

JUL 24 2020



BETWEEN

IN THE SUPREME COURT OF BRITISH COLUMBIA

RANTAJ JASWAL

PLAINTIFF

AND:

AIR CANADA, WESTJET AIRLINES LTD., AIR TRANSAT A.T. INC.,
PACIFIC COASTAL AIRLINES LIMITED and SWOOP INC.

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

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

- (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,

- (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 with 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.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

A. DEFINED TERMS

1. In this Notice of Civil Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) “**APPR**” means the Air Passenger Protection Regulations, SOR/2019-150, which form part of the **Transportation Legislation**;
 - (b) “**BPCPA**” means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
 - (c) “**Class**” or “**Class Members**” means all persons in Canada except residents of Quebec who purchased airfares and:
 - (i) did not receive a refund for a flight cancellation; or
 - (ii) were charged a cancellation fee for processing a refundin respect of travel scheduled between March 1, 2020 and the date of certification.

- (d) “**Consumer Subclass**” or “**Consumer Subclass Members**” means all individual **Class Members** who purchased airfares as part of a consumer transaction (as defined in the **BPCPA** and **Equivalent Consumer Protection Legislation**) and did not receive a refund for a flight cancellation in respect of travel scheduled between March 1, 2020 and the date of certification. For greater certainty, airfare purchases for business or commercial purposes are excluded from the Consumer Subclass;
- (e) “**Contracts**” means the agreements between the Defendants and the Plaintiff and the Class to provide air services;
- (f) “**CPA**” means the *Class Proceedings Act*, RSBC 1996, c 50, as amended;
- (g) “**CTA**” means the Canadian Transportation Agency;
- (h) “**Equivalent Consumer Protection Legislation**” means the *Consumers Protection Act*, RSY 2002, c 40; the *Consumer Protection Act*, RSNWT 1988, c C-17; the *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17; the *Consumer Protection Act*, RSA 2000, c C-26.3; the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2; the *Business Practices Act*, CCSM, c B120; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A; the *Consumer Protection Act*, RSNS 1989, c 92; the *Business Practices Act*, RSPEI 1988, c B-7; and, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, all as amended;
- (i) “**Equivalent Frustrated Contract Legislation**” means the *Frustrated Contracts Act*, RSY 2002, c 96; the *Frustrated Contracts Act*, RSNWT 1988, c F-12; the *Frustrated Contracts Act*, RSNWT (Nu) 1988, c F-12; the *Frustrated Contracts Act*, RSA 2000, c F-27; the *Frustrated Contracts Act*, SS 1994, c F-22.2; the *Frustrated Contracts Act*, CCSM c F190; the *Frustrated Contracts Act*, RSO 1990, c F.34; the *Frustrated Contracts Act*, RSNB 2011, c 164; the *Frustrated Contracts Act*, RSPEI 1988, c F-16; and, the *Frustrated Contracts Act*, RSNL 1990, c F-26;

- (j) “**Excluded Persons**” means:
 - (i) the **Defendants** and their officers and directors; and,
 - (ii) the heirs, successors and assigns of the persons described in subparagraph (i);
- (k) “**FCA**” means the *Frustrated Contract Act*, RSBC 1996, c 166;
- (l) “**Federal Government**” means the Federal Government of Canada and includes the Public Health Agency of Canada;
- (m) “**New Representations**” means the new representations described at paragraph 37;
- (n) “**Representations**” means the representations described at paragraph 36;
- (o) “**Tariff**” means a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental service;
- (p) “**Transportation Legislation**” means the *Canada Transportation Act*, SC 1996, c 10 and the regulations thereto.

B. NATURE OF THE ACTION

2. This class action arises from the widespread cancellation and disruption of domestic and international flights to and from Canada as a result of the global COVID-19 pandemic.
3. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.
4. On March 13, 2020, the Federal Government issued a Level 3 travel advisory and published a notice advising Canadian travellers to avoid all non-essential travel outside of Canada.

5. In the days and months that followed, the Defendants cancelled the majority of their scheduled flight services to and from Canada which prevented Class Members from travelling as scheduled, or at all.
6. In an effort to retain profits, the Defendants have provided Class Members with travel vouchers or flight credits in sums equivalent to the unused portions of Class Members' airfares instead of providing Class Members with refunds, contrary to aviation industry practice and in violation of the *BPCPA* and Equivalent Consumer Protection Legislation.
7. In this case, the Defendants misrepresented Class Members' entitlement to compensation for cancelled flights which caused the Plaintiff and the Class damages for which they should be compensated, or, for which the Plaintiffs and the Class are entitled to rescind their Contracts with the Defendants and obtain full refunds as restitution.

C. THE DEFENDANTS

8. The Defendant, Air Canada is a federal company, extraprovincially registered in British Columbia, with an attorney in British Columbia at: AHBL Corporate Services Ltd., 2700 - 700 West Georgia Street, Vancouver, BC, V7Y 1B8.
9. The Defendant, Westjet Airlines Ltd. ("**Westjet**") is an Alberta company, extraprovincially registered in British Columbia, with an attorney in British Columbia at: AHBL Corporate Services Ltd., 2700 - 700 West Georgia Street, Vancouver, BC, V7Y 1B8.
10. The Defendant, Air Transat A.T. Inc. ("**Air Transat**") is a federal company, extraprovincially registered in British Columbia, with an attorney in British Columbia at: David Edinger, 1200-925 West Georgia Street, Vancouver, BC V6C 3L2.
11. The Defendant, Swoop Inc. ("**Swoop**") is an Alberta company, extraprovincially registered in British Columbia, with an attorney in British Columbia at: AHBL

Corporate Services Ltd., 2700 – 700 West Georgia Street, Vancouver, BC V7Y 1B8.

12. The Defendant, Pacific Coastal Airlines Limited (“**Pacific**”) is a British Columbia company with a registered and records office at 400 – 725 Granville Street, Vancouver, BC V17Y 1G5.

D. THE PLAINTIFF AND THE CLASS

13. The Plaintiff, Rantaj Jaswal, is an individual residing in Vancouver, British Columbia. The Plaintiff seeks to represent the Class.

Airfares to New York

14. In February and March 2020, the Plaintiff purchased airfares from Air Canada for trips to New York City, New York for himself, his wife, his parents and his grandfather (the “**NYC Airfares**”) to attend the wedding of a family member. The particulars of the NYC Airfares are as follows:
 - (a) on or about February 26, 2020, the Plaintiff purchased three return airfares from Air Canada for his parents, Ranbir Jaswal and Tejinder Jaswal, and his grandfather, Sampuran Minhas; and
 - (b) on or about March 8, 2020, the Plaintiff purchased two one-way airfares from Air Canada for himself and his wife, Sumeet Mutti Jaswal.
15. The Plaintiff expected his parents and grandfather would depart from Vancouver on April 20, 2020 and return from New York on April 28, 2020, and that he and his wife would depart from Vancouver on April 17, 2020 (collectively, the “**NYC Flights**”).
16. The total purchase price paid by the Plaintiff for the NYC Airfares was \$1,727.66. The tickets were non-refundable.

Airfare to Panama

17. On March 9, 2020, the Plaintiff purchased a one-way airfare from Air Canada, for a trip to Panama City, Panama (the "**Panama Airfare**"). The purpose of the Plaintiff's trip was to vacation with friends.
18. The Plaintiff expected to depart from Vancouver on March 31, 2020 (the "**Panama Flight**").
19. The purchase price of the Panama Airfare was \$296.09. The ticket was non-refundable.

Flight Itinerary Revisions and Cancellations

20. Beginning on or about March 20, 2020, the Plaintiff started receiving email notifications from Air Canada informing him that the flight itineraries for the NYC Flights and the Panama Flight were changing. For instance, on March 31, 2020, the Plaintiff's father's itinerary was altered such that he would miss his connecting flight in Toronto, Ontario.
21. Eventually on March 28, 2020 the Plaintiff received emails from Air Canada prompting him to confirm or cancel the NYC Flights and Panama Flight in exchange for flight credits, valid only for travel by the named ticketholders and to be completed by March 31, 2021.
22. Believing cancellation to be his only option, the Plaintiff called Air Canada on March 28, 2020 and cancelled the NYC Flights and Panama Flight in exchange for flight credits.
23. On or about March 28, 2020, the Plaintiff received confirmation that the Panama Flight had been voluntarily cancelled and that he had received a flight credit for the Panama Airfare, which would only be valid for one year from the date of cancellation.

24. Also on or about March 28, 2020, the Plaintiff received a notification that his and his wife's NYC Flights had been cancelled and that they were receiving flight credits, which would expire within two years of their flight cancellation date. The Plaintiff's parents and grandfather also received email confirmations that their NYC Flights had been cancelled.
25. On May 22, 2020, Air Canada revised its flight credit policy to allow Class Members that booked their tickets directly with Air Canada with to convert their tickets to an Air Canada Travel Voucher that has no expiry date or to Aeroplan Miles with an additional 65% bonus miles.

E. THE STATUTORY REGIME AND INDUSTRY STANDARDS GOVERNING AIRFARES AND PASSENGER RIGHTS

26. The Defendants' Tariffs contain the contractual terms governing airfares and air passenger rights and remedies.
27. The Tariffs are governed by Transportation Legislation, and are regulated by the CTA, an independent quasi-judicial tribunal.
28. The *APPR* form part of the Transportation Legislation.

The APPR

29. The *APPR* provide Class Members with minimum rights and remedies including *inter alia*:
 - (a) a right to be informed of terms and conditions concerning flight cancellation in simple, clear and concise language;
 - (b) a right to be informed of treatment, compensation and recourse to the CTA in simple, clear and concise language; and,
 - (c) a right to alternate travel arrangements or a refund in case of a cancellation. Specifically:

- (i) if a flight is cancelled and the reason is within the airline's control and required for safety purposes, specific standards of treatment, compensation, and the option for rebooking or a refund must be provided to the air passenger; and,
 - (ii) if a flight is cancelled and the reason is outside of the airline's control, the option for rebooking must be provided to the air passenger.
30. The *APPR* and Transportation Legislation do not form a complete code in respect of the adjudication of air passenger disputes or air passenger rights and remedies.
31. Section 3(3) of the *APPR* provides that an air passenger must not be refused compensation in accordance with the *APPR* for an event on the grounds that they are also eligible for compensation for the same event under a different passenger rights regime.

The CTA and Aviation Industry Practice Regarding Refunds

32. The Transportation Legislation grants the CTA broad powers, including the power to substitute terms in existing Tariffs.
33. In several Decisions, the CTA has substituted language in Tariffs in order to provide passengers with refunds in instances where the reason for the cancellation was outside the airline's control and the airline was unable to provide transportation on its services or on the services of other carriers within a reasonable period of time.
34. The CTA's jurisprudence has created an aviation industry practice or a passenger rights regime that provides air passengers with greater rights or protections than those specified in the *APPR*, including the right to a refund where a flight is cancelled for a reason beyond an airline's control.

35. The CTA also publishes guides and public notices which are intended to provide guidance to air passengers and air service providers. These guides and public notices are non-binding and do not have the effect of law. Where there are differences between the guides and notices and the Transportation Legislation, the Transportation Legislation prevails.

F. DEFENDANTS' REPRESENTATIONS CONCERNING COMPENSATION FOR FLIGHT CANCELLATIONS

36. Prior to March 2020, the Defendants made Representations in their respective Tariffs regarding their respective Class Members' ability to obtain refunds for cancelled flights, including:

- (a) by the Defendant Air Canada in its international and domestic tariffs, issued on January 6, 2020 and December 19, 2019, respectively, a Representation that, following "Schedule Irregularities" outside of the its control, its respective Class Members could obtain refunds for the unused portions of their airline tickets;
- (b) by the Defendant WestJet in its international tariff, issued on October 6, 2019, a Representation that its respective Class Members could obtain "Involuntary Refunds" for the unused portions of their airline tickets, and in its domestic tariff, updated December 15, 2019, a Representation that its respective Class Members could obtain refunds for the unused portions of their airline tickets following "Involuntary cancellations";
- (c) by the Defendant Air Transat in its domestic and international (outside of the United States) Tariffs, effective October 18, 2016 and March 8, 2018, respectively, a Representation that, following a "Schedule Irregularity", its respective Class Members could obtain refunds for the unused portions of their airline tickets if the Defendant Air Transat were unable to provide reasonable alternative transportation on its services or on the services of other carriers within a 24 hour delay;

- (d) by the Defendant Swoop in its domestic and international Tariffs, effective August 2, 2018 and February 1, 2020, respectively, a Representation that, following a “schedule irregularity not within [its] control”, its respective Class Members could obtain refunds for the unused portions of their airline tickets; and
 - (e) by the Defendant Pacific in its domestic Tariff, amended May 4, 2020, a Representation that, following a flight cancellation due to, *inter alia*, epidemic or national emergency, its respective Class Members could obtain refunds for unused portions of their airline tickets.
37. Beginning in or about March 2020, the Defendants made New Representations which consisted of publishing new terms and conditions on their respective websites regarding cancellation of flights in response to the COVID-19 pandemic and Class Members’ corresponding entitlement to compensation. The New Representations include:
- (a) by the Defendant Air Canada, a New Representation that its respective Class Members whose flights have been cancelled “may keep the remaining value of [their] ticket for future travel, which is valid for travel that must be completed within 24 months of [their] flight cancellation date”;
 - (b) by the Defendant WestJet, a New Representation to its respective Class Members whose flights have been cancelled that “[t]he full value of [their] cancelled flight will be credited to a Travel Bank, valid for 24 months from the date of issue” and that “WestJet Vacation packages will be credited as WestJet dollars, valid for 24 months”;
 - (c) by the Defendant Air Transat, a New Representation that its respective Class Members whose flights have been cancelled will not receive refunds “[s]ince the cancellation is the result of exceptional circumstances surrounding the COVID-19 pandemic” but rather “will receive a credit for the value of [their] flight/package, applicable to [their] next trip with [the

Defendant Air Transat]", which will be valid for 24 months after their respective Class Members' original return dates;

- (d) by the Defendant Pacific, a New Representation to its respective Class Members whose flights have been cancelled that their "flight value will be held as a travel credit that can be applied towards a future flight with Pacific Coastal Airlines" and that the "[t]ravel credit will be available for travel completed within 24 months from the date of original purchase" and that "[the Defendant Pacific Coastal Airlines is] not processing refunds to original form of payment at this time"; and
 - (e) by the Defendant Swoop, a New Representation to its respective Class Members whose international flights have been cancelled that "[f]light purchases will be returned as a future travel credit in the form of a Swoop Credit, valid for 24 months".
38. A common feature of the terms and conditions introduced in March 2020 by each of the Defendants is the provision of travel vouchers or flight credits to Class Members instead of refunds.
39. The Defendants do not and cannot know whether regular flight scheduling will resume within 24 months, whether the Class Members will be willing and able to travel within the next 24 months, or whether the travel vouchers or flight credits will be sufficient to purchase equivalent flight services in the future, whether within the next 24 months or during an indefinite period of time.
40. The Defendants' New Representations had the effect of deceiving or misleading Class Members into believing that their only entitlement to compensation for the cancellation of flights is a travel voucher or flight credit when the Defendants knew or ought to have known of Class Members' recourse to the CTA and compensation under air passenger rights regimes.

41. As a result of the Defendants' New Representations, the Plaintiff and the Class have not received refunds for air travel scheduled on or after March 1, 2020 which has caused the Plaintiff and the Class to suffer damages.

PART 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
 - (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
 - (b) a declaration that the Defendants breached the Contracts in place with the Plaintiff and the Class;
 - (c) a declaration that it is an implied term of the Contracts that the Plaintiff and the Class are entitled to refunds for the cancellation of flights;
 - (d) an order for restitution pursuant to section 5 of the *FCA* and equivalent provisions in Equivalent Frustrated Contract Legislation;
 - (e) general damages for breach of contract, misrepresentation and conduct contrary to the governing statutes pleaded herein;
 - (f) a reference to decide any issues not decided at the trial of the common issues;
 - (g) the costs of administering and distributing a damage award;
 - (h) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and,
 - (i) such further and other relief as this Honourable Court may deem just.

2. Further, the Plaintiff, on his own behalf and on behalf of the Consumer Subclass Members seeks:
 - (a) a declaration pursuant to section 172(1)(a) of the *BPCPA* and the equivalent parts and provisions in the Equivalent Consumer Protection

Statutes that the Defendants' Representations are unfair and/or deceptive acts or practices;

- (b) damages pursuant to section 171 of the *BPCPA* and equivalent provisions in the Equivalent Consumer Protection Statutes;
- (c) an order pursuant to section 27 and/or section 172(3)(a) of the *BPCPA* and equivalent provisions in the Equivalent Consumer Protection Statutes directing the Defendants to restore to the Plaintiff and Consumer Subclass Members all money acquired as a result of the Contracts not being performed and for contravention of the *BPCPA* and Equivalent Consumer Protection Statutes; and
- (d) a declaration that it is not in the interests of justice to require that notice be given pursuant to section 18(15) of Ontario's *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, and pursuant to any parallel provisions of the balance of the Equivalent Consumer Protection Statutes, and waiving any such notice requirements.

PART 3: LEGAL BASIS

A. BREACH OF CONTRACT

1. By purchasing air services from the Defendants, the Plaintiff and Class Members entered into Contracts with the Defendants.
2. The Defendants' Tariffs constitute a valid and enforceable agreement which form part of the Contracts to which the Plaintiff and Class Members are parties.
3. Most of the Defendants' Tariffs contain *force majeure* clauses which are not defined to include the circumstances caused by the COVID-19 pandemic or similar circumstances.
4. To the extent that the *force majeure* clauses are valid and enforceable, they are to be interpreted narrowly and against the Defendants as the parties that drafted the provisions.

5. In the absence of a term in the Contracts that expressly addresses the circumstances caused by the COVID-19 pandemic or similar circumstances, a term must be implied in the Contracts.
6. In addition to the rights and remedies afforded by *APPR*, it is an implied term of the Contracts that aviation industry practice which has developed through the CTA's jurisprudence requires the Defendants to provide the Plaintiff and the Class with refunds for the unused portion of their airfares, regardless of whether the reason for the cancellation was within or outside of the Defendants' control.
7. The Defendants did not provide the Plaintiff or the Class with air services pursuant to the Contracts and the Plaintiff and Class Members suffered damages as a result.
8. Further, or in the alternative, as a result of the Defendants cancelling flights of the Plaintiff and Class Members while retaining the amounts paid by the Plaintiff and Class Members for such flights, the Defendants have been unjustly enriched:
 - (a) the Defendants have been enriched through receipt of the amounts paid by the Plaintiff and Class Members for their respective flights;
 - (b) the Plaintiff and Class Members have been deprived of the benefit of their respective flights and services, as purchased, as well as the amounts paid for such; and
 - (c) there is no juristic reason for the enrichment.

B. STATUTORY RIGHTS OF ACTION

FCA and Equivalent Frustrated Contract Legislation

9. In the alternative to damages for breach of contract, the Plaintiff and the Class seek restitution under the *FCA*, Equivalent Frustrated Contract Legislation and common law, on the basis that:

- (a) the Contracts were formed prior to the announcement and imposition of travel restrictions which gave rise to the widespread cancellation of the Defendants' air services;
- (b) the cancellation of air services was not self-induced by either the Plaintiff and the Class or the Defendants;
- (c) the travel restrictions and cancellations of air services were not foreseeable at the time the parties entered into the Contracts;
- (d) by providing travel vouchers or flight credits, the Defendants are providing a service that is fundamentally different from what the parties intended when they entered into the Contracts;
- (e) by providing travel vouchers or flight credits, the Defendants have changed the nature, meaning, purpose, effect and consequences of the Contracts for the Plaintiff and the Class; and,
- (f) the Contracts, including the *force majeure* clauses in most of the Defendants' Tariffs, contain no provision for the consequences of frustration caused by long-term travel restrictions and the circumstances arising from the COVID-19 pandemic or similar circumstances.

BPCPA and Equivalent Consumer Protection Legislation

- 10. The Defendants were and continue to be suppliers as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.
- 11. The Plaintiff and the Consumer Subclass were consumers as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.
- 12. The Defendants' New Representations were false, misleading or deceptive under section 4 of the *BPCPA*, and unfair, unconscionable and/or otherwise prohibited practices under section 8 of the *BPCPA*, and the Equivalent Consumer

Protection Statutes, given that, among other things, the Defendants knew, or ought to have known, that:

- (a) Consumer Subclass Members have rights and remedies that differ in fact from the ones described in the Defendants' New Representations;
 - (b) Consumer Subclass Members have recourse to the CTA in respect of disputes concerning their airfares and the CTA has the power to order remedies other than those in the Defendants' Tariffs or the *APPR*;
 - (c) *Force majeure* clauses in most of the Defendants' Tariffs do not contemplate or address the circumstances caused by the COVID-19 pandemic or similar circumstances;
 - (d) Consumer Subclass Members were unable to reasonably protect their own interests because of their inability to understand the character, nature or language of the Defendants' New Representations; and,
 - (e) The Defendants intended that their New Representations be relied on by Consumer Subclass Members as an accurate description of the Consumer Subclass Members' entitlements and that Consumer Subclass Members would not understand or have knowledge that they may be entitled to compensation under a passenger rights regime.
13. These are unfair practices, and as a result, the Plaintiff and other Consumer Subclass Members have suffered damages and are entitled to recovery pursuant to section 171 of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes.
14. Further or alternatively, the Plaintiff and other Consumer Subclass Members are entitled to an order pursuant to section 172(3)(a) of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes requiring the Defendants to restore them money acquired as a result of the contravention of the *BPCPA* and Equivalent Consumer Protection Statutes.

15. Also further or alternatively, the Consumer Subclass Members are entitled to receive a refund of all monies received by the Defendants in respect of the Contracts pursuant to section 27 of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes.
16. Also further or alternatively, the Consumer Subclass Members in some or all of the provinces/territories are entitled to rescission of the Contracts pursuant to section 18 of Ontario's *Consumer Protection Act* and equivalent provisions of the balance of the Equivalent Consumer Protection Statutes. The Consumer Subclass Members are entitled, to the extent necessary, to a waiver of any notice requirements under the applicable provisions of the Equivalent Consumer Protection Statutes, particularly as the Defendants concealed the existence of passenger rights regimes from the Consumer Subclass Members.

C. STATUTES RELIED UPON

17. The Plaintiff and the Class plead and rely upon the following statutes and regulations:
 - (a) Air Passenger Protection Regulations, SOR/2019-150;
 - (b) *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
 - (c) *Business Practices Act*, CCSM, c B120;
 - (d) *Business Practices Act*, RSPEI 1988, c B-7;
 - (e) *Canada Transportation Act*, SC 1996, c 10;
 - (f) *Class Proceedings Act*, RSBC 1996, c 50;
 - (g) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1
 - (h) *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2;
 - (i) *Consumer Protection Act*, RSA 2000, c C-26.3;
 - (j) *Consumer Protection Act*, RSNS 1989, c 92;
 - (k) *Consumer Protection Act*, RSNWT 1988, c C-17;
 - (l) *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
 - (m) *Consumers Protection Act*, RSY 2002, c 40
 - (n) *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A;

- (o) *Frustrated Contracts Act*, CCSM c F190;
- (p) *Frustrated Contracts Act*, RSA 2000, c F-27;
- (q) *Frustrated Contract Act*, RSBC 1996, c 166;
- (r) *Frustrated Contracts Act*, RSNWT 1988, c F-12;
- (s) *Frustrated Contracts Act*, RSNWT (Nu) 1988, c F-12;
- (t) *Frustrated Contracts Act*, RSNB 2011, c 164;
- (u) *Frustrated Contracts Act*, RSNL 1990, c F-26;
- (v) *Frustrated Contracts Act*, RSO 1990, c F.34
- (w) *Frustrated Contracts Act*, RSPEI 1988, c F-16;
- (x) *Frustrated Contracts Act*, RSY 2002, c 96; and,
- (y) *Frustrated Contracts Act*, SS 1994, c F-22.2.

Plaintiff's address for service:

Miller Titerle Law Corporation
300 – 638 Smithe Street
Vancouver, BC V6B 1E3

Sotos LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Fax number address for service (if any):

604-681-4113
416-977-0717

E-mail address for service (if any):

joelle@millertiterle.com
dsterns@sotosllp.com

Place of trial:

Vancouver Law Courts

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Date: July 24, 2020



"Joelle Walker"

Signature of Joelle Walker

Plaintiff

Lawyer for Plaintiff

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading/petition on the Defendants outside British Columbia on the grounds that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 ("CJPTA") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to section 10 of the CJPTA because this proceeding:

- (a) concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- (b) concerns a tort committed in British Columbia; and,
- (c) concerns a business carried on in British Columbia.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff alleges that the Defendants issued vouchers for travel instead of refunds, contrary to Class Members' rights to refunds. The Defendants misrepresented the Class Members' rights and the Class is entitled to damages for misrepresentation, frustration, and/or unjust enrichment.

Part 2: 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
- 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:

- Builders Lien Act
- Divorce Act
- Family Relations Act
- Insurance (Motor Vehicle) Act
- Insurance (Vehicle) Act

- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act

OR

1. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2
2. *Frustrated Contract Act*, RSBC 1996, c 166