

No. 2011681
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

JANET SYMMONDS

Plaintiff

- and -

MEDICAL DEPOT INC. d.b.a. DRIVE DEVILBISS HEALTHCARE (“Drive”)

Defendant

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

SETTLEMENT AGREEMENT

Made as of June 8, 2021

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WHEREAS:

A. The Plaintiff commenced this proposed class proceeding in British Columbia on November 4, 2020, Vancouver Registry No. S2011681, asserting claims under the *Personal Information Protection Act*, SBC 2003, c 63 and related statutes; the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5; and the common law;

B. The Defendant denies all allegations in the Action;

C. Taking into account the burdens and expense of continued litigation, including the significant risks and uncertainties associated with completion of the litigation and any potential appeals, the Plaintiff, with the benefit of advice from Class Counsel and certain disclosure from the Defendant, has concluded that the Settlement on the terms and conditions set out in this Agreement is fair and reasonable, and in the best interests of the Class.

D. The Parties intend by this Agreement to resolve, terminate and finally conclude any and all claims raised or which could have been raised in the Action pursuant to the terms of this Agreement and the approval of the Court, and further intend that the Defendant shall receive complete releases and finality in respect of the Class.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties stipulate and agree, subject to Court approval, that the Action shall be finally settled and resolved on the terms and conditions set out in this Agreement.

Section 1 - Definitions

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

(1) **Action** means the proposed class proceeding commenced by the Plaintiff in British Columbia on November 4, 2020, Vancouver Registry No. S2011681.

(2) **Agreed Class Counsel Fees** means fees, disbursements, and expenses to be paid to Class Counsel on behalf of the Plaintiff and Settlement Class in connection with the Action and Settlement, including all expert fees, any costs related to the administration of this Settlement including the distribution of notice (by regular mail) and the Settlement Amount to Class Members (by regular mail or e-transfer), all other disbursements, costs, and interest and applicable taxes and any other charges, fixed in the all-inclusive amount of \$39,486. Agreed Class Counsel Fees are subject to approval of the Court on application by Class Counsel.

(3) **Class** and **Class Members** means all Persons in Canada whose Personal Information was accessed by an unauthorized party while held on the Defendant's data network in the Data Incident, or who received a letter indicating that their Personal Information may have been accessed by unauthorized parties in the Data Incident.

(4) **Class Counsel** means Slater Vecchio LLP and Mathew P Good Law Corporation.

- (5) **Common Issue** means: Did the Defendant wilfully, without claim of right, intentionally, or recklessly fail to protect the Personal Information?
- (6) **Counsel for the Defendant** means Osler, Hoskin & Harcourt LLP.
- (7) **Court** means the Supreme Court of British Columbia.
- (8) **Data Incident** means the unauthorized access by a third party to the Defendant's network referred to in the Action.
- (9) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (10) **Defendant** means Medical Depot Inc. d.b.a. Drive Devilbiss Healthcare.
- (11) **Effective Date** means the earliest date by which all of the following have occurred:
- (a) This Settlement Agreement has been executed by all Parties;
 - (b) This Settlement Agreement has been approved by the Court, the Action has been certified by the Court (for settlement purposes only), and the Action has been dismissed with prejudice;
 - (c) The time to appeal the dismissal, judgment or approval orders has expired or, if an appeal is taken, then (i) the appeal proceedings have been exhausted, or (ii) the Court makes an order as to the timing of the Effective Date.
- (12) **Other Actions** means actions or proceedings relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (13) **Parties** means the Defendant, the Plaintiff, and, where necessary, the Settlement Class Members.
- (14) **Personal Information** means information about an identifiable individual contained on the Defendant's electronic file system accessed in the Data Incident.
- (15) **Plaintiff** means Janet Symmonds.
- (16) **Released Claims** means any and all manner of claims, demands, actions, suits, debts, duties, accounts, bonds, covenants, contracts, rights, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, penalties, disgorgement, restitution, and claims of every nature and kind whatsoever, available, asserted, or which could have been asserted, in law or in equity, whether known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, including assigned claims, or claims for injunction, contribution, indemnity, costs, expenses, and interest, in respect of or arising from or in any way related to, directly or indirectly, the facts,

allegations and claims asserted or which could have been asserted in the Action, including but not limited to allegations in respect of the access of personal information in the Data Incident.

(17) ***Releasees*** means, jointly and severally, individually and collectively, the Defendant and all of its present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(18) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney heir, executor, administrator, insurer, devisee, assignee, or representative of any kind, excluding Persons who validly and timely opt out of the Action in accordance with orders of the Court.

(19) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(20) ***Settlement Amount*** means the amount of \$6,000, which includes any applicable taxes.

(21) ***Settlement Class*** means the class comprised of Class Members excluding those individuals who opt out of the Settlement Class in a timely manner in compliance with the procedures in this Settlement Agreement for doing so.

(22) ***Settlement Class Member*** means a member of a Settlement Class.

Section 2- Settlement Approval

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Action.

2.2 Application Seeking Approval of Notice

(1) The Plaintiff shall seek an order from the Court in the form attached as Schedule A, as soon as practicable after the Date of Execution, approving the notice described in Section 8.1(1).

2.3 Application Seeking Approval of the Settlement and Certification

(1) The Plaintiff shall seek orders from the Court in the form attached as Schedule B approving this Settlement Agreement, certifying the Action as a class proceeding (for settlement purposes only), and dismissing the Action, and in the form attached as Schedule C approving the method of dissemination of the Notice of Settlement Approval and Certification the distribution of the Settlement Amount, as soon as practicable after:

- (a) the order referred to in Section 2.2 has been granted;
- (b) the notices described in Section 8.1(1) have been delivered; and
- (c) the deadline for opting out of the Settlement Agreement has expired.

2.4 Affidavit from Representative of the Defendant

- (1) In support of the applications under Section 2.2 and 2.3, the Defendant will file an affidavit setting out its investigations into the Data Incident and its best information on class size.

2.5 Confidentiality

- (1) Until the application required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of the Settlement Agreement, or as otherwise required by law.

- (2) Class Counsel and the Plaintiff shall engage in reasonable consultation with the Defendant with respect to the timing, content, and disclosure of any media statement relating to this Settlement Agreement.

2.6 Settlement Agreement Effective

- (1) This Settlement Agreement shall only become final on the Effective Date.

Section 3 - Settlement Benefits

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days of the Court approval referred to in Section 2.3, the Defendant shall pay the Settlement Amount to Class Counsel in trust for the benefit of Settlement Class Members.

- (2) The Plaintiff will direct the distribution of the Settlement Amount to Settlement Class Members as follows:

- (a) Each Settlement Class Member shall receive \$300 or such lower amount pro rata, inclusive of interest, any applicable taxes, costs, and fees whatsoever.

- (3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

- (4) The Settlement Amount shall be all-inclusive of all amounts, including interest and applicable taxes.

Section 4 – Effect of Non-Approval by the Court

4.1 Settlement Agreement Void

(1) In the event that the Court declines to certify the Settlement Class, to dismiss the Action against the Defendant, or to approve the settlement and this Settlement Agreement; or in the event that the Court approves or issues an order approving this Settlement Agreement in a materially modified form, then:

- (a) This Settlement Agreement shall be null and void and shall have no force or effect, and no Party to the Settlement Agreement shall be bound by any of its terms except the terms of this section; and
- (b) This Settlement Agreement and all of its provisions and all negotiations, all documents and information exchanged in furtherance of settlement, and all statements and proceedings relating to it, and the fact of its existence and any of its terms, shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the Settlement Agreement and negotiations in respect of it. For clarity and without limitation, this Settlement Agreement is without prejudice to the rights of each Party to seek or oppose certification of the Action should the Settlement not be approved by the Court.

Section 5 - Releases and Dismissals

5.1 Release of Releasees

(1) Subject to Section 5.2, upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release 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.

5.2 Covenant Not To Sue

(1) Upon the Effective Date and notwithstanding Section 5.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

5.3 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or

other claims over relief, or who might claim contribution or indemnity under any statutory provision or otherwise from the parties discharged by this release, or who might seek declaratory relief in a third party proceeding against the parties discharged by this release, from any Releasee in respect of any Released Claim or any matter related thereto.

5.4 Dismissal of the Action

- (1) Upon the Effective Date, the Action shall be dismissed with prejudice and without costs.

5.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of the Settlement Class Member's Other Actions, if any, against the Releasees.

5.6 Material Term

- (1) For greater certainty, the releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases on the terms contemplated herein shall void this Settlement Agreement pursuant to Section 4.1.

Section 6 - Effect of Settlement

6.1 No Admission of Liability

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is voided or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Defendant, or of the truth of any of the claims or allegations contained in the Action.

6.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is voided, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

6.3 No Further Litigation

(1) Neither the Plaintiff nor Class Counsel may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, and Class Counsel so undertakes. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 6.3(1) shall be inoperative to the extent that it is inconsistent with Class Counsel's obligations under Rule 3.2-10 of the *Code of Professional Conduct for British Columbia*.

Section 7 - Certification for Settlement Only

7.1 Certification

(1) The Parties agree that the Action shall be certified as a class proceeding solely for purposes of settlement of the Action and the approval of this Settlement Agreement by the Court.

(2) The Plaintiff agrees that, in the application for certification of the Action as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Class.

7.2 Opting Out

(1) Class Members who opt out shall be excluded from the terms of this Settlement Agreement and from any and all rights and obligations under this Settlement Agreement. Class Members who do not opt out in the matter prescribed shall be deemed to have elected to participate in this Settlement Agreement and shall be bound by this Settlement Agreement and all related releases and Court orders.

7.3 Objections

(1) Class Members who do not opt out shall be entitled to object to the terms of settlement. Any objection must be delivered in writing to Class Counsel by not later than 35 days after the date notice issued, and include name, contact information, proof of class membership, and the basis for the objection, for the Court's review at the the hearing to approve the Settlement Agreement and to approve the Agreed Class Counsel Fees.

Section 8- Notice to Settlement Classes

8.1 Notices Required

- (1) The proposed Class shall be given a single notice of: (i) the hearing at which the Court will be asked to certify the Action as a class proceeding and approve the Settlement Agreement; and (ii) if it is brought with the hearing to approve the Settlement Agreement, the hearing to approve the Agreed Class Counsel Fees.
- (2) If this Settlement Agreement is not approved, is voided, or otherwise fails to take effect, the Class shall be given notice of such event.
- (3) The notice to the proposed Class shall advise Class Members that they are entitled to opt out of the proceeding. Settlement Class Members will have 30 days after the date that the notice is sent to them to opt out. Class Counsel will forward a copy of any such opt out notices to Counsel for the Defendant.

8.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court. Any modification to the form of notice by the Court shall not constitute a material change of this Settlement Agreement.
- (2) The notices shall be disseminated by a method and at a time agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

Section 9 - Administration and Implementation

9.1 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 the Court on applications brought by Class Counsel, on notice to the Defendant.

9.2 Information and Assistance

- (1) The Defendant will compile a list of all Settlement Class Members' last known addresses and other available contact information, according to the Defendant's records as of the date that the Court approves the Notice of Certification and Settlement Approval Hearing. The Defendant will compile and send this list to Class Counsel within 10 business days of such Court approval.

Section 10- Class Counsel Fees

- (1) Separate and apart from its obligations to the Settlement Class, the Defendant agrees to pay the Agreed Class Counsel Fees on the condition that the Agreed Class Counsel Fees are approved by the Court on application by Class Counsel.

(2) The Defendant will make best efforts to pay the Agreed Class Counsel Fees to Class Counsel within 30 days after such fees are approved by the Court. If the Court awards less than \$18,525 plus applicable taxes on account of Class Counsel Fees, then the Defendant's obligation to pay will be reduced correspondingly.

(3) The Defendant will not make any submissions at the Settlement Approval Hearing or otherwise with respect to court approval of Agreed Class Counsel Fees.

(4) The approval of Class Counsel Fees is not a material term of this Settlement Agreement, and approval of the settlement shall not depend on approval of Class Counsel Fees in whatever amount.

Section 11- Miscellaneous

11.1 Headings

(1) 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.

11.2 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) if the time for doing an act expires on a holiday (as "holiday" is defined in the *Interpretation Act*, RSBC 1996, c 238), the act may be done on the next day that is not a holiday.

11.3 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

11.4 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.

11.5 Amendments

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

11.6 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Defendant, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made by the Defendant shall be binding upon all of the Releasees.

11.7 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.

11.8 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. 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.

11.9 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.10 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement.

11.11 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she 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.

11.12 Authorized Signatures

(1) Each of the undersigned represents that he or she is 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.

11.13 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Anthony A. Vecchio, Q.C.
SLATER VECCHIO LLP
1800 - 777 Dunsmuir St.
Vancouver, BC V7Y 1K4
Tel: 604-682-5111
Fax: 604-682-5197
Email: aav@slatervecchio.com

For the Defendant:

Mark A. Gelowitz
OSLER, HOSKIN & HARCOURT LLP
1700 – 1055 West Hastings St.
Vancouver, BC V6E 2E9
Tel:
Fax:
Email: mgelowitz@osler.com

11.14 Date of Execution

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

JANET SYMMONDS, on her own behalf and on behalf of the Settlement Class,
by her counsel

Signature of Authorized Signatory: _____

Name of Authorized Signatory: Anthony A. Vecchio, Q.C.
Slater Vecchio LLP
Class Counsel

MEDICAL DEPOT INC. d.b.a. DRIVE DEVILBISS HEALTHCARE

Signature of Authorized Signatory: _____

Name of Authorized Signatory:

Title:

IN THE SUPREME COURT OF BRITISH COLUMBIA

JANET SYMMONDS

- and -

MEDICAL DEPOT INC. d.b.a. DRIVE DEVILBISS HEALTHCARE (“Drive”)

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

**ORDER MADE AFTER APPLICATION
NOTICE APPROVAL AND CONSENT CERTIFICATION**

☒ BEFORE THE HONOURABLE JUSTICE MAJAWA)
)
)

☒ ON THE APPLICATION of the plaintiff coming on for hearing at Vancouver, B.C. on [DATE]; and on hearing [COUNSEL];

THIS COURT ORDERS that:

1. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

Notice Approval

2. The Notices of Hearing are hereby approved substantially in the form attached respectively hereto as Schedules “●” to “●”, and “●”.

3. The plan of dissemination for the Notices of Hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “●”.

4. The Notices of Hearing shall be disseminated in accordance with the Plan of Dissemination.

Signature of lawyer for the Plaintiff

ANTHONY VECCHIO, Q.C.

Signature of lawyer for the Defendant
Medical Depot Inc. d.b.a. Drive Devilbiss
Healthcare

MARK GELOWITZ

By the Court

Registrar