

**CITATION:** Rahman v. LifeLabs Inc., 2024 ONSC 368  
**COURT FILE NO.:** CV-20-00650936-0000  
**Date:** 20240117

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**ASIF RAHMAN**

Plaintiff

**-and-**

**LIFELABS INC.**

Defendant

- *Tara Vasdani* for the Plaintiff
- *Dana M. Peebles* and *Amanda D. Iarusso* for the Defendant
- *Jean-Marc Leclerc* for Class Counsel in *Carter v. LifeLabs Inc.*

**FILE DIRECTION**

**PERELL, J.**

[1] On **December 17, 2019**, LifeLabs Inc., which operates a diagnostic laboratory service, announced that there had been a criminal cyber-attack and that there had been unauthorized access to its customers' personal information.

[2] After the announcement, individual actions and proposed class actions were commenced against LifeLabs and its affiliated companies in Ontario and British Columbia. In Ontario, one of the proposed class actions pursuant to the *Class Proceedings Act, 1992*<sup>1</sup> was *Carter v. LifeLabs Inc.*

[3] In **2020**, one of the individual actions against LifeLabs was brought by Asif Rahman.

[4] I was assigned to case manage the Ontario class proceedings, and carriage was granted to *Carter v. LifeLabs*. The other Ontario actions were stayed by Court Order, and all of the British Columbia actions were discontinued except one, which was held down by agreement of all counsel.

[5] In **2020** and **2021**, LifeLabs obtained Orders staying five of the individual actions.

[6] Meanwhile, Mr. Rahman agreed to hold his individual action in abeyance while the stay Orders remained in effect.

[7] In **2023**, the *Carter v. Lifelabs Inc.* class action was certified for settlement purposes.<sup>2</sup> The

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<sup>1</sup> S.O. 1992, s. 6.

<sup>2</sup> *Carter v. LifeLabs Inc.*, 2023 ONSC 4331.

putative Class Members, of which Mr. Rahman was a member, were given notice and advised of their rights to opt-out.

[8] Mr. Rahman received the notice of certification and did not opt out of the class action.

[9] On **October 25, 2023**, the settlement in *Carter v. LifeLabs Inc.* was approved,<sup>3</sup> and the settlement became binding on the class members who had not opted out.

[10] Mr. Rahman was repeatedly asked to consent to a dismissal of his action. Mr. Rahman's counsel advised LifeLabs' counsel that Mr. Rahman had indeed not opted out, but it took her until this case management conference to obtain instructions that Mr. Rahman will deliver a Notice of Discontinuance.

[11] The purpose of this case management conference was to set a date for a motion by LifeLabs Inc. to have Mr. Rahman's action dismissed. In the circumstances described above, this is not necessary. Nor is it necessary for Mr. Rahman to deliver a Notice of Discontinuance. On consent, I order Mr. Rahman's action against LifeLabs to be dismissed without costs.

[12] It is unfortunate that Mr. Rahman did not promptly agree to a dismissal, and this delay undoubtedly put LifeLabs to some unnecessary legal expense, but in all the circumstances, I would not have awarded LifeLabs any costs associated with the discontinuance or dismissal of Mr. Rahman's action. He has had to bear the costs of commencing that action, and he did not put LifeLabs to the expense of delivering a defence; rather, he held his own action in abeyance. These are not the circumstances for which costs should be awarded.

[13] Order accordingly.

Perell J.

Released: January 17, 2024.

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<sup>3</sup> *Carter v. LifeLabs Inc.*, 2023 ONSC 6104.