CV 13 493837 00CP
Court File No.

*ONTARIO*
SUPERIOR COURT OF JUSTICE

BETWEEN:

**JOYCE BERNSTEIN**

Plaintiff

- and -

**PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding

dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date November 29, 2013 Issued by _____
Local registrar

Address of court office
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO:

**PEOPLES TRUST COMPANY**
Citigroup Place
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Toronto, Ontario M5J 2M2

**PEOPLES CARD SERVICES LLP**
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## CLAIM

1. The plaintiff claims:

a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative of a class to be certified by the court;

b) general damages for breach of contract in the amount of $100,000,000;

c) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992,* directing an aggregate assessment of damages;

d) an order, as may be necessary, pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information;

e) an order, as may be necessary, that any damages awarded be paid by the defendants, or either of them, into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;

f) a mandatory injunction restraining the defendants, or either of them, from enforcing or relying on its illegal contractual terms and representations;

g) a mandatory injunction restraining the defendants, or either of them, from charging or receiving its illegal fees or payments in the future;

h) a declaration that the defendants, or either of them, charged or received illegal fees or payments and engaged in unfair practices contrary to the *Consumer Protection Act, 2002,* SO 2002, c 30, Sch A (the "*CPA*") and *O Reg 17/05* (the

"Gift Card Regulation") in respect of its pre-paid stored value "credit" cards (hereinafter the "Gift Cards");

i) a declaration, as may be necessary, waiving the notice provisions of the *CPA* and the Gift Card Regulation;

j) punitive damages in the sum of $10,000,000;

k) pre-judgment and post-judgment interest;

l) the costs of this action on a substantial indemnity basis;

m) the costs of administering the plan of distribution of the recovery in this action; and

n) such further and other relief as may be required and as this Honourable Court deems to be just.

**THE PARTIES**

2. The plaintiff, Joyce Bernstein, lives in Toronto, Ontario.

3. The defendant Peoples Trust Company is a federally regulated trust company incorporated under the *Trust and Loan Companies Act*. The defendant Peoples Card Services LLP is a wholly owned subsidiary of Peoples Trust Company. The plaintiff pleads that the nature of the legal and/or financial relationship between Peoples Card Services LLP and Peoples Trust Company is exclusively within the purview of these defendants (collectively, "Peoples Trust"). Peoples Trust is the seller and/or issuer of the Gift Cards.

**THE CLASS**

4. The plaintiff brings this action on her own behalf and on behalf of all consumers in Ontario who purchased or acquired a pre-paid stored value 'credit' card sold and/or issued by Peoples Trust prior to the date that notice of certification in this action is given (the "Class" or "Class Members"), and after October 1, 2007.

5. The plaintiff pleads that she and all class members are "consumers" within the meaning of the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sch A ("*CPA*").

**THE PLAINTIFF'S CIRCUMSTANCES**

6. On or around September 28, 2010, the plaintiff was given a pre-paid stored value 'credit' card. The card was sold or issued by Peoples Trust, and branded with the name "Vanilla Prepaid Visa" (the "Card"). It had a face value of $35 and stated that it was "valid thru 04/14."

7. On or about September 22, 2013, well prior to the stated expiry date, the plaintiff visited the website www.visaprepaidcanada.com, which is the website listed on the back of her Card where her account information could be accessed. After registering the Card online, the plaintiff learned that her account balance was zero. Notwithstanding that she had not used her Card, all of the money associated with the Card had been seized by Peoples Trust.

8. The partial transaction history the plaintiff was able to access online indicated that on the 26$^{th}$ day of each month during the period displayed, $2.50 was deducted from the balance of the Card.

9. The final $2.50 charge was applied on May 26, 2012, after which time there were no longer any funds left in the plaintiff's account.

10. The service fee policy, which Peoples Trust asserted applied to the plaintiff's Card was printed on its reverse in virtually illegible 5-point font:

> Except where prohibited by law, a service fee of $2.50 per month will be applied to the remaining balance on the Card, beginning the 7th month from the date of purchase. By buying or accepting this Card you agree to be bound by the Cardholder Agreement, as amended from time to time.

11. As more fully set out below, the service fee policy was illegal.

**PEOPLES TRUST GIFT CARDS**

12. The Class' claim stems from unauthorized or illegal fees and deductions charged by ~~Peoples Trust in respect of Gift Cards sold and/or issued by P~~eoples Trust under a variety of brand names. Each of these Gift Cards is branded as either a Visa or Mastercard and permits the holder of the Gift Card to make purchases on either the Visa or Mastercard financial network. Peoples Trust issues the Gift Cards under license from Visa or MasterCard, as the case may be.

13. While the Gift Cards are commonly referred to as "prepaid credit cards" or "secured credit cards" these names are misnomers; they provide the customer with no access to credit. To the contrary, the consumer advances funds to Peoples Trust by pre-paying an amount in exchange for the Gift Card.

14. Peoples Trust issues two types of Gift Cards: Single Load Prepaid Cards ("SLP") and General Purpose Reloadable Cards ("GPR"). SLPs may be loaded with the consumer's money only once and used until the balance is spent, claimed by Peoples Trust, or the card expires.

GPRs can be loaded with additional funds after the initial load to allow for continued use by the consumer. The GPR Gift Card may be used until the balance is spent, claimed by Peoples Trust, or the card expires.

15. Peoples Trust sells and/or issues its Gift Cards under several different brand names. They are sold at retailers, such as drug stores and convenience stores, frequently alongside other gift cards as part of a common display.

**APPLICABILITY OF THE *CPA* AND THE GIFT CARD REGULATION**

16. Peoples Trust is in the business of selling, leasing or trading in goods or services, and is therefore a "supplier" within the meaning of the *CPA*.

17. Peoples Trust Gift Cards are "gift cards" within the meaning of the Gift Card Regulation.

18. A standard form agreement (the "Standard Form Agreement") is applicable to all Gift Cards and, along with other terms incorporated into these agreements (the "Extra Contractual Terms") govern the terms and conditions of the use of the Gift Card, including the associated fees and expiry dates (collectively, the "Standard Form Agreement" and the "Extra Contractual Terms" form the "Gift Card Agreements").

19. The Gift Card Agreements are all contracts of adhesion.

20. In the case of SLP Gift Cards, the Extra Contractual Terms can be found on the back of the cards' packaging and inside the packaging. The SLP Extra Contractual Terms list the activation fees and other terms of the Gift Cards' use.

21. In the case of GPR Gift Cards, the Extra Contractual Terms are posted at a retailer's location and are published online for each brand, separate and apart from each brand's Standard Form Agreement.

22. The Gift Card Agreements are "future performance agreements," "consumer agreements," "gift card agreements," and "open loop gift card agreements" within the meaning of the Gift Card Regulation.

23. The Gift Card Agreements are not "credit agreements," and the Gift Cards are not "credit cards" within the meaning of the *CPA*.

24. To the extent that the Gift Card Agreements purport to override the law of the province of Ontario, purport to restrict access to Ontario courts to resolve disputes arising out of the Gift Card Agreements, purport to limit liability arising out of any breaches of the *CPA*, and purport to restrict the ability of consumers to bring or participate in a civil proceeding or a class proceeding, those terms are illegal and unenforceable. The plaintiff pleads and relies on sections 2, 7 and 8 of the *CPA*.

**THE DEFENDANTS' UNFAIR PRACTICES**

25. The Gift Card Agreements make the Gift Cards subject to a variety of fees that are contrary to the *CPA* and s. 25.4(2)(a) of the Gift Card Regulation, and constitute "unfair practices" within the meaning of the *CPA* the Gift Card Regulation (collectively, all of which are described as the "Illegal Fees"). Every Gift Card that Peoples Trust issues and/or sells is subject to some or all of the following illegal fees:

(a) Activation Fees: Peoples Trust charges fees greater than $1.50 for the issue or purchase of a Gift Card. (hereinafter the "Illegal Activation Fees");

(b) Dormancy (or Maintenance/Monthly) Fees: Peoples Trust charges monthly fees which are "dormancy fees" within the meaning of the Gift Card Regulation and do not comply with the provisions s.25.4 (2.1) of the Gift Card Regulation (hereinafter the "Illegal Dormancy Fees").

(c) Transaction/Point of Sale Fee: fee charged for each transaction;

(d) Insufficient Funds/Decline Fee: fee charged where the card is declined because of an inadequate balance to cover the transaction;

(e) Reload Fee: fee charged to add additional value to a card beyond the first load;

(f) Customer Service/Inquiry Fees: fee charged for inquiries about Cardholder balances, transaction history, statements of account and live customer service calls;

(g) Refund Processing Fee;

(h) PIN Change Fee;

(i) ATM Withdrawal Fee;

(j) Re-activation Fee;

(k) Foreign Exchange Fee; and

(l) Overdraft Fee.

(hereinafter the "Illegal Fee Types")

26. Furthermore, those Gift Cards that are subject to an expiry date contravene section 25.3(1) of the Gift Card Regulation. The seizure of "expired" amounts results in Peoples Trust charging fees or receiving payments from consumers which are illegal and contrary to section 25.4(1)(b) of the Gift Card Regulation, and which further constitute an "unfair practice" within the meaning of the *CPA* (hereinafter the "Illegal Expiry Date").

27. The plaintiff pleads that the failure to indicate on the front of the card that there is fee information on the back of the card contravenes s. 25.4(2.1)(c) of the Gift Card Regulation and further constitutes an "unfair practice" within the meaning of the *CPA*

28. The plaintiff pleads that the failure to set out clearly and prominently on the back of the card the terms associated with the charging of the monthly dormancy fee contravenes s. 25.4(2.1)(d) of the Gift Card Regulation and further constitutes an "unfair practice" within the meaning of the *CPA.*

**BREACH OF CONTRACT- CPA TERMS**

29. When a consumer purchases a Gift Card, there is a contract between Peoples Trust and the consumer, the terms of which are set out in the Gift Card Agreement (as defined above).

30. As set out above, the Illegal Activation Fees, Illegal Fee Types, Illegal Dormancy Fees and Illegal Expiry Dates are all illegal and unenforceable. The Gift Cards are therefore effective as if these fees did not form part of the Contractual Terms.

31. By systemically seizing or receiving illegal funds and fees, contrary to the Gift Card Regulation, Peoples Trust has breached the lawful terms of the contract and is liable to class

members for their damages, representing the illegal fees and charges taken by Peoples Trust in breach of the lawful terms of the contract entered into with class members.

**BREACH OF CONTRACT- COMMON LAW**

32. In the alternative, the plaintiff pleads that the terms of the Gift Card Agreements are not enforceable as they are placed inside of the Gift Card packaging and thus, on a class-wide basis, are not brought to consumers' attention until after purchase. The terms of the Gift Card Agreements are therefore unenforceable post-contractual representations.

**UNJUST ENRICHMENT**

33. Where Peoples Trust seizes or receives illegal funds and fees, Peoples Trust is unjustly enriched by the value of these seizures and consumers suffer a corresponding deprivation.

34. There is no juristic reason justifying the defendant retaining the amounts in question. The terms of the Peoples Trust contracts are illegal and do not provide a juristic reason.

**PUNITIVE DAMAGES**

35. Class members are entitled to punitive damages as a result of the callous, highhanded, and arbitrary actions of Peoples Trust as set out above.

**EFFECT OF THE DEFENDANTS' ACTIONS**

36. As a result of Peoples Trust breaches of contract, unjust enrichment and unlawful conduct as set out above, the class members have and will continue to sustain damages.

**A CLASS PROCEEDING IS APPROPRIATE**

37. The class members as individuals cannot match the resources of Peoples Trust. The individual claims of each class member would not be economical to pursue individually. The class members would be denied access to justice in the absence of a class proceeding.

38. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by Peoples Trust. Moreover, Peoples Trust is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its behaviour. This class proceeding will either produce a voluntary change in the behaviour of Peoples Trust or result in a court order which will compel a change in its behaviour.

39. The plaintiff pleads and relies on sections 1, 3, 6, 7, 8, 11, 14, 15, 17, 18, 22, 98, 100 and 101 of the *CPA*.

40. The plaintiff pleads and relies on sections 23, 25.1, 25.3, 25.4, and 25.5 of the Gift Card Regulation .

41. The plaintiff pleads that pursuant to s. 98 of the *CPA,* she/he is entitled to a refund of all illegal fees charged or received by Peoples Trust.

42. The plaintiff pleads that pursuant to ss. 18(5) and 101 of the *CPA,* the Court should waive any requirement of notice under the *Act*, as it is in the interest of justice to do so.

43. The plaintiff proposes that this action be tried in Toronto.

November 29, 2013

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JOYCE BERNSTEIN
Plaintiff

and

PEOPLES TRUST COMPANY et al.
Defendants

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**STATEMENT OF CLAIM**

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