



Court File No:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 19-Dec-2019  
Délivré par voie électronique :  
Toronto

**MICHAEL FELDBERG and DANIEL FELDBERG**

Plaintiffs

- and -

**LIFELABS INC, LIFELABS LP,  
LIFELABS BC INC., and EXCELLERIS TECHNOLOGIES INC**

Defendants

**NOTICE OF ACTION**

Proceeding under the *Class Proceedings Act, 1992*

**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

**Date:** .....

Issued by: .....  
Local Registrar

Address of court office:  
393 University Ave  
Toronto, ON M5G 1E6

**TO: LIFELABS INC**  
100 International Boulevard  
Toronto, ON M9W 6J6

**AND TO: LIFELABS LP**  
100 International Boulevard  
Toronto, ON M9W 6J6

**AND TO: LIFELABS BC INC.**  
100 International Boulevard  
Toronto, ON M9W 6J6

**AND TO: EXCELLERIS TECHNOLOGIES INC.**  
100 International Boulevard  
Toronto, ON M9W 6J6

## **OVERVIEW**

1. LifeLabs is one of the largest medical testing companies in the world, providing diagnostic medical testing services, including specimen collection, laboratory testing, and reporting of results to patients and health practitioners, across Canada. Each year, LifeLabs performs over 112 million laboratory tests on Canadians.

2. Sometime prior to November 1, 2019, LifeLabs suffered a cyberattack in which hackers penetrated LifeLabs' computer network, and extracted the personal health information and other private information of an estimated 15 million Canadians. This highly sensitive information included, but is not limited to, medical lab test results, health card numbers, names, addresses, emails, login information, passwords, and dates of birth (collectively the "Personal Information"). After gaining access to LifeLabs' computer network, the hackers demanded, and LifeLabs paid, an undisclosed amount of money as ransom in an attempt to secure the data. It was not until almost two months later, on December 17, 2019, that LifeLabs made a public announcement regarding the cyberattack and the resulting privacy breach.

3. The plaintiffs bring this action on behalf of all persons residing in Canada whose Personal Information was stolen or accessed without authorization as part of this cyberattack (the "Class" or "Class Members").

## **RELIEF SOUGHT**

4. As a result of the defendants' actions, and in particular the failure to adequately protect the extremely sensitive Personal Information, including personal health information, of the plaintiffs and Class, the plaintiffs and Class have suffered and will continue to suffer damages.

5. The plaintiffs, on their own behalf and on behalf of the Class Members, claim:
- (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), certifying this action as a class proceeding and appointing them as representative plaintiffs of the Class;
  - (b) a declaration that the defendants owed a duty of care to the plaintiffs and the Class Members, and breached the standard of care owed to them;
  - (c) a declaration that the defendants are liable in breach of contract;
  - (d) a declaration that the defendants breached the confidence of the plaintiffs and the Class Members;
  - (e) a declaration that the defendants intruded upon the seclusion of the Class Members or, in the alternative, are jointly and severally liable for intruding upon the seclusion of the Class Members;
  - (f) a declaration that the defendants violated the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A, and other equivalent provincial and territorial consumer protection legislation;
  - (g) a declaration that the defendants breached the statutory privacy rights of the Class Members, including those as set out in the *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A and other equivalent provincial and territorial personal health information protection legislation;
  - (h) a declaration that the defendants were unjustly enriched, to the deprivation of the Class Members;
  - (i) damages in an amount to be determined prior to trial;
  - (j) punitive damages;

- (k) an order, pursuant to s. 24 of the *CPA*, directing an aggregate assessment of damages;
- (l) an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
- (m) pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (n) costs of this action on a substantial indemnity basis, together with applicable HST or other applicable taxes thereon;
- (o) the costs of administering the plan of distribution of the recovery in this action; and
- (p) such further and other relief as this Honourable Court deems just.

## **THE PARTIES**

### **Plaintiffs**

6. The plaintiff Michael Feldberg (“Michael”) resides in Toronto, Ontario. Michael has attended at LifeLabs for medical testing on numerous occasions over the last ten years, with the result that LifeLabs has collected and retained a significant amount of Michael’s personal health information, including his health card number and test results, and personal information including name, address, telephone numbers, and email address. Since at least 2015, Michael has maintained an account on the LifeLabs website that provides him with online access to his personal health information held by LifeLabs. In addition to his personal health information which was collected and retained by LifeLabs, Michael was required to provide LifeLabs with additional personal information in order to sign up for an online account, including his name, address, email, login information, password, date of birth, and credit card information.

7. The plaintiff Daniel Feldberg (“Daniel”) resides in Toronto, Ontario. Daniel has attended at LifeLabs for medical testing on numerous occasions over the last ten years, with the result that LifeLabs has collected and retained a significant amount of Daniel’s personal health information, including his health card number and test results. Daniel has also provided to LifeLabs, or LifeLabs otherwise has access to, additional personal information, including his name, address, email, and date of birth.

### **Defendants**

8. The defendant LifeLabs Inc. is incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, and headquartered in Toronto, Ontario.

9. LifeLabs Inc. is the general partner of the defendant LifeLabs LP, a limited partnership incorporated under the laws of Ontario and headquartered in Toronto, Ontario. LifeLabs LP does business under the registered name LifeLabs.

10. LifeLabs is comprised of four corporate divisions: LifeLabs Medical Laboratory Services, LifeLabs Genetics, Rocky Mountain Analytical, and Excelleris. Excelleris provides e-health services, including providing electronic access to, and storage of, health care information and lab results to patients, healthcare providers, hospitals and health authorities. Both LifeLabs and Excelleris are health information custodians pursuant to the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A.

11. Excelleris is operated by the defendant Excelleris Technologies Inc., a corporation incorporated under the laws of British Columbia and headquartered in Vancouver, British Columbia, with an extra-provincial registration in Ontario. Excelleris Technologies Inc. is a wholly owned subsidiary of LifeLabs Inc. and carries on business in Ontario.

12. The defendant LifeLabs BC Inc. is a corporation registered in British Columbia with an extra-provincial registration in Ontario. Lifelabs BC Inc. is a related company or subsidiary to Lifelabs Inc.

### **CONNECTION TO ONTARIO**

13. The plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) the defendants LifeLab Inc. and LifeLab LP's corporate headquarters are in Ontario;
- (b) the defendants LifeLabs BC Inc. and Excelleris Technologies Inc. are registered to conduct business in Ontario and have a principle place of business in Ontario;
- (c) the defendants have and continue to conduct business in Ontario;
- (d) the various torts relating to the subject matter of this action were committed in Ontario;
- (e) the Class Members Personal Information was transmitted in and through Ontario;
- (f) the plaintiffs are resident in Ontario; and
- (g) a substantial majority of Class Members reside in Ontario.

### **PLACE OF TRIAL**

14. The plaintiffs propose that this action be tried at the City of Toronto.

Date: December 19, 2019

**WADDELL PHILLIPS PC**  
36 Toronto Street, Suite 1120  
Toronto, Ontario M5C 2C5  
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**David Fogel (LSO #58572A)**

Lawyers for the Plaintiffs

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Plaintiffs

and

LABS INC. et al.

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF ACTION**

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PROFESSIONAL CORPORATION**

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