

FORM 3-9
(Rule 3-9)

COURT FILE NUMBER:

Q.B.C. 2024/14

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE OF REGINA

PLAINTIFF(S)

YING JIANG

DEFENDANT(S)

PEOPLES TRUST COMPANY, PEOPLES CARD SERVICES
LIMITED PARTNERSHIP, PEOPLES CARD SERVICES LTD.,
VANCOUVER CITY SAVINGS CREDIT UNION, CITIZENS BANK
OF CANADA, AMEX BANK OF CANADA, and ALL TRANS
FINANCIAL SERVICES CREDIT UNION LIMITED

Brought under *The Class Actions Act*

NOTICE TO DEFENDANT

1 The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:

- (a) serve a Statement of Defence on the plaintiff; and
- (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2 The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

- (a) 20 days if you were served in Saskatchewan;
- (b) 30 days if you were served elsewhere in Canada or in the United States of America;
- (c) 40 days if you were served outside Canada and the United States of America.

3 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4 This Statement of Claim is to be served within 6 months from the date on which it is issued.

5 This Statement of Claim is issued at the above named judicial centre on the ^{*29th*} ~~19th~~ day of September, 2014.

(SEAL)

29th
FN
F. NIETO
Dy. Local Registrar

Local Registrar

STATEMENT OF CLAIM

I. PARTIES

(1) Plaintiff

1. The representative Plaintiff, Ying Jiang, resides in the City of Vancouver in the Province of British Columbia.

(2) Defendants

1. The Defendant, Peoples Trust Company ("Peoples Trust"), is a trust company incorporated pursuant to the *Trust and Loan Companies Act*, S.C. 1991, c. 45 and extra-provincially registered pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.
2. Peoples Card Services Limited Partnership is a limited partnership formed pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.
3. Peoples Card Services Ltd. is a company incorporated pursuant to the laws of Canada and extra-provincially registered pursuant to the laws of British Columbia with a head office at Suite 1400, 888 Dunsmuir Street in the City of Vancouver in the Province of British Columbia and a registered address for delivery at PO BOX 49130, 2900 – 595 Burrard Street in the City of Vancouver in the Province of British Columbia.
4. Peoples Card Services Ltd. is the general partner of Peoples Card Services Limited Partnership (together, "Peoples Card").
5. Peoples Card is a subsidiary of Peoples Trust (together, "Peoples").

6. The Defendant, Vancouver City Savings Credit Union ("Vancouver City"), is a credit union incorporated pursuant to the *Credit Union Incorporation Act*, R.S.B.C. 1996, c. 82 with a head office and address for delivery at 183 Terminal Avenue, PO Box 2120, Stn. Terminal in the City of Vancouver in the Province of British Columbia.

7. The Defendant, Citizens Bank of Canada ("Citizens Bank"), is a bank incorporated pursuant to the *Bank Act*, S.C. 1991, c. 46 with a head office and address for delivery at 183 Terminal Avenue in the City of Vancouver in the Province of British Columbia.

8. Citizens Bank is a wholly-owned subsidiary of Vancouver City (together, "Vancity").

9. The Defendant, Amex Bank of Canada ("Amex") is a bank incorporated pursuant to the *Bank Act*, S.C. 1991, c. 46 with a head office and address for delivery at 101 McNabb Street in the City of Markham in the Province of Ontario.

10. The Defendant, All Trans Financial Services Credit Union Limited ("All Trans"), is a provincially regulated credit union incorporated under the laws of Ontario with a head office at 3250 Bloor St. W, Suite 707 in the City of Etobicoke in the Province of Ontario.

(3) The Class

11. The representative Plaintiff brings this action on her own behalf and on behalf of all consumers who purchased, received, or acquired one or more prepaid purchase cards ("Prepaid Cards") issued or sold by Peoples, Vancity, Amex, All Trans, and each of them (collectively, the "Defendants"), on or after November 10, 2008 (the "Class" or "Class Members").

12. The representative Plaintiff is a member of the Class.

13. The Class Members, and each of them, have suffered damages as a result of the charging of Fees, the expiration of the Prepaid Cards, or both.

II. FACTS

(1) The Defendants' Prepaid Card Offerings

14. This proceeding involves Prepaid Cards sold and/or issued, both within and outside of Saskatchewan, by the Defendants.

15. The Prepaid Cards are branded with either a Visa, MasterCard, or American Express logo and are accepted as a form of payment anywhere in the world and online at all merchants that accept the applicable brand of card.

16. The Prepaid Cards are prepaid purchase cards that have a monetary value and are sold and/or issued to persons in exchange for the future supply of goods or services to a consumer.

17. The Defendants offer the Prepaid Cards in two varieties: non-reloadable cards and reloadable cards.

18. Non-reloadable Prepaid Cards are pre-loaded with a fixed value, such as \$25.00, \$50.00, \$100.00, or \$200.00, and are activated at the point-of-sale upon paying the value of the card plus an activation or purchase fee. Non-reloadable Prepaid Cards have an expiry date and cannot be reloaded with additional funds.

19. Reloadable Prepaid Cards allow the purchaser to initially load the card with any chosen value and are activated at the point-of-sale upon paying the chosen value plus an activation or purchase fee. Reloadable Prepaid Cards can be reloaded with additional funds at any time.

20. For both reloadable and non-reloadable Prepaid Cards, the Defendants impose, fees, including discount fees, and deductions (collectively, "Fees") including some or all of the following:

- a. an activation or purchase fee upon purchase;
- b. a monthly administrative or maintenance fee;
- c. a transaction or point-of-sale fee when a Prepaid Card is used;
- d. an insufficient funds fee;
- e. inquiry fees for inquiries about a Prepaid Card, including querying the balance;
- f. a refund processing fee;
- g. an expiration fee;
- h. a re-activation fee;
- i. a foreign exchange service charge, conversion fee, margin, or discount when the card is used for a purchase in a foreign currency;
- j. a domestic or international ATM fee;
- k. an over-the-counter cash advance fee;
- l. a card closure and balance return fee;
- m. a reload fee; and
- n. a PIN Change fee.

21. The packaging of the Defendants' Prepaid Cards prominently refers to an agreement that is entered into upon purchase of each of the Prepaid Cards (a "Cardholder Agreement").

22. A paper copy of the Cardholder Agreement is contained inside the packaging of the Prepaid Cards. The same Cardholder Agreement is also publically accessible on the Defendants' websites.

23. The Cardholder Agreement details a Defendant's and individual Class Member's rights and obligations with respect to the Prepaid Cards. The rights and obligations include, *inter alia*, payment of fees, expiry dates, and other legal clauses.

24. The Defendants' Prepaid Cards are issued under different brand names and sold to consumers, both within and outside of Saskatchewan, at a variety of retailers, such as drug stores, supermarkets, gas stations, and convenience stores. The Defendants' Prepaid Cards are frequently sold alongside gift cards for other merchants and retailers.

(2) The Plaintiff's Circumstances

25. On June 20, 2014, the representative Plaintiff purchased a prepaid purchase card (the "Card") from a Real Canadian Superstore located in Burnaby, British Columbia. The Card has a face value of \$25.00, was issued by Citizens Bank, and is branded with a Visa logo.

26. The Card's packaging states, *inter alia*,:

- a. "THE PERFECT GIFT";
- b. "\$3.95 activation fee";
- c. "Good thru 11/2016";
- d. "Use at millions of merchants worldwide, including online.";
- e. "Funds on card never expire";
- f. "Monthly Fee (Starts month after Good Thru date) \$2.50";
- g. "Foreign Currency Margin 2.5%"; and
- h. "This Visa Gift Card is not refundable at retail stores. Additional Guidelines may apply. See enclosed Terms and Conditions for details."

27. The representative Plaintiff paid \$28.95 for the Card. This amount represents the \$25.00 face value of the Card plus a \$3.95 activation fee.

28. The representative Plaintiff is a consumer and purchased the Card for personal use.

III. CAUSES OF ACTION

(1) *Consumer Protection*

29. On behalf of Class Members, the representative Plaintiff pleads the consumer protection and trade practice legislation in Saskatchewan and other provinces, including:

- a. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2, including ss. 4-5, 8-10, and 56.1-56.4;
- b. *The Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2, including ss. 6-9 and 47-53 ("CPBPA");
- c. *The Business Practices Act*, SM 1990-91, c. 6, including ss. 2-9 and 170-173;
- d. *Consumer Protection Act, 2002*, S.O., c.30, Sched. A, including ss. 14-19 and Ontario Regulation 17/05 including ss. 23 – 25.5;
- e. *Consumer Protection Act*, R.S.Q. c. P-40.1, including ss. 187.1 – 187.5;
- f. *Consumer Protection Act*, R.S.N.S. 1989, c. 92 and *Gift Card Regulations*, NS Reg 325/2009;
- g. *Gift Cards Act*, RSNB 2011, c. 165;
- h. *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, including ss. 7-17 and *Newfoundland and Labrador Regulation 14/11*;
- i. *Business Practices Act*, R.S.P.E.I. 1988, c. B-8, including s. 2, *Gift Cards Act*, R.S.P.E.I 1988, c G-4.1.

30. The Class Members are consumers within the meaning of the *CPBPA* or the corresponding consumer protection and trade practice legislation in each respective province.

31. Defendants are suppliers within the meaning of the *CPBPA* or the corresponding consumer protection and trade practice legislation in each respective province.

32. The Prepaid Cards sold and/or issued by the Defendants:

- a. are prepaid purchase cards pursuant to s. 47 of the *CPBPA*;
- b. have expiry dates contrary to s. 49 of the *CPBPA*; and
- c. charge Fees contrary to s. 51 of the *CPBPA*.

33. The Defendants, having contravened the *CPBPA* and/or the consumer protection and trade practice legislation in each respective province, have caused the Class Members to suffer damages.

34. The Defendants' wilful and blatant disregard of consumer protection legislation constitutes egregious and high-handed conduct that warrants an award of punitive damages.

35. The Defendants' representation to the Class Members, *inter alia*, that it has the right to charge and/or collect the Fees has the capability, tendency, or effect of deceiving or misleading a consumer and constitutes an unfair practice contrary to s. 6 of the *CPBPA* or the corresponding consumer protection and trade practice legislation in each respective province.

36. The Class Members are entitled under the law of restitution and pursuant to s. 93(1)(a) of the *CPBPA* to restitution in the amount of the Fees and the amounts unlawfully retained in relation to expired Prepaid Cards.

37. The Class Members are entitled under section 93(1)(b) of the *CPBPA*, or the corresponding section of the consumer protection and trade practice legislation in each respective province, to damages in the amount of the Fees and the amounts unlawfully retained in relation to expired Prepaid Cards.

(2) Unjust Enrichment

38. The Defendants have been enriched by the receipt of the Fees and paid by the Class Members in respect of the Prepaid Cards, contrary to sections 47 and 49 of the *CPBPA*.

39. Each of the Class Members have been deprived of moneys by the payment of Fees in respect of the Prepaid Cards.

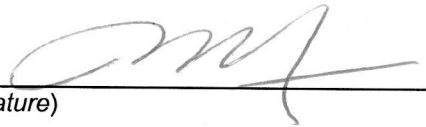
40. There is no juristic reason why the Defendants should have received or should retain the benefit of the Fees paid by each of the Class Members.

41. The Defendants hold the unlawful benefits they have received pursuant to the collection of these Fees from the Class Members in trust for the Class.

IV. RELIEF SOUGHT

42. On behalf of herself and other class members, the representative Plaintiff claims compensatory and punitive damages, restitution, pre-judgment interest, post-judgment interest, costs for administering a plan to distribute funds to Class Members and a permanent injunction.

DATED at REGINA, Saskatchewan, this 19 day of September, 2014.



(signature)