

AMENDED THIS Sept. 20/23 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02 ( )

☒ THE ORDER OF Justice Revell  
L'ORDONNANCE DU Sept. 20, 2023

DATED / FAIT LE

Court File No.: CV-19-00631903-00CP

REGISTRAR  
SUPERIOR COURT OF JUSTICE

GREFFIER  
COUR SUPÉRIEURE OF JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN :

J.C. and A.C.

Plaintiffs

- and -

MARTIN JUGENBURG and  
DR. MARTIN JUGENBURG MEDICINE PROFESSIONAL CORPORATION

Defendants

**PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992**

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

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

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

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

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

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

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

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

Date November 28, 2019

Issued by

**"E-FILED"**

Local Registrar

Address of Superior Court of Justice  
court office: 393 University Avenue, 10th Floor  
Toronto, ON M5G 1E6

TO: **Martin Jugenburg**  
Toronto Cosmetic Surgery Institute  
The Fairmont Royal York Hotel  
100 Front Street West, Level B  
Toronto, ON M5J 1E3

TO: **Dr. Martin Jugenburg Medicine Professional Corporation**  
Toronto Cosmetic Surgery Institute  
The Fairmont Royal York Hotel  
100 Front Street West, Level B  
Toronto, ON M5J 1E3

**CLAIM**

1. The Plaintiffs, on their own behalf and on behalf of Class members as defined in paragraph 12 below, claim:

- (a) an order permitting the Plaintiffs to be named by the pseudonyms J.C. and A.C.;
- (b) an order pursuant to the *Class Proceedings Act, 1992* (the "CPA"), certifying this action as a class proceeding and appointing J.C. and A.C. as the representative plaintiffs;
- (c) damages, including aggravated damages, in the amount of \$50,000,000, for breach of trust, breach of fiduciary duty, negligence, and intrusion upon seclusion;
- (d) special damages, including lost wages, lost earning capacity, out-of-pocket expenses, and costs of past and future care, including any provincial or territorial health insurers' subrogated claims, in an amount to be determined, particulars of which will be provided in advance of trial;
- (e) punitive and exemplary damages in the amount of \$25,000,000 or as fixed by the Court;
- (f) a declaration that the Defendants owed fiduciary and common law duties of care to the Class, and that they breached these duties by engaging in the conduct described below;
- (g) a declaration that the Defendants are liable to the Class for damages caused or materially contributed to by the Defendants' breaches of their fiduciary and common law duties of care;

- (h) a declaration that the Defendants breached the Class members' rights to privacy and confidentiality, and committed the tort of intrusion upon seclusion by engaging in the conduct described below;
- (i) a mandatory order requiring the Defendants to immediately surrender to the Class members all images, videos and/or audio recordings of the Class members that remain in their possession, power, and control, and directing the Defendants to permanently delete and destroy all digital, film, or electronic copies of these images and/or videos;
- (j) damages in an amount to be fixed by the Court for the costs of providing notice of certification of this action as a class proceeding, and for administering the plan of distribution of the recovery of this action;
- (k) such further and other damages as may be incurred by the Class from the date hereof until the ultimate disposition of this matter, particulars of which will be provided prior to trial;
- (l) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues, in accordance with the Plaintiffs' litigation plan or as directed by the court;
- (m) pre-judgment and post-judgment interest compounded annually or pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA");
- (n) costs of this action pursuant to the *CJA*, as amended, or, in the alternative, on a substantial indemnity basis together with applicable taxes payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and

- (o) such further and other relief as this Honourable Court may deem just.

## **OVERVIEW**

2. Martin Jugenburg (who markets himself, particularly on social media, by the populist pseudonym “Dr. 6ix”) is a plastic surgeon carrying on business in Toronto, Ontario, through his professional corporation Dr. Jugenburg Medicine Professional Corporation (the “Corporation”).
3. Dr. Jugenburg practices primarily out of his clinic in downtown Toronto, the Toronto Cosmetic Surgery Institute (the “Clinic”), where he offers a variety of cosmetic surgical procedures primarily targeted towards women – breast augmentations, liposuction, “Brazilian Butt Lifts”, labia reduction, and so on.
4. Through the Corporation, Dr. Jugenburg owns and operates the Clinic. Dr. Jugenburg also makes the Clinic premises available for use by other plastic surgeons to conduct business.
5. Dr. Jugenburg enters into a doctor-patient relationship with, and therefore owes a duty of care to, every person who attends his Clinic for a consultation, appointment and/or medical or surgical procedure with him. Both in his role as a physician and in his role as the operator of the Clinic, Dr. Jugenburg is required to give his patients all of the information they need to make free and informed decisions with full knowledge of the facts about the treatment and care offered by the Clinic. Dr. Jugenburg also owes a fiduciary duty to his patients, which requires him to act in the best interest of his patients and to prioritize their interests over his own personal interests, with respect to his patients’ health and well-being.

6. As the owner and operator of the Clinic, Dr. Jugenburg and the Corporation owe a duty of care to every person who attends at his Clinic.

7. As a physician and health information custodian, and as the operator of the Clinic, Dr. Jugenburg is obliged to maintain patient-doctor confidentiality and to take all reasonable steps to protect the privacy of all patients who attend at the Clinic, and their personal information, including personal health information.

8. All of these duties were violated by Dr. Jugenburg and the Corporation. Dr. Jugenburg surreptitiously placed recording devices (capable of capturing both video and audio) throughout his Clinic, including in waiting, consultation and examination rooms, where private conversations between patients and persons accompanying them took place, patient medical histories were discussed, and patients were often instructed to undress, respectively. These recording devices were also placed in pre- and post-operative rooms where medical procedures were discussed and patients were dressing or undressing, and in operating rooms where patients were sedated and operated on while fully or partially undressed. Dr. Jugenburg operated these recording devices and collected photographic images, video and audio recordings of patients without their consent.

## **FACTS**

### **The Plaintiffs & the Class**

9. J.C. was a patient of Dr. Jugenburg and the Clinic. She currently resides in the City of Markham, in the Province of Ontario.

10. A.C. was a patient of Dr. Jugenburg and the Clinic. She currently resides in the City of Niagara Falls, in the Province of Ontario.

11. J.C. and A.C. bring this action pursuant to the *CPA* on their own behalf and on behalf of the following Class:

All patients who attended at the Toronto Cosmetic Surgery Institute from January 1, 2017 to December 13, 2018.

12. This action is also maintained on behalf of all provincial and territorial health insurance authorities.

**Dr. Jugenburg and the Toronto Cosmetic Surgery Institute**

13. Dr. Martin Jugenburg is a plastic surgeon who has been licenced to practice in Ontario by the College of Physicians and Surgeon ("CPSO") since May 2007.

14. In or around May 2009, Dr. Jugenburg incorporated professionally under the name "Dr. Martin Jugenburg Medicine Professional Corporation".

15. The Toronto Cosmetic Surgery Institute is a plastic surgery clinic owned and operated by Dr. Jugenburg and/or the Corporation. ‡ The Clinic operates out of the Fairmont Royal York Hotel in downtown Toronto.

16. At the Clinic, Dr. Jugenburg performs a variety of cosmetic plastic surgery procedures, including breast augmentations, breast lifts, breast reconstruction, breast reduction, abdominoplasty (also known as "tummy tucks"), liposuction, buttock lifts (including a proprietary procedure marketed as a "Brazilian Butt Lift by Dr. 6ix"), labia reduction, hymen reconstruction, and mons pubis liposuction. He also offers multi-procedure service packages such as "mommy makeovers", non-surgical cosmetic procedures such as Botox injections, and cosmetic surgical procedures for men.

17. In the vast majority of cases, Dr. Jugenburg's patients pay out-of-pocket for his services, as the cosmetic services are not covered by provincial or territorial health insurers, or by private health insurers.

18. Prior to and following surgical procedures performed by Dr. Jugenburg, patients must attend a variety of appointments with Dr. Jugenburg and/or staff under his direction, including initial, pre-operative, post-operative, and follow-up consultations. During these appointments, patients are often required to undress, partially or fully, to reveal the subject area of the surgical procedure, which often requires the exposure of their breasts, buttocks and/or genitalia.

19. During the class period, a number of other plastic surgeons also practiced at the Clinic.

20. During the class period, a number of other plastic surgeons made use of the Clinic to provide services to patients, pursuant to agreements with Dr. Jugenburg and/or the Corporation.

21. At all material times, the other plastic surgeons had no control over, nor did they operate, the surveillance and video cameras that were installed throughout the Clinic.

22. As their treating physician and/or the custodian of their personal information, including personal health information, Dr. Jugenburg owed the Class a fiduciary duty, statutory duty, and common law duty of care, which included a duty of privacy and confidentiality.

### **Personal health information**

23. Personal health information, as defined in the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A ("*PHIPA*"), includes identifying information about an individual in oral or recorded form, if the information, *inter alia*:

- (a) relates to the physical or mental health of an individual, including information that consists of the health history of the individual's family;



(b) relates to the provision of health care to the individual, including the identification of a person as a provider of health care to the individual; or

(c) relates to payments or eligibility for health care in respect of the individual.

24. Pursuant to s. 29 of the *PHIPA*, a health information custodian such as a physician or medical clinic shall not collect, use or disclose personal health information about an individual unless it is done with the individual's consent and is necessary for a lawful purpose.

25. Pursuant to s. 31 of the *PHIPA*, a health information custodian that collects personal health information in contravention of the *PHIPA* shall not use or disclose it unless required by law to do so.

26. The services provided at the Clinic are of an extremely personal and intimate nature. As a result, the photographic images and videos captured of the Class members contain a significant amount of particularly sensitive personal information, including personal health information.

27. Simply the fact of a Class member's depiction in the photographic images and videos is evidence of their attendance at the Clinic, which is, in and of itself, sensitive personal health information. In marketing cosmetic surgery procedures on the Clinic website, Dr. Jugenburg acknowledges this, stating: "Dr. Jugenburg and his caring, professional staff understand the discreet nature of the need for this type of surgery and, as always, all information will remain strictly confidential."

28. The Clinic website contains a Privacy Policy, which states as follows:

At the Toronto Cosmetic Surgery Institute, you are within the confines of a medical clinic. As such, we follow the guidelines set out by the College of Physicians and Surgeons of Ontario titled "Confidentiality of Personal Health Information" which all physicians and medical offices follow. **All**

**information about you, your health, and your procedures is strictly private. We do not share your medical records with anybody without your prior permission.**

**The Policy on Confidentiality follows the Personal Health Information Protection Act 2004 (PHIPA), to ensure personal health information is protected at all times.**

**Dr. Jugenburg and the staff of the Toronto Cosmetic Surgery Institute act in accordance with all of their professional and legal obligations to establish and preserve trust in the physician-patient relationship, to provide patients with the confidence that their personal health information will remain confidential. Maintaining confidentiality is fundamental to providing the highest standard of patient care.** Patients who understand that their information will remain confidential are more likely to provide the physician with complete and accurate health information, which in turn, leads to better treatment advice from the physician. [emphasis added]

29. At all material times, Dr. Jugenburg and the Clinic were required to abide by the Canadian Medical Association *Code of Ethics and Professionalism*. Without limiting the generality of the foregoing, Dr. Jugenburg and the Clinic were required to:

- (a) prioritize the well-being of every patient and always act for the patient's benefit;
- (b) always treat patients with dignity;
- (c) never exploit a patient for personal advantage; and
- (d) fulfill a physician's duty of confidentiality by collecting, using, and disclosing only as much health information as necessary to benefit a patient; and sharing information only to benefit the patient and within the patient's circle of care.

30. At all material times, Dr. Jugenburg and the Clinic were required to abide by the CPSO's *Practice Guide*, which states: "Patients give information to physicians in a unique context where they have the utmost faith that the physician will maintain patient privacy and confidentiality... Physicians must safeguard patient information."

31. At all material times, Dr. Jugenburg and the Clinic were required to abide by the CPSO's *Confidentiality of Personal Health Information* policy, *Medical Records* policy,

and *Physician Behaviour in the Professional Environment* policy. Without limiting the generality of the foregoing, Dr. Jugenburg and the Clinic were required to:

- (a) only disclose a patient's personal health information with consent and when disclosure is necessary for a lawful purpose;
- (b) only disclose a patient's personal health information outside of the patient's circle of care with express consent;
- (c) only assume implied consent of a patient to collect, use, or disclose the patient's personal health information if the personal health information is being used, collected or disclosed for the purpose of providing or assisting in the provision of health care to the patient; and
- (d) act in the best interests of the patient.

32. Ontario Regulation 856/93 "Professional Misconduct", made under the *Medicine Act*, 1991, S.O. 1991, c. 30, states that it is an act of professional misconduct for the purposes of clause 51(1)(c) of the *Health Professions Procedural Code* to "[give] information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law".

33. The Plaintiffs and the proposed class reasonably expected that Dr. Jugenburg complied with his professional obligations and ethical duties while treating them and all his patients. Compliance with these professional obligations and ethical duties was necessary for Dr. Jugenburg to meet the standard of care of a plastic surgeon.

**The Defendants' wrongful conduct**

34. During the class period, 24 recording devices (16 cameras on the first floor and eight cameras on the second floor) were installed and operational on the Clinic premises. The devices were active continuously (24 hours a day), and covered the entire Clinic premises, including the reception areas, waiting rooms, consultation rooms, examination rooms, pre- and post-operative rooms, operating rooms, and hallways.

35. All of the recording devices captured video of patients during confidential appointments and procedures, while nude or partially nude, in the course of being examined, and even while being operated on. The eight cameras on the second floor also captured audio of patients, including when discussing personal health information.

36. At all material times, the recording devices were activated, recording without patient consent, and uploading footage to two Network Video Recorders located on the Clinic premises. In addition, live footage from all of the recording devices was available through an application on Dr. Jugenburg's smartphones and other devices.

37. At all material times, the recording devices were not used for patients' medical treatment and care, but rather were used solely to serve Dr. Jugenburg's personal and business interests.

**J.C.'s experience**

38. In July 2018, J.C. contacted the Clinic to book a consultation appointment to discuss undergoing a potential breast augmentation procedure with Dr. Jugenburg. She also paid a non-refundable \$200 consultation fee.

39. On or about, August 14, 2018, J.C. attended at the Clinic for her consultation appointment. She was accompanied by a friend. On arrival, J.C. and her friend were asked to sit in the waiting room.

40. From the waiting room, J.C. was escorted by a nurse into a consultation room. Acting under the direction of Dr. Jugenburg, who was not present, the nurse conducted the consultation appointment. As part of the appointment, the nurse obtained information from J.C., including J.C.'s medical history.

41. During the consultation, the nurse asked J.C. to remove her top and bra. While undressed, the nurse took photographs of J.C.'s naked breasts and torso, which J.C. understood to be for the purpose of providing medical treatment and care to her.

42. The nurse then assisted J.C. in trying different types of breast implants. During the course of trying implants, J.C. was naked from the waist up, wearing only a bra. The nurse assisted J.C. by inserting and adjusting various breast implants inside J.C.'s bra.

43. After J.C. selected the type of implant to be used for her procedure, the nurse offered to bring J.C.'s friend into the consultation room to offer an opinion on the selected implant.

44. At some point during the consultation, J.C. advised the nurse that she was potentially also interested in an abdominoplasty procedure. The nurse instructed J.C. to remove her pants, which J.C. did, again on the understanding that it was for the purpose of providing medical treatment and care. J.C. felt exposed and uncomfortable as she stood in her underwear and the nurse examined her stomach. After the examination, J.C. got dressed.

45. Before the appointment concluded, the nurse reviewed J.C.'s surgical options and the associated costs.

46. At one or more times during the consultation process, J.C. and her friend were left alone in the consultation room, during which they engaged in private conversations.

47. At the conclusion of the appointment, J.C. left the clinic to consider her options. She ultimately decided not to have Dr. Jugenburg perform any procedures.

48. At no time before, during or after J.C.'s consultation appointment did Dr. Jugenburg or his staff advise J.C. that there were recording devices recording her in the Clinic, including in the consultation room or obtain J.C.'s written or oral consent to be recorded while on the Clinic premises.

49. On or about December 14, 2018, J.C. also read the CBC News article which stated that CBC investigators had observed video surveillance cameras set up throughout Dr. Jugenburg's Clinic, including in consultation rooms like the one where J.C. had attended. J.C. then realized that she had been videotaped during her consultation at the Clinic and that her privacy had been invaded intentionally.

50. As a result of Dr. Jugenburg's deliberate and significant invasion of her personal privacy, J.C. felt distressed, embarrassed, utterly humiliated and overwhelmed by a deep sense of personal violation.

#### **A.C.'s experience**

51. On or about April 20, 2017, A.C. contacted the Clinic to book a consultation appointment to discuss potential liposuction procedures with Dr. Jugenburg. A.C. was required to pay a non-refundable \$200 consultation fee in order to book the appointment.

52. A.C.'s consultation appointment was originally booked for May 11, 2017, but was subsequently rescheduled for February 27, 2018.

53. On February 27, 2018, A.C. attended at the Clinic and met with a nurse acting under the direction of Dr. Jugenburg. During the consultation, the nurse obtained information from A.C., including A.C.'s detailed medical history. The nurse discussed the liposuction procedures with A.C, specifically liposuction to the chin and the torso, which the Clinic referred to as "liposuction - 360". The nurse also advised of the cost of the procedures and the payment process.

54. During the consultation, the nurse instructed A.C. to remove all of her clothing, except for her underwear. Once A.C. was undressed, the nurse took photographs of A.C. from various angles.

55. Following the consultation, A.C. decided to proceed with Dr. Jugenburg for the liposuction procedures. In order to schedule the surgery, A.C. paid a mandatory, non-refundable \$2,000 deposit.

56. A.C.'s surgery was ultimately scheduled for July 16, 2018. On July 3, 2018, A.C. received an e-mail from the Clinic requesting certain information, the return of various forms including a social media consent form, and payment of \$9,865.

57. The social media consent indicated stated that "Dr. Jugenburg (Dr. 6ix) documents surgical procedures for educational purposes." A.C. felt pressured to sign the social media consent, since her scheduled surgery date was less than two weeks away, and she had already paid a non-refundable deposit of \$2,000.

58. On July 16, 2018, A.C. attended at the Clinic to undergo the liposuction procedures, accompanied by her partner. Upon arriving at the Clinic, A.C. and her partner

were asked to take a seat in the waiting room. While in the waiting room, A.C. and her partner engaged in private conversations.

59. One of Dr. Jugenburg's staff then directed A.C. into a pre-operative room and instructed A.C. to undress completely and put on a gown. While in the pre-operative room, a nurse gave A.C. medication. The medication made A.C. feel tired and drowsy.

60. At some point after taking the medication, Dr. Jugenburg entered the pre-operative room with another man. This was the first time that A.C. had met Dr. Jugenburg or the other man. Photographs of her naked body were displayed on the computer screen in the pre-operative room, and there was some discussion about the procedures to be undertaken that day. During this meeting, A.C. felt vulnerable, as she was medicated and drowsy, wearing only a hospital gown, and with her naked body visible on the computer screen.

61. A.C. was then escorted into the operating room. She was sedated and Dr. Jugenburg performed the liposuction procedures to her chin and torso.

62. Following the procedure, A.C. was brought to a post-operative room, where she remained until she came out of sedation. A.C. was then escorted by a nurse to her hotel room at the Royal York Hotel.

63. Approximately one month later, A.C. returned to the Clinic for a follow-up appointment. She met with a nurse under the direction of Dr. Jugenburg and was again instructed to remove all of her clothing except her underwear. Photographs were taken of A.C.'s body and chin. The nurse also removed the drainage tube from A.C.'s stomach, as well as the stitches from her torso and chin.



64. Subsequently, Dr. Jugenburg came into the room. While discussing the massaging of A.C.'s surgical sites, Dr. Jugenburg interrupted the appointment and stated "now you will see me rant". Dr. Jugenburg proceeded to take out his cellphone and record a Snapchat video in which he "ranted" about his unhappiness with patients who he feels do not follow his instructions in massaging surgical sites after liposuction. This social media "rant" took place in the middle of A.C.'s appointment, while A.C. remained in the room, undressed.

65. A.C. was shocked by Dr. Jugenburg's behaviour, but felt too intimidated and upset to say anything. After concluding his "rant", Dr. Jugenburg left the examination room and the appointment concluded with the nurse alone.

66. On December 19, 2018, A.C. received what appeared to be a form e-mail from Dr. Jugenburg. The e-mail stated:

*I would like to inform you about an important matter involving security and patient privacy concerns.*

*Approximately two years ago, we installed security cameras throughout our clinic, including reception areas and examining rooms. The cameras were always visible, and signs were posted to inform our patients of the presence of video surveillance.*

*The video footage captured on this system was for security purposes and to protect our team and our patients. The information was stored on a highly secure IT system with access limited to me or my senior office manager.*

*As Canadian privacy legislation has continued to expand, both the scope of our security system and related signage should have been reviewed and updated. We have learned that we should have been more proactive in communicating the presence of the cameras through the office to you, allowing you to opt out if desired.*

*We did not do this, and we apologize for this oversight.*

*Our security system is currently disabled, and any previous recordings would be automatically deleted by the system every few weeks.*

*Moving forward we will ensure that any future security cameras comply with all privacy interests and expectations.*

*I would like to reiterate that patient safety and privacy is most important to me and my team.*

*We want to ensure all of our patients are provided with the best clinical care and experience when you visit our premises.*

67. At no time before, during or after A.C.'s initial consultation, pre-operative appointment, surgery, or follow-up appointments, did Dr. Jugenburg or his staff advise A.C. that there were recording devices recording her in the Clinic, including in the consultation, examination, pre- and post-operative, and operating rooms or obtain A.C.'s written or oral consent to be recorded while on the Clinic premises.

68. Upon reading the e-mail, A.C. realized that she had been videotaped during her appointments and surgery at the Clinic, and that her privacy had been invaded intentionally.

69. As a result of Dr. Jugenburg's deliberate and significant invasion of her personal privacy, A.C. felt distressed, embarrassed, utterly humiliated and overwhelmed by a deep sense of personal violation.

#### **CAUSES OF ACTION**

70. The Plaintiffs and Class members met with Dr. Jugenburg, or Clinic nurses directed by Dr. Jugenburg, or other plastic surgeons using the Clinic premises, to discuss and receive medical treatment and care. The Plaintiffs and Class members trusted Dr. Jugenburg and the Clinic staff directed by him to prioritize their treatment and care over Dr. Jugenburg's personal and commercial interests, to maintain their privacy, and to keep their personal and health information confidential, which they failed to do.

71. The Defendants are liable to the Class for breach of trust and fiduciary duty, negligence, and intrusion upon seclusion.

**Breach of trust and fiduciary duty/negligence**

72. Dr. Jugenburg enjoyed a special position of trust and confidence vis-à-vis the Class, as vulnerable patients over whom he exercised special power, authority, knowledge and control, both in his role as physician and in his role as operator of the Clinic.

73. At all material times, Dr. Jugenburg owed the Class a fiduciary duty to act in their best interests and not to abuse his dominant position in relation to them, nor to exploit their vulnerabilities or dependency on him, nor to betray the trust they placed in him, nor to otherwise act disloyally towards them by placing his personal and commercial interests ahead of their interests in receiving medical care compliant with the standard of care of a reasonably competent plastic surgeon acting in accordance with legislative, regulatory and professional standards.

74. Dr. Jugenburg owed a duty of care to the Class members to: collect, store, use retain, and/or disclose their personal health information only in accordance with legislative, regulatory, and professional standards; keep their personal information, including personal health information, confidential; and to ensure that their personal information, including personal health information, would not be disclosed to unauthorized individuals. Specifically, Dr. Jugenburg owed a duty of care to the Class members to take all reasonable steps to ensure that:

- (a) their personal health information would only be collected for the purpose of providing medical care and treatment;

- (b) their personal health information would only be collected with fully informed consent;
- (c) any of their collected personal health information would be used only for the provision of medical care and treatment;
- (d) any of their personal information or personal health information that was collected but which was not necessary for the provision of medical care and treatment would not be retained and would be promptly destroyed or would be maintained in the patient's medical records in a manner that would preserve the patient's privacy and be in compliance with the *PHIPA*, the Canadian Medical Association *Code of Ethics and Professionalism* and relevant CPSO policies and guidelines;
- (e) any of their collected personal health information would be kept confidential and secure;
- (f) any of their collected personal information, including personal health information, would not be disseminated or disclosed to the public or to any individuals outside of their circle of care without the patient's express consent; and
- (g) their personal information, including personal health information, would only be collected, stored, used, retained, and/or disclosed in compliance with the *PHIPA*, the Canadian Medical Association *Code of Ethics and Professionalism*, and relevant CPSO policies and guidelines.

75. The Plaintiffs plead that Dr. Jugenburg breached his duty of care and fiduciary duty, particulars of which include:

- (a) failing to collect, store, use, delete and/or disclose the Class members' personal health information in accordance with legislative, regulatory and professional standards, including the *PHIPA*, the Canadian Medical Association *Code of Ethics and Professionalism*, and relevant CPSO policies and guidelines;
  - (b) installing and operating recording devices throughout his Clinic, including in waiting, consultation, examination, and operating rooms, and using those devices to collect personal information of the Class members, including personal health information, in the form of photographic images, video and audio recordings, without the Plaintiffs or Class members' consent;
  - (c) using video and audio recordings which were non-consensually collected for purposes other than the provision of medical treatment and care, without the Plaintiffs or the Class members consent;
  - (d) retaining and failing to delete in a timely fashion the collected personal information of the Class members, including video and audio recordings, which was not necessary for the provision of medical care and treatment;
  - (e) failing to properly supervise Clinic employees, and/or failing to provide Clinic employees with proper training with regard to the collection, storage, use, retention, deletion, and/or disclosure of personal information, including personal health information.
76. At all material times, Dr. Jugenburg failed to act in the Class members' best interests, and placed his interests over theirs in pursuit of his own personal and commercial gain. He acted with reckless indifference to the consequences of failing to protect the Class members' privacy.

77. As a result of the aforementioned breaches, Dr. Jugenburg caused the Class members psychological, emotional and physical harm, including anguish, humiliation, and serious and prolonged mental distress.

#### **Intrusion upon seclusion**

78. The Class members attended at the Clinic with the reasonable expectation that Dr. Jugenburg would respect their right to privacy.

79. The Defendants committed the tort of intrusion upon seclusion because the use and operation of the video surveillance system constituted an intentional invasion of the Class members' privacy, without lawful justification, in circumstances which would be considered highly offensive to a reasonable person.

#### **DAMAGES**

80. As a result of the Defendants' wrongful conduct pleaded herein, the Plaintiffs and the Class members have suffered and/or continue to suffer harms and injuries, which have caused or materially contributed to their serious and prolonged pain, suffering and loss of enjoyment of life, including emotional, physical and psychological harm. Particulars of the harms suffered by the Plaintiffs and Class will be provided prior to trial.

81. As a result of these harms and injuries, the Class members have required and/or will require ongoing therapy, counselling and treatment. They claim the costs of both past and future therapy, counselling and treatment, as well as any other expenses arising from the Defendant's wrongful conduct.

82. All relevant provincial and territorial health insurers have incurred expenses with respect to the medical treatment of the Class members as a result of the Defendant's negligence, breaches, actions or inactions. Consequently, the health insurers have

suffered and will continue to suffer damages for which they are entitled to be compensated by virtue of their direct right of action or right of subrogation in respect of all past and future insured services.

### **Punitive and aggravated damages**

83. The selfish, high-handed and callous conduct of the Defendants warrants condemnation of the court through awards of both aggravated and punitive damages.

84. The prolonged, intrusive and exploitative nature of the mistreatment to which the Class members were subject at the hands of Dr. Jugenburg—who showed no regard for their bodily integrity or emotional wellbeing—represented a willful and flagrant betrayal of their trust and vulnerabilities and was of such a serious nature as to justify an award of both aggravated and punitive damages against the Defendants.

### **STATUTES RELIED UPON**

85. This action is maintained on behalf of all provincial and territorial health insurers pursuant to the following legislation, all as amended:

- (a) *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27;
- (b) *Crown's Right of Recovery Act*, S.A. 2009, c. C-35;
- (c) *The Health Administration Act*, R.S.S. 1978, c. H-0.0001;
- (d) *The Health Services Insurance Act*, C.C.S.M., c. H35;
- (e) *Health Insurance Act*, R.S.O. 1990, c. H.6;
- (f) *Health Insurance Act*, R.S.Q., c. A-29;
- (g) *Health Services and Insurance Act*, S.N.S. 1989, c. 197;
- (h) *Hospital Services Act*, R.S.N.B. 1973, c. H-9;
- (i) *Medical Care and Hospital Insurance Act*, S.N.L. 2016, c. M-5.01;

- (j) *Hospital and Diagnostic Services Insurance Act*, R.S.P.E.I. 1988, c. H-8;
- (k) *Health Services Payment Act*, R.S.P.E.I. 1988, c. H-2;
- (l) *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T. 1988, c. T-3;
- (m) *Health Care Insurance Plan Act*, R.S.Y. 2002, c. 107; and
- (n) *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T. (Nu) 1988, c. T-3.

86. The Plaintiffs also plead and rely upon: the *CPA*; the *CJA*; the *PHIPA*; the *Negligence Act*, R.S.O. 1990, c. N.1; the *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B; and the *Excise Tax Act*, R.S.C. 1985, c. E-15, all as amended.

#### PLACE OF TRIAL

87. The Plaintiffs propose that this action be tried in Toronto, Ontario.

November 28, 2019

#### **Beyond Law LLP**

67 Yonge Street, Suite 200  
Toronto, ON M5E 1J8  
Tel: (416) 613-1225  
Fax: (647) 243-2852

#### **Kate Mazzucco (LSO #54356S)**

kate@beyond.law

#### **Josh Nisker (LSO #53799A)**

josh@beyond.law

#### **Waddell Phillips Professional Corporation**

36 Toronto St., Suite 1120  
Toronto, ON M5C 2C5  
Tel: (647) 261-4486  
Fax: (416) 477-1657

#### **Margaret Waddell (LSO #29860U)**

marg@waddellphillips.ca

#### **Tina Q. Yang (LSO #60010N)**

tina@waddellphillips.ca



**Howie, Sacks and Henry LLP**

Suite 3500 – 20 Queen Street West

Toronto, ON M5H 3R3

Tel: (416) 361-5990

Fax: (416) 361-0083

**Paul Miller (LSO #39202A)**

pmiller@hshlawyers.com

**Valérie Lord (LSO #70962H)**

vlord@hshlawyers.com

Lawyers for the Plaintiffs

J.C. et al.

PLAINTIFFS

-and-

MARTIN JUGENBERG et al.

DEFENDANTS

Court File No.: CV-19-00631903-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced in TORONTO

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

**Beyond Law LLP**

67 Yonge Street, Suite 200  
Toronto, ON M5E 1J8

**Howie, Sacks and Henry  
LLP**

20 Queen Street West  
Suite 3500  
Toronto, ON M5H 3R3

**Kate Mazzucco (LSO #:  
54356S)**

kate@beyond.law

**Josh Niskier (LSO #: 53799A)**

josh@beyond.law

**Paul Miller (LSO #:**

**39202A)**

pmiller@hshlawyers.com

**Valerie Lord (LSO #:**

**70962H)**

vlord@hshlawyers.com

Tel: 416.361.5990

**Waddell Phillips Professional  
Corporation**

36 Toronto St., Suite 1120  
Toronto, ON M5C 2C5

**Margaret Waddell (LSO #:  
29860U)**

marg@waddellphillips.ca

**Tina Q. Yang (LSO #: 60010N)**

tina@waddellphillips.ca

Tel: 647.261.4486

Lawyers for the Plaintiffs