidiaries, patients’ personal information, and possibly
19 their sensitive health information, was not kept secure. Instead, it was left in an
20 unencrypted state and stolen by cyber thieves. Due to Defendants’ failure to take
21 the basic steps of encrypting patients’ data, it was much easier for cyber thieves to
22 interpret the information, use it to steal the identities of Defendants’ patients, or
23 sell to others who would use Defendants’ patients’ personal and health
24 information.

25 2. Defendants’ conduct permitted criminal hackers to steal Defendants’
26 customers’ sensitive personal and health information. Defendant UCLA HEALTH
27 SYSTEMS AUXILIARY admitted the stolen information includes, at a minimum,
28 names, addresses, dates of birth, Social Security numbers, medical record numbers,

1 Medicare or health plan ID numbers, and some medical information.

2 3. In or about September 2014, Defendants first noticed their computer
3 system containing current customers' and former customers' personal and health
4 information had been subject to suspicious activity that put the sensitive
5 information at risk of being stolen. Months-long investigations have revealed that,
6 as a result of the security breach, unknown cyber thieves now possess nonpublic
7 personal and health information from Plaintiff and 4.5 million customers of
8 Defendants nationwide. Because the nonpublic personal and health information
9 included social security numbers and Medicare or health plan ID numbers, Plaintiff
10 and other customers of Defendants face a long term battle against identity theft.
11 Defendants' failure to adequately protect the nonpublic personal and health
12 information in their possession has caused, and will continue to cause, substantial
13 harm and injuries to Plaintiff and all current and former customers of Defendants.

14 4. Mr. Allen seeks on behalf of himself and putative class members,
15 statutory, actual and/or compensatory damages, punitive damages, and equitable
16 relief, including costs and expenses of litigation including attorneys' fees, and
17 appropriate injunctive relief requiring Defendants to comply with its legal
18 obligations, as well as additional and further relief that may be appropriate.
19 Plaintiff reserves the right to amend the Complaint to add additional relief as
20 permitted under applicable law.

21 II

22 JURISDICTION AND VENUE

23 5. This Court has original jurisdiction pursuant to 28 U.S.C. section
24 1332(d). Diversity is satisfied as Plaintiff, Mr. Allen is a citizen of Casper,
25 Wyoming, and Defendants' principal place of business is located in Los Angeles,
26 California. The amount in controversy is satisfied as it exceeds \$5 million dollars.

27 6. Venue is proper pursuant to 28 U.S.C. section 1391(b) and (c) because
28 Defendant UCLA HEALTH SYSTEMS AUXILIARY is a corporation

1 headquartered in Los Angeles County and/or because this District is a District in
2 which a substantial part of the events or omissions giving rise to the improper
3 conduct alleged herein occurred.

4 **III**
5 **PARTIES**

6 7. Plaintiff Michael Allen is a current resident of Casper, Wyoming.

7 8. Upon information and belief, Defendant UCLA HEALTH SYSTEMS
8 AUXILIARY is a corporation doing business in California, with its headquarters
9 and principal place of business located at 10833 Le Conte Avenue, Los Angeles,
10 California 90095-7131.

11 9. Upon information and belief, Defendant THE REGENTS OF THE
12 UNIVERSITY OF CALIFORNIA is a corporation doing business throughout the
13 State of California.

14 10. Plaintiff is ignorant of the true names and capacities of the Defendants
15 sued herein as Does 1 through 10, but Plaintiff will seek leave to amend this
16 Complaint to allege their true names and capacities once they are ascertained.
17 Upon information and belief, Plaintiff makes all allegations contained in this
18 Complaint against all of the Defendants, including Does 1 through 10.

19 **IV**
20 **FACTUAL ALLEGATIONS**

21 11. Mr. Allen incorporates by reference the foregoing allegations.

22 12. On or around February 2013, Mr. Allen visited a UCLA Health
23 Center for the purpose of receiving treatment as a patient. During his multiple
24 visits as a patient with UCLA Health, Mr. Allen provided his entire medical/patient
25 history, billing information, as well as other non-public personal information.

26 13. Starting on or before September 2014, cyber thieves accessed
27 approximately 4.5 million of UCLA Health's current and former customers'
28 personal and health information, including, but not limited to, names, addresses,

1 dates of birth, Social Security numbers, medical record numbers, Medicare or
2 health plan ID numbers and medical information.

3 14. After investigating unusual activity on their computer servers,
4 Defendants determined that their computer network containing customers personal
5 and health information had been accessed by cyber hackers.

6 15. The cyber thieves who breached Defendants' records were able to
7 access a network containing 4.5 million current and former customers' records that
8 included the nonpublic personal and health information.

9 16. Despite investigating the potential breach since in or around October
10 2014, Defendants did not announce that their network containing current and
11 former customers' personal and health information had been compromised until
12 July 17, 2015. Underscoring its dilatory response, Defendants are still delaying
13 notifying individual consumers affected by the breach. See attached as Exhibit A,
14 CNN Money article dated July 17, 2015¹.

15 17. Defendants' failure to maintain the security of its current and former
16 customers' nonpublic personal and health information has been the subject of
17 scrutiny by security experts and patient advocates. Despite the trend of
18 cybercriminals targeting big players in healthcare, Defendants still failed to take
19 even the most basic step of encrypting their patient data.

20 18. Health care providers such as UCLA Health are legally required to
21 keep their customers' personal, health, and financial information private and
22 secured.

23 19. Defendants knew or should have known of the risks inherent in
24 maintaining their customers' nonpublic personal and health information, and if
25 such information was stolen, it would have dire consequences for those customers.
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27 ¹ See Exhibit A, Article from CCN Money entitled, "Hackers broke into the
28 massive hospital network of the University of California, Los Angeles, accessing
computers with sensitive records of 4.5 million people."

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V

CLASS ALLEGATIONS

20. Mr. Allen incorporates by reference the foregoing allegations.

21. Mr. Allen brings this action pursuant to the Federal Rules of Civil Procedure section 23(a) and (b)(2) and/or 23(b)(3) on behalf of himself and all others similarly situated. This action satisfies the numerosity, typicality, commonality, adequacy, predominance, and superiority requirements of those provisions.

22. Plaintiff's proposed class consists of and is defined as: "All current and former patients who provided non-public personal and non-public health information for the purpose of receiving health care."

23. Numerosity. The Class consists of several millions of individuals, making joinder of individual cases impracticable, in satisfaction of Rule 23(a)(1). While the exact number of the Class members is unknown to Plaintiff at this time, such information can be ascertained through appropriate discovery, from records maintained by Defendant and its agents.

24. Typicality. Mr. Allen is qualified to, and will, fairly and adequately protect the interests of each class member with whom he is similarly situated. Mr. Allen's claims are typical of the claims of all members of the Class. Mr. Allen and each Class member were affected in substantially the same way, as demonstrated herein. The claims of the Plaintiff and members of the Class are based on the same legal theories and arise from the same unlawful conduct, resulting in the same injury to the Plaintiff and to all of the other Class members.

25. Adequacy of Representation. Mr. Allen will fairly and adequately represent the interests of the class members. Mr. Allen has retained counsel with substantial experience in prosecuting complex litigation and class actions. Mr. Allen and his counsel are committed to vigorously prosecuting the action on behalf of the class members, and have the financial resources to do so. Neither Mr. Allen

1 nor his counsel has any interest adverse to those of the other class members.

2 26. Superiority. Absent a class action, most class members would find the
3 cost of litigating their claims to be prohibitive and will have no effective remedy.
4 The class treatment of common questions of law and fact is also superior to
5 multiple individual actions or piecemeal litigation in that it conserves the resources
6 of the courts and litigants, and promotes consistency and efficiency of
7 adjudication. By contrast, the conduct of this action as a class action presents few
8 management difficulties, conserves the resources of the parties and of the court
9 system, and protects the rights of each Class member. Plaintiff anticipates no
10 difficulty in the management of this case as a class action.

11 27. Commonality. There are many questions of law and fact common to
12 the claims of Plaintiff and the other members of the Class, and those questions
13 predominate over any questions that may affect individual Class members within
14 the meaning of Rules 23(a)(2) and 23(b)(3).

15 28. Common questions of fact and law affecting members of the Class
16 include, but are not limited to, the following:

- 17 a. Whether Defendants failed to implement and maintain
18 reasonable security procedures and practices to protect
19 Plaintiff's and Class members' personal and medical
20 information;
- 21 b. Whether Defendants implemented and maintained reasonable
22 security practices to protect Plaintiff's and Class members'
23 personal and medical information from unauthorized access,
24 destruction, use, modification, or disclosure;
- 25 c. Whether Defendants negligently and unlawfully disclosed
26 Plaintiff's and Class members' personal and medical
27 information to unauthorized persons in violation of California
28 Civil Code section 56.10;

- 1 d. Whether Defendants negligently created, maintained, preserved,
2 stored, abandoned, destroyed, or disposed of Plaintiff's and
3 Class members' personal and medical information in violation
4 of California Civil Code section 56.101;
5 e. Whether Plaintiff and Class members are entitled to statutory
6 damages; and
7 f. Whether Plaintiff and Class members are entitled to restitution;
8 g. Whether Plaintiff and Class members are entitled to equitable
9 and/or injunctive relief.

10 29. Mr. Allen reserves the right to revise the foregoing "Class
11 Allegations" based on facts learned in discovery.

12 VI

13 CAUSES OF ACTIONS

14 *FIRST CAUSE OF ACTION*

15 **(Violations of the Confidentiality of Medical Information Act, California Civil
16 Code §§ 56 *et seq.*)**

17 **(Against All Defendants)**

18 30. Plaintiff incorporates by reference each allegation set forth above as if
19 fully set forth herein and further alleges as follows.

20 31. Defendants are providers of health care services with a network of
21 hospitals and offices that span throughout Southern California and are subject to
22 the requirements and mandates of the California Confidentiality of Medical
23 Information Act, Cal. Civ. Code §§ 56, *et seq.* ("CMIA").

24 32. Plaintiff and the Class are "patients" of Defendants within the
25 meaning of Civil Code section 56.05(g). Furthermore, Plaintiff and the Class, as
26 patients of the Defendants had their personal medical information recorded and
27 stored within Defendants' network.

28 33. Defendants requested and came into possession of Plaintiff's and

1 Class members' personal and medical information and had a duty to exercise
2 reasonable care in preserving the confidentiality of this information.

3 34. Defendants were entrusted with Plaintiff's and Class members'
4 personal and medical information as a provider of medical data processing and/or
5 other administrative services to Defendants and therefore also owed a duty of
6 reasonable care to Plaintiff and Class members to preserve the confidentiality of
7 their personal and medical information.

8 35. Under California Civil Code section 56.10, Defendants were required
9 to obtain Plaintiff's and Class members' authorization prior to disclosing their
10 personal or medical information.

11 36. On or around September 2014, Defendants negligently and unlawfully
12 disclosed Plaintiff's and Class members' personal and medical information,
13 without first obtaining Plaintiff's and Class members' authorization when cyber
14 hackers slipped into Defendants' computer networks containing sensitive patient
15 and subscriber information as required by the Confidentiality of Medical
16 Information Act, Cal. Civ. Code §§ 56.10, 56.104, and 56.11. Thus, Defendants'
17 negligence constitutes a violation of California Civil Code sections 56.10, 56.104,
18 and 56.11.

19 37. As a direct and proximate result of Defendants' violation of California
20 Civil Code sections 56.10, 56.104, and 56.11, accordingly, Plaintiff and the Class
21 seek relief under California Civil Code sections 56.35 and 56.36(b).

22 38. Plaintiff and the Class seek nominal damages of one thousand dollars
23 (\$1,000) per violation pursuant to California Civil Code section 56.36(b)(1), actual
24 damages per violation pursuant to California Civil Code section 56.36(b)(2),
25 punitive damages up to three thousand dollars (\$3,000) per violation pursuant to
26 California Civil Code section 56.35.

27 39. Plaintiff and the Class seek recovery of attorneys' fees of up to one
28 thousand dollars (\$1,000) per violation pursuant to California Civil Code section

1 56.35 and costs of litigation pursuant to California Civil Code section 56.35.

2 ***SECOND CAUSE OF ACTION***

3 **(Violation of Unlawful, Fraudulent and Unfair Business Practices, California**
4 **Business & Professions Code § 17200, *et seq.*)**

5 **(Against All Defendants)**

6 40. Plaintiff and the Class incorporate by reference all of the above
7 paragraphs of this Complaint as though fully stated herein.

8 41. As a result of Defendants' violation of California Civil Code sections
9 56.10, 56.104, and 56.11, as set forth above, and Defendant's violation of
10 California Business and Professions Code section 17200, as set forth below,
11 Plaintiff and members of the Class have suffered an injury in fact by, among other
12 things, having their personal information disseminated to others without their prior
13 written authorization, as required by the Confidentiality of Medical Information
14 Act, Cal. Civ. Code §§ 56.10, 56.104, and 56.11, and being exposed to identity
15 theft. Additionally, Plaintiff and members of the Class have lost property in that
16 Plaintiff and the Class suffered and are each entitled to nominal damages of one
17 thousand dollar (\$1,000) pursuant to Cal. Civ. Code § 56.36(b)(1).

18 42. Defendants' conduct in violation California Civil Code sections 56.10,
19 56.104, and 56.11, as set forth above, violates California Business and Professions
20 Code section 17200 in the following respects:

- 21 a) Defendants' negligent mishandling of Plaintiff's and the Class
22 members' medical information, as set forth above, constitutes an
23 unlawful business practice because Defendants' conduct violates
24 California Civil Code sections 56.10, 56.104, and 56.11;
- 25 b) Defendants' negligent mishandling of Plaintiff's and the Class
26 members' medical information, as set forth above, constitutes an
27 unfair business practice because Defendants' practice is
28 unethical, unscrupulous, and substantially injurious to

1 consumers. The harm to Plaintiff and members of the Class
2 outweighs the utility, if any, of Defendant's practices; and
3 c) Defendants' unlawful and unfair business practices, as described
4 above, present a continuing threat to Plaintiff and the Class since
5 Defendants continue to negligently maintain the medical
6 information of Plaintiff and the Class. Plaintiff and the Class
7 have no other adequate remedy of law in that absent equitable
8 relief from the Court, Defendants are likely to continue to injure
9 consumers, and thus engendering a multiplicity of judicial
10 proceedings.

11 43. Pursuant to the Business & Professions Code section 17203, Plaintiff
12 and the Class seek an order of this Court for equitable and/or injunctive relief in
13 the form of an order instructing Defendants to prohibit the unauthorized access to
14 the medical information of Plaintiff and the Class and to maintain the
15 confidentiality of the medical information of Plaintiff and the Class. Plaintiff and
16 the Class also seek the recovery of attorneys' fees and costs in prosecuting this
17 action against Defendants under California Code of Civil Procedure section 1021.5
18 and other applicable law.

19 ***THIRD CAUSE OF ACTION***

20 **(Invasion of Privacy)**

21 **(Against All Defendants)**

22 44. Plaintiff and the Class incorporate by reference all of the above
23 paragraphs of this Complaint as though fully stated herein.

24 45. As a result of providing health care services to Plaintiff and the Class
25 as patients of Defendants, each and every day during the two-year period preceding
26 the filing of this class action complaint through the present, Defendant invaded
27 Plaintiff's and the Class members' right to privacy by allowing the unauthorized
28 access to the medical information of Plaintiff and the Class and negligently

1 maintaining the confidentiality of the medical information of Plaintiff and the
2 Class, as set forth above.

3 46. The intrusion was offensive and objectionable to Plaintiff, the Class
4 and to a reasonable person or ordinary sensibilities in that the personal medical
5 information that Defendants obtain, is disclosed by Defendants without prior
6 written authorization of Plaintiff and the Class.

7 47. The intrusion was into a place or thing which was private and is
8 entitled to be private, in that Plaintiff's and Class' personal medical information
9 provided to Defendants as patients of Defendants were made privately, and was
10 intended to be kept confidential and protected from unauthorized disclosure.

11 48. As a proximate result of Defendants' above acts, Plaintiff's and Class
12 members' medical information was viewed, printed, distributed, and used by
13 persons without prior written authorization and Plaintiff and the Class suffered
14 general damages in an amount to be determined at trial according to proof.

15 49. Defendants are guilty of oppression, fraud, or malice by permitting the
16 unauthorized disclosure of Plaintiff's and the Class members' personal medical
17 information with a willful and conscious disregard of Plaintiff's and the Class
18 members' right to privacy.

19 50. Unless and until enjoined, and restrained by order of this Court,
20 Defendants' wrongful conduct will continue to cause Plaintiff and the Class, great
21 and irreparable injury in that the personal identification information maintained by
22 Defendants can be viewed, printed, distributed, and used by unauthorized persons.
23 Plaintiff and members of the Class have no adequate remedy of law for the injuries
24 in that a judgment for the monetary damages will not end the invasion of privacy
25 for Plaintiff and the Class.

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1 ***FOURTH CAUSE OF ACTION***

2 **(Constructive Fraud)**

3 **(Against All Defendants)**

4 51. Plaintiff hereby incorporates the foregoing paragraphs of this
5 Complaint and restates them as if they were fully written herein.

6 52. Defendants, in collecting Plaintiff and Class members' nonpublic
7 personal, financial and health information, were therefore entrusted with Plaintiff's
8 and Class members' nonpublic personal, financial, and health information and
9 were put in the same confidential and special relationship with Plaintiff and Class
10 members as they had with the companies that provided them with health insurance.

11 53. Defendants breached their confidential and special relationship with
12 Plaintiff and Class members by failing to adequately secure Plaintiff's and Class
13 members' nonpublic personal and financial information from unauthorized users,
14 including the cyber thieves who stole the information as described herein.

15 54. As a direct and proximate result of Defendants' breach, Plaintiff and
16 Class members have been harmed and have suffered, and will continue to suffer,
17 damages and injuries.

18 ***FIFTH CAUSE OF ACTION***

19 **(Breach of Contract)**

20 **(Against All Defendants)**

21 55. Plaintiff hereby incorporates the foregoing paragraphs of this
22 Complaint and restates them as if they were fully written herein.

23 56. Plaintiff and Class members, upon information and belief entered into
24 express contracts with Defendants that included Defendants' promise to protect
25 nonpublic personal information given to Defendants or that Defendants gather on
26 their own, from disclosure. Defendants' promise was incorporated into each of
27 their health insurance policies issued to Plaintiff and Class members.

28 57. Plaintiff and Class members performed their obligations under the

1 contract when they paid for their health care services.

2 58. Defendants breached their contractual obligation to protect the
3 nonpublic personal information Defendants gathered when the information was
4 accessed by unauthorized personnel as part of the cyber hacking that occurred on
5 or about September 2014.

6 59. As a direct and proximate result of Anthem's breach, Plaintiff and
7 Class members have been harmed and have suffered, and will continue to suffer,
8 damages and injuries.

9 ***SIXTH CAUSE OF ACTION***

10 **(Negligence Per Se)**

11 **(Against All Defendants)**

12 60. Plaintiff hereby incorporates the foregoing paragraphs of this
13 Complaint and restates them as if they were fully written herein.

14 61. Defendants had a duty under the Gramm-Leach-Bliley Act (GLBA) to
15 protect the security and confidentiality of their customers' personal information. 12
16 U.S.C. § 1843(k).

17 62. Defendants breached their duty to protect the security and
18 confidentiality of their patients' personal information by allowing their former and
19 current patients' nonpublic personal and medical information to be compromised
20 and stolen by cyber thieves as described throughout this Complaint. Amongst their
21 many failings, Defendants failed to encrypt their customers' nonpublic personal
22 and financial information so that if it were accessed by unauthorized persons, it
23 would not be easily readable or usable.

24 63. As a direct and proximate cause of Defendants' failure to protect the
25 security and confidentiality of their customers' nonpublic personal and financial
26 information, Plaintiff and Class members have been harmed and have suffered, and
27 will continue to suffer, damages and injuries.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Negligence)**

3 **(Against All Defendants)**

4 64. Plaintiff hereby incorporates the foregoing paragraphs of this
5 Complaint and restates them as if they were fully written herein.

6 65. Defendants had a foreseeable duty to disclose that Defendants could
7 not keep private patients' nonpublic personal, health and health related information
8 to Plaintiff and Class members.

9 66. Defendants had a foreseeable duty to Plaintiff and Class members to
10 exercise reasonable care to secure Plaintiff's and Class members' nonpublic
11 personal and financial health information from being accessed by unauthorized
12 persons. This duty included creating, maintaining, testing, and securing any
13 databases containing Defendants' customers' nonpublic personal and financial
14 information, to ensure that Plaintiff's and Class members' nonpublic personal and
15 financial information was secured from cyber attack, and other things. This duty
16 also included, at the minimum, that Plaintiff's and Class members' nonpublic
17 personal, financial and health information be encrypted.

18 67. Defendants had a foreseeable duty to Plaintiff and Class members to
19 implement processes to detect a breach of Defendants' security systems in a timely
20 manner and to act upon any warnings or alerts that Defendants' security systems
21 were breached.

22 68. Defendants had a foreseeable duty to Plaintiff and Class members to
23 timely disclose any breach of Defendants' security systems.

24 69. Defendants breached these duties owed to Plaintiff and Class
25 members by their conduct alleged herein by, *inter alia*, (i) not exercising
26 reasonable care in retaining, maintaining, securing, and safeguarding current and
27 former customers' nonpublic personal and financial information from being
28 accessed and taken by unauthorized persons, including failing to encrypt the

1 nonpublic personal and financial information; (ii) failing to implement processes to
2 detect a breach of its security systems in a timely manner and to act upon any
3 warnings or alerts that Defendants' security systems had been breached; (iii)
4 failing to timely disclose the data breach to Plaintiff and Class members; and (iv)
5 failing to disclose that Defendants could not adequately secure Plaintiff's or Class
6 members' personal or financial and health information.

7 70. As a result of Defendants' conduct described throughout this
8 Complaint, Plaintiff and members of the Class have been harmed and have
9 suffered, and will continue to suffer, damages and injuries.

10 ***EIGHTH CAUSE OF ACTION***

11 **(Breach of Implied Contract)**

12 **(Against All Defendants)**

13 71. Plaintiff hereby incorporates the foregoing paragraphs of this
14 Complaint and restates them as if they were fully written herein.

15 72. Defendants, provided Plaintiff and Class members with an implied
16 contract to protect and keep Defendants' patients' private nonpublic personal and
17 financial and health information when it gathered the information from each of its
18 patients.

19 73. Plaintiff and Class members would not have provided their personal
20 or financial and health information to Defendants or its subsidiaries. Defendants'
21 implied promises to safeguard and protect Defendants' customers' nonpublic
22 personal and financial information.

23 74. Plaintiff and Class members performed their obligations under the
24 implied contract when they provided their private personal, financial, and health
25 information as a patient and when they paid for the health care service provided by
26 Defendants.

27 75. Defendants breached the implied contracts with Plaintiff and Class
28 members by failing protect and keep private the nonpublic personal and financial

1 information provided to them about Plaintiff and Class members.

2 76. As a direct and proximate result of Defendants' breach of their
3 implied contracts, Plaintiff and Class members have been harmed and have
4 suffered, and will continue to suffer, damages and injuries.

5 ***NINTH CAUSE OF ACTION***

6 **(Unjust Enrichment)**

7 **(Against All Defendants)**

8 77. Plaintiff hereby incorporates the foregoing paragraphs of this
9 Complaint and restates them as if they were fully written herein.

10 78. Plaintiff and Class members conferred a benefit on Defendants in the
11 form of payment for health care services provided by Defendants, part of which
12 was to pay for Defendants to protect and keep private their customers' nonpublic
13 personal and financial information.

14 79. Defendants failed to pay for the benefits provided to them by Plaintiff
15 and Class members by failing to protect and keep private the nonpublic personal
16 and financial information with which Plaintiff and Class members entrusted
17 Defendants.

18 80. Defendants' failure to pay for the benefits provided to them, i.e., to
19 protect and keep private Plaintiff's and Class members' nonpublic personal,
20 financial, and health information, was to the detriment to Plaintiff and Class
21 members because it was Plaintiff's and Class members' nonpublic personal,
22 financial and health information that was stolen by cyber thieves.

23 81. As a direct and proximate result of Defendants' failure to pay for the
24 benefits provided to them, Plaintiff and the Class have been harmed and have
25 suffered, and will continue to suffer, damages and injuries, and are entitled to
26 restitution.

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1 **VII.**

2 **REQUEST FOR JURY TRIAL**

3 82. Mr. Allen requests a trial by jury of all issues which may be tried by a
4 jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

5 **VIII.**

6 **PRAYER FOR RELIEF**

7 Mr. Allen, on behalf of himself and class members, respectfully requests that
8 this Court award relief as follows:

- 9 a) Certify this case as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(1),
10 (b)(2), (b)(3) and/or (c)(4), and, pursuant to Fed. R. Civ. P. 23(g), appoint
11 the named Plaintiff to be Class representative and his undersigned counsel to
12 be Class counsel;
- 13 b) An order declaring that the actions of Defendants, as set out above, are in
14 violation of California Civil Code § 56.10;
- 15 c) An order declaring that the actions of Defendants, as set out above, are in
16 violation of California Civil Code § 56.101;
- 17 d) An order declaring that the actions of Defendants, as set out above, are in
18 violation of California Civil Code § 1798.81.5;
- 19 e) A judgment for and award of statutory damages to Plaintiff and the members
20 of the class pursuant to California Civil Code § 56.36(b)(1);
- 21 f) A permanent injunction enjoining Defendants from engaging in conduct in
22 violation of California Civil Code §§ 56.10, 56.101 and 1798.81.5;
- 23 g) An award of restitution pursuant to Business and Professions Code §§
24 17200, *et seq.*;
- 25 h) Payment of costs of suit herein incurred pursuant to, *inter alia*, California
26 Civil Code § 56.35;
- 27 i) Payment of attorneys' fees pursuant to, *inter alia*, California Civil Code §
28 56.35 and/or California Code of Civil Procedure § 1021.5;

- 1 j) Require Defendants to make whole any losses suffered by Plaintiff and Class
2 members;
- 3 k) Enjoin Defendants from further engaging in the unlawful conduct
4 complained of herein;
- 5 l) Award Plaintiff and the Class appropriate relief, including actual and
6 statutory damages, restitution and disgorgement;
- 7 m) Award pre- and post- judgment interest;
- 8 n) Require Defendants to pay for notifying the Class of the pendency of this
9 action; and
- 10 o) Grant all other and further relief as this Court deems necessary, just and
11 proper.

12
13 Dated: July 20, 2015

MAHONEY LAW GROUP, APC

14 /s/Kevin Mahoney

15 Kevin Mahoney
16 Attorney for Plaintiff Michael Allen

17
18 Dated: July 20, 2015

BRIANA KIM, PC

19 /s/Briana M. Kim

20 Briana M. Kim
21 Attorney for Plaintiff Michael Allen