

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEBRA LEBAKKEN, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WEBMD, LLC,

Defendants.

**MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT**

CIVIL ACTION

FILE NO.: 1:22-cv-0644-TWT

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Defendant WebMD, LLC (“WebMD”), by and through its undersigned counsel, respectfully moves to dismiss Plaintiff Debra Lebakken’s (“Plaintiff”) First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. WebMD submits the following arguments in support of this Motion and requests that the Court enter an order dismissing the First Amended Complaint with prejudice.

I. Introduction

This is one of more than a dozen Video Privacy Protection Act (“VPPA”) class actions plaintiff’s counsel and other members of the plaintiffs’ bar have filed in recent months in federal courts across the country. Challenging online content providers’ use of the Facebook Pixel, a piece of code installed on their websites, these actions seek to multiply the VPPA’s \$2,500 in statutory damages by a putative nationwide class. This is the only such action within the Eleventh Circuit, which has twice affirmed the dismissal of similar claims.

In 2017, Debra Lebakken subscribed to a free e-mail newsletter on WebMD.com, an online publisher of health news and information. Over four years later, in January 2022, Lebakken navigated to WebMD.com and watched unspecified videos. She does not allege that she accessed the videos through the newsletter, that she signed into the site, or that the videos were restricted to

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