Court File No. CV-20-00636642-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ALITA MARIE CARTER,
ANNA BELLE THARANI, and ALBERT OTOTÉ

Plaintiffs

- and -

LIFELABS INC., LIFELABS BC INC.,
LIFELABS BC LP, and LIFELABS LP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

RECITALS

A. **WHEREAS**, on December 17, 2019, the Defendants disclosed the Data Breach;

B. **AND WHEREAS**, the Plaintiffs commenced actions in Ontario, including this Action, on behalf of Class Members for, inter alia, class-wide compensation for the alleged impact of the Data Breach on the Personal Information of the Class Members, pleading intrusion upon seclusion, breaches of Provincial Privacy Legislation, negligence, breach of contract, and breaches of Part III of the Ontario *Consumer Protection Act* and Equivalent Consumer Protection Statutes;

C. **AND WHEREAS** the parallel proposed class proceedings commenced in Ontario, styled *Feldberg* v. *LifeLabs Inc.*, Superior Court of Justice File No. CV-19-00633194-00CP, *MacBrayne* v *LifeLabs BC Inc.*, Superior Court of Justice File No. CV-00633029-00CP, and *Sparling* v. *LifeLabs Inc.,* Superior Court of Justice File No. CV-

19-00633587-00CP were stayed by Order of the Court on May 6, 2020, in favour of this action such that each of the plaintiffs in those proceedings is a member of the Class in this Action;

D. **AND WHEREAS** parallel proposed class proceedings commenced in British Columbia have all been discontinued, except *Holt et al. v. LifeLabs BC Inc., et al.* Supreme Court of British Columbia, Vancouver Registry File No.: S-201131, which has not been actively prosecuted in favour of this Action, and the plaintiffs in those British Columbia proceedings are members of the Class in this Action;

E. **AND WHERAS** the Defendants, voluntarily and beginning before the Action was issued, offered Class Members complementary credit monitoring and identity theft insurance at the expense of the Defendants for a period of one year;

F. **AND WHEREAS** the Defendants have disputed their liability and do not admit, by the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Action and otherwise deny all liability under any pleaded or possible cause of action related to the Data Breach, and assert that they have complete defences in respect of the merits of the Action;

G. **AND WHEREAS** the Parties, through their counsel, have engaged in confidential, **extended** and hard-fought arm's length settlement discussions and negotiations with a view to resolving the Action and the BC Action;

H. **AND WHEREAS**, during and in the course of those settlement discussions and negotiations, the Defendants made the Representations to the Plaintiffs, on which the Plaintiffs have relied reasonably in reaching this Settlement;

I. **AND WHEREAS**, as a result of those settlement discussions and negotiations, the Parties have reached this Settlement, and they have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Plaintiffs and the Defendants, both individually and on behalf of the Settlement Class, subject to the approval of the Court;

J. **AND WHEREAS** the Defendants are entering into this Settlement Agreement to achieve a final resolution of all claims asserted or which may have been asserted by the Plaintiffs and the Settlement Class in the Action, and to avoid the expense, inconvenience and distraction of further burdensome and protracted litigation;

K. **AND WHEREAS** the Plaintiffs have reviewed and fully understand the terms of this Settlement Agreement and, based on Class Counsel's analyses of the facts and law applicable to the Plaintiffs' claims asserted in the Action, and having regard to the burdens and expense of prosecuting the Action, including, in particular, the risks and uncertainties associated with certification, trials and appeals, the Plaintiffs and the BC Action plaintiffs have each concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;

L. **AND WHEREAS** the Parties therefore wish to and hereby finally resolve the Action (and the BC Action) as against the Defendants, without an admission of liability and without any admission by the Defendants that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Action;

M. **AND WHEREAS** the Parties acknowledge that the Settlement is contingent on approval by the Ontario Court as provided for in this Settlement Agreement, and is entered into with the express understanding that this Settlement shall not derogate from

the respective rights of the Parties relating to the Action in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. **AND WHEREAS** the Plaintiffs and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against, the Plaintiffs or the Defendants, or evidence of the truth of any of the Plaintiffs' allegations or the validity of any of the Defendants' defences, which allegations are expressly denied by the Defendants and which defences are expressly denied by the Plaintiffs;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action shall be settled and dismissed with prejudice, each without costs paid by or to the Plaintiffs, the Settlement Class or the Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the Recitals hereto:

(1) **"Action"** means the herein action, namely, *Alita Marie Carter* et al. *v. LifeLabs Inc.* et al., commenced in the Ontario Court at Toronto and bearing the Court File No. CV-20-0063664200CP;

(2) **"Notice of Conditional Certification, and of Settlement Hearing"** means the Notice to be sent by email by the Claims Administrator to all Class Members for whom LifeLabs has an email address, and as otherwise published to the Class advising of the

Conditional Certification Order, and of the date of the **Settlement Approval Motion Hearing**, a copy of which Notice is attached as Schedule "A" to this Settlement Agreement.

(3) **"Notice of Settlement Approval"** means the Notice to be sent by email by the Claims Administrator to all Class Members for whom LifeLabs has an email address, and by email or mail to the approximately 131,000 Class Members whose test results or test requisitions were exfiltrated by the hackers, and as otherwise published to the Class advising of the **Settlement Approval Order;**

(4) **"BC Action"** means the action styled *Holt et al. v. LifeLabs BC Inc. et al.*, in the Supreme Court of British Columbia and bearing Docket Number S201131.

(5) **"BC Court"** means the Supreme Court of British Columbia;

(6) **"Settlement Approval Motion"** means the motion for an Order of the Court:

(a) approving the Settlement Agreement;

(b) approving the manner of distribution of the **Net Settlement Funds**;

(c) dismissing the Action;

(d) approving the fee request of Class Counsel; and,

(e) such other relief as the Parties may request;

(7) **"Settlement Approval Order"** means the Order approving the Settlement Agreement, the manner of distribution of Settlement Funds and granting any other relief granted on the Settlement Approval Motion;

(8) ***"CJA"*** means the *Courts of Justice Act*, RSO 1990, c. C-43, as amended;

(9) **"Claim Form"** means the form attached as Schedule "B" to this Settlement Agreement;

(10) **"Claims Administrator"** means the firm agreed upon by the Plaintiffs and Defendants and/or appointed by the Court to deliver the Notices and to administer the Settlement in accordance with the provisions of this Settlement Agreement, and any employees of such firm;

(11) **"Class" and "Class Members"** mean any person living as of the date of Settlement Approval who is a current or former user of LifeLabs' services whose Personal Information is known to have been exfiltrated as part of the Data Breach, excluding any officer, director, or executive-level employee of the Defendants;

(12) **"Class Counsel"** means: McPhadden Samac Tuovi LLP; Waddell Phillips PC; Charney Lawyers PC; Sotos LLP; Peter I. Waldman Professional Corporation; Stein Law Office; OV Counsel; Collette Parsons Corrin LLP; Arsenault Aaron Lawyers; Rosenberg Law; and Boughton Law Corporation (collectively, "Class Counsel")

(13) **"Class Counsel Disbursements"** means the disbursements, interest and applicable taxes incurred by Class Counsel in the prosecution of the Action and the BC Action and approved by an Order of the Court;

(14) **"Class Counsel Fees"** means the Class Counsel Fees incurred by Class Counsel in the prosecution of the Action and the BC Action and approved by an Order of the Court;

(15) **"Committed Settlement Funds"** is $9.8 million, the maximum amount committed to be paid by the Defendants pursuant to this Settlement Agreement, which sum is composed of the $4.9 million in Guaranteed Settlement Funds and the $4.9 million in Contingent Settlement Funds;

(16) **"Consumer Protection Act"** means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A.;

(17) **"Court"** means the Ontario Superior Court of Justice;

(18) **"Data Breach"** means the unauthorized access by third-party cyber criminals to the Class Members' Personal Information through the Defendants' computer systems and networks which was publicly disclosed by the Defendants on December 17, 2019;

(19) **"Defence Counsel"** means McCarthy Tétrault LLP;

(20) **"Defendants"** means LifeLabs Inc., LifeLabs BC Inc., LifeLabs BC LP, and LifeLabs LP;

(21) **"Effective Date"** means the date upon which the Settlement Approval Order becomes a Final Order;

(22) **"Equivalent Consumer Protection Statutes"** means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Fair Trading Act*, RSA 2000, c F-2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM c B120, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, each as amended;

(23) **"Execution Date"** means the date on which the last of the Parties signs this Settlement Agreement;

(24) **"Final Order"** means the later of the dates upon which: (i) the time to appeal the Order of the Court approving this Settlement Agreement has expired without any appeal being taken; or (ii) if an appeal is taken, all appeals and any time period for a further appeal have concluded;

(25) **"Guaranteed Settlement Funds"** means $4.9 million, which is the minimum settlement amount guaranteed to be paid by the Defendants pursuant to this Settlement Agreement;

(26) "**Contingent Settlement Funds**" means $4.9 million, which is the maximum settlement amount (in addition to the **Guaranteed Settlement Funds**) which the Defendants can be required to pay pursuant to this Settlement Agreement;

(27) **"LifeLabs"** means, jointly, LifeLabs Inc., LifeLabs BC Inc., LifeLabs BC LP, and LifeLabs LP;

(28) **"Net Contingent Settlement Funds"** means the $4.9 million Contingent Settlement Funds that the Defendants may be required to pay pursuant to this Settlement Agreement, less Class Counsel Fees and Class Counsel Disbursements as approved by the Court;

(29) **"Net Guaranteed Settlement Funds"** means the **Guaranteed Settlement Funds** paid by LifeLabs in accordance with this Settlement Agreement, less Class Counsel Fees, Class Counsel Disbursements and Representative Plaintiffs' Honoraria (if any) as approved by the Court;

(30) **"Notice of Objection"** means a document by which a Class Member sets out their reasons for objecting to the terms of the Settlement Agreement and/or the Fee Request Motion of Class Counsel;

(31) **"Opt-Out Deadline"** means the date that is thirty (30) days from the first distribution of the **Notice of Conditional Certification and of Settlement Hearing** to Class Members by the Claims Administrator, which date shall be provided by the Administrator to Class Counsel and Defence Counsel;

(32) **"Opt-Out Procedure"** means the procedure to be fixed by Order of the Court by which any Class Member(s) who wish(es) to do so may opt out of the Action;

(33) **"Parties"** means the Plaintiffs and the Defendants in the Action, who are the signatories to this Settlement Agreement, and "Party" means any one thereof:

(34) **"Personal Information"** means information about an identifiable individual, including but not limited to "personal health information" or "personal information", each as defined in Provincial Privacy Legislation, as applicable;

(35) **"Provincial Privacy Legislation"** means the *Privacy Act*, RSBC 1996, c 373, *The Privacy Act*, CCSM c P125, the *Privacy Act*, RSNL 1990, c P-22, *The Privacy Act*, RSS 1978, c P-24, the *Civil Code of Québec*, CQLR, c CCQ-1991, *the Charter of Human Rights and Freedoms*, CQLR, c C-12, and the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, *Personal Health Information Protection Act*, 2004, S.O. 2004, c.3, *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, *Personal Information Protection Act*, SBC 2003, C.63, each as amended, and all equivalent provincial privacy statutory provisions;

(36) **"Released Claims"** means any and all manner of claims, demands, actions, suits, and causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, and damages of any kind including compensatory, nominal, punitive or other damages, whenever incurred, and liabilities of any nature whatsoever, including for interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen,

actual or contingent, and liquidated or unliquidated, in law, under statute or at equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with any alleged conduct related to, arising from, or described in the Action on account of, causing, arising out of or resulting from the Data Breach. The Released Claims do not include any obligations under this Settlement Agreement;

(37) **"Releasees"** means, jointly and severally, individually and collectively, the Defendants and their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, stockholders, shareholders, agents, employed or retained lawyers, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing;

(38) **"Releasors"** means, jointly and severally, individually and collectively, the Plaintiffs and the **Settlement Class** and their respective successors, heirs, executors, administrators, trustees and assigns;

(39) **"Representations"** means the following representations which the Defendants explicitly made to the Plaintiffs during the negotiation of this Settlement Agreement, in good faith and with a reasonable belief in their accuracy:

(a) The cyber criminals exfiltrated Personal Information of approximately 8.6 million Class Members that was returned to LifeLabs;

(b) The Defendants have no knowledge of any improper use of Class Members' Personal Information arising from the Data Breach; and

(c) 43,984 LifeLabs customers requested the identity theft insurance and credit monitoring offered by LifeLabs following its announcement of the Data Breach;

(40) **"Representative Plaintiffs' Honoraria"** means $2,500 or such other amount as the Court may approve to be paid from the **Guaranteed Settlement Funds** to each of the three Plaintiffs in the Action;

(41) **"Settlement Administration Expenses"** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the cost of French translations of the notices, but excluding Class Counsel Fees and Class Counsel Disbursements;

(42) "**Settlement**" means the resolution of the dispute between the purported Class in the Action and in the BC Action and the Defendants thereto, as defined by the terms of this Settlement Agreement, if approved by the Court;

(43) **"Settlement Agreement"** means this agreement, including the Recitals and Schedules hereto;

(44) **"Settlement Benefits"** means the amount of $50 plus any additional amount, up to a further $100, that is calculated to be payable to a Settlement Class Member who submits a valid claim form pursuant to the terms of the Settlement Agreement, to be paid net of Class Counsel Fees and Class Counsel Disbursements;

(45) **"Settlement Class"** means the Class Members except any person who validly opts out of the Action;

(46) **"Trust Account"** means the segregated trust account to be established by the Claims Administrator for holding the Settlement Funds;

(47) **"Written Election to Opt Out"** means a timely written notification by a Class Member expressing their intent to be excluded from the Action, which must include the person's name, address and signature (including electronic signature) to be valid.

SECTION 2– POST-EXECUTION DATE STEPS

2.1 Pre-Motion Confidentiality

(1) Until the Motion for Settlement Hearing Notice Approval is filed with the Court, the Parties shall keep all of the terms of the Settlement Agreement (but not the fact of its existence) confidential and shall not disclose them without the prior written consent of the opposing Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

(2) Until the Motion for Settlement Hearing Notice Approval is filed with the Court, LifeLabs may advise the Plaintiffs in the outstanding individual lawsuits of the fact of the Settlement

Agreement, but not its terms, and will request that those persons keep the fact of the Settlement Agreement confidential until it is filed with the Court.

2.2 Costs

Each party shall bear their own costs of all court attendances in order to complete this Settlement.

2.3 No Admission or Inference of Liability

The Defendants shall consent to all of the Court Orders required to complete the approval of this Settlement, solely for the purposes of implementing the Settlement, and the Defendants' consent shall not be taken to be an admission of liability or legal responsibility for the pleaded damages and losses, and may not be relied upon by the Plaintiffs, the Settlement Class Members or any other person in this or any other court proceeding relating to the Data Breach.

2.4 Appointment of Claims Administrator

(1) As soon as practicable following the Execution Date, the Defendants shall identify a proposed Claims Administrator. The Plaintiffs shall advise of any objections to the proposed Claims Administrator. If the Plaintiffs object to the proposed Claims Administrator, then the Parties shall work cooperatively to reach an agreement on the Claims Administrator failing which the Defendants will move for Court approval and the Plaintiffs may make submissions to the Court on the appointment of the Claims Administrator.

(2) The Defendants shall be responsible for all fees and expenses of the Claims Administrator, including the expenses of distributing the **Notice of Conditional Certification, and of Settlement Hearing**, and the **Notice of Settlement Approval Order**, Notice translation expenses, collection of written elections to Opt-Out, reports to the Court, and any other claims administration expenses.

2.5 Motion for Certification and for Approval of Settlement Hearing Notice

(1) As soon as practicable following the **Execution Date**, the Plaintiffs shall bring the Motion for Conditional Certification, Approval of the Settlement Hearing Notice, and for the appointment of a Claims Administrator.

(2) The sole common issue to be certified shall be:

"Did the Defendants owe the Plaintiffs and Class Members a duty of care in respect of the Data Breach?"

(3) At the Motion for Conditional Certification and Approval of the Settlement Hearing Notice, the Parties will seek an order from the Court granting the Defendants leave to produce to the Claims Administrator such Personal Information that LifeLabs has in its possession in respect of the proposed Class Members (the "LifeLabs Data") to be used solely for the purposes of identifying Class Members and effecting this Settlement and the Notices contemplated herein, as necessary. The LifeLabs Data to be produced by LifeLabs may include names, addresses, email addresses, telephone numbers, dates of birth, and Provincial Health Insurance Numbers of the Class Members that were included in any of the four data sets referenced in the affidavit of Michael Melo sworn January 18, 2022 (the "Personal Identifying Information"), as necessary to carry out the tasks stipulated by this Agreement.

(4) At the Motion for Conditional Certification and Approval of the Settlement Hearing Notice, the Plaintiffs shall seek the Court's approval of the following process for objections to the Settlement and/or Class Counsel Fees:

(a) Class Members seeking to object to the Settlement or to the Proposed Class Counsel Fees may send a written notice of objection to the Claims Administrator at any time up

until 5 days prior to the Settlement Approval Motion. The Claims Administrator will provide any such objections to Class Counsel within 1 business day of receipt of the objection. Class Counsel will file all maintained objections with the Court in advance of the Motions for Approval of the Settlement and Approval of Class Counsel's Fees;

(b) The written notice of objection must be sent by the Class Member or the Class Member's designee to the Claims Administrator and must include the following information:

i) the Class Member's full name, current address, email address, if any, and telephone number, and Provincial Health Number, which will be used solely to ascertain if the objector is a Class Member;

ii) a statement to the effect that the Class Member objects to the Settlement or to Class Counsel's proposed Fees; and

iii) the reason(s) for objecting.

(c) Class Members who object to the Settlement or to Class Counsel Fees may also ask the Court for the right to make oral submissions at the Motions for Settlement Approval and Class Counsel Fee Approval.

(4) As soon as practicable after the Conditional Certification is granted and the Court approves the Notice of Settlement Hearing, LifeLabs shall retain the approved Claims Administrator, and will provide the necessary LifeLabs Data to it. The Claims Administrator will complete the distribution of the **Notice of Conditional Certification and Settlement Hearing** in accordance with **Section 3** of this Agreement or such other Notice Plan as is approved by the Court.

(5) The Motion for Settlement Approval shall be scheduled to be heard 30 days after the distribution of the final tranche of email addresses for **Notice of Conditional Certification and of Settlement Hearing**, or as soon as possible thereafter.

2.6 Court Approval of Opt-Out Process

(1) At the **Conditional Certification Motion**, the Plaintiffs shall seek the Court's approval of the following opt-out process:

(a) Class Members seeking to opt out of the Action must do so within thirty (30) days from the first date of distribution of the N**otice of Conditional Certification and of Settlement Hearing**, by sending a written election to opt out to the Claims Administrator at an address to be identified in the Notice, and received on or before the **Opt-Out Deadline**. The written election to opt out must be sent by the Class Member or the Class Member's designee and must include the following information:

(i) the Class Member's full name, current address, email address (if any) and telephone number;

(ii) a statement to the effect that the Class Member wishes to be excluded from the Action;

(b) Class Members who opt out of the Action shall not be members of the Settlement Class, and shall have no further right to participate in the Action including at the Settlement Approval and Fee Approval Hearings, or to share in the distribution of the Settlement Funds; and,

(c) Within five (5) days of the **Opt-Out Deadline**, the Claims Administrator shall provide a report to the Parties and the Court containing the names of each person who has validly and timely opted out of the Action.

(2) The Defendants reserve all of their legal rights and defences with respect to any Class Member who validly opts out from the Action, and no term of this Settlement Agreement shall be tendered as evidence in any litigation by any such person against LifeLabs arising out of the Data Breach.

SECTION 3 – NOTICE OF CONDITIONAL CERTIFICATION AND OF SETTLEMENT APPROVAL HEARING

3.1 Mode of Dissemination

(1) The **Notice of Conditional Certification and of Settlement Approval Hearing** shall be disseminated as follows:

(a) sent by email by the Claims Administrator to every Class Member whose email address is included in the LifeLabs Data;

(b) sent by regular mail to every one of the 131,957 Class Members who had personal health information in the data sets referenced at paragraph 84 of the Melo Affidavit sworn January 18, 2022 who received the December 2019 notice from LifeLabs by mail, unless their email address has been provided to the Claims Administrator;

(c) to the extent Class Counsel has received or receives credible updated email contact information for any person claiming to be a Class Member, Class Counsel shall be authorized to and shall provide such information to the Claims Administrator for the purpose of delivery of the Notices. The Claims Administrator shall use any information so received solely for the purpose of updating the LifeLabs Data and implementing the Settlement Agreement;

(d) Class Counsel shall post the **Notice of Conditional Certification, and of Settlement Hearing** on their websites and may each post messages on their

respective social media accounts limited to notice of the Conditional Certification and pending Motion for Settlement Approval, and may direct Class Members to their websites' postings related to this Action;

(e) LifeLabs shall post a link to the **Notice of Conditional Certification and of Settlement Hearing** on its homepage;

(f) LifeLabs will post a hard copy of the **Short Form Notice of Conditional Certification, and of Settlement Hearing** no smaller than on a 8" x 11" page, in a prominent and visible public location at each of its customer-facing laboratory sites.

(2) Class Counsel shall provide a copy of the **Notice of Conditional Certification, and of the Settlement Hearing** to any person who has contacted them in respect of the Action, and who did not provide an email address that was delivered to the Claims Administrator.

(3) All direct notices emailed or mailed by the Claims Administrator shall have the appearance and format of communications regularly distributed by LifeLabs such that it will be identifiable by Class Members as having originated with LifeLabs.

(4) All direct notices sent by the Claims Administrator shall be in the language in which the Defendants customarily communicates or communicated with the Class Member as a customer (either English or French).

SECTION 4 – SETTLEMENT APPROVAL

4.1 The Settlement Approval Motion

(1) 60 days after the hearing of the Motion for Conditional Certification and Settlement Hearing Notice Approval, or as soon as reasonably practicable thereafter, the Plaintiffs shall bring

a motion for approval of this Settlement Agreement, and for approval of the Notice of Settlement Approval.

(2) At the same time, Class Counsel may bring their motion for Class Counsel Fee and Class Counsel Disbursement Approval.

(3) The Defendants' consent to Conditional Certification does not extend to Class Counsel's motion for approval of Class Counsel Fees or Class Counsel Disbursements, about which the Defendants shall take no position.

(4) The Order approving this Settlement Agreement shall be as agreed to by the Parties and approved by the Court.

4.2 Date Upon Which Settlement Is Final

(1) This Settlement shall become final on the **Effective Date**.

4.3 Dismissal of BC Action

(1) BC Class Counsel and the lawyers for LifeLabs shall execute a Consent and approve a draft Order as to form and content for the dismissal of the BC Action, without costs.

(2) Forthwith after the **Effective Date**, Class Counsel shall be responsible for taking out the Order dismissing the BC Action, and delivering a copy of the issued Order to Defence Counsel, and the Parties agree to take such other steps as may be required by the BC Courts to effect the dismissal of the BC Action.

4.4 Class Counsel's Fees and Disbursements

(1) Class Counsel will bring a motion for approval of Class Counsel Fees and Class Counsel Disbursements contemporaneously with or immediately following the Settlement Approval

Motion, and such Class Counsel Fees and Class Counsel Disbursements as are approved by the Court relating to the **Guaranteed Settlement Funds** will be a first charge on and be paid out of the **Guaranteed Settlement Funds**.

(2) Class Counsel will be at liberty to seek approval for the payment of additional Fees and Disbursements out of any **Contingent Settlement Funds** that are required to be paid out to the Class by the Defendants by the terms of this Agreement.

(3) The Defendants acknowledge that they are not parties, individually or collectively, to any motion(s) concerning the approval of Class Counsel Fees and Class Counsel Disbursements, and they will take no position on the motion(s) for approval of Class Counsel Fees and Class Counsel Disbursements.

(4) Any order in respect of Class Counsel Fees and Class Counsel Disbursements, or any appeal from any order relating thereto or any modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the Settlement of the Action as provided herein. Unless this Settlement Agreement is terminated in accordance with its terms, all amounts awarded on account of Class Counsel Fees and Class Counsel Disbursements shall be paid from the Guaranteed Settlement Funds, and, if ordered, from the Contingent Settlement Funds.

(5) The Claims Administrator shall pay Class Counsel Fees and Class Counsel Disbursements as set out below in **Section 6**.

(6) The Claims Administrator shall pay Class Counsel Fees and Class Counsel Disbursements, as awarded by the Court, to the law firm designated by Class Counsel in the settlement approval Order, in trust, by wire transfer.

(7) The payments of Settlement Benefits to Settlement Class Members with valid claims (the "**Claimants**") shall be paid net of Class Counsel Fees and Class Counsel Disbursements.

SECTION 5 – NOTICE OF SETTLEMENT APPROVAL

5.1 Mode of Dissemination

(1) The **Notice of Settlement Approval** shall be disseminated in the same manner as Notice of Conditional Certification and of Settlement Approval Hearing as set out above at **Section 3**.

(2) In addition, Class Counsel shall post the **Notice of Settlement Approval** on their websites, and they may each post messages on their respective social media accounts about the fact of the Settlement approval, and how to make a claim, which may include hyperlinks to their websites and/or the claim form on the Claims Administrator's website.

SECTION 6 – DISTRIBUTION OF SETTLEMENT FUNDS

6.1 Claims Administration

(1) Within five (5) business days of the **Effective Date**, LifeLabs shall pay to the Claims Administrator the sum of $4,900,000.00 ($4.9 million) representing the **Guaranteed Settlement Funds**, which funds the Claims Administrator will hold in a segregated interest bearing trust account (the "Trust Account"). Interest shall accrue to the benefit of the Settlement Class Members.

(2) The Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with an order of the Court.

(3) The Plaintiffs and Class Counsel and Defence Counsel shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any

Settlement Benefits or pay any taxes on the monies in the Trust Account. Any such tax will be paid out of the monies in the Trust Account.

(4) Within fourteen (14) days from the Effective Date, the Claim Administrator shall pay to the Representative Plaintiffs the Honoraria amounts approved by the Court.

(5) Within fourteen (14) days from the Effective Date, the Claims Administrator shall pay the approved **Class Counsel Fees and Class Counsel Disbursements** relating to the Guaranteed Settlement Funds by wire transfer to the law firm designated by Class Counsel in the settlement approval Order, in trust.

(6) Within ten (10) business days of the **Claim Period** closing, the Claims Administrator shall advise LifeLabs, Class Counsel, and the Court if any or all of the **Contingent Settlement Funds** are payable by LifeLabs, and provide the necessary calculations and data to support that advice. LifeLabs and Defence Counsel shall have ten (10) business days to review and discuss that advice with the Claims Administrator, and to either accept that advice or serve a Notice of Motion to put the advice before the Court for determination. LifeLabs shall pay the amount of the **Contingent Settlement Funds** calculated as payable, up to the full amount of the **Contingent Settlement Funds**, to the Claims Administrator within five (5) business days of either the end of the review period or, if a motion is brought, the date of the resulting Final Order.

(7) Immediately upon receipt of the **Contingent Settlement Funds** (if any) by the Claims Administrator, the Claims Administrator shall pay to Class Counsel such additional Class Counsel Fees and Class Counsel Disbursements as are approved by the Court.

(8) The Claims Administrator shall thereafter pay out the balance of the **Net Settlement Funds** to the **Claimants** in accordance with the terms of this Section.

(9) Each member of the Settlement Class who submits a valid claim form by the Claim Deadline shall be a "**Claimant**" for the purposes of receiving compensation from the **Committed Settlement Funds** (the "**Settlement Benefit**").

(10) The **Guaranteed Settlement Funds** and, if any, the **Contingent Settlement Funds** shall be divided and distributed among the **Claimants** in accordance with the procedure set out in this Section.

(11) Within fourteen (14) days of the **Effective Date**, the Claims Administrator shall commence the process to deliver the **Notice of Settlement Approval** and **Claims Form** to the Class Members in accordance with the Notice Plan set out in **Section 5.1**;

(12) Settlement Class Members shall have **120 days** from the date of the Claims Administrator's first dissemination of the Settlement Approval Notice within which to submit to the Claims Administrator a completed Claim Form (the "**Claim Deadline**"). Claim Forms must be received by the **Claim Deadline** by the Claims Administrator by return email, separate email, ordinary mail, or, if the claim forms are made available on a website of the Claims Administrator, by completion of the form on that site (in which instance, the Claims Administrator will confirm receipt);

(13) Claims Forms mailed by Settlement Class Members must be postmarked by no later than 5 pm (Pacific Time) on the Claim Deadline to be valid.

(14) The number of valid Claims Forms shall be multiplied by the sum of $50 minus the *pro rata* share of Class Counsel Fees, Class Counsel Disbursements and Representative Plaintiffs' Honoraria (if any) approved by the Court from the Committed Settlement Funds ("the Compensation Calculation"). If the resulting sum is less than the Net Guaranteed Settlement

Funds, then the Claims Administrator shall pay each Claimant an equal amount of the remaining Net Guaranteed Settlement Funds, up to a maximum of $150.

(15) If the number of valid claims is sufficiently high that each Claimant would receive less than $50 minus a *pro rata* share of Class Counsel Fees, Class Counsel Disbursements and Representative Plaintiffs' Honoraria (if any) (the "**Minimum Settlement Payment**") from the **Net Guaranteed Settlement Funds**, the Claims Administrator shall calculate the amount necessary to be paid by LifeLabs out of the **Contingent Settlement Funds** up to the maximum of the **Committed Settlement Funds** as are required for each such Class Member to receive the **Minimum Settlement Payment**.

(16) In the event that the number of Claimants is sufficiently low that even after each Claimant is paid the maximum of $150 from the **Net Guaranteed Settlement Funds** there remains a balance in the Net Guaranteed Settlement Fund, then that balance of the **Net Guaranteed Settlement Fund** shall be paid in accordance with the Court-approved *cy-près* settlement provisions.

(17) The **Minimum Settlement Payment** is the minimum to be paid to each qualified Settlement Class Member unless the **Committed Settlement Fund** of $9.8 million, net of all Court-Approved Class Counsel Fees, Class Counsel Disbursements and Representative Plaintiffs' Honoraria (if any) (the "**Net Settlement Fund**") would thereby be exceeded. In that case, the difference between the **Committed Settlement Funds** and the **Net Settlement Fund** shall be paid to all Claimants on a *pro rata* basis such that each Claimant receives the same amount.

(18) In no event shall the Defendants be required to pay more than the **Committed Settlement Fund**.

(19) The Parties acknowledge that while compensation is being provided to the Claimants for their claims of time and money spent and inconvenience experienced in responding to the Data Breach and its consequences for the purposes of the consent resolution of the Action, the allocation of such funds for those purposes is without admission of liability by the Defendants, and without any admission by the Defendants that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Action.

6.2 Payment of Settlement Funds

(1) The Claims Administrator shall send the **Settlement Benefits** to Claimants by e-transfer or by cheque as directed on Claims Forms.

(2) When sending **Settlement Benefits** to Claimants, the Claims Administrator shall send a personalized cover email or letter in the form that LifeLabs usually uses to email or mail, as the case may be, to its customers advising that the Claimant is being paid their **Settlement Benefit Payment**;

(3) Within two (2) months after all **Settlement Benefit Payments** have been made, the Claims Administrator shall report to Class Counsel and Defence Counsel the total number of emails and letters returned as undeliverable or returned to sender or analogous designation.

(4) Settlement cheques issued by the Claims Administrator that could not be delivered to a Claimant or which are not cashed by a Claimant within six (6) months of issuance will become stale-dated, ineligible for redemption, and shall not be reissued.

(5) Forthwith after the date on which all uncashed settlement cheques have become stale dated and ineligible for redemption, the Claims Administrator shall advise on the total dollar value of cheques cashed.

(6) In the event there are monies remaining from stale-dated cheques issued from the Guaranteed Settlement Fund, the balance shall be paid by the Claims Administrator in accordance with the Cy Près Award provisions in this Settlement Agreement.

6.3 No Further Payments

(1) The Defendants shall pay the above amounts in full satisfaction of the Released Claims against the Releasees.

(2) Subject to the Defendants' obligations in furtherance of the approval and implementation of this Settlement Agreement, as set out herein, the Defendants and Releasees shall have no obligation to pay any amount in addition to the Settlement Benefits, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) The Plaintiffs and Class Members including their heirs, executors, predecessors, successors, assigns and agents, have no personal obligation to pay anything to the Defendants or any of the Releasees in relation to this Settlement Agreement or the Action.

SECTION 7 – STEPS TO EFFECTUATE SETTLEMENT AGREEMENT

7.1 Reasonable Efforts

(1) The Parties shall take all reasonable steps to effectuate this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal with prejudice of the Action and the BC Action on a without costs basis as against the Defendants, including cooperating with the Plaintiffs' efforts to obtain the approval and orders required from the Court and the implementation of this Settlement Agreement.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement in British Columbia, they will co-operate in entering into such further documentation and agreements using language as required to effect the agreed-upon results, and applying to the necessary Courts for directions.

(3) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

7.2 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by agreement between the Parties, each acting reasonably, or thereafter, if necessary, by the Court on motion brought by any Party.

7.3 Action in Abeyance

(1) Until the Parties have obtained the **Settlement Approval Order** or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Action and the BC Action other than the **Certification and Notice Approval Motion** and the **Settlement Approval Motion** contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

SECTION 8 – RELEASES AND DISMISSALS

8.1 Release of the Releasees

(1) Upon the **Effective Date**, and in consideration of payment of the Settlement Benefits, and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, excepting the obligations created by this Settlement Agreement.

(2) The Plaintiffs acknowledge that they or the Class may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, but it is their intention to release fully, finally and forever all **Released Claims** and, in furtherance of such intention, this Agreement and that release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

(3) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class against any person other than the Releasees.

8.2 No Further Claims

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Ontario or elsewhere, on his or her own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute or at common law or equity in respect of any **Released Claim.**

(2) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its action against the Releasees.

8.3 Material Term

(1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated in this section shall be considered a material term of the Settlement Agreement and the failure of the Courts to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to **Section 10** of the Settlement Agreement.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability or Concessions

(1) The Plaintiffs and the Defendants expressly reserve all of their respective rights if the Settlement is not approved, is terminated or otherwise fails to take effect for any reason.

(2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be:

(a) an admission or concession by the Defendants of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against the Defendants in the Action, or of the application of any of the pleaded statutes to any of the claims made in the Action, or of the entitlement of any Class Member to compensation or payment for any of the losses and damages alleged in the Action; or

(b) an admission or concession by the Plaintiffs, Class Counsel or the Class of any weakness in the claims of the Plaintiffs and the Class, or that the consideration to be given

hereunder represents the amount that could or would have been recovered from the Defendants after the trial of the Action.

9.2 Agreement Not Evidence or Presumption

(1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding brought by any persons or government entity or quasi-government Commission in any jurisdiction:

(a) against the Defendants, or any of them, as evidence, or a presumption of a concession or admission of anything; or

(b) against the Plaintiffs, Class Counsel, or the Class, as evidence, or a presumption, of a concession or admission:

(i) of any weakness in the claims of the Plaintiffs and the Class; or

(ii) that the consideration to be given hereunder represented the amount that could or would have been recovered from the Defendants after trial of the Action.

(2) Notwithstanding s. 10.2(1) this Settlement Agreement may be referred to or offered as evidence to obtain the orders or directions from the Court contemplated by this Settlement Agreement, in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as may be necessary, or as otherwise required by law.

SECTION 10 – TERMINATION

10.1 Right of Termination

(1) In the event that:

(a) the Court declines to approve this Settlement Agreement or any material part hereof;

(b) the Court issues an order approving this Settlement Agreement that is materially inconsistent with the terms of the Settlement Agreement;

(c) an Order approving this Settlement Agreement is reversed on appeal and the reversal becomes a Final Order; or

(d) the BC Court declines to dismiss the BC Action without costs,

the Plaintiffs and Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) days following an event described above, subject to the Parties using best efforts and good faith to attempt to resolve any issues in furtherance of resolution of the Action on such modified terms as may be required to obtain the Court's approval, except that the Defendants shall have no obligation to negotiate any increase to the compensation provided for by this Settlement Agreement.

(2) In addition, if the **Settlement Benefit Payments** are not paid in accordance with s. 6.4(1) and (6), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice to the Defendants and be at liberty to continue the Actions.

(3) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees or Class Counsel Disbursements shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.

(4) Except as provided for in ss. 10.3 and 10.4(2), if the Plaintiffs or the Defendants exercise the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

10.2 Steps Required on Termination

(1) If this Settlement Agreement is terminated after the Court has heard or decided any motion in the settlement approval process, either the Defendants or the Plaintiffs shall, as soon as reasonably practicable after termination, on notice to the other Parties, bring a motion to the Court for Orders:

(a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in ss. 10.3 and 10.4;

(b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments sought from and entered by the Court in accordance with the terms of this Settlement Agreement; and(c) to obtain directions about any further notice to be provided to the Class about the termination of the Agreement, and the costs of any such notice shall be split evenly between the Plaintiffs and the Defendants.

(2) Subject to s. 10.4(2), the Parties shall consent to the order(s) sought in any motion made under s. 10.2(1).

10.3 Notice of Termination

(1) If this Settlement Agreement is terminated, a notice of the termination will be given to the Class Members, the form and content of which notice is to be agreed upon by the Parties or as

ordered by the Court, at an expense evenly split between the Plaintiffs and the Defendants in the Action or as ordered by the Court.

(2) The notice of termination, if necessary, shall be disseminated in a manner agreed upon by the Parties or as ordered by the Court.

10.4 Effect of Termination

(1) In the event this Settlement Agreement is terminated in accordance with its terms:

(a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;

(b) the Claims Administrator shall, within thirty (30) days of the written notice pursuant to s. 10.1, return to the Defendants the Settlement Funds paid to the Claims Administrator, plus all accrued interest thereon, and the Defendants will be solely responsible to report such interest as income and pay any taxes in respect thereto.

(c) the Parties will cooperate in seeking to have all prior orders or judgments sought from and entered by the Court, in accordance with the terms of this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;

(d) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein; and

(e) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.

(2) Notwithstanding the provisions of s. 10.2, if this Settlement Agreement is terminated, the provisions of ss. 2.2, 2.4(2), 7.3(1), 9.1, 9.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 11.1, 11.4, 11.5,

11.7, 11.12, 11.17 and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

10.5 Disputes Relating to Termination

(1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by any Party on notice to every other Party.

10.6 Handling of Confidential Information in the Event of Termination

(1) In the event of a valid termination, it is understood and agreed that all documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or otherwise become publicly available.

SECTION 11 – MISCELLANEOUS

11.1 Motions for Directions

(1) Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to all other Parties.

11.2 Headings, etc.

(1) In this Settlement Agreement:

(a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;

(b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," "hereto," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement; and

(c) "person" means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

11.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

(a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

(b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the Rules of Civil Procedure, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Ongoing Jurisdiction

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

11.5 Governing Law

(1) Subject to s. 11.6(1), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

11.6 Severability

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

(2) In the event that the Court does not approve any term of this Agreement relating to the payment of Class Counsel Fees or Class Counsel Disbursements, such term(s) shall be severed from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

11.9 Binding Effect

(1) If the Settlement is approved by the Court and becomes final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Defendants, the Releasees and the Releasors or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

11.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.11 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.12 Negotiated Agreement

(1) This Settlement Agreement and the underlying Settlement have been the subject of confidential, lengthy, and hard-fought arm's-length negotiations and discussions among the Parties and Counsel. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.13 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by a Court, Defence Counsel shall have a French translation of the Settlement Agreement prepared at a cost to be paid by the Defendants. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

11.14 Recitals

(1) The recitals to this Settlement Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

11.16 Acknowledgements

(1) Each Party hereby affirms and acknowledges that:

(a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;

(b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;

(c) they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.17 Notice

(1) Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, facsimile or letter by overnight delivery to:

For the Plaintiffs, and the BC Action Plaintiffs and Class Counsel in the Action and the BC Action:

Bryan C. McPhadden
MCPHADDEN SAMAC TUOVI LLP

For the Defendants or any of them: to Defence Counsel.

Dana M. Peebles
McCARTHY TÉTRAULT LLP

11.18 Authorized Signatures

(1) Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

For the Plaintiffs, and the BC Action Plaintiffs and Class Counsel in the Action and the BC Action:

July 5, 2023

MCPHADDEN SAMAC TUOVI LLP

Per: _____

Bryan C. McPhadden, lawyers for the Plaintiffs

For the Defendants:

June 27, 2023

McCARTHY TÉTRAULT LLP

Per: _____

Dana M. Peebles, lawyers for the Defendants

Notice of Conditional Certification & Scheduled Settlement Hearing

LIFELABS DATA BREACH CLASS ACTION

Read this notice carefully as it may affect your rights.

INTRODUCTION

A proposed Class Action was commenced arising out of a data breach announced by LifeLabs Inc. on December 17, 2019 ("the Action"). The representative plaintiffs are: Alita Marie Carter, Anna Belle Tharani, and Albert Ototé.

A Settlement has been negotiated, and the Action has been certified as a class action for the purpose of completing the Settlement.

THE CLASS ACTION

The Action was brought against LifeLabs Inc. and related LifeLabs companies ("LifeLabs") following the attack by a criminal cyber-attacker on its database of customer personal health information. The Action alleged that LifeLabs was negligent in its protection of that data. LifeLabs denied all such allegations.

The Class is:

> All Canadian resident customers or patients of the Defendant LifeLabs companies whose Personal Information was stored on computer systems in the control of LifeLabs that were compromised or accessed by unauthorized persons in the security breach announced by LifeLabs on December 17, 2019; including a subclass of:
>
> > (i) all customers or patients of LifeLabs whose test requisitions or test results were accessed by persons unknown as a result of a security breach announced by LifeLabs on December 17, 2019

The Class includes approximately 8.6 million persons whose personal information (including provincial health card numbers) was stolen, including approximately 131,957 Class members whose confidential test requisitions or test results were stolen by hackers.

LifeLabs paid a ransom and the cyber-attackers returned the data. That data has not been identified as being sold on the dark web or otherwise misused by anyone.

THE PROPOSED SETTLEMENT

If the Settlement is approved by the Court, LifeLabs has agreed to pay compensation to Class members who submit a valid claim form within the time set by the Court for filing a claim.

If the Settlement is approved, LifeLabs will pay a guaranteed amount of $4.9M, and up to a further $4.9M depending on the number of claims made ("the Settlement Funds"). Each Class member who completes a valid claim form will be eligible to receive **compensation of $50, up to a maximum of $150, from which will be deducted Court-approved legal fees, disbursements and taxes**. Class members may receive more or less than $50, depending on the number of claims filed, and the legal fees and disbursements approved by the Court.

In exchange for LifeLabs paying the Settlement Funds, LifeLabs will be released by the Class from all forms of potential claims against LifeLabs arising from the data breach.

THE PROPOSED CONTINGENCY LEGAL FEES

The Plaintiffs retained Class Counsel on a contingency fee basis, which means that the lawyers do not get paid unless the Court approves a settlement of the Action or awards a monetary judgment after a trial.

If the Settlement is approved, Class Counsel will request that the Court approve legal fees totalling 25% of the Settlement Funds paid by LifeLabs, plus taxes and disbursements.

HOW THE CASE WILL PROCEED

The Court will convene a hearing to decide whether it approves the Settlement and the proposed Class Counsel fees. This hearing will be held on [redacted] by videoconference.

If you are a Class member, and you object to the terms of the proposed Settlement, or to the fees that Class Counsel will request, you are entitled to file a written objection with the Court. The procedure for filing a written objection is as follows:

- Your objection must be sent to the Claims Administrator by ***[*five days pre-hearing]*** at the latest;
- Your objection must include your full name, current address, email address, telephone number, and Provincial Health Number (which will be kept confidential and used only to confirm that you are a Class member);
- You must provide a statement to the effect that you object to the Settlement or to Class Counsel's proposed Fees; and
- You must provide your reason(s) for objecting.

Class members who object may also ask the Court for the right to speak at the hearing.

The contact particulars for the Claims Administrator are: [redacted]

If the Court approves the Settlement, then a further notice will be provided to the Class with details explaining how to make a claim for a portion of the Settlement Fund.

PARTICIPATING IN THE CLASS ACTION

If the Settlement is approved by the Court, and you are a member of the Class, you are automatically included in the Action, and will be entitled to claim a share of the Settlement Funds, and you will give a release of all potential claims against LifeLabs regarding the data breach, unless you exclude yourself from the Action by "opting-out".

If the Settlement is not approved by the Court, and you do not opt out, you will be bound by all results in the Action whether favourable to the Class or not. However, Class members are never liable to pay adverse court costs to the Defendants.

EXCLUDING YOURSELF FROM THE CLASS ACTION

If you fall within the Class definition and you **do not wish to participate in the Action**, you must opt-out of the Action, by sending a written election to opt-out to the Claims Administrator at the address above.

The deadline to file the opt-out notice is **/*/**.

If you opt-out by the deadline, it means that you may seek to bring your own lawsuit, and you will not be bound by the Settlement or any result in the Action. It also means that you cannot object to the Settlement, or request or obtain any of the Settlement Funds approved by the Court.

IF THE COURT DOES NOT APPROVE THE SETTLEMENT

If the Court declines to approve the Settlement, it will not be completed, the certification order will be set aside, and the Action will continue against the defendants on a contested basis.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should not be directed to the Court. The pending Settlement and other information may be obtained by visiting the website at **/*/**.

If you have any questions for Class Counsel, or if you are unsure whether you fall within the Class, please contact Class Counsel at the following coordinates:

LIFELABS DATA BREACH CLASS ACTION

CLAIM FORM

NAME: *_____

TELEPHONE NUMBER: *_____

ADDRESS: *_____

PROVINCIAL HEALTH NUMBER: *_____

(Your Provincial Health Number will be used solely to confirm that you are an eligible Class member, and will be kept confidential.)

☐ By checking this box, **I hereby certify** that that I spent time or money responding to the LifeLabs Data Breach, and that I am claiming compensation from the Settlement Fund.

(Claims Administrator to create a PDF that can create a check in the box).

I would like the payment from the Settlement Fund to be made as follows:

A. By e-transfer using this email address: _____

OR

B. By cheque mailed to this mailing address:

Street and Number: _____

Unit number, if any: _____

Town or City: _____

Province: _____

Postal Code: _____

If mailing this form, sign your name on the signature line:
If submitting this form electronically, insert your signature or type your name on the signature line:

Signature: _____