



Court File No. **VLC-S-S-205424**
No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

Yonah Dwor, Derek Gee and Chon-Kin Benjamin Chu

PLAINTIFFS

and

car2go Canada Ltd., car2go N.A. LLC, car2go N.A. Holding Inc., car2go Deutschland GmbH,
Share Now GmbH, and Daimler Mobility Services GmbH

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 plaintiffs 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 plaintiffs 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.

THE PLAINTIFFS' CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. The defendants operated car-sharing services (“**Car-Sharing Services**”) in Canada between about 2011 and February 29, 2020 under the “car2go” and “SHARE NOW” brands in Vancouver, Calgary, Montréal and Toronto. In connection with its Car-Sharing Services, car2go charged customers a so-called “driver protection fee” in breach of the *Business Practices and Consumer Protection Act* and related enactments. Through this suit, Canadian consumers seek to hold the defendants accountable for this unlawful conduct.

The Parties

2. The Plaintiff Yonah Dwor is an individual residing in British Columbia. He was a member of car2go and purchased Car-Sharing Services from car2go in Vancouver for personal transportation.

3. The Plaintiff Derek Gee is an individual residing in Alberta. He was a member of car2go and purchased Car-Sharing Services from car2go in Calgary for personal transportation.

4. The Plaintiff Chon-Kin Benjamin Chu is an individual residing in Ontario. He was a member of car2go and purchased Car-Sharing Services in Toronto for personal transportation.

5. The Plaintiffs bring this action on their own behalf and on behalf of:

All individuals residing in British Columbia, Alberta, Ontario, and Québec who purchased Car-Sharing Services from car2go for personal, family or

household purposes and paid using a credit card that included rental car insurance from June 1, 2015 up to February 29, 2020 (the “**Class Period**”).

(hereafter the “**Class**” and “**Class Members**”)

6. The Defendant car2go Canada Ltd. is a company incorporated under the laws of Canada with an address for service at #2800 – 666 Burrard Street, Vancouver BC V6C 2Z7.

7. The Defendant car2go N.A. LLC is a limited liability company incorporated under the laws of the state of Delaware, United States, with an address for service at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801 USA.

8. The Defendant car2go N.A. Holding Inc. is a corporation under the laws of the state of Delaware, United States, with an address for service at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801 USA.

9. The Defendant car2go Deutschland GmbH is an entity formed under the laws of the Federal Republic of Germany with a registered office address at Fasanenweg 15-17, 70771 Leinfelden-Echterdingen, Germany.

10. The Defendant Share Now GmbH is an entity formed under the laws of the Federal Republic of Germany with a registered office address at Brunnenstraße 19 - 21, 10119 Berlin, Germany.

11. The Defendant Daimler Mobility Services GmbH (formerly moovel GmbH) is an entity formed under the laws of the Federal Republic of Germany with a registered office address at Fasanenweg 15-17, 70771 Leinfelden-Echterdingen, Germany.

12. At all material times, the Defendants car2go Canada Ltd., car2go N.A. LLC car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH or their predecessors in interest are related entities whose precise corporate relationship are within the knowledge of the Defendants only. These Defendants are direct or indirect subsidiaries of Daimler AG.

13. To the Plaintiffs’ knowledge, the Defendant car2go Canada Ltd. and car2go N.A., LLC are wholly owned subsidiaries of car2go N.A. Holding Inc., who is in turn a wholly owned subsidiary

of car2go Deutschland GmbH. From about 2011, these Defendants collectively operated, offered to operate, and/or participated in operating the Car-Sharing Services in Canada. In particular, car2go Canada Ltd. was the contracting entity that contracted with Canadian customers for the Car-Sharing Services. The Defendant car2go N.A., LLC was the entity responsible for the payments and invoicing relating to the Car-Sharing Services. The Defendants car2go N.A. Holding Inc. and/or car2go Deutschland GmbH participated in the offering of the Car-Sharing Services in Canada, including deciding to charge the Driver Protection Fee for Canadian consumers, and fixing of this fee, and the management, oversight, and marketing of the Car-Sharing Services.

14. At all material times, the Defendant Daimler Mobility Services GmbH is the registered owner of the following Canadian trademarks:

a. CAR 2GO AUTOPARTAGE

TMA948417, which Daimler Mobility Services GmbH declared to be in use in Canada since August 30, 2016

b. CAR2GO

TMA802996, which Daimler Mobility Services GmbH declared to be in use in Canada since July 27, 2011

c. CAR2GO

TMA864213, which Daimler Mobility Services GmbH declared to be in partially used in Canada since November 4, 2013

15. At all material times, the Defendant Daimler Mobility Services GmbH had control over the character and quality of the Car-Sharing Services in Canada and participated in the transactions with the Class Members.

16. At all material times, Daimler AG was the registered owner of and maintains the domain name www.car2go.com, through which the Car-Sharing Services were offered to Class Members in Canada. Daimler AG had control over the internet servers that provided the Car-Sharing Services in Canada.

17. On November 12, 2019, the car2go brand became SHARE NOW as result of a joint venture between Daimler AG and BMW. Thereafter, the Defendant Share Now GmbH participated in the provision of the management, oversight, and marketing of the Car-Sharing Services in Canada, including authorising the Defendants car2go Canada Ltd. and/or car2go N.A. Holding Inc. to use the trademark SHARE NOW in Canada in relation to the Car-Sharing Services.

18. Together, all the Defendants were “**car2go**” in connection with the development, management, marketing and operation of Car-Sharing Services under the brands car2go and Share Now (on or after November 12, 2019) in Canada. All the Defendants participated in provision of the Car-Sharing Services in Canada using car2go Canada Ltd. (which is headquartered in British Columbia) as a “storefront” and all of the Defendants would therefore be subject to the laws of British Columbia and Canada in their dealings with the Class Members

Car-Sharing Services

19. car2go offered Car-Sharing Services that allowed customers to use a variety of car2go branded vehicles (including a Smart Car, Mercedes sedan, and Mercedes cross-over SUV) for short periods of time for travel, without the obligation of owning their own vehicle, but with the ability to drive themselves, instead of taking a taxi, public transportation or other conveyance.

20. Customers could locate and reserve a vehicle from the car2go fleet using the car2go internet servers. Upon arriving at the vehicle, customers would unlock the vehicle using the car2go app or a physical card and a passcode and begin their rental.

21. car2go offered one-way or open-ended rentals within its zone of operations, permitting customers to drop the vehicle off at a different location from where they had started. car2go established a “Home Area” in each city in which it operated. The Home Area was a geographical zone in which trips had to be started and ended.

22. To use car2go’s Car-Sharing Services, a customer had to register as a member via car2go’s internet servers. Registration involved, among other things, providing driver’s license information and paying a sign-up or registration fee to car2go.

23. car2go charged members by the minute (for trips less than an hour or 200 km), and by the hour or the day for longer periods. Charges varied by the model of vehicle selected by the member from car2go's fleet – a Mercedes Smart Car was less expensive to use than a Mercedes-Benz sedan or cross-over SUV. Fees were standardised by car2go. All fees were subject to applicable taxes.

24. In addition to the rental charges for Car-Sharing Services, car2go charged members a so-called “**Driver Protection Fee**” from June 1, 2015. Prior to January 1, 2020, the Driver Protection Fee was a charge of \$1 per trip for the first 200 trips a member took in a calendar year, and \$0 starting from the 201st trip and thereafter in that calendar year. From January 1, 2020 up to and including February 29, 2020, the Driver Protection Fee was \$1 per trip for every trip a member took.

25. The Driver Protection Fee was not mandated by statute but was an indemnity fee determined and levied by car2go against members for its own benefit. The Driver Protection Fee was not referenced in the Terms and Conditions and is mentioned without explanation or definition in the Fee Schedule issued by car2go. There was no contractual basis for charging the Driver Protection Fee as it is not referenced in any of the contractual arrangements between car2go and members.

26. The Driver Protection Fee was not optional, and members could not opt-out of it. The Driver Protection Fee purportedly operated as follows, according to car2go's Frequently Asked Questions:

The \$1 Driver Protection Fee enables car2go to charge a deductible that is under \$1,000 to its members in the event that they get into an accident while driving a car2go. For each trip, a member is charged a \$1 (plus taxes) surcharge. This \$1 surcharge is only charged for a member's first 200 trips in 2019. Starting January 1, 2020, the fee will apply to every trip. Any member who takes 91 or more trips by the end of a calendar year will have their deductible lowered to \$0. At the beginning of each new year, the trip count will rest to 0 and the deductible will be reinstated.

27. car2go required members to pay for Car-Sharing Services by credit card. Most major Canadian credit cards include driver protection insurance coverage for rental cars charged to the credit card, at no extra charge to the cardholders. That credit card insurance coverage covers loss/damages up to the actual cash value of the damaged or stolen rental vehicle, including payment

of any deductible on a rental car loss or damage claim. (“**Credit Card Rental Car Insurance**”)
The credit card insurance coverage is better coverage than car2go purportedly charged for through the \$1/trip Driver Protection Fee and was provided at material times by licensed insurance companies.

28. The Plaintiff Dwor used his RBC Avion Visa card to pay for Car-Sharing Services from car2go. That RBC Avion Visa card automatically included Credit Card Rental Car Insurance, thereby rendering the \$1 Driver Protection Fee valueless to the Plaintiff Dwor. However, car2go provided no option for the Plaintiff Dwor or the Class Members to opt-out of the coverage offered by car2go.

29. The Plaintiff Gee used his CIBC Aerogold Visa Infinite card to pay for Car-Sharing Services from car2go. That CIBC Aerogold Visa Infinite card automatically included Credit Card Rental Car Insurance, thereby rendering the \$1 Driver Protection Fee valueless to the Plaintiff Gee. However, car2go provided no option for the Plaintiff Gee or the Class Members to opt-out of the coverage offered by car2go.

30. The Plaintiff Chu used his CIBC Aventura Visa card to pay for Car-Sharing Services from car2go. That CIBC Aventura Visa card automatically included Credit Card Rental Car Insurance, thereby rendering the \$1 Driver Protection Fee valueless to the Plaintiff Chu. However, car2go provided no option for the Plaintiff Chu or the Class Members to opt-out of the coverage offered by car2go.

31. Class Members used their credit cards to pay for Car-Sharing Services from car2go. The Class Members’ credit cards included Credit Card Rental Car Insurance, thereby rendering the \$1 Driver Protection Fee valueless to Class Members. However, car2go provided no option for the Class Members to opt-out of the coverage offered by car2go.

32. By 2018, car2go had 419,000 members in Canada. At material times, car2go had approximately 300,000 members in Vancouver, 134,000 members in Calgary, 102,000 members in Montréal and 80,000 members in Toronto. car2go members in Vancouver took more than two million trips in 2019.

33. car2go publicly announced that it was shutting down its Canadian operations as follows:

- a. in Toronto on May 24, 2018;
 - b. in Calgary on September 27, 2019; and
 - c. in Vancouver and Montréal on December 18, 2019.
34. car2go ceased operations as follows:
- a. in Toronto on May 31, 2018;
 - b. in Calgary on October 31, 2019; and
 - c. in Vancouver, Montréal and Canada on February 29, 2020.

Unconscionable Driver Protection Fees

35. Charging members Driver Protection Fees for each of a Class Member's first 200 trips in a calendar year (prior to 2020) and for each trip in 2020 was unconscionable. It was not fair. There was no contractual basis to charge Driver Protection Fees, and the Defendants were not licensed to offer it. In addition, or in the alternative, the Driver Protection Fees offered a service that was of no value or could be obtained for free from the Class Members' own credit cards that were used to pay for the Car-Sharing Services.

36. Charging the Driver Protection Fees breached the following consumer protection laws as set out in Part 3 below:

- a. The British Columbia *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "**BC BPCPA**");
- b. The Alberta *Consumer Protection Act*, RSA 2000, c C-26.3 (the "**Alberta CPA**");
- c. The Ontario *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A (the "**Ontario CPA**"); and
- d. The Québec *Consumer Protection Act*, CQLR c P-40.1 (the "**Québec CPA**").

37. At all material times, car2go had total control over the operation of the car2go app and platform, including over whether and how Car-Sharing Services were offered for sale, the prices at which Car-Sharing Services were offered, and how fees for Car-Sharing Services were presented to prospective customers including the Plaintiffs and Class Members, and how and whether fees were charged. car2go dictated the terms by which customers, including the Plaintiffs and Class Members, were able to purchase Car-Sharing Services in Canada during the Class Period.

38. In particular, customers did not have any meaningful visibility or transparency regarding any alleged contractual basis for imposing the Driver Protection Fee, justification for or purpose of that fee.

39. As a result of car2go's total control over the platform for the delivery of its Car-Sharing Services, there was a fundamental inequality of bargaining power between car2go and the Plaintiffs and Class Members. The relationship between car2go and its members, including the Plaintiffs and Class Members, resulted in a substantially unfair bargain to car2go's benefit in the form of the Driver Protection Fee, as a direct consequence of car2go's systemic conduct during the Class Period.

40. car2go knew or ought to have known that the Driver Protection Fee and its conduct in connection with it was unconscionable.

41. A reasonable car2go member would not have looked behind the information in presented to them by car2go to determine whether it was the product of a fair process or presentation.

42. The Plaintiffs and Class Members suffered damage and loss as a result of car2go's conduct and charging of the Driver Protection Fee. The Plaintiffs and Class Members have an interest in the Driver Protection Fee collected by car2go and would have a right to recover those as damages under s 171 of the *Business Practices and Consumer Protection Act* and in unjust enrichment, and also the applicable consumer protection laws in Alberta, Ontario, and Québec.

43. car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH and Daimler Mobility Services GmbH through their ownership and control of car2go Canada Ltd., car2go N.A. LLC are the ultimate recipients or beneficiaries of part or all of the Driver Protection Fees received from the Plaintiffs and Class Members.

44. car2go willfully concealed the lack of contractual basis for the Driver Protection Fees, and the applicability of Credit Card Rental Car Insurance, from the Plaintiffs and Class Members during the Class Period.

45. The Plaintiffs and Class Members seek return of the Driver Protection Fees.

Part 2: RELIEF SOUGHT

46. The Plaintiffs claim, on their own behalf and on behalf of the Class Members:

Against All Defendants

- a. an order certifying this action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “*Class Proceedings Act*”);
- b. an order appointing the plaintiffs as the representative plaintiffs for the Class;
- c. an order under Rule 10-1 of the *Supreme Court Civil Rules* that all moneys received by the Defendants from the Class Members on account of the Driver Protection Fees be paid into Court pending resolution of this proceeding;
- d. an order that any monetary award be assessed on an aggregate basis under the *Class Proceedings Act*;
- e. an order pursuant to s 27 of the *Class Proceedings Act*, after the common issues trial in favour of the Class, directing individual inquiries for Class Members should any individual issues remain, and all necessary directions for the most expeditious procedures to be followed in conducting such inquiries;
- f. a declaration that the Defendants are jointly and severally liable to the Class Members;

- g. a declaration under the *BC BPCPA* s 172(1)(a) that the Defendants have contravened the *BC BPCPA*, namely ss 4-5 and 8-9 in their transactions with all Class Members and further declarations that the Defendants also contravened the
 - i. the *Alberta CPA* in their transaction with Class Members residing in Alberta, namely s 6;
 - ii. the *Ontario CPA* in their transaction with Class Members residing in Ontario, namely ss 14-17 and accompanying regulations; and
 - iii. the *Québec CPA* in their transaction with Class Members residing in Québec, namely arts. 8, 12, 219 and 220;
- h. an order for damages, restoration, and/or restitution against each of the Defendants pursuant to the applicable consumer protection laws:
 - i. s 172(3)(a) of the *BC BPCPA* for Class Members residing in British Columbia;
 - ii. s 7, 7.2, and/or 13 of the *Alberta CPA* for Class Members residing in Alberta;
 - iii. s 18 of the *Ontario CPA* for Class Members residing in Ontario;
 - iv. arts. 253 and/or 272 of the *Québec CPA* for Class Members residing in Québec;
- i. punitive damages, as permitted under the applicable consumer protection laws;
- j. pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79;

Against the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH

- k. a declaration that the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH have been enriched

in the amount of the Driver Protection Fees collected from the Class Members, at the expense of those Class Members, and there is no juristic reason for these Defendants to retain that benefit;

- l. restitution or, in the alternative, disgorgement of the benefits received by the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH on account of the Driver Protection Fees; and
- m. Such further and other relief as this Honourable Court may deem just against any of the Defendants.

Part 3: LEGAL BASIS

47. The Plaintiffs plead and rely on the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (“*BPCPA*”), related consumer protection legislation from other Canadian provinces, the *Class Proceedings Act*, RSBC 1996, c 50, the *Limitation Act*, SBC 2012, c 13, the *Court Order Interest Act*, RSBC 1996, c 79, and the *Emergency Program Act*, Ministerial Order No. M098, the *Supreme Court Civil Rules*, and related enactments.

Breach of the British Columbia Business Practices and Consumer Protection Act

48. The Defendants have breached the *BC BPCPA*.

49. The Plaintiff Dwor and Class Members in British Columbia used car2go for purposes that are primarily personal, family or household and are “consumers” within the meaning of s 1 of the *BC BPCPA*.

50. The *BC BPCPA* applies to all Class Members’ claims against all the Defendants, or alternatively against car2go Canada Ltd.

51. Car-Sharing Services are “services” within the meaning of s 1 of the *BC BPCPA*.

52. The Defendants are each a “supplier”, within the meaning of s 1 of the *BPCPA* that participated in a “consumer transaction”. The *BPCPA* does not require privity of contract between suppliers and consumers.

53. The purchase and sale of Car-Sharing Services, including the payment of the Driver Protection Fee, is a “consumer transaction”, within the meaning of s 1 of the *BPCPA*.

54. By the conduct set out above, the Defendants have breached ss 4-5 and/or 8-9 of the *BPCPA*. The Defendants’ actions constitute deceptive, unfair and unconscionable business practices. The Defendants knew or ought to have known that charging the Driver Protection Fee was unconscionable.

55. In particular, the Defendants’ actions have breached the *BPCPA*, ss 4 and 5 and specifically *inter alia* s-ss 4(3)(b)(ii), (b)(iv) and (c)(i). The Driver Protection Fee was not a needed service, although car2go’s written and visual representations including the Fee Schedule and FAQ stated that it was. The Plaintiff Dwor and Class Members were not required to pay the Driver Protection Fee because there was no contractual basis for it, although car2go’s written and visual representations including the Fee Schedule and FAQ stated that it was, and car2go charged the Plaintiff Dwor and Class Members for it. The Plaintiff Dwor and any Class Member could reasonably conclude that a price benefit or advantage existed as a result of the Driver Protection Fee, when it did not because that benefit or advantage was already provided by their credit cards used to pay for Car-Sharing Services by way of the Credit Card Rental Car Insurance.

56. In particular, the Defendants’ actions have breached *inter alia* the *BPCPA*, s 8, whether or not the factors in ss 8(3) are present in any individual case, and under s-ss 8(3)(b), (c) and (e) specifically.

57. The Defendants took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiff Dwor and Class Members, to reasonably protect their own interests because of their ignorance or inability to understand the character or nature of the consumer transaction and the Defendants’ misconduct within it based on its total control over the service (including its app and web interface) and the fees it charged, and the manner in which they were presented to members.

58. In addition, per *BPCPA*, s-s 8(3)(e), the terms or conditions on or subject to which the Plaintiff Dwor and Class Members entered by purchasing Car-Sharing Services from the Defendants insofar as they concerned the Driver Protection Fee were so harsh or adverse to these consumers as to be inequitable because of the inequality of bargaining power and the lack of candid disclosure by the Defendants about the purpose and justification for the Driver Protection Fee.

59. In addition, per *BPCPA*, s-s 8(3)(c), at the time that the Plaintiff Dwor and Class Members paid the Driver Protection Fee, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers through their Credit Card Rental Car Insurance. Specifically, the very credit cards that the Plaintiff Dwor and Class Members were using to pay the Drive Protection Fee – as required by the Defendants – already included driver protection insurance for free from licensed insurance providers through their Credit Card Rental Car Insurance.

60. As result of the breaches of the *BPCPA*, s 8, the consumer transaction – insofar as it implicates the Driver Protection Fee – is not binding on the Plaintiff Dwor and Class Members per *BPCPA*, s 10(1).

61. The Plaintiff Dwor and Class Members have an interest in the funds received from them by the Defendants on account of the Driver Protection Fee charged in breach of s 8 and which are not binding per s 10(1), and they are entitled to the restoration of those amounts. The Plaintiff Dwor and Class Members would have a right to make a claim for damages under the *BPCPA*, s 171 and a claim for unjust enrichment for which the unlawful act is a breach of s 380(2) of the *Criminal Code* and the *Competition Act*, s 52.

62. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff Dwor and Class Members are entitled to a declaration under *BPCPA*, s 172(1)(a) and a restoration order against car2go under the *BPCPA*, s 172(3)(a) in the full amount of the Driver Protection Fees.

Alberta Consumer Protection Act

63. For the Plaintiff Gee and Class Members resident in Alberta, they have a further claim under the *Alberta CPA*.

64. The Plaintiff Gee and Class Members in Alberta are “consumers” within the meaning of s 1(1)(b) of the *Alberta CPA*. Car-Sharing Services are “services” within the meaning of s 1(1)(k) of the *Alberta CPA*. The Defendants were each a “supplier” within the meaning of s 1(1)(l) of the *Alberta CPA*. The purchase and sale of Car-Sharing Services is a “consumer transaction”, including the payment of the Driver Protection Fee, within the meaning of s 1(1)(c) of the *Alberta CPA*.

65. As set out above, by reason of the Defendants’ conduct and the Driver Protection Fee, the Defendants have committed an unfair practice in breach of the Alberta Act, ss 5-6, 7 and 7.2. As a result of the Defendants’ breaches of the *Alberta CPA*, the Plaintiff Gee and Class Members in Alberta are entitled to recover damages under the *Alberta CPA*, ss 7(3) and 7.3.

66. The Plaintiff Gee and Class Members in Alberta further plead and rely on ss 2, 2.1, 3, 4, and 16 of the *Alberta CPA*.

Ontario Consumer Protection Act, 2002

67. For the Plaintiff Chu and Class Members resident in Ontario, they have a further claim under the *Ontario CPA*.

68. The Plaintiff Chu and Class Members in Ontario are “consumers” within the meaning of the *Ontario CPA*, s 1. Car-Sharing Services are “services” within the meaning of the *Ontario CPA*. The Defendants are each a “supplier” within the meaning of the *Ontario CPA*. The purchase and sale of Car-Sharing Services is a “consumer transaction”, including the payment of the Driver Protection Fee, and involves a “consumer agreement” within the meaning of the *Ontario CPA*, s 1.

69. As set out above, by reason of the Defendants’ conduct and the Driver Protection Fee, the Defendants have breached the *Ontario CPA*, ss 14-15 and 17. The Defendants’ actions constitute unfair and unconscionable business practices. As a result of the Defendants’ breaches of the *Ontario CPA* the Plaintiff Chu and Class Members in Ontario are entitled to an award of damages under the *Ontario CPA*, s 18.

70. The Plaintiff Chu and Class Members in Ontario further plead and rely on ss 3, 4, 6, 7, 8 of the *Ontario CPA*.

Québec Consumer Protection Act

71. For Class Members resident in Québec, they have a further claim under the *Québec CPA*.

72. Class Members in Québec are “consumers” within the meaning of the *Québec CPA*, art. 1(e). The Defendants are each a “merchant” under the *Québec CPA*, art. 1.

73. As set out above, by reason of the Defendants’ misconduct and the Driver Protection Fee, the Defendants have breached various articles of Title I and Title II of the *Québec CPA*, namely art. 8. The Driver Protection fees are *lesionary* (i.e. unconscionable) under art. 8 of the *Québec CPA*.

74. Class Members in Québec further plead and rely on arts. 12, 219, 220, 253, and 272 of the *Québec CPA*.

Unjust Enrichment

75. As set out above, the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH have been enriched by the collection of Driver Protection Fees from the Plaintiffs and Class Members.

76. The Plaintiffs and Class Members have been deprived by the payment of Driver Protection Fees.

77. There is no juristic reason why the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH should have received or should retain this benefit. In particular, the absence of any contractual basis for the Driver Protection Fee, the breaches of the consumer protection statutes, and the breach of the *Criminal Code*, s 380(2) and the *Competition Act*, s 52 negate any juristic reason why these Defendants should have received or should retain this benefit and voids the contracts or provisions of contracts under which the Driver Protection Fees were purportedly collected.

78. As a result of their actions, the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH have been unjustly enriched. The Plaintiffs and Class Members are entitled to restitution of the benefits received by these Defendants on account of the Driver Protection Fees.

79. In the alternative, justice and good conscience require that the Defendants car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH disgorge to the Plaintiffs and Class Members an amount attributable to the benefits received by them on account of the Driver Protection Fees.

Joint and Several Liability

80. The Defendants are jointly and severally liable for the acts of each of them.

Limitation Periods

81. The Plaintiffs or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of car2go, or that a court proceeding would be an appropriate means to seek to remedy the injury until after car2go ceased service and Class Members would no longer face any risk of denial of access to car2go's services by challenging the Defendants' business practices, and at which time car2go's business model received public attention and scrutiny.

82. The Plaintiffs and Class Members rely on the doctrines of postponement, discoverability, and fraudulent concealment per *Pioneer Corp v Godfrey* to postpone the running of the limitation period until 2020.

83. The Plaintiff Dwor and Class Members in British Columbia plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss. 8, 21(3). In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s. 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiff Dwor and Class Members in British Columbia plead and rely on the *Emergency Program Act*, Ministerial Order No. M098 to suspend the running of the limitation period from March 26, 2020.

84. The Plaintiff Gee and Class Members in Alberta plead and rely on the *Limitation Act*, RSA 2000, c L-12 and in particular s. 3. In addition, the Plaintiff Gee and Class Members in Alberta plead and rely on Ministerial Order M.O. 27/2020 made under the *Public Health Act*, RSA 2000, c P-37, on March 27, 2020 retroactive to March 17, 2020 to suspend the running of all limitation periods until June 1, 2020 or such other period as the Minister may order.

85. Class Members in Ontario plead and rely on postponement under the *Limitation Act, 2002*, SO 2002, c 24, Sch B. In addition, Class Members in Ontario plead and rely on the *Emergency Management and Civil Protection Act*, RSO 1990, c E.9 and O. Reg. 73/20 made March 20, 2020 retroactive to March 16, 2020 to suspend the running of all limitation periods until the cessation of the declaration of emergency in Ontario relative to COVID-19 under O. Reg. 50/20 and any amendments or renewals thereof.

86. Class Members in Québec plead and rely on the *Civil Code of Québec*, art. 3131 and 2922. In addition, Class Members in Québec plead and rely on Order 2020-4251 made under the *Code of Civil Procedure* on March 15, 2020 retroactive to March 13, 2020 to suspend the running of all prescription periods until the expiry of the declaration of the state of health emergency set out in Order 177-2020.

Service

87. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on the Defendants car2go N.A. LLC car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, Daimler Mobility Services GmbH pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

88. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. contractual obligations, to a substantial extent, were to be performed in British Columbia (*CJPTA*, s 10(e)(i) and s 10(e)(iii));
- b. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));

- c. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- d. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiffs' address for service:

Hammerberg Lawyers LLP
1220 – 1200 West 73rd avenue
Vancouver, British Columbia V6P 6G5

Fax number for service: 604-269-8511

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: May 15, 2020



Signature of lawyer for plaintiffs
Joel Zanatta
Kevin McLaren
Alexia Majidi
Simon Lin
Mathew Good

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**

The plaintiffs claim the right to serve this pleading on the defendants car2go N.A. LLC, car2go N.A. Holding Inc., car2go Deutschland GmbH, Share Now GmbH, and Daimler Mobility Services GmbH outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. contractual obligations, to a substantial extent, were to be performed in British Columbia (*CJPTA*, s 10(e)(i) and s 10(e)(iii));
- b. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- c. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- d. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breaches of the *Business Practices and Consumer Protection Act* and related statutes in the provision of ride-sharing services.

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:

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

Class Proceedings Act, RSBC 1996, c 50

Court Order Interest Act, RSBC 1996, c 79

Limitation Act, SBC 2012, c 13