

NOV 09 2021



S 219811

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[REDACTED]

PLAINTIFF

AND:

BHANU PRASAD SEELABOYINA
KENT PHARMACY
FABIA KARA and
THE FRASER HEALTH AUTHORITY

DEFENDANTS

NOTICE OF CIVIL CLAIM

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

This action has been started by the plaintiff(s) 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(s),

- (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.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Overview

1. The within proposed class proceeding involves the administration of a COVID-19 vaccination, pursuant to a British Columbia Ministry of Health vaccination plan, implemented by the Fraser Health Authority, to patients by a licenced pharmacist reusing the same vaccination syringe and/or device among such patients and as result thereof, exposing such patients to the serious risk of infections and/or bloodborne pathogens, including, but not limited to, Hepatitis B and/or C and/or human immunodeficiency virus ("HIV").
2. The Plaintiff and proposed class members allege that as a result of receiving a COVID-19 vaccination from a reused vaccination syringe and/or device have suffered damages, including, *inter alia*, physical, psychological and/or emotional injuries.

B. The Parties

3. [REDACTED]
[REDACTED]

4. The Defendant, BHANU PRASAD SEELABOYINA ("SEELABOYINA"), is a licenced pharmacist pursuant to the *Health Profession Act*, RSBC 1996, c.183 and is subject to the *Pharmacists Regulation*, B.C. Reg. 417/2008.
5. The Defendant, FABINA KARA ("KARA"), is a licenced pharmacist pursuant to the *Health Profession Act*, RSBC 1996, c.183 and is subject to the *Pharmacists Regulation*, B.C. Reg. 417/2008.
6. The Defendant, KENT PHARMACY LTD. ("KENT PHARMACY"), is a company duly incorporated under the laws of the Province of British Columbia under incorporation number BC07723175 and has a registered office at 101 - 566 Lougheed Highway, Coquitlam, British Columbia, V3L 1B1 and operating a pharmacy located at 424 Columbia Street, in the City of New Westminster, Province of British Columbia.
7. The Defendant, FRASER HEALTH AUTHORITY ("FHA"), is a regional health board governed by the *Health Authorities Act*, R.S.B.C., 1996, c.180, and has a business address at Central City Tower, #400 - 13450 - 102nd Avenue, Surrey, British Columbia, V3T 0H1.
8. At all material times to the cause of action herein, the British Columbia Ministry of Health developed a provincial COVID-19 immunization plan.
9. At all material times to the cause of action herein, the Defendant, FHA, implemented and administered the British Columbia Ministry of Health COVID-19 immunization plan in its health region at various clinics, pharmacies and other sites, including the Defendant, KENT PHARMACY.
10. At all material times to the cause of action herein, the Defendant, KENT PHARMACY, possessed a pharmacy licence pursuant to the *Pharmacy Operations and Drug Scheduling Act*, S.B.C. c. 77 and operated a pharmacy located at 424 Columbia Street, New Westminster, British Columbia, V3L 1B1.

11. At all material times to the cause of action herein, the Defendants, SEELABOYINA, and KARA, were engaged in the practice of pharmacy at the Defendant, KENT PHARMACY.
12. At all material times to the cause of action herein, the Defendant, KARA, owned, operated and/or managed the Defendant, KENT PHARMACY, and was responsible for supervising and monitoring the Defendant, SEELABOYINA.
13. At all material times to the cause of action herein, the Defendant, FHA, provided COVID-19 vaccinations to its agents and/or contractors including the Defendant, KENT PHARMACY, among other locations. The vaccinations were administered by the Defendant, KENT PHARMACY, to patients, pursuant to a healthcare services agreement with the Defendant, FHA.

C. The Class

14. All persons resident in British Columbia who attended the Defendant, KENT PHARMACY, located at 424 Columbia Street, New Westminster, British Columbia on August 24, 25 or 26, 2021 and received a COVID-19 vaccination, (the "Class Members"), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges, or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

15. The Government of Canada, Canadian Immunization Guide (the "CIG"), and the British Columbia Centre for Disease Control, Communicable Disease Control Manual (the "Control Manual") provide standards and protocols for administering immunizations and vaccines in Canada, including the Province of British Columbia. Further, the CIG and Control Manual recommends that separate sterile needle and syringes ought to be used for each injection administered to different patients.
16. The Plaintiff and Class Members scheduled COVID-19 vaccination appointments at the Defendant, KENT PHARMACY, through the online registration system of the British

Columbia Ministry of Health.

17. Between August 24 and August 26, 2021, the Plaintiff and Class Members attended the Defendant, KENT PHARMACY, for their COVID-19 vaccination. The vaccinations were administered by the Defendants, SEELABOYINA and/or KARA. The Defendant SEELABOYINA, was monitored, supervised and/or instructed by the Defendant, KARA.
18. Unbeknownst to the Plaintiff and Class Members, the Defendants, SEELABOYINA, and/or KARA, reused the same syringes amongst the Class Members, including the Plaintiff, without their express or implied consent.
19. The Defendants, SEELABOYINA, and/or KARA, intentionally committed battery of the Plaintiff and Class Members by injecting them with a needle connected to a reused syringe without their express or implied consent causing them injury, loss and damages.
20. On or about September 22, 2021, the Plaintiff and Class Members received a letter from the Defendant, FHA, advising them that syringes were reused amongst patients who attended the Defendant, KENT PHARMACY, between August 24 and August 26, 2021 for their COVID-19 vaccination, and that they were at risk of contracting blood-borne illnesses such as Hepatitis B, Hepatitis C and HIV. Further, the Defendant, FHA, in the same letter, also advised the Plaintiff and Class Members that they need to take three blood tests over the next three months, at 3 weeks, 6 weeks and 3 months after exposure.
21. As a result of the negligence of the Defendants, and their respective officers, employees or agents, as referred to herein, and/or the battery by the Defendants, SEELABOYINA, and/or KARA, the Plaintiff and Class Members have sustained personal injuries, the particulars of which include:
 - (a) mental injuries; and
 - (b) such further and other injuries that may become apparent through medical reports and/or blood tests.

22. The Plaintiff and/or Class Members are beneficiaries as defined in section 1 of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286, and have received health care services as defined in section 2(1) of the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27. The Plaintiff and Class Members have an obligation to claim for the health care services, both past and future, attributed to, in whole or in part, by the Defendants pursuant to section 3 of the *Health Care Costs Recovery Act*.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of the Class Members, claims against each of the Defendants, jointly and severally, as follows:
- (a) An order certifying this proceeding as a class proceeding and appointing the Plaintiff as the class representative;
 - (b) a declaration that the Defendants, SEELABOYINA, KARA, KENT PHARMACY and/or FHA, owed a duty of care to the Plaintiff and Class Members;
 - (c) a declaration that the Defendants, SEELABOYINA, KARA, KENT PHARMACY and/or FHA, breached their duty of care to the Plaintiff and Class Members;
 - (d) a declaration that the Defendants, SEELABOYINA, KARA, KENT PHARMACY and/or FHA, were negligent in implementing standards, protocols and/or administering vaccinations causing the Plaintiff and Class Members to suffer damages, including emotional distress;
 - (e) a declaration that the Defendants, SEELABOYINA and/or KARA, committed battery of the Plaintiff and Class Members;
 - (f) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("CPA") directing an aggregate assessment of damages;

- (g) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (h) general damages including actual, compensatory, incidental, statutory and consequential damages;
- (i) special damages;
- (j) punitive damages;
- (k) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (l) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Negligence

1. The Defendants owed a duty of care to the Plaintiff and Class Members to implement standards, protocols, and/or to administer vaccinations in a safe, competent and careful manner that did not cause injury or harm to them.
2. The particulars of the negligence of the Defendant, SEELABOYINA, for which the Defendants, KARA, KENT PHARMACY and/or FHA, are vicariously liable, are as follows:
 - (a) reusing syringes when he know or ought to have know that this would expose the Plaintiff and Class Members to mental trauma, blood borne illnesses, and serious physical impairments or death;
 - (b) failing to use reasonable care or skill to be expected of a licensed pharmacist and/or vaccine provider of similar training and background in the administration of vaccines;

- (c) failing to use a separate sterile needle and syringe for each injection contrary to the standards and protocols of the CIG and/or Control Manual; and
 - (d) such further and other particulars as may be uncovered or discovered.
3. The particulars of the negligence of the Defendant, KARA, for which the Defendants, KENT PHARMACY and/or FHA, are vicariously liable, are as follows:
- (a) reusing syringes when he know or ought to have know that this would expose the Plaintiff and Class Members to mental trauma, blood borne illnesses, and serious physical impairments or death;
 - (b) failing to use reasonable care or skill to be expected of a licensed pharmacist and/or vaccine provider of similar training and background in the administration of vaccines;
 - (c) failing to use a separate sterile needle and syringe for each injection contrary to the standards and protocols of the CIG and/or Control Manual;
 - (d) failing to adequately train and/or ensure the adequacy or the knowledge and skills of the Defendant, SEELABOYINA, as to the safe administration of vaccines;
 - (e) failing to instruct the Defendant, SEELABOYINA, as to the safe administration of vaccines pursuant to the CIG and/or Control Manual, in particular, using a separate sterile needle and syringe for each injection;
 - (f) failing to adequately supervise or monitor the Defendant, SEELABOYINA, with regard to the safe administration of vaccines;
 - (g) permitting incompetent and/or inadequately trained pharmacists to

administer vaccines;

- (h) failing to provide an adequate number of syringes for the administration of vaccines to the Plaintiff and Class Members;
- (i) failing to provide and maintain proper pharmacy policies, standards, protocols, guidelines and procedures as to the safe administration of vaccines;
- (j) failing to ensure the Defendant, SEELABOYINA, adhered to procedures, guidelines and policies for the administration of vaccines to the Plaintiff and Class Members; and
- (k) such further and other particulars as may be uncovered or discovered.

4. The particulars of the negligence of the Defendant, KENT PHARMACY, for which the Defendant, FHA, is vicariously liable, are as follows:

- (a) failing to adequately train and/or ensure the adequacy or the knowledge and skills of the Defendants, SEELABOYINA, and/or KARA, as to the safe administration of vaccines;
- (b) failing to instruct the Defendants, SEELABOYINA, and/or KARA, as to the safe administration of vaccines pursuant to the CIG and/or Control Manual, in particular, using a separate sterile needle and syringe for each injection;
- (c) failing to adequately monitor and/or supervise the Defendants, SEELABOYINA, and/or KARA, with regard to the safe administration of vaccines;
- (d) permitting incompetent and/or inadequately trained pharmacists to administer vaccines;

- (e) failing to provide an adequate number of syringes for the administration of vaccines to the Plaintiff and Class Members;
- (f) failing to provide and maintain proper pharmacy policies, standards, protocols, guidelines and procedures as to the safe administration of vaccines;
- (g) failing to ensure the Defendants, SEELABOYINA, and/or KARA, adhered to procedures, guidelines and policies for the administration of vaccines to the Plaintiff and Class Members; and
- (h) such further and other particulars as may be uncovered or discovered.

5. The particulars of the negligence of the Defendant, FHA, are as follows:

- (a) failing to instruct its agents and/or contractors, the Defendants, SEELABOYINA, KARA, and/or KENT PHARMACY, as to the safe administration of vaccines pursuant to the CIG and Control Manual, in particular, using a separate sterile needle and syringe for each injection;
- (b) failing to provide and maintain proper policies, standards, protocols, guidelines and procedures for vaccine providers including the Defendants, SEELABOYINA, KARA, and/or KENT PHARMACY;
- (c) failing to ensure the British Columbia Ministry of Health vaccine plan was being safely administered by the Defendants, SEELABOYINA, KARA, and/or KENT PHARMACY; and
- (d) such further and other particulars as may be uncovered or discovered.

Negligent Infliction of Emotional Distress

6. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
7. The Defendants breached their duty of care to the Plaintiff and Class Members as alleged herein when they knew or ought to have known that the Plaintiff and Class Members would suffer from emotional distress as a result of being exposed to blood-borne illnesses such as Hepatitis B, Hepatitis C and HIV, all of which was reasonably foreseeable.

Battery

8. The Defendants, SEELABOYINA, and/or KARA, committed battery of the Plaintiff and Class Members without their express or implied consent causing injury. The Defendants, SEELABOYINA, and/or KARA, made harmful and/or offensive contact with the Plaintiff and Class Members by injecting them with reused syringes.

Plaintiff's(s') address for service:

Garcha & Company
Barristers & Solicitors
#405 - 4603 Kingsway
Burnaby, BC V5H 4M4

Fax number address for service (if any):
604-435-4944

E-mail address for service (if any):

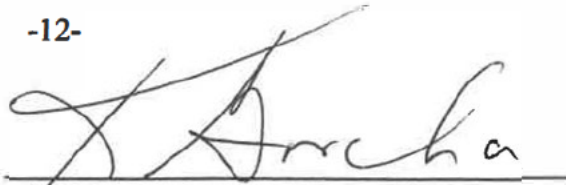
none

Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

A handwritten signature in black ink, appearing to read 'K.S. Garcha', written over a horizontal line.

Signature of K.S. Garcha
lawyer for Plaintiff

Dated: November 8, 2021

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

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proceeding concerns the negligent administration of vaccines to patients.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ 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:

1. *Court Order Interest Act*, R.S.B.C., c. 79
2. *Class Proceedings Act*, R.S.B.C., 1996, c. 50
3. *Health Profession Act*, RSBC 1996, c.183
4. *Health Authorities Act*, R.S.B.C., 1996, c.180
5. *Pharmacy Operations and Drug Scheduling Act*, S.B.C. c. 77
6. *Pharmacists Regulation*, B.C. Reg. 417/2008