



Amended Pursuant to Rule 6-1(1)(a)

Original Filed on August 16, 2019

No. S-199228
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

JAMES RODNEY MCLEAN

PLAINTIFF

and

CATHAY PACIFIC AIRWAYS LIMITED

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. On October 24, 2018, Cathay Pacific Airways Limited (“**Cathay Pacific**”) announced a major data breach affecting up to 9.4-million passengers. As a result of this data breach, the Plaintiff and Class Members’ private information (including full names, passport numbers, credit card numbers, and other sensitive data) were exposed, in breach of those passengers’ privacy and reasonable expectations, and a result of Cathay Pacific’s negligence. Through this suit, the Plaintiff and Class Members seek to hold Cathay Pacific accountable for its conduct and to obtain compensation.

The Parties

The Plaintiff

2. The Plaintiff, James Rodney McLean, is a resident of Vancouver, British Columbia. At material times, he was a customer and passenger with Cathay Pacific. In order to obtain services from Cathay Pacific, he provided private information to Cathay Pacific, including his full name, address, credit card details (including expiry date and CVV code), frequent flyer information, and passport details, which information alone or in combination is not public information. The Plaintiff is a member of Asia Miles, as defined below.

3. The Plaintiff received an e-mail on or about October 27, 2018 from Cathay Pacific, that his information was exposed as a result of the Data Breach (defined further below).

4. The Plaintiff brings this claim on his own behalf and on behalf of all individuals residing anywhere in the world (or, subsidiarily in British Columbia or Canada), except the

Hong Kong Special Administrative Region of the People's Republic of China, who received notification from Cathay Pacific that their private information may have been accessed as part of the Data Breach disclosed on October 24, 2018~~all individuals residing anywhere in the world (or, subsidiarily in British Columbia or Canada, who provided Private Information to Cathay Pacific for the purpose of obtaining products or services from Cathay Pacific or its subsidiaries, up to October 24, 2018 (together, "Class Members")~~.

The Defendant Cathay Pacific's Business

5. Cathay Pacific is a commercial airline headquartered in Hong Kong, which operates worldwide, that operates international passenger flights to/from British Columbia and Canada, under the authority and requirements of the *Canada Transportation Act*, SC 1996, c 10, the *Air Transportation Regulations*, SOR/88-58 and related enactments. Cathay Pacific is extra-provincially registered in British Columbia with an address for service c/o BLG Corporate Services (B.C.) Ltd., PO Box 48600, 1200 Waterfront Centre, 200 Burrard Street, Vancouver BC V7X 1T2.

6. Cathay Pacific operates various subsidiaries, including Hong Kong Dragon Airlines Limited, and the Private Information (as defined further below) for passengers who travelled with Hong Kong Dragon Airlines Limited are stored and managed on the same database as those who travelled with Cathay Pacific, and similarly affected by the Data Breach.

7. Cathay Pacific has employees, aircraft, and facilities in British Columbia. Cathay Pacific operates from Canadian airports, including Vancouver International Airport. Customers located in British Columbia book travel with Cathay Pacific directly, or through intermediaries, from British Columbia, and pay for those services.

8. In order to make a purchase from and take flights on Cathay Pacific (or its subsidiaries), customers provided Cathay Pacific with private information including but not limited to:

- a. full legal name,

- b. date of birth,
- c. nationality,
- d. addresses,
- e. phone numbers,
- f. email addresses,
- g. passport or other government ID numbers,
- h. credit card numbers (including expiry dates and CVV codes), and/or
- i. frequent flyer program membership numbers.

In addition, Cathay Pacific collects travel information regarding its passengers, records customer service remarks about customers' interactions with the airline, and other generates and collates other sensitive data (collectively, "**Private Information**").

- 9. The Private Information alone or in combination is not public information.
- 10. The Private Information was obtained from customers by Cathay Pacific for the limited purpose of processing their orders or permitting them to travel on Cathay Pacific (or its subsidiaries).
- 11. Cathay Pacific stored the Private Information electronically, including on computer servers and other media, in Hong Kong or otherwise controlled and/or managed the Private Information from Hong Kong.
- 12. The Plaintiff and Class members had direct, transactional relationships with Cathay Pacific. The information collected by Cathay Pacific was sensitive and collected in the course of its business. It was reasonably foreseeable that harm such as identity theft could result if such information were disclosed or not securely stored, and it was foreseeable to Cathay Pacific as an experienced participant in the airline industry.

The Data Breach

13. On October 24, 2018, Cathay Pacific publicly announced that it had discovered unauthorized access to some of its information system containing passenger data of up to 9.4 million passengers, including passengers who have flown with Cathay Pacific and/or Hong Kong Dragon Airlines Limited, which included ongoing unauthorized access by at least two groups of intruders, since as early as October 2014. The information compromised includes the Private Information (“**Data Breach**”).

14. The Data Breach involved information systems that were based in Hong Kong, or otherwise controlled or managed from Hong Kong.

15. Cathay Pacific confirmed that the following data was accessed: passenger name; nationality; date of birth; phone number; email; address; passport number; identity card number; frequent flyer programme membership number; customer service remarks; and historical travel information.

16. Cathay Pacific also advised that some apparently expired credit card numbers were accessed.

17. Customers have received emails or other communications from Cathay Pacific purporting to notify Class Members that some of their Private Information hads been accessed, without further particularization.

18. On October 27, 2018, the Plaintiff received an email from Cathay Pacific notifying him that his Private Information had been accessed as a result of the Data Breach. Cathay Pacific advised the Plaintiff that his title, name and address had been accessed. As a result of the Data Breach, the Class Members (including the Plaintiff) have felt upset and inconvenienced from having their Private Information exposed to unknown individuals.

The Investigation into the Data Breach by the Hong Kong Privacy Commissioner for Personal Data

19. The Privacy Commissioner for Personal Data, Hong Kong, (the “**HK Commissioner**”) investigated the Data Breach. On June 6, 2019, the HK Commissioner issued a report entitled “*Data Breach Incident Investigation Report – Cathay Pacific Airways Limited and Hong Kong Dragon Airlines Limited: Unauthorised access to personal data of customers*” (HK PCO Report Number R19-15281) (“**HK PCO Report**”).

20. The HK PCO Report determined that the Data Breach was discovered when Cathay Pacific detected suspicious activity on its network on March 13, 2018. Nevertheless, despite being aware of the Data Breach and the compromise of its customers’ privacy and Private Information, Cathay Pacific deliberately chose to and did not disclose the Data Breach to its customers, including the Plaintiff and Class Members, for seven months.

21. The HK PCO Report concluded that the Data Breach occurred because Cathay Pacific failed to identify and fix commonly-known and exploitable vulnerabilities in its internet-facing server. The HK PCO Report also found that Cathay Pacific had failed to apply effective multi-factor authentication to all remote users accessing its IT system involving personal data. The HK PCO Report further found that should not have produced unencrypted backup files, thereby exposing the personal data of customers to attackers, and should not have retained personal identify information as long as it did.

22. The HK PCO Report concluded that Cathay Pacific did not take all reasonably practicable steps to protect the customers’ personal data against unauthorised access in terms of vulnerability management, adoption of effective technical security measures and data governance, and breached Data Protection Principles 2(2) and 4(1) under Schedule 1 of Hong Kong’s *Personal Data (Privacy) Ordinance*, Cap. 486 (the “**HK Data Privacy Ordinance**”).

23. The HK PCO Report also concluded that Cathay Pacific could have notified Class Members much earlier to meet the Class Members’ legitimate expectations.

The Investigation into the Data Breach by the United Kingdom Information Commissioner

23.1. The Information Commissioner for the United Kingdom, (the “UK Commissioner”) investigated the Data Breach. On about March 4, 2020, the UK Commissioner announced that it had levied a £500,000 fine against Cathay Pacific for the Data Breach.

23.2. At or around the time of the announcement on March 4, 2020, the UK Commissioner published the full details of the investigation in the monetary penalty notice that it issued to Cathay Pacific, dated February 10, 2020 (“UK ICO Report”).

23.3. The UK ICO Report determined that Cathay Pacific breached various provisions of the United Kingdom’s *Data Protection Act, 1998*. At paragraph 20 of the UK ICO Report, the UK Commissioner noted that Cathay Pacific had several months to analyse the data that was compromised in the Data Breach.

23.4. Prior to the announcement in about October 2018, Cathay Pacific had retained third-parties to assist in the investigation and, as a result, Cathay Pacific had gained full knowledge of the extent of the Data Breach and what Private Information was accessed for each of the Class Members.

23.5. Among other findings, the UK Commissioner also found that the contraventions and breaches of privacy were serious, including the types of personal data compromised (and in particular the likelihood that they could be used to perpetrate fraud), the number of failings identified, and the long duration of the breach (over 3.5 years). The UK ICO Report concluded that the contraventions were of a kind likely to cause substantial damage or distress, given the types of personal data which were compromised, and that Cathay Pacific had been negligent. In particular, negligence was found because of Cathay Pacific failing to follow its own policies; ignoring best practices; Cathay Pacific had available to it knowledge of the various vulnerabilities and the means to correct them, but did not implement controls in a timely way or at all.

Class Members' Losses

24. The Plaintiff and Class members have suffered a loss and violation of privacy. The Plaintiff and Class members have or will suffer losses associated with responding to this wrongdoing and from additional misuse of their Private Information.

25. In particular, as a result of Cathay Pacific's actions, the Plaintiff and Class Members have suffered, or will likely suffer, damages including, but not limited to:

- a. Damage to their credit ratings or reputation;
- b. Costs incurred in preventing identity theft;
- c. Cancelling their payment cards, including any financial losses suffered by the Class Member and wasted time in engaging in the procedures to report fraudulent transactions on a payment card;
- d. Changing or closing payment or bank accounts;
- e. Wasted time in investigating and reviewing their accounts and transactions;
- f. Serious risk of identity theft or phishing scams;
- g. Costs of replacing passports or other identification documents;
- h. Out of pocket expenses; and
- i. Injury to feelings from the stress and frustration of dealing with the Data Breach.

26. In addition, Class members have suffered or will likely suffer further losses from identity theft because of the likelihood that the Private Information has been or will be sold for criminal purposes, including identity theft. It is likely or alternatively there is a real and substantial chance the Private Information will be used in the future for criminal purposes such as to create fictitious bank accounts, obtain loans, secure credit cards or to engage in other forms of identity theft, thereby causing Class Members to suffer additional losses.

Composition of the Class

27. The HK PCO Report and UK ICO Report confirms that all Class Members were all passengers of Cathay Pacific and flown on an airplane operated by Cathay Pacific (or its subsidiaries) and dispersed across 260 jurisdictions.

28. The Class consists of two groups who are all similarly situated: **Member Group** and **Non-Member Group**.

- a. The Member Group consists of 3.59 million individuals enrolled as: (1) members of Asia Miles; (2) members of Marco Polo Club; and (3) Registered Users of Cathay Pacific.
- b. The Non-Member Group consists of 5.86 million individuals who travelled on a Cathay Pacific Flight.

29. Asia Miles is a rewards program owned by Cathay Pacific and managed by Cathay Pacific's subsidiary, Asia Miles Limited, under the direction or on behalf of Cathay Pacific.

30. Marco Polo is a customer loyalty program owned and operated by Cathay Pacific.

31. Registered Users of Cathay Pacific are passengers who registers an account with Cathay Pacific to simplify the booking and check-in process.

Contracts with All of the Class Members

32. Considering all Class Members were passengers of Cathay Pacific, Cathay Pacific's *General Conditions of Carriage for Passengers and Baggage* (hereinafter the "**General Conditions**") applies to all the Class Members, regardless of their residency.

33. Section 6.3 of the General Conditions provides that:

We may use the personal information that you provide and we collect, including information about how your purchase history and how you use our services and facilities for the purposes of: making a reservation, purchasing and issuing a ticket, providing you with your transportation and any related services and facilities; accounting, billing and auditing, verifying and screening credit or other payment cards; immigration and customs control; safety, security, health, administrative and legal purposes; statistical and marketing analysis, operating frequent flyer programmes; systems testing, maintenance and development; IT training; customer relations; helping us to deal with you more efficiently in the future; and direct marketing and market research (which we will only do at your request or with your consent or if we give you the opportunity to opt out).. **For these purposes, you authorise us to retain and use such data as long as it is needed to perform these tasks** and to transmit it to our own offices, Authorised Agents, government agencies, other carriers or the providers of the above-mentioned services. You may be required, by government regulations, to provide specific personal data or information to us, including information to enable us to notify family members in the event of an emergency and other purposes associated with or incidental to your carriage. We shall not be liable to you for

any loss or expense incurred due to our use or transmission of any personal data provided to us **unless the loss or expense was due to our negligence**. We may also monitor and/or record your telephone conversations with us to ensure consistent service levels, prevent/detect fraud and for training purposes. Further information on our data privacy policy, including how to access and correct this data, can be obtained from our offices and our website.

34. By the contractual terms in section 6.3 (above), Cathay Pacific expressly agreed to retain the Private Information only for as long as necessary for providing the services to the Class Members. In addition, Cathay Pacific agreed to compensate passengers for any loss or expense covered by Cathay Pacific's own negligence.

35. In addition to the General Conditions, Cathay Pacific had in place a Customer Privacy Policy applicable to all customers. Under the terms of the Customer Privacy Policy, Cathay Pacific undertook to protect users' personal data, which includes the Private Information. In particular, Cathay Pacific undertook to maintain commercially reasonable physical, electronic and procedural safeguards to protect customers' personal data in accordance with the requirements of data protection legislation, including the *HK Data Privacy Ordinance*, the federal *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, and the British Columbia *Personal Information Protection Act*, SBC 2003, c 63.

36. Cathay Pacific further undertook to store the Private Information on secure servers, to comply with information security policies and standards when accessing or using this information, and to restrict access to customers' personal data to those persons who need to use it for the purpose(s) for which it was collected.

37. The Customer Privacy Policy was an expressed or implied term of every customers' agreement with Cathay Pacific to provide Private Information in exchange for access to Cathay Pacific's products and services.

37.1. To the extent the General Conditions, the Customer Privacy Policy or any other related contracts and/or arrangements entered into between Cathay Pacific and the Class Members, include provisions that purports to absolve or otherwise limit Cathay Pacific's liability for the Data Breach or force the Class Members to litigate in specific forums (the "LOL Clauses"), those provisions are unconscionable and/or unenforceable.

37.2. The LOL Clauses partn of contracts of adhesion between Cathay Pacific and the Class Members, where there was no opportunity for the Class Members to negotiate any of its terms.

37.3. There is an equality of bargaining power between the Class Members and Cathay Pacific. The LOL Clauses unduly advantages Cathay Pacific.

Part 2: RELIEF SOUGHT

38. The Plaintiff claim on his own behalf and on behalf of the Class Members against the Defendant, Cathay Pacific for:

- a. An order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c 50;
- b. a declaration that Cathay Pacific:
 - i. breached the express and/or implied terms of the contract(s) with each Class Member, which mandates that Cathay Pacific protect the Class Members' personal information or otherwise employ industry standard practices to protect the Class Members' Private Information;
 - ii. committed a tort under section 1 of the *BC Privacy Act*; and/or
 - iii. ~~is in contravention of~~contravened section 4 of the ~~Hong Kong~~ HK *Data Privacy Ordinance*, including failure to comply with Data Protection Principle 4(1) and 2(2), as concluded by the ~~Privacy Commissioner~~HK Commissioner of Hong Kong;
 - iv. owed a duty of care to the Plaintiff and the Class, and breached the standard of care owed to them;
 - v. committed the common law tort of breach of privacy of the Plaintiff and the Class Members;

~~iii-vi. intruded upon seclusion of the Plaintiff and the Class;~~

- c. an order for the aggregate assessment of the following remedies, pursuant to s. 29 of the *Class Proceedings Act*:
 - i. General and special or, alternatively, nominal damages for breach of contract, in an amount to be fixed by the Court; and/or
 - ii. Statutory damages for breach of the British Columbia *Privacy Act* in an amount to be fixed by the Court;
 - ~~iii. Statutory compensation in accordance with section 66 of the *Data Privacy Ordinance* in an amount to be fixed by the Court;~~
- d. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- e. the costs of administering the plan of distribution of the recovery in this proceeding;
- f. an order that the Defendants shall offer credit protection services to each Class Member for a period of five years, at the Defendant's' cost;
- g. an order pursuant to s. 27 and 28 of the *Class Proceedings Act* for individual assessment of compensatory damages to members of the Class and the appointment of a special referee for assessing each individual case using special modes of proof as directed by the Court;
- h. such further and other relief that, as to this Honourable Court, seems meet and just.

Part 3: LEGAL BASIS

39. The Plaintiff pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 34, the *Personal Data (Privacy) Ordinance*, Cap. 486 (Hong Kong), the *Personal Information Protection Act*, SBC 2003, c 63 (“**PIPA**”), the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (“**PIPEDA**”), and the *Privacy Act*, RSBC 1996, c 373 (“**Privacy Act**”) and related enactments.

The HK Data Privacy Ordinance

40. In addition to being subject to the local laws of jurisdictions which Cathay Pacific operates (including British Columbia and Canada), Cathay Pacific, as a Hong Kong based airline, is generally subject to the laws of Hong Kong, including for products and services it provides to persons outside of Hong Kong.

41. In particular, Cathay Pacific is required to comply with the *HK Data Privacy Ordinance*.

42. The *HK Data Privacy Ordinance* includes six Data Protection Principles, in Schedule 1. Data users are required to respect the Data Protection Principles including *inter alia* to ensure that:

- a. the personal data collected is adequate but not excessive in relation to the purpose for which it is collected;
- b. all practicable steps shall be taken to ensure that it is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is or is to be used; and
- c. all practicable steps shall be taken to ensure that any personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user is protected against unauthorized or accidental access, processing, erasure, loss or use.

43. Within the meaning of section 2 of the HK Data Privacy Ordinance:
- a. Cathay Pacific is a “data user”;
 - b. The Plaintiff and Class Members are “data subjects”; and
 - c. The Private Information is “personal data”.
44. Section 4 of the HK Data Privacy Ordinance provides that a data user shall not do an act or engage in an act that contravenes a data protection principle.
45. In the HK PCO Report, the HK Commissioner found that Cathay Pacific contravened data protection principles 2(2) and 4(1) (principles that are appended under Schedule 1 of the HK Data Privacy Ordinance) and the HK Commissioner issued an “enforcement notice” to Cathay Pacific pursuant to section 50 of the HK Data Privacy Ordinance.
46. Cathay Pacific has not appealed, or otherwise challenged, the enforcement notice issued to Cathay Pacific for its violation of various data protection principles.
47. Under the HK Data Privacy Ordinance, data users are also required to observe Codes of Practice promulgated by the HK Commissioner. At all material times, Cathay Pacific was duly required to comply with the Codes of Practice. In particular, Cathay Pacific was required to comply with “Code of Practice on the Identity Card Number and Other Personal Identifiers (Revised in April 2016).”, which provides specific guidance on when personal identifiers (i.e. government identification numbers) should be collected, how they should be used or stored, and the required safeguards for such information.
- ~~48. Pursuant to section 66(1) of the Data Privacy Ordinance, Class Members who suffer damage by reason of a contravention of the Data Privacy Ordinance are entitled to compensation for that damage.~~
- ~~49. Section 66(2) of the Data Privacy Ordinance further provides that recoverable damage under section 66(1) includes injury to feelings.~~

50.—[moved]

48. Further, or in the alternative, the applicable provisions of the *HK Data Privacy Ordinance* were incorporated by reference into customers' contracts with Cathay Pacific as implied terms and under the Cathay Pacific Customer Privacy Policy.

The Defendants's Statutory Obligations Towards Canadian Class Members

51.49. As non-governmental entities that transfer personal information, including Private Information, across provincial and national borders, Cathay Pacific was subject to the provisions of *PIPEDA*. Section 5(1) of *PIPEDA* provides that “[s]ubject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.” None of the exceptions in ss 6 to 9 apply here.

52.50. Schedule 1 to *PIPEDA* consists of “*Principles Set Out in the National Standard of Canada Entitled Model Code for the Protection of Personal Information, CAN/CSA-Q830-96*”. These principles provide *inter alia* that:

4.3 Principle 3 - Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

... 4.5 Principle 5 —Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

... 4.5.3

Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

... 4.7 Principle 7 – Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

4.7.1 The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification. Organizations shall protect personal information regardless of the format in which it is held.

4.7.2 The nature of the safeguards will vary depending on the sensitivity of the information that has been collected, the amount, distribution, and format of the information, and the method of storage. More sensitive information should be safeguarded by a higher level of protection...

4.7.3 The methods of protection should include

- (a) physical measures, for example, locked filing cabinets and restricted access to offices;
- (b) organizational measures, for example, security clearances and limiting access on a “need-to-know” basis; and
- (c) technological measures, for example, the use of passwords and encryption.

4.7.4 Organizations shall make their employees aware of the importance of maintaining the confidentiality of personal information.

(the “**Schedule 1 Obligations**”)

~~53.51.~~ As non-governmental entities handling personal information, including the Private Information, while carrying on business in British Columbia, Cathay Pacific was subject to the provisions of *PIPA*. In particular, *PIPA*, s 34 provides:

“An organization must protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks.”

~~54.52.~~ The requirements of under the *PIPEDA*, ~~and *PIPA*~~, *HK Data Privacy Ordinance* were incorporated by reference into customers’ contracts with Cathay Pacific as implied terms and under the Cathay Pacific Customer Privacy Policy, and further informs the standard of care in negligence.

Breach of Contract

~~55.53.~~ As set out above:

- a. Cathay Pacific’s conduct is in direction contravention of section 6.3 of their own General Conditions and their Privacy Policy;
- b. Cathay Pacific breached its contractual obligations to the Class Members in its mishandling of the Private Information; and
- c. Cathay Pacific breached its contractual obligations to comply with the standard practices for protection of personal information, as enshrined in each of the *HK Data Privacy Ordinance*, the *UK Data Protection Act, 1998*, *PIPA*, and/or *PIPEDA*.

53.1. The standard practices for protection of personal information are similar and/or substantially identical under the *HK Data Privacy Ordinance, PIPA, the UK Data Protection Act, 1998, and/or PIPEDA.*

~~56-54.~~ Further, or in the alternative, it was an express or in the alternative an implied term of each customer's agreement with Cathay Pacific that their Private Information would be safeguarded, that it would be retained only so long as necessary, and that only so much information as was actually required to process their orders would be collected and retained.

~~57-55.~~ The Plaintiffs and Class Members are entitled to claim damages, or alternatively nominal damages, for breach of the General Conditions and their Privacy Policy.

55.1. Any LOL Clauses in the contracts and/or arrangements between Cathay Pacific and the Class Members are unconscionable and thus unenforceable.

Negligence

55.2. Cathay Pacific owed all the Class Members, regardless where they reside, a duty of care in handling the Class Members' Private Information, to safeguard the Class Members Private Information to ensure it would not be accessed improperly without authorization and also to implement security measures to prevent unauthorized access to the Class Members' Private Information.

55.3. Cathay Pacific breached the standard of care and particulars of that breach include, but are not limited to:

- a. Failure to deal with the Class Members' information in accordance with its own policies and the statutory obligations under any of the *HK Data Privacy Ordinance, PIPA, the UK Data Protection Act, 1998, and/or PIPEDA;*
- b. Failure to implement appropriate safeguards to protect the Class Members' Private Information;

- c. Failure to delete and destroy the Private Information of the Class Members after there was no longer a proper purpose for retaining such information;
- d. Failure to keep its information system up-to-date; and
- e. Failure to rectify a known information systems vulnerability that is nearly one decade old;

55.4. In addition to the losses set out at Part 1, para 25, The Class Members all suffered, or will suffer, psychological injury including injury to feelings, such as anxiety, stress, and/or frustration knowing their Private Information was stolen by unknown cyber-criminal(s) as a result of Cathay Pacific's lax data protection standards.

55.5. Cathay Pacific is at all material times vicariously liable for the negligence of its own employees and Cathay Pacific knew that breach of the standard of care would cause damage to the Class Members, which it did as set out above.

Breach of Privacy and Intrusion upon Seclusion

55.6. Cathay Pacific's conduct (as described in Part 1) also constitutes a common law tort of breach of the privacy of the Class Members, regardless of where they reside. Cathay Pacific's conduct further constitute reckless intrusion upon the seclusion of the Class Members' private affairs in a manner that is highly offensive to a reasonable person and such intrusion was without any lawful justification.

The British Columbia Privacy Act and Related Enactments

~~58-56.~~ The British Columbia *Privacy Act* further creates a tort, actionable without proof of damage, where a person, willfully and without a claim of right, violates the privacy of another.

~~59-57.~~ As set out above, Cathay Pacific has breached the *Privacy Act*. Cathay Pacific willfully and without a claim of right, violated consumers' privacy, by failing to protect the Private Information. Cathay Pacific's failings respecting the Private Information were not reasonable in the circumstances, having regard to the lawful interests of the Plaintiff and Class Members in that information, and was in breach of s 1 of the *Privacy Act*.

~~60-58.~~ In particular, between the time when Cathay Pacific identified the Data Breach and when it announced it to the public (including the Plaintiffs and Class Members), which was approximately seven months, Cathay Pacific willfully and without a claim of right compromised Class Members' privacy by:

- a. denying Class Members the knowledge of the scope and extent of the Data Breach as it relates to each individual Class Members;
- b. denying Class Members the opportunity to protect their Private Information, by making public representations that there has been no harm and/or fraud that could be fully traced back to the Data Breach; and
- c. failing to offer Class Members any credit protection services, fraud protection, and/or identity theft insurance.

~~61-59.~~ The Plaintiff and Class Members that reside in British Columbia are entitled to statutory damages as a result of the breaches of the *Privacy Act*. For the same reasons, residents of Saskatchewan are entitled to statutory damages for breach of *The Privacy Act*, RSS 1978, c P-24; residents of Manitoba for breach of *The Privacy Act*, CCSM, P125; and residents of Newfoundland & Labrador for breach of the *Privacy Act*, RSNL 1990, c P-22.

Plaintiff's' address for service:

Hammerberg Lawyers LLP
1220 – 1200 West 73rd avenue
Vancouver, British Columbia V6P 6G5

Fax number for service: 604-269-8511

Place of trial: Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia on August 16, 2019
(amended October 15, 2020)



Signature of co-counsel for the
Plaintiffs
JOEL D. ZANATTA
KEVIN MCLAREN
ALEXIA MAJIDI
SIMON LIN
MATHEW GOOD

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for damages arising out of breaches of customers' privacy through unauthorised access to private information.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 34

Personal Data (Privacy) Ordinance, Cap. 48 (Hong Kong)

Personal Information Protection Act, SBC 2003, c 63

Personal Information Protection and Electronic Documents Act, SC 2000, c 5

Privacy Act, RSBC 1996, c 373