

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JANE DOE and JOHN DOE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

VIRGINIA MASON MEDICAL CENTER, and
VIRGINIA MASON HEALTH SYSTEM,

Defendants.

NO. 19-2-26674-1 SEA

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

NATURE OF THE ACTION

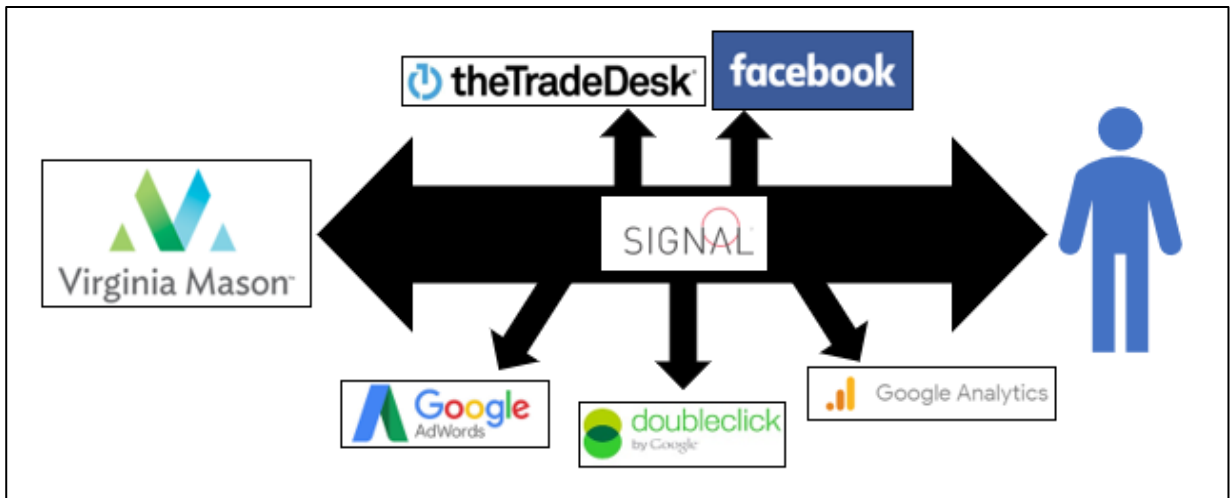
1. This case concerns Defendants’ systematic violation of patient privacy rights.
2. Defendants, together “Virginia Mason,” are health care providers that operate medical facilities in the state of Washington. Virginia Mason maintains a website at www.virginiamason.org and encourages patients to use the site to obtain medical information and communicate with their health care providers. These communications include patient queries about health conditions, treatments, doctors, appointments, and access to a patient portal called “MyVirginiaMason.” These patient communications are protected by federal and state law, common law, patients’ reasonable expectations of privacy, and Virginia Mason’s

1 express assurances that patients' personally identifiable information and communications will
2 remain private.

3 3. Virginia Mason's statutory and common law duties as a health care provider
4 and its express and implied assurances of confidentiality give patients the impression that
5 their communications with Virginia Mason and personally identifiable and health information
6 will remain private. In other words, patients expect their communications with Virginia Mason
7 to look like this:



14 4. Despite these legal protections and promises, Virginia Mason deploys source
15 code on its website that redirects patients' personally identifiable data and health
16 communications to third parties without patients' knowledge, authorization, consent, or any
17 further action on their part. As a result, patients' communications with Virginia Mason in fact
18 look like this:



1
2 5. Virginia Mason’s conduct gives rise to claims for (1) violation of the Washington
3 Consumer Protection Act, (2) identity theft, (3) invasion of privacy, (4) fraudulent
4 concealment, (5) breach of the duty of confidentiality, and (6) violation of the Washington
5 Health Care Information Act.

6 **PARTIES TO THE ACTION**

7 6. Plaintiff Jane Doe resides in Tacoma, Washington and is a patient of Defendant
8 Virginia Mason Medical Center. Plaintiff exchanged electronic communications with Virginia
9 Mason through its website www.virginiamason.org. The communications included Plaintiff’s
10 sign up and subsequent log ins to the “MyVirginiaMason” patient portal.

11 7. Plaintiff John Doe resides in Seattle, Washington and is a patient of Defendant
12 Virginia Mason Medical Center. Plaintiff exchanged electronic communications with Virginia
13 Mason through its website www.virginiamason.org. The communications included Plaintiff’s
14 sign up and subsequent log ins to the “MyVirginiaMason” patient portal.

15 8. Defendant Virginia Mason Health System is a Washington nonprofit
16 corporation with its headquarters at 1100 Ninth Avenue, Seattle, Washington. Virginia Mason
17 Health System owns and operates multiple health care facilities throughout Washington.

18 9. Defendant Virginia Mason Medical Center is a Washington nonprofit
19 corporation and a subsidiary of Virginia Mason Health System.

20 **JURISDICTION AND VENUE**

21 10. This Court has jurisdiction pursuant Article 4, Section 7 of the Washington State
22 Constitution.

23 11. Venue is proper in King County pursuant to RCW 4.12.025(1) because
24 Defendants are located in and transact business in King County.

25 **FACTUAL ALLEGATIONS**

26 12. Virginia Mason’s patients, including Plaintiffs and Class members, enjoy
27 reasonable expectations of privacy that their data and communications with health care

1 providers will not be used by providers for non-medical purposes without patient
2 authorization.

3 13. Virginia Mason has fiduciary, common law, and statutory duties to protect the
4 confidentiality of patient information and communications.

5 14. Virginia Mason expressly and impliedly promises patients that it will maintain
6 and protect the confidentiality and security of patient data and communications.

7 15. Virginia Mason maintains the website www.virginiamason.org for its patients
8 to communicate with Virginia Mason and its entities. Patients can use the website to, among
9 other things, request appointments, pay bills, sign into their personal patient portal, and learn
10 more about their conditions, treatments, and doctors, as well as services Virginia Mason
11 provides.

12 16. Virginia Mason encourages its patients to use the website for these purposes.

13 17. The Virginia Mason homepage shows how Virginia Mason designed the website
14 for patient communications. The homepage provides patients with links to Find a Doctor,
15 Departments and Services, Patients and Visitors, and Billing and Insurance. It also contains
16 prominent links to access the “MyVirginiaMason” patient health portal.

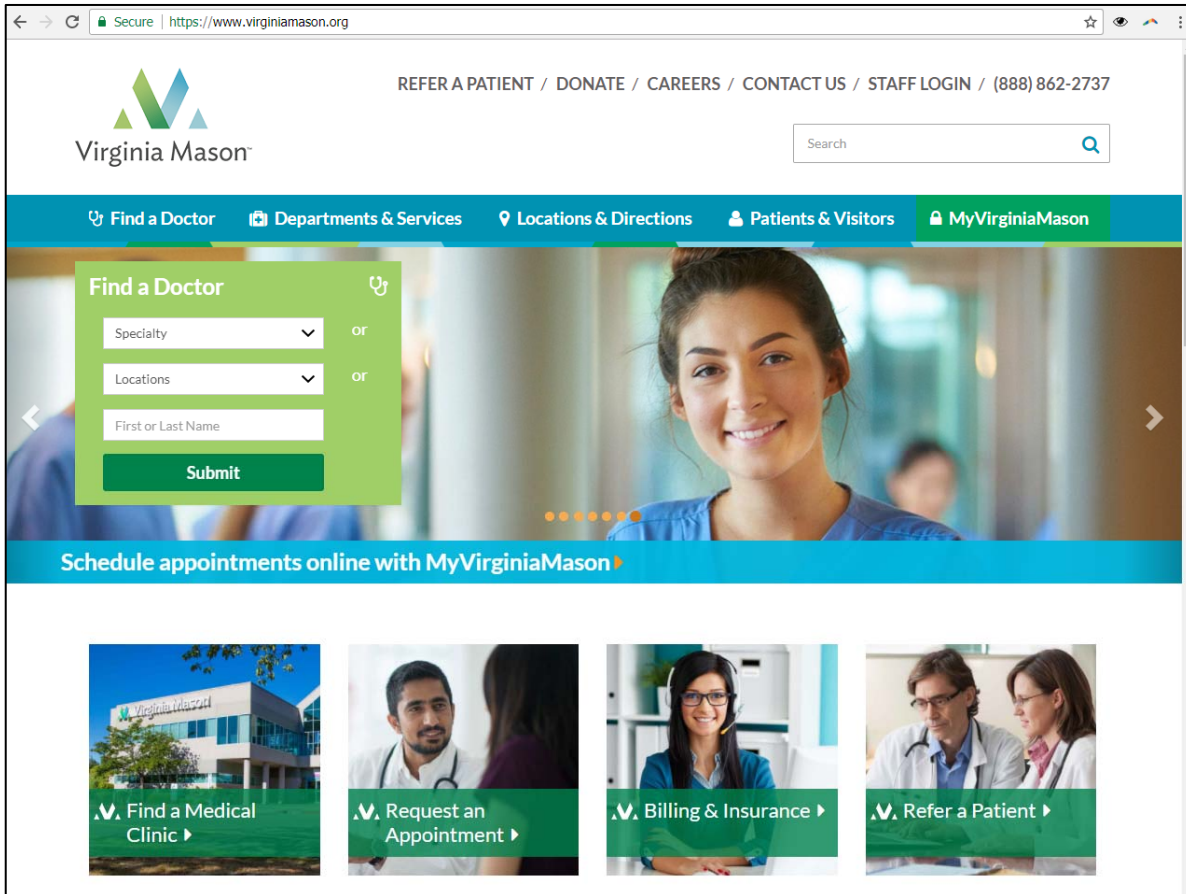


Figure 1

Virginia Mason Deploys Code Provided by Third Parties on Its Website to Redirect Patient Communications to the Third Parties

18. Web browsers are software applications that allow consumers to exchange electronic communications over the Internet.

19. Every website is hosted by a computer server through which the entity in charge of the website exchanges communications with Internet users via its web browser.

20. The basic command that web browsers use to communicate with website servers is called the 'GET' command or 'GET' request.¹ For example, when a patient types www.virginiamason.org/treating-brain-cancer into the navigation bar of her web browser and

¹ The other basic command is 'POST,' which is typically employed when a user enters data into a form on a website and clicks 'Enter' or a submit button. The POST command sends the form data directly to the server for the website.

1 hits 'Enter' (or when an Internet user clicks on a hyperlink), the user's web browser makes
2 connection with the server for Virginia Mason via a 'GET' request for the specific document
3 requested and the Virginia Mason web server responds via source code, which is simply a set
4 of commands that instructs the user's computing device and web browser on how to act in
5 the process of rendering the response communication from Virginia Mason on the user's
6 device.

7
8 21. Each website server has an Internet Protocol Address, or IP address. For
9 example, the IP address for www.virginiamason.org is 192.152.45.233. Virginia Mason has just
10 one or a handful of IP addresses that host all articles, essays, and other communications
11 available on its web server. It is therefore a simple matter to determine that a patient who
12 exchanges a series of communications with 192.152.45.233 is exchanging communications
13 with Virginia Mason.

14 22. An IP address is not the same as a Uniform Resource Locator, or URL. A full-
15 string URL reveals both the parties to the communication and its content. A URL is composed
16 of several different parts. For example, consider the following URL broken down into its
17 component parts: <https://www.virginiamason.org/treating-brain-cancer>

- 18 a. <https://>: This is the protocol identified by the Internet user's web browser
19 to the Virginia Mason web server that sets the basic language of the
20 interaction between the web browser and the server. The backslashes
21 indicate that the browser is attempting to make contact with the server.
- 22 b. www.virginiamason.org: This is the name that identifies the website and
23 corresponding web server with which the Internet user has initiated a
24 communication. It is a human language equivalent of the IP address.
- 25 c. [/treating-brain-cancer](#): This is the file name for the return communication
26 the user has requested from Virginia Mason. In this example, it is also the
27 complete "file path" for the user's communication – that is, everything in

1 the URL beyond the .com or .org. The file path identifies the location of the
2 document requested and contains information relating to the substance or
3 meaning of the communication.

4 23. When a user's web browser sends a GET request to a website server, the
5 website server responds by sending the web browser a series of instructions (contained in
6 computer language commonly referred to as source code) that instructs the web browser how
7 to render the server's responsive communication on the screen of the user's computing
8 device.

9 24. Although a webpage presents to the user as a cohesive whole, it is more often
10 a collage of independent parts. Some portions may be filled by third parties with whom the
11 Internet user is not actually communicating. For example, a website's source code may
12 command a web browser to contemporaneously redirect the content of a user's
13 communication to a third party for purposes of displaying a picture or video from the third
14 party to the user.

15 25. One example of this can be found at the Seattle Times webpage for the article
16 entitled 'The Roar Below: How Our Noise is Hurting Orcas' Search for Salmon,' available at:
17 <https://projects.seattletimes.com/2019/hostile-waters-orcas-noise/>. The article includes a
18 video a user can watch on the webpage. The text of the article is rendered on the user's
19 screen directly from SeattleTimes.com, but the video is grabbed from a third-party video
20 hosting website called Bright Cove. This is done through source code that the Seattle Times
21 deploys to command the user's web browser to redirect the user's initial communication with
22 the Seattle Times to Bright Cove to fill out the video portion of the article.

23 26. The redirect of a user's communication occurs contemporaneously with the
24 exchange of the communications between the user and the website.

25 27. In addition to commanding a user's web browser to fill the screen with picture
26 or video content supplied by third parties (such as the Bright Cove video in the Seattle Times
27

1 article), a website developer may also deploy source code to command a user's web browser
2 to make data transmissions to third parties via invisible tracking pixels or web bugs. Tracking
3 pixels or web bugs are tiny 1x1 invisible GIF files the size of an individual pixel on a user's
4 screen. They effectively open a spying window through which the website funnels personally
5 identifiable data about users, their communications, and other actions to third parties.

6 28. For example, below is the webpage that a patient sees after searching for
7 "treating brain cancer" on the Virginia Mason website:
8

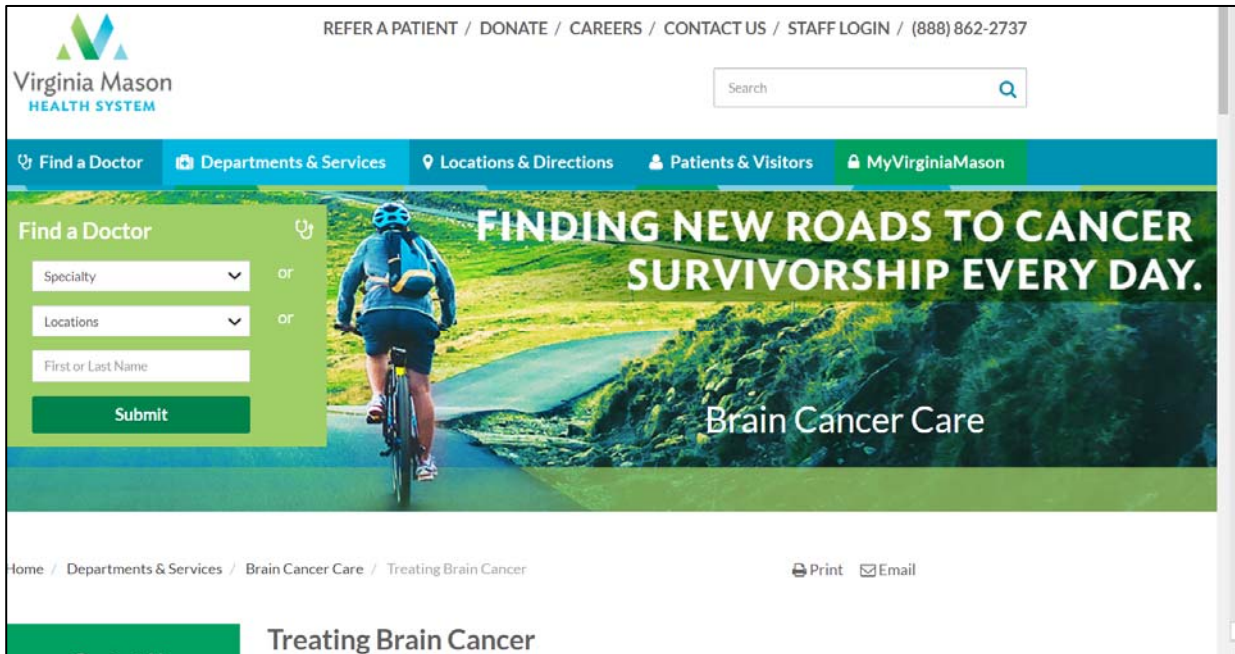


Figure 2, Screenshot 1

Contact Us (206) 223-6193	<h2 style="margin: 0;">Treating Brain Cancer</h2> <p>If you are newly diagnosed or have a family member who is seeking treatment for a brain tumor, Virginia Mason in Seattle offers expert care from a team of physicians and providers. For more information or to schedule an appointment, call (206) 223-6193.</p> <p>Treatment for a brain tumor is determined based on the type, size and location of the tumor, as well as the patient's overall health. Surgery is frequently performed to remove all or as much of the tumor as possible. In some cases, tumors can be completely cured with only surgery, without the need for further treatment. Advances in radiation therapy, chemotherapy and medications can also contribute to effective treatment and the control of symptoms.</p>
Brain Cancer Care	<h3 style="margin: 0;">Neuro-Oncology Tumor Board</h3> <p>Patients with brain tumors are seen at Virginia Mason by a multidisciplinary team that includes neurologists and neurosurgeons, who specializes in diagnosing and treating tumors of the nervous system, including spinal tumors.</p> <p>In addition, Virginia Mason's Neuro-Oncology Tumor Board – which includes experts from medical oncology, radiation oncology, radiology and pathology – review individual cases. These physicians are joined by other specialists as needed.</p> <p>Together, the experts and specialists at Virginia Mason develop a unique plan of treatment for each patient who is presented at the tumor board that addresses the particular aspects of their disease. The care team will then carefully follow the patient from diagnosis through treatment and recovery.</p>
Brain Cancer Care Team	
Brain Cancer Care Location	
About Brain Cancer	
Treating Brain Cancer	
Brain Cancer Wellness & Support	
Brain Cancer Care - Cancer Clinical Trials	
Brain Cancer Diagnosis Second Opinions	
Brain Cancer Clinical Trials	<h3 style="margin: 0;">Brain Tumor Treatment Options</h3>
Cancer Patient Testimonials	<h4 style="margin: 0;">Surgery</h4>

Figure 2, Screenshot 2

Cancer Patient Testimonials	<h4 style="margin: 0;">Surgery</h4> <p>The goal of surgery is to remove as much of the tumor as possible while minimizing damage to healthy tissue. Some tumors can be completely removed, while others only partially or not at all. Partial removal can still help to relieve symptoms by reducing pressure on the brain and reducing the size of the tumor to be treated by radiation or chemotherapy. Virginia Mason surgeons use the latest computer-assisted neurosurgery techniques, allowing the best visualization of the tumor and brain for the most effective treatment possible.</p>
Brain Cancer Referral Information for Providers	
Neuro-Oncology	<h4 style="margin: 0;">Radiation Therapy</h4> <p>If a tumor cannot be removed by surgery, or if it is only partially removed, the next option is radiation therapy. Radiation therapy uses high-energy rays aimed at the tumor site to kill cancer cells. Physicians who administer radiation therapy are called radiation oncologists. Types of radiation therapy include:</p> <ul style="list-style-type: none"> • External beam radiation - This form of radiation therapy delivers radiation to the area of the brain where the tumor is located, or it can be applied to the whole brain. Whole brain radiation can be used following surgery to kill any remaining tumor cells or to treat multiple tumors. A course of therapy often lasts five to six weeks. The use of specialized radiation sensitizing drugs with treatments can increase the cancer-killing effects of radiation even as less of it is used. Patients benefit from receiving a more effective treatment with reduced exposure to radiation. • Stereotactic radiosurgery - Radiosurgery can be an option when a brain tumor cannot be removed with traditional surgery. Stereotactic radiosurgery uses multiple beams of radiation precisely focused on the tumor. Using computer-generated 3-D images of the brain to target the beams, high doses of radiation are delivered to the tumor with minimal exposure to surrounding tissues. Radiosurgery at Virginia Mason involves collaboration among a team of medical experts from neurosurgery, radiation oncology and diagnostic radiology.

Figure 2, Screenshot 3

Chemotherapy

Chemotherapy treatment consists of powerful anticancer agents usually given intravenously, as an IV solution. The treatment works by stopping the division of cell growth in the body, essentially killing a growing cancer. However, because chemotherapy cannot distinguish between good and bad cells, all cells stop dividing. Rapidly dividing cells, such as those found in hair follicles and in bone marrow, are particularly prone to the toxic effects of chemotherapy. For this reason, patients undergoing treatment may lose some of their hair and are at risk of developing anemia (low blood cell production) which may bring on chronic fatigue.

A course of chemotherapy may consist of several cycles of treatment spaced six to eight weeks apart, daily treatments during radiation therapy, or chemotherapy given for five days out of each 28 day cycle. Physicians who administer chemotherapy are called medical oncologists or neuro-oncologists.

Even in cases in which chemotherapy does not cure the disease, medical studies have shown that this form of treatment helps patients live longer and more comfortably.

Drug Therapy

Specialized drugs are sometimes used in the treatment for brain tumors for controlling increased intracranial pressure, swelling and seizure activity. Deep vein thrombosis and pulmonary emboli are conditions associated with some primary tumors and are preventable or treatable with blood thinning medications. Pain medications are also used to control the symptoms of brain tumors.

Experimental Treatment

Experimental or investigational therapies not yet approved by the U.S. Food and Drug Administration (FDA) or new combinations of available treatments may be offered in clinical research studies. Your doctor will tell you more about the risks and expected benefits of treatment. In addition, as new treatment

Figure 2, Screenshot 4

doctor will tell you more about the risks and expected benefits of treatment. In addition, as new treatment options become available, your doctor, along with your input, will determine if they are an option for you.

Support and Survivorship

We support our patients with brain tumors beyond their treatment. Our emphasis on cancer, pre-cancerous identification and surveillance, [wellness](#) and [rehabilitation](#) enhances quality of life for our patients. Patient education programs continue to provide support and information after treatment and into recovery.

If you have questions or would like to make an appointment with one of our specialists, please call us at (206) 223-6193.

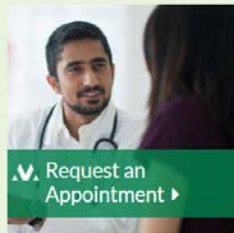


Figure 2, Screenshot 5



Figure 2, Screenshot 6

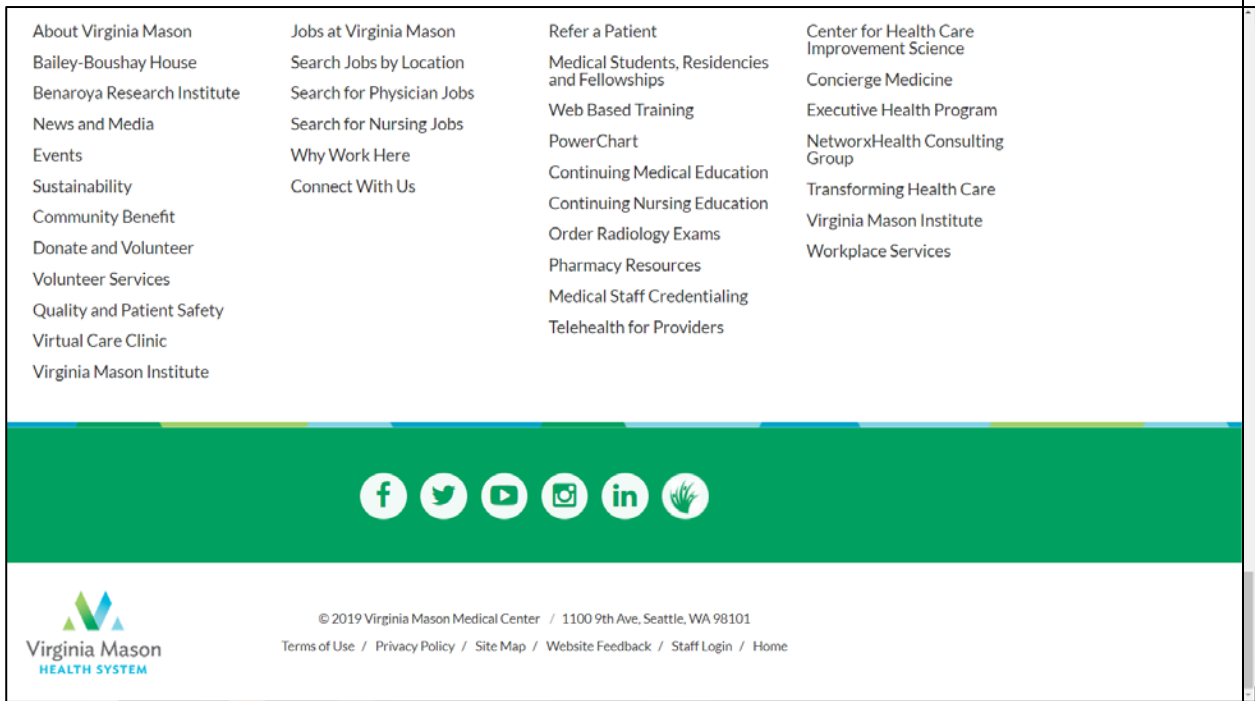


Figure 2, Screenshot 7

29. The only visible sign of any third party on this and Virginia Mason’s other webpages is the logos of Facebook, Twitter, Youtube, Pinterest, and LinkedIn in the footer.

1 These logos are not visible until a patient scrolls through five full screens of content on
2 treatments for brain cancer. More importantly, these logos are not supplied by third parties
3 and do not redirect patients' communications. They also do not provide notice to patients
4 that Virginia Mason may use their personal identifiers to aid third parties in acquiring and
5 recording their data and communications. Rather, a reasonable internet user would view the
6 logos as merely convenient links to use *at their option* to access Virginia Mason's various
7 social media accounts, which is precisely what the logos do. For purposes of this litigation, the
8 logos are a red herring: they do *not* disclose that patients' data and communications will be
9 acquired by third parties.

10 30. What Virginia Mason's patients do not know—and cannot know from simply
11 using Virginia Mason's website—is that Virginia Mason deploys source code on its website
12 that commands the patient's browser to open several *invisible* 1x1 tracking pixel windows that
13 allow Facebook and others to acquire and record patients' personally identifiable data and
14 communications. These redirections of patients' communications occur contemporaneously
15 with each patient's exchange of communications with Virginia Mason's website.

16 **Personally Identifiable Information Used for Internet Tracking**

17 31. Tracking pixels often work in conjunction with Internet technologies that
18 identify Internet users or otherwise contain personally identifiable information.

19 32. These identifying technologies include IP addresses, cookies, and browser
20 fingerprints or device identifiers.

21 ***IP Addresses***

22 33. An IP address is a number that identifies a computer connected to the Internet.

23 34. IP addresses are used to identify and route communications on the Internet.

24 35. In a typical home Internet setup, all Internet-connected devices share the
25 public IP address of the modem of the home.
26
27

1 36. Individual homes and their occupants can be tracked and targeted with
2 advertising using IP addresses.

3 37. Virginia Mason’s source code uses and redirects patient IP addresses to
4 Facebook and the other third-party trackers connected to the content of patient
5 communications, including communications relating to doctors, conditions, treatments, and
6 patient portal login clicks.

7 38. Under the Health Insurance Portability and Accountability Act (HIPAA), IP
8 address are protected personal identifiers. See 45 C.F.R. § 164.514(b)(2)(i)(O).

9 ***Internet Cookies***

10 39. In the early years of the Internet, advertising on websites followed the same
11 model as traditional newspapers. Just as a sporting goods store would choose to advertise in
12 the sports section of a traditional newspaper, advertisers paid for ads to be placed on specific
13 web pages based on the type of content displayed on the web page.

14 40. Computer programmers eventually developed ‘cookies’ – small text files that
15 web servers could place on a person’s web browser and computing device when that person’s
16 web browser interacts with the website server. Cookies can perform different functions.
17 Eventually, some cookies were designed to acquire and record an individual Internet user’s
18 communications and activities on websites across the Internet.

19 41. Cookies are designed to and, in fact do, operate as means of identification for
20 Internet users. In general, cookies are classified by (1) duration and (2) party.

21 42. There are two types of cookies classified by duration:

- 22 a. “Session cookies” are placed on a user’s computing device only while
23 the user is navigating the website that placed the cookie. The user’s
24 web browser typically deletes session cookies when the user closes the
25 browser.
26
27

1
2 b. "Persistent cookies" are designed to survive beyond a single Internet-
3 browsing session. The party creating the persistent cookie determines
4 its lifespan. As a result, a persistent cookie can acquire and record a
5 user's Internet communications for years and over dozens or hundreds
6 of websites. Persistent cookies are also sometimes called "tracking
7 cookies."

8 43. Cookies are also classified by the party that uses the collected data.

9 a. "First-party cookies" are set on a user's device by the website with
10 which the user is exchanging communications. For example, Virginia
11 Mason sets a collection of its own cookies on patients' browsers when
12 they visit any webpage on the Virginia Mason website. First-party
13 cookies can be helpful to the user, server, and/or website to assist with
14 security, log in, and functionality.

15 b. "Third-party cookies" are set on a user's device by website servers other
16 than the website or server with which the user is exchanging
17 communications. For example, patients who visits Virginia Mason's
18 website will also have cookies on their device from third parties, such as
19 Facebook. Unlike first-party cookies, third-party cookies are not
20 typically helpful to the user. Instead, third-party cookies are typically
21 used for data collection, behavioral profiling, and targeted advertising.

22 44. Data companies like Facebook have developed methods for monetizing and
23 profiting from cookies. These companies use third-party tracking cookies to acquire and
24 record users' Internet communications in order to sell advertising that is customized to that
25 person's communications and habits. To build individual profiles of Internet users, third party
26 data companies assign each user a unique or set of unique numeric or alphanumeric
27 identifiers associated with specific cookies assigned to the user.

1 45. Traditionally, first-party and third-party cookies were kept separate. An
2 Internet security policy known as the same-origin policy required web browsers to prevent
3 one web server from accessing the cookies of a separate web server. For example, although
4 Virginia Mason can deploy source code on its website that uses a patient's Facebook cookies
5 to help Facebook acquire and record the patient's communications, Virginia Mason is not
6 permitted direct access to the value associated with the Facebook cookie. The reverse is also
7 true: Facebook is not provided direct access to the values associated with first-party cookies
8 set by Virginia Mason.

9 46. Data companies such as Facebook have designed a way to hack around the
10 same-origin policy to gain access to first-party cookies.

11 47. Javascript source code developed by third-party data companies and placed on
12 a webpage by a developer such as Virginia Mason can bypass the same-origin policy to send a
13 first-party cookie value in a tracking pixel to the third-party data company. This technique is
14 known as "cookie synching," and it allows two cooperating websites to learn each other's
15 cookie identification numbers for the same user. Once the cookie synching operation is
16 completed, the two websites can exchange any information they have collected and recorded
17 about a user that is associated with a cookie identification number. The technique can also be
18 used to track an individual who has chosen to deploy third-party cookie blockers.

19 48. Virginia Mason uses and redirects patient cookie identifiers with each patient
20 communication on the Virginia Mason website, including use of cookie-synching.

21 49. Under HIPAA, cookies are protected personal identifiers. See 45 C.F.R.
22 § 164.514(b)(2)(i)(H), (J), (M), (N)& (R).

23 ***Browser Fingerprints***

24 50. A browser fingerprint is information collected about a computing device that
25 can be used to identify the device.
26
27

1
2 51. A browser fingerprint can be used to identify a device when the device's IP
3 address is hidden and cookies are blocked.

4 52. The Electronic Frontier Foundation has explained:

5 When a site you visit uses browser fingerprinting, it can learn
6 enough information about your browser to uniquely distinguish
7 you from all the other visitors to that site. Browser fingerprinting
8 can be used to track users just as cookies do, but using much more
9 subtle and hard-to-control techniques. In a paper EFF released in
10 2010, we found that a majority of users' browsers were uniquely
11 identifiable given existing fingerprinting techniques. Those
12 techniques have only gotten more complex and obscure in the
13 intervening years. By using browser fingerprinting to piece
14 together information about your browser and your actions online,
15 trackers can covertly identify users over time, track them across
16 websites, and build an advertising profile of them.²

17 53. Google recently explained, "With fingerprinting, developers have found ways to
18 use tiny bits of information that vary between users, such as what device they have or what
19 fonts they have installed to generate a unique identifier which can then be used to match a
20 user across websites. Unlike cookies, users cannot clear their fingerprint, and therefore
21 cannot control how their information is collected."³

22 54. In 2017, researchers showed that browser fingerprinting techniques can
23 successfully identify 99.24% of users.⁴

24 ² Katarzyna Szymielewicz and Bill Dudington, Electronic Frontier Foundation, The GDPR and
25 Browser Fingerprinting: How It Changes the Game for the Sneakiest Web Trackers,
26 [https://www.eff.org/deeplinks/2018/06/gdpr-and-browser-fingerprinting-how-it-changes-
game-sneakiest-web-trackers](https://www.eff.org/deeplinks/2018/06/gdpr-and-browser-fingerprinting-how-it-changes-game-sneakiest-web-trackers).

27 ³ <https://www.blog.google.com/products/chrome/building-a-more-private-web/>

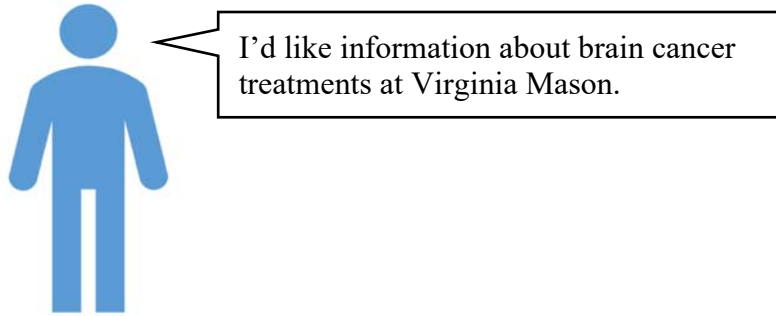
⁴ Yinzhi Cao, Song Li, Erik Wijmans, (Cross-)Browser Fingerprinting via OS and Hardware Level
Features, Proceedings of the Network and Distributed Security Symposium, March 2017,
http://yinzhicao.org/TrackingFree/crossbrowsertracking_NDSS17.pdf.

1 55. Virginia Mason uses and redirects patient device identifiers and data sufficient
2 for third parties to create a browser fingerprint with each patient communication via the
3 Virginia Mason website.

4 56. Under HIPAA, browser fingerprints are protected personal identifiers. See 45
5 C.F.R. § 164.514(b)(2)(i)(M), (R).

6 **What Happens When a Patient Exchanges Communications with Virginia Mason**

7 57. A communication between a patient and Virginia Mason begins when the
8 patient decides to search Virginia Mason’s website for information on a health-related topic
9 like brain cancer treatments:



16 58. A patient can seek this information by typing “brain cancer treatments” into
17 the search bar on the Virginia Mason homepage.

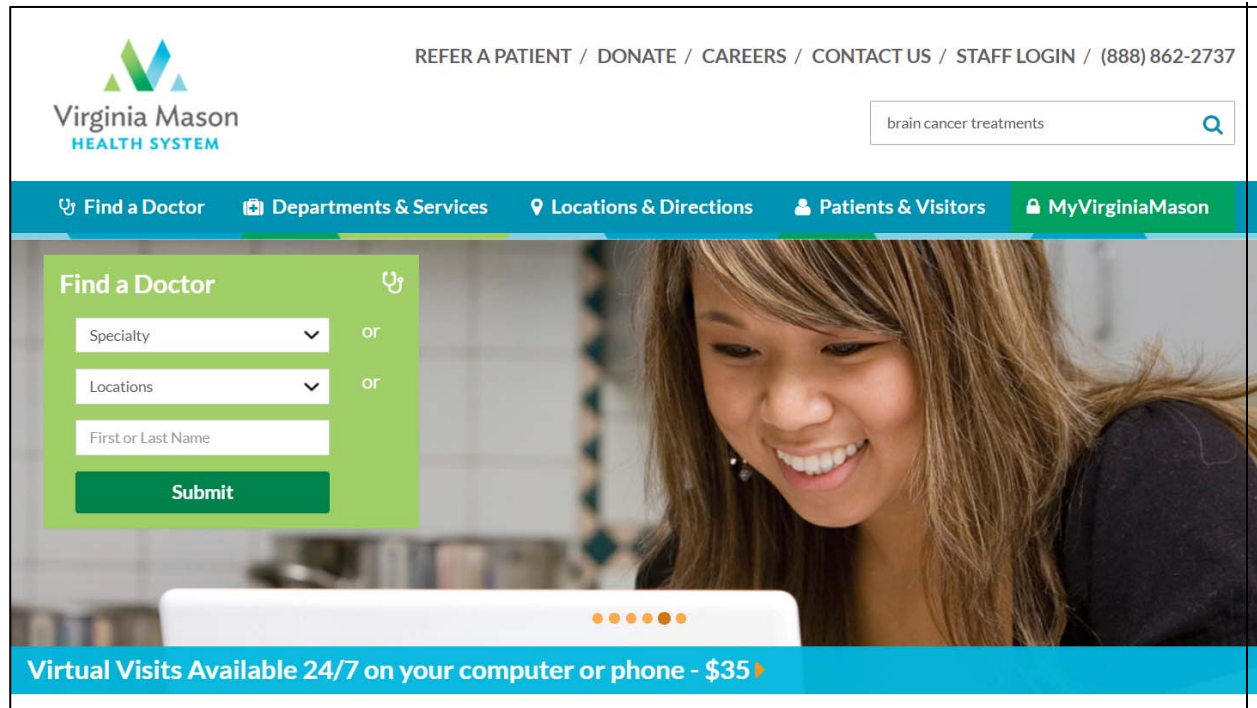


Figure 3

59. When a patient searches for “brain cancer treatments,” a single communication occurs between the patient and Virginia Mason, but Virginia Mason’s source code triggers at least 54 contemporaneous connections or transmissions redirecting the patient’s personally identifiable information, the content of the patient’s communication, and Virginia Mason’s response without the patient’s knowledge or consent.

60. Only one of the contemporaneous transmissions relates to the patient’s communication with Virginia Mason.

61. Virginia Mason causes the other transmissions to automatically and contemporaneously redirect the patient’s personal identifiers and the content of the patient’s communication to Facebook, Google, theTradeDesk, and Signal.

***Virginia Mason Uses Patient Identifiers
to Help Facebook Acquire and Record Patient Communications***

62. Facebook operates the world’s largest social media company.

1 63. Facebook maintains profiles on users that include real names, locations, email
2 addresses, friends, likes, and communications that Facebook associates with personal
3 identifiers including IP addresses, cookies, and device identifiers.

4 64. Facebook also tracks non-users across the web through its widespread Internet
5 marketing products and source code.

6 65. Facebook's revenue is derived almost entirely from selling advertising targeted
7 at Facebook users on Facebook.com and other non-Facebook sites that integrate Facebook
8 marketing source code.

9 66. Facebook Business is the division that provides advertising tools and services to
10 businesses.

11 67. Facebook Business and the advertising tools it provides to web developers are
12 focused on trade and commerce.

13 68. The Facebook Pixel, a product of Facebook Business, is a "piece of code" that
14 lets developers "measure, optimize and build audiences for ... ad campaigns."⁵

15 69. The Facebook Pixel is an invisible 1x1 web bug.

16 70. As Facebook describes its service, the Facebook Pixel captures and transmits
17 patients' personally identifiable information to Facebook in connection with their actions on
18 the website and the content of their communications. See Exhibit 1.⁶

19 71. On its implementation page for web developers, Facebook describes how its
20 pixel program matches website visitors with their Facebook accounts and tracks their actions:⁷
21

22
23
24
25 ⁵ <https://www.facebook.com/business/learn/facebook-ads-pixel>.

26 ⁶ Facebook Pixel Implementation, <https://developers.facebook.com/docs/facebook-pixel/implementation/>

27 ⁷ Exhibit 1.

Implementation

The Facebook pixel is a snippet of JavaScript code that loads a small library of functions you can use to track Facebook ad-driven visitor activity on your website. It relies on Facebook cookies, which enable us to match your website visitors to their respective Facebook User accounts. Once matched, we can tally their actions in the Facebook Ads Manager and Analytics dashboard, so you use the data to analyze your website's conversion flows and optimize your ad campaigns.

72. Facebook explains “How the Facebook Pixel Works”:⁸

How the Facebook pixel works

When someone visits your website and takes an action (for example, buying something), the Facebook pixel is triggered and reports this action. This way, you'll know when a customer took an action after seeing your Facebook ad. You'll also be able to reach this customer again by using a custom audience. When more and more conversions happen on your website, Facebook gets better at delivering your ads to people who are more likely to take certain actions. This is called conversion optimization.

73. Facebook recommends the pixel code be placed early in the source code for any given web page or website to ensure that the user will be tracked:⁹

Installing The Pixel

To install the pixel, we highly recommend that you add its base code between the opening and closing `<head>` tags on every page where you will be tracking website visitor actions. Most developers add it to their website's persistent header, so it can be used on all pages.

Placing the code within your `<head>` tags reduces the chances of browsers or third-party code blocking the pixel's execution. It also executes the code sooner, increasing the chance that your visitors are tracked before they leave your page.

74. Virginia Mason has installed the Facebook Pixel on its website.

75. When a patient exchanges any communication with Virginia Mason on the Virginia Mason website, the Facebook Pixel source code deployed by Virginia Mason redirects

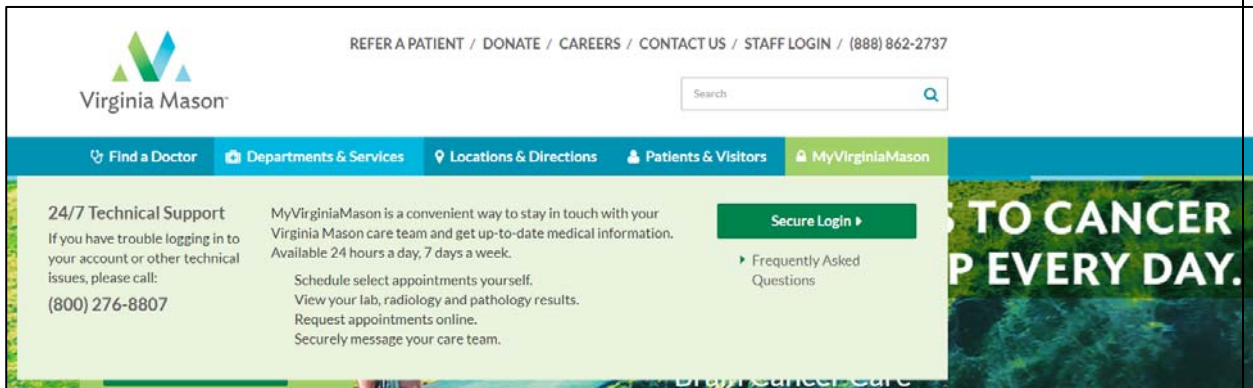
⁸ <https://www.facebook.com/business/learn/facebook-ads-pixel>

⁹ <https://developers.facebook.com/docs/facebook-pixel/implementation/>

1 the patient’s personal identifiers and the content of the patient’s communications with
2 Virginia Mason to Facebook—before the information is transmitted to Virginia Mason.

3
4 76. Virginia Mason uses the Facebook Pixel to redirect a patient’s personal
5 identifiers and the content of the button clicked when the patient chooses to log in to the
6 MyVirginiaMason portal.

7
8 77. For example, every page on the Virginia Mason website offers patients a button
9 to click to log in to MyVirginiaMason. When a patient’s mouse is over the MyVirginiaMason
10 button (with the lock promising security), a pop-up window is offered:



11
12
13
14
15
16 78. When a patient clicks the green “Secure Login” button, Virginia Mason
17 automatically redirects the patient’s personal identifiers and the content of the patient’s
18 communication (i.e. “Secure Login”) to Facebook.

ts	1567106847474
cd[buttonFeatures]	{"classList":"btn btn-default btn-lg btn-control","destination":"https://vmmc.iqhealth.com/home","id":"","imgLogin","numChildButtons":0,"tag":"a","name":""}
cd[buttonText]	Secure Login
cd[formFeatures]	[]
cd[pageFeatures]	{"title":"Treating Brain Cancer Virginia Mason Medical Center, Seattle"}

19
20
21
22
23
24 79. Facebook receives the redirected patient personal identifiers and the content
25 of “Secure Login” before Virginia Mason receives it.

1 80. The specific means of identification that Virginia Mason uses to help Facebook
2 acquire and record the patient communications and activity include the patient’s IP address
3 and cookie values, including first-party cookie values used by Virginia Mason that Facebook
4 can access and use through cookie synching.

5 81. Through the source code deployed by Virginia Mason, the cookies that Virginia
6 Mason uses to help Facebook identify patients are named `c_user`, `datr`, `fr`, and `_fbp`.

7 82. The **c_user cookie** is a means of identification for Facebook users. The `c_user`
8 cookie value is the Facebook equivalent of a user identification number. Each Facebook user
9 account has one—and only one—unique `c_user` cookie. Facebook uses the `c_user` cookie to
10 record user activities and communications.

11 83. A skilled computer user can obtain the `c_user` cookie value for any Facebook
12 user by going to the user’s Facebook page, right clicking, and selecting “View page source,”
13 executing a Control-F function for “fb://profile,” and copying the number value that appears
14 after “fb://profile” in the page source code of the target Facebook user’s page.

15 84. It is even easier to find the Facebook account associated with a `c_user` cookie.
16 One simply needs to log in to Facebook, and then type www.facebook.com/#, with #
17 representing the `c_user` cookie identifier. For example, the `c_user` cookie value for Mark
18 Zuckerberg is 4. Logging in to Facebook and typing www.facebook.com/4 in the web browser
19 retrieves Mark Zuckerberg’s Facebook page: www.facebook.com/zuck.¹⁰

20 85. The **datr cookie** identifies the web browser from which the patient is sending
21 the communication, meaning the exact version number that is unique to the device used by
22 the patient. The `datr` cookie is a means of identification for Facebook users. In fact, Facebook
23

24 _____
25 ¹⁰ Facebook “pages” lack `c_user` cookies. However, they also have unique identifiers. The
26 `c_user` equivalent for Virginia Mason is 1062330712. The last four digits of the `c_user` cookie
27 value for Virginia Mason Chief Marketing Officer Darlene Corkrum are -4476. (Counsel
possesses but chooses not to disclose the full value of personally identifiable information in a
public document.)

1 keeps a record of every datr cookie associated with each of its users. A Facebook user can
2 obtain a redacted list of all datr cookies associated with his or her Facebook account.

3 86. The **fr cookie** is a means of identification for Facebook users. The ‘fr’ cookie is
4 an encrypted combination of the c_user and datr cookies.¹¹

5 87. The **_fbp cookie** is a first-party cookie set by Virginia Mason. Virginia Mason
6 uses the _fbp cookie in connection with the Facebook Tracking Pixel, sending Facebook a
7 patient’s unique _fbp cookie value when redirecting the contents of the patient’s
8 communications to Facebook.

9 88. Facebook instructs developers on using Facebook Pixel with both first-party
10 and third-party cookies. See Exhibit 2.¹² On its Developer Help Center, Facebook explains that
11 its pixel program can use both first-party and third-party cookies to acquire and record
12 activities and communications of Internet users.¹³

13
14
15
16
17
18
19
20
21
22
23
24 ¹¹ See Facebook Tracking Through Social Plug-ins: Technical Report prepared for the Belgian
25 Privacy Commission, Mar. 27, 2015, available at
https://securehomes.esat.kuleuven.be/~gacar/fb_tracking/fb_pluginsv1.0.pdf.

26 ¹² Facebook, About Cookie Settings For Your Facebook Pixel, retrieved from
<https://www.facebook.com/business/help/471978536642445>

27 ¹³ Exhibit 2.

About Cookie Settings For Your Facebook Pixel

Cookies are small pieces of code stored in Internet browsers that are often used to distinguish between website visitors.

You can now use both first and third-party cookies with your Facebook pixel. The difference between first and third-party cookies lies in who owns the cookie.

First-party cookies are owned by the website a person is currently viewing, while third-party cookies belong to a website other than the one a person is currently viewing.

Compared to third-party cookies, first-party cookies are more widely accepted by browsers and stored for longer periods of time.

To give you more control over your advertising outcomes, the options for using cookies with your Facebook pixel are:

1. Use the Facebook pixel with both first and third-party cookies

This is the default option and is most likely your current Facebook pixel setting. With this option, you will use first-party cookie data with your Facebook pixel, in addition to third-party cookie data. Using both first and third-party cookies will enable you to reach more customers on Facebook and to be more accurate in measurement and reporting.

2. Use the Facebook pixel with third-party cookies only

You can disable first-party cookies and use the Facebook pixel with third-party cookies only. With this option, your Facebook pixel will be less effective in reaching customers on Facebook and less accurate in measurement and reporting.

89. The fbp cookie is a means of identification for Facebook users. Virginia Mason deploys the fbp cookie to help Facebook acquire and record patients' identifiable user communications. With every communication a patient exchanges with Virginia Mason at VirginiaMason.org, Virginia Mason separately but contemporaneously transmits the fbp cookie identifier to Facebook attached to the content of the patient's communication.

90. For example, through its source code, Virginia Mason can use the c_user, datr, and fr cookies to help Facebook acquire and record a patient's search for "brain cancer treatments."

91. Facebook also periodically scrapes every webpage on which its source code appears, enabling Facebook to obtain all of the exchanged communications.

**Virginia Mason Uses Patient Identifiers
to Help Google Acquire and Record Patient Communications**

92. By many measures, Google is the world’s largest data company. Among other services, Google operates the world’s most popular search engine (Google), email provider (Gmail), video website (YouTube), mapping service (Google Maps), Internet analytics service for web developers (Google Analytics), and web browser (Chrome). It also operates various ad services that are among the world’s most popular in their respective categories, including the advertising services of Google Doubleclick and Google AdWords.

93. Though lesser known, Google Analytics has massive reach. The Wall Street Journal called it “far and away the web’s most dominant analytics platform” and explained that it “tracks you whether or not you are logged in.”¹⁴

94. Google tracks Internet users with IP addresses, cookies, geolocation, and other unique device identifiers.

95. Cookies are personally identifiable for Google. For example, Google explains the following about certain cookies that it uses:

- a. “[W]e use cookies called ‘SID’ and ‘HSID’ which contain digitally signed and encrypted records of a user’s Google account ID and the most recent sign-in time.”¹⁵
- b. “Most Google users will have a preference cookie called ‘NID’ in their browsers. A browser sends this cookie with requests to Google’s sites. The NID cookie contains a unique ID Google uses to remember your preferences and other information[.]”¹⁶
- c. “Google uses cookies like NID and SID to help customize ads on Google

¹⁴ Christopher Mims, *Who Has More of Your Personal Data than Facebook? Try Google*, The Wall Street Journal, April 22, 2018, <https://www.wsj.com/articles/who-has-more-of-your-personal-data-than-facebook-try-google-1524398401>.

¹⁵ Google Privacy & Terms, Types of Cookies Used by Google, <https://policies.google.com/technologies/types?hl=en-US>

¹⁶ *Id.*

1 properties, like Google Search. For example, we use such cookies to
2 remember your most recent searches, your previous interactions with
3 an advertiser’s ads or search results, and your visits to an advertiser’s
4 website. This helps us show you customized ads on Google.”¹⁷

5 d. “We also use one or more cookies for advertising we serve across the
6 web. One of the main advertising cookies on non-Google sites is named
7 ‘IDE’ and is stored in browsers under the domain doubleclick.net.
8 Another is stored in google.com and is called ANID. We use other
9 cookies with names such as DSID, FLC, AID, TAID, and exchange_uid.
10 Other Google properties, like YouTube, may also use these cookies to
11 show you more relevant ads.”¹⁸

12 96. Virginia Mason deploys Google Analytics tracking on its website.

13 97. When a patient sends a communication to Virginia Mason through its website,
14 the Google source code deployed by Virginia Mason triggers the transmission of patient
15 identifiers (IP address and unique values passed to Google) and the content of the patient’s
16 communication (i.e., “treating brain cancer”) to Google Analytics.

17 98. Google provides instructions for web developers to anonymize IP addresses
18 when they use Google Analytics. See Exhibit 3.¹⁹

19 99. Google explains that the IP anonymization feature “is designed to help site
20 owners comply with their own privacy policies, or, in some countries, recommendations from
21 local data protection authorities, which may prevent the storage of full IP address
22 information.” The Google IP anonymization instructions tell web developers to add a
23 parameter called ‘aip’ in their Google Analytics source code. When ‘aip’ (“anonymize IP”) is
24

25 ¹⁷ *Id.*

26 ¹⁸ *Id.*

27 ¹⁹ Google, Analytics Help, IP Anonymization in Analytics,
<https://support.google.com/analytics/answer/2763052?hl=en>

1 turned on, it will be reported to Google Analytics in a GET request with the following:
2 '&aip=1'.
3

4 100. Virginia Mason does not use Google's IP anonymization tool. As a result,
5 patient identifiers are not anonymous when Virginia Mason uses and causes them to be
6 transmitted to Google Analytics.

7 101. Virginia Mason deploys Google Doubleclick and Google Ads tracking on its
8 website.

9 102. Google Doubleclick is a third-party advertising service that tracks users across
10 the Internet using personally identifiable data and communications to place targeted
11 advertisements.

12 103. Virginia Mason funnels Doubleclick source code through a tag management
13 system called Bright Tag, owned by a company called Signal.

14 104. As explained below, the Doubleclick source code places an invisible pixel within
15 the already invisible Bright Tag/Signal iframe.

16 105. Virginia Mason uses patient means of identification including IP addresses and
17 cookies to help Google Doubleclick acquire and record patients' data and the content of their
18 communications without the patients' knowledge, action, authorization, or consent.

19 106. The cookies used by Virginia Mason to help Google Doubleclick and Google Ads
20 acquire and record patient communications include, as discussed above, cookies named IDE,
21 NID, ANID, HSID, and SID, each of which is a personal identifier when obtained by Google.

22 107. In addition, Virginia Mason causes transmission of a cookie named _fbp to
23 Google Doubleclick that has a different value than the first party _fbp cookie set by Virginia
24 Mason, but which is a persistent identifier that Google Doubleclick uses to acquire and record
25 patient communications at sites across the Internet.
26
27

1
2 108. Facebook instructs developers on how to use the Facebook Tracking Pixel with
3 Google Doubleclick. See Exhibit 4.²⁰ Facebook explains how developers can funnel data
4 through Doubleclick to Facebook in a recurring report that can be transmitted to Facebook in
5 a daily email:²¹



16 109. Upon information and belief, Virginia Mason set up its Google Campaign or
17 Doubleclick Campaign Manager to transmit patient information to Facebook via the Google
18 Doubleclick _fbp cookie.

19
20 ***Virginia Mason Uses Patient Identifiers
to Help Signal Acquire and Record Patient Communications***

21 110. Tag management systems offer a solution for web developers to place all of
22 their third-party tracking pixel or web bug source code in a single place, which makes
23 webpages load faster, makes it relatively easier to change third-party tracking tools, and
24 further obscures the tracking taking place on a website.

25
26 ²⁰ Facebook, Google Campaign Manager (Double-Click Campaign Manager),
<https://www.facebook.com/business/help/565734646951134>

27 ²¹ Exhibit 4.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

111. To use tracking pixels, web developers use source code that commands a user's browser to redirect the contents of the user's communication and personally identifiable information to the third-party data companies engaged in the tracking. Placing multiple tracking pixels directly into the source code of a website can become unwieldy because it causes webpages to load more slowly and makes it more difficult to make changes to the website.

112. By using a tag management system, a web developer can simply place a small snippet of code from the tag management system into the website's source code. The developer then places all of the third-party tracking pixel source code into the tag manager.

113. Using the same invisible window analogy, in the absence of a tag manager, a web developer has to command a web browser to open a separate window for each third-party tracker deployed on the website. With a tag manager, the web developer commands the web browser to open a single window through which all of the third-party tracking pixels and source code are permitted to spy on user identifiers and communications.

114. Google explains the benefits of its own Google Tag Manager:

Tags on your website help you measure traffic and optimize your online marketing. But all that code is cumbersome to manage. It often takes too long to get new tags on your site or update existing ones. This can delay campaigns by weeks or months so you miss valuable opportunities, data, and sales. That's where tag management comes in. Google Tag Manager is a powerful free tool that puts you the marketer back in control of your digital marketing. You update all your tags from Google Tag Manager instead of editing the site code. This reduces errors, frees you from having to involve a web master, and lets you quickly deploy tags on your site.

Here's how it works. Sign in with an existing Google Account. Go to [Google.com/tagmanager](https://www.google.com/tagmanager) and create an account for your company. We'll name this one after the name of our company, Example Inc. Next, create a container for your domain name. We'll name this one after our website, example.com. This container will hold all the tags on the site. When you create a container, Google Tag Manager generates a container snippet to add to your site. Copy this container snippet and paste it into every page of your site. Paste the snippet below the opening body tag. Once you've

1 pasted the container snippet into your site, you add and edit your tags
2 using Google Tag Manager. You can add any marketing or measurement
tag you want, whenever you want.²²

3 115. Virginia Mason uses Signal’s Bright Tag management system.

4 116. When a patient sends a communication through the Virginia Mason website,
5 the source code sends a command to create an invisible 1x1 iframe on the patient’s screen
6 and then contemporaneously and instantaneously commands the patient’s web browser to
7 redirect the content of the patient’s communications to Facebook, Google, Signal, and
8 theTradeDesk.

9 117. For example, this is one example of Facebook Pixel source code that Virginia
10 Mason places inside the Bright Tag management system:

```
11 7 s.tag('\x3c!-- Facebook Pixel Code --\x3e\n\x3cscript\x3e\n!function(f,b,e,v,n,t,s){if(f.fbq)return;  
12 n\x3df.fbq\x3dfunction(){n.callMethod?\n\n.callMethod.apply(n,arguments):n.queue.push(arguments)};if(  
13 !f._fbq)f._fbq\x3dn;\n\n.push\x3dn;n.loaded\x3d!0;n.version\x3d\x272.0\x27;n.queue\x3d[];t\x3ddb.  
createElement(e);t.async\x3d!0;\n\n.src\x3dv;s\x3db.getElementsByTagName(e)[0];s.parentNode.  
insertBefore(t,s)}(window,\ndocument,\x27script\x27,\x27https://connect.facebook.net/en_US/fbevents.  
js\x27);\n\n\nfbq(\x27init\x27, \x27637283573094005\x27);\n\nfbq(\x27track\x27, \x22PageView\x22);\n\n\x3c/script\x3e\n\n\x3c!-- End Facebook Pixel Code --\x3e', {tagId:4001557});
```

14 118. In addition to granting Facebook, Google, and theTradeDesk access to an
15 invisible window through which to track Virginia Mason patients, the Bright Tag transmission
16 also involves Virginia Mason’s use of patient identifiers to help Signal acquire and record
17 patient communications without patients’ knowledge, action, authorization, or consent.

18 119. This redirected transmission to Bright Tag/Signal includes searches for health
19 information (like the search for “brain cancer treatments”), Internet cookies, and other data
20 that Signal publicly claims helps it to recognize a user “as a specific person” “wherever she is
21 on the web or mobile, not as a collection of data suggesting an individual”²³

22 120. Signal proclaims that it assigns consumers “[a] persistent ID [that] provides a
23 single view of an individual that crosses multiple devices – from desktop, to mobile web, to in-
24 app – with no duplication. This ID is formed using deterministic data, collected from
25

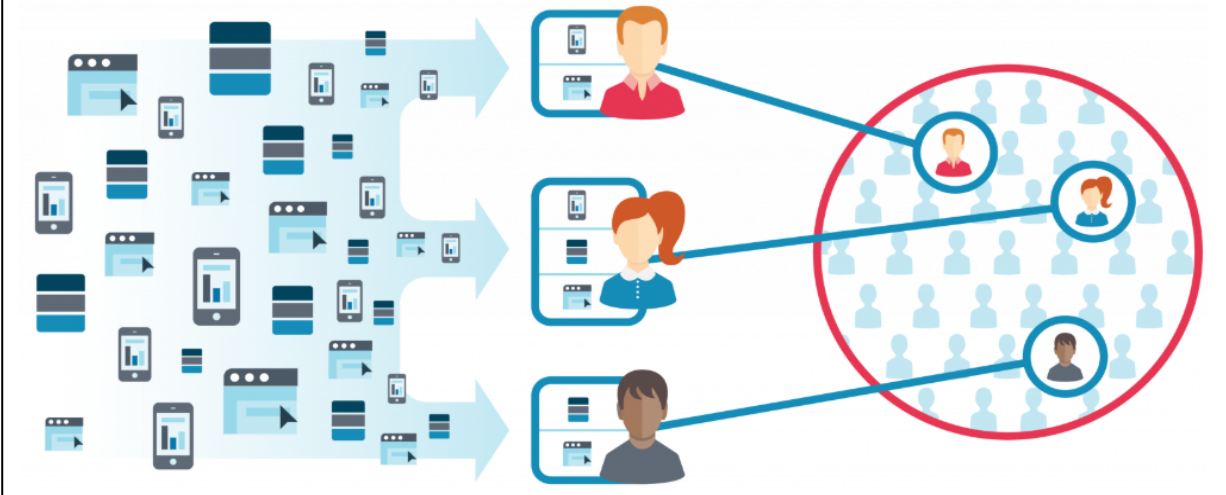
26 ²² See <https://www.youtube.com/watch?v=KRvbFpeZ11Y>, audio from 0:04 to 1:40.

27 ²³ <https://www.signal.co/customer-identity-solution/>

1 authenticated identifiers like logins, loyalty card numbers, etc. If the user remains logged into
2 a social media platform, a brand site, an email account, or any other online account, she can
3 be recognized wherever she is on the web or mobile, not as a collection of data suggesting an
4 individual, but as a specific person.”²⁴

5 121. Signal then creates a customer identity graph that it describes as “a database
6 that houses all the known identifiers that correlate with individual customers”:²⁵

7
8 Across a consumer’s journey, one or many personal identifiers may be associated with an individual – email addresses, a
9 physical address, mobile phone numbers, device IDs, account usernames, customer IDs, loyalty numbers and an ever-
10 changing array of cookies picked up in browsers. The ID graph collects these identifiers and connects them to the
11 customer’s profile and any related data points, including behavioral data like browsing activity or purchase history.



19 122. Virginia Mason uses at least 53 separate patient identifiers that it redirects to
20 Bright Tag/Signal, plus the patient’s IP address and the contents of the patient’s
21 communication.

22 ***Virginia Mason Uses Patient Identifiers
to Help theTradeDesk Acquire and Record Patient Communications***

23 123. Virginia Mason uses tracking tools from theTradeDesk via the domain
24 adsrvr.org.

25 124. Virginia Mason funnels TradeDesk source code through Bright Tag.

26 ²⁴ <https://www.signal.co/resources/what-is-customer-identity/>

27 ²⁵ <https://www.signal.co/blog/6-things-about-id-graphs/>

1 125. As with other third parties, TradeDesk tracking is hidden from patients.

2 126. TheTradeDesk is an online advertising company that “helps advertisers and
3 their advertising agencies manage digital advertising campaigns across many channels, such as
4 websites, apps, audio, smart tvs, and other video.”²⁶

5 127. TheTradeDesk states that the data it collects is not anonymous, but instead
6 “pseudonymous, which means that it does not directly identify people.”²⁷

7 128. TheTradeDesk retains the information for “up to 18 months before [theTrade
8 Desk] aggregate[s] it.” The “pseudonymous” data includes:²⁸

The data our Platform collects and processes:	Pseudonymous data such as: <ul style="list-style-type: none">• unique cookie and device identifiers• mobile device advertising identifiers• IP addresses• web browsing history from advertising impressions we see• interest information inferred by us from web browsing history• interest information stored and/or used on the Platform by clients and partners• location information• browser and device type, version and settings
--	--

9
10
11
12
13
14
15
16 129. As described by theTradeDesk, the “pseudonymous” data it collects is
17 personally identifiable information under HIPAA.

18 130. Virginia Mason uses patient identifiers like IP addresses and cookies to help
19 theTradeDesk acquire and record patient data and communications content without patients’
20 knowledge, action, authorization, or consent.

21 **Other Communications that Virginia Mason Helps Third Parties Acquire and Record**

22 131. The data transmissions triggered by the Virginia Mason source code when a
23 patient searches for “brain cancer treatments” are just an example. The Virginia Mason source
24

25 ²⁶ <https://www.thetradedesk.com/general/privacy>

26 ²⁷ *Id.*

27 ²⁸ *Id.*

1 code triggers similar redirects of patient identifiers and communications with every
2 communication that a patient exchanges with Virginia Mason on its website.

3 132. These communications include, but are not limited to, every time a patient:

- 4 a. Clicks the “MyVirginiaMason” button to access the Virginia Mason
5 patient portal;
6
7 b. Logs out of the Virginia Mason patient portal;
8
9 c. Requests and exchanges information about a doctor;
10
11 d. Clicks to “Request Appointment”;
12
13 e. Requests and exchanges information about a service, such as
14 www.virginiamason.org/brain-cancer;
15
16 f. Searches for a specialist;
17
18 g. Searches or exchanges a communication about a specific medical
19 condition;
20
21 h. Searches for a type of treatment;
22
23 i. Refines a search by clicking the “Apply Filter” button; or
24
25 j. Clicks on a link, such as “Treating Brain Cancer.”

18 133. Virginia Mason uses patient identifiers to help third parties identify website
19 users’ status as patients of Virginia Mason and to acquire and record their requests for
20 appointments, doctors, conditions, interests, and other communications they exchange with
21 Virginia Mason on its website.

22 134. The source code Virginia Mason deploys on its website is the digital equivalent
23 of (1) providing a carbon copy of key data points on every patient intake form, and (2) bugging
24 Virginia Mason’s phone lines to inform Facebook, Google, Trade Desk, and Signal in real time
25 of the who, what, and when of communications exchanged with patients.
26
27

1 **Virginia Mason Benefits from Helping Third Parties Surreptitiously Track Its Patients**

2 135. In exchange for deploying source code supplied by the third parties to capture
3 and transmit its patient identifiers and communications, Virginia Mason receives enhanced
4 advertising services. Among other things, the third parties help Virginia Mason measure the
5 effectiveness of its advertising and provide retargeting abilities, a form of online advertising
6 targeting consumers based on their previous Internet communications.

7 136. Retargeting is cookie-based online advertising. It uses code tracking pixels and
8 cookies to notify retargeting providers to display ads to the user elsewhere on the Internet.

9 137. Retargeting is the reason a consumer may see an advertisement for hotels in a
10 certain location for many days after visiting a website about that location, or an
11 advertisement for shoes after browsing for shoes.

12 138. The third parties capture patients' personally identifiable information and
13 health communications and use that information to create detailed dossiers. The third parties
14 then use this information to sell Virginia Mason and others advertisements that target the
15 patients.

16 139. Once the third parties have patients' personally identifiable information and
17 health communications, nothing prevents them from disclosing the information for their own
18 gain or using it in any other manner they desire. For example, and upon information and
19 belief, Facebook uses the information to permit other advertisers to send targeted messages
20 to its own user list with individuals Facebook has identified as having an interest in specific
21 medical conditions.

22 140. Virginia Mason has effectively sold patient identifiers and communications
23 through this barter: Virginia Mason gives the third parties the data, the third parties return
24 the favor of enhanced marketing services, and third parties can then use the data however
25 else they choose.

26 141. Upon information and belief, the third parties Virginia Mason assists in
27

1 acquiring and recording patients' identifying information and health communications use that
2 information for their own business purposes.

3 142. The monetization of Virginia Mason's patient information demonstrates its
4 inherent value.

5 143. In aiding third parties in capturing and recording the data, Virginia Mason is
6 infringing on its patients' property rights to the data.

7 144. There is an active market for health information that is the subject of
8 significant legal protections under HIPAA and the common law.

9 145. The value of the data that Virginia Mason helps third parties acquire to build
10 dossiers on its patients and target advertisements to them is well understood and generally
11 accepted in the e-commerce industry.

12 146. Personal information is now viewed as a form of currency. Professor Paul M.
13 Schwartz noted in the Harvard Law Review:

14
15 Personal information is an important currency in the new millennium. The
16 monetary value of personal data is large and still growing, and corporate
17 America is moving quickly to profit from the trend. Companies view this
18 information as a corporate asset and have invested heavily in software that
19 facilitates the collection of consumer information.

20 147. The cash value of Internet users' personal information can be quantified.

21 148. For example, one 2015 study determined that Americans place more value on
22 "health condition" than any other piece of data about them (including their Social Security
23 numbers, passwords, and purchase histories), with a with a minimum value of \$82.90.²⁹

24 149. Medical information derived from medical providers is more valuable because
25 this data is not available to third-party data marketing companies because of strict restrictions
26 on disclosures under HIPAA, state laws, and provider ethical standards, including the

27 ²⁹ Ponemon Institute, Privacy and Security in a Connected Life: A Study of US Consumers, March 2015, <https://www.trendmicro.de/media/report/ponemon-privacy-and-security-in-a-connected-life-us-consumers-report-en.pdf>.

1 Hippocratic oath.

2 150. Even with restrictions on the disclosure of personally identifiable health
3 information, a robust market exists for the trade of de-identified health data.³⁰

4 151. By assisting third parties in acquiring and recording its patients' personally
5 identifiable data and communications without the patients' knowledge, consent, or
6 authorization, Virginia Mason diminishes the value of Plaintiffs' and other Class members'
7 personally identifiable data and communications.

8 **Virginia Mason's Wrongful Conduct Is Not Necessary**

9 152. The third-party code that Virginia Mason deploys on its website is not required
10 for maintenance of the website or use of social media marketing tools. Virginia Mason could
11 easily remove the code without impairing the functionality of the website as a tool to
12 exchange communications with patients.

13 153. It is also possible for a website developer to enable social media sharing by
14 users (if that was the intent) without allowing third parties to capture patient information. In
15 fact, Virginia Mason's website illustrates precisely how this can be accomplished.

16 **Virginia Mason Does Not Disclose Its Conduct or Obtain Authorization, But Instead**
17 **Falsely Assures Patients of the Confidentiality of Their Information**

18 154. Plaintiffs and Class members reasonably expect that their communications with
19 Virginia Mason are private because of:

- 20 a. Virginia Mason's status as their health care provider;
- 21 b. Virginia Mason's common law obligation to maintain the confidentiality
22 of communications with patients;

23 _____

24 ³⁰ See How Data Brokers Make Money Off Your Medical Records, Scientific American,
25 [https://www.scientificamerican.com/article/how-data-brokers-make-money-off-your-
26 medical-records/](https://www.scientificamerican.com/article/how-data-brokers-make-money-off-your-medical-records/); Your Private Medical Data is for Sale – and It's Driving a Business Worth
27 Billions, The Guardian, [https://www.theguardian.com/technology/2017/jan/10/medical-data-
multibillion-dollar-business-report-warns](https://www.theguardian.com/technology/2017/jan/10/medical-data-multibillion-dollar-business-report-warns); The Hidden Global Trade in Patient Medical Data,
YaleGlobal Online, [https://yaleglobal.yale.edu/content/hidden-global-trade-patient-medical-
data](https://yaleglobal.yale.edu/content/hidden-global-trade-patient-medical-data).

- 1
- 2 c. State and federal laws protecting the confidentiality of private
- 3 communications and medical information;
- 4 d. Virginia Mason’s express promises of confidentiality; and
- 5 e. Virginia Mason’s implied promises of confidentiality.

6 155. A health care provider must obtain a patient’s express written authorization to

7 disclose and use patient personal identifiers for marketing purposes.

8 156. Virginia Mason expressly promises not to disclose or use patients’ information

9 for marketing purposes in the absence of express, written authorization.

10 157. In its Notice of Privacy Practices provided to patients, Virginia Mason promises:

11 **Use and Disclosure Requiring Your Authorization**

12 Other than the uses and disclosures described above, we will not use or

13 disclose your health information without your written authorization.

14 Virginia Mason requires your written authorization for most uses and

15 disclosures of psychotherapy notes, for marketing (other than a face-to-

16 face communication between you and a Virginia Mason workforce

17 member or a promotional gift of nominal value), or before selling your

18 health information.

19 158. HIPAA protects patient health information by prohibiting covered entities, such

20 as hospitals and other health providers, from disclosing protected health information without

21 the express, written authorization of a patient. A person who knowingly violates HIPAA by

22 disclosing individually identifiable health information to another person with the intent to sell,

23 transfer or use the individually identifiable health information for commercial advantage is

24 subject to criminal fines of up to \$250,000 and imprisonment of up to 10 years. See 42 U.S.C.

25 § 1320d-6.

26 159. The patient information that Virginia Mason helps third parties capture is

27 considered personally identifiable under HIPAA. HIPAA defines personally identifiable

information to include “any unique identifying number, characteristic or code” and lists the

examples of medical record numbers, account numbers, device identifiers, serial numbers,

1 URLs and IP addresses. 45 C.F.R. § 164.514(2). HIPAA also declares information to be
2 personally identifiable when the covered entity has “actual knowledge that the information
3 could be used alone or in combination with other information to identify an individual who is
4 a subject of the information.” 45 C.F.R. § 164.514(2)(ii).

5 160. To Plaintiffs’ knowledge, every federal agency charged with rulemaking
6 addressing the definition of personally identifiable information has found that the type of
7 information captured through Virginia Mason’s website and redirected to third parties is
8 personally identifiable.

9 161. The Washington Health Care Information Act prohibits health care providers
10 and agents and employees of health care providers from disclosing health care information
11 about a patient to any other person without the patient’s written authorization. *See* RCW
12 70.02.020.

13 162. Virginia Mason fails to obtain express written authorization as required by
14 HIPAA, RCW 70.02.020, and its own promises, before using and disclosing patient personal
15 identifiers and the content of patient communications for marketing purposes.

16 163. Virginia Mason does not alert patients in any way that their personally
17 identifiable information and the content of their communications (including communications
18 relating to their medical provider, medical conditions, appointments, and clicks to access the
19 MyVirginiaMason patient portal) are captured and transmitted to third parties
20 contemporaneously with their communications with Virginia Mason.

21 164. A health care provider’s duty of confidentiality cannot be waived via an
22 inconspicuous, unenforceable browse-wrap privacy policy, regardless of the contents of the
23 policy.

24 165. Patients’ reasonable expectation that their health care provider will not
25 disclose their personal identifiers or the contents of their communications to third parties for
26 marketing purposes in the absence of express authorization cannot be waived via an
27

1 inconspicuous, unenforceable browse-wrap privacy policy, regardless of the contents of the
2 policy.

3 166. Browse-wrap statements do not create enforceable contracts against
4 consumers.

5 167. The very term “Privacy Policy” is deceptive. Consumer surveys consistently
6 show that a majority of Americans falsely believe that the existence of a “privacy policy”
7 means that “the company keeps confidential all the information it collects on users.”³¹
8

9 168. The vast majority of Internet users do not read privacy policies. One study
10 found that only between 0.05 to 0.22 percent of online shoppers (1 or 2 of every 1,000
11 shoppers) access online agreements – even click or scroll-wrap agreements rather than
12 browse-wrap agreements.³²

13 169. Chief Justice John Roberts admits he does not read online agreements.³³

14 170. The cost of reading all privacy policies a consumer encounters is high. A study
15 found that it would take the average American consumer between 181 to 304 hours per year
16 to read the privacy policies of websites with which they interact.³⁴ This would require a
17 consumer to devote an estimated 40 minutes per day to reading privacy policies. The time-
18 money calculation for this effort is between \$2,533 to \$5,038 per year per consumer for a
19 collective national cost of \$559.7 billion to \$1.1 trillion per year.

20 171. It is reasonable for patients to assume their health care providers’ privacy

21 ³¹ Aaron Smith, *Half of Americans Don’t Know What a Privacy Policy Is*, Pew Research Center
22 (Dec. 4, 2014) (reporting that more than half of Americans false believe that “[w]hen a
23 company posts a privacy policy, it ensures that the company keeps confidential all the
information it collects on users”), [https://www.pewresearch.org/fact-tank/2014/12/04/half-
of-americans-dont-know-what-a-privacy-policy-is/](https://www.pewresearch.org/fact-tank/2014/12/04/half-of-americans-dont-know-what-a-privacy-policy-is/).

24 ³² Yannis Bakos, Florencia Marotta-Wurgler and David R. Trossen, *Does Anyone Read the Fine
Print? Consumer Attention to Standard Form Contracts*, 43 J. Legal Stud. 1, 1 (2014).

25 ³³ Debra Cassens Weiss, *Chief Justice Roberts Admits He Doesn’t Read the Computer Fine Print*,
26 ABA Journal (Oct. 20, 2010) (“Answering a student question, Roberts admitted he doesn’t
usually read the computer jargon that is a condition of accessing websites.”).

27 ³⁴ Aleecia M. McDonald and Lorrie Faith Cranor, *The Cost of Reading Privacy Policies*, 4 ISJLP
543, 563 (2008).

1 policies are consistent with their health care providers' duties of confidentiality and patients'
2 expectations of privacy.

3 172. Even if a browse-wrap privacy policy could legally waive health providers'
4 privacy obligations, Virginia Mason makes express and implied promises of confidentiality in
5 its privacy policy that increase its patients' expectations of privacy and assures patients that
6 their personally identifiable information and communications will be kept private and secure.

7 173. Virginia Mason includes a link to its "Privacy Policy" link in the footer of its
8 website. To see the footer, a patient must scroll down through at least two full screens of
9 material:



Figure 7, Screenshot 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

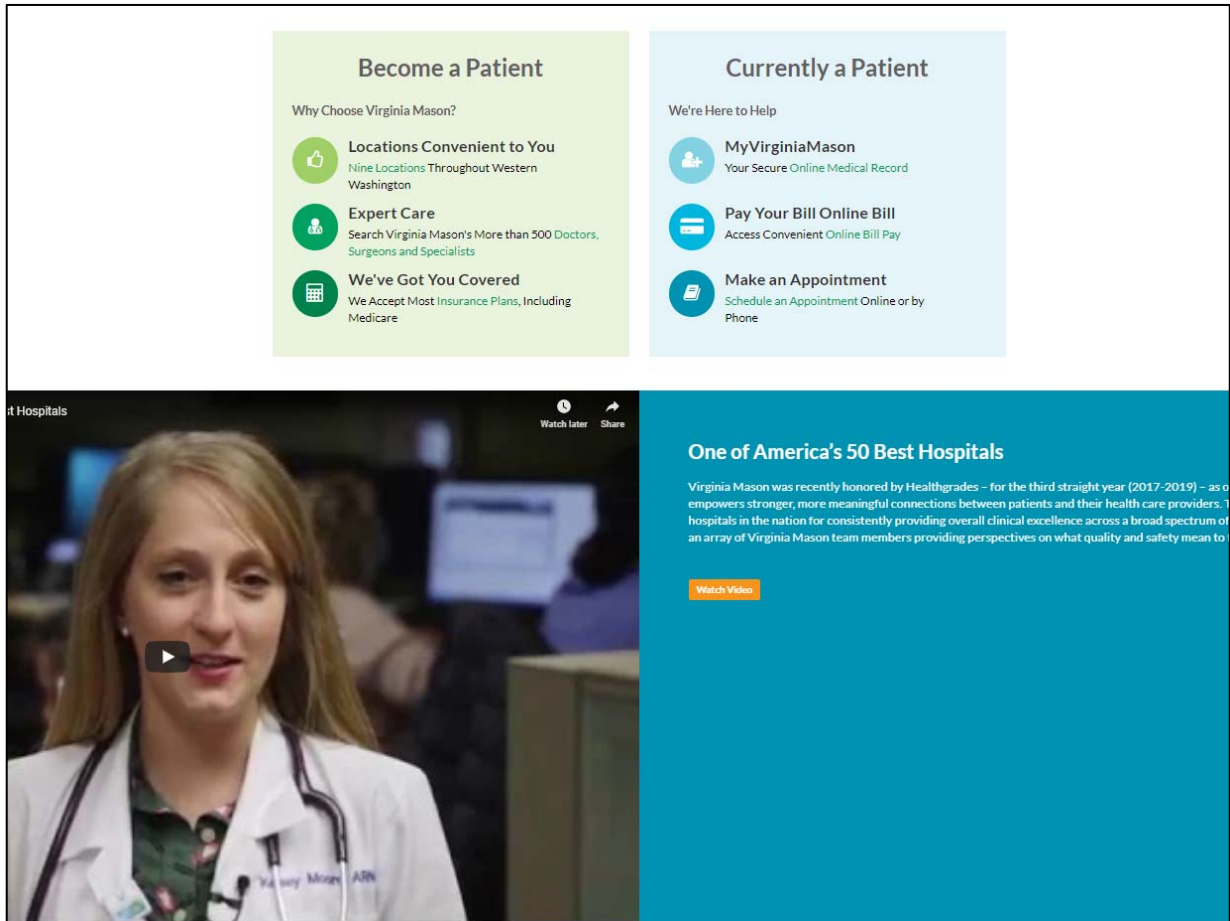


Figure 7, Screenshot 2

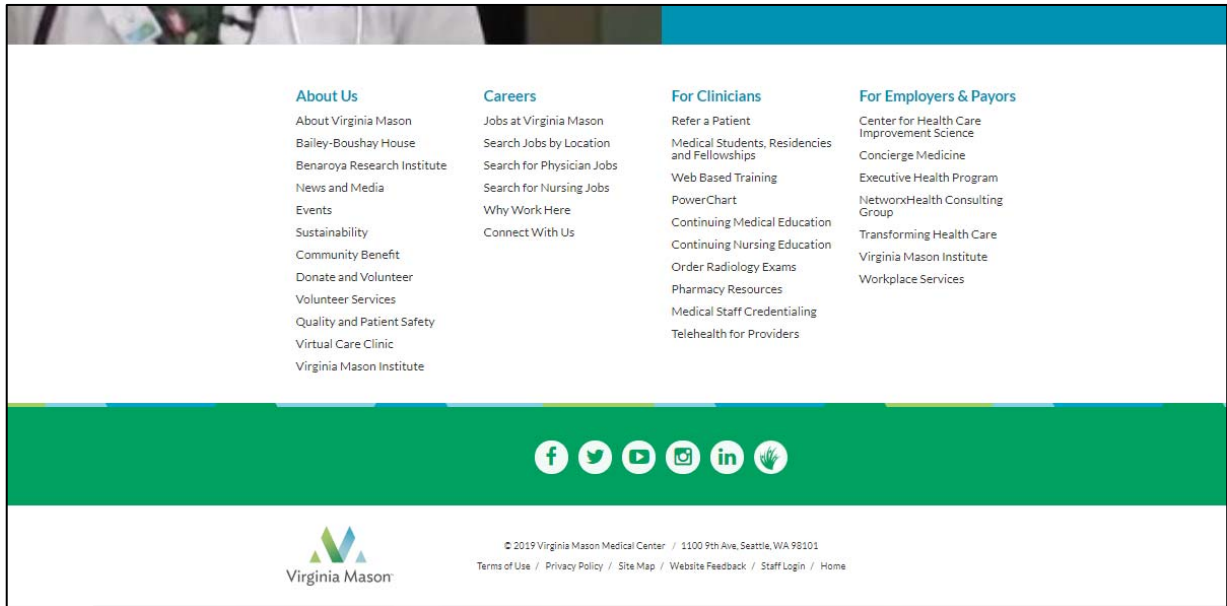


Figure 7, Screenshot 3

174. A patient who clicks the “Privacy Policy” link is taken to this webpage:

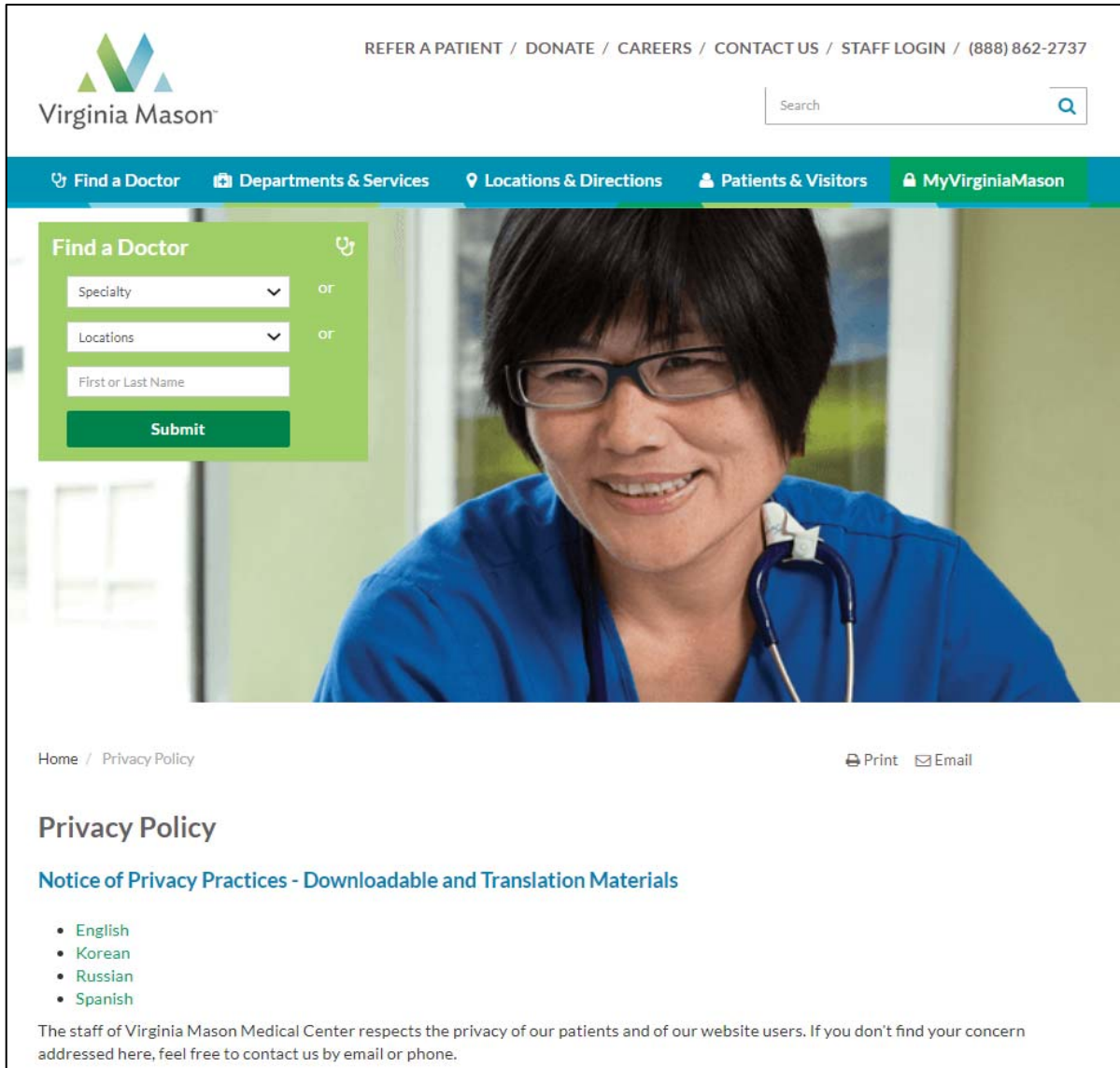


Figure 6

175. The initial content of the page directs patients to Virginia Mason’s Notice of Privacy Practices for patients under HIPAA in English, Korean, Russian, and Spanish and describes Virginia Mason’s use and disclosure of patients’ medical information. See Exhibit 5.³⁵

³⁵ Virginia Mason Notice of Practice Practices, https://www.virginiamason.org/workfiles/privacy_notice.pdf

1 176. A patient viewing this statement about the Notice of Privacy Practices would
2 reasonably believe the Notice of Privacy Practices applies to his or her data and
3 communications with Virginia Mason.
4

5 177. The Notice of Privacy Practices does not disclose that Virginia Mason deploys
6 code on its website to capture and transmit patients' personally identifiable information and
7 health communications to Facebook, Google, and other third-party data companies.
8

9 178. The Notice promises that Virginia Mason "will not use or disclose your health
10 information without your written authorization ... for marketing ... or before selling your
11 health information."
12

13 **Use and Disclosure Requiring Your Authorization**

14 Other than the uses and disclosures described above, we will not use or
15 disclose your health information without your written authorization.
16 Virginia Mason requires your written authorization for most uses and
17 disclosures of psychotherapy notes, for marketing (other than a face-to-
18 face communication between you and a Virginia Mason workforce
19 member or a promotional gift of nominal value), or before selling your
20 health information.
21

36

22 179. Virginia Mason makes additional statements about patients' privacy on a
23 submerged screen below the links to the Notice of Privacy Practices. See Exhibit 6.³⁷
24

25 180. Among other things, Virginia Mason promises the following:

- 26 a. "The staff of Virginia Mason respects the privacy of our patients and of
27 our website users."
b. "We will use your personally identifiable information only for the
specific reason for which you submitted it, (i.e. registering for a class)."

³⁶ Exhibit 5 at 4.

³⁷ Virginia Mason Privacy Policy Information, <https://www.virginiamason.org/privacy-policy>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- c. “We will take reasonable precautions to protect your personal information including encryption with SSL technology and passwords when appropriate.”
- d. “Virginia Mason will use overall demographic data of our Web users to improve the site and enhance services. These demographic trends will not be traceable to an individual’s personal information.”
- e. “Virginia Mason is the sole owner of the information collected on this site. We will not sell, share, or rent this information to others in ways different from what is disclosed in this statement, except to vendors and agents in support of Virginia Mason’s activities.”
- f. “Virginia Mason does not commercially sell any customer lists or email addresses.”
- g. “Company may, however, disclose personal information if permitted or required to do so by law or in the good-faith belief that such action is necessary to (a) conform to applicable law or comply with legal process served on Virginia Mason; (b) protect and defend the rights or property of Virginia Mason, the websites, or the users; or (c) act under exigent circumstances to protect the personal safety of users of the Virginia Mason, the website, or the public.”
- h. “Usage of a cookie is not linked to any personally identifiable information while visiting the Virginia Mason site.”
- i. “We may use non-personally identifiable information transferred through Cookies for promotional or marketing purposes.”
- j. “In addition to the use of personal information, Virginia Mason may also gather anonymous information which may be used by Virginia Mason or shared with third parties. Generally this information is collected through

1 'traffic data' and may entail the use of Cookie and IP addresses. Virginia
2 Mason uses such traffic data to help determine how our users use parts
3 of the website so we can analyze trends, administer the site, track
4 user's movements, gather broad demographic information for
5 aggregate use a better experience for you. IP addresses and other traffic
6 data are not linked to personally identifiable information."

7 k. "We exercise care in providing secure transmission of your information
8 from your PC to our servers. Personal information collected by the
9 Virginia Mason website is stored in secure operating environments that
10 are not available to the public. ... Only those employees who need
11 access to your information in order to do their jobs are allowed access,
12 each having signed confidentiality agreements. Any employee who
13 violates our privacy and/or security policies is subject to disciplinary
14 action, including possible termination and civil and/or criminal
15 prosecution."

16 **PLAINTIFFS' EXPERIENCE**

17 181. Plaintiff Jane Doe used VirginiaMason.org to communicate with Virginia Mason,
18 to create an account on Virginia Mason's patient portal, identify herself to Virginia Mason as a
19 patient by clicking on the MyVirginiaMason link, and exchange information relating to her
20 providers and medical conditions.

21 182. Plaintiff John Doe used VirginiaMason.org to communicate with Virginia
22 Mason, to create an account on Virginia Mason's patient portal, identify himself to Virginia
23 Mason as a patient by clicking on the MyVirginiaMason link, and exchange information
24 relating to his providers and medical conditions.
25
26
27

1
2 183. Plaintiff John Doe exchanged communications with Virginia Mason via the
3 VirginiaMason.org web property and patient portal after the Complaint was initially filed in
4 this case but where Plaintiff had no knowledge of this case or Virginia Mason's activity.

5 184. Based on the serving of the Complaint and expert analysis conduct by Virginia
6 Mason and submitted to this Court, Virginia Mason's re-directions and disclosures of Plaintiff
7 John Doe's communications were done with full knowledge of the consequences of its
8 actions.

9 185. The code that Virginia Mason deployed on its website captured and
10 transmitted Plaintiffs' personally identifiable information to Facebook, Google, theTradeDesk,
11 and Signal.

12 186. Virginia Mason received enhanced marketing services in exchange for
13 transmitting Plaintiffs' personally identifiable information to these third parties but did not
14 pay or offer to pay Plaintiffs for the information.

15 187. Plaintiffs' injuries are ongoing because, upon information and belief, Plaintiffs'
16 information continues to be disseminated, sold, and used by third parties to target Plaintiffs
17 for specific advertising, goods, and services.

18 188. Plaintiffs did not receive the full benefit of being a patient of Virginia Mason
19 because Virginia Mason breached its duty of confidentiality and violated Plaintiffs' right to
20 privacy.

21 **CLASS ACTION ALLEGATIONS**

22 189. Plaintiffs bring this case as a class action on behalf of the proposed Class:

23 All Washington residents who are, or were, patients of Virginia Mason
24 Medical Center or Virginia Mason Health System or any of their affiliates
25 and who exchanged communications at www.virginiamason.org or any
26 other website maintained by Virginia Mason.

27 190. Excluded from the proposed Class is: (a) any Judge or Magistrate Judge
presiding over this action and members of their families; (b) Defendnats; (c) any entity in

1 which any Defendant has a controlling interest or which has a controlling interest in any
2 Defendant; (d) Defendants' officers and directors; (e) Defendants' legal representatives,
3 assigns, and successors; and (f) counsel for any party.
4

5 191. **Numerosity.** The proposed Class is so numerous that joinder of all Class
6 members is impracticable. Plaintiffs do not know the exact number of Class members, but
7 estimates it to be in the hundreds or thousands.

8 192. **Commonality.** There are questions of law and fact common to Plaintiffs and the
9 proposed Class, including but not limited to:

- 10 a. Whether Virginia Mason assists third parties in acquiring and recording
11 Plaintiffs' and Class members' personally identifiable and health
12 information;
- 13 b. Whether Virginia Mason obtains Plaintiffs' and Class members' express
14 authorization to assist third parties in acquiring and recording their
15 personally identifiable and health information;
- 16 c. Whether Plaintiffs' and Class members' communications with Virginia
17 Mason on Virginia Mason's website constitute private health
18 information that is protected by common law, state and federal law,
19 and industry standards and ethical guidelines;
- 20 d. Whether Virginia Mason engaged in unfair or deceptive acts or practices
21 in violation of the Washington Consumer Protection Act;
- 22 e. Whether Virginia Mason aided and abetted third parties' violations of
23 the Washington Privacy Act;
- 24 f. Whether Virginia Mason's conduct constitutes identity theft in violation
25 of RCW § 9.35.020;
- 26 g. Whether Virginia Mason intruded upon the private affairs of Plaintiffs
27 and Class members;

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- h. Whether Virginia Mason’s conduct would be highly offensive and objectionable to a reasonable person;
 - i. Whether Virginia Mason concealed from Plaintiffs and Class members that their personally identifiable and health information is acquired and recorded by third parties;
 - j. Whether Virginia Mason’s practices violate the Washington Health Care Information Act;
 - k. Whether and to what extent Plaintiffs and Class members are entitled to damages and other monetary relief;
 - l. Whether and to what extent Class members are entitled to equitable relief including, but not limited to, a preliminary and permanent injunction; and
 - m. Whether and to what extent Class members are entitled to recover attorneys’ fees and litigation costs.

16

17

18

19

20

21

22

23

24

25

26

27

193. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class because they arise out of a common course of conduct by Virginia Mason and are based on the same legal and remedial theories.

194. **Adequacy of representation.** Plaintiffs are appropriate representatives for the Class and will fairly and adequately protect the interests of the Class. Plaintiffs understand and are willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiffs have no interests that directly conflict with the interests of the Class and have retained competent counsel with significant experience in complex and class action litigation. Plaintiffs and their counsel are committed to prosecuting this case vigorously on behalf of the Class and have the resources to do so.

195. **Predominance.** Virginia Mason has a standard practice of deploying code on its website that captures and transmits its patients’ personally identifiable and health

1 information to third parties. The common issues arising from this conduct predominate over
2 any individual issues. Adjudication of these common issues in a single action has important
3 and desirable advantages of judicial economy.
4

5 196. **Superiority.** Class members are unlikely to know about Virginia Mason’s
6 conduct and that their personally identifiable and health information is compromised as a
7 result. Absent a class action, most Class members would likely find the cost of litigating their
8 claims prohibitive. Class treatment is superior to multiple individual suits or piecemeal
9 litigation because it conserves judicial resources, promotes consistency and efficiency of
10 adjudication, provides a forum for small claims, and deters illegal activities. Class members
11 can be identified from Virginia Mason’s records and there will be no significant difficulty in the
12 management of this case as a class action.

13 197. In the alternative, the proposed classes may be certified because:

- 14 a. the prosecution of separate actions by the individual members of the
15 Class would create a risk of inconsistent adjudications, which could
16 establish incompatible standards of conduct for Virginia Mason;
17 b. the prosecution of individual actions could result in adjudications that
18 as a practical matter would be dispositive of the interests of non-party
19 Class members, or which would substantially impair their ability to
20 protect their interests; and
21 c. Virginia Mason acted or refused to act on grounds generally applicable
22 to the proposed classes, thereby making appropriate final and
23 injunctive relief with respect to members of the Class as a whole.

24 **COUNT I**

25 **Violation of the Washington Consumer Protection Act
26 (Unfair or Deceptive Business Practices)**

27 198. Plaintiffs incorporate all other paragraphs as if fully stated herein.

1 199. Plaintiffs and Class members are “persons” within the meaning of RCW
2 19.86.010(1).

3 200. Virginia Mason is a “person” as defined by RCW 19.86.010(1) and conducts
4 “trade” and “commerce” within the meaning of RCW 19.86.010(2).

5 201. Virginia Mason engaged in unfair or deceptive acts or practices in the conduct
6 of its business as described in this complaint. Among other things, Virginia Mason engages in
7 unfair or deceptive acts or practices through a pattern and practice of knowingly aiding and
8 allowing third parties to obtain Plaintiffs’ and Class members’ personally identifiable and
9 health information for marketing purposes without obtaining express patient authorization.

10 202. As a health care provider, Virginia Mason has statutory and common law duties
11 to protect the confidentiality of patient data and communications.

12 203. As a health care provider, Virginia Mason may not disclose patient data and
13 communications to third parties for marketing purposes without the patient’s express
14 authorization.

15 204. As patients of Virginia Mason, Plaintiffs and Class members have objectively
16 reasonable expectations that Virginia Mason will not disclose their personal identifiers or the
17 content of their communications with Virginia Mason to third parties without their express
18 authorization.

19 205. Virginia Mason furthers patients’ reasonable expectations of privacy by:

- 20 a. Designing its website so that patients will reasonably believe the
21 Virginia Mason Notice of Privacy Practices applies to their
22 communications;
23 b. Making express assurances of patient confidentiality on its website; and
24 c. Making implied assurances of patient confidentiality on its website.

25 206. Virginia Mason’s conduct is unfair because its acts or practices offend public
26 policy established by statutes, regulations, and the common law, including but not limited to:
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- a. Common law rules protecting the confidentiality of patient-provider communications, a palpable wrong for which the law provides a remedy;
 - b. The HIPAA Marketing Rule, 45 C.F.R. § 164.508(a)(3), which requires express authorization for the use or disclosure of protected health information for marketing purposes unless the marketing is in a face-to-face communication or a promotional gift of nominal value;
 - c. Washington Constitution, article 1 section 7, which provides that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law”;
 - d. RCW 9.73.030, which prohibits unauthorized electronic surveillance;
 - e. Common law rules protecting the confidentiality of individual data and communications; and
 - f. RCW 9.35.020, the Washington identity theft law.

16 207. Virginia Mason’s conduct also violates rules governing medical privacy promulgated by the American Medical Association:

- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- a. Principle IV of the AMA Principles of Medical Ethics, which states that “[a] physician shall respect the rights of patients ... and shall safeguard patient confidences and privacy within the constraints of the law.”³⁸
 - b. AMA Code of Medical Ethics Opinion 3.1.1, which provides, “Protecting information gathered in association with the care of the patient is a core value in health care. However, respecting patient privacy in other forms is also fundamental, as an expression of respect for patient autonomy and a prerequisite for trust. Patient privacy encompasses a number of aspects, including ... personal data (information privacy)

27 ³⁸ <https://www.ama-assn.org/about/publications-newsletters/ama-principles-medical-ethics>.

1 Physicians must seek to protect patient privacy in all settings to the
2 greatest extent possible”³⁹

3
4 c. AMA Code of Medical Ethics Opinion 3.2.1, which provides, “Patients
5 need to be able to trust that physicians will protect information shared
6 in confidence. They should feel free to fully disclose sensitive personal
7 information to enable their physician to most effectively provide
8 needed services. Physicians in turn have an ethical obligation to
9 preserve the confidentiality of information gathered in association with
10 the care of the patient. In general, patients are entitled to decide
11 whether and to whom their personal health information is disclosed.”⁴⁰

12 d. MA Code of Medical Ethics Opinion 3.2.4, which provides, “Information
13 gathered and recorded in association with the care of a patient is
14 confidential. Patients are entitled to expect that the sensitive personal
15 information they divulge will be used solely to enable their physician to
16 most effectively provide needed services. Disclosing information to
17 third parties for commercial purposes without consent undermines
18 trust, violates principles of informed consent and confidentiality, and
19 may harm the integrity of the patient-physician relationship. Physicians
20 who propose to permit third-party access to specific patient
21 information for commercial purposes should: (a) Only provide data that
22 has been de-identified; [and] (b) Fully inform each patient whose record
23 would be involved ... about the purpose(s) for which access would be
24 granted”⁴¹

25 ³⁹ <https://www.ama-assn.org/delivering-care/ethics/privacy-health-care>.

26 ⁴⁰ <https://www.ama-assn.org/delivering-care/ethics/confidentiality>.

27 ⁴¹ <https://www.ama-assn.org/delivering-care/ethics/access-medical-records-data-collection-companies>.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

208. Virginia Mason’s acts or practices are unfair because they are immoral, unethical, oppressive, or unscrupulous in that they violate well-established medical ethical principles and patients’ reasonable expectations of privacy. Virginia Mason’s conduct is also unfair because it causes substantial injury to Plaintiffs and Class members that is not outweighed by any countervailing benefits to consumers and is not reasonably avoidable by consumers.

209. Virginia Mason represents that it protects Plaintiffs’ and Class members’ personally identifiable and health information, including by following HIPAA regulations, federal and state laws, and industry standards. Virginia Mason does not disclose that it in fact assists third parties in acquiring its patients’ personally identifiable and health information for marketing purposes. Virginia Mason’s representations and omissions are material because they are likely to deceive Plaintiffs and Class members into believing that Virginia Masons keeps their personally identifiable and health information private. Virginia Mason’s representations and omissions include the following:

- a. Virginia Mason states that “[t]he staff of Virginia Mason respects the privacy of our patients and of our website users,” giving patients the impression that Virginia Mason works to protect patient privacy when in fact Virginia Mason redirects patients’ personally identifiable data and every patient communication made through its website to third parties for marketing purposes without informing patients or obtaining patient authorization.
- b. Virginia Mason says “[w]e will use your personally identifiable information only for the specific reason for which you submitted it, (i.e. registering for a class),” which gives patients the impression that Virginia Mason’s use of their personally identifiable information is limited to “specific reasons” known by patients when in fact Virginia

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Mason redirects patients’ personally identifiable data and the contents of patients’ communications to third parties regardless of whether the patient knowingly “submits” the information for that purpose, including for marketing purposes, a purpose for which reasonable patients would not submit their personally identifiable information to Virginia Mason.

c. Virginia Mason states, “We will take reasonable precautions to protect your personal information including encryption with SSL technology and passwords when appropriate,” when in fact Virginia Mason routinely redirects patients’ personal information and communications to third parties for marketing purposes without patients’ knowledge or authorization.

d. Virginia Mason states that it “will use overall demographic data of our Web users to improve the site and enhance services” and that “[t]hese demographic trends will not be traceable to an individual’s personal information” when in fact Virginia Mason routinely redirects patients’ personal identifiers and the content of patients’ communications for marketing purposes.

e. Virginia Mason states that it “is the sole owner of the information collected on this site” and that it “will not sell , share, or rent this information to others in ways different from what is disclosed in this statement, except to vendors and agents in support of Virginia Mason’s activities,” when in fact Virginia Mason routinely sells, shares, and rents information collected on its site to third party marketing companies by redirecting patient identifiers and the content of patient communications to third-party marketing companies in exchange for enhanced marketing services.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

f. Virginia Mason states that it “does not commercially sell any customer lists or email address” when it does in fact commercially sell customer lists as described in this complaint, including by disclosing to Facebook every time a user clicks to log in to MyVirginiaMason on the www.virginiamason.org website.

g. Virginia Mason states that it “may, however, disclose personal information if permitted or required to do so by law or in the good-faith belief that such action is necessary to (a) conform to applicable law or comply with legal process served on Virginia Mason; (b) protect and defend the rights or property of Virginia Mason, the websites, or the users; or (c) act under exigent circumstances to protect the personal safety of users of the Virginia Mason, the website, or the public.” This statement does not disclose that Virginia Mason routinely assists third parties in obtaining its patients’ personal information for marketing purposes.

h. Virginia Mason states that “[u]sage of a cookie is not linked to any personally identifiable information while visiting the Virginia Mason site” when in fact Virginia Mason redirects patients’ personally identifiable cookie data to Facebook, Google, Signal, and Trade Desk as described in this complaint.

i. Virginia Mason states that it “may use non-personally identifiable information transferred through Cookies for promotional or marketing purposes” when in fact Virginia Mason uses personally identifiable cookies for marketing purposes.

j. Virginia Mason states that “[i]n addition to the use of personal information, Virginia Mason may also gather anonymous information

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

which may be used by Virginia Mason or shared with third parties. Generally, this information is collected through ‘traffic data’ and may entail the use of Cookie and IP addresses. Virginia Mason uses such traffic data to help determine how our users use parts of the website so we can analyze trends, administer the site, track user’s movements, gather broad demographic information for aggregate use a better experience for you.” This statement does not disclose that Virginia Mason gathers and shares personal information with third parties that is not anonymous.

- k. Virginia Mason states that “IP addresses and other traffic data are not linked to personally identifiable information” when in fact Virginia Mason deploys third-party source code on its website to redirect IP addresses and other traffic data are linked to personally identifiable patient data to third parties for marketing purposes.
- l. Virginia Mason states, “We exercise care in providing secure transmission of your information from your PC to our servers. Personal information collected by the Virginia Mason website is stored in secure operating environments that are not available to the public. ... Only those employees who need access to your information in order to do their jobs are allowed access, each having signed confidentiality agreements. Any employee who violates our privacy and/or security policies is subject to disciplinary action, including possible termination and civil and/or criminal prosecution.” This statement does not disclose that Virginia Mason routinely redirects patients’ personally identifiable information and the content of patients’ communications to third

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

parties who are not employees of Virginia Mason and have not signed confidentiality agreements.

m. Virginia Mason states, “This Website contains links to other sites. Please be aware that Virginia Mason is not responsible for the privacy practices of these websites. Virginia Mason is not responsible for content provided on these sites or for the validity of content on these site. [sic] We encourage our users to be aware when they leave our site and to read the privacy statements of each and every website that collects personally identifiable information. This privacy statement applies solely to information collected by this website.” This statement gives patients the impression that the personally identifiable information collected by Virginia Mason’s website will be governed by Virginia Mason’s privacy statement and not the privacy statements of any third parties, and that third parties will only have access to their personally identifiable information if they click on links to other sites on Virginia Mason’s website. Virginia Mason assists Facebook, Google, Signal, and The Trade Desk in acquiring patients’ personally identifiable information even when the patients do not click on links to other sites.

210. Virginia Masons’ unfair acts or practices impact the public interest because they have injured Plaintiffs and hundreds of Washington residents and have the capacity to injure hundreds more.

211. As a direct and proximate cause of Virginia Mason’s unfair or deceptive acts or practices, Plaintiffs and Class members have suffered injuries. Plaintiffs and Class members have suffered damages a result of Virginia Mason’s unfair or deceptive acts or practices.

Among other things:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- a. Plaintiffs’ and Class members’ personally identifiable data and health communications were used and disseminated by Virginia Mason without their authorization.
- b. Plaintiffs’ and Class members’ personally identifiable data and health communications have tangible value that is diminished by Virginia Mason’s unauthorized use. This information is now in the possession of third parties who can use it for the own advantage, including financial advantage, and Virginia Mason also benefits financially from this information.
- c. Plaintiffs and Class Members did not receive the full benefit of the bargain they struck with Virginia Mason for the provision of health care services. Virginia Mason has a duty to maintain the confidentiality of Plaintiffs’ and Class members’ data and communications and promised to maintain the confidentiality of this information. This duty and Virginia Mason’s promises are part of the bargain that Plaintiffs and Class members struck when contracting with Virginia Mason. Plaintiffs and Class members’ damages are equal to the difference between the amount they paid to Virginia Mason for health care services and the value of those services without confidentiality.
- d. Virginia Mason deprived Plaintiffs and Class members of the exclusive authority to authorize the use of their personally identifiable data and communications.
- e. Virginia Mason eroded the essential confidential nature of the provider-patient relationship.

212. Plaintiffs and the Class are entitled to recover actual damages, treble damages, attorneys’ fees, and costs under RCW 19.86.090.

1 213. Plaintiffs and the Class are also entitled to an order enjoining Virginia Mason's
2 conduct and other equitable relief that the Court deems appropriate.
3

4 **COUNT II**

5 **Violation of the Washington Consumer Protection Act**
6 **(Per Se Violation)**

7 214. Plaintiffs incorporate all other paragraphs as if fully stated herein.

8 215. Plaintiffs and Class members are "persons" within the meaning of the RCW
9 19.86.010(1).

10 216. Virginia Mason is a "person" as defined by RCW 19.86.010(1) and conducts
11 "trade" and "commerce" within the meaning of RCW 19.86.010(2).

12 217. Virginia Mason's aiding and abetting the third parties' violations of the
13 Washington Privacy Act is a per se deceptive or unfair act or practice in trade or commerce
14 that affects the public interest as set forth by RCW 9.35.800.

15 218. As a direct and proximate result of Virginia Mason's deceptive or unfair acts or
16 practices, Plaintiffs and Class members have suffered injuries. Plaintiffs and Class members
17 have suffered damages as a result of Virginia Mason's unfair or deceptive acts or practices.

18 Among other things:

- 19 a. Plaintiffs' and Class members' personally identifiable data and health
20 communications were used and disseminated by Virginia Mason
21 without their authorization.
- 22 b. Plaintiffs' and Class members' personally identifiable data and health
23 communications have tangible value that is diminished by Virginia
24 Mason's unauthorized use. This information is now in the possession of
25 third parties who can use it for the own advantage, including financial
26 advantage, and Virginia Mason also benefits financially from this
27 information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- c. Plaintiffs and Class Members did not receive the full benefit of the bargain they struck with Virginia Mason for the provision of health care services. Virginia Mason has a duty to maintain the confidentiality of Plaintiffs’ and Class members’ data and communications and promised to maintain the confidentiality of this information. This duty and Virginia Mason’s promises are part of the bargain that Plaintiffs and Class members struck when contracting with Virginia Mason. Plaintiffs and Class members’ damages are equal to the difference between the amount they paid to Virginia Mason for health care services and the value of those services without confidentiality.
- d. Virginia Mason deprived Plaintiffs and Class members of the exclusive authority to authorize the use of their personally identifiable data and communications.
- e. Virginia Mason eroded the essential confidential nature of the provider-patient relationship.

219. Plaintiffs and the Class are entitled to recover actual damages, treble damages, attorneys’ fees, and costs under RCW 19.86.090.

220. Plaintiffs and the Class are also entitled to an order enjoining Virginia Mason’s conduct and other equitable relief that the Court deems appropriate.

COUNT III

Violation of RCW 9.35.020, Identity Theft

221. Plaintiffs incorporate all other paragraphs as if fully stated herein.

222. RCW 9.35.020 states: “No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.”

1 223. Under RCW 9.35.005, “means of identification” connotes, among other things,
2 “information or an item that is not describing finances or credit but is personal to or
3 identifiable with an individual or other person, including: A current or former name of the
4 person, ... an electronic address, or identifier of the individual or a member of his or her
5 family, ... and other information that could be used to identify the person”

6 224. Virginia Mason is a “person” as defined by RCW 9A.04.110(17).

7 225. The IP addresses, cookie identifiers, and browser fingerprint information used
8 and transferred by Virginia Mason constitute “means of identification” because they include
9 electronic addresses and identifiers and information that could be used to identify Plaintiffs
10 and Class members.

11 226. By deploying source code at VirginiaMason.org that captures and transmits
12 patients’ personally identifiable information and communications to third parties without
13 patients’ authorization, Virginia Mason knowingly obtains, possesses, uses, and/or transfers
14 Plaintiffs’ and Class members’ means of identification, including electronic addresses and
15 other identifiers, with the intent to aid and abet third parties’ violations of the Washington
16 Privacy Act, RCW 9.73.030.

17 227. The Washington Privacy Act makes it unlawful to “intercept or record, any ...
18 [p]rivate communication transmitted by telephone, telegraph, radio, or other device between
19 two or more individuals between points within or without the state by device, electronic or
20 otherwise, designed to record and/or transmit said communication, regardless of how such
21 device is powered or actuated, without first obtaining the consent of all the participants in the
22 communication.”

23 228. Communications between Plaintiffs and Class members and Virginia Mason,
24 including Plaintiffs’ and Class members’ identities and the content of their communications
25 with Virginia Mason, constitute private communications transmitted by an electronic device
26 “designed to record and/or transmit said communications.”
27

1
2 229. The third parties intercept and record Plaintiffs' and Class members'
3 communications by redirecting the contents of Plaintiffs' and Class members' communications
4 from their personal computers, web browsers, and browser-managed files, Internet cookies,
5 and Virginia Mason's computer servers to their own servers using computer code the third
6 parties provided to Virginia Mason.

7 230. As a direct and proximate cause of Virginia Mason's actions, Plaintiffs and Class
8 members were damaged in that:

- 9 a. Sensitive, confidential, and/or protected information that Plaintiffs and
10 Class members intended to remain private is no more;
11 b. Virginia Mason took something of value from Plaintiffs and Class
12 members and derived benefit therefrom without Plaintiffs and Class
13 members' knowledge or informed consent and without sharing the
14 benefit of such value;
15 c. Plaintiffs and Class members did not get the full value of the medical
16 services for which they paid, which included Virginia Mason's duty to
17 maintain confidentiality of patient data and communications; and
18 d. Virginia Mason's actions diminished the value of Plaintiffs' and Class
19 members' personally identifiable patient data and communications.

20 231. Plaintiffs and Class members seek all monetary and non-monetary relief
21 allowed by law, including statutory damages under RCW 9.35.020(7), actual damages,
22 injunctive relief, and other appropriate equitable relief, as well as attorneys' fees and costs.

23 **COUNT IV**

24 **Invasion of Privacy – Intrusion Upon Private Affairs**

25 232. Plaintiffs and Class members reasonably expect that the personally identifiable
26 and health information they communicate through Virginia Mason's website will remain
27 private and not be shared with undisclosed third parties. This expectation is reasonable

1 because Virginia Mason has a duty to maintain the confidentiality of Plaintiffs' and Class
2 members' information that derives from federal and state laws requiring health care providers
3 to protect the confidentiality of medical information, industry standards, and representations
4 Virginia Mason makes in its privacy policy.

5
6 233. Virginia Mason intentionally intrudes upon the private affairs of Plaintiffs and
7 Class members by deploying code on its website that captures and transmits Plaintiffs' and
8 Class members' personally identifiable and health information to third parties. The third
9 parties and Virginia Mason then use this information to target Internet advertising to Plaintiffs
10 and Class members.

11 234. Virginia Mason does not inform Plaintiffs and Class members of this conduct in
12 its privacy disclosures and, in fact, represents that it maintains the privacy of Plaintiffs' and
13 Class members' personally identifiable and health information.

14 235. Virginia Mason's conduct would be highly offensive and objectionable to a
15 reasonable person and substantially interferes with Plaintiffs' and Class members' privacy.

16 236. Plaintiffs and Class members did not consent to Virginia Mason's intrusion
17 upon their private affairs.

18 237. Plaintiffs and Class members suffered actual and concrete injury as a result of
19 Virginia Mason's intrusions upon their private affairs.

20 238. As a direct and proximate cause of Virginia Mason's actions, Plaintiffs and Class
21 members were damaged in that:

- 22 a. Sensitive, confidential, and/or protected information that Plaintiffs and
23 Class members intended to remain private is no more;
- 24 b. Virginia Mason took something of value from Plaintiffs and Class
25 members and derived benefit therefrom without Plaintiffs and Class
26 members' knowledge or informed consent and without sharing the
27 benefit of such value;

- 1
2
3
4
5
6
- c. Plaintiffs and Class members did not get the full value of the medical services for which they paid, which included Virginia Mason’s duty to maintain confidentiality of patient data and communications; and
 - d. Virginia Mason’s actions diminished the value of Plaintiffs’ and Class members’ personally identifiable patient data and communications.

7
8
9
10

239. Plaintiffs and Class members seek damages to compensate them for the harm to their privacy interests and the mental and emotional distress caused by Virginia Mason’s invasions of privacy, as well as disgorgement of Virginia Mason’s profits from its intrusions on Plaintiffs’ and Class members’ private affairs.

11

COUNT V

12

Fraudulent Concealment / Nondisclosure

13
14
15

240. Virginia Mason knows or should know that third parties are acquiring and using Plaintiffs’ and Class members’ personally identifiable and health information using code that the third parties provided and Virginia Mason deployed on its website.

16
17
18

241. Virginia Mason fraudulently conceals from Plaintiffs and Class members that their personally identifiable and health information is being captured and transmitted to third parties.

19
20
21
22
23
24

242. Virginia Mason has a duty to disclose these facts because it is in a superior position to know the true facts about the personally identifiable and health information that Plaintiffs and Class members communicate through its website, because it makes partial disclosures about the confidentiality of the information, because of its confidential and fiduciary relationship with Plaintiffs and Class members, and because the Washington Health Care Information Act imposes a statutory duty on Virginia Mason to disclose its information practices.

25
26
27

243. The facts that Virginia Mason fails to disclose are material facts that a reasonable person would consider important in deciding whether to communicate personally

1 identifiable and health information through Virginia Mason’s website.

2 244. Plaintiffs and Class members did not know about Virginia Mason’s undisclosed
3 conduct and could not have known about it when they used Virginia Mason’s website.

4 245. Plaintiffs and Class members justifiably acted or relied upon the concealed or
5 undisclosed facts to their detriment as evidenced by their use of Virginia Mason’s website to
6 communicate personally identifiable and health information.

7 246. As a direct and proximate result of Virginia Mason’s concealment, Plaintiffs and
8 Class members were damaged in that:

- 9 a. Sensitive, confidential, and/or protected information that Plaintiffs and
10 Class members intended to remain private is no more;
- 11 b. Virginia Mason took something of value from Plaintiffs and Class
12 members and derived benefit therefrom without Plaintiffs and Class
13 members’ knowledge or informed consent and without sharing the
14 benefit of such value;
- 15 c. Plaintiffs and Class members did not get the full value of the medical
16 services for which they paid, which included Virginia Mason’s duty to
17 maintain confidentiality of patient data and communications; and
- 18 d. Virginia Mason’s actions diminished the value of Plaintiffs’ and Class
19 members’ personally identifiable patient data and communications.

20 247. Plaintiffs and Class members seek all monetary and non-monetary relief
21 allowed by law, including damages, injunctive relief, and other appropriate equitable relief, as
22 well as attorneys’ fees and costs.

23 **COUNT VI**

24 **Breach of Common Law Duty of Confidentiality**

25 248. Plaintiffs and Class members are Virginia Mason’s patients. Because of their
26 confidential relationship, Virginia Mason owes Plaintiffs and Class members a duty to maintain
27

1 the confidentiality of their personal health information.

2 249. By allowing and aiding third parties access to Plaintiffs' and Class members'
3 personally identifying and health information, Virginia Mason breaches its duty of
4 confidentiality.

5 250. Plaintiffs and Class members were injured by Virginia Mason's breach.

6 251. As a direct and proximate cause of Virginia Mason's actions, Plaintiffs and Class
7 members were damaged in that:

- 8 a. Sensitive, confidential, and/or protected information that Plaintiffs and
9 Class members intended to remain private is no more;
- 10 b. Virginia Mason took something of value from Plaintiffs and Class
11 members and derived benefit therefrom without Plaintiffs and Class
12 members' knowledge or informed consent and without sharing the
13 benefit of such value;
- 14 c. Plaintiffs and Class members did not get the full value of the medical
15 services for which they paid, which included Virginia Mason's duty to
16 maintain confidentiality of patient data and communications; and
- 17 d. Virginia Mason's actions diminished the value of Plaintiffs' and Class
18 members' personally identifiable patient data and communications.

19 252. Plaintiffs and Class members seek all monetary and non-monetary relief
20 allowed by law, including damages, injunctive relief and other appropriate equitable relief,
21 and attorneys' fees and costs.

22 **COUNT VII**

23 **Violation of the Washington Health Care Information Act**

24 253. The Washington Health Care Information Act, RCW 70.2.005, *et seq.*, states
25 that "a health care provider, an individual who assists a health care provider in the delivery of
26 health care, or an agent and employee of a health care provider may not disclose health care
27

1 information about a patient to any other person without the patient’s written authorization.”

2 254. The Act defines “health care information” to mean “any information, whether
3 oral or recorded in any form or medium, that identifies or can readily be associated with the
4 identity of a patient and directly relates to the patient’s health care” RCW 70.02.010(17).

5 255. Virginia Mason is a health care facility as defined by RCW 70.010(16).

6 256. By deploying code on its website to capture and transmit its patients’
7 personally identifiable and health information to third parties, Virginia Mason discloses
8 Plaintiffs’ and Class members’ health care information without their written authorization.

9 257. As a direct and proximate cause of Virginia Mason’s actions, Plaintiffs and Class
10 members were damaged in that:

- 11 a. Sensitive, confidential, and/or protected information that Plaintiffs and
12 Class members intended to remain private is no more;
- 13 b. Virginia Mason took something of value from Plaintiffs and Class
14 members and derived benefit therefrom without Plaintiffs’ and Class
15 members’ knowledge or informed consent and without sharing the
16 benefit of such value;
- 17 c. Plaintiffs and Class members did not get the full value of the medical
18 services for which they paid, which included Virginia Mason’s duty to
19 maintain confidentiality of patient data and communications; and
- 20 d. Virginia Mason’s actions diminished the value of Plaintiffs’ and Class
21 members’ personally identifiable patient data and communications.

22 258. Plaintiffs and Class members seek an order requiring Virginia Mason to comply
23 with the Act, actual damages, and attorneys’ fees and costs.

24 **COUNT VIII – NEGLIGENCE**

25 259. Plaintiffs incorporate all other paragraphs as if fully stated herein.

26 260. Virginia Mason undertook and/or assumed a duty to Plaintiffs and Class
27

1 members, who are both patients and visitors to its website, to exercise reasonable care to
2 maintain the confidentiality of their private and personal health information and to
3 unnecessarily avoid causing harm to them.

4 261. Virginia Mason, through its actions and failures to act, unlawfully breached a
5 duty to Plaintiffs and Class members to protect personal health information from
6 unauthorized disclosure and use.

7 262. Virginia Mason was careless, grossly negligent, or reckless in this duty to
8 Plaintiffs and Class members in the following ways: incorporating computer code onto the
9 Virginia Mason website that caused the contents of communications exchanged with Virginia
10 Mason to be disclosed to third parties with accompanying PII identifying Plaintiffs and Class
11 members. The protected health information disclosed includes, but is not limited to,
12 information about log-ins to Virginia Mason's patient portal, treating doctors, potential
13 doctors, conditions, treatments, appointments, search terms, and bill payment.

14 263. Virginia Mason knew or should have known that the computer code on its
15 website was causing the unauthorized disclosure of protected health information to third
16 parties. Plaintiffs and Class members were the foreseeable and probable victims of Virginia
17 Mason's unauthorized disclosures.

18 264. Plaintiffs and Class members had no idea that the computer code Virginia
19 Mason placed on its website was disclosing protected health information to third parties.

20 265. In contrast, Virginia Mason was in a position to protect against the harm
21 suffered by Plaintiffs and Class members and had a duty to do so.

22 266. But for Virginia Mason's wrongful and negligent breach of duties owed to
23 Plaintiffs and Class members, Plaintiffs' and Class members' protected health information
24 would not have been subject to unauthorized disclosure.

1
2 267. As a direct and proximate cause of Virginia Mason's careless, grossly negligent,
3 or reckless disclosures, Plaintiffs and the Class members suffered injuries and damages that
4 include, but are not limited to:

- 5 a. Sensitive, confidential, and/or protected information that Plaintiffs and
6 Class members intended to remain private is no longer confidential;
7 b. Virginia Mason took something of value from Plaintiffs and Class
8 members and derived benefit therefrom without Plaintiffs' and Class
9 members' knowledge or informed consent and without sharing the
10 benefit of such value;
11 c. Plaintiffs and Class members did not get the full value of the medical
12 services for which they paid, which included Virginia Mason's duty to
13 maintain confidentiality of patient data and communications; and
14 d. Virginia Mason's actions diminished the value of Plaintiffs' and Class
15 members' personally identifiable patient data and communications.

16 **COUNT IX – BREACH OF CONTRACT**

17 268. Plaintiffs incorporate all other paragraphs as if fully stated herein

18 269. Virginia Mason's relationship with its patients is governed in part by the HIPAA
19 Joint Notice of Privacy Practices ("Joint Notice") that it is required by law to provide to
20 patients and to post at its properties.

21 270. The Joint Notice is part of a valid and enforceable contract between Plaintiffs
22 and Class members on the one hand and Virginia Mason on the other, and therefore contains
23 contractually enforceable promises that Virginia Mason made to Plaintiffs and Class members.

24 271. Plaintiffs and Class members agreed to use Virginia Mason's services and
25 transmit sensitive protected health and personally identifiable information to Virginia Mason
26 in exchange for Virginia Mason's promise that it would not share that information with third
27 parties without Plaintiffs' and Class members' authorization.

1
2 272. Virginia Mason materially breached its contract with patients by disclosing to
3 third-party marketing companies Plaintiffs' and Class members' personally identifiable data
4 and communications with Virginia Mason without obtaining Plaintiffs' and Class members'
5 written authorization, thereby breaking the following promises contained within the Joint
6 Notice.

7 273. Virginia Mason promises, "We keep a record of the health care services we
8 provide you. You may ask to see and obtain a copy of that health information. You may also
9 ask us to correct that health information. We will not disclose your health information to
10 others unless you direct us to do so or unless the law authorizes or compels us to do so."

11 Virginia Mason breaches this promise by:

- 12 a. Failing to accurately describe to patients how it handles their health
13 information, including patient status, requests for appointments, and
14 communications patients exchange with Virginia Mason while logged in
15 to the MyVirginiaMason patient portal;
- 16 b. Failing to comply with federal and state law, as described herein,
17 including but not limited to disclosing Plaintiffs and other patients'
18 email addresses and other personally identifiable data, their status as
19 patients, and the content of their communications exchanged with
20 Virginia Mason while signed in to the Patient Portal.

21 274. Virginia Mason also promises, "Other than the uses and disclosures described
22 above, we will not use or disclose your health information without your written
23 authorization." Virginia Mason breaches this promise by routinely using and sharing patient
24 information for marketing purposes without obtaining patient authorization in writing.

25 275. The patient health information Virginia Mason uses and discloses for marketing
26 includes:
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- a. Patient addresses, User-Agent data, persistent cookie identifiers, device identifiers, and browser fingerprint information – all of which constitute personally identifiable data both alone and in combination with other data;
 - b. The date and time each clicked to log in to “MyVirginiaMason” using the “SECURE LOGIN” and the date and time each patient logged off of MyVirginiaMason;
 - c. All HTTP and HTTPS communications patients exchange with Virginia Mason at the Virginia Mason web property that Virginia Mason has permitted the third parties to correlate with the patient’s status as a patient and the dates and times they access MyVirginiaMason;
 - d. The contents of the last communication patients exchange with Virginia Mason while signed in to MyVirginiaMason immediately prior to logging off;
 - e. For Google, at times during the Class Period, patient IP addresses and cookie-synched cookie values while the patient was logged in to MyVirginiaMason.

19

20

21

22

23

24

25

26

27

276. Virginia Mason also promises in the Joint Notice, “Virginia Mason requires your written authorization for most uses and disclosures of psychotherapy notes, for marketing purposes (other than a face-to-face communication between you and a Virginia Mason workforce member or promotional gift of nominal value), or before selling your health information.” Virginia Mason breaches this promise by routinely using and disclosing patient information for marketing purposes without obtaining written authorization, and by routinely bartering patient information with the third parties in exchange for enhanced marketing services from the third parties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

277. Virginia Mason further promises, “We are required to protect the privacy of your information, provide this notice about our privacy practices, and follow the privacy practices that are described in this notice.” Virginia Mason breaches this promise by routinely violating state and federal laws protecting the privacy of health information.

278. Finally, Virginia Mason promises, “You have the right to receive notice from us if we discover a breach of your unsecured health information according to the requirements of federal and state law.” Virginia Mason has breached this promise by failing to notify patients of its disclosures to Facebook and others for marketing purposes.

279. As a direct and proximate cause of Virginia Mason’s breach of contract, Plaintiffs and Class members suffered injuries and damages that include, but are not limited to:

- a. Sensitive, confidential, and/or protected information that Plaintiffs and Class members intended to remain private is no more;
- b. Virginia Mason took something of value from Plaintiffs and Class members and derived benefit therefrom without Plaintiffs’ and Class members’ knowledge or informed consent and without sharing the benefit of such value;
- c. Plaintiffs and Class members did not get the full value of the medical services for which they paid, which included Virginia Mason’s duty to maintain confidentiality of patient data and communications; and
- d. Virginia Mason’s actions diminished the value of Plaintiffs’ and Class members’ personally identifiable patient data and communications.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COUNT X – QUASI-CONTRACT / UNJUST ENRICHMENT

280. Plaintiffs incorporate all other paragraphs as if fully stated herein.

281. The representations made in the Joint Notice are an implied contract and are therefore enforceable to prevent Virginia Mason's unjust enrichment at Plaintiffs' and Class members' expense.

282. Virginia Mason received the benefit of using Plaintiffs' and Class members' protected health information for marketing purposes by disclosing to third-party marketing companies, in exchange for enhanced marketing services, Plaintiffs' and Class members' personally identifiable data and communications with Virginia Mason without obtaining Plaintiffs' and Class members' written authorization.

283. The benefits Virginia Mason received were at Plaintiffs' and Class members' expense in that Plaintiffs and Class members received no remuneration for the disclosures of their valuable protected health information .

284. Virginia Mason has voluntarily accepted and retained the benefits of using Plaintiffs' and Class' members protected health information and permitting Virginia Mason to retain these benefits without payment to Plaintiffs and Class members would be unjust.

285. As a direct and proximate cause of Virginia Mason's breach of contract, Plaintiffs and the Class members suffered injuries and damages that include, but are not limited to:

- a. Sensitive, confidential, and/or protected information that Plaintiffs and Class members intended to remain private is no more;
- b. Virginia Mason took something of value from Plaintiffs and Class members and derived benefit therefrom without Plaintiffs and Class members' knowledge or informed consent and without sharing the benefit of such value;

1 c. Plaintiffs and Class members did not get the full value of the medical services
2 for which they paid, which included Virginia Mason's duty to maintain confidentiality of
3 patient data and communications; and

4 d. Virginia Mason's actions diminished the value of Plaintiffs' and Class members'
5 personally identifiable patient data and communications.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, ask
9 for judgment in their favor, and that the Court award the following relief:

10 A. Certification of the proposed class and appointment of Plaintiffs and their
11 counsel to represent the Class;

12 B. Actual damages, treble damages, civil damages authorized by RCW 9.35.020,
13 and any other form of monetary relief provided by law, including general damages for
14 invasion of privacy;

15 C. Injunctive and declaratory relief requiring Virginia Mason to maintain the
16 confidentiality of its patients' personally identifiable and health information;

17 D. Prejudgment and post-judgment interest as provided by law;

18 E. Reasonable attorneys' fees and reimbursement of litigation costs reasonably
19 expended; and

20 F. Any other relief as the Court deems necessary, just, and proper.
21

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby demand a trial by jury on all issues so triable.
24
25
26
27

1
2 RESPECTFULLY SUBMITTED AND DATED this 19th day of October, 2020.

3 TERRELL MARSHALL LAW GROUP PLLC

4
5 By: /s/ Beth E. Terrell, WSBA #26759

6 Beth E. Terrell, WSBA #26759
7 Email: bterrell@terrellmarshall.com
8 Amanda M. Steiner, WSBA #29147
9 Email: asteiner@terrellmarshall.com
10 Benjamin M. Drachler, WSBA #51021
11 Email: bdrachler@terrellmarshall.com
12 936 North 34th Street, Suite 300
13 Seattle, Washington 98103-8869
14 Telephone: (206) 816-6603
15 Facsimile: (206) 319-5450

16 Mitchell Breit
17 Email: mbreit@simmonsfirm.com
18 SIMMONS HANLY CONROY LLC
19 112 Madison Avenue, 7th Floor
20 New York, New York 10016-7416
21 Telephone: (212) 784-6400
22 Facsimile: (212) 213-5949

23 Jason "Jay" Barnes, *Admitted Pro Hac Vice*
24 Email: jaybarnes@simmonsfirm.com
25 Email: kdunnagan@simmonsfirm.com
26 Eric S. Johnson, *Admitted Pro Hac Vice*
27 Email: ejohnson@simmonsfirm.com
SIMMONS HANLY CONROY LLC
One Court Street
Alton, Illinois 62002
Telephone: (618) 259-2222

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Stephen M. Gorny, *Admitted Pro Hac Vice*
Email: steve@gornylawfirm.com
Christopher D. Dandurand, *Admitted Pro Hac Vice*
Email: chris@gornylawfirm.com
Email: ekroh@gornylawfirm.com
Email: linda@gornylawfirm.com
THE GORNY LAW FIRM, LC
4330 Belleview Avenue, Suite 200
Kansas City, Missouri 64111
Telephone: (816) 756-5071
Facsimile: (816) 756-5067

Jeffrey A. Koncius, *Admitted Pro Hac Vice*
Email: koncius@kiesel.law
Nicole Ramirez, *Admitted Pro Hac Vice*
Email: ramirez@kiesel.law
Email: jmendez@kiesel.law
KIESEL LAW LLP
8648 Wilshire Blvd.
Beverly Hills, California 90211
Telephone: (310) 854-4444
Facsimile: (310) 854-0812

Attorneys for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$3.5M Virginia Mason Settlement Resolves Privacy Class Action Lawsuit](#)
