



Client Alert

California AG Reaches “Landmark” Settlement of Data Privacy Allegations Against Creator of Women’s Healthcare App

September 25, 2020

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On September 17, 2020, California’s Attorney General announced a civil complaint and, simultaneously, a negotiated settlement with fertility-tracking app creator Glow Inc., stemming from alleged data security flaws in Glow’s app that exposed users’ healthcare information. The alleged violations included breaches of California medical privacy, data security, and consumer fraud laws.

According to the settlement documents filed by the AG, Glow’s app gives users insight into their fertility by analyzing their personal health information, including ovulation cycles, current and past medications, sexual experiences, pregnancy test results, and previous pregnancies. Glow also has a “Partner Connect” feature, which allows users to share their fertility information with a partner by linking accounts.

While the AG’s filings do not reference any actual breach of user data, the AG alleges two security vulnerabilities in Glow’s app that “put its users’ data at risk.” First, the app’s Partner Connect feature allegedly “would automatically grant linking requests without any authorization or confirmation from the user who was about to have their information shared.” Second, the app’s password change function allegedly did not require verification of the old password, and thus created the risk that third parties “could” change a user’s password without verification by the original user.

In resolving these claims, Glow agreed to pay a \$250,000 fine and to implement, document, and maintain a cybersecurity program that adequately safeguards personal health information against unauthorized access. In a provision lauded by the AG as a “landmark,” “first-ever injunctive term,” when designing its cybersecurity program, Glow must specifically consider how “privacy or security lapses may impact online threats affecting women and online risks that women face, or could face, including gender-based risks, from privacy and security lapses.” Glow was not required to admit liability or to concede any of the legal or factual allegations made by the AG.

One striking feature of the Glow civil complaint filed by the AG is the breadth of the claims. In addition to violations of California’s health privacy laws, the complaint charges Glow with false advertising on the theory that Glow’s security practices contradicted its own privacy policy as well as violations of California’s data security law requirement to maintain reasonable data security measures.

The Glow settlement signals a possible paradigm shift in how data privacy authorities in the United States will approach data protection issues in the future. Up to this point, data privacy enforcement actions—including those brought by the California AG—have focused nearly exclusively on large-scale, well-publicized data breaches that impacted sensitive consumer data. But the Glow settlement is distinct in two notable ways.

First, there does not appear to have been any large-scale data breach associated with the app—or, at least not one that has been publicly identified. The Glow settlement raises the specter of enforcement even where a business was able to avoid a data breach.

Second, the Glow settlement reflects a shift away from enforcement authorities almost always focusing on the type of data at issue, without significant attention to the groups of users impacted by potential security flaws. Glow's mandate to design a security program focusing on the unique risks posed to women online puts businesses on notice that it may no longer be sufficient to think solely in terms of what types of data they process but to make more considered judgments about addressing the privacy risks unique to particular groups of users.

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