TISH COLUMBIA
SEAL
14-Sep-21
Vancouver
REGISTRY

Amended pursuant to Rule 6-1(a)
Original Notice of Civil Claim Filed April 9, 2021

NO. S213608
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GAYLE VALLANCE

PLAINTIFF

AND:

DHL EXPRESS (CANADA), LTD. (dba DHL CANADA), and DHL EXPRESS (USA), INC.

DEFENDANTS

AMENDED NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

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 reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, 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

Overview

1. This action concerns false, misleading, and deceptive representations made by DHL Express (Canada), Ltd. (dba DHL Canada,) and DHL (Express) USA, Inc. (collectively "DHL").

2. DHL required the Plaintiff and other Class Members (defined below) to make payments to DHL for "import duties and taxes" before releasing to Class Members their purchased goods that were being shipped, via DHL, to their residences in Canada from the United States or internationally.

3. In order to cause their purchased goods to be delivered by DHL, Class Members paid DHL the requested "import duty/tax payment".

4. This "import duty/tax payment" included a "processing fee" which was retained by DHL after payment was made by a Class Member.

5. At no time before payment was made did DHL disclose to Class Members that this "import duty/tax payment" included a DHL "processing fee". At all material times, DHL represented to Class Members that the payments being made by them to DHL were for import duties and taxes charged by the Canada Border Services Agency ("Canada Customs") for goods crossing the border and entering Canada. Class Members believed these representations to be true.

6. DHL's representations were false, misleading, and deceptive. DHL knew that its representations were false, misleading, and deceptive. Alternatively, DHL was reckless and ought to have known that its representations were false, misleading, and deceptive.

7. DHL's representations and conduct were in breach of the *Competition Act*, RSC 1985, c C-34 and constituted an unfair business practice contrary to provincial consumer protection legislation. DHL was unjustly enriched by its conduct, and its conduct constituted the tort of deceit.

8. Class Members are entitled to restitution and to statutory and common law damages for their losses.

The Parties and the Class

9. The Plaintiff, Gayle Vallance, is a retired teacher currently residing in Fernie, British Columbia, with an address for service c/o Murphy Battista LLP at 2020 – 650 West Georgia Street, Vancouver, British Columbia.

10. The Plaintiff brings this action on her own behalf and on behalf of a proposed national Class of persons resident in Canada who have paid DHL fees charged by DHL which include DHL's processing or brokerage fees for goods shipped to Class Members, via DHL, from a destination outside of Canada ("Class" or "Class Members", to be further defined in the Plaintiff's application for certification). In many circumstances, Class Members used DHL's courier delivery services primarily for personal, family or household purposes or uses.

11. The Defendant, DHL Express (Canada), Ltd. (dba DHL Canada), is a federal company duly incorporated pursuant to the laws of Canada with its corporate office at 18 Parkshore Drive in Brampton, Ontario and with an extra-provincial registered office on the 25th Floor of 700 West Georgia Street, in Vancouver, British Columbia. DHL Canada identifies its business activity as "Operation of Courier Services" in its Business Names Report.

12. The Defendant, DHL Express (USA), Inc., is a company duly incorporated pursuant to the laws of the state of Florida in the United States with its principal address on the 1st Floor of 1210 South Pine Island Road, in Plantation, Florida. DHL Express (USA), Inc.'s Registered Agent is C T Corporation System, which has an address at 1200 South Pine Island Road, in Plantation, Florida.

DHL

13. DHL is a package delivery and express courier service. DHL operates internationally and holds itself out as a specialist in international shipping and courier delivery services. On its website, DHL states:

> When you ship with DHL Express – you're shipping with specialists in international shipping and courier delivery services! With our wide range of express parcel and package services, along with shipping and tracking solutions to fit your needs – learn how DHL Express can deliver!

14. On its website, DHL sets out "the fundamentals about duties and taxes" for receivers

of goods. DHL states:

Receiver's Guide to Duties and Taxes

Learn the fundamentals about duties and taxes to understand who pays and why.

...

Goods Purchased Online for Personal Use

You may be charged customs duties and taxes for something purchased online because:

- Duties and taxes are most typically not included in the price of the goods you purchase online, and might not be included in the overall shipping costs you pay to the online retailer.
- When purchasing goods online, some or all of these goods may not originate in the country you reside in, therefore are subject to a customs duty, which is a tariff or tax imposed on goods when transported across international borders.
- When goods are not shipped domestically (within your country) or within a single customs union, such as the European Union, you are liable to pay any inbound duties and taxes which your local customs authority deems appropriate.
- To ensure the DHL courier can deliver your goods in shortest possible time after entering your country or customs union, DHL pays the customs authority on your behalf for any duties and taxes that are due on the goods.
- Once the duties and taxes are fully repaid to DHL the goods will be delivered to you
- What is payable, if anything, depends on where the goods are sent from, the type of goods, their transactional value and the weight of the package

When buying goods online, you should always check whether they are either being sent to your address from:

- Your country
- Another country
- Outside your customs union country

Note: Different rules apply when buying goods for commercial use.

Gifts Bought Online

A gift is defined as something sent directly by one private individual to another and such goods do not attract import tax if the value is below stated local thresholds.

Ordering and paying for goods that originate outside of your country or customs territory for shipping to a person other than the purchaser, does not satisfy the customs definition of being a gift.

15. On its FAQs webpage, DHL states:

> **Why did my online purchase get delivered by DHL?**
> The online retailer has an agreement for DHL to deliver items ordered online.
> **I was charged duties and taxes by customs for something purchased online. Why wasn't that included as part of the overall shipping costs?**
> - Duties and taxes are most typically not included in the price of the goods you purchase online.
> - When purchasing goods online, some or all of these goods may not originate in the country you reside in.
> - When goods are not shipped domestically (within your country) or within a single customs union, such as the European Union, you are liable to pay any inbound duties and taxes which your local customs authority deems appropriate.
> - To ensure the DHL courier can deliver your goods in shortest possible transit time, when we enter your country, DHL pays the customs authority immediately on your behalf for any duties and taxes that are due on the goods.
> - DHL only releases the goods to you upon the full repayment of any duties and taxes that were paid on your behalf.
>
> **Why do I need to pay customs duty?**
> Although you ordered and purchased the goods online, the goods are still subject to an import procedure to clear the shipment through customs. Clearance depends on:
> - The country of origin
> - The value including transport charges
> - The quantity of goods
>
> Each country has its own customs laws and the duties for different types of goods and values are set locally. DHL, like any other international transportation company, must adhere to local customs legislation and so DHL pays duties on the receiver's behalf to clear shipments on arrival.
>
> **When making my purchase it stated the price includes shipping costs. Why was I asked by DHL to pay additional charges to have my package delivered?**
> You will not be paying to DHL any further shipping costs. Rather, you will be asked instead to pay customs duties, taxes and other import charges related to customs clearance in your home country, as per local regulations.

DHL's Unlawful Scheme

16. DHL holds itself out as a business that specializes in express courier delivery services for shipments of goods being transported across international borders.

17. In the course of its business, DHL has engaged in an unlawful scheme whereby it has made false, misleading, and deceptive representations to the Plaintiff and Other Class Members – to their detriment – for its own financial gain and business interest.

18. Prior to delivering shipments to the Plaintiff and other Class Members, DHL would advise Class Members of their need to make payment to DHL for "import duty/tax and clearance fees" owing on their goods shipped from a destination outside of Canada. This was usually done via an email from DHL to a Class Member, with the subject line: "IMPORT DUTY/TAX PAYMENT". The email advised the Class Member of their need to pay import duties and taxes and contained a link to DHL's website for payment. Some Class Members were advised by phone or in person of their need to pay DHL for "import duties and taxes".

19. In order to receive their shipments and because of DHL's representations, the Plaintiff and other Class Members acted and made payment to DHL for the fees charged by DHL.

20. At all material times, DHL represented to the Plaintiff and other Class Members that - in order to ensure the delivery of their goods in the shortest possible time after entering Canada - DHL would pay any import duties or taxes (also referred to as government levies) deemed payable by Customs Canada and that DHL would deliver those goods to Class Members upon repayment by Class Members to DHL of any import fees and taxes that were paid on their behalf.

21. At all material times, the Plaintiff and other Class Members understood that the fees being charged by DHL – and paid to DHL by them – were to repay DHL for duties and taxes (government levies) charged by Canada Customs for goods being shipped when they crossed the border into Canada.

22. In reality, however, the fees charged by DHL to the Plaintiff and other Class Members for "import duties and taxes" included a DHL "processing" or brokerage fee. This fee was retained by DHL after payment was made by a Class Member.

23. At no time before payment was made, did DHL disclose to Class Members that this "import duty/tax payment" included DHL's "processing fee". This was a hidden fee.

24. For the purpose of promoting its business interest, DHL knowingly and recklessly made representations to the Plaintiff and other Class Members that were false or misleading in a material respect contrary to the *Competition Act*.

25. For the purpose of promoting its business interest, DHL knowingly and recklessly sent, or caused to be sent, in electronic messages representations to the Plaintiff and other Class Members that were false or misleading in a material respect contrary to the *Competition Act*.

26. DHL's conduct was unlawful and was purposed for DHL's own financial gain. The representations made by DHL to the Plaintiff and other Class Members were false, misleading, and deceptive.

27. DHL's conduct was high-handed, planned, and deliberate and showed a marked departure from the ordinary standards of decent behaviour.

The Plaintiff's Experience

28. The Plaintiff purchased two books on fabric weaving from an online UK based company, Janet Phillips, on February 17, 2021 for £71.90 plus £57 for shipping, for a total of £128.90. The books were for personal use.

29. The Plaintiff's books were shipped by the vendor, via DHL, with waybill number 6040928106. The Plaintiff was using DHL's courier delivery services for personal, family, or household purposes.

30. On February 26, 2021 the Plaintiff was advised by DHL that her shipment was in Richmond, British Columbia, but that she was required to pay CDN$33.16 in "duties and taxes" prior to the delivery and release of her shipment.

31. The Plaintiff paid DHL the CDN$33.16 fee on February 26 or 27, 2021.

32. At all material times prior to payment, DHL represented to the Plaintiff that the fee being charged on her shipment was for duties and taxes. DHL never advised the Plaintiff, prior to payment, that the fee being charged included DHL's "processing fee" of CDN$17

plus tax.

33. The Plaintiff only learned that she had paid DHL a "processing fee" after numerous inquiries to DHL.

Damages

34. As a consequence of DHL's conduct and its false, misleading, and deceptive representations – which caused the Plaintiff and other Class Members to act and to pay DHL a processing or brokerage fee – the Plaintiff and other Class Members have sustained loss and damage, including the monies they paid to DHL for DHL's processing or brokerage fee.

35. The Plaintiff and other Class Members have also suffered stress and anxiety as a result of DHL's conduct and as a result of time they have had to spend investigating the fees charged by DHL, communicating with DHL about the fees charged, and reporting DHL's unlawful conduct to the Better Business Bureau and other consumer protection organizations.

Part 2: RELIEF SOUGHT

36. The Plaintiff claims, on her own behalf and on behalf of the Class:

a) an order certifying this action as a class proceeding and appointing Gayle Vallance as a Representative Plaintiff under the *Class Proceedings Act,* RSBC 1996, c 50;

b) general damages;

c) special damages;

d) exemplary, aggravated, and punitive damages;

e) statutory damages pursuant to s. 36 of the *Competition Act*, RSC 1985, c C-34, including the cost of any investigation in connection with this matter and the cost of this proceeding;

f) damages pursuant to section 171 of the British Columbia *Business Practices and Consumer Protection Act*, SBC 2004, c 2; section 13 of the Alberta *Consumer Protection Act*, RSA 2000 c C-26.3; section 93 of the Saskatchewan *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; section 23 of Manitoba's *The Business Practices Act*, CCSM c B120; sections 18 and 100 of the Ontario *Consumer Protection Act*, 2002, SO 2002, c 30, Sched A; section 272 of the Quebec *Consumer Protection Act*, CQLR c P-40.1; section 4 of the Prince Edward Island Business Practices Act c B-7; and section 10 of the

Newfoundland and Labrador *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;

g) restitution;

h) damages equal to the costs of administering notice and the plan of distribution;

i) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;

j) costs; and

k) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Legislation

37. The Plaintiff pleads and relies on the *Class Proceeding Act*, RSBC 1996, c 50; the *Competition Act*, RSC 1985, c C-34; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A; the *Consumer Protection Act*, CQLR c P-40.1; the *Consumer Protection Act*, RSA 2000, c C-26.3; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *The Business Practices Act*, CCSM c B120; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28; the *Court Order Interest Act*, RSBC 1996, c 79, the *Business Practices Act* SPEI c B-7, and the *Limitation Act,* SBC 2012, c 13.

Breach of the *Competition Act*

Generally

38. At all material times, DHL represented to the Plaintiff and other Class Members that the fees being charged to them by DHL were to pay any import duties or taxes (government levies) charged by Canada Customs for goods being shipped into Canada.

39. At all material times, the Plaintiff and other Class Members understood that the fees being charged by DHL – and paid to DHL by them – were for duties and taxes (government levies).

40. However, the fees charged by DHL to the Plaintiff and other Class Members included a DHL "processing" or brokerage fee, which was not disclosed by DHL to the Plaintiff and other Class Members.

Section 52

41. For the purpose of promoting its business interest (which includes financial gain), DHL knowingly and recklessly made representations to the Plaintiff and other Class Members that were false or misleading in a material respect, contrary to section 52(1) of the *Competition Act*.

42. Although section 52(1.1) of the *Competition Act* does not require that the Plaintiff and other Class Members be deceived or misled, they were - in fact - deceived or misled by DHL's representations.

Section 52.01

43. Emails sent, or caused to be sent, by DHL to the Plaintiff and other Class Members advised Class Members of their need to make payment to DHL for "import duty/tax and clearance fees" owing on their goods shipped from destinations outside of Canada. The subject line of the emails was: "IMPORT DUTY/TAX PAYMENT".

44. The emails from DHL to the Plaintiff and other Class Members did not advise the Plaintiff and other Class Members that they were being charged a "processing" or brokerage fee by DHL.

45. For the purpose of promoting its business interest (which includes financial gain), DHL knowingly and recklessly sent, or caused to be sent, in emails to the Plaintiff and other Class Members representations that were false or misleading in a material respect contrary to section 52.01(2) of the *Competition Act* and subject matter information that was false or misleading contrary to section 52.01(1) of the *Competition Act*.

Section 54

46. By charging a "processing fee" as described in paragraph 4, DHL supplied a product to Class Members at a price that exceeded the lowest of two or more prices expressed to Class Members contrary to Section 54 of the *Competition Act*.

Section 36 – Statutory Damages

47. DHL's conduct, as set out in the whole of this claim, was contrary to Part VI of the *Competition Act*.

48. Pursuant to section 36 of the *Competition Act*, the Plaintiff and other Class Members can sue for and recover from DHL an amount equal to the loss or damage they have suffered as a result of DHL's breaches of Part VI of the *Competition Act*, together with an additional amount the Court may allow for the cost of any investigation in connection with DHL's statutory breaches and the cost of this proceeding.

Tort of Deceit

49. DHL made false representations to the Plaintiff and other Class Members.

50. DHL knew of the falsehood of its representations or, alternatively, DHL was reckless and ought to have known that its representations were false.

51. DHL's false representations caused the Plaintiff and other Class Members to act and to pay DHL the hidden processing or brokerage fee.

52. The Plaintiff and other Class Members suffered a loss as a result of their actions, being the amount they paid to DHL for the hidden processing or brokerage fee.

Unjust Enrichment

53. DHL received financial gain and was enriched from charging the Plaintiff and other Class Members a processing or brokerage fee.

54. The Plaintiff and other Class Members suffered a corresponding deprivation, being the monies they paid to DHL for DHL's hidden processing or brokerage fee.

55. There was no juristic reason for DHL's enrichment and Class Members' corresponding deprivation.

56. The Plaintiff and other Class Members are entitled to restitution of DHL's financial

gain.

Breach of Consumer Protection Legislation

British Columbia

57. With respect to the Plaintiff and other Class Members resident in British Columbia who used DHL's courier delivery services primarily for personal, family or household purposes:

(a) the Plaintiff and each Class Member was a "consumer";

(b) DHL was a "supplier";

(c) DHL's courier delivery services were a "service"; and

(d) the supply of DHL's services from DHL to the Plaintiff and each Class Member was a "consumer transaction"

all within the meaning of section 1 of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

58. At all material times, DHL represented to the Plaintiff and other Class Members that the fees being charged to them by DHL were to pay any import duties or taxes (government levies) charged by Canada Customs for goods being shipped into Canada.

59. At all material times, the Plaintiff and other Class Members understood that the fees being charged by DHL – and paid to DHL by them – were for duties and taxes (government levies).

60. However, the fees charged by DHL to the Plaintiff and other Class Members included a DHL "processing" or brokerage fee, which was not disclosed by DHL to the Plaintiff and other Class Members.

61. DHL's representations were relied on by the Plaintiff and other Class Members in connection with the consumer transactions when DHL's courier delivery services were provided to the Plaintiff and other Class Members primarily for personal, family or household purposes.

62. Contrary to DHL's representations and as set out in the whole of this claim, DHL's representations were false, misleading, and untrue and constituted a "deceptive act or practice"

within the meaning of section 4 and contrary to section 5 of the *Business Practices and Consumer Protection Act*.

63. The Plaintiff and other Class Members are entitled to statutory damages under section 171 of the *Business Practices and Consumer Protection Act*.

Alberta

64. With respect to Class Members resident in Alberta who used DHL's courier delivery services primarily for personal, family or household purposes:

(a) each Class Member was a "consumer";

(b) DHL was a "supplier";

(c) DHL's courier delivery services were a "service"; and

(d) the supply of DHL's services from DHL to each Class Member was a "consumer transaction"

all within the meaning of section 1 of the *Consumer Protection Act*, RSA 2000, c C-26.3.

65. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier delivery services primarily for personal, family or household purposes.

66. As set out above and in the whole of this claim, DHL acted contrary to its representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of and contrary to section 6 of the *Consumer Protection Act*.

67. Class Members are entitled to statutory damages under section 13 of the *Consumer Protection Act*.

Saskatchewan

68. With respect to Class Members resident in Saskatchewan who used DHL's courier delivery services ordinarily for personal, family or household purposes:

(a) each Class Member was a "consumer";

(b) DHL was a "supplier"; and

(c) DHL's courier delivery services were a "service"

all within the meaning of section 2 of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

69. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier delivery services ordinarily for personal, family or household purposes.

70. As set out above and in the whole of this claim, DHL acted contrary to its representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of sections 4 and 6 and contrary to section 8 of *The Consumer Protection and Business Practices Act*.

71. Class Members are entitled to statutory damages under section 93 of *The Consumer Protection and Business Practices Act*.

Manitoba

72. With respect to Class Members resident in Manitoba who used DHL's courier delivery services primarily for personal, family or household use:

(a) each Class Member was a "consumer";

(b) DHL was a "supplier";

(c) DHL's courier delivery services were "goods"; and

(d) the supply of DHL's courier delivery services from DHL to each Class Member was a "consumer transaction"

all within the meaning of section 1 of *The Business Practices Act*, CCSM c B120.

73. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier delivery services primarily for personal, family or household use.

74. As set out above and in the whole of this claim, DHL acted contrary to its representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair business practice" within the meaning of sections 1 and 2 and contrary to section 5 of *The Business Practices Act*.

75. Class Members are entitled to statutory damages under section 23 of *The Business Practices Act*.

Ontario

76. With respect to Class Members resident in Ontario who used DHL's courier delivery services for personal, family or household purposes:

(a) each Class Member was a "consumer";

(b) DHL was a "supplier";

(c) DHL's courier delivery services were a "service";

(d) the supply of DHL's courier delivery services from DHL to each Class Member was a "consumer transaction"; and

(e) DHL and Class Members entered into a "consumer agreement" with respect to the supply of DHL's courier delivery services

all within the meaning of section 1 of the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A.

77. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier services for personal, family or household purposes.

78. As set out above and in the whole of this claim, DHL acted contrary to its representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of section 14 and contrary to section 17 of the *Consumer Protection Act, 2002*.

79. Class Members are entitled to statutory damages under sections 18 and 100 of the *Consumer Protection Act, 2002*.

Quebec

80. With respect to Class Members resident in Quebec:

(a) each Class Member was a "consumer"; and

(b) DHL was a "merchant";

within the meaning of section 1 of the *Consumer Protection Act*, CQLR c P-40.1.

81. As set out above and in the whole of this claim, a contract for services was entered into, in the course of DHL's business, between each Class Member in Quebec and DHL, within the meaning of section 2 of the *Consumer Protection Act*.

82. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members when entering into contracts with DHL for courier delivery services.

83. As set out above and in the whole of this claim, DHL acted contrary to those representations. The representations made by DHL to Class Members in Quebec were false and misleading and, accordingly, DHL contravened section 219 of the *Consumer Protection Act*.

84. Class Members are entitled to statutory damages under section 272 of the *Consumer Protection Act*.

Newfoundland and Labrador

85. With respect to Class Members resident in Newfoundland and Labrador who used DHL's courier delivery services for personal, family or household purposes:

(a) each Class Member was a "consumer";

(b) DHL was a "supplier";

(c) DHL's courier delivery services were "services"; and

(d) the supply of DHL's courier delivery services from DHL to each Class Member was a "consumer transaction"; and

all within the meaning of section 2 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

86. As set out above and in the whole of this claim, DHL made various representations

which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier delivery services for personal, family or household purposes.

87. As set out above and in the whole of this claim, DHL acted contrary to those representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair business practice" within the meaning of section 7 and contrary to section 9 of the *Consumer Protection and Business Practices Act*.

88. Class Members are entitled to statutory damages under section 10 of the *Consumer Protection and Business Practices Act*.

Prince Edward Island

89. With respect to Class Members resident in Prince Edward Island who used DHL's courier delivery services for personal, family or household purposes:

(a) each Class Member was a "consumer";

(b) DHL's courier services were "services"; and

(c) the supply of DHL's courier delivery services from DHL to each Class Member was a "consumer transaction"; and

all within the meaning of section 1 of the *Business Practices Act*.

90. As set out above and in the whole of this claim, DHL made various representations which were relied on by Class Members in connection with the consumer transactions when they decided to use DHL's courier delivery services for personal, family or household purposes.

91. As set out above and in the whole of this claim, DHL acted contrary to those representations. DHL's representations were false, misleading, and deceptive and constituted an "unfair practice" within the meaning of section 2 and contrary to section 3 of the *Business Practices Act*.

92. Class Members are entitled to statutory damages under section 4 of the *Business Practices Act*.

Damages

93. As a result of DHL's conduct and its false, misleading, and deceptive representations, the plaintiff and other Class Members have sustained loss and damage, including monies they paid to DHL for DHL's processing or brokerage fee.

94. They have also suffered stress and anxiety as a result of DHL's conduct and as a result of time they had to spend investigating the fees charged by DHL, communicating with DHL about the fees charged, and reporting DHL's unlawful conduct to the Better Business Bureau and other consumer protection organizations.

Punitive Damages

95. DHL's representations were false, misleading, and deceptive.

96. As set out in detail in this claim, DHL's conduct was high-handed and showed a marked departure from the ordinary standards of decent behaviour.

97. DHL's conduct was planned and deliberate and merits punishment.

98. An award of punitive damages in this case is necessary to achieve the goals of general and specific deterrence.

Willful Concealment

99. DHL has willfully concealed from Class Members, the existence of the "processing fee" described in paragraph 4.

100. DHL's willful concealment has succeeded to date in concealing from Class Members the fact that they have suffered injury, loss or damage caused by or contributed to by DHL.

Plaintiff's address for service:	Murphy Battista LLP #2020 - 650 West Georgia Street Vancouver, BC V6B 4N7
Fax number address for service:	(604) 683-5084
Place of trial:	Vancouver, BC

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: September 13, 2021

Signature of
☐ Plaintiff ☑ lawyer for Plaintiff
Angela Bespflug
J. Scott Stanley
Janelle O'Connor

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.

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding, and the Plaintiff and the Class plead and rely on the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 in respect of the Defendants DHL Express (Canada), Ltd. (dba DHL Canada) and DHL Express (USA), Inc. 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 Act because this proceeding:

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia; and

(h) concerns a business carried on in British Columbia

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action concerns unlawful conduct and false, misleading, and deceptive representations made by DHL Express (Canada), Ltd. (dba DHL Canada) and DHL (Express) USA, Inc. (collectively "DHL"). DHL required the Plaintiff and other Class Members to make payments to DHL for "import duties and taxes" before delivering to Class Members their parcels that were being shipped, via DHL, to their residences in Canada from the United States or internationally. This "import duty/tax payment" included a "processing fee" which was retained by DHL after payment was made by a Class Member. This fee was not disclosed to Class Members by DHL. DHL's representations and conduct were in breach of the *Competition Act*, RSC 1985, c C-34 and provincial consumer protection legislation and constituted the tort of deceit. DHL was also unjustly enriched by its conduct.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident
[ ] medical malpractice
[X] 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
[X] 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:

Business Practices and Consumer Protection Act, SBC 2004, c 2.

Class Proceeding Act, RSBC 1996, c 50.

Competition Act, RSC 1985, c C-34.

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

Consumer Protection Act, CQLR c P-40.1.

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

Consumer Protection and Business Practices Act, SNL 2009, c C-31.1.

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28.

Court Order Interest Act, RSBC 1996, c 79.

Limitation Act, SBC 2012, c 13.

The Business Practices Act, CCSM c B120.

The Consumer Protection and Business Practices Act, SS 2013, c C-30.