

DEC 18 2019

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KENNETH WILLIAM MORRISON

PLAINTIFF

AND:

LIFELABS BC INC.

DEFENDANT

NOTICE OF CIVIL CLAIM

Brought pursuant to the Class Proceedings Act, RSBC 1996, c-50

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff:

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Kennet William Morrison, is a retired computer technician, resident in Vancouver, British Columbia, with an address for service at 302 – 543 Granville Street, Vancouver, British Columbia.
2. Since about 2014, the Plaintiff has been a customer of LifeLabs BC Inc., as defined below.
3. The Defendant, LifeLabs BC Inc. (“Life Labs”) is a company incorporated in British Columbia with a registered office at 3680 Gilmore Way, Burnaby, British Columbia, V5G 4V8 and a records office at 2900 – 550 Burrard Street, Vancouver, B.C. V6C 03A.
4. At all material times, Life Labs operated a business of providing medical laboratory tests (“the Lab Testing”) to individual customers in British Columbia (“the Test Subjects”), including the Plaintiff.
5. In the course of carrying out the Lab Testing, Life Labs collected, used and stored highly sensitive personal information of the Test Subjects, including the Plaintiff (“the Personal Information”).
6. The Personal Information includes medical information, lab test results, birth dates, government issued personal health numbers, personal addresses, phone numbers, email addresses and passwords (“the Personal Information”).
7. Each of the Test Subjects, including the Plaintiff, entered identical or substantially similar contracts with Life Labs for the provision medical lab testing services and with respect to the collection, use, retention, and disclosure of personal information incidental to the provision of those services (“the Contract”).

8. The Contract contained the following express or implied terms:
- a) Life Labs would comply with all relevant statutory obligations regarding the collection, use, retention, and disclosure of the Test Subject's personal information, including the obligations set out in the *Personal Information Protection Act*, SBC 2003, c 63 ("PIPA").
 - b) Life Labs would not collect, use, retain, or disclose the Personal Information except in the manner and for the purposes expressly authorized by the Contract or PIPA;
 - c) Life Labs would keep the Personal Information secure and confidential;
 - d) Life Labs would not disclose the Personal Information without consent;
 - e) Life Labs would protect the Personal Information by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks; and
 - f) Life Labs would delete, destroy, or not retain the Personal Information as soon as it is reasonable to assume that (i) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and (ii) retention is no longer necessary for legal or business purposes.

9. In storing the Personal Information:

- a) Life Labs, having knowledge or constructive knowledge of the risk of data breach, failed to implement sufficiently strong encryption and security safeguards to prevent the Personal Information from being subject to unauthorized access, collection, use, disclosure and copying;
- b) Life Labs failed to delete/destroy (in a timely and secure manner) that Personal Information for which the purpose of collection was no longer served by retention and for which retention was no longer necessary for legal or business purposes;
- c) Life Labs failed to treat privacy and security as its top priorities; and
- d) Life Labs failed to implement, manage and/or update systems for ongoing monitoring and maintenance to address evolving digital vulnerabilities and threats so as to reasonably protect against breach.

("the Storage Breach").

- 10. At all material times, Life Labs had its own privacy policies and security measures which it failed to sufficiently adhere to in its conduct amounting to the Storage Breach.
- 11. Life Labs was reckless in its conduct amounting to the Storage Breach.
- 12. As a result of the Storage Breach, one or more cybercriminal was able to remotely access and

seize the Personal Information.

13. As a result of the Storage Breach, the Test Subjects, including the Plaintiff, have suffered an intrusion upon seclusion, a loss of personal security and a highly offensive invasion into their private affairs.
14. As a result of the Storage Breach, the Test Subject, including the Plaintiff, have been exposed to a real and substantial risk of identity theft, cybercrime, phishing, extortion and further disclosure of their highly sensitive medical information.
15. The Plaintiff brings this action on his own behalf, and on behalf of a proposed class of individuals (the "Class") consisting of:

All British Columbia resident persons who have been customers of Life Labs prior to December 17, 2019.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of the Class members, seeks the following relief:
 - a) An order certifying this action as a class action pursuant to the *Class Proceedings Act*, RSBC 1996, c 50.
 - b) General damages, assessed in the aggregate pursuant to section 29(1) of the *Class Proceedings Act*;
 - c) Punitive damages, assessed in the aggregate pursuant to section 29(1) of the *Class Proceedings Act*;
 - d) Pre- and post-judgment interest pursuant to the *Court Order Interest Act* RSBC 1996, c 79; and
 - e) Such further and other relief as this Honourable Court may deem necessary.

Part 3: LEGAL BASIS

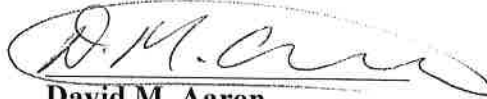
1. The plaintiff pleads and relies upon the *Class Proceedings Act*, RSBC 1996, c 50.
2. By way of the Storage Breach, Life Labs:
 - a. committed the torts of negligence and intrusion upon seclusion;
 - b. violated sections 34 and 35 PIPA; and
 - c. breached the Contract.

3. At all material times, Life Labs owed the Test Subjects, including the Plaintiff, a common law duty of care with respect to the secure storage of the Personal Information to prevent unauthorized access, collection, use, disclosure and copying. The said duty of care arises from Life Labs' own privacy policies and security measures.
4. Life Labs owed the Test Subjects, including the Plaintiff, the highest standard of care. Given the sensitivity of the Personal Information, the Defendant should have had the strongest encryption and security measures in place and should have been diligent with respect to the destruction of Personal Information where retention was not longer necessary or permitted.
5. Life Labs breached the said duty of care and standard of care, and thereby committed the tort of negligence, by failing to implement sufficient encryption and security to prevent the Personal Information from unauthorized access, collection, use, disclosure and copying and by omitting to destroy the Personal Information where its retention was no longer necessary or permissible.
6. The Storage Breach caused the Test Subjects, including the Plaintiff, to suffer harm that was reasonably foreseeable.
7. The Plaintiff pleads and relies on the *Negligence Act* [RSBC 1996] chapter 333.
8. The Personal Information is "personal information" as defined in section 1 of the *Personal Information Protection Act* [SBC 2003] c. 63 ("PIPA").
9. The Plaintiff pleads and relies on the tort of intrusion upon seclusion. The Storage Breach caused an invasion that a reasonable person would regard as highly offensive, causing distress, humiliation or anguish.
10. Life Labs is an "organization" as defined in section 1 of PIPA.
11. By failing to implement sufficient encryption and security, Life Labs breached section 34 of PIPA which requires that an organization must protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks.
12. Life Labs breached section 35 of PIPA by failing to destroy the Personal Information as required by that section.
13. The relationship between Life Labs and each of the Test Subjects was governed in part by the Contract, which Life Labs breached by the Storage Breach.

Plaintiff's address for service: c/o David M. Aaron, Barrister & Solicitor
#302 - 543 Granville Street, Vancouver, B.C. V6C 1X8
Fax number for service: 604-669-4737
E-mail address for service: david@legalmind.ca
Place of trial: Vancouver, British Columbia

The address of the registry is 800 Smithe Street, Vancouver B.C., V6Z 2E1

Dated: December 18, 2019



David M. Aaron
Lawyer for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for violation of privacy.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning: Land use

Part 3: THIS CLAIM INVOLVES:

A class action.

Part 4: ENACTMENTS BEING RELIED ON:

Class Proceedings Act, RSBC 1996, c 50.

Negligence Act [RSBC 1996] c 333.

Personal Information Protection Act [SBC 2003] c 63.