

disclosure." Contrary to these assurances, however, Defendants do not follow these policies, nor do they follow the law prohibiting such disclosures.

RESPONSE: Lima states that its privacy policy speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations of paragraph 2 as stated. Responding further, Lima denies that it violated any law or deviated from the terms of its privacy policy.

3. At all relevant times, Defendants disclosed information about their patients- including their status as patients, their physicians, their medical treatments, the hospitals they visited, and their personal identities- to Facebook and other third parties without their patients' knowledge, authorization, or consent.

RESPONSE: Lima denies that it disclosed its patients' status, their physicians, medical treatments, the hospitals they visited or their personal identities or any PHI, as defined under HIPAA, to Facebook or other third parties. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 3 and therefore denies the same.

4. Defendants disclosed this protected health information through the deployment of various digital marketing and automatic rerouting tools embedded on their websites that purposefully and intentionally redirect patients' personal health information to Facebook who exploits that information for advertising purposes. Defendants ' use of these rerouting tools causes their patients' personally identifiable information and the contents of their patients' communications exchanged with Defendants to be automatically redirected to Facebook in violation of those patients' reasonable expectations of privacy, their rights as patients, their rights as citizens of Ohio, and both the express and implied promises of Defendants.

RESPONSE: Lima denies that it disclosed any PHI, as defined under HIPAA, to any third parties through the deployment of digital marketing and automatic rerouting tools embedded on its website. Lima denies that its use of any rerouting tool causes or caused the contents of its patients' communications exchanged with Lima to be directed to Facebook, automatically or otherwise. Responding further, Lima states that as Plaintiff's allegations are stated and absent a definition of the term "personally identifiable information" Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 4 and therefore denies the same.

5. Defendants' conduct in disclosing such protected health information about their patients to Facebook without notice or consent violates Ohio law, including Ohio Rev. Code § 2933.52(A)(1) and (A)(3) (Wiretapping), Ohio Rev. Code § 3798.04 (Prohibition on Unauthorized Disclosures of Protected Health Information); Ohio Rev. Code § 3798.03(2) (Duties of Covered Entity), and breaches the duty of to protect nonpublic medical information from disclosure to third parties first recognized by the Ohio Supreme Court in *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395,401 (1999).

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore a response is not required. To the extent a response is required, Lima denies that it violated Ohio Rev. Code § 2933.52(A)(1) and (A)(3), Ohio Rev. Code § 3798.04; Ohio Rev. Code § 3798.03(2), or any other law. Lima denies the remaining allegations in paragraph 5 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

6. On behalf of themselves and all similarly situated citizens in the state of Ohio, Plaintiff seeks an order enjoining Defendants from further unauthorized disclosures of their

personal information; awarding liquidated damages in the amount of \$10,000 per violation, attorneys' fees and costs; and granting any other preliminary or equitable relief the Court deems appropriate.

RESPONSE: Lima denies that Plaintiff is entitled to any damages, costs, fees or other relief from or against Lima.

PARTIES TO THE ACTION

7. Defendant Lima Memorial Joint Operating Company d/b/a Lima Memorial Health System is an Ohio corporation with its principal office at 1001 Bellefontaine Avenue, Lima, Ohio 45804. Defendant owns and operates numerous health facilities in Ohio, including Lima Memorial Hospital and numerous outpatient care facilities.

RESPONSE: Lima admits the allegations contained in this paragraph.

8. Defendant Lima Memorial Hospital is an Ohio corporation with its principal office at 1001 Bellefontaine Avenue, Lima, Ohio 45804. Defendant owns and operates a hospital providing services in Lima, Ohio.

RESPONSE: Lima admits the allegations contained in this paragraph.

9. Plaintiff Jane Doe is an Ohio citizen residing in Lima, Ohio, has been treated by Defendants' physicians, and has been a patient at Lima Memorial Hospital, and is thus also a patient of Defendants.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the statements of paragraph 9 and therefore denies the same.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Defendants because they regularly conduct business throughout Ohio and have their principal place of business at 1001 Bellefontaine Avenue, Lima, Ohio 45804.

RESPONSE: Lima admits the allegations of this paragraph.

11. Venue is appropriate in this Court because Defendants reside in Allen County.

RESPONSE: Lima admits the allegations of this paragraph.

FACTUAL BACKGROUND

A. Defendants routinely disclosed the protected health information of their patients to Facebook.

12. Plaintiff Jane Doe is a patient of Defendants who has received treatment at Lima Memorial Hospital.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the statements of paragraph 12 and therefore denies the same.

13. As the Ohio Supreme Court has long recognized, hospital systems have a duty to refrain from making unauthorized disclosures to a third party of nonpublic medical information " that a physician or hospital has learned within a physician-patient relationship." *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395, 401 (1999).

RESPONSE: Lima states that the allegations of paragraph 13 are legal conclusions and, therefore a response is not required. To the extent a response is required, Lima states that *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395, 401 (1999) speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the holdings set forth therein, Lima denies the allegations as stated. Lima denies the remaining allegations in paragraph 13 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

14. Medical patients in Ohio such as Jane Doe have a legal interest in preserving the confidentiality of their communications with healthcare providers and have reasonable expectations of privacy that their personally identifiable information and communications will not be disclosed to third parties without their express written consent and authorization.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the statements of paragraph 14 and therefore denies the same.

15. As health care providers, Defendants have fiduciary, common law, and statutory duties to protect the confidentiality of patient information and communications.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore a response is not required. To the extent a response is required Lima recognizes that there are statutory prohibitions on the distribution of personal healthcare information but states that Lima did not act in contravention of its statutory obligations. Further answering, Lima denies the remaining allegations in paragraph 15 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

16. Defendants expressly and impliedly promise patients that they will maintain and protect the confidentiality of personally identifiable patient information and communications.

RESPONSE: Lima denies that it shared any statutorily protected information. Lima denies the remaining allegations in paragraph 16 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

17. Defendants operate websites for patients, including www.limamemorial.org.

RESPONSE: Lima admits only that it operates www.limamemorial.org, but denies the remaining allegations of paragraph 17.

18. Defendants' websites are designed for interactive communications with patients, including scheduling appointments, searching for physicians, paying bills, requesting medical records, learning about medical issues and treatment options, and joining support groups.

RESPONSE: Lima admits that its website may be used by a range of website visitors, both patient and non-patient, to search for physicians, join support groups, and to learn about medical issues and treatment options. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations made in paragraph 18 and therefore denies the same.

19. Notwithstanding patients' reasonable expectations of privacy, Defendants' legal duties of confidentiality, and Defendants' express promises to the contrary, Defendants disclosed the contents of patients' communications and protected healthcare information via automatic re-routing mechanisms embedded in the websites operated by Defendants without patients' knowledge, authorization, or consent.

RESPONSE: Lima denies that any PHI, as defined under the Health Insurance Portability and Accountability Act ("HIPAA"), are transmitted from Lima to any third parties. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 19 and therefore denies the same.

B. The nature of Defendants' unauthorized disclosure of patients' health care information.

20. Defendants' disclosures of patients' personal healthcare information occurred because Defendants intentionally deployed source code on the websites they operate, including <https://www.limamemorial.org>, that caused patients' personally identifiable information (as well as the exact contents of their communications) to be transmitted to Facebook.

RESPONSE: Lima denies that any that any Personal Information, as defined under Ohio law, was transmitted from Lima's website to third parties. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 20 and therefore denies the same.

21. By design, Facebook receives and records the exact contents of patient communications before the full response from Defendants to patients has been rendered on the screen of the patient's computer device and while the communication between Defendants and the patient remains ongoing.

RESPONSE: Lima denies that the exact contents of patient communications or PHI, as defined under HIPAA, was transmitted to any third parties. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 21 and therefore denies the same.

22. Websites like those maintained by Defendants are hosted by a computer server through which the business in charge of the website exchanges and communicates with internet users via their web browsers.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 22 and therefore denies the same.

23. The basic command that web browsers use to exchange data and user communications is called a GET request. For example, when a patient types "heart failure treatment" into the search box on Defendants' website and hits Enter,' the patient's web browser makes a connection with the server for Defendant's website and sends the following request: "GET search/q=heart+failure+treatment."

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 23 and therefore denies the same.

24. The other basic transmission command utilized by web browsers is POST, which is typically employed when a user enters data into a form on a website and clicks 'Enter' or some other form of submission button. POST sends the data entered in the form to the server hosting the website that the user is visiting.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 24 and therefore denies the same.

25. In response to receiving a GET or POST command, the server for the website with which the user is exchanging information will send a set of instructions to the web browser and command the browser with source code that directs the browser to render the website's responsive communication.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 25 and therefore denies the same.

26. Unbeknownst to users, however, the website's server may also redirect the user's communications to third parties. Typically, users are provided no notice that these disclosures are being made. Third parties (such as Facebook and Google) use the information they receive to track user data and communications for marketing purposes.

RESPONSE: Lima denies that its website's server redirected user communications or PHI, as defined under HIPAA, to third parties. Lima denies for lack for information or knowledge at this

time sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 26 and therefore denies the same.

27. In many cases, third-party marketing companies acquire the content of user communications through a 1x1 pixel (the smallest dot on a user's screen) called a tracking pixel, a web-bug, or a web beacon. These tracking pixels are tiny and are purposefully camouflaged to remain invisible to users.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 27 and therefore denies the same.

28. Tracking pixels can be placed directly on a web page by a developer, or they can be funneled through a "tag manager" service to make the invisible tracking run more smoothly. A tag manager further obscures the third parties to whom user data was transmitted.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 28 and therefore denies the same.

29. These tracking pixels can collect dozens of data points about individual website users who interact with a website. One of the world's most prevalent tracking pixels, called the Meta Pixel, is provided by Facebook.

RESPONSE: Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 29 and therefore denies the same.

30. A web site developer who chooses to deploy third-party source code, like a tracking pixel, on their website must enter the third-party source code directly onto their website

for every third party they wish to send user data and communications. This source code operates invisibly in the background when users visit a site employing such code.

RESPONSE: Lima denies for lack for information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 30 and therefore denies the same.

C. Tracking pixels provide third parties with a trove of personally identifying data, permitting them to uniquely identify the individuals browsing a website.

31. Tracking pixels are lines of source code embedded in websites such as Defendants'. Tracking pixels are particularly pernicious because they result in the disclosure of a variety of data that permits third parties to determine the unique personal identities of website visitors. While most users believe that the internet provides them with anonymity when, for example, they browse a hospital website for treatment information about a medical condition, that is not the case when the hospital website has embedded third party tracking devices, as Defendant has.

RESPONSE: Lima admits only that the tracking pixels were deployed within certain pages on its website. Lima denies that any patient communications or PHI, as defined under HIPAA, were transmitted to third parties. Lima denies for lack for information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 31 and therefore denies the same.

32. For example, an IP address is a number that identifies a computer connected to the internet. IP addresses are used to identify and route communications on the internet. IP addresses of individual users are used by internet service providers, websites, and tracking companies to facilitate and track internet communications and content. IP addresses also offer advertising companies like Facebook a unique and semi-persistent identifier across devices-one that has limited privacy controls.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 32 and therefore denies the same.

33. Because of their uniquely identifying characteristics, IP addresses are personally identifiable information. Tracking pixels can (and typically do) collect website visitors' IP addresses.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 33 and therefore denies the same.

34. Likewise, internet cookies also provide personally identifiable information. Cookies are small text files that web servers can place on a user's browser and computer when a user's browser interacts with a website server. Cookies are typically designed to acquire and record an individual internet user's communications and activities on websites and were developed by programmers to aid with online advertising.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 34 and therefore denies the same.

35. Cookies are designed to operate as a means of identification for internet users. Advertising companies like Facebook and Google have developed methods for monetizing and profiting from cookies. These companies use third-party tracking cookies to help them acquire and record user data and communications in order to sell targeted advertising that is customized to a user's personal communications and browsing history. To build individual profiles of internet users, third party advertising companies assign a unique identifier (or a set of unique identifiers) to each user.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 35 and therefore denies the same.

36. Cookies are personal identifiers, and tracking pixels can collect cookies from website visitors.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 36 and therefore denies the same.

37. A third type of personally identifying information is what data companies refer to as a "browser-fingerprint." A browser-fingerprint is information collected about a computing device that can be used to identify the specific device.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 37 and therefore denies the same.

38. These browser-fingerprints can be used to uniquely identify individual users when a computing device's IP address is hidden or cookies are blocked and can provide a wide variety of data. As Google explained, "With fingerprinting, developers have found ways to use tiny bits of information that vary between users, such as what device they have or what fonts they have installed to generate a unique identifier which can then be used to match a user across websites." The value of browser-fingerprinting to advertisers (and trackers who want to monetize aggregated data) is that they can be used to track website users just as cookies do, but it employs much more subtle techniques. Additionally, unlike cookies, users cannot clear their fingerprint and therefore cannot control how their personal information is collected.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 38 and therefore denies the same.

39. In 2017, researchers demonstrated that browser fingerprinting techniques can successfully identify 99.24 percent of all users.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 39 and therefore denies the same.

40. Browser-fingerprints are personal identifiers, and tracking pixels can collect browser-fingerprints from website visitors.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 40 and therefore denies the same.

41. A fourth kind of personally identifying information protected by law against disclosure are unique user identifiers (such as Facebook's "Facebook ID") that permit companies like Facebook to quickly and automatically identify the personal identity of its user across the internet whenever the identifier is encountered. A Facebook ID is an identifying number string that is connected to a user's Facebook profile. Anyone with access to a user's Facebook ID can locate a user's Facebook profile.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 41 and therefore denies the same.

42. Unique personal identifiers such as a person's Facebook ID are likewise capable of collection through pixel trackers.

RESPONSE: Lima denies for lack of information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 42 and therefore denies the same.

D. Facebook

43. Facebook, a social media platform founded in 2004 and today operated by Meta Platforms, Inc., was originally designed as a social networking website for college students.

RESPONSE: Lima admits to the existence of Facebook and its predecessor company Meta Platforms, Inc. Lima denies the remaining allegation for lack of information or knowledge

sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 43 and therefore denies the same.

44. Facebook describes itself as a “real identity” platform. This means that users are permitted only one account and must share "the name they go by in everyday life." To that end, Facebook requires users to provide their first and last name, along with their birthday, telephone number and/or email address, and gender, when creating an account.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 44 and therefore denies the same.

45. In 2007, realizing the value of having direct access to millions of consumers, Facebook began monetizing its platform by launching "Facebook Ads," proclaiming this service to be a "completely new way of advertising online," that would allow "advertisers to deliver more tailored and relevant ads." Facebook has since evolved into one of the largest advertising companies in the world. Facebook can target users so effectively because it surveils user activity both on and off its website through the use of tracking pixels. This allows Facebook to make inferences about users based on their interests, behavior, and connections.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 45 and therefore denies the same.

46. Today, Facebook provides advertising on its own social media platforms, as well as other websites through its Facebook Audience Network. Facebook has more than 2.9 billion users.

RESPONSE: Lima admits that Facebook hosts advertising on its platform. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 46 and therefore denies the same.

47. Facebook maintains profiles on users that include users' real names, locations, email addresses, friends, likes, and communications. These, profiles are associated with personal identifiers, including IP addresses, cookies, and other device identifiers. Facebook also tracks non-users across the web through its internet marketing products and source code.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 47 and therefore denies the same.

48. Facebook offers several advertising options based on the type of audience that an advertiser wants to target. Those options include targeting "Core Audiences," "Custom Audiences," "Look Alike Audiences," and even more granulated approaches within audiences called "Detailed Targeting." Each of Facebook's advertising tools allow an advertiser to target users based on, among other things, their personal data, including geographic location, demographics (e.g., age, gender education, job title, etc.), interests, (e.g., preferred food, movies), connections (e.g., particular events or Facebook pages), and behaviors (e.g., purchases, device usage, and pages visited). This audience can be created by Facebook, the advertiser, or both working in conjunction.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 48 and therefore denies the same.

49. Ad Targeting has been extremely successful due to Facebook's ability to target individuals at a granular level. For example, among many possible target audiences, "Facebook offers advertisers 1.5 million people 'whose activity on Facebook suggests that they're more likely to engage with/distribute liberal political content' and nearly seven million Facebook users who 'prefer high-value goods in Mexico.'" Aided by highly granular data used to target specific users,

Facebook's advertising segment quickly became Facebook's most successful business unit, with millions of companies and individuals utilizing Facebook's advertising services.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 49 and therefore denies the same.

E. Facebook's Meta Pixel tool allows Facebook to track the personal data of individuals across a broad range of third-party websites.

50. To power its advertising business, Facebook uses a variety of tracking tools to collect data about individuals, which it can then share with advertisers. These tools include software development kits incorporated into third-party applications, its "Like" and "Share" buttons (known as "social plug-ins"), and other methodologies, which it then uses to power its advertising business.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 50 and therefore denies the same.

51. One of Facebook's most powerful tools is called the "Meta Pixel."

RESPONSE: Lima admits to the existence of the "Meta Pixel. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 51 and therefore denies the same.

52. The Meta Pixel is a snippet of code embedded on a third-party website that tracks users' activities as users navigate through a website. Once activated, the Meta Pixel "tracks the people and type of actions they take." Meta Pixel can track and log each page a user visits, what buttons they click, as well as specific information that users input into a website.

RESPONSE: Lima admits only that the Meta Pixel is a piece of code that may be placed on a website, which allows third parties to measure the effectiveness of their advertising by understanding the actions website users take on a website. Lima denies for lack of information or

knowledge at this sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 52 and therefore denies the same.

53. For example, if Meta Pixel is incorporated on a shopping website, it may log what searches a user performed, which items of clothing a user clicked on, whether they added an item to their cart, as well as what they purchased. Along with this data, Facebook collects identifying information like IP addresses, Facebook IDs, and other data that allow Facebook to identify the user. Once Facebook receives this information, Facebook processes it, analyzes it, and assimilates it into datasets like its Core Audiences and Custom Audiences.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 53 and therefore denies the same.

54. The Meta Pixel collects data on website visitors regardless of whether they have Facebook or Instagram accounts.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 54 and therefore denies the same.

55. Facebook can then share analytic metrics with the website host, while at the same time sharing the information it collects with third-party advertisers who can then target users based on the information collected and shared by Facebook.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 55 and therefore denies the same.

56. Facebook touted Meta Pixel (which it originally called "Facebook Pixel") as "a new way to report and optimize for conversions, build audiences and get rich insights about how people use your website." According to Facebook, the Meta Pixel is an analytics tool that

allows business to measure the effectiveness of their advertising by understanding the actions people take on their websites.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 56 and therefore denies the same.

57. Facebook warns web developers that its Pixel is a personal identifier because it enables Facebook "to match your website visitors to their respective Facebook User accounts."

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 57 and therefore denies the same.

58. Facebook recommends that its Meta Pixel code be added to the base code on every website page (including the website's persistent header) to reduce the chance of browsers or code from blocking Pixel's execution and to ensure that visitors will be tracked.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 58 and therefore denies the same.

59. Once Meta Pixel is installed on a business's website, the Meta Pixel tracks users as they navigate through the website and logs which pages are visited, which buttons are clicked, the specific information entered in forms (including personal information), as well as "optional values" set by the business website. Meta Pixel tracks this data regardless of whether a user is logged into Facebook. It is unclear how Facebook exploits the data collected from nonusers, but when asked by Congress about Facebook's business practices, Mark Zuckerberg conceded that the company maintains "shadow profiles" on nonusers of Facebook.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 59 and therefore denies the same.

60. For Facebook, the Meta Pixel tool embedded on third-party websites acts as a conduit for information, sending the information it collects to Facebook through scripts running in a user's internet browser, similar to how a "bug" or wiretap can capture audio information. The information is sent in data packets, which include personally identifying data such as a user's IP address.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 60 and therefore denies the same.

61. For example, the Meta Pixel is configured to automatically collect "HTTP Headers" and "Pixel-specific data." HTTP headers collect data including "IP addresses, information about the web browser, page location, document, referrer and person using the website. Pixel-specific data includes such data as the "Pixel ID and the Facebook Cookie.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 61 and therefore denies the same.

62. Meta Pixel takes the information it harvests and sends it to Facebook with personally identifiable information, such as a user's IP address, name email, phone number, and specific Facebook ID, which identifies an individual's Facebook user account. Anyone who has access to this Facebook ID can use this identifier to quickly and easily locate, access, and view a user's corresponding Facebook profile. Facebook stores this information on its servers, and, in some instances, maintains this information for years.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 62 and therefore denies the same.

63. Facebook has a number of ways to uniquely identify the individuals whose data is being forwarded from third-party websites through the Meta Pixel.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 63 and therefore denies the same.

64. If a user has a Facebook account, the user data collected is linked to the individual user's Facebook account. For example, if the user is logged into their Facebook account when the user visits a third-party website where the Meta Pixel is installed, many common browsers will attach third-party cookies allowing Facebook to link the data collected by Meta Pixel to the specific Facebook user.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 64 and therefore denies the same.

65. Alternatively, Facebook can link the data to a user's Facebook account through the "Facebook Cookie." The Facebook Cookie is a workaround to recent cookie-blocking applications used to prevent websites from tracking users.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 65 and therefore denies the same.

66. Facebook can also link user data to Facebook accounts through identifying information collected through Meta Pixel through what Facebook calls "Advanced Matching." There are two forms of Advanced Matching: manual matching and automatic matching. Manual matching requires the website developer to manually send data to Facebook so that users can be linked to data. Automatic matching allows Meta Pixel to scour the data it receives from third-party websites to search for recognizable fields, including names and email addresses that correspond with users' Facebook accounts.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 66 and therefore denies the same.

67. While the Meta Pixel tool "hashes" personal data-obscuring it through a form of cryptography before sending the data to Facebook-that hashing does not prevent Facebook from using the data. In fact, Facebook explicitly uses the hashed information it gathers to link pixel data to Facebook profiles.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 67 and therefore denies the same.

68. Facebook also receives personally identifying information in the form of user's unique IP addresses that stay the same as users visit multiple websites. When browsing a third-party website that has embedded Facebook code, a user's unique IP address is forwarded to Facebook by GET requests, which are triggered by Facebook code snippets. The IP address enables Facebook to keep track of the website page visits associated with that address.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 68 and therefore denies the same.

69. Facebook also places cookies on visitors' computers. It then uses these cookies to store information about each user. For example, the "c_user" cookie is a unique identifier that identifies a Facebook user's ID. The c_user cookie value is the Facebook equivalent of a user identification number. Each Facebook user has one-and only one-unique c_user cookie. Facebook uses the c_user cookie to record user activities and communications.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 69 and therefore denies the same.

70. The data supplied by the c_user cookie allows Facebook to identify the Facebook account associated with the cookie. One simply needs to log into Facebook, and then type www.facebook.com/#, with the c_user identifier in place of the "#." For example, the c_user cookie for

Mark Zuckerberg is 4. Logging into Facebook and typing www.facebook.com/4 in the web browser retrieves Mark Zuckerberg's Facebook page: www.facebook.com/zuck.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 70 and therefore denies the same.

71. Similarly, the "lu" cookie identifies the last Facebook user who logged in using a specific browser. Like IP addresses, cookies are included with each request that a user's browser makes to Facebook's servers. Facebook employs similar cookies such as "datr," "fr," "act," "presence," "spin," "wd," "xs," and "fbp" cookies to track users on websites across the internet. These cookies allow Facebook to easily link the browsing activity of its users to their real-world identities, and such highly sensitive data as medical information, religion, and political preferences.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 71 and therefore denies the same.

72. Facebook also uses browser fingerprinting to uniquely identify individuals. Web browsers have several attributes that vary between users, like the browser software system, plugins that have been installed, fonts that are available on the system, the size of the screen, color depth, and more. Together, these attributes create a fingerprint that is highly distinctive. The likelihood that two browsers have the same fingerprint is at least as low as 1 in 286,777, and the accuracy of the fingerprint increases when combined with cookies and the user's IP address. Facebook recognizes a visitor's browser fingerprint each time a Facebook button is loaded on a third-party website page. Using these various methods, Facebook can identify individual users, watch as they browse third-party websites like www.limamemorial.org, and target users with advertising based on their web activity.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 72 and therefore denies the same.

D. [sic] Defendants embedded the Meta Pixel tool on their website, resulting in the capture and disclosure of patients' protected health information to Facebook.

73. A third-party website that incorporates Meta Pixel benefits from the ability to analyze a user's experience and activity on the website to assess the website's functionality and traffic. The third-party website also gains information from its customers through Meta Pixel that can be used to target them with advertisements, as well as to measure the results of advertising efforts.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 73 and therefore denies the same.

74. Facebook's intrusion into the personal data of visitors to third-party websites incorporating the Meta Pixel is both significant and unprecedented. When Meta Pixel is incorporated into a third-party website, unbeknownst to users and without their consent Facebook gains the ability to surreptitiously gather every user interaction with the website ranging from what the user clicks on to the personal information entered on a website search bar. Facebook aggregates this data against all websites. Facebook benefits from obtaining this information because it improves its advertising network, including its machine-learning algorithms and its ability to identify and target users with ads.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 74 and therefore denies the same.

75. Facebook provides websites using Meta Pixel with the data it captures in the "Meta Pixel page" in Events Manager, as well as tools and analytics to reach these individuals through future Facebook ads. For example, websites can use this data to create "custom audiences" to

target the specific Facebook user, as well as other Facebook users who match "custom audience's" criteria. Businesses that use Meta Pixel can also search through Meta Pixel data to find specific types of users to target, such as men over a certain age.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 75 and therefore denies the same.

76. Meta Pixel is wildly popular with businesses and embedded on millions of websites. Businesses install the Meta Pixel software code to help drive and decode key performance metrics from visitor traffic to their websites. Businesses also use the Meta Pixel to build custom audiences on Facebook that can be used for advertising purposes.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 76 and therefore denies the same.

77. Shockingly, Meta Pixel is incorporated on many websites that are used to store and convey sensitive medical information that by law must be kept private. Recently, investigative journalists have determined that Meta Pixel is embedded on the websites of many of the top hospitals in the United States. This results in sensitive medical information being collected and then sent to Facebook when a user interacts with these hospital websites. For example, when a user on many of these hospital websites clicks on a "Schedule Online" button next to a doctor's name, Meta Pixel sends the text of the button, the doctor's name, and the search term (such as "cardiology") used to find the doctor to Facebook. If the hospital's website has a drop-down menu to select a medical condition in connection with locating a doctor or making an appointment, that condition is also transmitted to Facebook through Meta Pixel.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 77 and therefore denies the same.

78. Facebook has designed the Meta Pixel such that Facebook receives information about patient activities on hospital websites as they occur in real time. Indeed, the moment that a patient takes any action on a webpage that includes the Meta Pixel-such as clicking a button to register, login, or to create an appointment-Facebook code embedded on that page redirects the content of the patient's communications to Facebook while the exchange of information between the patient and hospital is still occurring.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 78 and therefore denies the same.

79. Defendants are among the hospital systems who have embedded Meta Pixel on their websites. When a patient enters their personal information through Defendant's websites that incorporate Meta Pixel, such as to locate a doctor or make an appointment, this information, including what the patient is being treated for, is immediately and instantaneously routed to Facebook via the Meta Pixel. The acquisition and disclosure of these communications occurs contemporaneously with the transmission of these communications by patients.

RESPONSE: Lima admits only that the Meta Pixel has been deployed on certain pages within its website. Lima denies that any patient communications or PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 79 and therefore denies the same.

80. This data, which can include health conditions (e.g., addiction, Alzheimer 's, heart disease), diagnoses, procedures, test results, the treating physician, medications, and other personally identifying information ("Personal Health Information"), is obtained and used by Facebook, as well as other parties, for the purpose of targeted advertising.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies the remaining allegations in paragraph 80 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

81. For example, a patient searching for a doctor on Defendants' website located at www.limamemorial.org is asked to provide a variety of information to filter the various physicians available to treat various medical conditions, including the doctor's specialty, the patient's symptoms, the patient's preferred location, and other information that the patient provides:

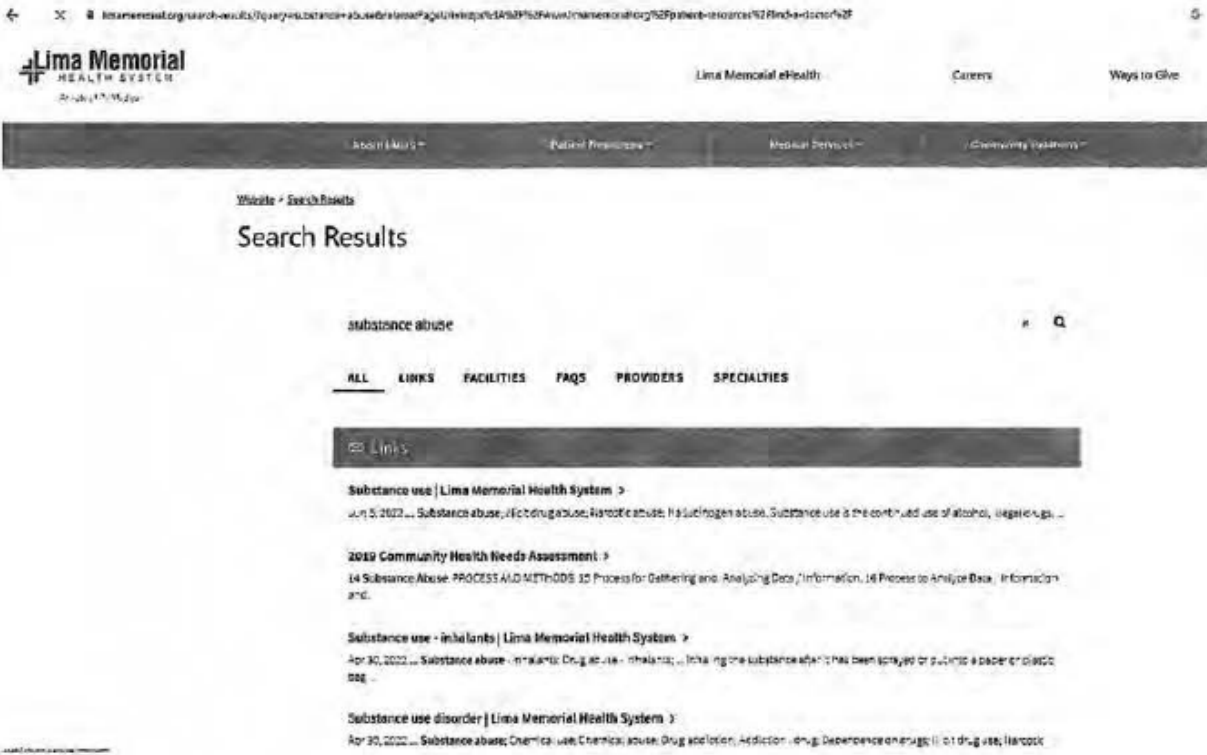


RESPONSE: Lima admits only that Plaintiff has copied a page from Lima's website into its Complaint. Lima states that the website identified speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies the remaining allegations in paragraph 81 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

82. As recently as November 4, 2022, all this data was disclosed to Facebook simultaneously in real time as patients transmitted their information, along with other data, such as patient's unique Facebook ID that is captured by the c_user cookie, which allows Facebook to link this information to patients' unique Facebook accounts. Defendants also disclosed other personally identifying information to Facebook, such as patient IP addresses, cookie identifiers, browser-fingerprints, and device identifiers.

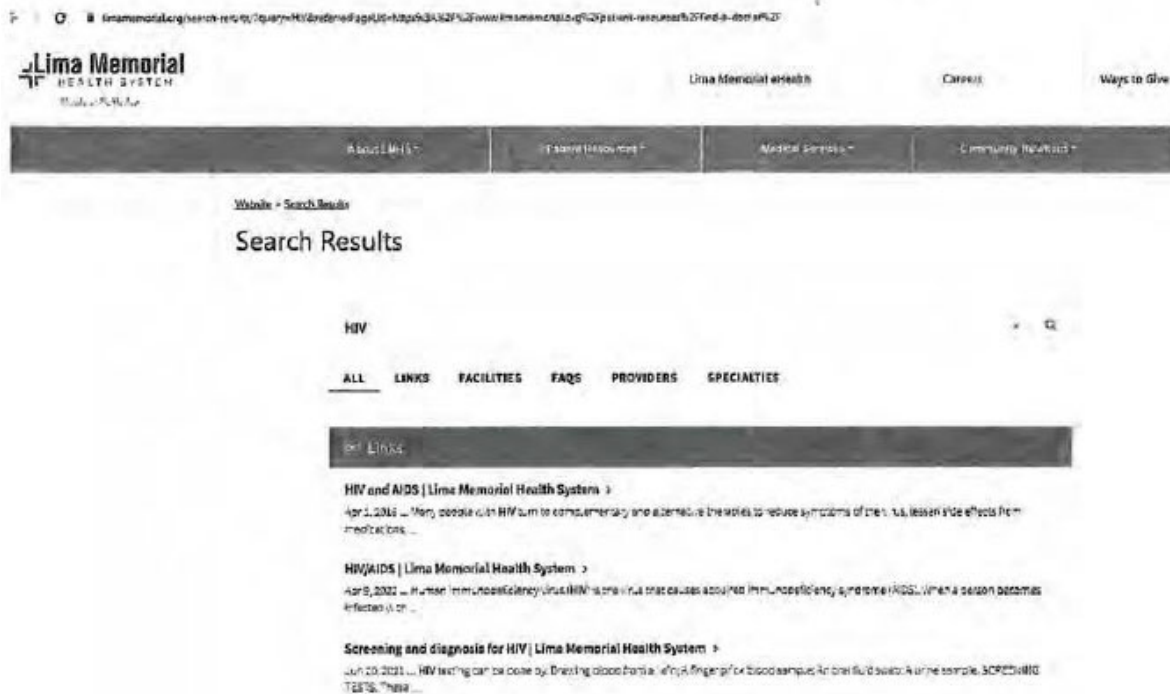
RESPONSE: To the extent the term "all this data" refers to PHI, as defined under HIPAA, Lima denies that PHI was transmitted from Lima's website to any third parties. Responding further, as Plaintiff's allegations are stated and absent a proper definition of the terms employed, Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 82 and therefore denies the same.

83. Defendants disclosed such personally identifying information and sensitive medical information even when patients were searching for doctors on their websites to assist them with conditions such as substance abuse and addiction:



RESPONSE: Lima admits only that Plaintiff has copied a page from Lima’s website into its Complaint. Lima States that its website speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima’s website to any third parties. Lima denies for lack of knowledge or information sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 83 and therefore denies the same.

84. Defendants even disclosed personally identifying and sensitive medical information to Facebook about patients who are searching for treatment of HIV (Human Immunodeficiency Virus):



RESPONSE: Lima admits only that Plaintiff has copied a page from Lima’s website into its Complaint. Lima States that its website speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima’s website to any third parties. Lima denies for lack of knowledge or information sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 84 and therefore denies the same.

85. In other words, Facebook learned not just that patients were seeking treatment, but where and typically when they were seeking treatment, along with other information that patients would reasonably assume that Defendants were not sharing with third party marketing companies.

RESPONSE: Lima denies the allegations of paragraph 85.

86. Defendants also disclosed patient information from other sections of their website including (but not limited to) communications that are captured by the website's search bar, communications that are captured when a patient searches for "Medical Services" offered by

Defendants, communications that are made when a patient signs up for classes such as "Weight Management," communications made by patients using the website's Bill Pay/Financials function, and communications made when patients are researching specific medical conditions such as COVID-19.

RESPONSE: Lima denies that it disclosed any PHI, as defined under HIPAA, to any third parties nor is it disclosing that information now. Further responding, Lima denies for lack of information or knowledge at this time sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 86 and therefore denies the same.

87. By compelling visitors to its websites to disclose personally identifying data and sensitive medical information to Facebook, Defendants knowingly disclosed information that allowed Facebook and other advertisers to link patients' Personal Health Information to their private identities and target them with advertising (or do whatever else Facebook may choose to do with this data, including running "experiments" on its customers by manipulating the information they are shown on their Facebook pages). Defendants intentionally shared the Personal Health Information of their patients with Facebook in order to gain access to the benefits of the Meta Pixel tool.

RESPONSE: Lima denies the allegations of paragraph 87.

88. Defendants facilitated the disclosure of Plaintiff Jane Doe's Personal Health information, including sensitive medical information, to Facebook without her consent or authorization when she entered information on the websites that Defendants maintain. Plaintiff continued to have her privacy violated when Defendants permitted Facebook and other companies to send her targeted advertising related to her medical condition.

RESPONSE: Lima denies the allegations of paragraph 88.

89. For example, Plaintiff Jane Doe visited Defendants' website multiple times in 2022, including between June and October 2022, at www.limamemorial.org and entered data, including sensitive medical information, such as details about her medical condition and doctor. The information that Plaintiff Jane Doe transmitted included queries about treatment for anxiety and doctors who could assist with other medical procedures. After entering her medical information on Defendants' website, Plaintiff Jane Doe began receiving ads on her Facebook page related to her medical conditions, including advertisements for anxiety medication.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 89 and therefore denies the same.

90. Plaintiff Jane Doe believed that her interactions with Defendants' website were private and would not be shared with anyone besides h [sic] health care providers and their staff. Plaintiff Jane Doe was dismayed when she learned that her Personal Health Information, including private and potentially distressing facts, had been sent to Facebook without her consent.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 90 and therefore denies the same.

91. Defendants knew that by embedding Meta Pixel-a Facebook advertising tool- they were permitting Facebook to collect, use, monitor, and share Plaintiff's and the Class Members' Personal Health Information, including sensitive medical information and personally identifying data. Defendants were also aware that such information would be shared with Facebook

simultaneously with patients' interactions with its websites. Defendants made the decision to barter their patients' Personal Health Care Information to Facebook because they wanted access to the Meta Pixel tool. While that bargain may have benefited Defendants and Facebook, it betrayed the rights of Plaintiff and Class Members.

RESPONSE: Lima admits that Meta Pixel was included on a limited number of pages on its web site. Lima denies the remaining allegations of paragraph 91.

F. [sic] Plaintiff and the Class Members did not consent to the interception and disclosure of their protected health information.

92. Plaintiff and Class Members had no idea when they interacted with Defendants' websites that their personal data, including sensitive medical data, was being collected and simultaneously transmitted to Facebook. That is because, among other things, Meta Pixel was secretively and seamlessly integrated into Defendants' websites and was invisible to patients visiting those websites.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 92 and therefore denies the same.

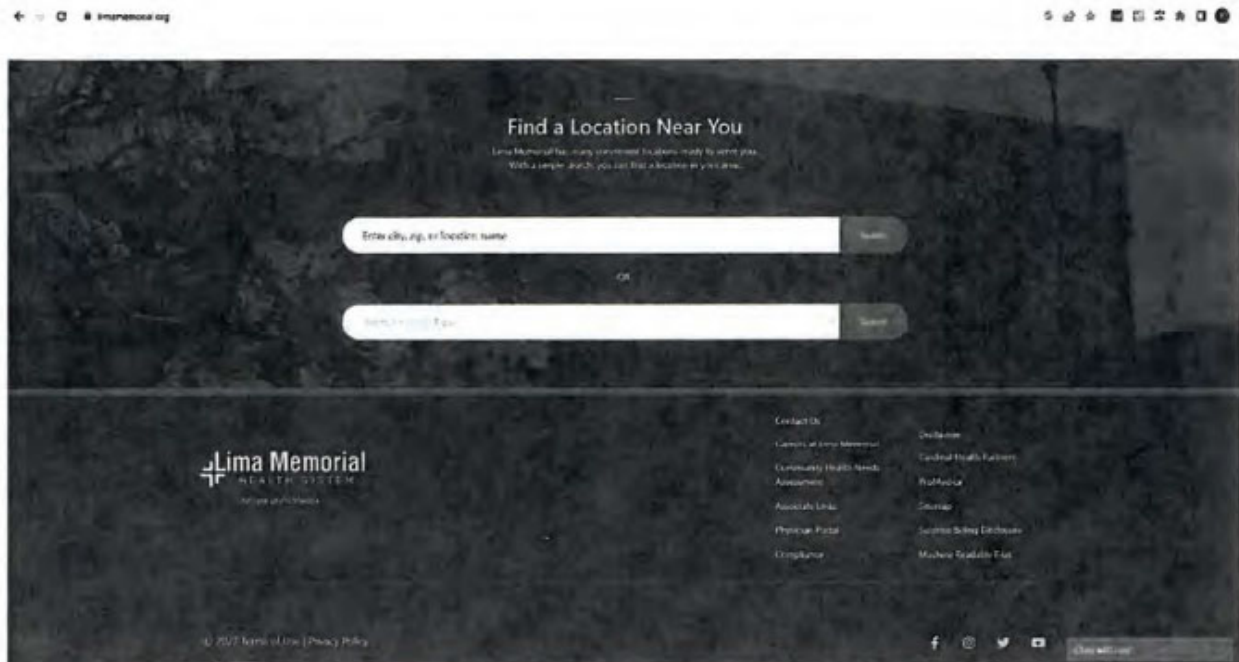
93. For example, when Plaintiff Jane Doe visited Defendants' website at www.limamemorial.org in 2022, there was no indication that the Meta Pixel was embedded on that website or that it would collect and transmit his sensitive medical data to Facebook.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the allegations in paragraph 93 and therefore denies the same.

94. Plaintiff and her fellow Class Members could not consent to Defendants' conduct when there was no indication that their sensitive medical information would be collected and transmitted to Facebook in the first place.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 94 and therefore denies the same.

95. While Defendants purport to have a "Privacy Policy," that Privacy Policy is effectively hidden from patients, buried at the bottom of Defendants' homepage in type so small as to be unreadable to many visitors:



RESPONSE: Lima admits only that its privacy policy is available on its website. Lima denies the remaining allegations of paragraph 95.

96. Defendants' "Privacy Policy" gives no indication to patients that Defendants routinely allow Facebook to capture and exploit patients' Personal Health Information.

RESPONSE: Lima states that its Privacy Policy speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies that it “allows Facebook to capture and exploit patients” PHI. Lima denies the remaining allegations in paragraph 96 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

97. Even if a patient had stumbled upon Defendants' carefully hidden "Privacy Policy," nothing in that notice would be understood by any reasonable patient to mean that Defendants were routinely allowing Facebook to capture and exploit patients' Personal Health Information. Indeed, Defendants expressly promise that it will never share patients' personal health information for "marketing" purposes without their written permission:

II. USES AND DISCLOSURES OF YOUR PERSONAL HEALTH INFORMATION

1. Your Authorization. Except as outlined in Nos. 2 through 11 below, we will not use or disclose your personal health information for any purpose unless you have signed a form authorizing the use or disclosure. You have the right to revoke that authorization in writing unless we have taken any action in reliance on the authorization. There are certain uses and disclosures of your personal health information for which we will always obtain a prior authorization and these include:

- Marketing purposes, unless the communication is made directly to you in person, is simply a promotional gift of nominal value, is a prescription refill reminder, general health or wellness information or a communication about health-related products or services that we offer or that are directly related to your treatment.
- Sales of your health information
- Most sharing of psychotherapy notes

RESPONSE: Lima states that its Privacy Policy speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies that its privacy policy is “carefully hidden” and that it allows “Facebook to capture and exploit patients” PHI. Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 97 and therefore denies the same.

98. That promise is unsurprising. Defendants do not have a legal right to share Plaintiff's and Class Members' Personal Health Information without their written consent to third parties, because this information is protected from such disclosure by law. See Ohio Rev. Code § 3798.04(A); 45 C.F.R. § 164.508. Nor are Defendants permitted to disclose patients' Personal Health Information to advertising and marketing companies like Facebook without express written authorization from patients. See Ohio Rev. Code § 3798.04(B); 45 C.F.R. § 164.502(a)(5)(ii).

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Further answering, Lima denies the remaining allegations in paragraph 98 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

99. Defendants failed to obtain a valid written authorization from Plaintiff or any of the Class Members to allow the capture and exploitation of their personally identifiable information and the contents of their communications for marketing purposes.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the allegations in paragraph 99 and therefore denies the same.

100. Likewise, a patient's reasonable expectation that their health care provider will not share their information with third parties for marketing purposes is not subject to waiver via an inconspicuous privacy policy hidden away on a company's website. Such "Browser-Wrap" statements do not create an enforceable contract against consumers. Further, Defendants expressly

promised Plaintiff and Class Members that they would never sell or use their Personal Health Information for marketing purposes without express authorization.

RESPONSE: Lima denies that it sold patients' PHI for marketing purposes. Lima denies for lack of information or knowledge sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 100 and therefore denies the same.

101. Accordingly, Defendants lacked authorization to intercept, collect and disclose Plaintiff's and Class Members Personal Health Information to Facebook or aid in the same.

RESPONSE: Lima denies that it intercepted, collected or disclosed Plaintiff's or the putative class's PHI. Responding further, Lima denies that it aided Facebook in the interception, collection and disclosure of Plaintiff's or the putative class's PHI. Lima denies the remaining allegations in paragraph 101 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

G. [sic] The disclosures of personal patient data to Facebook are unnecessary.

102. There is no information anywhere on the websites operated by Defendants that would alert patients that their most private information (such as their identifiers, their medical conditions, and their medical providers) is being automatically transmitted to Facebook. Nor are any of the disclosures of patient Personal Health Information to Facebook necessary for Defendants to maintain their healthcare website or provide medical services to patients.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge at this sufficient to form an opinion about the truth or veracity of the remaining allegations in paragraph 102 and therefore denies the same.

103. For example, it is possible for a healthcare website to provide a doctor search function without allowing disclosures to third-party advertising companies about patient sign ups or appointment's. It is also possible for a website developer to utilize tracking tools without allowing disclosure of patients' Personal Healthcare Information to companies like Facebook. Likewise, it is possible for Defendants to provide medical services to patients without sharing their Personal Health Information with Facebook so that this information can be exploited for advertising purposes.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 103 and therefore denies the same.

104. Despite these possibilities, Defendants willfully chose to implement Meta Pixel on their websites and aid in the disclosure of personally identifiable information and sensitive medical information about its patients, as well as the contents of their communications with Defendants, to Facebook.

RESPONSE: Lima denies the allegations of paragraph 104.

H. [sic] Plaintiff and Class Members have a reasonable expectation of privacy in their Personal Health Information, especially with respect to sensitive medical information.

105. Plaintiff and Class Members have a reasonable expectation of privacy in their Personal Health Information, including personally identifying data and sensitive medical information. Defendants' surreptitious interception, collection, and disclosure of patients' Personal Health Information to Facebook violated Plaintiff and Class Members' privacy interests.

RESPONSE: Lima denies that it surreptitiously intercepts, collects or discloses patients' PHI to Facebook in violation of Plaintiff or any putative Class Members' privacy interests. Lima denies

for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 105 and therefore denies the same.

106. Patient Personal Health Information is specifically protected by law. E.g., Ohio Rev. Code § 3798.04. The prohibitions against disclosing patient Personal Health Information include prohibitions against disclosing personally identifying information such as patient names, IP addresses, and other unique characteristics or codes. E.g., Ohio Rev. Code § 3798.03(2); 45 C.F.R. § 164.514.

RESPONSE: Lima states that that the statutes identified speak for themselves. To the extent plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated.

107. Ohio courts have long recognized that health care providers like Defendant owe a duty of confidentiality to patients, which prohibits them from disclosing patients' health information without patients' written consent. *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 401 (1999). And Ohio law subjects medical providers who treat conditions such as HIV to heightened duties of confidentiality. Ohio Rev. Code§ 3701.243(1)-(3).

RESPONSE: Lima states that *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 401 (1999) and Ohio Rev. Code§ 3701.243(1)-(3) speak for themselves. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies the remaining allegations in paragraph 107 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

108. Given the public policy expressed by these laws, coupled with Defendants' express promises that it would protect the confidentiality of their Personal Health information, Plaintiff

and the Class Members had a reasonable expectation of privacy in their protected health information.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 108.

109. Several studies examining the collection and disclosure of consumers' sensitive medical information confirm that the disclosure of sensitive medical information violates expectations of privacy that have been established as general social norms.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 109 and therefore denies the same.

110. Polls and studies also uniformly show that the overwhelming majority of Americans consider one of the most important privacy rights to be the need for an individual's affirmative consent before a company collects and shares its customers' data.

RESPONSE Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 110 and therefore denies the same.

111. For example, a recent study by *Consumer Reports* showed that 92% of Americans believe that internet companies and websites should be required to obtain consent before selling or sharing consumers' data, and the same percentage believed that internet companies and websites should be required to provide consumers with a complete list of the data that has been collected about them.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 111 and therefore denies the same.

112. Users act consistently with these preferences. For example, following a new rollout of the iPhone operating software-which asks users for clear, affirmative consent before allowing companies to track users-85 percent of worldwide users and 94 percent of U.S. users chose not to share data when prompted.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 112 and therefore denies the same.

113. "Patients are highly sensitive to disclosure of their health information," particularly because it "often involves intimate and personal facts, with a heavy emotional overlay." Peter A. Winn, *Confidentiality in Cyberspace: The HIPAA Privacy Rules and the Common Law*, 33 RUTGERS L.J. 617, 621 (2002). Unsurprisingly, empirical evidence demonstrates that "[w]hen asked, the overwhelming majority of Americans express concern about the privacy of their medical records." Sharona Hoffman & Andy Podgurski, *E-Health Hazards: Provider Liability and Electronic Health Record Systems*, 24 BERKLEY TECH L.J. 1523, 1557 (2009).

RESPONSE: Lima states that the law journals identified speak for themselves. To the extent Plaintiff misquotes or mischaracterizes the information contained therein, Lima denies the allegations as stated. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 113 and therefore denies the same.

114. The concern about sharing personal medical information is compounded by the reality that advertisers view this type of information as particularly valuable. Indeed, having access to the data women share with their healthcare providers allows advertisers to obtain data on children before they are even born. As one recent article noted, "What is particularly worrying about this process of datafication of children is that companies like [Facebook] are harnessing and

collecting multiple typologies of children's data and have the potential to store a plurality of data traces under unique ID profiles."

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 114 and therefore denies the same.

115. Many privacy law experts have expressed serious concerns about patients' sensitive medical information being disclosed to third-party companies like Facebook. As those critics have pointed out, having a patient's personal health information disseminated in ways the patient is unaware of could have serious repercussions, including affecting their ability to obtain life insurance, how much they might pay for such coverage, the rates they might be charged on loans, and the likelihood of their being discriminated against.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 115 and therefore denies the same.

I. [sic] Plaintiff's Personal Health Data that Defendants collected, disclosed, and used is Plaintiff's property, has economic value, and its illicit disclosure has caused Plaintiff harm.

116. It is common knowledge that there is an economic market for consumers' personal data – including the kind of data that Defendants collected and disclosed from Plaintiff and Class Members.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 116 and therefore denies the same.

117. In 2013, the *Financial Times* reported that the data-broker industry profits from the trade of thousands of details about individuals, and that within that context, "age, gender and location information" were being sold for approximately "\$0.50 per 1,000 people."

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 117 and therefore denies the same.

118. In 2015, *TechCrunch* reported that “to obtain a list containing the names of individuals suffering from a particular disease,” a market participant would have to spend about “\$0.30” per name. That same article noted that “Data has become a strategic asset that allows companies to acquire or maintain a competitive edge” and that the value of a single user’s data can vary from \$15 to more than \$40 per user.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 118 and therefore denies the same.

119. In a 2021 Washington Post article, the legal scholar Dina Srinivasan said that consumers “should think of Facebook’s cost as [their] data and scrutinize the power it has to set its own price.” This price is only increasing. According to Facebook’s own financial statements, the value of the average American’s data in advertising sales rose from \$19 to \$164 per year between 2013 and 2020.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 119 and therefore denies the same.

120. Despite the protections afforded by law, there is an active market for health information. Medical information obtained from health providers garners substantial value because it is generally unavailable to third party data marketing companies because of the strict restrictions on disclosure of such information by state laws and provider standards, including the Hippocratic oath. Even with these restrictions, however, a multi-billion-dollar market exists for the sale and purchase of such private medical information.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 120 and therefore denies the same.

121. Further, individuals can sell or monetize their own data if they so choose. For example, Facebook has offered to pay individuals for their voice recordings, and has paid teenagers and adults up to \$20 per month plus referral fees to install an app that allows Facebook to collect data on how individuals use their smart phones.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 121 and therefore denies the same.

122. A myriad of other companies and apps such as DataCoup, Nielsen Compute, Killi, and UpVoice also offer consumers money in exchange for access to their personal data.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 122 and therefore denies the same.

123. Given the monetary value that data companies like Facebook have already paid for personal information in the past, Defendant has deprived Plaintiff and the Class Members of the economic value of their sensitive medical information by collecting, using, and disclosing that information to Facebook without consideration for Plaintiff and the Class Member's property.

RESPONSE: Lima denies the allegations of paragraph 123.

J. [sic] Defendants were enriched by making unlawful, unauthorized, and unnecessary disclosures of their patients' protected health information.

124. In exchange for disclosing Personal Health Information about its patients, Defendants were compensated by Facebook with enhanced online advertising services, including (but not limited to) retargeting and enhanced analytics functions.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Further answering, Lima denies that it was compensated by Facebook

with enhanced online advertising services. Lima denies the remaining allegations in paragraph 124 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

125. Retargeting is a form of online targeted advertising that targets users with ads based on their previous internet actions, which is facilitated through the use of cookies and tracking pixels. Once an individual's data is disclosed and shared with a third-party marketing company, the advertiser is able to show ads to the user elsewhere on the internet.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 125 and therefore denies the same.

126. For example, retargeting could allow a web-developer to show advertisements on other websites to customers or potential customers based on the specific communications exchanged by a patient or their activities on a website. Using the Meta Pixel, a website could target ads on Facebook itself or on the Facebook advertising network. The same or similar advertising can be accomplished via disclosures to other third-party advertisers and marketers.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 126 and therefore denies the same.

127. Once personally identifiable information relating to patient communications is disclosed to third parties like Facebook, Defendants lose the ability to control how that information is subsequently disseminated and exploited.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations in paragraph 127 and therefore denies the same.

128. The monetization of the data being disclosed by Defendants, both by Defendants and Facebook, demonstrates the inherent value of the information being collected.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 128 and therefore denies the same.

K. [sic] Facebook's history of egregious privacy violations.

129. Defendants knew or should have known that Facebook could not be trusted with their patients' sensitive medical information.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 129 and therefore denies the same.

130. Due to its ability to target individuals based on granular data, Facebook's ad-targeting capabilities have frequently come under scrutiny. For example, in June 2022, Facebook entered into a settlement with the Department of Justice regarding its Lookalike Ad service, which permitted targeted advertising by landlords based on race and other demographics in a discriminatory manner. That settlement, however, reflected only the latest in a long history of egregious privacy violations by Facebook.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 130 and therefore denies the same.

131. In 2007, when Facebook launched "Facebook Beacon," users were unaware that their online activity was tracked, and that the privacy settings originally did not allow users to opt-out. As a result of widespread criticism, Facebook Beacon was eventually shut down.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 131 and therefore denies the same.

132. Two years later, Facebook made modifications to its Terms of Service, which allowed Facebook to use anything a user uploaded to its site for any purpose, at any time, even

after the user ceased using Facebook. The Terms of Service also failed to provide for any way for users to completely delete their accounts. Under immense public pressure, Facebook eventually returned to its prior Terms of Service.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 132 and therefore denies the same.

133. In 2011, Facebook settled charges with the Federal Trade Commission relating to its sharing of Facebook user information with advertisers, as well as its false claim that third-party apps were able to access only the data they needed to operate when-in fact- the apps could access nearly all of a Facebook user's personal data. The resulting Consent Order prohibited Facebook from misrepresenting the extent to which consumers can control the privacy of their information, the steps that consumers must take to implement such controls, and the extent to which Facebook makes user information available to third parties.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 133 and therefore denies the same.

134. Facebook found itself in another privacy scandal in 2015 when it was revealed that Facebook could not keep track of how many developers were using previously downloaded Facebook user data. That same year, it was also revealed that Facebook had violated users' privacy rights by harvesting and storing Illinois' users' facial data from photos without asking for their consent or providing notice. Facebook ultimately settled claims related to this unlawful act for \$650 million.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 134 and therefore denies the same.

135. In 2018, Facebook was again in the spotlight for failing to protect users' privacy. Facebook representatives testified before Congress that a company called Cambridge Analytics may have harvested the data of up to 87 million users in connection with the 2016 election. This led to another FTC investigation in 2019 into Facebook's data collection and privacy practices, resulting in a record-breaking five-billion-dollar settlement.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 135 and therefore denies the same.

136. Likewise, a different 2018 report revealed that Facebook had violated users' privacy by granting access to user information to over 150 companies. Some companies were even able to read users' private messages.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 136 and therefore denies the same.

137. In June 2020, after promising users that app developers would not have access to data if users were not active in the prior 90 days, Facebook revealed that it still enabled third-party developers to access this data. This failure to protect users' data enabled thousands of developers to see data on inactive users' accounts if those users were Facebook friends with someone who was an active user.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 137 and therefore denies the same.

138. On February 18, 2021, the New York State Department of Financial Services released a report detailing the significant privacy concerns associated with Facebook's data collection practices, including the collection of health data. The report noted that while Facebook maintained a policy that instructed developers not to transmit sensitive medical information.

Facebook received, stored, and analyzed this information anyway. The report concluded that "[t]he information provided by Facebook has made it clear that Facebook's internal controls on this issue have been very limited and were not effective at preventing the receipt of sensitive data ."

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 138 and therefore denies the same.

139. The New York State Department of Financial Service's concern about Facebook's cavalier treatment of private medical data is not misplaced. In June 2022, the FTC finalized a different settlement involving Facebook's monetizing of sensitive medical data. In that case, the more than 100 million users of Flo, a period and ovulation tracking app, learned something startling: the company was sharing their data with Facebook. When a user was having her period or informed the app of her intention to get pregnant, Flo would tell Facebook, which could then use the data for all kinds of activities including targeted advertising. In 2021, Flo settled with the Federal Trade Commission for lying to its users about secretly sharing their data with Facebook, as well as with a host of other internet advertisers, including Google, Fabric, AppsFlyer, and Flurry. The FTC reported that Flo "took no action to limit what these companies could do with users' information."

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 139 and therefore denies the same.

140. More recently, Facebook employees admitted to lax protections for sensitive user data. Facebook engineers on the ad business product team conceded in a 2021 privacy review that "We do not have an adequate level of control and explainability over how our systems use data, and thus we can't confidently make controlled policy changes or external commitments such as 'we will not use X data for Y purpose.'"

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 140 and therefore denies the same.

141. These revelations were confirmed by an article published by the Markup on June 16, 2022, which found during the course of its investigation that Facebook's purported "filtering" failed to discard even the most obvious forms of sexual health information. Worse, the article found that the data that the Meta Pixel was sending Facebook from hospital websites not only included details such as patients' medications, descriptions of their allergic reactions, details about their upcoming doctor's appointments, but also included patients names, addresses, email addresses, and phone numbers.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 141 and therefore denies the same.

142. Of course, no additional privacy breach by Facebook is necessary for harm to have accrued to Plaintiff and Class Members; the secret disclosure by Defendant of its patient s' personal health information to Facebook means that a privacy injury has already occurred.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Responding further, Lima denies that it breached Plaintiff's or the putative class's privacy or that Plaintiff and the putative class suffered harm as a result of Lima's use of the Meta Pixel or other similar marketing technologies. Lima denies the remaining allegations in paragraph 142 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

143. Despite knowing that the Meta Pixel code embedded in its websites was sending patients' Personal Health Information to Facebook, Defendants did nothing to protect their patients

from egregious intrusions into its patients' privacy, choosing instead to benefit at those patients' expense.

RESPONSE: Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Responding further, Lima denies that it did not protect its patients' privacy or that Lima benefited at its patients' expense.

TOLLING, CONCEALMENT, AND ESTOPPEL

144. The applicable statutes of limitation have been tolled as a result of Defendants' knowing and active concealment and denial of the facts alleged herein.

RESPONSE: Lima states the allegations of this paragraph are legal conclusions and therefore no response is required, to the extent a response is required Lima denies the allegations.

145. Defendants seamlessly incorporated Meta Pixel and other trackers into their websites, providing no indication to users that they were interacting with a website enabled by Meta Pixel. Defendants had knowledge that their websites incorporated Meta Pixel and other trackers, yet failed to disclose that by interacting with Meta-Pixel-enabled websites that Plaintiff and Class Members' sensitive medical information would be intercepted, collected, used by, and disclosed to Facebook.

RESPONSE: Lima admits only that it incorporated the Meta Pixel, within certain pages on its website. Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 145 and therefore denies the same.

146. Plaintiff and Class Members could not with due diligence have discovered the full scope of Defendants' conduct, because there were no disclosures or other indication that they were interacting with websites employing Meta Pixel.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 146 and therefore denies the same.

147. The earliest that Plaintiff and Class Members, acting with due diligence, could have reasonably discovered this conduct would have been on June 16, 2022, following the release of the Markup's investigation.

RESPONSE: Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations in paragraph 147 and therefore denies the same.

148. All applicable statutes of limitation have also been tolled by operation of the discovery rule and the doctrine of continuing tort. Defendants' illegal interception and disclosure of patients' Personal Health Information has continued unabated through the date of the filing of Plaintiffs Original Complaint. What's more, Defendants were under a duty to disclose the nature and significance of their data collection practices but did not do so. Defendants are therefore estopped from relying on any statute of limitations defenses.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 148.

CLASS ACTION ALLEGATIONS

149. Plaintiff brings this action as a class action pursuant to Rule 23(8)(3) of the Ohio Rules of Civil Procedure on behalf of all Ohio citizens who are, or were, patients of Lima Memorial Health System or any of its affiliates and who exchanged communications at Defendants' websites, including www.limamemorial.org and any other Lima Memorial affiliated website that caused disclosures of patient Personal Health Information and communications to Facebook.

RESPONSE: Lima denies that this matter may be properly maintained as a class action under Ohio Rule of Civil Procedure (“Rule”) 23. Lima denies the remaining allegations in paragraph 149 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

150. Defendants' conduct violates the law and breaches its express and implied privacy promises.

RESPONSE: Lima denies the allegations of paragraph 150.

151. Defendants' unlawful conduct has injured Plaintiff and Class Members.

RESPONSE: Lima denies the allegations of paragraph 151.

152. Defendants' conduct is ongoing.

RESPONSE: Lima denies the allegations of paragraph 152.

153. Plaintiff brings this action individually and as a class action against Defendants.

RESPONSE: Lima admits only that Plaintiff brings this action individually and purportedly on behalf of a class of individuals. Lima denies that this matter may be properly maintained as a class action under Rule 23. Lima denies the remaining allegations in paragraph 153.

154. Plaintiff seeks class certification for the following proposed Class:

The Lima Memorial Health System Class: During the fullest period allowed by law, all Ohio citizens who are, or were, patients of The Lima Memorial Health System or any of its affiliates and who exchanged communications at Defendants' websites, including www.limamemorial.org and any other Luna Memorial Health System affiliated website that caused disclosures of patient Personal Health Information and communications to Facebook.

RESPONSE: Lima denies the allegations in paragraph 154.

155. Excluded from the proposed Class are: (1) any Judge or Magistrate presiding over this action and members of their families; (2) the Defendants, Defendants' subsidiaries, affiliates, parents, successors, predecessors, and any entity in which the Defendants or their parent has a

controlling interest and their current or former employees, officers, and directors; and (3) Plaintiff's counsel and Defendants' counsel.

RESPONSE: Lima denies that Plaintiff can maintain and fully prosecute this class action complaint. Lima denies the remaining allegations in paragraph 155 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

156. Plaintiff reserves the right to redefine the Class and/or add Subclasses in response to discovery or pursuant to instruction by the Court.

RESPONSE: Lima denies the allegations of paragraph 156.

157. Plaintiff and the Class Members satisfy the numerosity, commonalty, typicality, adequacy, and predominance prerequisites for suing as representative parties pursuant to Ohio Rule of Civil Procedure 23.

RESPONSE: Lima denies the allegations of paragraph 157.

158. **Numerosity:** While the exact number of Class Members is unknown to Plaintiff at this time, the Class, based on information and belief, consists of thousands of people dispersed throughout the State of Ohio, such that joinder of all members is impracticable. The exact number of Class Members can be determined by review of information maintained by Defendants.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 158.

159. **Commonality and Predominance:** There are questions of law and fact common to Class Members and which predominate over any questions affecting only individual members.

A class action will generate common answers to the questions below, which are apt to drive resolution:

- a. Whether Defendants' acts and practices violated Plaintiffs and Class Members' privacy rights;
- b. Whether Defendants' acts and practices violate Ohio Rev. Code § 2933.52(A)(1);
- c. Whether Defendants' acts and practices violate Ohio Rev. Code § 2933.52(A)(3);
- d. Whether Defendants' acts and practices violate Ohio Rev. Code § 3798.04;
- e. Whether Defendants' acts and practices violate Ohio Rev. Code § 3798.03(2);
- f. Whether Defendants' acts and practices violate Ohio Rev. Code § 1347.05(g);
- g. Whether Defendants' acts and practices violate the duty to protect patients' nonpublic medical information from unauthorized disclosure set forth in *Biddle v. Warren Hospital*, 86 Ohio St. 3d 395, 401 (1999).
- h. Whether Defendants knowingly allowed the surreptitious collection and disclosure of Plaintiff and Class Members' Personal Health Information to Facebook;
- i. Whether Defendants' acts and practices constitute a breach of fiduciary duty;
- j. Whether Defendants profited from disclosures of patient Personal Health information to third parties including Facebook;
- k. Whether Defendants were unjustly enriched;
- l. Whether Defendants' acts and practices harmed and continue to harm Plaintiff and Class Members and, if so, the extent of that injury;
- m. Whether Plaintiff and Class Members are entitled to equitable relief including, but not limited to, injunctive relief, restitution, and disgorgement; and
- n. Whether Plaintiff and Class Members are entitled to actual, statutory, or other forms of damages, and other monetary relief.

RESPONSE: Lima states that the allegations of this paragraph, including its subparts, are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 159.

160. These common questions of law and fact predominate over any questions affecting only the individual Class Members.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 160.

161. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other Class Members. Identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quantity and quality, to the numerous questions that dominate this action.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 161.

162. **Typicality:** Plaintiff's claims are typical of the claims of other Class Members and Plaintiff have substantially the same interest in this matter as other Class Members. Plaintiff's [sic] claims arise out of the same set of facts and conduct as all other Class Members. Plaintiff and Class Members are patients of Defendants who used the websites set up by Defendants for patients and are victims of Defendants' respective unauthorized disclosures to Facebook. All claims of Plaintiff and Class Members are based on Defendants' wrongful conduct and unauthorized disclosures.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 162.

163. **Adequacy of Representation:** Plaintiff has no interests that are in conflict with, the interests of other members of the Class. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in class actions and complex civil litigation. Plaintiff's claims are coincident with, and not antagonistic to, those of other Class Members she seeks to represent. Plaintiff has no disabling conflicts with Class Members. Accordingly, Plaintiff is an adequate presentative of the Class and, along with counsel, will fairly and adequately protect the interests of the Class and any Subclasses.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 163

164. **Superiority:** A class action is the superior method for fair and efficient adjudication of the controversy. Although all Class Members have claims against Defendants, the likelihood that individual Class Members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. The damages, harm, and other financial detriment suffered individually by Plaintiff and other Class Members are relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendants, making it impractical for Class Members to individually seek redress for Defendants' wrongful conduct. Moreover, serial adjudication in numerous venues is not efficient, timely, or proper. Judicial resources would be unnecessarily depleted by prosecution of individual claims. The prosecution of separate actions by individual Class Members could create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests

of the members of the Class Members who are not parties to the adjudications, If a class action is not permitted, Class Members will continue to suffer losses and Defendants' misconduct will continue without proper remedy.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 164.

165. In addition to satisfying the prerequisites of Rule 23(b)(3), Plaintiff satisfies the requirements for maintaining a class action under Rule 23(b)(2) because (a) the prosecution of separate actions by the individual Class Members would create a risk of inconsistent or varying adjudication which would establish incompatible standards of conduct for Defendants; (b) the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; (c) Defendants have acted or refused to act on grounds that apply generally to the proposed Class, thereby making final injunctive relief or declaratory relief herein appropriate with respect to the proposed Class as a whole; and (d) questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima denies the allegations of paragraph 165.

166. Plaintiff anticipates no unusual difficulties in the management of this litigation as a class action. The Class is readily ascertainable and direct notice can be provided from the records maintained by Defendants, electronically or by publications, the cost of which is properly imposed on Defendant.

RESPONSE: Lima denies the allegations of paragraph 166.

167. For the above reasons, among other, a class action is superior to other available methods for the fair and efficient adjudication of this action.

RESPONSE: Lima denies that this matter may be properly maintained as a class action under Rule 23. Lima denies the remaining allegations in paragraph 167.

CAUSES OF ACTION

COUNT I

Biddle Claim – Breach of the Duty of Confidentiality (On Behalf of Plaintiff and the Class)

168. Plaintiff re-alleges and incorporates by reference all paragraphs above as if fully set forth herein.

RESPONSE: Lima reasserts its answers and responses set forth herein.

169. Plaintiff brings this claim on behalf of herself and all members of the Class.

RESPONSE: Lima admits that Plaintiff brings this claim on behalf of herself and purportedly on behalf of a class of individuals. Lima denies that this matter may be properly maintained as a class action under Rule 23. Lima denies the remaining allegations in paragraph 169.

170. All conditions precedent to this action have been performed or occurred.

RESPONSE: Lima denies the allegations of paragraph 170.

171. In *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 401 (1999), the Ohio Supreme Court held that an independent tort exists for the unauthorized, unprivileged disclosure

to a third party of nonpublic medical information that a physician or hospital has learned within a physician-patient relationship.

RESPONSE: Lima states that the allegations of this paragraph are legal conclusions and, therefore no response is required. To the extent a response is required, Lima states that *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 401 (1999) speaks for itself. To the extent Plaintiff misquotes or mischaracterizes the holding contained therein, Lima denies the allegations of paragraph 171. Lima denies the remaining allegations in paragraph 171 for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the allegations and therefore denies the same.

172. As a medical provider for Plaintiff and Class Members, Defendants owe Plaintiff and Class Members a fiduciary duty of confidentiality in the data and content of communications exchanged between itself and Plaintiff of Class Members.

RESPONSE: Lima admits that there are statutory guidelines for confidentiality of medical data exchanged between patients and their providers . Lima denies that any PHI, as defined under HIPAA, was transmitted from Lima's website to any third parties. Lima denies for lack of information or knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 172 and therefore denies the same.

173. Plaintiff and Class Members who paid money to Defendants reasonably believed and expected that Defendants would use part of those funds to operate its websites free of surreptitious collection and exploitation of communications between the parties. Defendants failed to do so. Plaintiff and Class Members would not have sought medical services from Defendants if they knew that Defendants would share their Personal Health Information with Facebook without their knowledge or written consent.

RESPONSE: Lima denies that it surreptitiously collected and exploited the communications exchange between it and Plaintiff or the putative class. Responding further, Lima denies that it failed to comply with any obligation to Plaintiff or the putative class. Lima denies for lack of information of knowledge sufficient to form an opinion as to the truth or veracity of the remaining allegations of paragraph 173 and therefore denies the same.

174. Defendants breached their duty of confidentiality by disclosing Personal Health Information about Plaintiff and Class Members, including their status as patients, the content of their communications, and information about their doctors, potential doctors, conditions, treatments, appointments, search terms, and bill payment.

RESPONSE: Lima denies the allegations of paragraph 174.

175. Defendants' breach caused Plaintiff and Class Members the following damages:

- a. Sensitive and confidential information that Plaintiff and Class Members intended to remain private is no longer private;
- b. Defendants eroded the essential confidential nature of the doctor-patient and provider-patient relationship;
- c. Defendants took something of value from Plaintiff and Class Members and derived benefit therefrom without Plaintiff and Class Members' knowledge, consent, or authorization and without sharing the benefit of such value;
- d. Plaintiff and Class Members did not get the full value of the medical services for which they paid, which included Defendants' duty to maintain the confidentiality of their Personal Health Information; and
- e. Defendants' actions diminished the-value of Plaintiff and Class Members' personal information.

RESPONSE: Lima denies the allegations of paragraph 175.

176. The amount of these damages to Plaintiff and Class Members will be established at trial.

RESPONSE: Lima denies that Plaintiff or the putative class are entitled to any damages, costs, fees or other relief from or against Lima.

177. Lima specifically denies any allegation, not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiff and the putative class have failed to state a claim upon which relief may be granted.

2. Plaintiff and the putative class's claims are barred, in whole or in part, by the applicable statute of limitations.

3. Plaintiff and the putative class's claims are barred in whole or in part, by the Health Insurance Portability Act, 45 C.F.R. § 160, *et seq.*, and its state law analogue, Ohio Rev. Code. § 3798, *et seq.*, neither of which provides a private cause of action.

3. Plaintiff and the putative class's claims are barred, in whole or in part, by the equitable theories of estoppel, waiver, consent, release and laches.

4. Plaintiff and the putative class have failed to take reasonable steps to mitigate their damages, if any.

5. Plaintiff and the putative class's damages are the result of acts or omissions committed by Plaintiff and the putative class.

6. Plaintiff and the putative class's damages are the result of acts or omissions committed by non-parties to this action over whom Lima has no responsibility or control.

7. Any claim for exemplary or punitive damages asserted by Plaintiff violates Lima's rights under the Due Process and Excessive Fines clauses of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the analogous provisions of applicable State Constitutions.

8. Lima reserves the right to assert additional defenses as may become apparent through additional investigation and discovery.

WHEREFORE, Defendants Lima Memorial Hospital and Lima Memorial Joint Operating Company d/b/a Lima Memorial Health System, deny that Plaintiff is entitled to judgment or to any of the relief sought, and respectfully requests that judgment be entered in its favor and against Plaintiff on all counts set forth in the Complaint and that Lima be awarded its costs incurred in defending this action, along with such other relief as this Court deems equitable and just.

Dated: June 20, 2023

Respectfully submitted,

/s/ Bryan T. Kostura

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing **Answer to Plaintiff's Complaint** was sent via email and U.S. Mail on this 20th day of June, 2023 to the following:

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