SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY
NOV 28 2026

S 268755

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TREVOR PASSEY

PLAINTIFF

AND:

PAYBYPHONE TECHNOLOGIES INC.

DEFENDANT

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

The Parties

1. The representative Plaintiff, Trevor Passey, is an individual residing in British Columbia with an address for service c/o Hira Rowan LLP, 1500-570 Granville St., Vancouver, British Columbia.

2. The Defendant, PayByPhone Technologies Inc. ("**PBP**"), is a company amalgamated under the laws of British Columbia with an address for service of 1055 Dunsmuir Street Suite 3000 Vancouver BC V7X 1K8.

3. PBP operates a mobile phone car parking application, called "PayByPhone", which allows people to purchase car parking in various municipalities and places (the "**App**").

The Plaintiff's Circumstances

4. On or about August 20, 2024**,** the representative Plaintiff had downloaded and began using the PBP App to pay for car parking.

5. The App allows customers to turn on SMS text message reminders on the App and SMS text message confirmations on the App.

6. The SMS text message reminders on the App send a SMS text message to the customer's phone warning them before the car parking that they paid for will expire and allows them to extend the parking time for an additional payment ("**SMS Reminders**").

7. The SMS text message confirmations on the App send a SMS text message to the customer's phone confirming that the parking they attempted to pay for has been done successfully ("**SMS Confirmations**" and together with SMS Reminders "**PBP Texts**").

8. On or about August 20, 2024, the representative Plaintiff activated SMS Reminders on the App.

9. The representative Plaintiff used the App to pay for parking often following August 20, 2024.

10. One such parking purchase was on October 31, 2026, when the representative Plaintiff paid for parking at location parking location 50651.

11. The representative Plaintiff was a consumer, as defined under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "***BPCPA***"), when he paid for parking on this date. The act of him paying for parking is a consumer transaction as defined under the *BPCPA*.

12. The representative Plaintiff received a SMS Text on October 31 at 12:51 pm which stated:

> PayByPhone: VK017S parking at 50651 expires at 2026-10-31 11:59 a.m.. Add more time in the app or at m.paybyphone.com. Std msg rates apply

Pay By Phone's Hidden SMS Text Message Fees

13. This proceeding involves fees for PBP Texts ("**SMS Fees**") that are hidden from PBP customers and charged each time a PBP Text is sent to a customer.

14. Turning on SMS Reminders cost customers between 10 cents ($0.10) and 25 cents ($0.25) and every time they pay for parking depending on their location in BC, Canada, or another jurisdiction.

15. Turning on SMS Confirmations cost customers between 10 cents ($0.10) and 25 cents ($0.25) and every time they pay for parking depending on their location in BC, Canada, or another jurisdiction.

16. The costs for each SMS Reminder and each SMS Confirmation in the following areas of BC are set out below:

    a. Capilano Suspension Bridge $0.20;

    b. Concord Parking $0.25;

    c. Duncan $0.25;

    d. FastPark Whistler $0.20;

    e. Grouse Mountain $0.20;

    f. Harrison Hot Springs $0.25;

    g. Kamloops Airport $0.20;

    h. Nanaimo $0.25;

    i. Robbins Victoria $0.25;

    j. Tofino $0.25;

    k. Trinity Western University $0.20;

    l. University of British Columbia $0.25;

    m. University of British Columbia – Okanagan $0.25;

    n. University of Northern British Columbia – UNBC $0.20;

    o. Vancouver $0.15;

    p. Whistler $0.20; and

q. White Rock $0.20.

17. The SMS Fee amounts for the rest of Canada are provided in the attached schedule A.

18. PBP began charging the SMS Fees on or about May 1, 2023.

19. When PBP updated the software version of its App, it automatically enabled PBP Texts for customers without notifying them of the SMS Fees that would be charged for PBP Texts.

20. The App includes free push notifications. Push notifications are notifications that are sent through the phone operating system. They do not cost money, and provide the same confirmation and reminder functions as the PBP Texts.

21. The PBP Texts are deceptive by hiding the SMS Fees and unconscionable in contravention of the *BPCPA* as the App's push notifications do not cost a fee while providing the same services as the PBP Texts.

22. The PBP App determines the different car parking cost rates for different parking areas by designating each different parking area a location number.

23. There are primarily two types of mobile phones, Android devices and Apple devices each of which has its own operating system and own version of the PBP App.

24. Apple device's operating system is called IOS and Android device's operating system is called Android.

IOS App and Android App

25. When paying for parking on the IOS App, the App first requests the customer enter the location number, the vehicle licence plate number, and the amount of time for car parking to be paid for.

26. Upon doing this the customer is then brought to a confirmation page (the "**Confirmation Page**") which lists the location number, the vehicle licence plate, and the amount of time for car parking to be paid for (the "**Parking Details**").

27. If the customer has enabled SMS Reminders and SMS Confirmations, after listing the Parking Details the Confirmation Page provides an order summary setting out:

    a. the parking fee and a number amount;

    b. the total which includes tax and a number amount;

    c. a drop-down menu allowing you to see the current selected payment method and allowing you to choose from additional payment methods; and

d. a large green button to continue with paying for the parking with the chosen payment method.

28. For example, the payment for 5 minutes of parking at location number 54010 provides the following on the Confirmation Page after the Parking Details:

Order Summary

Parking fee $0.17

Total $0.47

Includes tax

Apple Pay

Continue with Apple Pay

29. The SMS Fees do not appear on the initial Confirmation Page and the inclusion of the phrase "includes tax" in the total amount misleads customers into thinking that any increase in cost beyond the parking fee is from taxes, not the SMS Fees.

30. In order to see the SMS Fees the customer has to drag down on the App and scroll on the Confirmation page which then reveals the SMS Fees and an additional convenience fee.

31. The App user interface hides the SMS Fees from the customer.

32. If the customer has disabled the SMS Reminders and SMS Confirmations two large toggle buttons allowing the customer to activate SMS Reminders and SMS Confirmations appear on the Confirmation Page below the Parking Details stating:

SMS reminders

Stress-free. Get an SMS before parking expires.

SMS confirmations

Confirm your parking is successful.

33. The inclusion of these two toggle buttons encourages the customer to agree to receiving PBP Texts and paying the hidden SMS Fees.

34. Underneath the two toggles for SMS Reminders and SMS Confirmations it states SMS fees may apply. And then provides a link with the text "Learn more".

35. The reference to the phrase "SMS fees may apply" misleads App customers. On most, if not many, other phone applications text messages are provided to customers for free, and only cost fees if the customer has a phone plan that

excludes text messages. Accordingly, when customers of the App see the phrase "SMS fees may apply" they are misled to believe that PBP Texts are free unless they do not have an applicable phone plan, when in reality all PBP Texts will incur SMS Fees no matter the phone plan.

36. The use of this phrase leads the consumer to wrongfully believe that if they agree to the PBP Texts no further charges will occur if they have a phone contract that allows SMS text messages

37. Only if the customer clicks the link in the "Learn more" text and then navigates out of the App to a PBP website will they see that PBP charges different rates for the PBP Texts based on the location the customer is parking in.

38. If the two toggles for SMS Reminders and SMS Confirmations are activated the total amount for parking will increase by the SMS Fee, but no SMS Fee is shown.

39. To see the SMS Fee the customer must again scroll further down in the App to show that the SMS Fee is being included in the total cost for parking.

40. After accepting the SMS Reminder and SMS Confirmation toggle buttons on the Confirmation Page, the next time the customer visits the Confirmation Page the toggle buttons no longer appear on it and the Confirmation Page appears as it is described above in paragraph 27.

41. If the customer chooses to extend their parking time, they are redirected to the Confirmation Page as described above and will be charged additional SMS Fees each time they extend their parking.

42. The Android App behaves in the same way as the IOS App was described as doing above in paragraphs 24 to 40, preventing customers from seeing the SMS Fees on the Confirmation page, encouraging customers to agree to the PBP Texts without conveying the costs of doing so, and encouraging customers to incur further SMS Fees by extending their parking time.

The Pay By Phone Terms & Conditions

43. The PBP terms and conditions (the "**Terms and Conditions**") are not available on the App and need to be viewed on PBP's website.

44. The Terms and Conditions contain no explicit reference to the SMS Reminder fees or the SMS Confirmation fees, but do state under section 5 that:

> You agree that the fees and service charges included in the Transaction are confirmed before you start parking apply to the Account and may be charged to the Account. You authorize us to initiate any such charges to the Account.
>
> You are responsible for all applicable fees, charges, taxes or assessments related to your use of the Services. When paying for a Parking Session,

> You agree that you may be charged an applicable service charge for the PayByPhone service in addition to any parking fees. The payment required shall be displayed to you through the Services.

45. In breach of section 5 of the Terms and Conditions, stating that when a service charge is required that "The payment shall be displayed to you through the Services" the SMS Fees are not displayed through the App as described above.

46. The Terms and Conditions state in section 14 that:

> Any dispute relating in any way to the services offered by PayByPhone not resolved in accordance with the preceding Section 13 shall be submitted to confidential arbitration in Vancouver, British Columbia, except that, to the extent you have in any manner violated or threatened to violate PayByPhone's intellectual property rights, PayByPhone may seek injunctive or other appropriate relief in any Provincial or Federal court in the Province of British Columbia, and you consent to exclusive jurisdiction and venue in such courts. Arbitration under this agreement shall be conducted under the rules then prevailing of the Canadian Arbitration Association conducted by a single arbitrator and can be held telephonically at the request of either party. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party subject to this Agreement, whether through class arbitration proceedings or otherwise. Enforceability of this provision is expressly delegated to the arbitrator, who will analyze the provision under the law applicable to the country in which you have opened your Account.

47. Section 14.3 and/or in the alternative section 14.4 of the *BPCPA* specifically void arbitration provisions such as the one set out above at paragraph 46.

48. The Terms and Conditions state in section 20 that:

> By opening the Account, you agree that the laws of the jurisdiction in which the PayByPhone with whom you have a contract and Account is domiciled excluding the application of any conflict of laws principles and/or rules. In the case of PayByPhone Technologies Inc. the relevant jurisdiction is the Province of British Columbia, Canada (subject to the provisions of the Consumer Protection Act applicable to residents of Quebec)

49. As a result of PBP's breach of contract, the representative Plaintiff has suffered and continues to suffer loss and damage.

50. The process of charging of the SMS Fees as set out above, in particular at paragraphs 14 – 42 and 45, are misleading, deceptive, and unconscionable acts and or practices by PBP in violation of the *BPCPA* sections 5(1) and 9(1).

The Class

51. The representative Plaintiff brings this action on his own behalf and on behalf of all consumers who paid one of the SMS Fees or both of SMS Fees to PBP, on or after May 1, 2023 or the date that PBP began charging the SMS Fees whichever is earlier (the "**Class**" or "**Class Members**").

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

53. The Class Members, and each of them, have suffered damages as a result of PBP charging the SMS Fees.

Multi-Jurisdictional Claim

54. The representative Plaintiff brings this action on his own behalf and on behalf of all members of the class in Canada.

55. Each of the Canadian jurisdictions in which the defendant operates, and/or charges the SMS fees have consumer protection legislation prohibiting deceptive and or unconscionable business practices. The Class pleads and relies on, in addition to the *BPCPA*:

    a. *Consumer Protection Act*, RSA 2000, c. C-26.3 (the "**Alberta *CPA***");

    b. The *Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2 (the "**Sask *CPA***");

    c. The *Business Practices Act*, CCSM c. B120 (the "**Man *CPA***");

    d. *Consumer Protection Act*, 2002, SO 2002, c. 30, Sch. A (the "**Ont *CPA***"); and

    e. *Consumer Protection Act*, CQLR c. P-40.1 (the "**Que *CPA***").

    (together the "***Consumer Protection Acts***")

56. PBP's contraventions of the *BPCPA*, and the *Consumer Protection Acts*, have caused and will continue to cause irreparable harm to Class Members and other consumers.

PART 2: RELIEF SOUGHT

57. The representative Plaintiff claims on his own behalf and on behalf of the Class Members against PBP for:

f. a declaration pursuant to s. 172(1)(a) of the *BPCPA* that the SMS Fees contravene section 5(1) of the *BPCPA*, and the equivalent sections under the *Consumer Protection Acts*.

g. a declaration pursuant to s. 172(1)(a) of the *BPCPA* that PBP has contravened s. 9(1) of the *BPCPA*, and the equivalent sections under the *Consumer Protection Acts*.

h. damages;

i. in addition, or in the alternative, an accounting and restitution to all Class Members of all the SMS Fees charged and/or received by PBP;

j. in addition, or in the alternative, an order pursuant to section 172(3)(a) of the *BPCPA* that PBP restore to the Class Members all monies received from the SMS Fees;

k. a permanent injunction pursuant to section 172(1)(b) of the *BCPCA*, and the equivalent sections under the *Consumer Protection Acts*, restraining PBP, from, directly or indirectly, receiving, collecting, or charging the SMS Fees;

l. in addition, an order pursuant to section 172(3)(c) of the *BCPCA*, and the equivalent sections under the *Consumer Protection Acts*, that PBP advertise to the public in a manner that will assure prompt and reasonable communication to consumers, and on terms or conditions that this Honourable Court considers reasonable, the particulars of any judgment, declaration, order, or injunction granted against PBP;

m. punitive damages;

n. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

o. the costs of administering the plan of distribution of the recovery in this proceeding; and

p. such further and other relief that, as to this Honourable Court, seems meet and just.

PART 3: LEGAL BASIS

58. The Class Members are consumers within the meaning of the *BPCPA*, and the *Consumer Protection Act*s.

59. PBP, a British Columbia company, is a supplier within the meaning of the *BPCPA,* and the *Consumer Protection Act*s, in relation to all consumers that reside within or outside of British Columbia.

60. PBP's sale of car parking services and SMS Text services to each of the Class Members is a consumer transaction as defined in the *BPCPA*, and the *Consumer Protection Act*s.

61. PBP, having contravened the *BPCPA,* and the *Consumer Protection Acts*, have caused the Class Members to suffer damages.

62. PBP's wilful and blatant disregard of consumer protection legislation constitutes egregious and high-handed conduct that warrants an award of punitive damages.

63. PBP's representation to the Class Members, *inter alia*, that it has the right to charge and/or collect the SMS Fees has the capability, tendency, or effect of deceiving or misleading a consumer and constitutes a deceptive act or practice contrary to section 5(1) of the *BPCPA,* and the equivalent sections under the *Consumer Protection Act*s, including:

    a. ss. 6(2)(c) and 6(4)(a) of the Alberta *CPA*;

    b. s. 8(1), with ss. 6(a), (d) and 7(o) of the Sask *CPA*;

    c. s. 5, with ss. 2(1)–(3), especially s. 2(3)(p), (t) Man *CPA*;

    d. ss. 17(1) and 14(1), (2), items 14 and 16 of the Ont *CPA*; and

    e. ss.12, 219 and 228, read with ss. 216 and 218 of the Que *CPA*.

64. PBP's Terms and Conditions that impose the SMS Fees are so harsh or adverse to the consumer as to be inequitable and constitute an unconscionable act or practice contrary to section 9(1) of the *BPCPA,* and the equivalent sections under the *Consumer Protection Act*s, including:

    a. s. 6(3)(c), and.or in the alternative, s. 6(2)(d), of the Alberta *CPA*;

    b. s. 8(1), with ss. 6(c), 6(d) and 7(q), (r) of the Sask *CPA*;

    c. s. 5, with s. 3(2)(b) of the Man *CPA*;

    d. ss. 17(1) and 15(1), (2)(b), (e), (f) Ont *CPA*;

    e. s. 8 of the Que *CPA*.

65. The Class Members are entitled under the law of restitution in the amount of the SMS Fees pursuant to s. 172(3)(a) of the *BPCPA*, and the equivalent sections under the *Consumer Protection Acts*, including:

    a. s. 13(2)(d)(ii) of the Alberta *CPA*;

    b. ss. 91(2), 93(1)(a) of the Sask *CPA*;

    c. s. 23(2)(d) of the Man *CPA*;

    d. ss. 18(1)–(2) of the Ont *CPA*; and

e. ss. 8 and 272(c) of the Que *CPA*.

66. PBP's contraventions of the *BPCPA* have caused and will continue to cause irreparable harm to Class Members and other consumers. The Class Members seek a permanent injunction under section 172(1)(b) of the *BPCPA,* and the equivalent sections under the *Consumer Protection Act*s, restraining PBP from further contravening the *BPCPA* and the *Consumer Protection Acts*.

67. PBP breached a contract, the Terms and Conditions, with the representative Plaintiff and each of the Class Members.

68. The PBP Terms and Conditions contain an choice of law clause in favour of British Columbia law.

69. The representative Plaintiff pleads and relies upon s. 14.3 of the *BPCPA*, and the equivalent sections under the *Consumer Protection Act*s, and/or in the alternative s. 14.4 of the *BPCPA* and the equivalent sections under the *Consumer Protection Act*s, and/or in the further alternative, the common law in regards to the invalidity of arbitration, dispute resolution and/or class proceeding clauses.

70. The representative Plaintiff pleads and relies upon the provisions of:

    a. the *BPCPA*;

    b. the *Consumer Protection Acts*;

    c. the *Class Proceedings Act*, R.S.B.C. 1996, c. 50; and

    d. Such further legal bases as counsel may advise.

Plaintiff's address for service:

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Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British Columbia

Date:

Signature of J. Kyle Bienvenu
[ ] plaintiff [X] lawyer for plaintiff

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

PayByPhone charged consumers fees contrary to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and or in breach of the terms and conditions

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[ ] A personal injury arising out of a motor vehicle accident

[ ] A personal injury arising out of medical malpractice

[ ] A personal injury arising out of another cause

[ ] A dispute concerning contaminated sites

[ ] A dispute concerning construction defects

[ ] A dispute concerning real property (real estate)

[ ] A dispute concerning personal property

[X] A dispute concerning the provision of goods or services or other general commercial matters

[ ] A dispute concerning investment losses

[ ] A dispute concerning the lending of money

[ ] A dispute concerning an employment relationship

[ ] A dispute concerning a will or other issues concerning the probate of an estate

[ ] A dispute concerning a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[X] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4: enactments relied on:

Court Order Interest Act, R.S.B.C. 1996, c. 79;

Law and Equity Act, R.S.B.C. 1996, c. 253;

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

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2;

Consumer Protection Act, RSA 2000, c. C-26.3;

The *Consumer Protection and Business Practices Act*, SS 2013, c. C-30.2;

The *Business Practices Act*, CCSM c. B120;

Consumer Protection Act, 2002, SO 2002, c. 30, Sch. A; and

Consumer Protection Act, CQLR c. P-40.1.

Supreme Court Civil Rules, B.C. Reg. 168/2009.