

CV-16-553271  
Court File No. -00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CHRISTINE CHRISSIKOS**

Plaintiff

-and-

**JUST ARRIVED BABY PHOTOGRAPHY INC., MOUNT SINAI HOSPITAL, NORTH YORK GENERAL HOSPITAL, ST. JOSEPH'S HEALTH CENTRE, HUMBER RIVER HOSPITAL, THE TORONTO EAST GENERAL HOSPITAL, and ROUGE VALLEY HEALTH SYSTEM**

Defendants

Proceeding under the *Class Proceedings Act, 1992*



**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

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 Plaintiff's lawyers or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

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: *May 20, 2016*

Issued by

  
Local Registrar *(Mr Brentan)*

Address of court office:  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

TO: **JUST ARRIVED BABY PHOTOGRAPHY INC.**  
716 - 2525 Willow Street  
Vancouver, British Columbia, Canada  
V5Z 3N8

AND TO: **MOUNT SINAI HOSPITAL**  
600 University Avenue  
Toronto, Ontario, Canada  
M5G 1X5

AND TO: **NORTH YORK GENERAL HOSPITAL**  
4001 Leslie Street  
Toronto, Ontario, Canada  
M2K 1E1

AND TO: **ST. JOSEPH'S HEALTH CENTRE**  
30 The Queensway  
Toronto, Ontario, Canada  
M6R 1B5

AND TO: **HUMBER RIVER HOSPITAL**  
2111 Finch Avenue West  
Toronto, Ontario, Canada  
M3N 1N1

AND TO: **THE TORONTO EAST GENERAL HOSPITAL**  
825 Coxwell Avenue  
Toronto, Ontario, Canada  
M4C 3E7

AND TO: **ROUGE VALLEY HEALTH SYSTEM**  
2867 Ellesmere Road  
Scarborough, Ontario, Canada  
M1E 4B9

## CLAIM

1. The Plaintiff Christine Chrissikos claims on her own behalf and on behalf of the Class Members (as defined below):

- 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 her as representative plaintiff for the Class (as defined below);
- b) A declaration that the Defendants committed the tort of intrusion upon seclusion;
- c) A declaration that the Defendants Mount Sinai Hospital, North York General Hospital, St. Joseph’s Health Centre, Humber River Hospital, The Toronto East General Hospital, and Rouge Valley Health System (collectively the “Hospital Defendants”) were in breach of contract and warranty;
- d) A declaration that the Hospital Defendants owed a duty of care to the Plaintiff and other Class Members, and these Defendants breached that duty causing the Plaintiff and other Class Members to suffer damages;
- e) A declaration that the Defendants are liable for the tort of civil conspiracy;
- f) Damages for breach of contract, breach of warranty, intrusion upon seclusion, negligence, and conspiracy, including the costs of administering the plan of distribution of recovery in this action, in the sum of \$400,000,000.00, or such other sum as this Honourable Court finds appropriate;
- g) Special damages in an amount to be determined, including but not limited to,
  - i) Costs of credit monitoring;
  - ii) Costs of identity theft insurance;

- iii) Costs incurred to remedy and prevent identity theft; and
- iv) Out-of-pocket expenses;
- h) Exemplary, punitive, and/or aggravated damages in the amount of \$100,000,000.00;
- i) Pre-judgment and post-judgment interest on the damages in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- j) Costs of this action on a substantial indemnity basis, together with applicable harmonized sales tax thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
- k) Such further and other relief as this Honourable Court may deem just.

#### **THE NATURE OF THIS ACTION**

2. This action concerns breaches of the Plaintiff's and other Class Members' privacy relating to personal information provided to hospitals in the course of obtaining medical treatment. As part of a commercial arrangement, the Hospital Defendants inappropriately compiled a daily list of the personal information of new mothers and routinely provided the list to a third party baby photography company for the sole purpose of selling baby photography services to the new mothers.

3. From approximately 2009 to 2014, the Defendants Mount Sinai Hospital, North York General Hospital, St. Joseph's Health Centre, Humber River Hospital, The Toronto East General Hospital, and Rouge Valley Health System inappropriately provided the personal information of, and access to, tens of thousands of new mothers to Just Arrived Baby Photography Inc. in exchange for monies or other compensation. The personal information included, in some cases, the patients' name, age, length of hospital stay, attending physician, type of diet, reason for admission to hospital, type of delivery, and baby's birth date. Just Arrived Baby Photography Inc. used the patients' personal information to sell baby photography services to the new mothers.

#### **THE PLAINTIFFS**

4. The Plaintiff Christine Chrissikos is an individual residing in Scarborough, Ontario, with an address for service care of Spiteri & Ursulak LLP, 1010 - 141 Laurier Avenue West, Ottawa, Ontario. Christine attended Rouge Valley Health System for

medical treatment and purchased baby photography services from Just Arrived Baby Photography Inc.

#### THE DEFENDANTS

5. The Defendant Just Arrived Baby Photography Inc. ("Just Arrived") is a professional photography company incorporated under the laws of British Columbia. Just Arrived provides baby photography services to new mothers at hospitals in Canada. At all material time, Just Arrived's employees worked at each of the Hospital Defendants and its head office is located in Vancouver, British Columbia.

6. The Defendant Mount Sinai Hospital ("Mount Sinai") is a public hospital providing medical services to the public. The defendant hospital is governed by the provisions of the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

7. The Defendant North York General Hospital ("North York General") is a public hospital providing medical services to the public. The defendant hospital is governed by the provisions of the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

8. The Defendant St. Joseph's Health Centre ("St. Joseph's") is a public hospital providing medical services to the public. The defendant hospital is governed by the provisions of the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

9. The Defendant Humber River Hospital ("Humber River") is a public hospital providing medical services to the public. Humber River consists of several health sites, including the Church Street site and the Finch Avenue site. The defendant hospital is governed by the provisions of the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

10. The Defendant The Toronto East General Hospital is a public hospital providing medical services to the public. The defendant hospital is governed by the provisions of

the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

11. The Defendant Rouge Valley Health System ("Rouge Valley") is a public hospital providing medical services to the public. Rouge Valley consists of several health sites, including a community hospital, Rouge Valley Centenary, in east Toronto, and Rouge Valley Ajax and Pickering, in west Durham. The defendant hospital is governed by the provisions of the *Public Hospitals Act* and at all material times was responsible for the actions of its employees, staff, and agents. The defendant hospital is located in Toronto, Ontario.

#### **THE CLASS**

12. The Plaintiffs bring this action on their own behalf and on behalf of all members of the proposed class, which is defined as follows (the "Class" or "Class Members"):

All persons whose personal and confidential information was recorded and stored in the Hospital Defendants' computer database and whose personal and confidential information was provided to Just Arrived during the following time periods:

- a) Mount Sinai Hospital: from May 1, 2009 to July 31, 2014;
- b) North York General Hospital: from March 1, 2013 to March 31, 2014;
- c) St. Joseph's Health Centre: from November 1, 2009 to July 31, 2014;
- d) Humber River Hospital: from January 1, 2010 to July 31, 2013 at the Church Street site, and from January 1, 2010 to July 31, 2014 at the Finch Avenue site;
- e) The Toronto East General Hospital: from June 1, 2012 to July 31, 2014;  
and
- f) Rouge Valley Health System: from November 1, 2009 to July 31, 2014 at the Centenary site, and from April 1, 2014 to July 31, 2014 at the Ajax and Pickering site.



## BACKGROUND

13. The Plaintiff and other Class Members attended at the Hospital Defendants for medical treatment. Both prior to and in the course of obtaining medical treatment, the Plaintiff and other Class Members disclosed personal information to the Hospital Defendants.

14. Beginning in or about May 2009, the Hospital Defendants each entered into contacts with Just Arrived to provide photography services to new mothers at their respective hospitals. The Hospital Defendants each agreed to provide Just Arrived with a census list of the new mothers and access to the new mothers in the maternity wards in order to sell baby photography services. In exchange for access to the maternity wards and the census list, Just Arrived agreed to pay monies and other compensation to the Hospital Defendants.

15. Instead of simply providing just the names and room numbers of the new mothers, the Hospital Defendants provided Just Arrived a daily list enclosing the following personal information of each of the patients (collectively the "Personal Information"):

- a) Mount Sinai Hospital: baby birth date and gestational age, clinician names, length of stay and clinical status, and from June 7 to 18, 2014, the type of delivery;
- b) North York General Hospital: patient name, room number, age, gender, physician name, service (obstetrics) and length of stay;
- c) St. Joseph's Health Centre: name and room number and additional patient information including whether the patient had received a C-section, baby's date of birth and if the baby was in neonatal intensive care unit;
- d) Humber River Hospital: patient name, room number, age, chart number, physician name and type of obstetrical service;
- e) The Toronto East General Hospital: patient name, room number, age, gender, hospital medical record number, attending physician, medical service and visit reason; and



- f) Rouge Valley Health System: patient name, room number, age, gender, physician name, length of stay in hospital, type of diet (Ajax-Pickering site only), type of room accommodation in hospital (Centenary site only) and reason for admission to hospital (Centenary only).

16. During the material times outlined above, Just Arrived marketed baby photography services to the new mothers and their families in the recovery rooms of the Defendant Hospitals. Just Arrived had intimate knowledge of the Plaintiffs' and other Class Members' Personal Information, which they used to sell photography services.

17. During the material times outlined above, each of the Hospital Defendants provided a daily list of the patients' Personal Information to Just Arrived as part of a commercial arrangement between the hospital and baby photography company. The Hospital Defendants provided the patients' Personal Information to Just Arrived for the sole purpose of selling baby photography services to the Plaintiff and Class Members. Just Arrived used the Personal Information to sell baby photography services to the Plaintiff and Class Members. The Hospital Defendants received monies and other compensation from Just Arrived as a result of this commercial arrangement.

18. The baby photography programs at the Hospital Defendants provided a source of income for the hospitals. In the 2009-2010 fiscal year, the baby photography program provided Mount Sinai with \$20,616. In the 2011-2012 fiscal year, Just Arrived paid Mount Sinai almost \$41,000.

19. During the material times outlined above, the Hospital Defendants provided Just Arrived with the Personal Information of tens of thousands of new mothers. Between approximately March 2013 and February 2014, North York General alone provided Just Arrived with the Personal Information of more than 5,000 patients. Furthermore, between approximately November 2009 and July 2014, Rouge Valley Health System provided Just Arrived with the Personal Information of more than 7,000 patients who gave birth at its Centenary site.

20. In or about June and July, 2014, the Hospital Defendants discovered the breaches of patient privacy when they conducted internal reviews triggered by news that two former employees at Rouge Valley had allegedly sold the personal information of up to 14,500 patients to private Registered Education Savings Plan companies. The

Hospital Defendants each independently reported the breaches to the Information and Privacy Commissioner after the internal reviews.

21. Rather than send the Plaintiff and Class Members letters advising them of the breach as the Hospital Defendants have done for past privacy breaches, the Hospital Defendants informed patients of the breach by temporarily posting notices on their websites, starting in or about August 2014. All the Hospital Defendants, except for Mount Sinai, have subsequently removed the notices from their websites. As a result, tens of thousands of patients affected remain unaware of the breaches of privacy.

22. On or about August 8, 2014, Mount Sinai in a notice entitled "Notice to Patients of the Mother & Baby Unit between May 2009 and June 2014" advised as follows:

In compliance with section 12(2) of the Personal Health Information Protection Act, this notice is to advise patients of a privacy breach which was identified in July, 2014.

For some time, Mount Sinai Hospital's Mother & Baby unit has offered baby photography services through Just Arrived Baby Photography Inc. We have recently learned that, between May 2009 and June 2014, instead of simply receiving the name and room number of new mothers to see if they would like to receive photography services, the photographer was provided with a daily list which also included baby birth date and gestational age, clinician names, length of stay and clinical status (if any). From June 7 to 18, 2014, the type of delivery was also included on the list, due to a technology change in our health information system.

The list was only used to approach new parents in the hospital to offer photography services. Just Arrived has confirmed that the lists were not used for any other purpose, were not provided to any third party, and were securely shredded at the end of each day.

The hospital takes privacy protection very seriously and sincerely regrets this breach. We are conducting a rigorous review of our privacy practices and will use this as an opportunity to ensure the highest standards of privacy protection for all patients. We have notified the Information & Privacy Commissioner/Ontario and continue to work closely with the Commissioner's office to support best practices.

23. In an undated notice entitled "Notice to Patients of the Mother & Baby Unit between March 2013 And February 2014," North York General advised as follows:

In compliance with section 12(2) of the Personal Health Information Protection Act, this notice is to notify the above noted patients of a privacy breach which was confirmed in early July 2014.

For some time, the hospital's Mother and Baby unit offered baby photography services through Just Arrived Baby Photography (the photographer).

We have recently learned that, between March 2013 and February 2014, instead of simply receiving the name and room number of new mothers to determine whether new mothers would like to receive the photography services offered, the photographer was provided with a list daily which contained patient name, room number, age, gender, physician name, service (obstetrics) and length of stay.

The list was only used to approach new mothers in the hospital to offer photography services. It was not used for any other purpose and it was not provided to any third party. At the end of the day, the list was returned to the nursing station for shredding.

The hospital takes privacy protection very seriously and sincerely regrets this breach of privacy. We are conducting a review of our practices to ensure that privacy is protected. The Information and Privacy Commissioner/Ontario has also been notified.

If you would like to discuss this matter or you have any questions, please do not hesitate to contact Patient Experience at 416-756-6125.

24. North York General has subsequently removed this notice.

25. In an undated notice entitled "Notice to Patients of the Mother & Baby Unit between November 2009 and June 2014," St. Joseph's advised as follows:

In compliance with section 12(2) of the Personal Health Information Protection Act, this notice is to notify the above noted patients of a privacy breach which was confirmed in early June, 2014.

For some time, the hospital's Family Birthing Centre unit offered baby photography services through Just Arrived Baby Photography (the photographer). We have recently learned that, between November 2009 and June 2014, instead of simply receiving the name and room number of new mothers to determine whether new mothers would like to receive the photography services offered, the photographer was provided with additional patient information, including whether the patient had received a C-section, baby's date of birth and if the baby is in Neonatal Intensive Care Unit.

The list was only used to approach new mothers in the hospital to offer photography services. It was not used for any other purpose and it was not provided to any third party. The lists stayed on site and were placed in a locked shredding box when no longer used.

The hospital takes privacy protection very seriously and sincerely regrets this breach of privacy. We are conducting a review of our practices to ensure that privacy is protected. The Information & Privacy Commissioner/Ontario has also been notified.

26. St. Joseph's has subsequently removed this notice.

27. In an undated notice entitled "Notice to Patients of the Mother & Baby Unit between January 2010 and June 2014," Humber River Hospital advised as follows:

In compliance with Section 12(2) of the Personal Health Information Protection Act, (PHIPA) this notice is to notify the above noted patients of a privacy breach which was confirmed in early July, 2014.

For some time, the hospital's Mother & Baby unit offered baby photography services through Just Arrived Baby Photography (the photographer). We have recently learned that, between January 2010 to June 2013 at the Church Street Site, and January 2010 to June 2014 at the Finch Avenue Site, instead of simply receiving the name and room number of new mothers to determine whether new mothers would like to receive the photography services offered, the photographer was provided with a list daily which contained patient name, room number, age, chart number, physician name and type of obstetrical service.

The list was only used to approach new mothers in the hospital to offer photography services. It was not used for any other purpose and it was not provided to any third party. At the end of the day, the list was returned to the nursing station for shredding.

The hospital takes privacy protection very seriously and sincerely regrets this breach of privacy. We are conducting a review of our practices to ensure that privacy is protected. The Information & Privacy Commissioner/Ontario has also been notified.

28. Humber River Hospital has subsequently removed this notice.

29. In an undated notice entitled "Notice to Patients of the Maternal Newborn and Child Unit between June 2012 and June 2014," The Toronto East General advised as follows:



In compliance with section 12(2) of the Personal Health Information Protection Act, this notice is to notify the above noted patients of a privacy breach which was confirmed in early July, 2014.

For some time, the hospital's Maternal Newborn and Child's unit offered baby photography services through Just Arrived Baby Photography (the photographer). We have recently learned that, between June 2012 and June 2014, instead of simply receiving the name and room number of new mothers to determine whether new mothers would like to receive the photography services offered, the photographer was provided with a daily list which contained patient name, room number, age, gender, hospital medical record number, attending physician, medical service and visit reason.

The list was only used to approach new mothers in the hospital to offer photography services. It was not used for any other purpose and it was not provided to any third party. At the end of the day, the list was shredded.

TEGH takes the privacy of our patients' information very seriously. Accordingly, this practice was reported to the Ontario Information and Privacy Commissioner (IPC) for their assistance in dealing with this matter.

30. The Toronto East General has subsequently removed this notice.

31. In an undated notice entitled "Notice to Patients of RVHS," Rouge Valley advised as follows:

Notice to patients of the Rouge Valley Centenary Birthing Centre unit between November 2009 and early July 2014, and Rouge Valley Ajax and Pickering Maternal and Newborn Services unit between April 2014 and early July 2014

In compliance with section 12(2) of the Personal Health Information Protection Act, this notice is to notify the above noted patients of a privacy breach which was confirmed in early July 2014.

For some time, the hospital's birthing centres offered baby photography services through Just Arrived Baby Photography (the photographer). The photography service has been in place at our Rouge Valley Centenary (RVC) campus since November 2009 and at the Rouge Valley Ajax and Pickering (RVAP) campus since April 2014. We have recently learned that instead of simply receiving the name and room number of new mothers to determine whether new mothers would like to receive the photography services offered, the photographer was provided with a list daily which

contained patient name, room number, age, gender, physician name, length of stay in hospital, type of diet (RVAP only), type of room accommodation in hospital (RVC only) and reason for admission to hospital (RVC only).

The list was only used to approach new mothers in the hospital to offer photography services. It was not used for any other purpose and it was not provided to any third party. The list never left the hospital, and it was shredded by the photographer.

The hospital takes privacy protection very seriously and sincerely regrets this breach of privacy. We are conducting a review of our practices to ensure that privacy is protected. The Information & Privacy Commissioner/Ontario has also been notified.

32. Rouge Valley has subsequently removed this notice.

33. In or about August, Mount Sinai, through its President and Chief Executive Officer Joseph Mapa, announced the following:

A Message To Our Patients From Joseph Mapa, President and CEO,  
Mount Sinai Hospital

Respecting our patients and protecting their privacy and confidentiality are two of our core patient values. We regret this privacy breach and I would like to take this opportunity to sincerely apologize to our patients. Since we learned of this breach, we have changed our practice – the photographer is no longer provided any patient information.

Patient privacy is a top priority at Mount Sinai. I am confident in how our team is moving forward on this matter and we will remain diligent in following privacy best practices in all that we do. Thank you for your understanding.

34. As noted above, each of the Hospital Defendants, except for Mount Sinai, has since taken removed the notice of the privacy breach. As the Hospital Defendants only posted these notices on a temporary basis, many Class Members are unaware of the privacy breaches. Those Class Members who have discovered the breaches of privacy relating to the Personal Information suffered distress, humiliation, and anguish. As a result of the Defendants acts and omission, the Class Members have suffered other damages, as particularized below, for which the Defendants are liable.

35. In addition to posting temporary notices, each of the Hospital Defendants has either terminated the contract with Just Arrived or changed its policy to limit the information provide to Just Arrived.

#### **THE PLAINTIFFS' CIRCUMSTANCE**

36. On or about June 28, 2013, Christine gave birth to a daughter at the Rouge Valley Centenary site. On or about the same day, a Just Arrived employee approached Christine and her family in the hospital to sell them baby photography services. Unbeknownst to Christine and her family and without consent, Rouge Valley had given Just Arrived her Personal Information for the sole purpose of selling baby photography to Christine and her family. The Personal Information Rouge Valley provide to Just Arrived included her name, room number, age, gender, physician name, length of stay in hospital, type of room accommodation in the hospital, and reason for admission to hospital. Christine and her family never consented to Rouge Valley providing her Personal Information to Just Arrived.

37. On or about June 29, 2013, Christine and her family purchased the baby photography services from Just Arrived. Despite being a third party service provider, the marketing and sale of the photographs occurred at the hospital, the contract was signed at the hospital, and the photographs were taken at the hospital.

38. Christine and her family had some issues accessing the photographs provided in the disc and they called Just Arrived. Just Arrived arranged to have a new copy of the disc delivered at the hospital.

39. In or about September 2014, in news articles and through a Rouge Valley notice that has since been taken down, Christine learned that Rouge Valley had breached her privacy by providing her Personal Information to Just Arrived. As a result of discovering the breach of privacy relating to her Personal Information Personal Information, Christine suffered distress, humiliation, and anguish.

#### **INTRUSION UPON SECLUSION**

40. The Defendants actions constitute intentional, or alternatively reckless, intrusions on seclusion in a manner that would be highly offensive to a reasonable person for which the Defendants are liable.



41. The Defendants invaded, with no lawful justification, the Plaintiff's and other Class Members' private affairs.

42. The Defendants' invasion was highly offensive, causing distress, humiliation, and anguish to the Plaintiff and other Class Members.

#### **BREACH OF CONTRACT AND WARRANTY**

43. The Plaintiffs and the Class Members entered into agreements with the Hospital Defendants that were similar or identical with respect to the collection, retention, use, and disclosure of Personal Information. As part of the agreement, each Class Member completed, or had someone complete on their behalf, various documents to obtain their medical services which required that the patients provide Personal Information to the Hospital Defendants. The terms of medical services and the documents together form the agreement (the "Contract").

44. The express or implied terms of the Contract provided that any Personal Information provided by or on behalf of the patients in connection with obtaining medical services would not be publically disclosed and would only be collected, used, and shared by the Hospital Defendants for the following limited purposes:

- a) To provide the patient with health care;
- b) To communicate with or consult with other health care providers;
- c) For payment-related purposes (including OHIP, WSIB, private insurance companies and others);
- d) To plan, manage, and administer the Hospital Defendants' programs and services;
- e) For research (with Research Ethics Board approval);
- f) For teaching;
- g) For statistical and other kinds of reporting obligations;
- h) For fundraising activities; and
- i) For other purposes as permitted or required by law.

45. The Contract contained the following express or implied terms:

- a) the Hospital Defendants would comply with all relevant statutory obligations and policies concerning the collection, retention, use, and disclosure of the Plaintiff's and other Class Members' Personal Information, including its obligations set out in the hospital's policies, including its privacy policy, and the *Personal Health Information Protection Act*;
- b) the Hospital Defendants would not collect, retain, use, or disclose the Personal Information except in the manner and for the purposes expressly authorized by the Contract, its policies, or law;
- c) the Hospital Defendants would keep the Personal Information secure and confidential;
- d) the Hospital Defendants would take steps to keep the Personal Information from being lost, used, disseminated, or disclosed to unauthorized persons;
- e) the Hospital Defendants would not use or disclose the Personal Information without the patient's consent; and
- f) the Hospital Defendants would protect the Personal Information from compromise or disclosure.

46. The Contract offered peace of mind to the Plaintiff and the Class Members that in exchange for providing the Personal Information required to obtain medical services, the Personal Information would be used by the Hospital Defendants for limited purposes and would otherwise be kept secure and would not be used or disclosed to unauthorized persons.

47. The Hospital Defendants warranted that it would keep the Personal Information secure and confidential, comply with the obligations in the hospital's policies, including its privacy policy, and the *Personal Health Information Protection Act*, and would take steps to prevent the Personal Information from being disseminated or disclosed to unauthorized persons.

48. The Hospital Defendants breached the express or implied terms of the Contract and warranty by improperly losing, disseminating, or disclosing the Personal Information

of the Plaintiff and the Class Members, and failing to comply with the obligations set out in the hospital's policies, including its privacy policy, and the *Personal Health Information Protection Act*.

49. The Hospital Defendants' breach has caused the Plaintiff and each Class Member to suffer damages, as particularized below, for which the Hospital Defendants are liable.

#### **NEGLIGENCE**

50. At all material times, the Hospital Defendants owed a duty of care to the Plaintiff and to each Class Member in the collection, retention, and use of their Personal Information, and to maintain the confidentiality of their Personal Information.

51. Furthermore, the Hospital Defendants had a statutory duty under section 12 of the *Personal Health Information Protection Act* to ensure that personal health information in its custody or control is protected against theft, loss, and unauthorized use, or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification, or disposal.

52. The Hospital Defendants also had a statutory duty under section 33 of the *Personal Health Information Protection Act* not to collect, use or disclose personal health information about an individual for the purpose of marketing anything unless the individual expressly consents.

53. The Hospital Defendants breached the standard of care expected in the circumstances. Particulars of the Hospital Defendants' breach include, but are not limited to, the fact that it:

- a) Provided the Personal Information to others without the consent of the Plaintiffs and other Class Members;
- b) Failed to use the electronic medical records system in a proper, efficient and/or work related manner and instead used said electronic system for personal gain;
- c) Failed to meet its statutory duties and/or own established policies in the collection, retention, security, use, and disclosure of the Personal Information;

- d) Failed to follow and abide by regulations pertaining to the confidentiality and sanctity of patient medical records;
- e) Failed to establish policies for the effective, well-coordinated, and proactive management of the Personal Information;
- f) Failed to take reasonable steps to ensure the Personal Information was not used, disseminated, or disclosed;
- g) Failed to keep the Personal Information secure and confidential;
- h) Failed to properly, if at all, inform its employees, staff, and agents of the policies, procedures, and guidelines of the hospital with respect to maintaining strict patient confidentiality, as outlined in the *Personal Health Information Protection Act*;
- i) Failed to properly supervise and monitor its employees, staff, and agents with respect to accessing files of patients;
- j) Failed to have the proper computer programs and/or security systems in place in order to prevent its employees, staff, and agents from improperly accessing, using, and disclosing medical records;
- k) Failed to conduct proper and timely audits of the electronic medical records system;
- l) Failed to train their employees, staff, and agents with respect to the regulations pertaining to the confidentiality and sanctity of patient medical records;
- m) Provided said medical records to others without the consent of the Plaintiff and other Class Members;
- n) Failed to take appropriate steps to prevent further breaches when it was known, or ought to have been known that this unlawful activity had taken place; and
- o) Failed to advise the Plaintiff and other Class Members of the breaches in a timely manner.

54. At all material times, the breaches of patient privacy were within the exclusive knowledge and control of the Defendants Hospitals. The breaches of patient privacy were not known and could not have been known to the Plaintiff and other Class Members.

55. As a result of these Hospital Defendants' acts and omissions described above, the Plaintiff and other Class Members suffered reasonably foreseeable damages and losses, which are particularized below for which the Defendants Hospitals are liable. The Plaintiff and other Class Members' damages and losses were caused by the negligence of these Defendants.

### **THE CONSPIRACY**

56. The Defendants conspired to intrude on the seclusion of the Plaintiff and other Class Members, breach the privacy of the Plaintiff and other Class Members, and to conceal the intrusion on the seclusion and breaches of patient privacy from the Plaintiff, the other Class Members, and the general public.

57. From on or about 2009 to on or about 2014 at Toronto, North York, Scarborough, and Ajax, Ontario, the Defendants, by themselves, their directors, officers, employees, servants, and agents, wrongfully, unlawfully, maliciously and lacking *bona fides*, conspired and agreed together to:

- a) Intrude on the seclusion of the Plaintiff and other Class Members;
- b) Breach the privacy of the Plaintiff and other Class Members;
- c) Provide pursuant to a commercial agreement the Personal Information to Just Arrived for the purpose of selling baby photographs to the Plaintiff and other Class Members;
- d) Conceal the intrusion on the seclusion and breaches of patient privacy;
- e) Breach the provisions of the *Public Hospitals Act* and *Personal Health Information Protection Act*; and
- f) Obtain revenue from the Plaintiff and other Class Members from the sales of baby photographs.

58. The Defendants were motivated to conspire and their predominant purposes, concerns, and motivations were to:

- a) Harm the Plaintiff and other Class Members by intruding on their seclusion and breaching their privacy;
- b) Increase or maintain revenue;
- c) Increase or maintain profit;
- d) Avoid negative publicity and preserve public goodwill;
- e) Place personal and corporate revenue and profits before the privacy rights of the Plaintiff and the Class Members; and
- f) Avoid the costs associated with correcting and remedying the breaches of privacy.

59. In furtherance of the conspiracy, the following acts, among others, were done by the Defendants and their servants, agents, and employees:

- a) They engaged in telephone conversations and met secretly in Toronto, North York, Scarborough, and Ajax from time-to-time to discuss the issues giving rise to the conspiracy, including content and use of the Personal Information;
- b) They agreed to the content and use of the Personal Information;
- c) They accessed hospital computers to collect the Personal Information of tens of thousands of patients;
- d) They provided and/or received for the Plaintiff's and other Class Members' Personal Information as part of a commercial agreement;
- e) They made repeated visits to the new mothers immediately after they gave birth to sell baby photographs investments using intimate knowledge of the Personal Information in their aggressive and predatory sales tactics;
- f) They directed their servants, agents and employees to perform wrongful or unlawful acts in furtherance of the conspiracy;
- g) They failed to take appropriate steps to fix the breaches of privacy after they knew of the breaches of privacy and its effect on the Plaintiffs and other Class Members;

- h) They ignored patient complaints about the unsolicited baby photograph sales attempts;
- i) They failed to disclose the breaches of privacy to the public in a timely manner or at all;
- j) They failed to disclose to the Plaintiff, other Class Members, and the public that their Personal Information was provided to Just Arrived as part of a commercial transaction; and
- k) They continued to require the Personal Information as a precondition for medical services without adequately securing the Personal Information.

60. The Defendants' conduct was unlawful because they intentionally or recklessly committed the tort of intrusion on seclusion, and breached the Plaintiffs' and other Class Members' privacy and sections 12 and 33 of the *Personal Health Information Protection Act*.

61. The conspiracy was directed towards the Plaintiff and other Class Members. The Defendants knew that the Plaintiff and other Class Members would purchase baby photographs; suffer distress, humiliation, and anguish; and incur costs to prevent identity theft. The Defendants knew that the conspiracy would cause losses to the Plaintiff and other Class Members, which it ultimately did.

#### **DAMAGES**

62. As a result of the Hospital Defendants' breach of contract, breach of warranty, and negligence, and the Defendants' intrusion upon seclusion and conspiracy, the Plaintiff and other Class Members have suffered, and will continue to suffer, damages including:

- a) Distress, humiliation, and anguish;
- b) A severed confidence and level of expectation between patient and care facility;
- c) Paranoia and depression;
- d) Insomnia, or difficulty sleeping at night;



- e) Costs incurred to prevent identity theft;
- f) Increased risk of future identity theft;
- g) Damage to reputation;
- h) Mental distress;
- i) Out-of-pocket expenses;
- j) Inconvenience, frustration, and anxiety associated with taking precautionary steps to reduce the likelihood of home invasion, theft, robbery, and/or damage to personal property and to obtain personal security;
- k) Inconvenience, frustration, anxiety, and time lost associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of personal financial and health information;
- l) General damages; and
- m) Such further or other damages as counsel may advise.

63. The Defendants' conduct as particularized above, was high-handed, outrageous, reckless, wanton, deliberate, callous, willful, harsh, vindictive, reprehensible, malicious, deserving of condemnation and in intentional disregard of the Class Members' rights and safety and motivated by economic considerations. Such conduct renders the Defendants liable to pay exemplary, punitive, and/or aggravated damages.

#### LEGISLATION

64. The Plaintiffs plead and rely upon, to the extent applicable, *inter alia*:

- a) *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- b) *Public Hospitals Act*, R.S.O. 1990, c. P.40;
- c) *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3 Sch. A;
- d) *Negligence Act*, R.S.O. 1990, c. N.1; and

e) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

65. The Plaintiffs propose that the trial of this action be in the City of Toronto.

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