



Court File No. **VLC-S-S-205425**
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

CATHERINE SEVERS

PLAINTIFF

and

HYP3R INC.

DEFENDANT

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

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 plaintiffs 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. The defendant HYP3R Inc. collected, retained and exploited Instagram users' personal information without notice or consent in breach of Instagram's policies. HYP3R violated the privacy of the Plaintiff and Class Members, contravening the *Privacy Act* and related enactments. Through this suit, Canadian Instagram users seek to hold the defendant accountable for its unlawful conduct and to obtain damages.

The Parties

2. The defendant HYP3R Inc. ("**HYP3R**") is a company incorporated under the laws of Delaware with an address for service at VCORP SERVICES, LLC, 1013 Centre Road Suite 403-B, Wilmington, Delaware, USA 19805. HYP3R operates a for-profit location-based marketing platform. HYP3R carries on business worldwide, including in British Columbia and Canada, and including by making its services available to Canadians and by collecting data from Canadians through Instagram, as set out below.

3. The Plaintiff is a resident of British Columbia. She was a registered user on Instagram at material times up to August 8, 2019 with a profile setting set to public at material times.

4. The Plaintiff brings this action on her own behalf and on behalf of all persons in Canada (excluding Quebec) who were users of Instagram with profile setting set to public at any time between April 4, 2018 and the date this action is certified (the "**Class**", "**Class Members**" and "**Class Period**").

Instagram and Personal Information

5. Instagram is a social media platform owned by Facebook Inc. (together, “**Instagram**”). Instagram permits users to share posts, including text, photos and videos, with other members and the public, and connect with other users on the platform. Users provide Instagram with certain information to open an account, including name, email address, and other biographical information.

6. In addition to the information provided by users to Instagram to create an account, users share personal information through Instagram, including by way of text, video and picture posts, private messages with other users, public posts on other users’ posts, and other types of actions such as location check-ins and “likes” (of other users, topics, products, events), followers (other users a person is interested in or who are interested in him or her), and metadata associated with all of the foregoing. This information is personal information, and Instagram users have a privacy interest in it and in how it is shared, stored, manipulated, retained and exploited by themselves, other users, Instagram and anyone else that interacts with it (“**Personal Information**”).

7. One feature of Instagram is the “**Instagram Story**”. An Instagram Story is a type of content involving text, photos and videos posted by a user that is meant to expire after 24 hours. An Instagram Story contains and is Personal Information.

8. The Plaintiff and Class Members were Instagram users and had Personal Information on Instagram during the Class Period.

9. There were approximately 12,760,000 Instagram users in Canada during the Class Period, including the Plaintiff and Class Members.

10. Instagram profiles can be set to public or private. Private profiles are only accessible to other users pre-approved by a user. Public profiles make some but not all of an Instagram user’s Personal Information available to all other Instagram users and non-users. But Personal Information made available on public profiles is hosted on the Instagram platform by Instagram. By making a profile public, an Instagram user is not granting any other entity or person the right to collect, retain and manipulate all of the Personal Information a user posts. Setting a profile to public is an act granting access to pieces of a user’s Personal Information within the Instagram

platform. Setting a profile to public is not an invitation to unscrupulous actors to collect all of that Personal Information, without notice, retain it in secret and in perpetuity, and exploit it for profit by selling it or services based on it to third parties.

11. Instagram maintains relationships with other developers, businesses and people, to permit them to develop products or services to run on its platform or in connection with its platform.

12. To enable third-party applications or apps to work on Instagram, and to permit third parties to interact with Instagram and its users' data, Instagram makes available application programming interfaces (“**APIs**”). APIs are tools used by apps to interact with an underlying platform or system. APIs for Instagram are developed, maintained and controlled by Instagram.

13. For years prior to 2018, Instagram made available an API called the “Instagram API Platform”. The Instagram API Platform *inter alia* permitted persons using its API to search for public posts at a given location. At no time did the Instagram API Platform permit the collection or retention of information associated with ordinary users' Instagram Stories (which was only permitted for a minority of business and “creator” accounts).

14. To manage its platform, Instagram issues and requires third parties using its services (“developers”), including its APIs, to agree to and respect certain policies governing use (“**Policies**”). Instagram's Policies include the following *mutatis mutandis*:

- a. Not to confuse, deceive, defraud, mislead, or harass anyone.
- b. Provide a publicly accessible privacy policy that tells people what you collect and how you will use this information.
- c. If you allow third parties to serve content, including advertisements, or collect information directly from visitors, including placing or recognizing cookies on visitors' browsers, disclose this in your privacy policy.
- d. Comply with any requirements or restrictions imposed on usage of Instagram user photos and videos (“User Content”) by their respective owners. You are solely responsible for making use of User Content in compliance with owners' requirements or restrictions.
- e. Obtain a person's consent before including their User Content in any ad.

- f. Only store or cache User Content for the period necessary to provide your app's service.
- g. If you store or cache User Content, keep it up to date. For example, if a user marks a photo as "private", you must reflect that change by removing the content as soon as reasonably possible.
- h. Don't use follower information for anything other than analytics without our prior permission. For example, don't display these relationships in your app.
- i. Only use the INSIGHTS DATA endpoint to inform the account holder of their own analytics information. Do not use it for any other service and do not share it with any third parties.
- j. Respect the limits we've placed on Instagram functionality and the way Instagram looks and functions. Don't offer experiences that change it.
- k. Don't attempt to identify groups of individuals or create demographic clusters for the purpose of contacting or targeting Instagram members on or off Instagram.
- l. Protect the information you receive from us against unauthorized access, use, or disclosure. For example, don't use data obtained from us to provide tools that are used for surveillance.
- m. Don't transfer any data that you receive from us (including anonymous, aggregate, or derived data) to any ad network, data broker, or other advertising or monetization-related service.
- n. Don't reverse engineer the Instagram APIs or any of Instagram's apps.
- o. Don't sell, lease, or sublicense any data derived through the Platform.
- p. Comply with all applicable laws or regulations. Don't provide or promote content that violates any rights of any person, including but not limited rights of privacy, or rights of personality. Don't expose people who use Instagram to harm.
- q. You represent and warrant that you own or have secured all rights necessary to display, distribute and deliver all content in your app or website.
- r. You represent and warrant that you satisfy all licensing, reporting, and payout obligations to third parties in connection with your app or website.

- s. You are responsible for restricting access to your content in accordance with all applicable laws and regulations, including geo-filtering or age-gating access where required.

15. In early 2018, rocked by the so-called Cambridge Analytica Scandal, in which a third-party Facebook app had misappropriated private data from 87 million Facebook users, Facebook and Instagram took significant steps to alter their approach to privacy and users' Personal Information.

16. On April 4, 2018, Facebook and Instagram announced significant changes to their APIs, including to the Instagram API Platform. Several features were removed (or "deprecated"), including access to follows & relationships, commenting on public content, media, likes and user search was restricted.

17. Following the changes by Instagram in April 2018, it was not possible to access or collect all public posts from specific locations or collect and retain users' Instagram Stories' content through the Instagram API Platform.

HYP3R's Business

18. HYP3R was founded in 2015.

19. HYP3R describes itself as a "location-based marketing platform". HYP3R is essentially a marketing company that tracks social-media posts tagged with real-world locations. HYP3R's business is to collect data on people, including based on their location history, to permit third-party advertisers to target users with a connection to a particular real-world location or event (such as a sporting event or a concert), associated with a particular Instagram post.

20. HYP3R compiles profiles on people with whom it has no relationship or contractual arrangement. HYP3R builds its profiles by collecting information such as users' given names, usernames, birthday, residence, demographic information, social media platform accounts, pictures and real-world location data (locations visited). HYP3R then exploits that information to permit third-party advertisers to target specific users or types of users with ads and marketing materials.

21. HYP3R gathers data about people from various sources, including their social media profiles on Instagram. Between 2015 and about April 4, 2018, HYP3R used the Instagram API Platform and Facebook APIs to compile data on Instagram users. At all material times, HYP3R was bound by the Instagram Policies in its use of Instagram and the Instagram API Platform.

22. Based on the data it has obtained, HYP3R creates so-called “shadow” profiles of Instagram users on its internal database. Those profiles include Instagram’ users’ names, usernames, photos and post content, along with all associated information that HYP3R has been able to get.

23. HYP3R offers a CRM – customer relationship management – tool to third party businesses. HYP3R allows its customers to use its database to see all posts from a given location, and engage with them directly, a feature not provided by the Instagram API Platform. HYP3R’s CRM permits its customers to target people with ads, based on their interests and the locations they have visited. HYP3R’s CRM permits its customers to obtain and exploit the detailed profiles it has created of Instagram users, which include Personal Information such as names, photos and post content.

24. HYP3R sold access to and exploitation of its database to third parties. HYP3R sold access to Instagram users’ Personal Information to its customers. That is HYP3R’s business model.

25. Following the changes to the Instagram API Platform by Instagram, on about April 9, 2018, HYP3R posted a public statement on its website saying that it “welcome[d] the changes that Facebook is making to protect the privacy of all of us” and that HYP3R would continue to act with “transparency”, “hold[ing] ourselves to an incredibly high standard”.

HYP3R’s Breaches of Privacy

26. Following the changes to the Instagram API Platform by Instagram, between about April 4, 2018 and about August 8, 2019, HYP3R carried out what is known as “scraping” of Class Members’ Personal Information from their profiles on Instagram. This activity was prohibited by Instagram’s Policies and was no longer permitted by the Instagram API Platform or Facebook’s APIs.

27. Between about April 4, 2018 and about August 8, 2019, HYP3R took the following actions among others in breach of Instagram’s Policies to obtain Instagram users’ Personal Information for its own benefit:

- a. HYP3R exploited a security flaw in Instagram’s code to extract Instagram user data from specific locations for all public Instagram posts made from those locations;
- b. HYP3R developed its own API to systematically compile users’ Instagram Stories from specific locations, including the individual photos posted by users as part of their Instagram Stories and despite the fact that Instagram Stories are meant to expire after 24 hours; and
- c. HYP3R collected all public information from public Instagram user profiles associated with specific locations (including usernames, profile pictures, and post content) and retained that information indefinitely, combining it with existing data in its control and data from other sources.

28. As a result of this collection of Personal Information in breach of Instagram’s Policies between about April 4, 2018 and about August 8, 2019, HYP3R continued to compile profiles of Instagram users, including the Plaintiff and Class Members, to record every location at which they had posted on Instagram over time. HYP3R made this unlawfully obtained Personal Information available for sale and exploitation to its customers through its CRM system and other services for the benefit of its customers and its own profit.

29. On August 7, 2019, an article in *Business Insider* disclosed HYP3R’s misconduct publicly.

30. On about August 8, 2019, in response to press reports, Instagram publicly announced that HYP3R’s actions were not sanctioned by Instagram and violated its Policies. Instagram removed HYP3R from its platform, revoked its access to its APIs, and rescinded its “Facebook Marketing Partner” status. Instagram ordered HYP3R to cease and desist its misconduct.

Instagram Users did not Consent to having their Personal Information Scraped by HYP3R

31. The Plaintiff and Class Members did not consent to having their Personal Information scraped by HYP3R at any time and in particular between about April 4, 2018 and about August 8, 2019.

32. The Plaintiff and Class Members were not in a contractual or other relationship with HYP3R at any time and in particular between about April 4, 2018 and about August 8, 2019.

33. HYP3R did not provide notice or seek consent from the Plaintiff and Class Members to collect, retain or use their Personal Information at any time and in particular during the period between about April 4, 2018 and about August 8, 2019.

35. HYP3R developed and undertook its collection and use of Personal Information from Instagram users between about April 4, 2018 and about August 8, 2019, including the Plaintiff and Class Members, deliberately to benefit itself. HYP3R did so knowing that Instagram users, including the Plaintiff and Class Members, had not consented and were not aware of HYP3R's actions. HYP3R did so knowing that its actions violated Instagram's Policies and acted intentionally without a claim of right against Instagram users, including the Plaintiff and Class Members.

36. The senior officers and directors of HYP3R were aware at all material times between about April 4, 2018 and about August 8, 2019 that Instagram users, including the Plaintiff and Class Members, did not have notice and did consent to the collection and use of their Personal Information by HYP3R, and that HYP3R's actions constituted a breach of Instagram's Policies.

37. At the time this action is filed, HYP3R retains the Personal Information from the Plaintiff and Class Members that it unlawfully obtained and continues to exploit it for profit.

Part 2: RELIEF SOUGHT

38. An order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50;

39. Statutory damages for breach of the *Privacy Act BC* for residents of British Columbia;
40. Statutory damages or disgorgement for breach of the *Privacy Act SK* for residents of Saskatchewan;
41. Statutory damages or disgorgement for breach of the *Privacy Act MB* for residents of Manitoba;
42. Statutory damages or disgorgement for breach of the *Privacy Act NL* for residents of Newfoundland & Labrador;
43. Damages for the tort of intrusion upon seclusion for residents of Yukon, Northwest Territories, Alberta, Nunavut, Ontario, New Brunswick, Nova Scotia and Prince Edward Island;
44. Damages or disgorgement for the tort of unlawful means;
45. Punitive damages;
46. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;
47. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Breach of the Privacy Act (BC)

48. The *Privacy Act*, RSBC 1996, c 373, s 1 creates a tort, actionable without proof of damage, a person, wilfully and without a claim of right, violates the privacy of another.
49. HYP3R's acts as set out above constituted "eavesdropping or surveillance" on Class Members within the meaning of the *Privacy Act BC*, s 1(4).
50. HYP3R breached the *Privacy Act BC*, s 1 and the Plaintiff and Class Members' privacy as set out above when it collected, retained and used Personal Information from the Plaintiff and Class Members wilfully and without a claim of right.

51. The *Privacy Act BC*, s 3(2) creates a tort, actionable without proof of damage, where a person uses the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services, unless that other, or a person entitled to consent on his or her behalf, consents to the use for that purpose.

52. A user's profile photo on Instagram is a "portrait" within the meaning of the *Privacy Act BC*, s 3(1). A user's registered name on Instagram is a "name" within the meaning of the *Privacy Act BC*, s 3(1).

53. Profiles provided by HYP3R to third parties in the course of its business, as set out above, displaying an Instagram user's registered name or profile photo were used "for the purpose of advertising or promoting the sale of, or other trading in, property or services" within the meaning of the *Privacy Act BC*, s 3(2).

54. The Plaintiff and Class Members resident in British Columbia did not consent to the use of their user profile photos or registered names by HYP3R in this manner for the purpose of the *Privacy Act BC*, s 3(2).

55. By its conduct set out above, HYP3R has breached the *Privacy Act BC*, s 3(2).

56. The Plaintiff and Class Members resident in British Columbia are entitled to statutory damages as a result of HYP3R's breaches under the *Privacy Act BC*, ss 1 and 3(2).

Breach of the Privacy Act (SK)

57. The *Privacy Act*, RSS 1978, c P-24, s 2 creates a tort, actionable without proof of damage, a person, wilfully and without a claim of right, violates the privacy of another.

58. HYP3R's acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act SK*, s 3(a).

59. HYP3R breached the *Privacy Act SK* and Class Members' privacy as set out above when it collected, retained and used Personal Information from Class Members wilfully and without a claim of right, and without Class Members' consent, express or implied.

60. The *Privacy Act SK* ss 2 and 3(c) create a tort, actionable without proof of damage, for a person willfully and without a claim of right to violate the privacy of another person including through the use of the name or likeness of a person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, the person is identified or identifiable and the user intended to exploit the name or likeness of that person without the consent, expressed or implied, of that person.

61. A user's profile photo on Instagram is a "likeness" within the meaning of the *Privacy Act SK*, s 3(c). A user's registered name on Instagram is a "name" within the meaning of the *Privacy Act SK*, s 3(c).

62. Profiles provided by HYP3R to third parties in the course of its business, as set out above, displaying an Instagram user's registered name or profile photo were used "for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to" HYP3R within the meaning of the *Privacy Act SK*, s 3(c).

63. Class Members resident in Saskatchewan did not consent to the use of their user profile photos or registered names by HYP3R in this manner for the purpose of the *Privacy Act SK*, s 3. HYP3R acted willfully and without a claim of right.

64. By its conduct set out above, HYP3R has breached the *Privacy Act SK*, ss 2 and 3(c).

65. Class Members resident in Saskatchewan are entitled to statutory damages as a result of HYP3R's breaches under the *Privacy Act SK*, s 2 under s 7(a) or disgorgement under s 7(c).

Breach of the Privacy Act (MB)

66. The *Privacy Act*, CCSM, P125, s 2 creates a tort, actionable without proof of damage, where a person to substantially, unreasonably, and without claim of right, violates the privacy of another.

67. HYP3R's acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act MB*, s 3(a).

68. HYP3R breached the *Privacy Act MB* and Class Members' privacy as set out above when it collected, retained and used Personal Information from Class Members willfully and without a claim of right, and without Class Members' consent, express or implied.

69. The *Privacy Act MB* ss 2 and 3(c) creates a tort, actionable without proof of damage, for a person to substantially, unreasonably, and without claim of right, violates the privacy of another person by the unauthorized use of the name or likeness of that person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, that person is identified or identifiable and the user intended to exploit the name or likeness of that person, without the consent, expressed or implied, of that person.

70. A user's profile photo on Instagram is a "likeness" within the meaning of the *Privacy Act MB*, s 3(c). A user's registered name on Instagram is a "name" within the meaning of the *Privacy Act MB*, s 3(c).

71. Profiles provided by HYP3R to third parties in the course of its business, as set out above, displaying an Instagram user's registered name or profile photo were used "for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to" HYP3R within the meaning of the *Privacy Act MB*, s 3(c). HYP3R acted willfully and without a claim of right.

72. Class Members resident in Manitoba did not consent to the use of their user profile photos or registered names by HYP3R in this manner for the purpose of the purpose of the *Privacy Act MB*, s 2.

73. By its conduct set out above, HYP3R has breached the *Privacy Act MB*, ss 2 and 3(c).

74. Class Members resident in Manitoba are entitled to statutory damages as a result of HYP3R's breaches under the *Privacy Act MB*, s 2 under s 4(1)(a) or disgorgement under s 4(1)(c).

Breach of the Privacy Act (NL)

75. The *Privacy Act*, RSNL 1990, c P-22, s 3(1) creates a tort, actionable without proof of damage, where a person, willfully and without a claim of right, violates the privacy of an individual (natural person).

76. HYP3R's acts as set out above constituted "eavesdropping" or "surveillance" on Class Members within the meaning of the *Privacy Act NL*, s 4(a).

77. HYP3R breached the *Privacy Act NL* and Class Members' privacy as set out above when it collected, retained and used Personal Information from Class Members willfully and without a claim of right, and without Class Members' consent, express or implied.

78. The *Privacy Act NL* ss 3(1) and 4(c) creates a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of an individual (natural person) by use of the name or likeness or voice of an individual for the purposes of advertising or promoting the sale of, or other trading in, property or services, or for other purposes of advantage to the user where, in the course of the use, the individual is identified or identifiable and the user intended to exploit the name or likeness or voice of that individual without the consent, expressed or implied, of that person.

79. A user's profile photo on Instagram is a "likeness" within the meaning of the *Privacy Act NL*, s 4(c). A user's registered name on Instagram is a "name" within the meaning of the *Privacy Act NL*, s 4(c).

80. Profiles provided by HYP3R to third parties in the course of its business, displaying an Instagram user's registered name or profile photo were used "for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to" HYP3R within the meaning of the *Privacy Act NL*, s 4(c). HYP3R acted willfully and without a claim of right and intended to exploit the name or likeness of Class Members.

81. Class Members resident in Newfoundland & Labrador did not consent to the use of their user profile photos or registered names by HYP3R in this manner for the purpose of the purpose of the *Privacy Act NL*, s 4(c).

82. By its conduct set out above, HYP3R has breached the *Privacy Act NL*, ss 3 and 4(c).

83. Class Members resident in Newfoundland & Labrador are entitled to statutory damages as a result of HYP3R's breaches under the *Privacy Act NL*, s 3 under s 6(1)(a) or disgorgement under s 6(1)(c).

Intrusion upon Seclusion

84. For Class Members resident in Ontario and other common law provinces except British Columbia, Saskatchewan, Manitoba and Newfoundland & Labrador, it is a tort, actionable without proof of harm, for a defendant to:

(a) intentionally or recklessly;

(b) invade a plaintiff's private affairs or concerns;

(c) without lawful justification;

(d) where a reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.

85. As set out above, through its unauthorised collection, retention and use of Class Members' Personal Information, HYP3R committed the tort of intrusion upon seclusion against Class Members. HYP3R intentionally, or at a minimum recklessly, invaded the private affairs or concerns of the Class Members. HYP3R's actions were without lawful justification. A reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish.

86. These Class Members are entitled to damages as a result of HYP3R's tortious acts.

87. In the alternative, Class Members waive the tort and elect to pursue restitutionary remedies against the defendants. HYP3R must disgorge all amounts attributable to the benefits HYP3R received from the sharing and misuse of Class Members' Personal Information.

Unlawful Means Tort

88. By its conduct set out above, HYP3R intended to injure the Plaintiff and Class Members through the collection, retention, and use of the Personal Information as a means to enrich itself. HYP3R acted unlawfully against Instagram by breaching Instagram's Policies in order to inflict

injury on the Plaintiff and Class Members. Instagram did or would have suffered loss as a result and would have a civil cause of action against HYP3R for *inter alia* breach of contract and misrepresentation. The Plaintiff and Class Members are entitled to damages for HYP3R's tortious wrongdoing.

89. In the alternative, the Plaintiff and Class Members waive this tort and elect to pursue restitutionary remedies against HYP3R for its unlawful acts. HYP3R must disgorge to Plaintiff and Class Members an amount attributable to the value it received for or attributable to the collection, retention, and use of the Location Text Data.

Punitive Damages

90. HYP3R's misconduct, as described above, was oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour. It violated the trust and security of users and showed willful disregard for Class Members' privacy and. HYP3R's actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made.

Discoverability

91. The Plaintiff and Class Members could not reasonably have known that

- a. they sustained injury, loss or damage as a consequence of HYP3R's actions; or
- b. having regard to the nature of their injuries, losses or damages, a court proceeding would be an appropriate means to seek to remedy the injuries, losses or damages until, at the earliest, August 8, 2019.

92. The Plaintiff and Class Members plead and rely on postponement and discoverability under the *Limitation Act*, SBC 2012, c 13, s 8.

93. In addition, HYP3R willfully concealed the fact of its misuse of the Plaintiff and Class Members' private Personal Information without consent, and that this was caused or contributed to by HYP3R's acts or omissions. The Plaintiff and Class Members rely on *Pioneer Corp. v. Godfrey* and the *Limitation Act*, s 21(3).

94. The Plaintiff and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No M098 to suspend the running of the limitation period from March 26, 2020.

Service on HYP3R

95. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on HYP3R pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

96. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

97. An action under the *Privacy Act* must be determined in the Supreme Court of British Columbia (*Privacy Act BC*, s 4).

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, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: May 14, 2020



Signature of lawyer for plaintiff
Joel Zanatta
Kevin McLaren
Alexia Majidi
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.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading on the defendant HYP3R Inc. outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- b. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breaches of the *Privacy Act* by HYP3R Inc. scraping Personal Information from Instagram users without consent.

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 50

Privacy Act, RSBC 1996, c 373

Limitation Act, SBC 2012, c 13