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23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**

25 ERICA FRASCO, individually and on behalf of
26 all others similarly situated,

27 Plaintiff,

28 v.

29 Flo Health, Inc., a Delaware corporation.

30 Defendants.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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Plaintiff Erica Frasco (“Plaintiff”), on behalf of herself and all others similarly situated, asserts the following against Defendant Flo Health, Inc. (“Flo Health”), based upon personal knowledge, where applicable, information and belief, and the investigation of counsel.

SUMMARY OF ALLEGATIONS

1. Flo Health owns and develops the Flo Period & Ovulation Tracker (“Flo App” or “App”), one of the most popular health and fitness mobile applications.

2. The Flo App purports to use artificial intelligence to provide advice and assistance related to women’s health, such as by serving as an ovulation calendar, period tracker, pregnancy guide, and wellness and lifestyle tracker.

3. Flo Health touts that its app is the “#1 mobile product for women’s health.” The Flo App has been installed more than 165 million times and has over 38 million monthly active users. The App has also been rated the #1 period tracker in the United States based on active audience and as the #1 most downloaded health app in the Apple App Store.¹

4. In order to use the Flo App, millions of users—including Plaintiff—provide Flo Health with personally identifying information (e.g., their names, email addresses, dates of birth, and places of residence), along with intimate details about their sexual health, menstruation cycles, gynecological health, and physical well-being through a series of “survey questions.” These questions cover extremely personal topics and include, for example: (1) “do you experience any pain during sex?” (2) “how often do you have sex?” (3) “how often do you masturbate?” (4) “have you noticed a decrease in sexual desire?” (5) “are you sexually active during your period?” and (6) “What type of relationship do you have at present?”

5. Users also provided intimate, personal health details in response to probing survey questions about health and wellness, such as: (1) “do you smoke” (2) “how often do you experience stress?” (3) “do you want to change your weight?” (4) “do you follow a particular diet?” (5) “how often do you exercise?” (6) “do you get yeast infections?” (6) “do you have any chronic

¹ The Flo App was also feature as the “App of the Day” in the Apple App Store in over 30 countries.

1 diseases?” and (7) “do you have any reproductive system diseases?”

2 6. Within the first few minutes of using the Flo App, users answer over thirty survey
3 questions like these. As users continue to use the app, they are encouraged by Flo Health to
4 provide more and more intimate health data, including daily information about whether they have
5 their period, their weight, how long they slept, whether they had sex (as well as their sex drive, if
6 sex was unprotected, or if they masturbated), their mood (ranging from “calm” to “very self-
7 critical,”) and if they have any health symptoms (like headaches, breast tenderness, acne, or
8 fatigue).

9 7. By providing this information, Flo Health claims to predict ovulation, aid in
10 pregnancy and childbirth, and provide lifestyle and wellness suggestions, allowing users to “take
11 full control of [their] health.”

12 8. Plaintiff and Class members provided this information to Flo Health based on the
13 company’s repeated assurances that their intimate health data would remain protected and
14 confidential and would not be disclosed to third parties.

15 9. Flo Health’s privacy policies and public assurances have claimed—time and time
16 again—that Flo Health would not share users’ intimate health data with *anyone*. Flo Health’s
17 website touts that “[p]rivacy in the digital age is of utmost importance. Flo provides a secure
18 platform for millions of women globally.”²

19 10. Similarly, Flo Health’s privacy policy states, in all capital letters, that it “WILL
20 NOT TRANSMIT ANY OF YOUR PERSONAL DATA TO THIRD PARTIES, EXCEPT IF IT
21 IS REQUIRED TO PROVIDE THE SERVICE TO YOU (E.G. TECHNICAL SERVICE
22 PROVIDERS), UNLESS WE HAVE ASKED FOR YOUR EXPLICIT CONSENT.” Flo Health
23 assured users that these third parties would not receive “survey results,” “information regarding
24 your marked cycles, pregnancy, symptoms, notes” or information about “which articles [users]
25 view” *i.e.*, users’ intimate health data. Flo Health further assured users that these third parties
26 “will never use such information for any other purpose except to provide services in connection

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² *About Us*, FLO HEALTH, INC., <https://flo.health/our-mission> (last visited Jan. 27, 2021).

1 with the App.”³

2 11. These assurances were patently false. In February 2019, a report published by the
3 *Wall Street Journal* revealed that, despite Flo Health’s promises that it would not share intimate
4 health data, Flo Health had spent years disclosing the intimate health data that users entered into
5 the Flo App to dozens of third parties, including major advertising companies such as Facebook,
6 Inc. (“Facebook”) and Google, LLC (“Google”), who were free to use this data for their own
7 purposes.

8 12. In response to this revelation, the Federal Trade Commission (“FTC”) launched its
9 own investigation into Flo Health’s data privacy and disclosure practices and ultimately filed a
10 complaint, charging Flo Health with making a variety of fraudulent misrepresentations to Flo App
11 users in violation of their privacy rights.

12 13. On January 13, 2021, Flo Health entered into a settlement with the FTC that
13 prohibited Flo Health from further misrepresenting the purposes for which or entities to whom it
14 discloses users’ intimate health data, as well as obtain an independent review of its privacy policy,
15 obtain user consent before sharing their data, and notify third parties that previously received
16 users’ intimate health data to destroy that information.⁴

17 14. If Plaintiff and Class members had known that Flo Health would share their
18 intimate health data, they would not have used the Flo App.

19 15. Flo Health’s data disclosure practices constitute an extreme invasion of Plaintiff
20 and Class members’ right to privacy and violates federal and state common law.

21 **JURISDICTION AND VENUE**

22 16. This Court has jurisdiction over the subject matter of this action pursuant to 28
23 U.S.C § 1332(d), because the amount in controversy for the Class exceeds \$5,000,000 exclusive of

24 _____
25 ³ *Privacy Policy*, FLO HEALTH, INC., <https://flo.health/privacy-policy-archived/may-25-2018> (effective
26 May 25, 2018).

27 ⁴ *Developer of Popular Women’s Fertility-Tracking App Settles FTC Allegations that it Mislead Consumers
28 About the Disclosure of their Health Data*, FTC, (Jan. 13, 2021), [https://www.ftc.gov/news-events/press-
releases/2021/01/developer-popular-womens-fertility-tracking-app-settles-ftc](https://www.ftc.gov/news-events/press-releases/2021/01/developer-popular-womens-fertility-tracking-app-settles-ftc).

1 interest and costs, there are more than 100 putative class members defined below, and minimal
2 diversity exists because a significant portion of putative class members are citizens of a state
3 different from the citizenship of Defendants.

4 17. This Court also has jurisdiction over the subject matter of this action pursuant to 28
5 U.S.C. § 1331 since this suit is brought under the laws of the United States, *i.e.*, the Stored
6 Communications Act, 18 U.S.C. § 2702, *et seq.*, and supplemental jurisdiction pursuant to 28
7 U.S.C. § 1367 over the remaining state common law and statutory claims as these state law claims
8 are part of the same case or controversy as the federal statutory claim over which the Court has
9 original jurisdiction.

10 18. This Court has specific personal jurisdiction over Flo Health because it consented
11 to jurisdiction in this District in its Terms of Use, which states:

12 Any dispute arising from this Agreement shall be governed by the laws of the State
13 of California without regard to its conflict of law provisions. **SOLE AND
14 EXCLUSIVE JURISDICTION FOR ANY ACTION OR PROCEEDING
15 ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE IN
16 AN APPROPRIATE STATE OR FEDERAL COURT LOCATED IN SAN
17 FRANCISCO COUNTY, STATE OF CALIFORNIA**⁵

18 19. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), (c), and (d) because
19 Flo Health transacts business in this District and a substantial portion of the events giving rise to
20 the claims occurred in this District.

21 20. Intra-district Assignment: A substantial part of the events and omissions giving rise
22 to the violations of law alleged herein occurred in the County of San Francisco, and as such, this
23 action may properly be assigned to the San Francisco or Oakland divisions of this Court pursuant
24 to Civil Local Rule 3-2(c).

25 **PARTIES**

26 **A. Plaintiff**

27 21. Plaintiff Erica Frasco (“Plaintiff”) is a natural person and citizen of the State of

28 ⁵ *Terms of Use*, FLO HEALTH, INC., <https://flo.health/terms-of-service> (effective Feb. 5, 2020).

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