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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF ORANGE –**

18 KARI DELKENER, individually, and on  
19 behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 COTTAGE HEALTH SYSTEM, a California  
23 corporation; SANTA BARBARA COTTAGE  
24 HOSPITAL, a California corporation,  
25 GOLETA VALLEY COTTAGE HOSPITAL,  
26 a California Corporation, SANTA YNEZ  
27 VALLEY HOSPITAL, INSYNC  
28 COMPUTER SOLUTIONS, INC., a  
corporation, CIO SOLUTIONS, INC., a  
California corporation; CIO SOLUTIONS,  
LP, a California limited partnership, and  
DOES 1-100, Inclusive,

Defendants.

Case No. 30-2016-00847934-CU-NP-CXC

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Assigned for All Purposes To:  
Hon. Glenda Saunders

Dept: CX101

1 Plaintiff KARI DELKENER, individually and on behalf of the class described below, by  
2 her attorneys, makes the following allegations based upon information and belief, except as to  
3 those allegations specifically pertaining to Plaintiff and her counsel, which are based on personal  
4 knowledge. Plaintiff brings this action for damages against Defendants COTTAGE HEALTH  
5 SYSTEM, SANTA BARBARA COTTAGE HOSPITAL, GOLETA VALLEY COTTAGE  
6 HOSPITAL, SANTA YNEZ VALLEY HOSPITAL, and INSYNC COMPUTER SOLUTIONS,  
7 INC., and DOES 1-100.

8  
9 **NATURE OF THE ACTION**

10 1. This class action seeks damages against Defendants for its unlawful disclosure of  
11 confidential medical information for close to 11,000 patients in violation of the Confidentiality  
12 of Medical Information Act, codified as California Civil Code § 56, *et seq.*

13 2. SANTA BARBARA COTTAGE HOSPITAL, SANTA YNEZ VALLEY  
14 HOSPITAL, COTTAGE REHABILITATION HOSPITAL and GOLETA VALLEY  
15 HOSPITAL are all providers of medical care and services and are owned by the COTTAGE  
16 HEALTH SYSTEM (hereafter COTTAGE HOSPITAL).

17 3. COTTAGE HOSPITAL is a privately owned and operated medical facility that is  
18 the largest level II trauma center located between Los Angeles and the Bay Area.

19 4. INSYNC COMPUTER SOLUTIONS, INC. (“INSYNC”) is a corporation of  
20 unknown place of incorporation. INSYNC’s principal place of business is in Laguna Beach,  
21 County of Orange, State of California.

22 5. On April 15, 2015, the Orange County Superior Court finally approved a class  
23 action settlement against COTTAGE HOSPITAL, stemming from COTTAGE HOSPITAL’s  
24 negligence in permitting its server containing the medical records of over 50,000 patients to be  
25 fully available to the internet, where the medical records were thereafter indexed by a third party  
26 search engine company, and then republished.

27 6. Remarkably, a little more than 6 months later, COTTAGE HOSPITAL repeated  
28 this precise negligent conduct by releasing the confidential medical records of almost 11,000

1 patients between October 26, 2015 and November 8, 2015 in the same manner. A server  
2 containing the medical records was negligently left exposed and available on the internet, and  
3 thereafter was accessed, copied and indexed by at least two third party search engine companies  
4 (by and through their employees who were responsible for obtaining, accessing and indexing  
5 records left available and exposed to the internet). The indexed medical records were accessible  
6 to the public at large.

7 7. The negligence is truly unbelievable in that COTTAGE HOSPITAL and its  
8 contractor INSYNC failed to make changes to the COTTAGE HEALTH computer system to  
9 correct the gaping hole in its computer systems, notwithstanding the exposure of their  
10 negligence in the first class action against them, as well as the payment of millions of dollars in  
11 damages to that class. This makes Defendants' continued negligence in their maintenance of  
12 their patients' medical records all the more egregious. Indeed, this latest CMIA violation arises  
13 from essentially the same negligence as in the prior CMIA violation.

14 8. On December 1, 2015, public notices were sent to affected patients, stating that  
15 COTTAGE HOSPITAL compromised close to 11,000 patient records, including the name,  
16 address, date of birth, lab results, procedures, diagnosis, and social security numbers.

17 9. This case is ideally suited for class action treatment – for the same reasons that  
18 supported the certification that was stipulated to in connection with the prior COTTAGE  
19 HOSPITAL breach that resulted in the April 15, 2015 settlement. The claims arise from a  
20 common set of facts (*i.e.*, the negligent breach) and each class member will be entitled to the  
21 statutory amount of damages set forth in the CMIA.

## 22 **THE PARTIES**

23 1. Plaintiff KARI DELKENER was, at all relevant times, a resident of the State of  
24 California.

25 2. Plaintiff is informed and believes, and on that basis alleges, defendant INSYNC is  
26 an unknown type of corporation with its principal place of business located at 23041 Avenida  
27 De La Carlota, Laguna Hills, CA 92653, which is in Orange County, California.

1           3.       Plaintiff is informed and believes, and on that basis alleges, that the COTTAGE  
2 HEALTH SYSTEM is a California corporation with its principal place of business located at  
3 400 West Pueblo Street, Santa Barbara, CA 93105.

4           4.       Plaintiff is informed and believes, and on that basis alleges, that the SANTA  
5 BARBARA COTTAGE HOSPITAL is a California corporation with its principal place of  
6 business located at 400 W. Pueblo Street Santa Barbara, CA 93105.

7           5.       Plaintiff is informed and believes, and on that basis alleges, that the GOLETA  
8 VALLEY COTTAGE HOSPITAL is a California corporation with its principal place of  
9 business located at 351 S. Patterson Avenue, Santa Barbara, CA 93111.

10          6.       Plaintiff is informed and believes, and on that basis alleges, that the SANTA  
11 YNEZ VALLEY HOSPITAL is a California corporation with its principal place of business  
12 located at 2050 Viborg Road, Solvang, CA 93463.

13          7.       Plaintiff is informed and believes, and on that basis alleges, that defendant CIO  
14 SOLUTIONS, LP and CIO SOLUTIONS, INC. (collectively, CIO SOLUTIONS) are California  
15 corporate business entities that do business in the State of California. COTTAGE HOSPITAL  
16 contracted with and paid CIO SOLUTIONS over \$1.5 million a year to provide managed IT  
17 support services to COTTAGE HOSPITAL. Specifically, CIO SOLUTIONS would maintain  
18 strict confidentiality controls over COTTAGE HEALTH data, files, and systems related to the  
19 application, system, server, network, technology support, and development related services of  
20 COTTAGE HOSPITAL. CIO SOLUTION was also responsible for the security of the systems  
21 including physical and electronic access.

22          8.       Defendant INSYNC COMPUTER SOLUTIONS, INC. (“INSYNC”) is a  
23 corporation whose principal place of business is in Laguna Beach, County of Orange, State of  
24 California. Similar to CIO SOLUTIONS, INSYNC was contracted to, and provided, security  
25 for COTTAGE HEALTH’s computer systems and their alleged negligence contributed to the  
26 breaches that are the subject of this class action.

27          9.       Plaintiff is currently ignorant of the true names and capacities, whether individual,  
28 corporate, associate, or otherwise, of the Defendants sued herein under the fictitious names Does

1 1 through 100, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff  
2 will amend this complaint to allege the true names and capacities of said fictitiously named  
3 Defendants when their true names and capacities have been ascertained. Plaintiff is informed  
4 and believes and thereon alleges that each of the fictitiously named Doe Defendants are legally  
5 responsible in some manner for the events and occurrences alleged herein, and for the damages  
6 suffered by Plaintiff and members of the class.

7 10. Plaintiff is informed and believes, and on that basis alleges, that all Defendants,  
8 including the fictitious Doe Defendants, were at all relevant times acting as actual agents,  
9 captive agents or brokers, conspirators, ostensible agents, partners, brokers and/or joint  
10 venturers, and employees of all other Defendants, and that all acts alleged herein occurred  
11 within the course and scope of said agency, employment, partnership, joint venture, conspiracy  
12 and/or enterprise, and with the express and/or implied permission, knowledge, consent,  
13 authorization, and ratification of their co-defendants; however, this allegation is pleaded as an  
14 “alternative” theory wherever not doing so would result in a contradiction with other allegations.

#### 15 **THE PRIOR INCIDENT**

16 11. From September 29, 2009 through December 2, 2013. COTTAGE HOSPITAL  
17 negligently released nearly 50,000 patient records, including the name, address, date of birth, lab  
18 results, procedures, and diagnosis.

19 12. The negligent release occurred as follows. COTTAGE HOSPITAL stored the  
20 medical records of over 50,000 of its patients on a server that was negligently configured in a  
21 manner that allowed access by third party entities on the internet to the unencrypted medical  
22 records without the need of passwords. As a result, a bot from a third party search engine,  
23 which was not supposed to have access to the medical data, was able to scan, catalogue and  
24 index every patient medical record.

25 13. Defendant INSYNC was employed by COTTAGE HOSPITAL to enforce the IT  
26 security of the Hospital, including the design, implementation, and maintenance of COTTAGE  
27 HEALTH’s computer systems..

28

1 14. In the prior incident, the security breach actually resulted in private records getting  
2 on the internet. Because the indexing of records on the Internet is automated, indexed records  
3 are publicly served up to anyone who searches for relevant terms. As a result, the medical  
4 records were viewable on the Internet while the breach occurred.

5 15. The prior class action case was settled and finally approved by the on April 15,  
6 2015.

7 **THE PRESENT INCIDENT:**

8 16. Unfortunately, the negligence of COTTAGE HOSPITAL and INSYNC continued,  
9 notwithstanding their payment of millions of dollars for the CMIA violations from the first  
10 breach. Remarkably, a second negligent release was substantially similar to the first.

11 17. Just like the earlier breach, COTTAGE HOSPITAL maintained a negligent  
12 configuration of its server which resulted in its patients' medical records being publicly  
13 available on the internet.

14 18. In this second incident, more than 11,000 patient medical records were accessed,  
15 copied, viewed and indexed from COTTAGE HOSPITAL's negligently maintain computers that  
16 contained the confidential patient medical records. This time, Google and Bing (an entity  
17 owned and operated by Microsoft, Inc.) gained access to the medical patient information files,  
18 then scanned, catalogued and indexed 11,000 patient medical records.

19 19. Upon information and belief, there are teams of employees at Google and Bing  
20 who are charged with the responsibility of gaining access to computer files that are exposed to  
21 the internet through programs that they have developed, and then copy and index the files for  
22 use on the Google and Bing networks. In this case, Google and Bing (through their employees  
23 in these departments) gained access, copied, viewed and indexed each and every of the class  
24 member's confidential patient files – including those of Plaintiff.

25 20. A spokesperson for COTTAGE HOSPITAL made an admission when she stated  
26 to a public newspaper, "We moved quickly to remove the server and all data has been removed  
27 from Google's index."  
28

1           21. This indicates that the data had already been scanned, catalogued, and indexed by  
2 a third party company that is not authorized to have access to COTTAGE HOSPITAL's  
3 patient's medical records.

4           22. Upon information and belief, the confidential medical records of the patients that  
5 were accessed by Google and Bing (by and through their employees) have not been re-secured,  
6 and the confidential information is still being accessed by individuals and software at Google  
7 Inc.

8           23. The breach of confidentiality is as severe as could be imagined – since not only  
9 has the confidentiality of Plaintiff the class' medical records been breached by the medical  
10 records being accessed, indexed, viewed and copied by Google and Bing (by and through their  
11 employees), but the confidentiality was further breached when the records were made publicly  
12 available on the internet.

13           24. On information and belief, the IT and security contractor, INSYNC, wrote code,  
14 implemented procedures, set up servers, configured encryption, designed and maintained the  
15 automated information technology systems at COTTAGE HOSPITAL. Following the  
16 commencement of the prior class action for a comparable breach, apparently the negligent  
17 maintenance of the computerized records had not been fully corrected by INSYNC or  
18 COTTAGE HEALTH. This includes, but is not limited to the NSQIP system, which was  
19 located on one of COTTAGE HOSPITALS servers. These are the same servers that held  
20 medical records of patients that ended up on the public internet.

21           25. To compound matters, CIO SOLUTIONS also contracted with COTTAGE  
22 HEALTH to provide security both physically and electronically to health records of COTTAGE  
23 HOSPITAL. Upon information and belief, their failure to provide the basic service of a  
24 "firewall" further provided Google and Bing (through their employees) with the ability to  
25 access, copy, view, index and make the files available on the internet – which they did.

26           26. Digital records, once compromised, are **permanently** and forever compromised.  
27 No one can unring the bell. When private medical records are negligently released, the records  
28

1 can never be “re-secured.” There is no action that COTTAGE HOSPITAL or their security  
2 company can undertake to mitigate the lost records.

3 27. COTTAGE HOSPITAL states “Confidential treatment of all communications and  
4 records pertaining to your care and stay in the hospital.” Thus, it should be no surprise that  
5 when patients are treated at COTTAGE HOSPITAL facilities, they expect that their private  
6 medical information will be kept confidential and will not be disclosed to anyone without their  
7 authorization. Indeed, California law requires medical providers to maintain their patients’  
8 medical information confidential and prohibits the disclosure of such information without the  
9 patient’s written authorization.

10 28. Public searches were completed that displayed the results of private patients who  
11 had attended Cottage Hospital in both incidents. These records were accessed and viewed by  
12 individuals and third party corporations, including but not limited to employees at Google and  
13 Bing. The unauthorized access and viewing included Plaintiff’s confidential medical records..

14 29. Such conduct constitutes a patent violation of the Confidentiality of Medical  
15 Information Act, California Civil Code § 56, *et seq.* Accordingly, Plaintiff brings this class  
16 action against Defendants on behalf of herself and others similarly situated, to obtain the  
17 monetary damages authorized under that statute.

18 30. The class that Plaintiff seeks to certify is defined as follows:

19 *All Patients who attended a Cottage Health System hospital, whose*  
20 *confidential medical information and/or records were negligently*  
21 *released and/or disclosed at any time between October 2015 and*  
22 *November 2015 by Cottage Hospital and/or contractors acting on*  
23 *behalf of Cottage Hospital.*

#### 24 **GENERAL ALLEGATIONS**

25 31. All allegations in this complaint are based on information and belief and/or are  
26 likely to have evidentiary support after a reasonable opportunity for further investigation or  
27 discovery. Whenever allegations in this complaint are contrary or inconsistent, such allegations  
28 shall be deemed alternative.





1 information on the unsecured server location included patients' names, dates of birth, addresses,  
2 financial information, medical records, and social security numbers.

3 39. The server containing the files with Plaintiff and the Class' confidential medical  
4 records was negligently configured by INSYNC and CIO SOLUTIONS.

5 40. The confidential medical records were accessed by Google and Bing (by and  
6 through their employees) and Plaintiff and the class' confidential medical records were then  
7 scanned, viewed, catalogued and indexed. Google and Bing (as well as their employees who  
8 effectuated the access) were not unauthorized to have access to any of the 11,000 patient  
9 records.

10 41. When digital information is compromised, it is forever compromised. COTTAGE  
11 HOSPITAL cannot unring the bell.

12 42. COTTAGE HOSPITAL, CIO SOLUTIONS and INSYNC were responsible for  
13 the creation, maintenance, preservation, storage and disposal of these private medical records.

14 43. The medical record files were created by COTTAGE HOSPITAL in a format that  
15 is easily accessible and allows medical records to be opened by anyone.

16 44. The medical records were maintained without encryption.

17 45. The medical records were maintained without password protection.

18 46. The medical records were maintained without a firewall.

19 47. The medical records were maintained without file access permissions that  
20 prevented unauthorized access.

21 48. COTTAGE HOSPITAL maintained the personal medical records of 11,000  
22 patients on a physical server which was accessible by the internet.

23 49. In fact, upon information and belief, COTTAGE HEALTH maintained the  
24 confidential medical records of Plaintiff and the class on the same server that was used by  
25 COTTAGE HEALTH employees for an online service that facilitated the buying and selling  
26 their personal items to others – similar to a “Craigslist” – by individuals on unsecure computers  
27 outside of the COTTAGE HEALTH server.

28

1           50. Even though the confidential medical records required a heightened security,  
2 firewall and encryption to prevent access, the confidential medical records were negligently  
3 exposed and made available for anyone on the internet to access – since the records had the  
4 same lower-level security protocol as the “Craigslist” which was actually intended to be made  
5 available to others on the internet.

6           51. Upon information and belief, there are teams at Google and Bing that are charged  
7 with the responsibility of gaining access to computer files that are exposed to the internet  
8 through programs that they have developed, and then copy and index the files for use on the  
9 Google and Bing networks. In this case, Google and Bing (through their employees in these  
10 departments) gained access, viewed, copied and indexed each and every of the class member’s  
11 confidential patient files – including those of Plaintiff. This was accomplished through “bot”  
12 and other programs designed by Google and Bing employees to carry out their responsibilities to  
13 access, copy and index files and data that are made available by third parties to the internet.

14           52. Upon information and belief, even if Google Inc. or Bing removes the patient’s  
15 record from their respective search function and results, the patient records are still currently  
16 indexed and located on property owned by them. Data owned by Google and Bing is replicated  
17 and stores in many different locations to make sure that Google never loses data, and always has  
18 redundant systems. COTTAGE HOSPITAL cannot effectuate the total deletion and removal of  
19 the confidential patient medical records, as the Google and Bing database is built into their  
20 algorithms. COTTAGE HOSPITAL can request that the data does not show up in search  
21 results, but the data is still located in the hands of Google and Bing.

22           53. COTTAGE HOSPITAL’s negligence is heightened by the fact that it has repeated  
23 the same negligent activity that resulted in a class action settlement that was finally approved on  
24 April 15, 2015.

25           54. Plaintiff has been treating with Cottage Hospital her entire life. She sought  
26 medical treatment at COTTAGE HOSPITAL on multiple different occasions. During each of  
27 her visits, Plaintiff provided confidential medical information to COTTAGE HOSPITAL.  
28 During each of these visits, COTTAGE HOSPITAL generated and collected information

1 concerning Plaintiff's health and medical condition, including her diagnosis. At no time during  
2 her visits did Plaintiff provide written authorization that her private medical information be  
3 disclosed to any third party.

4 55. On or about December 6, 2015, Plaintiff received a letter in the mail advising her  
5 that her confidential medical records had been negligently released.

6 56. Defendants disclosed the confidential medical information of Plaintiff and the  
7 Class without obtaining written authorization.

8 57. As a result of this disclosure, Plaintiff and the Class were injured in that they  
9 suffered a violation of their privacy rights.

10  
11 **CLASS ACTION ALLEGATIONS**

12 58. Plaintiff brings this action on her own behalf and on behalf of all persons similarly  
13 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent the following  
14 class:

15 *All Patients who attended a Cottage Health System hospital, whose*  
16 *confidential medical information and/or records were negligently*  
17 *released and/or disclosed at any time between October 2015 and*  
18 *November 2015 by Cottage Hospital and/or contractors acting on*  
19 *behalf of Cottage Hospital.*

20 59. Upon information and belief, the scope of this class definition, including its  
21 temporal scope, may be further refined after discovery of Defendant's and/or third party records.

22 60. Excluded from the class are governmental entities, Defendants, any entity in  
23 which Defendants has a controlling interest, and Defendants' officers, directors, affiliates, legal  
24 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also  
25 excluded from the class is any judge, justice, or judicial officer presiding over this matter and  
26 the members of their immediate families and judicial staff.

27 61. Plaintiff's claims are typical of the claims of the class. Plaintiff is a member of the  
28 class she seeks to represent. Plaintiff is a member of a class of consumers, and the members of

1 this class of consumers were similarly situated and similarly affected by the conduct alleged of  
2 Defendants and incurred similar damage, as alleged in this complaint, as a result of the conduct  
3 of Defendants – including, without limitation, having her confidential medical information  
4 accessed, indexed, copied and placed on the internet by unauthorized third parties. Members of  
5 the class are ascertainable from Plaintiff’s description of the class and/or Defendant’s records  
6 and/or records of third parties accessible through discovery.

7 62. The representative Plaintiff will fairly and adequately represent the members of  
8 the class and have no interests which are antagonistic to the claims of the class. The Plaintiff’s  
9 interests in this action are antagonistic to the interests of Defendant, and she will vigorously  
10 pursue the claims of the class.

11 63. The representative Plaintiff has retained counsel who are competent and  
12 experienced in consumer class action litigation, and have successfully represented consumers in  
13 complex class actions.

14 64. Common questions of law and fact impact the rights of each member of the class  
15 and a common remedy by way of permissible damages and/or injunctive relief is sought for the  
16 class.

17 65. There are substantial questions of law and fact common to all members of the  
18 class which will predominate over any individual issues. These common questions of law and  
19 fact include, without limitation:

- 20 a. Whether Defendants released the confidential health information of Plaintiff  
21 and the class without authorization when the private patient medical records  
22 were publically accessed and viewed by Google and Bing – by and through  
23 their employees.
- 24 b. Whether such conduct constitutes a violation of California Civil Code § 56,  
25 *et seq.*
- 26 c. Whether Defendants’ repeated negligence eliminates any right they might  
27 have to assert a “safe harbor” defense to the CMIA.

1 d. Whether Defendants were negligent in the design, coding, and maintenance  
2 of the computer systems that stored the medical records of Plaintiff and the  
3 Class.

4 66. A class action provides a fair and efficient method, if not the only method, for  
5 adjudicating this controversy. The substantive claims of the representative Plaintiff and the  
6 class are nearly identical and will require evidentiary proof of the same kind and application of  
7 the same law.

8 67. A class action is superior to other available methods for the fair and efficient  
9 adjudication of this controversy, because Plaintiff believes class members number in the tens of  
10 thousands and individual joinder is impracticable. The expense and burden of individual  
11 litigation would make it impracticable or impossible for proposed class members to prosecute  
12 their claims individually. Trial of Plaintiff's and the class members' claims is manageable.  
13 Unless a class is certified, Defendants will remain free to continue to engage in the wrongful  
14 conduct alleged herein without consequence.

15 68. There is no plain, speedy, or adequate remedy other than by maintenance of this  
16 class action because Plaintiff is informed and believes that damage to each member of the class  
17 is relatively small, making it economically unfeasible to pursue remedies other than by way of a  
18 class action.

19 69. The persons in the class are so numerous that the joinder of all such persons  
20 individually in this case is impracticable, and the disposition of their claims in this case and as  
21 part of a single class action lawsuit, rather than hundreds or thousands of individual lawsuits,  
22 will benefit the parties and greatly reduce the aggregate judicial resources that would be spent if  
23 this matter were handled as hundreds or thousands of separate lawsuits.

24 70. Plaintiff knows of no difficulty that will be encountered in the management of this  
25 litigation, which would preclude its maintenance as a class action.  
26  
27  
28

1 FIRST CAUSE OF ACTION

2 **VIOLATION OF CALIFORNIA CONFIDENTIALITY OF MEDICAL INFORMATION**

3 **ACT (California Civil Code § 56, et seq.)**

4 **(By Plaintiff and all class members against all Defendants and Does 1-50)**

5 71. Plaintiff and the class re-allege and incorporate by reference the allegations  
6 contained in the preceding paragraphs of this complaint, as though fully set forth herein.

7 72. California Civil Code § 56, et seq., also known as the Confidentiality of Medical  
8 Information Act (“CMIA”), prohibits health care providers from disclosing medical information  
9 regarding a patient without first obtaining written authorization from the patient.

10 73. At all relevant times, Defendants had a legal duty to protect the confidentiality of  
11 Plaintiff’s and the class members’ medical information, and is a provider of health care and  
12 subject to the requirements and mandates of the CMIA.

13 74. Defendant COTTAGE HOSPITAL came into possession of Plaintiff’s and class  
14 members’ personally identifiable medical information while providing health care services and  
15 had a duty to exercise reasonable care in preserving the confidentiality of that information.

16 75. Defendant DOES 1-25 came into possession of Plaintiff’s and class members’  
17 personally identifiable medical information while providing contracted services for COTTAGE  
18 HOSPITAL.

19 76. Upon information and belief, Defendants COTTAGE HEALTH, INSYNC and  
20 CIO SOLUTIONS were responsible for the maintenance and security of the COTTAGE  
21 HEALTH computer systems for some undetermined time period and, upon information and  
22 belief, failed to correct prior defects in the security of the system that were known or should  
23 have been known with reasonable diligence.

24 77. Defendants did not obtain Plaintiff’s or class members’ written authorization to  
25 disclose their personally identifiable medical information.

26 78. Based on information and belief, Defendants failed to exercise due care to  
27 maintain and prevent the release or disclosure of private medical information *of Plaintiff and*  
28 *the class members* without their written authorization. They failed to have reasonable systems

1 and controls in place to prevent the release and/or disclosure of protected health information  
2 from the hospital premises, servers, and protections, and therefore defendants negligently lost  
3 the protection and possession of 11,000 patients' records. As such, Defendants violated § 56, *et*  
4 *seq.* and its legal duty to protect the confidentiality of such information.

5 79. As a direct and proximate result of Defendants' breach of its legal duty to protect  
6 Plaintiff's and other class members' confidential information, ***Plaintiff and other class***  
7 ***members'*** confidential medical records have been accessed, viewed, indexed and made available  
8 on the internet by Google and Bing, by and through their employees.

9 80. California Civil Code § 56.36(b) provides as follows:

10 (b) In addition to any other remedies available at law, any individual may bring  
11 an action against any person or entity who has negligently released confidential  
12 information or records concerning him or her in violation of this part, for either or  
13 both of the following:

- 14 1. Nominal damages of one thousand dollars (\$1,000). In order to recover  
15 under this paragraph, it shall not be necessary that the Plaintiff suffered or  
16 was threatened with actual damages.
- 17 2. The amount of actual damages, if any, sustained by the patient.

18 81. The confidential medical information of the entire class (***including that of***  
19 ***Plaintiff Kari Delkener***) was accessed, viewed, scanned, copied, duplicated, republished and  
20 then accessed on the internet by an unauthorized person(s).

21 82. Upon information and belief, the files containing the confidential medical records  
22 of the class (***including Plaintiff's***) were accessed, viewed and indexed by at least one  
23 unauthorized person, including but is not limited to the following:

- 24 a. Bing (an entity owned and operation by Microsoft, Inc.) by and through its employees  
25 whose job duties include the gathering of information available to the public internet,  
26 which they accomplish through software programs that permanently copy information  
27 on the internet for use by Bing. These individuals accessed the medical records and  
28 made permanent copies of the medical records. The copies of the medical records



1 made by these individuals are located in multiple places and individuals at Bing still  
2 are accessing and still have access to these medical records. The confidential medical  
3 records are located in multiple locations on Bing owned hardware;

4 b. Google, Inc., by and through its employees whose job duties include the gathering of  
5 information available to the public internet, which they accomplish through software  
6 programs that permanently copy information on the internet for use by Google, Inc.  
7 These individuals accessed the medical records and made permanent copies of the  
8 medical records. The copies of the medical records made by these individuals are  
9 located in multiple places and individuals at Google still are accessing and still have  
10 access to these medical records. The confidential medical records are located in  
11 multiple locations on Google owned hardware; and

12 c. Individuals at other Doe 1-25 data mining corporations whose job is to gather medical  
13 records on the internet for sale on the black market, and/or dark web. These  
14 individuals designed software programs to permanently copy information on the  
15 internet for use by Doe 1-25 data mining corporations. These individuals accessed the  
16 medical records and made permanent copies of the medical records.

17 83. Discovery is continuing to determine if there are other individuals who may have  
18 accessed the confidential medical records of Plaintiff and the Class, including individuals who  
19 searched the internet for the name of one of the 11,000 patients name, whereas the name of the  
20 individual would result in Google, Bing or other third party corporation displaying the copied  
21 records now owned by Google and Bing of the individuals personal medical information.

22 84. Pursuant to § 56.36(b), Plaintiff and the Class are entitled to nominal statutory  
23 damages of \$1,000 per class member.

## 24 **SECOND CAUSE OF ACTION**

### 25 **NEGLIGENCE**

26 **(By Plaintiff and all class members against all Defendants and Does 1-50)**

27 85. Plaintiff restates and incorporates by reference each and every allegation  
28 contained in the foregoing paragraphs as though fully set forth herein.

1           86. Plaintiff and the Class are all patients of COTTAGE HEALTH whose medical  
2 records were stored on the computer system owned, designed and/or maintained by the  
3 Defendants.

4           87. Defendants had a duty to use reasonable care in storing, handing, and using the  
5 confidential medical and personal information of Plaintiffs and the Class members, including a  
6 duty to keep this information secure and private at all times.

7           88. Defendants also had a duty to use reasonable care in the maintenance, coding and  
8 design of the computer system that was known at all times to be used for the storage of  
9 medical records of COTTAGE HEALTH patients.

10          89. Defendants owed Plaintiff and the Class members a duty of due care to properly  
11 and carefully store, handle, and maintain confidential the medical and personal information  
12 provided by Plaintiff and the Class members to Defendants.

13          90. Defendants breached their duty to properly and carefully store, handle, and  
14 maintain confidential the medical and personal information provided by Plaintiffs and the  
15 Class members to Defendants.

16          91. Defendants also owed Plaintiff and the Class members a duty of care to properly  
17 design and code the COTTAGE HEALTH computer system such that medical records would  
18 not be systematically released on the internet.

19          92. Defendants breached their duty to design the COTTAGE HEALTH computer  
20 system such that medical records would not be systematically released on the internet.

21          93. As a direct and proximate result of Defendants' breaches of their duty of care to  
22 Plaintiff and the Class members, Plaintiff and the Class members have suffered harm and will  
23 continue to suffer harm, including but not limited to loss of and invasion of privacy, loss of  
24 property, and loss of control of their medical information and personal financial information.

25          94. As a direct and proximate result of the acts and omissions by Defendants  
26 described herein, Plaintiff and the Class have suffered and/or will suffer economic harm.

27          95. The harm to the class was foreseeable in that all Defendants were aware that the  
28 medical records of Plaintiff and all class members were stored, or would be stored, on the  
COTTAGE HEALTH computer system.

1 96. As a direct and/or proximate result of Defendants' wrongful actions and/or  
2 inaction, Plaintiff and the Class members' confidential and personal information and records  
3 have actually been viewed by third parties.

4 **PRAYER**

5 Wherefore, Plaintiff, the Class and Subclass pray for judgment as follows:

- 6 1. That the Court certify the Class pursuant to Code. Civ. Pro. § 382 and the  
7 California Rules of Court and appoint Plaintiff and Plaintiff's counsel to represent the Class;  
8 2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;  
9 3. Awarding statutory damages and/or penalties available to the Class as provided  
10 by law;  
11 4. Awarding general and/or specific damages according to proof;  
12 5. For reasonable attorneys' fees and costs; and  
13 6 For such other and further relief as the Court deems just and proper.

14  
15 DATED: February 9, 2017

KABATECK BROWN KELLNER LLP

16  
17 By: /s Brian S. Kabateck  
18 Brian S. Kabateck  
19 Richard L. Kellner  
20 *Counsel for Plaintiffs and the Proposed*  
21 *Class*

22 ERNST LAW GROUP

23  
24 By: /s Don A. Ernst  
25 Don A. Ernst  
26 Taylor Ernst  
27 *Counsel for Plaintiffs and the Proposed*  
28 *Class*

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all claims and causes of action in this lawsuit.

DATED: February 9, 2017

ERNST LAW GROUP

By:                   /s Don A. Ernst  
Don A. Ernst  
Taylor Ernst  
*Counsel for Plaintiffs and the Proposed  
Class*

KABATECK BROWN KELLNER LLP

By:                   /s Brian S. Kabateck  
Brian S. Kabateck  
Richard L. Kellner  
*Counsel for Plaintiffs and the Proposed  
Class*

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action; my business address is 644 S. Figueroa Street, Los Angeles, CA 90017.

On February 9, 2017, I served a copy of the following document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** on the interested party(ies) in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY PERSONAL SERVICE:** By placing a true copy thereof, enclosed in a sealed envelope, I caused such envelope to be delivered by hand to the recipients herein shown (as set forth on the service list).

**BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence IS placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

**BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from \_\_\_\_\_ to the person(s) at the e-mail address( es) listed above.

**STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 9, 2017, at Los Angeles, California.

  
\_\_\_\_\_  
**IRMA DELEON**

**SERVICE LIST**

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15 16 17 18	Matthew D. Pearson, Esq. Paul Karlsgodt, Esq. <b>BAKER &amp; HOSTETLER LLP</b> 11601 Wilshire Blvd., Suite 1400 Los Angeles, California 90025 Telephone: (310) 820-8800	<i>Attorneys for Defendants</i> CIO Solutions, Inc.; and CIO Solutions, LP
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