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17  
18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MADELINE KISS, individually and on behalf  
21 of all others similarly situated,

22 Plaintiff,

23 v.

24 FLO HEALTH, INC., GOOGLE, LLC,  
25 FACEBOOK, INC., APPSFLYER, INC., and  
26 FLURRY, INC.,

27 Defendants.

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

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Madeline Kiss (“Plaintiff”), on behalf herself and all others similarly situated,  
2 asserts the following against Defendants Flo Health, Inc. (“Flo Health”), Google, LLC (“Google”),  
3 Facebook, Inc. (“Facebook”), AppsFlyer, Inc. (“AppsFlyer”), and Flurry, Inc. (“Flurry”)<sup>1</sup> based  
4 upon personal knowledge, where applicable, information and belief, and the investigation of  
5 counsel, which included, among other things, consultation with experts in the field of data privacy.

6 **SUMMARY OF ALLEGATIONS**

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

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

12 3. Flo Health touts that its app is the “#1 mobile product for women’s health.” The Flo  
13 App has been installed more than 180 million times and has more than 38 million monthly active  
14 users. The App has also been rated the #1 period tracker in the United States based on active  
15 audience and as the #1 most downloaded health app in the Apple App Store.<sup>2</sup>

16 4. The Flo App presents itself as a leader in women’s health care with at least “60  
17 doctors and experts from Europe and North America” on its Medical Board.<sup>3</sup>

18 5. In order to use the Flo App, millions of users—including Plaintiff—provide Flo  
19 Health with personally identifying information (e.g., their names, email addresses, dates of birth,  
20 and places of residence), along with intimate details about their sexual health, menstruation cycles,  
21 gynecological health, and physical well-being through a series of “survey questions.” These  
22 questions cover extremely personal topics and include, for example: (1) “do you experience any

23 \_\_\_\_\_  
24 <sup>1</sup> Defendants Flo Health, Google, Facebook, Appsflyer, and Flurry are hereafter referred to  
25 collectively, at times, as “Defendants.” Defendants Google, Facebook, Appsflyer, and Flurry are  
hereafter referred to, at times, as “Advertiser Defendants.”

26 <sup>2</sup> The Flo App was also featured as the “App of the Day” in the Apple App Store in over 30  
27 countries.

28 <sup>3</sup> *Our Medical Expertise*, FLO HEALTH, INC., <https://flo.health/medical-expertise>.

1 pain during sex?” (2) “how often do you have sex?” (3) “how often do you masturbate?” (4) “have  
2 you noticed a decrease in sexual desire?” (5) “are you sexually active during your period?” and  
3 (6) “what type of relationship do you have at present?”

4 6. Users also provided intimate, personal health details in response to probing survey  
5 questions about health and wellness, such as: (1) “do you smoke” (2) “how often do you experience  
6 stress? (3) “do you want to change your weight?” (4) “do you follow a particular diet?” (5) “how  
7 often do you exercise?” (6) “do you get yeast infections?” (6) “do you have any chronic diseases?”  
8 and (7) “do you have any reproductive system diseases?”

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

15 8. With access to this highly sensitive information, Flo Health claims to predict  
16 ovulation, aid in pregnancy and childbirth, and provide lifestyle and wellness suggestions, allowing  
17 users to “take full control of [their] health.”

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

21 10. This is because the surreptitious sharing of this intimate data (and improper  
22 collection of this data) has significant real-world consequences. Indeed, in today’s world, data is an  
23 extremely valuable commodity. The companies that deal in this data—such as Defendants Google  
24 and Facebook—are some of the largest and most valuable companies on earth. When these  
25 companies gain access to the intimate data users shared here, they are able to capitalize on an  
26 especially sensitive class of information, targeting women with ads in ways that are acutely invasive.

27 11. Flo Health’s privacy policies and public assurances have claimed—time and time  
28

1 again—that Flo Health would not share users’ intimate health data with *anyone*. Flo Health’s  
2 website touts that “[p]rivacy in the digital age is of utmost importance. Flo provides a secure  
3 platform for millions of women globally.”<sup>4</sup>

4 12. Similarly, Flo Health’s privacy policy states, in all capital letters, that it “WILL NOT  
5 TRANSMIT ANY OF YOUR PERSONAL DATA TO THIRD PARTIES, EXCEPT IF IT IS  
6 REQUIRED TO PROVIDE THE SERVICE TO YOU (E.G. TECHNICAL SERVICE  
7 PROVIDERS), UNLESS WE HAVE ASKED FOR YOUR EXPLICIT CONSENT.” Flo Health  
8 assured users that these third parties, including the Advertiser Defendants, would not receive  
9 “survey results,” i.e., the answers to Flo Health’s probing health questions, “information regarding  
10 your marked cycles, pregnancy, symptoms, notes,” or information about “which articles [users]  
11 view,” i.e., users’ intimate health data. Flo Health further assured users that third parties, including  
12 Advertiser Defendants, with whom it shared data “w[ould] never use such information for any other  
13 purpose except to provide services in connection with the App.”<sup>5</sup>

14 13. Contrary to these assurances, Flo Health knowingly collected, transmitted, and  
15 disclosed Plaintiff’s and Class’ members intimate health data to third parties, including Advertiser  
16 Defendants.

17 14. Flo Health disclosed its users’ highly sensitive health information to the Advertiser  
18 Defendants and other third parties through “software development kits” (“SDKs”) that it  
19 incorporated into the Flo App. SDKs are a collection of tools and programs that allow app  
20 developers, like Flo Health, to add functionality or features to their app that are developed by third  
21 parties.

22 15. For instance, Facebook’s SDK can be incorporated into an app to share user data  
23 between an app and Facebook. By using the Facebook SDK, developers can gain access to  
24 Facebook’s data analytics and use Facebook tools to assist with mobile ads, among other things.

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26 <sup>4</sup> *About Us*, FLO HEALTH, INC., <https://flo.health/our-mission> (last visited Jan. 27, 2021).

27 <sup>5</sup> *Privacy Policy*, FLO HEALTH, INC., <https://flo.health/privacy-policy-archived/may-25-2018>  
28 (effective May 25, 2018).

1           16. Flo Health incorporated Facebook’s SDK so that it could use Facebook’s analytics  
2 tools to identify which of its users would be prime targets for advertisements keyed off the data they  
3 entered into the App. Flo Health incorporated similar SDKs from all Advertising Defendants, who  
4 are all marketing and analytics firms or advertisers.

5           17. In exchange for using Advertiser Defendants’ SDKs, Flo Health transmitted intimate  
6 health data entered into the Flo App to Advertiser Defendants—in direct contravention of Flo  
7 Health’s assurances to users that this information would not be disclosed—including when a user  
8 indicated that they were on their period or intended to get pregnant.

9           18. Advertiser Defendants, including two of the largest digital advertisers in the world,  
10 incorporated this information into their existing data analytics and research segments to compile  
11 profiles and target users for advertisements.

12           19. The Advertiser Defendants’ access and use of this information can have profound  
13 consequences that users of the Flo App would never anticipate. For instance, armed with knowledge  
14 that a Flo App user is pregnant or attempting to get pregnant, the Advertiser Defendant can  
15 specifically target that user with ads for prenatal vitamins, breast pumps, or fertility treatments,  
16 among other things. In some instances, Flo Health may know a user is pregnant—based on the user’s  
17 data—before the user herself. Because this information was shared with the Advertiser Defendants,  
18 users could be targeted for ads that the users may find overwhelming or disturbing, depending on  
19 whether they did or did not intend to get pregnant. As another example, if a user indicated that she  
20 experienced oily skin during her menstruation cycle, Advertiser Defendants could use this  
21 information to target that user (i.e., Plaintiff and Class members) with advertisements for certain  
22 skin care products around this time period. The intimate health data entered into the Flo Health App  
23 is some of the most private information about a user and was provided under the guise that this  
24 information would stay private—not to develop profiles about users or target them for  
25 advertisements.

26           20. Advertiser Defendants knew that the data collected and received from Flo Health  
27 included intimate health data—but they did nothing to stop Flo Health from sharing this information

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