



NO. S-172912  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

RIGHT DECISION HOLDINGS LTD.

**PLAINTIFF**

**AND:**

REVOLUTION RESOURCE RECOVERY INC.

**DEFENDANT**

Brought pursuant to *The Class Proceedings Act*, R.S.B.C. 1996, c. 50

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**RESPONSE TO CIVIL CLAIM**

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Filed by: The Defendant, Revolution Resource Recovery Inc.

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1—Defendants' Response to Facts**

1. The facts alleged in paragraphs 2, 3, 5, 6, 7, and 8 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 4, 9, 10, and 11 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraph 1 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

## Division 2—Defendants’ Version of Facts

4. For ease of reference, Revolution adopts the defined terms used in Right’s Notice of Civil Claim filed March 29, 2017, except where otherwise defined herein.
5. Revolution denies each and every allegation of fact made in the Notice of Civil Claim, except as expressly admitted herein, and puts Right to the strict proof thereof.
6. In specific response to paragraph 3 of Part 1 of the Notice of Civil Claim, Revolution admits that it entered into a Customer Service Agreement (the “CSA”) with Right on or around February 11, 2010. Revolution says that the CSA includes the following provisions material to the issues raised in the Notice of Civil Claim:

***WEIGHTS: Solid waste pricing based on 50 Kgs per yard unless otherwise specified in “Special Instructions:***

*Customer agrees not to place any construction materials, white goods, mattresses, landscaping waste, bed frames, pallets or any other material not deemed by Northwest as standard material into the containers provided. Customer agrees to pay “additional charges” for any materials that requires [sic] special handling or exceed the special “kg’s per yard”...*

***FINES.*** *Customer agrees to be responsible for and pay to Northwest in addition to all other charges payable hereunder, any and all fines, surcharges or levies, including but not limited to overweight fines, container permit fees, municipal graffiti ordinances, mixed load surcharges, material ban surcharges incurred by Northwest in the course of providing the Serviced to the Customer.*

***WASTE MATERIAL.*** The solid waste and recyclable material to be collected and disposed of by Northwest pursuant to this Agreement are solid waste and recyclable material generated by Customer excluding radioactive, volatile, highly flammable, explosive, biomedical, toxic or hazardous material. The term “hazardous material” will include, but not be limited to, any amount waste listed or characterized as hazardous or special waste by any federal or provincial law. Northwest will acquire title to the solid waste and recyclable material when loaded into Northwest’s trucks. Title to and liability for any waste excluded above will remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Northwest from and against any and all damages, penalties, fines and liabilities resulting from or arising out of such waste excluded above...

***RATE ADJUSTMENTS.*** Northwest reserves the right to adjust rates hereunder based upon increases in fuel costs, insurance rates, disposal facility costs and transportation costs due to change in location of disposal facilities, decreases in the local market prices for recyclable material, changes in the composition, weight or volume of material disposed of by Customer, or contamination of recyclable material...

7. In specific response to paragraphs 5 and 6 of Part 1 of the Notice of Civil Claim, Revolution admits that the Organics Disposal Ban was introduced pursuant to the *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Regulation Bylaw No. 293, 2015* (the “2016 Tipping Fee Bylaw”), which has been subsequently repealed and replaced by the *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Regulation Bylaw No. 302, 2016* (the “2017 Tipping Fee Bylaw”). The 2016 Tipping Fee Bylaw and 2017 Tipping Fee Bylaw are referred to collectively herein as the “Tipping Fee Bylaws”.
  
8. In specific response to paragraph 9 of Part 1 of the Notice of Civil Claim, Revolution denies that the General Conditions are standard for all Class members, as these General Conditions have been subject to amendment from time to time and also may be subject to negotiation with individual customers.
  
9. In specific response to paragraph 10 of Part 1 of the Notice of Civil Claim, Revolution says that the Organics Disposal Ban was only one specific example of surcharges levied by the GVRD (now Metro Vancouver Regional District) on persons, such as Revolution, who dispose of loads at disposal sites within its jurisdiction. Section 5 of the Tipping Fee Bylaws permits surcharges on loads of waste containing higher than permitted concentrations of many different types of materials, including:
  - a) Recyclable Material (other than Food Waste or Clean Wood);
  - b) Contaminated Recyclable Paper;
  - c) Food Waste;
  - d) Clean Wood;

- e) Source Separated Organic Waste; and
  - f) Hazardous and Operational Impact Materials or Product Stewardship Materials.
10. Revolution says in further response to paragraph 10 of Part 1 of the Notice of Civil Claim that surcharges and/or fines have been imposed on Revolution, and other commercial waste and recycling disposal providers, pursuant to the Tipping Fee Bylaws and repealed versions of similar regulations for many years prior to the introduction of The Organics Disposal Ban. The Government Surcharge/Material Ban was implemented by Revolution to address increased disposal facility costs generally, including those for which previous surcharges or fines had already been incurred and was never specific to The Organics Disposal Ban as alleged.
  11. In further response to paragraph 10 of Part 1 of the Notice of Civil Claim, Revolution says that its implementation of the Government Surcharge/Material Ban was expressly or impliedly permitted by the CSA and/or any customer service agreements for the provision of waste and recycling disposal services during the Class Period.
  12. In specific response to paragraph 11 of the Notice of Civil Claim, Revolution denies that the Government Surcharge/Material Ban applied to Right under the CSA related exclusively to the Organics Disposal Ban as alleged.

### **Division 3—Additional Facts**

13. Right was a Claimant in New Westminster Provincial Court Action No. C016715 (the “Provincial Court Action”).
14. In the Provincial Court Action, Right sought recovery of fees paid to Revolution for Organics Disposal over the period of July 1, 2015 to January 31, 2016.

15. On or around February 7, 2017, judgment was given in favour of Right in the Provincial Court Action in the amount of \$757.16, which amount included compensation for all alleged overpayments made pursuant to The Government Surcharge/Material Ban.
16. This judgment has since been paid by Revolution in full and an Acknowledgment of Payment filed in the Provincial Court Action on February 24, 2017.

**Part 2: RESPONSE TO RELIEF SOUGHT**

17. Revolution consents to the granting of the relief sought in paragraphs NONE of Part 2 of the Notice of Civil Claim.
18. Revolution opposes the granting of the relief sought in paragraphs ALL of Part 2 of the Notice of Civil Claim and specifically takes the position that the claims particularized in the Notice of Civil Claim are not suitable for certification under *The Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “CPA”).
19. Revolution takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.
20. Revolution says that this claim should be dismissed with costs payable to Revolution.

**Part 3: LEGAL BASIS**

21. Revolution denies that it breached the CSA, or the terms of any customer service agreement with its customers, and says that it is not liable to any of them for damages for breach of contract, either as alleged or at all.

22. Revolution was not unjustly enriched by receipt of amounts paid by its customers pursuant to The Government Surcharge/Material Ban, as any such charge was levied in accordance with the CSA and/or the terms of the applicable customer service agreements. The existence of the customer service agreements between Revolution and its customers constitutes a juristic reason for Revolution's enrichment, if any occurred.
23. Revolution disputes that the restitution and damages sought by Right and/or other class members can be calculated on an aggregate basis as provided by ss. 29 and 30 of the *CPA*. More particularly, Revolution says that amounts recovered by Revolution pursuant to the Government Surcharge/Material ban may vary significantly from customer to customer, and establishing the amount of liability, if any exists which is not admitted but specifically denied, will require weighing differing questions of fact or law.
24. Revolution denies the entitlement of Right, or anyone, to punitive damages.
25. The subject matter of the within action is identical to that in which judgment was pronounced in the Provincial Court Action. Revolution says that Right's claim as representative plaintiff is barred by any or all of the doctrines of:
  - a. *Res judicata*;
  - b. Issue estoppel;
  - c. Abuse of Process; and/or
  - d. Accord and satisfaction.
26. Revolution pleads and relies upon the provisions of the *CPA*.

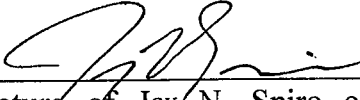
27. Revolution pleads and relies upon Rule 14-1 of the *Supreme Court Civil Rules* regarding its claim for costs.

Defendant's address for service: Kuhn LLP  
100 – 32160 South Fraser Way  
Abbotsford, BC  
V2T 1W5  
Attention: Andrew D. Delmonico

Fax number address for service (if any): NONE

E-mail address for service (if any): NONE

Dated May 31, 2017

  
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Signature of Jay N. Spiro on behalf of  
Andrew D. Delmonico  
Lawyer for the Defendant  
Revolution Resource Recovery Inc.

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.