

1 Timothy D. Cohelan, Esq. (SBN 60827)
J. Jason Hill, Esq. (SBN 179630)
2 **COHELAN KHOURY & SINGER**
605 C Street, Suite 200
3 San Diego, California 92101
Telephone: (619) 595-3001/Fax: (619) 595-3000
4

Patrick N. Keegan, Esq. (SBN 167698)
5 **KEEGAN & BAKER, LLP**
2292 Faraday Avenue, Suite 100
6 Carlsbad, California 92008
Telephone: (760) 929-9303/Fax: (760) 929-9260
7

Robert A. Waller, Jr. (SBN 169604)
8 **LAW OFFICE OF ROBERT A. WALLER, JR.**
P.O. Box 999
9 Cardiff-by-the-Sea, California 92007
10 Telephone: (760) 753-3118/ Fax: (760) 753-3206

11 Attorneys for Plaintiff KENNETH GARCIA, Individually and all others similarly situated,

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 KENNETH GARCIA, Individually and on)
15 behalf of and all others similarly situated,)

16 Plaintiff,)

17 vs.)

18 SCRIPPS HEALTH, a California Corporation;)
19 and DOES 1 through 100, inclusive,)

20 Defendants.)

CASE NO. 37-2021-00024103-CU-BT-CTL

**CLASS COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF (FOR
VIOLATIONS OF THE
CONFIDENTIALITY OF MEDICAL
INFORMATION ACT, CIVIL CODE §§
56, ET SEQ.**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/01/2021 at 03:03:38 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

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2 Plaintiff KENNETH GARCIA and by and through his attorneys, individually and on
3 behalf of others similarly situated, allege upon information and belief as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Under the Confidentiality of Medical Information Act, Civil Code §§ 56, *et seq.*
7 (hereinafter referred to as the “Act”), Plaintiff KENNETH GARCIA and all other persons
8 similarly situated, had a right to keep their personal medical information provided to Defendant
9 SCRIPPS HEALTH (or “Defendant”) confidential. The short title of the Act states, “The
10 Legislature hereby finds and declares that persons receiving health care services have a right to
11 expect that the confidentiality of individual identifiable medical information derived by health
12 service providers be reasonably preserved. It is the intention of the Legislature in enacting this
13 act, to provide for the confidentiality of individually identifiable medical information, while
14 permitting certain reasonable and limited uses of that information.” The Act specifically provides
15 that “aprovider of health care, health care service plan, or contractor shall not disclose medical
16 information regarding a patient of the provider of health care or an enrollee or subscriber of a
17 health care service plan without first obtaining an authorization....” Civil Code. § 56.10(a). The
18 Act further provides that “Every provider of health care, health care service plan, pharmaceutical
19 company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes
20 of medical records shall do so in a manner that preserves the confidentiality of the information
21 contained therein. Any provider of health care, health care service plan, pharmaceutical company,
22 or contractor who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes
23 of medical records shall be subject to the remedies ... provided under subdivisions (b) ... of Section
24 56.36.” Civil Code § 56.101(a).

25 2. Civil Code § 56.36(b) provides Plaintiffs, and all other persons similarly situated,
26 with a private right to bring an action against Defendant for violation of Civil Code § 56.101 by
27 specifically providing that “[i]n addition to any other remedies available at law, any individual
28 may bring an action against any person or entity who has negligently released confidential
information or records concerning him or her in violation of this part, for either or both of the

1 following: (1) ... nominal damages of one thousand dollars (\$1,000). In order to recover under this
2 paragraph, *it shall not be necessary that the plaintiff suffered or was threatened with actual*
3 *damages.* (2) The amount of actual damages, if any, sustained by the patient.” (Emphasis added.)

4 3. This class action is brought on behalf of Plaintiffs and a putative class defined as
5 all patients of Defendant who were admitted in-patient to one of Defendant’s hospital, satellite or
6 urgent care locations between July 1, 2012 and June 30, 2013 (or the “Class”).

7 4. As alleged more fully below, Defendant created, maintained, preserved, and stored
8 Plaintiffs’ and the Class members’ personal medical information onto the Defendant’s computer
9 network prior to June 6, 2014. Due to Defendant’s mishandling of personal medical information
10 recorded onto the Defendant’s computer network, there was an unauthorized release of Plaintiffs’
11 and the Class members’ confidential medical information on or about June 6, 2014, in violation of
12 Civil Code § 56.101 of the Act. As alleged more fully below, Defendant negligently created,
13 maintained, preserved, and stored Plaintiffs’ and the Class members’ confidential medical
14 information without Plaintiffs’ and the Class members’ prior written authorization, which
15 constitutes an unauthorized release of their confidential medical information in violation of Civil
16 Code § 56.101 of the Act. Because Civil Code § 56.101 allows for the remedies and penalties
17 provided under Civil Code § 56.36(b), Class Representative Plaintiffs, individually and on behalf
18 of others similarly situated, seek nominal damages of one thousand dollars (\$1,000) for each
19 violation under Civil Code §56.36(b)(1). Additionally, Class Representative Plaintiffs,
20 individually and on behalf of others similarly situated, seek injunctive relief for unlawful
21 violations of Business and Professions Code §§ 17200, *et seq.*

22 5. Plaintiff does not seek any relief greater than or different from the relief sought for
23 the Class of which Plaintiffs are a member. The action, if successful, will enforce an important
24 right affecting the public interest and would confer a significant benefit, whether pecuniary or
25 non-pecuniary, for a large class of persons. Private enforcement is necessary and places a
26 disproportionate financial burden on Class Representative Plaintiffs in relation to Class
27 Representative Plaintiffs’ stake in the matter.
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II.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under California Code of Civil Procedure § 410.10. The aggregated amount of damages incurred by Plaintiffs and the Class exceeds the \$25,000 jurisdictional minimum of this Court. The amount in controversy as to the Plaintiffs individually and each individual Class member does not exceed \$75,000, including interest and any pro rata award of attorneys' fees, costs, and damages. Venue is proper in this Court under California Bus. & Prof. Code § 17203, Code of Civil Procedure §§ 395(a) and 395.5 because Defendant does business in the State of California, and in the County of San Diego. Defendant has obtained medical information in the transaction of business in the County of San Diego, which has caused both obligations and liability of Defendant to arise in the County of San Diego. Class Representative Plaintiffs and their guardians ad litem also reside in the County of San Diego.

III.

PARTIES

A. PLAINTIFF

7. Plaintiff KENNETH GARCIA is a resident of San Diego County, California. At all times relevant, Plaintiff was a patient of Defendant. Plaintiff's individual identifiable medical information derived by Defendant in electronic form was in possession of Defendant, including but not limited to Plaintiff's medical history, mental or physical condition, or treatment, including diagnosis and treatment dates. Such medical information included or contained an element of personal identifying information sufficient to allow identification of the individual, such as Plaintiff's name, date of birth, addresses, medical record number, insurance provider, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals Plaintiff's identity.

B. DEFENDANT

11. Defendant SCRIPPS HEALTH is a California non-profit corporation, with its principal places of business located at 10140 Campus Point Drive, San Diego, California 92121.

1 At all times relevant, Defendant is a “provider of health care” as defined by Civil Code §
2 56.05(m). Defendant created, maintained, preserved, and stored Plaintiff’s’ and the Class
3 members’ individually identifiable medical information onto Defendant’s computer network,
4 including but not limited to Plaintiffs’ and the Class members’ medical history, mental or physical
5 condition, or treatment, including diagnosis and treatment dates. Such medical information
6 included or contained an element of personal identifying information sufficient to allow
7 identification of the individual, such as Plaintiffs’ and the Class members’ names, dates of birth,
8 addresses, medical record numbers, insurance providers, electronic mail addresses, telephone
9 numbers, or social security numbers, or other information that, alone or in combination with other
10 publicly available information, reveals Plaintiffs’ and the Class members’ identity.

11 **C. DOE DEFENDANTS**

12 12. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
14 the Plaintiffs, who therefore sue the Defendants by such fictitious names under the Code of Civil
15 Procedure § 474. Each of the Defendants designated herein as a DOE is legally responsible in
16 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court and/or
17 amend this complaint to reflect the true names and capacities of the Defendants designated
18 hereinafter as DOES 1 through 100 when such identities become known. Any reference made to a
19 named Defendant by specific name or otherwise, individually or plural, is also a reference to the
20 actions or inactions of DOES 1 through 100, inclusive.

21 **D. AGENCY/AIDING AND ABETTING**

22 13. At all times herein mentioned, Defendants, and each of them, were an agent or joint
23 venturer of each of the other Defendants, and in doing the acts alleged herein, were acting with the
24 course and scope of such agency. Each Defendant had actual and/or constructive knowledge of
25 the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or
26 authorized the wrongful acts of each co-defendant, and/or retained the benefits of said wrongful
27 acts.

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1 14. Defendants, and each of them, aided and abetted, encouraged and rendered
2 substantial assistance to the other Defendants in breaching their obligations to Plaintiffs and the
3 Class, as alleged herein. In taking action, as particularized herein, to aid and abet and substantially
4 assist the commissions of these wrongful acts and other wrongdoings complained of, each of the
5 Defendants acted with an awareness of his/her/its primary wrongdoing and realized that his/her/its
6 conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals,
7 and wrongdoing.

8 **IV.**

9 **CLASS ACTION ALLEGATIONS**

10 15. Plaintiff bring this action on their own behalf and on behalf of all other persons
11 similarly situated. The putative class that Plaintiff seeks to represent is composed of:

12 All patients of Defendant Scripps Health whose protected health information was
13 disclosed on or about May 1, 2021 (hereinafter the “Class”).

14 Excluded from the Class are the natural persons who are directors, officers, and employees
15 of the Defendant. Plaintiff expressly disclaims that they are seeking a class-wide recovery for
16 personal injuries attributable to Defendant’s conduct.

17 16. The members of the Class are believed to be in excess of 174,000 patients and are
18 so numerous that joinder of all members is impracticable. While the exact number of the Class
19 members is unknown to Plaintiff at this time, such information can be ascertained through
20 appropriate discovery, from records maintained by Defendant.

21 17. There is a well-defined community of interest among the members of the Class
22 because common questions of law and fact predominate, Plaintiff’s claims are typical of the
23 members of the class, and Plaintiff can fairly and adequately represent the interests of the Class.

24 18. Common questions of law and fact exist as to all members of the Class and
25 predominate over any questions affecting solely individual members of the Class. Among the
26 questions of law and fact common to the Class are:

- 27 (a) whether Plaintiff and the Class had individual identifiable medical information
28 recorded onto Defendant’s computer network prior to May 1, 2021;
- (b) whether Defendant stored Plaintiff’s and Class members’ individual identifiable
medical information onto a non-encrypted email on or about May 1, 2021;

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- (c) whether Defendant caused the disclosure of Plaintiff's and the Class Members' individual medical information;
- (d) whether Defendant's violations of §§ 56.10 and 56.101 of the Act constitute an unlawful violations of California Business and Professions Code §§ 17200, *et seq.*; and
- (e) whether Class Representative Plaintiffs and the Class are entitled to nominal damages.

19. Plaintiff's claims are typical of those of the other Class members because Plaintiff, like every other Class member, were exposed to virtually identical conduct and are entitled to nominal damages of one thousand dollar (\$1,000) per violation pursuant to Civil Code §§ 56.101 56.36(b)(1).

20. Plaintiff will fairly and adequately protect the interests of the Class. Moreover, Plaintiff has no interest that is contrary to or in conflict with those of the Class he seeks to represent during the Class Period. In addition, Plaintiff has retained competent counsel experienced in class action litigation to further ensure such protection and intend to prosecute this action vigorously.

21. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendant in the State of California and would lead to repetitious trials of the numerous common questions of fact and law in the State of California. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

22. Proper and sufficient notice of this action may be provided to the Class members through direct mail.

23. Moreover, the Class members' individual damages are insufficient to justify the cost of litigation, so that in the absence of class treatment, Defendant's violations of law inflicting substantial damages in the aggregate would go unremedied without certification of the Class.

1 Absent certification of this action as a class action, Class Representative Plaintiffs and the
2 members of the Class will continue to be damaged by the unauthorized release of their individual
3 identifiable medical information.

4 **V.**

5 **SUBSTANTIVE ALLEGATIONS**

6 24. Plaintiff, like each member of the Class, were patients of Defendant Scripps Health.
7 Plaintiff, like each member of the Class, provided Defendants with individually identifiable
8 medical information, as it is defined by Civil Code § 56.05(j), in order to receive health care from
9 Defendant. Specifically, Plaintiff's and the Class members' medical history, mental or physical
10 condition, or treatment, including diagnosis and treatment dates was created, maintained,
11 preserved, and stored onto Defendant's computer network. Such medical information included or
12 contained an element of personal identifying information sufficient to allow identification of the
13 individual, such as Plaintiffs' and the Class members' name, date of birth, addresses, medical
14 record number, insurance provider, electronic mail address, telephone number, or social security
15 number, or other information that, alone or in combination with other publicly available
16 information, reveals Plaintiffs' and the Class members' identity.

17 25. On or about May 1, 2021, Defendant negligently created, maintained, preserved,
18 and stored Plaintiffs' and the Class members' confidential, individual identifiable medical
19 information in a non-encrypted form. Specifically, on or about May 1, 2021, Defendant's
20 employee(s) negligently created, maintained, preserved, and stored Plaintiffs' and Class members'
21 individual identifiable "medical information," within the meaning of Civil Code § 56.05(j),¹

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23 ¹ Pursuant to Civil Code § 56.05(j), "Medical information" means "any individually identifiable
24 information, in electronic or physical form, in possession of or derived from a provider of health
25 care...regarding a patient's medical history, mental or physical condition, or treatment.
26 'Individually Identifiable' means that the medical information includes or contains any elements
27 of personal identifying information sufficient to allow identification of the individual, such as the
28 patient's name, address, electronic mail address, telephone number, or social security number, or
other information that, alone or in combination with other publicly available information, reveals
the individual's identity." As alleged herein, Defendant's unencrypted spreadsheet contained
Plaintiffs' and the Class members' names, primary diagnoses, admit/discharge dates, medical
record numbers, and other information including insurance billings and claims, and thus contained
individually identifiable medical information as defined by Civil Code § 56.05(j).

1 including Plaintiff's and the Class members' names, primary diagnoses, admit/discharge dates,
2 medical record numbers, and other information including insurance billings and claims, in a non-
3 encrypted form.

4 **VI.**

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **(Violations of the Confidentiality of Medical Information Act, Civil Code § 56, et seq.)**

8 (Against All Defendants)

9 26. Plaintiff and the Class incorporate by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.

11 27. Defendant is "provider of health care," within the meaning of Civil Code §
12 56.05(m), and maintained and continues to maintain "medical information," within the meaning of
13 Civil Code § 56.05(j), of "patients" of the Defendant, within the meaning of Civil Code §
14 56.05(k).

15 28. Plaintiff and the Class are "patients" of Defendant within the meaning of Civil
16 Code § 56.05(k). Furthermore, Plaintiffs and the Class, as patients of Defendant, had their
17 individually identifiable "medical information," within the meaning of Civil Code § 56.05(j),
18 created, maintained, preserved, and stored onto Defendant's computer network, and were admitted
19 in-patient to one of Defendant's hospital, satellite or urgent care locations.

20 29. On or about May 1, 2021, Defendant's employee(s) negligently created,
21 maintained, preserved, and stored Plaintiffs' and Class members' individual identifiable "medical
22 information," within the meaning of Civil Code § 56.05(j), including Plaintiffs' and Class
23 members' name, date of birth, medical treatment, including diagnosis and treatment dates, medical
24 record number, and insurance provider, in a non-encrypted form.

25 30. Defendant's failure to properly protect from access, disclosure, and/or actual
26 viewing of the Plaintiff's and the Class' confidential, individual identifiable "medical
27 information" by unauthorized person or persons in violation of § 56.101 of the Act.
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DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

By,

LAW OFFICE OF ROBERT A. WALLER, JR.

Dated: June 1, 2021

/s/ Robert A. Waller, Jr.

Robert A. Waller, Jr. (SBN169604)

Counsel for Plaintiff and the Class