

Fifth Amendment pursuant to Rule 6-1(1)(b)(i) and (ii) and the Order of Mr. Justice Milman made July 7, 2021  
Fourth Amendment pursuant to Rule 6-1(1)(b)(i) and the Order of Mr. Justice Milman made October 7, 2019.  
Third Amendment pursuant to Supreme Court Civil Rule 6-1(1)(b)(i) and the Order of Mr. Justice Milman made September 18, 2018.  
Second Amendment filed January 25, 2018 pursuant to Supreme Court Civil Rule 6-1(1)(b)(ii).  
Amended November 27, 2017 pursuant to Supreme Court Civil Rule 6-1(1)(a).  
Original filed on March 29, 2017.

**SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY**

**JAN 28 2022**

No. S172912  
Vancouver Registry



*In the Supreme Court of British Columbia*

Between

**676083 B.C. 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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**FOURTHFIFTH AMENDED NOTICE OF CIVIL CLAIM**

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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

- 
- (c) 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

- (d) 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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **PART 1: STATEMENT OF FACTS**

### ***The Parties***

1. The plaintiff, 676083 B.C. Ltd. is a British Columbia company with its registered office in Surrey, British Columbia.
2. The defendant, Revolution Resource Recovery Inc. ("Revolution"), is a Canadian company with its registered office in Surrey, British Columbia.
3. Prior to November 2011, 676083 B.C. Ltd. entered into a contract with Revolution for the provision of waste and recycling services. On November 3, 2011, 676083 B.C. Ltd. renewed its Customer Service Agreement with Revolution.

4. As of February 2017, 676083 B.C. Ltd. terminated its Customer Service Agreement with Revolution.

***The Class and the Class Period***

5.        This action is brought on behalf of all persons resident in British Columbia who had ~~contracts~~ a contract with Revolution for the provision of waste and recycling disposal services from between April 1, 2015 ~~to~~ and the present [where present is to be set as the date of the certification order] (the “Class Period”), and who:

(a) were charged a Government Surcharge/Material Ban of 18% (the “Surcharge Class”) and/or:

(b) continue to have a contract with Revolution for the provision of waste and recycling disposal services (the “Restraint of Trade Class”)

(collectively the “Class” or “Class Members”).

***Factual Background to Claim***

**Revolution Charged Unlawful Surcharges**

5.6.        Beginning in January, 2015, the GVRD introduced the Organics Disposal Ban.

6.7.        Under the Organics Disposal Ban, the GVRD required that organics and food scraps be separated from garbage disposed at Metro Vancouver and City of Vancouver waste disposal facilities.

7.8.        Between January 1, 2015 and June 30, 2015, the Organics Disposal Ban was enforced by way of an education program. Information on the Organics Disposal Ban was provided to haulers who disposed of loads of waste contaminated with over 25% organics and food scraps.

8.9.        Beginning July 1, 2015 the Organics Disposal Ban was enforced through fines:

- (a) from July 1, 2015 to December 31, 2016, haulers who disposed of loads of waste contaminated with over 25% organics and food scraps were subject to fines; and
- (b) from January 1, 2017 to the present, haulers who disposed of loads of waste contaminated with over 5% organics and food scraps were subject to fines.

~~9.10.~~ Haulers may also be charged surcharges levied by the GVRD under the *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Bylaw* No. 293, 2015, and No. 302, 2016 (the "Tipping Fee Bylaws").

~~40.11.~~ Revolution provides waste management and recycling disposal services to its clients in the GVRD. The terms of Class members' contracts with Revolution are set out in Revolution's customer service agreements, which include Revolution's written standard form "General Conditions". The General Conditions include a term that Revolution may charge its customers surcharges, fines, or levies where those costs were incurred by Revolution in the course of providing services to the customer.

~~12.~~ Beginning in April, 2015, and continuing throughout the Class Period, Revolution charged the ~~Class surcharges~~ Surcharge Class a Government Surcharge/Material Ban in the amount of 18% of the Surcharge Class Member's invoice (excluding the charges for fines related to the Organics Disposal Ban "Processing Fee", "Fuel and/or the Tipping Fee Bylaws that exceed Environmental" and/or bear GST).

~~44.13.~~ The Government Surcharge/Material Ban was charged at a uniform, fixed rate of 18% and bears no relation to the surcharges, fines charged to, or levies incurred by Revolution by the GVRD in relation to the Organics Disposal Ban and/ the Tipping Fee Bylaws, or other any other surcharges, fines, or fines the Tipping Fee Bylaws (levies incurred by Revolution in the "Government course of providing services to the Surcharge/Material Ban"). Class Members.

~~12.14.~~ The plaintiff had a contract with Revolution for the provision of waste management and recycling disposal services during the Class Period and was charged the Government Surcharge/Material Ban.

**Terms Contained in Revolution's Customer Service Agreements are Void or Unenforceable**

~~13.15.~~ The customer service agreements were drafted by the defendant, and were presented to the plaintiff and the Class Members as standard terms.

~~14.16.~~ The "Term", "Right to Re-Negotiate" and "Failure to Perform" clauses included in the standard form "General Conditions" that form part of Revolution's customer service agreements result in indefinite agreements by limiting the ability of the plaintiff and the Class Members:

- (a) to terminate the agreements; and
- (b) to enter into contracts for the same or similar services with companies other than Revolution.

~~15.17.~~ As a practice, Revolution did not:

- (a) draw the "Term", "Right to Re-Negotiate" or "Failure to Perform" clauses to the attention of the plaintiff, or the Class Members;
- (b) ensure that the plaintiff or other Class Members understood and acknowledged the implications of the "Term", "Right to Re-Negotiate" or "Failure to Perform" clauses; and/or
- (c) advise the plaintiff or the Class Members to obtain independent legal advise with respect to the "General Conditions".

~~16.18.~~ When the plaintiff and other Class Members attempted to terminate the customer services agreements with Revolution, Revolution implemented a retention policy that was designed to further obstruct the ability of the plaintiff and other Class

Members from terminating the customer service agreements by taking steps that included:

- (a) declining to accept notice(s) of termination;
- (b) declining to provide copies of the customer service agreements on request; and
- (c) declining to advise the Plaintiff and other ~~class members~~Class Members of their "Renewal Date" further to the "Term" clause.

## **PART 2: RELIEF SOUGHT**

~~17-19.~~19. The plaintiff claims against Revolution as follows:

- (a) an order certifying the proceeding as a class proceeding;
- (b) damages for breach of contract in the form of expectation damages, and in the alternative, nominal damages;
- (c) punitive damages;
- (d) the costs of administering and distributing an aggregate damage award;
- (e) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (f) a declaration that the customer service agreement "General Conditions" as drafted to include the "Term", "Right to Re-Negotiate", and "Failure to Perform" clauses are void and unenforceable; and
- (g) such further relief as this Honourable Court deems just.

## **PART 3: LEGAL BASIS**

### **Breach of Contract**

~~18-20.~~20. The customer service agreements are contracts between Revolution and the members of the Class. ~~Each~~The written "General Conditions" in the customer

service agreement includes agreements include a term that Revolution may charge fines, levies, or surcharges and fines where those costs were incurred by Revolution in the course of providing services to the customer.

21. Revolution breached the customer service agreements by charging the Government Surcharge/Material Ban without having incurred a corresponding fine or surcharge. at a uniform, fixed, and arbitrary rate of 18%, which bears no relation to any corresponding fines, levies, or surcharges incurred by Revolution in the course of providing services to the Surcharge Class Members. The customer service agreements do not authorize Revolution to charge the Surcharge Class Members a fine, surcharge or levy at a fixed rate of 18% of each Surcharge Class Member's invoice.

19-22. In particular, the Government Surcharge/Material Ban is not authorized by any of the "General Conditions", including the "Fines" clause, which would require Revolution to establish, prior to charging a fine, levy or surcharge, that the fine, levy or surcharge was actually incurred by Revolution in the course of providing services to the customer. No such analysis was conducted by Revolution in relation to the Government Surcharge/Material Ban, which it charged to all Surcharge Class Members at an arbitrary and uniform rate of 18%.

20-23. Revolution is liable to the Surcharge Class membersMembers for damages for breach of contract in the total amount of the Government Surcharge/Material Ban paid by the Surcharge Class Members minus any portion of the Government Surcharge/Material Ban actually incurred by Revolution in the course of providing services to the Surcharge Class Members.

### ***Restraint of Trade and Unconscionability***

21-24. Further, or alternatively, the plaintiff pleads that the "Term", "Right to Re-Negotiate", and "Failure to Perform" clauses included in the Customer Service Agreements, are void or unenforceable, wholly or in part, because they:

- (a) restrict the ability of the plaintiff and the Class Members to enter into contracts for the same or similar services with companies other than Revolution;
- ~~(b)~~ are unconscionable;
- ~~(e)~~(b) are substantially improvident or unfair bargains that favour Revolution at the expense of the plaintiff and the Class Members; and
- ~~(d)~~ are contrary to public policy, in that they are in restraint of trade and/or create indefinite agreements.

### ***Unjust Enrichment***

~~22.~~ Further, or alternatively, the plaintiff pleads that it and other members of the Class are entitled to recover under restitutionary principles.

~~23.~~ Revolution was unjustly enriched by the receipt of the Government Surcharge/Material Ban. The plaintiff and other members of the Class have suffered a corresponding deprivation in the amount of the Government Surcharge/Material Ban.

~~(a)~~(c) There is no juristic reason for Revolution to retain any part of the Government Surcharge/Material Ban, and Revolution must disgorge and make restitution of the Government Surcharge/Material Ban to the Class.

### ***Aggregate Damages***

~~24.~~25. The restitution and damages sought by the plaintiff and other members of the Class above can be calculated on an aggregate basis for the Class as provided by ss. 29 and 30 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

### ***Punitive Damages***

~~25.~~26. The plaintiff pleads that Revolution's wrongful conduct including by unlawfully collecting the Government Surcharge/Material Ban from the Class, and including use of the "Term", "Right to Re-negotiate", and "Failure to Perform" clauses as



standard terms in their customer service agreements was high-handed, entirely without care, deliberate, wilful, without good faith, and an intentional disregard of the rights of the Class. Such conduct renders Revolution liable to pay punitive damages.

Plaintiff's address for service:

**CAMP FIORANTE MATTHEWS MOGERMAN**

#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
Fax: (604) 689-7554

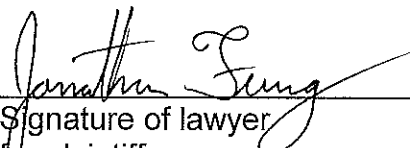
Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 29/March/2017

Fifth Amended Date: 28/Jan/2022

  
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Signature of lawyer  
for plaintiff

Jonathan Fung

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.

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#### APPENDIX

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

#### **CONCISE SUMMARY OF NATURE OF CLAIM:**

An action commenced under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, for breach of contract and unjust enrichment in relation to excess fees that were charged by the defendant.

#### **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
- X 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

THIS CLAIM INVOLVES:

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

*[If an enactment is being relied on, specify. Do not list more than 3 enactments.]*

1. *Class Proceedings Act, R.S.B.C. 1996, c. 50.*