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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

INITO, INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Jane Doe (“Plaintiff”) brings this action on behalf of herself, and all others  
2 similarly situated against Inito, Inc. (“Defendant”). Plaintiff brings this action based upon personal  
3 knowledge of the facts pertaining to herself, and on information and belief as to all other matters,  
4 by and through the investigation of the undersigned counsel.

5 **NATURE OF THE ACTION**

6 1. This is a class action lawsuit brought on behalf of all California residents and  
7 individuals nationwide who have used Defendant’s fertility tracker (“Fertility Tracker”) through  
8 Defendant’s mobile application, Inito (the “App”), and answered Defendant’s onboarding survey  
9 (the “Survey”).

10 2. Inito’s Fertility Tracker claims to “empower [women] to make informed choices  
11 about the thing that matters the most – [their] health.”<sup>1</sup> To accomplish this task, the Fertility  
12 Tracker asks women to provide Inito with very sensitive information about their fertility,  
13 reproductive health, and menstrual cycles. Inito even creates an air of false security by telling  
14 users that their information will “remain between us” when answering Survey questions.<sup>2</sup> Yet, in  
15 gross violation of women’s privacy rights, Inito enables Google, LLC (“Google”) to intercept these  
16 confidential communications.

17 3. This case is about the protection of women’s privacy in their personal, intimate  
18 information related to their reproductive and sexual health. In protecting sexual and reproductive  
19 health data and keeping this data private, outside the grasp of advertisers, the overarching outcome  
20 is the protection of human dignity and personal autonomy. As the philosopher Luciano Floridi puts  
21 it, “[o]ur [human] dignity rests in being able to be the masters of our own journeys, and keep our  
22 identities and our choices open. Any technology or policy that tends to fix and mould such  
23 openness risks dehumanizing us.”<sup>3</sup> Not respecting privacy over intimate health information also  
24

25  
26 <sup>1</sup>INITO, About Us, <https://www.inito.com/en-us/about-us>.

27 <sup>2</sup> See Figure 2.

28 <sup>3</sup> Luciano Floridi, *On Human Dignity as Foundation for the Right to Privacy*, Philos. Technol. 29,  
307-312 (2016), <https://link.springer.com/article/10.1007/s13347-016-0220-8>.

1 leads to a lack of autonomy such as limiting our ability to choose how our health data gets used and  
2 whom it gets shared with.

3 4. Information relating to a woman’s reproductive health, fertility, and menstrual cycle  
4 is highly coveted because it can be used to make valuable inferences advertisers would love to have  
5 – such as how the stage of a woman’s menstrual cycle can inform advertisers of a woman’s  
6 willingness to overspend and make unplanned purchases. Indeed, advertisers are willing to pay **15**  
7 **times** more for a pregnant woman’s data, than that of a non-pregnant woman.

8 5. Inito’s mission involves “empowering users to advocate for themselves.”<sup>4</sup> But by  
9 enabling third-party advertisers to intercept women’s sensitive data about their sexual and  
10 reproductive health without obtaining informed consent, Inito takes away a woman’s ability to  
11 control information about her own body, commoditizes her data at a tremendous cost to a woman’s  
12 own personal privacy, and infringes on her human dignity.

13 6. For these reasons, Plaintiff brings this action for legal and equitable remedies.

14 **PARTIES**

15 **I. PLAINTIFF**

16 7. Plaintiff is an adult citizen of California who resides in Los Angeles, California.

17 8. Plaintiff has used Defendant’s Fertility Tracker via the App since January 2024.

18 9. Plaintiff accessed the App to keep track of her menstrual cycle and gain information  
19 about her fertile days.

20 10. During the sign-up process, Plaintiff answered Inito’s Survey questions. Plaintiff’s  
21 answers to the Survey questions were communications intercepted in transit by third parties – as  
22 enabled by Inito.

23 11. Neither Inito nor the third parties procured Plaintiff’s prior consent to this  
24 interception.

25 12. Plaintiff’s answering of Inito’s onboarding questions has led to the unlawful  
26 interception of her sensitive communications, including information regarding her menstrual cycle,  
27

28 <sup>4</sup> *Supra* note 1.

1 reproductive health, and fertility. Specifically, as a result of Defendant’s unlawful conduct as  
2 alleged herein, third parties intercepted information about Plaintiff. As a result of Defendant’s  
3 unlawful conduct, Plaintiff received digital advertisements from Inito on social media platforms  
4 such as Facebook and Instagram.

5 13. Pursuant to the systematic process described herein, Defendant aided and assisted  
6 third parties with intercepting Plaintiff’s communications in transit, including those that contained  
7 personally identifiable information, sensitive health information, and related confidential  
8 information. Defendant aided and assisted these interceptions without Plaintiff’s knowledge,  
9 consent, or express written authorization.

10 14. By failing to receive the requisite consent, Defendant breached its duties of  
11 confidentiality and unlawfully disclosed Plaintiff’s communications related to her reproductive and  
12 sexual health.

13 15. Plaintiff did not discover and could not have discovered Inito’s unlawful conduct as  
14 alleged herein until approximately June 2024 upon her retention of counsel.

15 **II. DEFENDANT**

16 16. Defendant Inito, Inc. (“Inito”) is a California corporation with its principal place of  
17 business in San Francisco, California.

18 **JURISDICTION AND VENUE**

19 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)  
20 because this case is a class action where the aggregate claims of all members of the proposed class  
21 are in excess of \$5,000,000, exclusive of interest and costs, and at least one member of the  
22 proposed class is a citizen of a state different from the Defendant.

23 18. The Court has general personal jurisdiction over Inito because Inito is a California  
24 corporation and has its principal place of business in California, meaning it is at home in the State  
25 of California.

26 19. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant  
27 resides in this district.

**FACTUAL ALLEGATIONS**

**I. FERTILITY/MENSTRUATION TRACKING APPS/SOFTWARE AND THEIR USES**

20. Fertility or menstruation tracking apps/software are digital products that people use to manage their health. Fertility or menstruation tracking software allows users to “track their menstrual cycles and receive a prediction of the start of their future cycles,”<sup>5</sup> meaning the date they will begin menstruating which is referred to as the start of the menstrual cycle.<sup>6</sup> This software also provides users with detailed predictions of their “day of ovulation and fertile window.”<sup>7</sup>

21. Because of the ability to predict the ovulation date and fertile window, “[u]sers are especially attracted to menstruation-tracking apps ... [and] treat these apps as birth control [by] seeking to maximize or minimize their chance of getting pregnant by changing their sexual activity accordingly.”<sup>8</sup>

22. Fertility/menstruation tracking software is also helpful for users looking to “improve upon their menstrual literacy and increase [their] agency [] to make informed choices about their overall health.”<sup>9</sup> This software allows users to increase their bodily awareness, “better prepare for

<sup>5</sup> Lauren Worsfold, Lorrae Marriott, Sarah Johnson, Joyce C. Harper, *Period Tracker Applications: What Menstrual Cycle Information Are They Giving Women*, WOMEN’S HEALTH, Oct. 9, 2021, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8504278/#:~:text=Period%20tracking%20applications%20\(apps\)%20allow,day%20and%20the%20fertile%20window.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8504278/#:~:text=Period%20tracking%20applications%20(apps)%20allow,day%20and%20the%20fertile%20window.)

<sup>6</sup> NHS, *Periods and Fertility in the Menstrual Cycle*, <https://www.nhs.uk/conditions/periods/fertility-in-the-menstrual-cycle/#:~:text=The%20first%20day%20of%20a%20woman's%20period%20is%20day%201,Find%20out%20about%20heavy%20periods.>

<sup>7</sup> *Id.*

<sup>8</sup> Tahsin M. Ahmed, *LEAK! The Legal Consequences of Data Misuse in Menstruation-Tracking Apps*, 111 Calif. L. Rev. 1979, 1982-83 (2023) (citing Rasha Ali, *Do Period Tracker Apps Work as a Birth Control Replacement?*, USA TODAY (Aug. 8, 2019), <https://www.usatoday.com/story/life/health-wellness/2019/08/08/can-period-tracker-apps-replace-condoms-and-pill-not-really/1888837001/>).

<sup>9</sup> Bridget G. Kelly & Maniza Habib, *Missed period? The significance of period-tracking applications in a post-Roe America*, Sept. 8, 2023, SEX REPROD HEALTH MATTERS, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10494721/> (citing Eschler J, Menking A, Fox S & Uba Backonja, *Defining Menstrual Literacy With the Aim of Evaluating Mobile Menstrual Tracking Applications*, 37 COMPUT INFORM NURS. 638–646 (2019), doi: 10.1097/CIN.0000000000000559).

1 future periods, engage in conversations with healthcare providers,” “recognize body patterns or  
2 identify any changes or abnormalities within their cycle.”<sup>10</sup>

3 **II. DATA PRIVACY CONCERNS SURROUNDING FERTILITY/MENSTRUAL**  
4 **TRACKING SOFTWARE/APPS**

5 23. While Inito markets its Fertility Tracker as a helpful tool that allows women to gain  
6 agency in their sexual and reproductive care, it fails to reasonably inform its users that using the  
7 tracker comes at great expense to users’ privacy.

8 24. The type of information a third party can infer from the data gathered through a  
9 menstruation tracker can be worth a lot of money. For example, “[t]he data of pregnant women is  
10 particularly valuable to advertisers: expecting parents are consumers who are likely to change to  
11 their purchasing habits . . . .”<sup>11</sup> Thus, while “an average person’s data is worth \$0.10” a “pregnant  
12 woman’s will be \$1.50.”<sup>12</sup> Further, the spending habits of a woman will vary based on the  
13 menstrual cycle phase they are in.<sup>13</sup> A study found that women in the luteal phase of their  
14 menstrual cycle – the phase in the cycle that “starts after ovulation and ends with the first day of  
15 [the] period”<sup>14</sup> – engaged in spending that was “less controlled, more impulsive and more  
16 excessive compared to earlier phases of their menstrual cycle.<sup>15</sup> Specifically, “almost two-thirds of  
17 women” in the luteal phase “spen[t] more money than they had intended to and [had] a greater  
18 incidence of unplanned spending or purchasing of items on impulse.”<sup>16</sup> Allowing third-party  
19 companies, and especially marketing companies such as Google, to access sensitive information  
20

21 \_\_\_\_\_  
<sup>10</sup> *Id.*

22 <sup>11</sup> *No Body’s Business but Mine: How Menstruation Apps Are Sharing Your Data*, PRIVACY INT’L  
23 (2019), [https://privacyinternational.org/long-read/3196/no-bodys-business-mine-how-](https://privacyinternational.org/long-read/3196/no-bodys-business-mine-how-menstruations-apps-are-sharing-your-data)  
[menstruations-apps-are-sharing-your-data](https://privacyinternational.org/long-read/3196/no-bodys-business-mine-how-menstruations-apps-are-sharing-your-data).

24 <sup>12</sup> *Id.*

25 <sup>13</sup> Karen J. Pine & Ben Fletcher, *Women’s spending behaviour is menstrual-cycle sensitive*, 50  
26 *Personality and Individual Differences* 74, (2011).

27 <sup>14</sup> All About the Luteal Phase of the Menstrual Cycle, [https://www.healthline.com/health/womens-](https://www.healthline.com/health/womens-health/luteal-phase#what-happens)  
[health/luteal-phase#what-happens](https://www.healthline.com/health/womens-health/luteal-phase#what-happens)

28 <sup>15</sup> *Supra*, note 12.

<sup>16</sup> *Id.*

1 about a consumer’s menstrual cycle, sexual health, and reproductive health places women in the  
2 compromised position of having their sensitive data used against them for targeted advertising.

3 25. Serious privacy concerns arise with companies’ practice of sharing reproductive and  
4 sexual health information – such as information collected via menstrual tracking apps – with  
5 unauthorized third parties. Allowing this data to be commoditized and sold to third-party  
6 companies deprives consumers of the ability to control information about their own bodies.

7 26. Aside from this sensitive data being used against fertility-tracking software users for  
8 marketing purposes, information on fertility-tracking apps that allows someone to infer a user had  
9 an abortion “could potentially become criminal evidence” given that some states in the United  
10 States have criminalized abortion.<sup>17</sup> “As such, the social and psychological consequences of this  
11 data being leaked are of a delicate and potentially humiliating nature, elevating the need to  
12 adequately protect this information.”<sup>18</sup>

13 **III. BACKGROUND OF THE CALIFORNIA INFORMATION PRIVACY ACT**

14 27. The California Information Privacy Act (“CIPA”), Cal. Penal Code § 630, *et seq.*,  
15 prohibits aiding or permitting another person to willfully – and without the consent of all parties to  
16 a communication – read or learn the contents or meaning of any message, report, or  
17 communication while the same is in transit or passing over any wire, line, or cable, or is being sent  
18 from or received at any place within California.

19 28. To establish liability under Cal. Penal Code § 631(a), a plaintiff need only establish  
20 that the defendant, “by means of any machine, instrument, contrivance, or in any other manner,”  
21 does any of the following:

22 Intentionally taps, or makes any unauthorized connection, whether physically,  
23 electrically, acoustically, inductively or otherwise, with any telegraph or telephone  
24 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any  
internal telephonic communication system,

25 Or

26  
27 <sup>17</sup> Kelly & Habib, *supra* note 7.

28 <sup>18</sup> Ahmed, *supra* note 5, at 1994.

1 Willfully and without the consent of all parties to the communication, or in any  
2 unauthorized manner, reads or attempts to read or learn the contents or meaning of  
3 any message, report, or communication while the same is in transit or passing over  
4 any wire, line or cable or is being sent from or received at any place within this state,  
5 Or

6 Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any  
7 way, any information so obtained,

8 Or

9 Aids, agrees with, employs, or conspires with any person or persons to unlawfully do,  
10 or permit, or cause to be done any of the acts or things mentioned above in this section.

11 29. Section 631(a)'s applicability is not limited to phone lines, but also applies to "new  
12 technologies" such as computers, the internet, and email. *See Matera v. Google Inc.*, 2016 WL  
13 8200619, at \*21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to "new technologies" and must be  
14 construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*,  
15 2006 WL 3798134, at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs "electronic  
16 communications"); *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020)  
17 (reversing dismissal of CIPA and common law privacy claims based on Meta's collection of  
18 consumers' internet browsing history).

19 30. Under Cal. Penal Code § 637.2, Plaintiff and Class Members may seek injunctive  
20 relief and statutory damages of \$5,000 per violation.

#### 21 **IV. DEFENDANT'S MOBILE APP**

22 31. Inito is an at-home ovulation testing kit manufacturer that focuses its business on  
23 assisting users with getting pregnant. Defendant states its mission is to "simplify healthcare and  
24 wellness by equipping every household with the most advanced health trackers"<sup>19</sup> As part of its  
25 business, Defendant provides users with a tracker that is accessible on mobile devices via its App.  
26 The Fertility Tracker is designed to track "everything so you don't have to."<sup>20</sup>

27 <sup>19</sup> *Supra* note 1.

28 <sup>20</sup> INITO, [https://try.inito.com/hormone-tracking/?campaignid=21009861827&adgroupid=164418300211&keyword=inito&device=c&gad\\_source=1&gclid=CjwKCAjw1920BhA3EiwAJT3lSd8qryqwaJ8mgeupMWuOdfOEWWhWpysqXp6vRXgEmF2AEUwnBnNBdhoC--EQA\\_vD\\_BwE](https://try.inito.com/hormone-tracking/?campaignid=21009861827&adgroupid=164418300211&keyword=inito&device=c&gad_source=1&gclid=CjwKCAjw1920BhA3EiwAJT3lSd8qryqwaJ8mgeupMWuOdfOEWWhWpysqXp6vRXgEmF2AEUwnBnNBdhoC--EQA_vD_BwE).



1 **V. TESTING REVEALS THAT DEFENDAN ENABLES GOOGLE TO INTERCEPT**  
 2 **USERS' SENSITIVE COMMUNICATIONS WITH DEFENDANT VIA THE APP**

3 32. Defendant has enabled, and continues to enable, Google to intercept users' answers  
 4 to Defendant's Survey, including whether the user is trying to get pregnant, how long the user has  
 5 been trying to conceive, and the user's prior medical history, along with the fact that the user is  
 6 using the Fertility Tracker and used the tracker to calculate their predicted ovulating/fertile days  
 7 and menstruating days in the current or upcoming menstrual cycle.

8 33. Defendant aided and assisted the above-described interceptions through the use of  
 9 Google's Google Analytics software, run through Google's Firebase platform for mobile  
 10 applications. Specifically, Google intercepted, and continues to intercept, Survey answers through  
 11 a tool used by the Firebase platform – namely, <https://app-measurement.com>.<sup>21</sup>

12 34. Google intercepted, and continues to intercept, the communications at issue in a data  
 13 format called Protocol Buffers, or Protobuf. Protobuf is a format that Google designed to make  
 14 data serialization and deserialization more efficient.<sup>22</sup>

15 35. Data serialization is a “process of converting an object into a stream of bytes to  
 16 more easily save or transmit it.”<sup>23</sup> “Serialization enables us to save the state of an object and  
 17 recreate the object in a new location.”<sup>24</sup> In sum, serialization “encompasses both the storage of the  
 18 object and exchange of data.”<sup>25</sup> The deserialization process then “recreates the object.”<sup>26</sup>

19 36. Protobuf is “like JSON, except it's smaller and faster.”<sup>27</sup> It is the “most commonly-  
 20 used data format at Google.”<sup>28</sup>

21 <sup>21</sup> Kate O'Flaherty, *Meet Lockdown, The App That Reveals Who's Tracking You on Your iPhone*,  
 22 Forbes (Mar. 6, 2020), <https://www.forbes.com/sites/kateoflahertyuk/2020/03/06/meet-lockdown-the-app-that-reveals-whos-tracking-you-on-your-iphone/>.

23 <sup>22</sup> Gbadebo Bello, *What is Protobuf?*, (Feb. 13, 2024) <https://blog.postman.com/what-is-protobuf/>.

24 <sup>23</sup> *What is Serialization?*, HAZELCAST, <https://hazelcast.com/glossary/serialization/>.

25 <sup>24</sup> *Id.*

26 <sup>25</sup> *Id.*

27 <sup>26</sup> *Id.*

28 <sup>27</sup> Protocol Buffers Documentation, <https://protobuf.dev/overview/#:~:text=Protocol%20Buffers%20are%20a%20language,it%20generates%20native%20language%20bindings.>

<sup>28</sup> *Id.*

37. Figure 1 shows a summary of the data and communications transmissions from the InitoApp to Google when a user answers Defendant’s Survey questions:

**Figure 1**

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Phone16,2
ios 17.4.1
75EE839C-AF62-4A33-9863-3CC126AD8C2D
United States
UserAge 28 years
UserHeight 158 cms
UserWeight 147 lb
CycleRange 2024-04-19 - 2024-05-24
localTime 16:48
IsPregnancyCycle no
AppGoal Get pregnant
averageCycleLength 35.5
HowLongTryingToConceive More than 1 year
AnyPastIssues PCOS/PCOD
oneFertilityTreatment Fertility Medications
UsedFertilityKits Period Tracking Apps
currentMode CyclePrediction
cyclesSinceOnboarding 1
currentCycleDay 12
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**VI. GOOGLE’S FIREBASE PLATFORM**

38. Defendant utilizes Google’s website and app development platform, Firebase, thereby intentionally and knowingly integrating the Google Analytics software into its App. Defendant enables Google to intercept Plaintiff’s and Class Members’ communications by integrating and embedding Google Analytics into the App through the Firebase platform in the manner described throughout this Complaint.<sup>29</sup>

39. “At the heart of Firebase is Google Analytics, an unlimited analytics solution available at no charge”<sup>30</sup> to the Firebase customers. Google Analytics “help[s] [app owners] understand clearly how [] users behave, which enables [them] to make informed decisions regarding app marketing and performance optimizations.”<sup>31</sup>

<sup>29</sup> FIREBASE, GOOGLE ANALYTICS, <https://firebase.google.com/docs/analytics>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

1           40. The Google Analytics software, is a piece of code installed on a website or app that  
2 collects information on how website or app users interact with a business’s platform, such as “how  
3 many users bought an item ... by tracking whether they made it to the purchase-confirmation  
4 page.”<sup>32</sup>

5           41. The Google Analytics software development kit “automatically captures a number  
6 of events and user properties and also allows [Firebase users] to define [their] own custom events  
7 to measure the things that uniquely matter to [their] business.”<sup>33</sup> Once Google Analytics intercepts  
8 an app user’s data and communications, that information “is available in a dashboard through the  
9 Firebase console.”<sup>34</sup> Importantly, in order to provide “detailed insights” about the information,  
10 Google analyzes the information before providing it to any entity that was a party to the  
11 conversation (*e.g.*, Defendant) through the Firebase console.<sup>35</sup>

12           42. When a user accesses a website or app hosting Google Analytics, Google’s software  
13 surreptitiously directs the user’s browser or app to simultaneously send a separate message to  
14 Google’s servers. This second, secret transmission contains the data Google Analytics is  
15 configured to collect. This transmission is initiated by Google code and concurrent with the  
16 communications with the host website or app. In other words, when a user communicates with  
17 Defendant’s App, those communications are simultaneously and contemporaneously duplicated  
18 and sent to Google at the same time as they are being sent to Defendant. Thus, Google’s  
19 interception of these communications occurs “in transit.”

20           43. Once Google intercepts communications, it has the capability to use such  
21 information for its own purposes beyond recording the communications for the website and app  
22 owners. “Google uses the information shared by sites and apps to deliver [] services, maintain and  
23 improve them, develop new services, measure the effectiveness of advertising, protect against  
24

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25  
26 <sup>32</sup> *Id.*

27 <sup>33</sup> *Id.*

28 <sup>34</sup> *Id.*

<sup>35</sup> *Id.*

1 fraud and abuse, and personalize content and ads you see on Google and on [] partners' sites and  
2 apps."<sup>36</sup>

3 44. Google's business model involves entering into voluntary partnerships with various  
4 companies and surveilling communications on their partners' websites and apps with Google  
5 Analytics.

6 45. Thus, through websites and apps that employ Google's services, such as Inito's  
7 App, Google directly intercepts the electronic communications of platform visitors such as answers  
8 to the Survey.

9 46. Google's range of software services is based on Google's ability to collect and  
10 analyze information about individuals' online behavior and deliver targeted advertising to select  
11 individuals based on their online habits. This involves collecting information from thousands of  
12 websites and apps and then analyzing that information in order to deliver targeted advertising and  
13 group individuals for targeting.

14 47. Information from apps, like Defendant's App, is central to Google's ability to  
15 successfully market its advertising capabilities to future clients.

16 48. In sum, Google has the capability to use app communications to: (i) improve its own  
17 products and services; (ii) develop new Google for Business and Google Analytics products and  
18 services; and (iii) analyze app visitors' communications to assist with data analytics and targeted  
19 advertising.

20 **VII. HOW DEFENDANT AIDED AND ASSISTED GOOGLE'S INTERCEPTION OF**  
21 **PLAINTIFF'S AND CLASS MEMBERS' SENSITIVE COMMUNICATIONS**  
22 **ABOUT THEIR SEXUAL AND REPRODUCTIVE HEALTH**

23 49. At relevant times, Defendant installed and embedded Google Analytics software  
24 into the code of its App to track its users' actions when using its Fertility Tracker. Through the use  
25 of Google Analytics, Defendant aided and assisted Google in intercepting Plaintiff's and Class  
26 Members' communications with Defendant as they answered questions to Defendant's Survey,  
27 including whether the user was trying to get pregnant, how long the user had been trying to

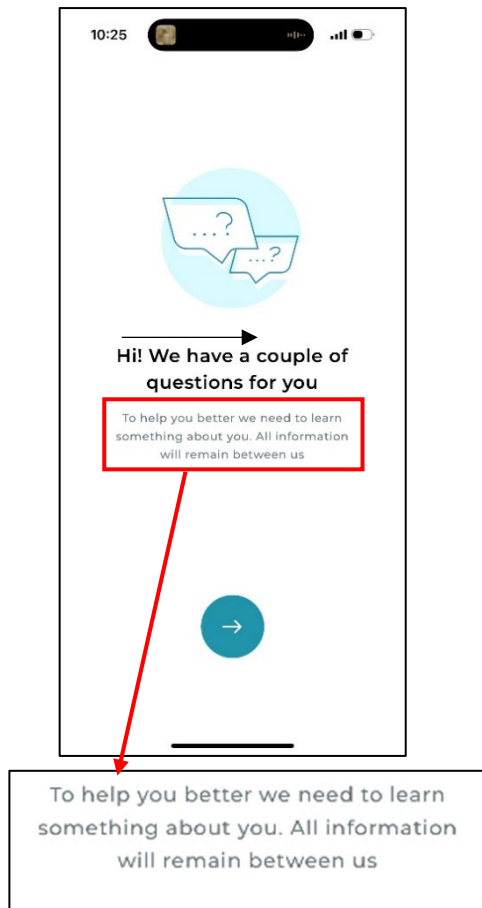
28 <sup>36</sup> GOOGLE, GOOGLE PRIVACY AND TERMS, <https://policies.google.com/technologies/partner-sites>.

1 conceive, and the user’s prior medical history, along with the fact that users were using a Fertility  
2 Tracker and used the tracker to calculate their predicted ovulating/fertile days and menstruating  
3 days in the current or upcoming menstrual cycle.

4 50. The following is an example of the communications Defendant aided and assisted  
5 Google in intercepting via the App.

6 51. When a person uses Defendant’s Fertility Tracker via the App to calculate the  
7 pertinent information that the Fertility Tracker provides – *e.g.*, the person’s predicted  
8 ovulation/fertility period and predicted menstruating period for the current or upcoming menstrual  
9 cycle – the App prompts the user to answer a number of questions related to the user’s sexual and  
10 reproductive health. Significantly, Defendant initially informs users via the App that “all  
11 information will remain between us,” reassuring users that their sensitive data will be kept  
12 confidential. *See* Figure 2.

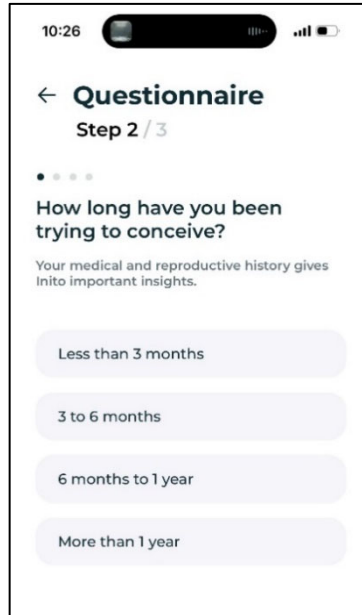
13 **Figure 2**



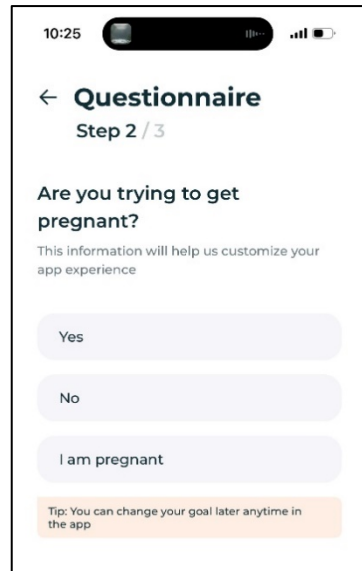


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**Figure 4**

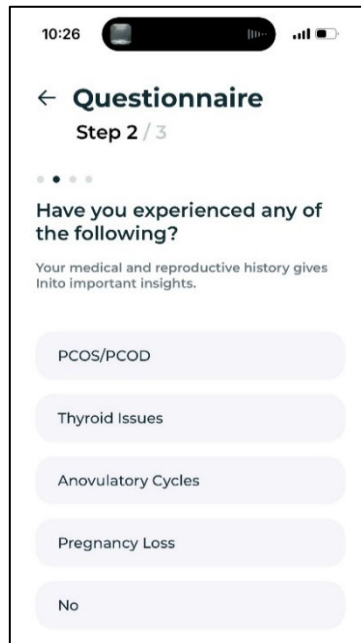


**Figure 5**



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**Figure 6**



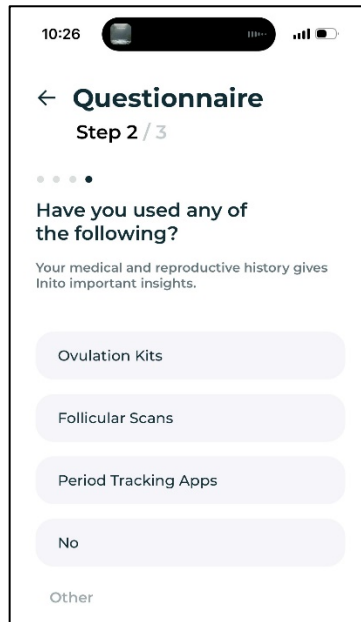
**Figure 7**



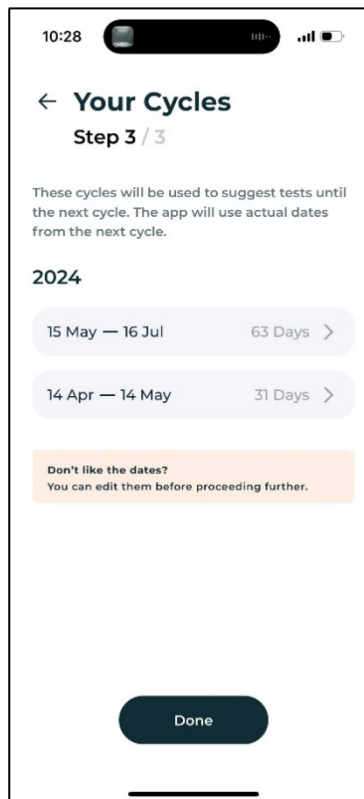


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**Figure 8**



**Figure 9**





1           60.     **Numerosity.** Members of the Classes are so numerous that joinder of all members  
2 would be unfeasible and not practicable. The exact number of Class Members is unknown to  
3 Plaintiff at this time; however, it is estimated that there are hundreds of thousands of individuals in  
4 the Class. Class Members can be readily identified from Inito’s records and non-party records,  
5 such as those of Google.

6           61.     **Typicality.** Plaintiff’s claims are typical of the claims of the Classes because  
7 Plaintiff, like all other members, used Inito’s App and had her confidential electronic  
8 communications intercepted and disclosed to a third party.

9           62.     **Adequacy.** Plaintiff is fully prepared to take all necessary steps to represent fairly  
10 and adequately the interests of the Classes. Plaintiff’s interests are coincident with, and not  
11 antagonistic to, those of the members of the Classes. Plaintiff is represented by attorneys with  
12 experience in the prosecution of class action litigation generally and in the emerging field of digital  
13 privacy litigation specifically. Plaintiff’s attorneys are committed to vigorously prosecuting this  
14 action on behalf of the members of the Classes.

15           63.     **Common Questions of Law and Fact Predominate.** Questions of law and fact  
16 common to the members of the Classes predominate over questions that may affect only individual  
17 members of the Classes because Defendant has acted on grounds generally applicable to the Class.  
18 Such generally applicable conduct is inherent in Defendant’s wrongful conduct. Questions of law  
19 and fact common to the Classes include, but are not limited to, the following: whether Defendant  
20 violated CIPA § 631 and whether Plaintiff and the proposed Class Members are entitled to  
21 damages, reasonable attorneys’ fees, pre-judgment interest and costs of this suit.

22           64.     **Superiority.** Class action treatment is a superior method for the fair and efficient  
23 adjudication of the controversy. Such treatment will permit a large number of similarly situated  
24 persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
25 without the unnecessary duplication of evidence, effort, or expense that numerous individual  
26 actions would engender. The benefits of proceeding through the class mechanism, including  
27 providing injured persons or entities a method for obtaining redress on claims that could not  
28 practicably be pursued individually, substantially outweigh potential difficulties in the management

1 of this class action. Plaintiff knows of no special difficulty to be encountered in litigating this  
2 action that would preclude its maintenance as a class action.

3 **COUNT I**  
4 **Violation Of The California Invasion Of Privacy Act,**  
5 **Cal. Penal Code § 631**  
6 **(On Behalf Of The Nationwide Class and California Subclass)**

7 65. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth  
8 herein.

9 66. Plaintiff brings this claim against Defendant, Inito individually and on behalf of the  
10 Classes.

11 67. To establish liability under CIPA § 631(a), a plaintiff need only establish that the  
12 defendant, “by means of any machine, instrument, contrivance, or in any other manner,” does any  
13 of the following:

14 Intentionally taps, or makes any unauthorized connection, whether  
15 physically, electrically, acoustically, inductively or otherwise, with any  
16 telegraph or telephone wire, line, cable, or instrument, including the wire,  
17 line, cable, or instrument of any internal telephonic communication  
18 system,

19 *Or*

20 Willfully and without the consent of all parties to the communication, or  
21 in any unauthorized manner, reads or attempts to read or learn the  
22 contents or meaning of any message, report, or communication while the  
23 same is in transit or passing over any wire, line or cable or is being sent  
24 from or received at any place within this state,

25 *Or*

26 Uses, or attempts to use, in any manner, or for any purpose, or to  
27 communicate in any way, any information so obtained,

28 *Or*

Aids, agrees with, employs, or conspires with any person or persons to  
unlawfully do, or permit, or cause to be done any of the acts or things  
mentioned above in this section.

68. CIPA § 631(a) is not limited to phone lines, but also applies to “new technologies”  
such as computers, the Internet, and email. *See Matera v. Google Inc.*, 2016 WL 8200619, at \*21  
(N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to  
effectuate its remedial purpose of protecting privacy); *see also Javier v. Assurance IQ, LLC*, 2022

1 WL 1744107, at \*1 (9th Cir. May 31, 2022) (“Though written in terms of wiretapping, Section  
2 631(a) applies to Internet communications.”).

3 69. Google’s Google Analytics software is a “machine, instrument, contrivance, or ...  
4 other manner” used to engage in the prohibited conduct at issue here.

5 70. Moreover, Google, is a separate legal entity from Defendant that offers software-as-  
6 a-service and not merely a passive device. Further, Google has the capability to use the intercepted  
7 information for its own purposes. Accordingly, at relevant times, Google was, and continues to be,  
8 a third party to any communication between Plaintiff and Class Members, on the one hand, and  
9 Defendant, on the other.

10 71. At relevant times, Google, willfully and without the consent of all parties to the  
11 communication, or in any unauthorized manner, read, attempted to read, and/or learned the  
12 contents or meaning of electronic communications of Plaintiff and Class Members, on the one  
13 hand, and Defendant, on the other, while the electronic communications were in transit or were  
14 being sent from or received at any place within California.

15 72. At relevant times, Google used or attempted to use the communications intercepted  
16 by its Google Analytics software via the Firebase platform to promote and improve its advertising  
17 platforms.

18 73. At relevant times, Defendant aided, agreed with, employed, permitted, or otherwise  
19 enabled Google to wiretap Plaintiff and Class Members communications with Defendant via the  
20 App using Google Analytics through the Firebase platform to accomplish the wrongful conduct at  
21 issue here.

22 74. Plaintiff and Class Members did not provide their prior consent to third parties’  
23 intentional access, interception, reading, learning, recording, collection, and usage of Plaintiff’s  
24 and Class Members’ electronic communications. Nor did Plaintiff and Class Members provide  
25 their prior consent to Defendant aiding, agreeing with, employing, permitting, or otherwise  
26 enabling Google’s conduct.









**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury on all claims so triable.

Dated: November 25, 2024

**BURSOR & FISHER, P.A.**

By: /s/ Brittany S. Scott  
Brittany S. Scott

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