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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103]

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

SEP 17 2020
CLERK OF THE COURT
BY: ANGELICA SUNGA
Deputy Clerk

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

UPWARD LABS HOLDINGS, INC., a
corporation, and GLOW, INC., a
corporation,

Defendants.

Case No.

CGC-20-586611

COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES, AND OTHER EQUITABLE
RELIEF

(CIVIL CODE, §§ 56.06(d), 56.101(a),
56.10(a); BUS. & PROF., §§ 17200 *et seq.*,
17500 *et seq.*)

Plaintiff, the People of the State of California ("Plaintiff" or the "People"), by and through
Xavier Becerra, Attorney General of the State of California, allege the following upon
information and belief:

INTRODUCTION

1. The People bring this action against Upward Labs Holdings, Inc. and Glow, Inc.
(collective referred to as "Defendants") for violations of the Confidentiality of Medical
Information Act ("CMIA"), Unfair Competition Law ("UCL"), and False Advertising Law
("FAL").

1 2. Defendants offer a mobile application to consumers called Glow (the “Glow app”),
2 which is marketed as an ovulation and fertility tracker. The Glow app collects and stores deeply-
3 sensitive personal and medical information related to a user’s menstruation, sexual activity, and
4 fertility. For example, the Glow app is designed to track the following types of personal and
5 medical information: medications, fertility test results, past and upcoming medical appointments,
6 complete medical records, and ovulation-cycle calculations. Users can also track intimate details
7 of their sexual experiences and efforts to become pregnant, as well as document pregnancy
8 histories, including miscarriages, abortions, and stillbirths.

9 3. Under California law, a business that offers a health app that is designed to
10 maintain medical information may be deemed to be a provider of health and must therefore
11 comply with the CMIA. The CMIA sets forth heightened legal obligations for a provider of
12 health care to preserve the confidentiality of medical information it collects and stores, and
13 prohibits a provider from disclosing any medical information without first obtaining the user’s
14 authorization.

15 4. From 2013 to 2016, the Glow app had serious basic security failures that put its
16 users’ data at risk. First, the app’s “Partner Connect” feature allowed two users to link to each
17 other and share information; but the app would automatically grant linking requests without any
18 authorization or confirmation from the user who was about to have their information shared.
19 Second, when a user changed their password, the Glow app did not verify that the old password
20 matched what was stored on Defendants’ servers, and thus, anyone could exploit this
21 vulnerability by simply changing to a new password and accessing a user’s stored medical
22 information.

23 5. In offering and operating the Glow app, Defendants violated California consumer
24 and health privacy laws because they failed to preserve the confidentiality of medical information
25 and disclosed medical information without first obtaining a user’s authorization, as well as failed
26 to implement reasonable data security procedures to protect personal information, which includes
27 medical information.
28

1 **PARTIES**

2 6. Plaintiff is the People of the State of California. Plaintiff brings this action by and
3 through Xavier Becerra, Attorney General. The Attorney General is authorized by Civil Code
4 section 56.36, subdivision (f)(1)(A), to bring actions to enforce the CMIA, Business and
5 Professions Code sections 17535 and 17536 to bring actions to enforce the FAL, and Business
6 and Professions Code sections 17204, 17206, and 17207 to bring actions to enforce the UCL.

7 7. Defendant Upward Labs Holdings, Inc. is a Delaware corporation with its
8 headquarters and principal place of business at 633 Folsom Street, 7th Floor, San Francisco,
9 California 94107.

10 8. Defendant Glow, Inc. is a Delaware corporation with its principal place of
11 business at 633 Folsom Street, 7th Floor, San Francisco, California 94107. Glow, Inc. is a
12 wholly-owned subsidiary of Upward Labs Holdings, Inc.

13 **JURISDICTION AND VENUE**

14 9. Defendants have transacted business within the State of California, including the
15 City and County of San Francisco, at all times relevant to this complaint. The violations of law
16 described herein occurred in the City and County of San Francisco and elsewhere in the State of
17 California.

18 **DEFENDANTS' BUSINESS ACTS AND PRACTICES**

19 10. Defendants operate mobile applications and online services related to sexual and
20 reproductive health, including the Glow app. The Glow app is designed to collect and maintain
21 users' medical information. For example, a user seeking to become pregnant can store fertility-
22 test results and diagnosed infertility causes, such as polycystic ovary syndrome (PCOS),
23 ovulation disorder, endometriosis, or sperm allergy. The app also collects user history of
24 previous pregnancies, with users selecting from options such as live birth, miscarriage, abortion,
25 or stillbirth. A user can also input "over 40 different health signals" into its Daily Health Log,
26 including data on ovulation tests, pregnancy tests, basal body temperature (BBT), medication list,
27 and physical and emotion conditions, such as bloating, constipation, diarrhea, pain during sex, sex
28 drive, sore breasts, and vaginal pain. The app also allows a user to import a complete medical

1 record from another provider of health care, as well as export information into a file that the user
2 can take to their doctor's appointments.

3 **A. The Glow App's "Partner Connect" Feature**

4 11. The "Partner Connect" feature allows a Glow user to link to a partner to share
5 information. Until July 2016, the "Partner Connect" feature automatically granted a partner's link
6 request and immediately shared the Glow user's sensitive information, such as sexual activity,
7 whether the user had taken a pregnancy or ovulation test and the results, a list of medications
8 taken, and physical and emotional statuses.

9 12. By automatically granting the linking request and immediately sharing
10 information, Defendants failed to obtain any authorization from the Glow user before disclosing
11 their medical information. It also failed to verify the legitimacy of the person with whom the
12 information was being shared, despite well-established industry standards requiring Defendants to
13 implement basic security-access controls.

14 **B. The Glow App's Password-Change Vulnerability**

15 13. From November 2014 until July 2016, when a Glow user requested to change their
16 password, it required users to enter the old password followed by a new password. By asking for
17 the old password, the app appeared to authenticate the user's request. But Defendants never
18 confirmed on the back-end that what had been entered as the old password matched the
19 information that Defendants maintained on their servers. As a result, new passwords were always
20 accepted and anyone could change a user's password, log in with that new password, and access
21 the user's data. By not authenticating users who requested to change their passwords, Defendants
22 failed to reasonably secure user credentials.

23 **C. Defendants' Privacy Policy and Terms of Use**

24 14. From 2013 through 2016, Defendants made representations on how it protects
25 consumer privacy and how it protects personal information in their privacy policies and terms of
26 use: "[W]e have designed the Service to protect information about you from unauthorized
27 disclosure to others."; "We use industry standard security measures to protect your information so
28 that it is not made available to unauthorized parties."; "We recognize the importance of protecting

1 the privacy of our users, particularly given the nature of that information"; and "Glow uses
2 industry-standard security measures to protect the loss, misuse and alteration of information under
3 our control." All of these assertions are contradicted by Defendants' security failures.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATIONS OF CIVIL CODE SECTION 56.06**

6 **(Failure to Preserve the Confidentiality of Medical Information)**

7 15. The People reallege and incorporate by reference each of the paragraphs above as
8 though fully set forth herein.

9 16. Defendants are deemed a provider of health care under Civil Code Section 56.06,
10 subdivision (b), because they offer software to consumers that is designed to maintain medical
11 information for the purposes of allowing its users to manage their information or for the
12 diagnosis, treatment, or management of a medical condition. Specifically, the Glow app is
13 designed for the user to store, email, and print information relating to their reproductive health
14 such as ovulation and menstrual cycles, and/or for the diagnosis, treatment, or management of
15 users seeking to become pregnant or treat infertility. Defendants are therefore subject to the
16 requirements of the CMIA and obligated under subdivision (d), to maintain the same standards of
17 confidentiality required of a provider of health care with respect to medical information its users
18 disclose to it.

19 17. Defendants violated Civil Code section 56.06 because: (a) the "Partner Connect"
20 feature shared a user's medical information without the user's authorization; (b) the "Partner
21 Connect Feature" did not authenticate the legitimacy of the user to whom the medical information
22 was shared; and (c) the password-change vulnerability permitted unauthorized access to and
23 unauthorized disclosure of the medical information stored in the Glow app.

24 18. Defendants also negligently disclosed medical information in violation of Civil
25 Code section 56.36, subdivision (c)(1) through the unauthorized disclosure and access by the
26 "Partner Connect" feature and password-change vulnerability.
27
28

1 26. The "Partner Connect" feature permitted an unauthorized disclosure of medical
2 information and the password-change vulnerability permitted unauthorized access to and
3 disclosure of the medical information stored in the Glow app. No statutory exception applied. As
4 a result, Defendants violated Civil Code section 56.10, subdivision (a).

5 27. Defendants also negligently disclosed medical information in violation of Civil
6 Code section 56.36, subdivision (c)(1) through the unauthorized disclosure and access by the
7 "Partner Connect" feature and password-change vulnerability.

8 **FOURTH CAUSE OF ACTION**

9 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

10 28. The People reallege and incorporate by reference each of the paragraphs above as
11 though fully set forth herein.

12 29. Defendants have engaged in acts or practices that constitute violations of Business
13 and Professions Code section 17500 et seq. by making or causing to be made untrue or
14 misleading statements concerning: (1) the design of the Glow app to protect consumers'
15 information from unauthorized disclosures to others; and (2) the security measures to protect
16 consumers' information.

17 30. At the time these representations were made, Defendants knew or by the exercise
18 of reasonable care should have known that these representations were untrue or misleading.

19 **FIFTH CAUSE OF ACTION**

20 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.**

21 31. The People reallege and incorporate by reference each of the paragraphs above as
22 though fully set forth herein.

23 32. Defendants have engaged in unlawful, unfair, or fraudulent acts or practices,
24 which constitute unfair competition within the meaning of Section 17200 of the Business and
25 Professions Code.

26 33. Specifically, Defendants:

- 27 (a) Violated Civil Code Section 56.06, subsection (d), as alleged in the First
28 Cause of Action;

- (b) Violated Civil Code Section 56.101, subdivision (a), as alleged in the Second Cause of Action;
- (c) Violated Civil Code Section 56.10, subsection (a), as alleged in the Third Cause of Action;
- (d) Violated Civil Code Section 1798.81.5, which requires Defendants to implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information maintained by Defendants, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure;
- (e) Violated Business & Professions Code Section 22575 et seq., which requires Defendants to comply with the provisions of its posted privacy policy; and
- (f) Violated Business & Professions Code Section 17500 as alleged in the Fourth Cause of Action.

34. Civil Code Section 1798.81.5 applies to Defendants because they are a business that owns or maintains personal information, which includes medical information, about a California resident. Defendants failed to implement and maintain reasonable security procedures and practices because: (a) the "Partner Connect" feature did not have access controls to authenticate the user with whom the information was being shared; and (b) the Glow app's password-change vulnerability did not authenticate the user requesting a password change. As a result, Defendants failed to protect the personal information stored in the user's Glow app from unauthorized access, destruction, use, modification, or disclosure.

35. Business and Professions Code Section 22575 et seq. applies to Defendants because they are an operator of a commercial online service that collects personally identifiable information through the Internet about individual consumers residing in California who use its commercial online service. Defendants' failure to comply with their posted privacy policy was negligent and material.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Code section 17203, that the Court enter all orders necessary to prevent Defendants, their successors, agents, representatives, employees, and all persons who act in concert with Defendants from engaging in any act or practice that constitutes unfair competition in violation of Business and Professions Code section 17200, including, but not limited to, as alleged in this Complaint;

2. Pursuant to Business and Professions Code section 17535, that the Court enter all orders necessary to prevent Defendants, their successors, agents, representatives, employees, and all persons who act in concert with Defendants from making any untrue or misleading statements in violation of Business and Professions Code section 17500, including, but not limited to, as alleged in this Complaint;

3. Pursuant to Civil Code section 56.36(c)(1), that the Court assess a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Civil Code sections 56.06, subdivision (d), 56.101, subdivision (a), and 56.10, subdivision (a), as proved at trial;

4. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business and Professions Code section 17200, as proved at trial;

5. Pursuant to Business and Professions Code section 17536, that the Court assess a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business and Professions Code section 17500, as proved at trial;

6. That Plaintiff recovers its cost of suit herein, including costs of investigation; and

7. For such other and further relief as the Court deems just and proper.

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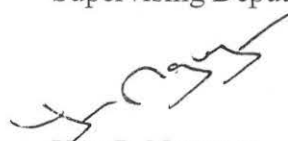
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1 Dated: September 17, 2020

Respectfully Submitted,

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