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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTHERN CALIFORNIA  
SAN JOSE DIVISION

C.M., on behalf of herself and all others  
similarly situated,

Plaintiff,

v.

BETTERHELP, INC.,

Defendant.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff C.M.<sup>1</sup> bring this class action complaint on behalf of herself and all others similarly  
2 situated (the “Class Members”) against BetterHelp, Inc. (“BetterHelp” or “Defendant”). The  
3 allegations contained in this class action complaint are based on Plaintiff’s personal knowledge of  
4 facts pertaining to herself and upon information and belief, including further investigation conducted  
5 by Plaintiff’s counsel.

## 6 NATURE OF THE ACTION

7 1. This is a class action lawsuit brought on behalf of a nationwide class to address  
8 Defendant’s improper, unauthorized, and illegal disclosure of their personally identifiable  
9 information (“PII”) and/or protected health information (“PHI”) (collectively referred to as “Private  
10 Information”) to third-party advertising platforms such as Facebook, Snapchat, and others.

11 2. Information about a person’s mental health is among the most confidential and  
12 sensitive information in our society, and the mishandling of medical information can have serious  
13 consequences, including discrimination in the workplace or denial of insurance coverage. If people  
14 do not trust that their medical information will be kept private, they may be less likely to seek  
15 medical treatment, which can lead to more serious health problems down the road. In addition,  
16 protecting medical information and making sure it is kept confidential and not disclosed to anyone  
17 other than the person’s medical provider is necessary to maintain public trust in the healthcare  
18 system as a whole.

19 3. Recognizing these facts, and in order to implement requirements of the Health  
20 Insurance Portability and Accountability Act of 1996 (“HIPAA”), the United States Department of  
21 Health and Human Services (“HHS”) has established “Standards for Privacy of Individually  
22 Identifiable Health Information” (also known as the “Privacy Rule”) governing how health care  
23 providers must safeguard and protect Private Information. Under the HIPAA Privacy Rule, **no** health  
24 care provider can disclose a person’s personally identifiable protected health information to a third  
25 party without express written authorization.

26  
27 <sup>1</sup> Plaintiff brings this action anonymously to protect her confidential personal health information,  
28 which is protected under the Health Insurance Portability and Accountability Act of 1996  
 (“HIPAA”).

1           4. Defendant has developed, advertised, and offered for sale an online mental health  
2 counseling service that matches users with Defendant’s therapists and then facilitates counseling via  
3 Defendant’s websites, including [www.betterhelp.com](http://www.betterhelp.com), and apps. In addition to general mental health  
4 counseling services, Defendant offers specialized counseling services for specific demographics,  
5 including but not limited to teens (via [www.teencounseling.com](http://www.teencounseling.com)), people of Christian faith (via  
6 [www.faithfulcounseling.com](http://www.faithfulcounseling.com)), and members of the LGBTQ community (via  
7 [www.pridecounseling.com](http://www.pridecounseling.com)). Defendants’ separate websites and apps are collectively referred to  
8 herein as “Defendants’ Website” or the “Website.”

9           5. Millions of consumers have signed up for Defendant’s counseling services. In doing  
10 so, those customers entrusted Defendant with their Private Information, including their health status  
11 and histories, mental health condition, and symptoms and treatment sought, as well as identifying  
12 information such as names, email addresses, and IP addresses.

13           6. Recognizing the sensitivity of this Private Information, Defendant repeatedly  
14 promised to keep it private and use it only for non-advertising purposes such as to facilitate  
15 consumers’ mental health therapy.

16           7. Rather than protecting Plaintiff’s and Class Members’ confidential and sensitive  
17 Private Information, however, Defendant installed web beacons and cookies on its Website to track  
18 users and collect data and information about them that it could later monetize.

19           8. According to a complaint filed by the Federal Trade Commission (“FTC”), from  
20 2013 to December 2020, Defendant continually broke its promises to protect consumers’ Private  
21 Information, instead using it to target existing and new customers with advertising for its services.  
22 Defendant also handed over Plaintiff’s and Class Members’ Private Information to some of the  
23 largest online advertising companies in the world, such as Facebook, Pinterest, Criteo, and Snapchat,  
24 often permitting these companies to use the sensitive Private Information for their own research,  
25 product development, and advertising purposes.

26           9. The FTC also alleged that Defendant: (i) failed to employ reasonable measures to  
27 safeguard Private Information it collected from customers; (ii) failed to properly train its employees  
28 to protect Private Information when using it for advertising; (iii) failed to properly supervise staff

1 in the use of Private Information; (iv) failed to provide customers with proper notice as to the  
2 collection, use, and disclosure of their Private Information; and (v) failed to limit how third parties  
3 could use customers' Private Information.

4 10. The FTC's Director of its Bureau of Consumer Protection, Samuel Levine, recently  
5 stated, "Digital health companies and mobile apps should not cash in on consumers' extremely  
6 sensitive and personally identifiable health information," noting that the sale of this information  
7 constituted blatant "misuse and illegal exploitation."

8 11. In response to the use of tracking and data collection technologies by companies  
9 offering health care services, the Office for Civil Rights at the U.S. Department of Health and  
10 Human Services ("HHS") recently published a bulletin concerning the Use of Online Tracking  
11 Technologies by HIPAA Covered Entities and Business Associates (the "Bulletin").<sup>2</sup> The Bulletin  
12 warns that:

13 An impermissible disclosure of an individual's PHI not only violates the Privacy  
14 Rule but also may result in a wide range of additional harms to the individual or  
15 others. For example, an impermissible disclosure of PHI may result in identity theft,  
16 financial loss, discrimination, stigma, mental anguish, or other serious negative  
17 consequences to the reputation, health, or physical safety of the individual or to  
18 others identified in the individual's PHI. Such disclosures can reveal incredibly  
19 sensitive information about an individual, including diagnoses, frequency of visits to  
20 a therapist or other health care professionals, and where an individual seeks medical  
21 treatment. While it has always been true that regulated entities may not  
22 impermissibly disclose PHI to tracking technology vendors, because of the  
23 proliferation of tracking technologies collecting sensitive information, now more  
24 than ever, it is critical for regulated entities to ensure that they disclose PHI **only** as  
25 expressly permitted or required by the HIPAA Privacy Rule.

20 12. And as recently noted by the Hon. William J. Orrick in a decision concerning the use  
21 of the data tracking technologies by healthcare organizations, "[o]ur nation recognizes the  
22 importance of privacy in general and health information in particular: the safekeeping of this  
23 sensitive information is enshrined under state and federal law."<sup>3</sup>

24 13. Consequently, Plaintiff brings this action for legal and equitable remedies to address  
25 and rectify the illegal conduct and actions described herein.

26 \_\_\_\_\_  
27 <sup>2</sup> <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-online-tracking/index.html>

28 <sup>3</sup> *In re Meta Pixel Healthcare Litig.*, No. 22-CV-03580-WHO, 2022 WL 17869218, at \*1 (N.D. Cal. Dec. 22, 2022)

1 **JURISDICTION AND VENUE**

2 14. This Court has subject matter jurisdiction over this action under 28 U.S.C.  
3 § 1332(d) because this is a class action wherein the amount in controversy exceeds the sum or value  
4 of \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed  
5 class, and at least one member of the class is a citizen of a state different from Defendant.

6 15. This Court has personal jurisdiction over Defendant because its principal place of  
7 business is in this District and many of the acts and omissions giving rise to Plaintiff's claims  
8 occurred in and emanated from this District.

9 16. Venue is proper under 18 U.S.C § 1391(b)(1) because Defendant's principal place  
10 of business is in this District.

11 **DIVISIONAL ASSIGNMENT**

12 17. Pursuant to Civil Local Rule 3-2(c), a substantial part of the events giving rise to  
13 the claims brought in this Complaint occurred in Santa Clara County, California. Consequently,  
14 assignment of this action to the San Jose Division is appropriate.

15 **THE PARTIES**

16 18. Plaintiff C.M. is an adult citizen of the State of Texas. She brings this action  
17 anonymously to protect her confidential personal health information, which is protected under  
18 HIPAA.

19 19. Defendant BetterHelp, Inc. is a Delaware corporation with a principal place of  
20 business located at 990 Villa Street, Mountain View, CA 94041.

21 20. Defendant does business under various other names in addition to BetterHelp,  
22 including Compile, Inc., Mytherapist, Teen Counseling, Faithful Counseling, Pride Counseling,  
23 Icounseling, Regain, and Terappeuta.

24 **FACTUAL ALLEGATIONS**

25 **Background**

26 21. Defendant BetterHelp has been in operation since 2013, offering online mental health  
27 counseling services via various websites and apps.

28

1           22. Defendant’s primary website, [www.betterhelp.com](http://www.betterhelp.com), offers general counseling  
2 services and has been in operation since 2013. In addition, Defendant has numerous other websites  
3 and apps that are targeted to more specific demographics. In 2016, Defendant began offering  
4 marriage and relationship counseling and services via [www.regain.us](http://www.regain.us). In 2017, Defendant began  
5 offering specialized counseling to teenagers via [www.teencounseling.com](http://www.teencounseling.com), to people of Christian  
6 faith via [www.faithfulcounseling.com](http://www.faithfulcounseling.com), to the LGBTQ community via [www.pridecounseling.com](http://www.pridecounseling.com).

7           23. Since its inception, Defendant has signed up over 2 million users and as of 2022 had  
8 more than 374,000 active users in the United States. Defendant earned more than \$345 million in  
9 revenue in 2020 and more than \$720 million in revenue in 2021.

10 **Defendant’s Deceptive and Unfair Marketing Practices**

11           24. Defendant has spent significant efforts since inception advertising and marketing its  
12 services through various digital and traditional media platforms, including television and radio as  
13 well as podcasts, search engine ads, and through third parties such as Facebook, Snapchat, Pinterest,  
14 and Criteo.

15           25. Defendant has spent tens of millions of dollars annually to market its counseling  
16 services. In 2020, Defendant spent between \$10-20 million on Facebook advertising alone. This  
17 advertising was extremely successful; by 2021, Defendant’s advertising through Facebook was  
18 generating approximately 90,000 – 120,000 new customers per year.

19           26. Defendant markets all of its services by offering online communications with  
20 licensed therapists telling “who you can trust.” BetterHelp also claims that customers using its  
21 therapists will “get the same professionalism and quality you would expect from an in-office  
22 therapist, but with the ability to communicate when and how you want.”<sup>4</sup>

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<sup>4</sup> [betterhelp.com](http://betterhelp.com) (last visited March 6, 2023)

1 Professional, licensed, and  
2 vetted therapists who you  
3 can trust

4 Tap into the world's largest network of licensed,  
5 accredited, and experienced therapists who can help  
6 you with a range of issues including depression, anxiety,  
7 relationships, trauma, grief, and more. With our  
8 therapists, you get the same professionalism and quality  
9 you would expect from an in-office therapist, but with  
10 the ability to communicate when and how you want.

11 [Get Matched to a Therapist](#)



12 27. Customers signing up for Defendant’s counseling services pay between \$60 and \$90  
13 per week. To sign up for counseling services, a customer must fill out an online intake questionnaire  
14 and answer a detailed series of questions about the customer’s personal life and mental health,  
15 including age, gender, marital/relationship status, whether the customer has ever been in therapy  
16 before. The online questionnaire also asks questions about the customer’s subjective rating of their  
17 physical health, eating habits, financial status, and sleep habits, and the customer’s employment  
18 status.

19 28. The questionnaire also asks a series of questions about symptoms or reasons why  
20 the customer is seeking therapy (e.g., feelings of depression, anxiety, grief, etc.), including asking  
21 if the customer is “experiencing overwhelming sadness, grief, or depression” or has been having  
22 thoughts that the customer “would be better off dead or hurting yourself in some way.”

23 29. The questionnaire also asks if the customer identifies as religious or as a member of  
24 the LGBTQ community, directing them to Faithful Counseling or Pride Counseling, respectively.  
25 In addition, teenagers are directed to Teen Counseling.

26 30. According to the FTC, in 2017, Defendant delegated most decision-making authority  
27 over its use of Facebook’s advertising services to a junior marketing analyst who was a recent  
28 college graduate, had never worked in marketing, and had no experience and little training in

1 safeguarding consumers' Private Information when using that information for advertising. In 2017  
2 Defendant gave the analyst unilateral authority to decide what Private Information to upload to  
3 Facebook and how to use that information. Defendant provided this marketing analyst with little  
4 training on how to protect customers' Private Information in connection with advertising until 2021.

5 31. Until November 2021, Defendant's Website included privacy assurances throughout  
6 the pages of the questionnaire. For example, at the top of each question, Defendant stated that it was  
7 asking for "general and *anonymous*" background information (emphasis added). In reality, the  
8 information collected was not anonymous.

9 32. In addition, from at least August 2017 to December 2020, Website visitors taking the  
10 questionnaire who reached the question about whether they were taking any medication were shown  
11 the statement: "Rest assured – any information provided in this questionnaire will stay private  
12 between you and your counselor." In December 2020, this statement was changed to read: "Rest  
13 assured – this information will stay private between you and your counselor." In January 2021, the  
14 statement was changed again, reading: "Rest assured – your health information will stay private  
15 between you and your counselor." In October 2021, Defendant removed this representation  
16 altogether.

17 33. Defendant also made false promises about its use of customers' email addresses,  
18 telling visitors to the Faithful Counseling, Pride Counseling, and Teen Counseling websites during  
19 the sign-up process that their email addresses would not be shared. From at least August 2017 to  
20 December 2020, Defendant assured such Website visitors that "Your email address is kept *strictly*  
21 *private*. It is never shared sold or disclosed to anyone. Even your counselor won't know your real  
22 email address." (emphasis added)

23 34. Millions of Website visitors, including those like Plaintiff and Class Members who  
24 ultimately signed up for Defendant's counseling services, were presented with these repeated  
25 promises about the confidentiality of the Private Information they shared with Defendant. Despite  
26 these promises, however, Defendant used Private Information extensively for Defendant's own  
27 profit, including by sharing and disclosing Private Information and selling email addresses.

28



1           35.     The FTC’s complaint against Defendant sets forth in great detail the extent to which  
2 Defendant brazenly violated Plaintiff’s and Class Members’ privacy and other rights by disclosing  
3 Private Information to third parties like Facebook, Snapchat, and others. A copy of the FTC’s  
4 complaint is attached hereto as Exhibit “A.” A few highlights are worth noting here:

- 5           • The intake questionnaire’s privacy assurances were “displayed in large, high-  
6 contrast, unavoidable text,” while Defendant’s privacy policies were linked in  
7 “small, low-contrast writing that is barely visible at the bottom of the page.” When  
8 Defendant added a banner at the bottom of each page in September 2020  
9 disclosing its use of cookies, it still falsely stated: “We never sell or rent any  
10 information you share with us.” Exh. A at 7-9. This was false.
- 11           • Defendant’s privacy policies went through numerous iterations that each  
12 contained deceptive and misleading statements about Defendant’s use and  
13 disclosure of Private Information. While Defendant disclosed it would use web  
14 beacons (including pixels) and cookies for certain limited purposes, it never  
15 disclosed that it would use or disclose Private Information for advertising  
16 purposes or to sell to third parties for their own purposes. *Id.* at 9-10
- 17           • Defendant disclosed millions of Class Members’ Private Information to  
18 advertisers including Facebook. Over 7 million email addresses were uploaded to  
19 Facebook, which “matched over 4 million of these Visitors and Users with their  
20 Facebook user IDs, linking their use of the Service for mental health treatment  
21 with their Facebook accounts.” Defendant also allowed Facebook to  
22 “automatically track certain actions” of Website users known as “Events.”  
23 Defendant “recorded and automatically disclosed these Events to Facebook  
24 through web beacons [Defendant] had placed on each of the [Websites].”  
25 Defendant and Facebook used this data to target advertising to millions of Class  
26 Members. *Id.* at 10-12.

27           36.     On March 2, 2023, the FTC announced that it had finalized a Consent Order with  
28 Defendant addressing Defendant’s deceptive and misleading business practices in using sensitive

1 personally identifiable information and personal health information and disclosing it to third parties.  
2 *See* Exhibit B.

3 37. As part of the Consent Order, Defendant has agreed to pay \$7.8 million to the FTC  
4 and to be subject to various auditing and compliance monitoring procedures in connection with its  
5 privacy policies and handling of customer data and information. *Id.*

6 38. In addition, Defendant is required under the Consent Order to provide its customers  
7 with a Notice advising customers about the FTC action and telling customers that (i) it will tell the  
8 advertising companies that received customers' information to delete it; (ii) it is no longer sharing  
9 customers' health information with other companies for advertising and it is no longer sharing  
10 customers' personal information for advertising without the customers' permission; and (iii) it will  
11 enhance its privacy program to better protect customers' personal health information, including  
12 participating in an independent audit program every two years for the next 20 years. *Id.* at 22-23.

13 **Defendant Was Enriched and Benefitted from the Use and Disclosure of Plaintiff's and Class**  
14 **Members' Private Information, Which Had Financial Value**

15 39. In exchange for disclosing the Private Information of its patients, Defendant was  
16 able to obtain tens or hundreds of thousands of new customers, each of whom paid between \$60 and  
17 \$90 per week for Defendant's counseling services.

18 40. Defendant's disclosure of Private Information also hurt Plaintiff and the Class.  
19 Conservative estimates suggest that in 2018, Internet companies earned \$202 per American user  
20 from mining and selling data. That figure is only due to keep increasing; estimates for 2022 are as  
21 high as \$434 per user, for a total of more than \$200 billion industry wide.  
22

23 41. The value of health data in particular is well-known and has been reported on  
24 extensively in the media. For example, Time Magazine published an article in 2017 titled "How  
25 Your Medical Data Fuels a Hidden Multi-Billion Dollar Industry" in which it described the  
26  
27  
28

1 extensive market for health data and observed that the market for information was both lucrative  
2 and a significant risk to privacy.<sup>5</sup>

3 42. Similarly, CNBC published an article in 2019 in which it observed that “[d]e-  
4 identified patient data has become its own small economy: There’s a whole market of brokers who  
5 compile the data from providers and other health-care organizations and sell it to buyers.”<sup>6</sup>  
6

### 7 **IP Addresses Are Personally Identifiable Information**

8 43. On information and belief, Defendant also disclosed and sold Plaintiff’s and Class  
9 Members’ Computer IP addresses.

10 44. An IP address is a number that identifies the address of a device connected to the  
11 Internet.

12 45. IP addresses are used to identify and route communications on the Internet.

13 46. IP addresses of individual Internet users are used by Internet service providers,  
14 websites, and third-party tracking companies to facilitate and track Internet communications.  
15

16 47. Under HIPAA, an IP address is considered personally identifiable information:

- 17 • HIPAA defines personally identifiable information to include “any unique  
18 identifying number, characteristic or code” and specifically lists the example of IP  
19 addresses. See 45 C.F.R. § 164.514 (2).
- 20 • HIPAA further declares information as personally identifiable where the covered  
21 entity has “actual knowledge that the information to identify an individual who is a  
22 subject of the information.” 45 C.F.R. § 164.514(2)(ii); See also, 45 C.F.R. §  
23 164.514(b)(2)(i)(O).  
24  
25

26  
27 <sup>5</sup> See <https://time.com/4588104/medical-data-industry/> (last visited February 16, 2023).

28 <sup>6</sup> See <https://www.cnbc.com/2019/12/18/hospital-execs-say-theyre-flooded-with-requests-for-your-health-data.html> (last visited February 16, 2023).

1           48.           Consequently, by disclosing IP addresses, Defendant’s business practices violated  
2 HIPAA and industry privacy standards.

3 **Defendant Violated Industry Standards**

4           49.           A medical provider’s duty of confidentiality is a cardinal rule and is embedded in  
5 the physician-patient and hospital-patient relationship.

6           50.           The American Medical Association’s (“AMA”) Code of Medical Ethics contains  
7 numerous rules protecting the privacy of patient data and communications.  
8

9           51.           AMA Code of Ethics Opinion 3.1.1 provides:

10           Protecting information gathered in association with the care of the patient is a core value in  
11 health care... Patient privacy encompasses a number of aspects, including, ... personal data  
(informational privacy)

12           52.           AMA Code of Medical Ethics Opinion 3.2.4 provides:

13           Information gathered and recorded in association with the care of the patient is confidential.  
14 Patients are entitled to expect that the sensitive personal information they divulge will be  
15 used solely to enable their physician to most effectively provide needed services. Disclosing  
16 information for commercial purposes without consent undermines trust, violates principles  
17 of informed consent and confidentiality, and may harm the integrity of the patient-physician  
18 relationship. Physicians who propose to permit third-party access to specific patient  
information for commercial purposes should: (A) Only provide data that has been de-  
identified. [and] (b) Fully inform each patient whose record would be involved (or the  
patient’s authorized surrogate when the individual lacks decision-making capacity about the  
purposes for which access would be granted.

19           53.           AMA Code of Medical Ethics Opinion 3.3.2 provides:

20           Information gathered and recorded in association with the care of a patient is confidential,  
21 regardless of the form in which it is collected or stored. Physicians who collect or store  
22 patient information electronically...must...:(c ) release patient information only in keeping  
ethics guidelines for confidentiality.

23 **PLAINTIFF’S EXPERIENCE WITH DEFENDANT’S WEBSITE**

24           54.           Beginning in January 2020, Plaintiff C.M. sought counseling services from  
25 Defendant to deal with stress and anxiety she was experiencing as the result of serving as a caregiver  
26 for her husband, who was critically ill at the time.  
27  
28

1 55. Plaintiff filled out the intake questionnaire and ultimately decided to sign up for  
2 Defendant's services, paying \$130/month for a monthly subscription for psychotherapy and mental  
3 health counseling.

4 56. Prior to deciding to transact with Defendant, Plaintiff viewed and relied upon  
5 Defendant's representations concerning its commitment to maintaining the confidentiality of Private  
6 Information communicated by consumers via Defendant's web platforms. Had Plaintiff known that  
7 Defendant would not maintain her information as private and confidential, Plaintiff would not have  
8 purchased Defendant's services or would have paid less for them.

9 57. Over the next two months, Plaintiff spoke with two BetterHelp therapists to discuss  
10 her mental health issues. Plaintiff's therapy sessions occurred approximately once per week via the  
11 BetterHelp app on her smartphone.

12 58. In December 2021, Plaintiff again sought psychotherapy and mental health  
13 counseling services from Defendant. From December 2021 through March 2022, Plaintiff paid  
14 \$1,005 for numerous live video and telephone therapy sessions with two separate BetterHelp  
15 therapists.

16 59. Beginning in October 2022, Plaintiff again sought psychotherapy and mental health  
17 counseling services from Defendant, paying an additional \$965 for monthly subscriptions and add-  
18 on live therapy sessions.

19 60. Plaintiff reasonably expected that her communications with Defendant via the  
20 Website and app were confidential, solely between herself and Defendant and her therapists, and  
21 that such communications would not be disclosed to a third party.

22 61. Plaintiff has an active Facebook account that she accesses on her computer and  
23 smartphone. She also has an active Pinterest account.  
24  
25  
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1 successor or assign, and any Judge who adjudicates this case, including their staff and immediate  
2 family.

3 69. Plaintiff reserves the right to modify or amend the definition of the proposed classes  
4 before the Court determines whether certification is appropriate.

5 70. Numerosity, Fed R. Civ. P. 23(a)(1). The Class Members for each proposed Class  
6 are so numerous that joinder of all members is impracticable. Upon information and belief, there  
7 are millions of individuals whose Private Information may have been improperly disclosed to third  
8 parties, and the Class is identifiable within Defendant's records.

9 71. Commonality, Fed. R. Civ. P. 23(a)(2) and (b)(3). Questions of law and fact common  
10 to each Class exist and predominate over any questions affecting only individual Class Members.

11 These include:

- 12
- 13 a. Whether and to what extent Defendant had a duty to protect the PII and PHI of Plaintiff  
14 and Class Members;
- 15
- 16 b. Whether Defendant had duties not to disclose the PII and PHI of Plaintiff and Class  
17 Members to unauthorized third parties;
- 18
- 19 c. Whether Defendant violated its Privacy Policies by disclosing the PII and PHI of  
20 Plaintiff and Class Members to Facebook, Snapchat, Pinterest, Criteo, and/or  
21 additional third parties;
- 22
- 23 d. Whether Defendant adequately, promptly, and accurately informed Plaintiff and Class  
24 Members that their PII and PHI would be disclosed to third parties;
- 25
- 26 e. Whether Defendant violated the law by failing to promptly notify Plaintiff and Class  
27 Members that their PII and PHI had been compromised;
- 28
- 28 f. Whether Defendant adequately addressed and fixed the practices which permitted the  
disclosure of patient PHI and PII;

- 1           g. Whether Defendant engaged in unfair, unlawful, or deceptive practices by failing to  
2           safeguard the PII and PHI of Plaintiff and Class Members;
- 3           h. Whether Defendant violated the consumer protection statutes invoked herein;
- 4           i. Whether Plaintiff and Class Members are entitled to actual, consequential, and/or  
5           nominal damages as a result of Defendant's wrongful conduct;
- 6           j. Whether Defendant knowingly made false representations as to its data security and/or  
7           Privacy Policies practices;
- 8           k. Whether Defendant knowingly omitted material representations with respect to its data  
9           security and/or Privacy Policies practices; and

10           72. Typicality, Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of those of other  
11           Class Members because each had their Private Information misused and disclosed as a result of  
12           Defendant's conduct.

13           73. Adequacy, Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and  
14           protect the interests of the Class Members in that Plaintiff has no disabling conflicts of interest that  
15           would be antagonistic to those of the other Members of the Class. Plaintiff seeks no relief that is  
16           antagonistic or adverse to the Members of the Class and the infringement of the rights and the  
17           damages Plaintiff has suffered are typical of other Class Members. Plaintiff has also retained counsel  
18           experienced in complex class action litigation, and Plaintiff intends to prosecute this action  
19           vigorously.

20           74. Superiority and Manageability, Fed. R. Civ. P. 23(b)(3). Class litigation is an  
21           appropriate method for fair and efficient adjudication of the claims involved. Class action treatment  
22           is superior to all other available methods for the fair and efficient adjudication of the controversy  
23           alleged herein; it will permit a large number of Class Members to prosecute their common claims  
24           in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence,  
25



1 effort, and expense that hundreds of individual actions would require. Class action treatment will  
2 permit the adjudication of relatively modest claims by certain Class Members, who could not  
3 individually afford to litigate a complex claim against large corporations, like Defendant. Further,  
4 even for those Class Members who could afford to litigate such a claim, it would still be  
5 economically impractical and impose a burden on the courts.  
6

7 75. Policies Generally Applicable to the Class. This class action is also appropriate for  
8 certification because Defendant has acted or refused to act on grounds generally applicable to the  
9 Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of  
10 conduct toward the Class Members and making final injunctive relief appropriate with respect to  
11 the Class as a whole. Defendant's policies challenged herein apply to and affect Class Members  
12 uniformly and Plaintiff's challenge of these policies hinges on Defendant's conduct with respect to  
13 the Class as a whole, not on facts or law applicable only to Plaintiff.  
14

15 76. The nature of this action and the nature of laws available to Plaintiff and Class  
16 Members make the use of the class action device a particularly efficient and appropriate procedure  
17 to afford relief to Plaintiff and Class Members for the wrongs alleged because Defendant would  
18 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm  
19 the limited resources of each individual Class Member with superior financial and legal resources;  
20 the costs of individual suits could unreasonably consume the amounts that would be recovered;  
21 proof of a common course of conduct to which Plaintiff was exposed is representative of that  
22 experienced by the Class and will establish the right of each Class Member to recover on the cause  
23 of action alleged; and individual actions would create a risk of inconsistent results and would be  
24 unnecessary and duplicative of this litigation.  
25

26 77. The litigation of the claims brought herein is manageable. Defendant's uniform  
27 conduct, the consistent provisions of the relevant laws, and the ascertainable identities of Class  
28

1 Members demonstrate that there would be no significant manageability problems with prosecuting  
2 this lawsuit as a class action.

3 78. Adequate notice can be given to Class Members directly using information  
4 maintained in Defendant's records.

5 79. Unless a Class-wide injunction is issued, Defendant may continue in its failure to  
6 properly secure the Private Information of Class Members, Defendant may continue to refuse to  
7 provide proper notification to Class Members regarding the practices complained of herein, and  
8 Defendant may continue to act unlawfully as set forth in this Complaint.

9 80. Further, Defendant has acted or refused to act on grounds generally applicable to  
10 each Class and, accordingly, final injunctive or corresponding declaratory relief with regard to the  
11 Class Members as a whole is appropriate under Rule 23(b)(2) of the Federal Rules of Civil  
12 Procedure.  
13

14 81. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification  
15 because such claims present only particular, common issues, the resolution of which would advance  
16 the disposition of this matter and the parties' interests therein. Such particular issues include, but  
17 are not limited to:  
18

- 19 a. Whether Defendant owed a legal duty to not disclose Plaintiff's and Class Members'  
20 Private Information;
- 21 b. Whether Defendant owed a legal duty to not disclose Plaintiff's and Class Members'  
22 Private Information with respect to Defendant's Privacy Policies;
- 23 c. Whether Defendant breached a legal duty to Plaintiff and Class Members to exercise  
24 due care in collecting, storing, using, and safeguarding their Private Information;
- 25 d. Whether Defendant failed to comply with its own policies and applicable laws,  
26 regulations, and industry standards relating to data security;  
27  
28

- 1 e. Whether Defendant adequately and accurately informed Plaintiff and Class Members
- 2 that their Private Information would be disclosed to third parties;
- 3 f. Whether Defendant failed to implement and maintain reasonable security procedures
- 4 and practices appropriate to the nature and scope of the information disclosed to third
- 5 parties; and
- 6 g. Whether Class Members are entitled to actual, consequential, and/or nominal
- 7 damages, and/or injunctive relief as a result of Defendant's wrongful conduct.
- 8

9 82. Plaintiff reserves the right to amend or modify the Class definition as this case  
10 progresses.

11 **COUNT I**  
12 **BREACH OF IMPLIED CONTRACT**  
13 **(On behalf of Plaintiff and the Nationwide Class)**

14 83. Plaintiff repeats and re-alleges each and every allegation contained in the Complaint  
15 as if fully set forth herein.

16 84. When Plaintiff and Class Members provided their Private Information to Defendant  
17 in exchange for services, they entered into an implied contract pursuant to which Defendant agreed  
18 to safeguard and not disclose their Private Information without consent.

19 85. Plaintiff and Class Members accepted Defendant's offers and provided their Private  
20 Information to Defendant.

21 86. Plaintiff and Class Members would not have entrusted Defendant with their Private  
22 Information in the absence of an implied contract between them and Defendant obligating Defendant  
23 to not disclose Private Information without consent.

24 87. Defendant breached these implied contracts by disclosing Plaintiff's and Class  
25 Members' Private Information to third parties, including Facebook, Snapchat, Pinterest, and Criteo.

26 88. As a direct and proximate result of Defendant's breaches of these implied contracts,  
27 Plaintiff and Class Members sustained damages as alleged herein. Plaintiff and Class Members  
28

1 would not have used Defendant’s services, or would have paid substantially for these services, had  
2 they known their Private Information would be disclosed.

3 89. Plaintiff and Class Members are entitled to compensatory and consequential damages  
4 as a result of Defendant’s breach of implied contract.  
5

6 **COUNT II**  
7 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
8 **Cal. Bus. & Prof. Code § 17200**

9 90. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
10 forth herein and brings this claim individually and on behalf of the proposed Class.

11 91. This Count is pleaded in the alternative to the breach of contract count above.

12 92. California’s Unfair Competition Law (“UCL”) prohibits any “unlawful, unfair, or  
13 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal.  
14 Bus. & Prof. Code § 17200.

15 93. Defendant engaged in unlawful business practices in connection with its disclosure  
16 of Plaintiff’s and Class Members’ Private Information to unrelated third parties, including  
17 Facebook, Snapchat, Pinterest, and Criteo, in violation of the UCL.

18 94. The acts, omissions, and conduct of Defendant were controlled, directed, and  
19 emanated from its California headquarters.  
20

21 95. The acts, omissions, and conduct of Defendant as alleged herein constitute “business  
22 practices” within the meaning of the UCL.

23 96. Defendant violated the “unlawful” prong of the UCL by violating, inter alia,  
24 Plaintiff’s and Class Member’s constitutional rights to privacy, state and federal privacy statutes,  
25 and state consumer protection statutes, such as HIPAA and the California Confidentiality of  
26 Information Act (“CMIA”). Defendant also violated the unlawful prong of the UCL by  
27  
28

1 disseminating false and misleading statements regarding its privacy practices in violation of  
2 California's False Advertising Laws.

3       97. Defendant's acts, omissions, and conduct also violate the unfair prong of the UCL  
4 because those acts, omissions, and conduct, as alleged herein, offended public policy (including the  
5 aforementioned federal and state privacy statutes and state consumer protection statutes, such as  
6 HIPAA and CMIA and constitute immoral, unethical, oppressive, and unscrupulous activities that  
7 caused substantial injury, including to Plaintiff and Class Members.  
8

9       98. Defendant's acts, omissions, and conduct also violate the fraudulent prong of the  
10 UCL because Defendant made material misrepresentations and omissions of fact to induce Plaintiff  
11 and Class Members to purchase Defendant's services without disclosing that Defendant shared,  
12 used, and sold Plaintiff's and Class Members Private Information and without obtaining consent.  
13 Defendant's acts, omissions, nondisclosures, and misleading statements as alleged herein were and  
14 are false, misleading, and/or likely to deceive the consuming public.  
15

16       99. Plaintiff viewed and relied upon Defendant's representations concerning the  
17 confidentiality of information provided by Plaintiff and Class Members to Defendant. Had  
18 Defendant disclosed that it shared Private Information with third parties, Plaintiff would not have  
19 purchased Defendant's services or would have paid considerably less for those services.  
20

21       100. The harm caused by the Defendant's conduct outweighs any potential benefits  
22 attributable to such conduct and there were reasonably available alternatives to further Defendant's  
23 legitimate business interests other than Defendant's conduct described herein.

24       101. As result of Defendant's violations of the UCL, Plaintiff and Class Members have  
25 suffered injury in fact and lost money or property, including but not limited to payments to  
26 Defendant and/or other valuable consideration, *e.g.*, access to their private and personal data. The  
27  
28

1 unauthorized access to Plaintiff's and Class Members' private and personal data also has diminished  
2 the value of that information.

3  
4 **COUNT III**  
5 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**  
6 **Cal. Bus. & Prof. Code § 17500**

7 102. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set  
8 forth herein and brings this claim individually and on behalf of the proposed Class.

9 103. This Count is pleaded in the alternative to the breach of contract count above.

10 104. The acts, omissions, and conduct of Defendant were controlled, directed, and  
11 emanated from its California headquarters.

12 105. California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq., makes  
13 it "unlawful for any person to make or disseminate or cause to be made or disseminated before the  
14 public in this state, ... in any advertising device ... or in any other manner or means whatever,  
15 including over the Internet, any statement, concerning ... personal property or services, professional  
16 or otherwise, or performance or disposition thereof, which is untrue or misleading and which is  
17 known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

18 106. Defendant committed acts of false advertising, as defined by § 17500, by  
19 intentionally making and disseminating statements to consumers in California and the general public  
20 concerning Defendant's products and services, as well as circumstances and facts connected to such  
21 products and services, which are untrue and misleading on their face and by omission, and which  
22 are known (or which by the exercise of reasonable care should be known) by Defendant to be untrue  
23 or misleading. Defendant has also intentionally made or disseminated such untrue or misleading  
24 statements and material omissions to consumers in California and to the public as part of a plan or  
25 scheme with intent not to sell those services as advertised.  
26  
27  
28

1           107. Defendant's statements include but are not limited to representations and omissions  
2 made to consumers in the intake questionnaire and privacy policy regarding Defendant's  
3 commitment to maintain the privacy of Private Information and not to disclose Private Information  
4 to third parties. Such representations and omissions constitute false and deceptive advertisements.  
5

6           108. Plaintiff viewed and relied upon Defendant's representations concerning the  
7 confidentiality of information provided by Plaintiff and Class Members to Defendant. Had  
8 Defendant disclosed that it shared Private Information with third parties, Plaintiff would not have  
9 purchased Defendant's services or would have paid considerably less for those services.

10           109. Defendant's actions in violation of § 17500, as described herein, were false and  
11 misleading such that the general public is and was likely to be deceived. Plaintiff and the members  
12 of the Class were deceived by Defendant's statements and omissions made online when they signed  
13 up and started paying for BetterHelp services, and there is a strong probability that consumers and  
14 members of the public were also or are likely to be deceived as well. Any reasonable consumer  
15 would be misled by Defendant's false and misleading statements and material omissions. Plaintiff  
16 and other members of the Class did not learn of Defendant's disclosure of their Private Information  
17 until after they had already signed up and paid for Defendant's services and the FTC settlement was  
18 announced. They relied on Defendant's statements and omissions to their detriment.  
19

20           110. Plaintiff and the Class lost money or property as a result of Defendant's FAL  
21 violations because they would not have purchased BetterHelp services on the same terms if the true  
22 facts were known about the product and the BetterHelp services do not have the characteristics as  
23 promised by Defendant. Plaintiff, individually and on behalf of all similarly situated consumers,  
24 seeks individual, representative, and public injunctive relief and any other necessary orders or  
25 judgments that will prevent Defendant from continuing with its false and deceptive advertisements  
26  
27  
28

1 and omissions; restitution that will restore the full amount of their money or property; disgorgement  
2 of Defendant’s relevant profits and proceeds; and an award of costs and reasonable attorneys’ fees.

3  
4 **COUNT IV - VIOLATION OF THE CALIFORNIA**  
**CONFIDENTIALITY OF MEDICAL INFORMATION ACT**

5 **Cal. Civ. Code § 56, *et seq***

6 111. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully  
7 set forth herein and brings this claim individually and on behalf of the proposed Class.

8 112. The California Confidentiality of Medical Information Act, Cal. Civ. Code § 56,  
9 *et seq* (“CMIA”) prohibits health care providers from disclosing medical information relating to  
10 their patients without a patient’s authorization. “Medical information” refers to “any individually  
11 identifiable information, in electronic or physical form, in possession of or derived from a  
12 provider of health care... regarding a patient’s medical history, mental or physical condition, or  
13 treatment. 'Individually Identifiable' means that the medical information includes or contains any  
14 element of personal identifying information sufficient to allow identification of the individual...”  
15 Cal. Civ. Code § 56.05.

16  
17 113. Defendant is a healthcare provider as defined by Cal. Civ. Code § 56.06.

18 114. Plaintiff and Class Members are patients, and, as a health care provider, Defendant  
19 has an ongoing obligation to comply with the CMIA’s requirements.

20 115. As set forth above, names, addresses, telephone numbers, email addresses, device  
21 identifiers, web URLs, Internet Protocol (IP) addresses, and other characteristics that can  
22 uniquely identify Plaintiff and Class members are transmitted to in combination with patient  
23 mental health concerns, treatment(s) sought, medications, and whether the patient is suffering  
24 from anxiety, depression, or a number of other mental health symptoms. This protected health  
25 information and personally identifiable information constitutes confidential information under  
26 the CMIA. This information is collected, recorded, and stored by Defendant and intentionally  
27 disclosed to third parties without Plaintiff’s and Class Members’ knowledge or consent.  
28



1           116. Facebook ID is also an identifier sufficient to allow identification of an individual.  
2 Along with patients' confidential Private Information, Defendant discloses to Facebook the  
3 patient's FID.

4           117. Pursuant to the CMIA, the information communicated to Defendant and disclosed  
5 to third parties constitutes medical information because it is patient information derived from a  
6 health care provider regarding patients' medical treatment and physical and mental condition and  
7 is in combination with individually identifying information. Cal. Civ. Code § 56.05(i).

8           118. As set forth above, Facebook and other third parties view, process, and analyze  
9 the confidential medical information it receives from Defendant and uses that Private Information  
10 for advertising and marketing purposes.

11           119. As demonstrated hereinabove, Defendant fails to obtain its patients' authorization  
12 for the disclosure of medical information and fails to disclose in its Website Privacy Policy that  
13 it shares protected health information with third parties for their marketing purposes.

14           120. Pursuant to CMIA Section 56.11, a valid authorization for disclosure of medical  
15 information must be: (1) "Clearly separate from any other language present on the same page and  
16 is executed by a signature which serves no other purpose than to execute the authorization;" (2)  
17 signed and dated by the patient or her representative; (3) state the name and function of the third  
18 party that receives the information; (4) state a specific date after which the authorization expires.  
19 Accordingly, the information set forth in Defendant's Website Privacy Policy and any Terms and  
20 Conditions do not qualify as a valid authorization.

21           121. Based on the above, Defendant is violating the CMIA by disclosing its patients'  
22 medical information to third parties along with the patients' individually identifying information.  
23 Accordingly, Plaintiff and Class Members seek all relief available for Defendant's CMIA  
24 violations.



1 129. Defendant should be compelled to disgorge into a common fund for the benefit of  
2 Plaintiff and Class Members all unlawful or inequitable proceeds that Defendant received, and such  
3 other relief as the Court may deem just and proper.

4 **RELIEF REQUESTED**

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

8 (a) Certification of this action as a class action pursuant to Federal Rule of Civil  
9 Procedure 23 and appointment of Plaintiff and Plaintiff’s counsel to represent the Class;

10 (b) An order enjoining Defendant from engaging in the unlawful practices and  
11 illegal acts described herein;

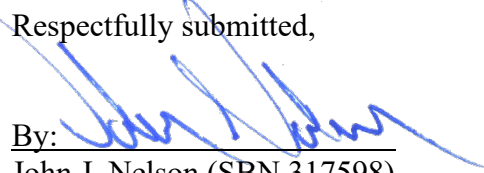
12 (c) An order awarding Plaintiff and the Class: (1) actual or statutory damages;  
13 (2) punitive damages—as warranted—in an amount to be determined at trial; (3) prejudgment  
14 interest on all amounts awarded; (4) injunctive relief as the Court may deem proper; (5) reasonable  
15 attorneys’ fees and expenses and costs of suit pursuant to applicable law; and (6) such other and  
16 further relief as the Court may deem appropriate.  
17

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of herself and the proposed Class, demand a trial by jury for all of the  
20 claims asserted in this Complaint so triable.  
21

22 Dated: March 7, 2023

Respectfully submitted,

23  
24 By:   
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*\*Pro Hac Vice Application Forthcoming*

*Attorneys for Plaintiff and the Putative Class*

