No. Court File No. VLC-S-S-255057
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

DARREN DICKEY

PLAINTIFF

and

FIVERR INC. AND FIVERR INTERNATIONAL LTD.

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

(Unlawful Pricing Practices)

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.

THE PLAINTIFF'S CLAIM

Part 1: STATEMENT OF FACTS

Overview

1. Consumers expect to pay the lowest price that a company represents a product will cost at a given time. Parliament has codified this principle through sections 52, 52(1.3), and 54 of the *Competition Act*, RSC 1985, c C-34 (the "***Competition Act***"), which require that companies represent the full cost of a product upfront, prohibiting companies from tacking on additional fees or charging the higher of two different advertised prices for a product. These provisions ensure that companies' pricing practices are fair, straightforward, and not deceptive.

2. Fiverr operates a platform through which users can hire service providers to complete a variety of digital services across over 700 skill categories, such as website development and video editing. On its website and mobile app, Fiverr represents a price for its services that is, unbeknownst to consumers, unattainable, and thereafter increases the purchase price once a consumer is further along in the purchasing process. Fiverr's practice of concealing the full cost of, and/or representing two different prices for, its services is contrary to the *Competition Act,* the *Business Practices and Consumer Protection Act*, SBC 2004 c 2 (the "***BPCPA***"), and consumer protection legislation in other provinces in pricing its services. This conduct has resulted in Fiverr being unjustly enriched.

The Parties

3. The Plaintiff Darren Dickey is a resident of British Columbia. The Plaintiff paid for Fiverr's Booking Services, as defined below, for both business and personal use. The Plaintiff has paid for Fiverr's Booking Services on approximately 694 occasions. For example, on October 11, 2024, the Plaintiff purchased a file conversion service and was charged a Service Fee of USD $4.10 that was not disclosed at the outset of the purchasing process.

4. The Plaintiff brings this action on his own behalf and on behalf of all persons in Canada who paid a Service Fee to use the Booking Services through fiverr.com or Fiverr's mobile application, including a subclass of individuals who paid to use the Booking Services for primarily personal, family, or household use (the "**Consumer Subclass**" and "**Consumer Subclass Members**") from the date on which Fiverr began charging Service Fees in Canada until the date that this action is certified as a class proceeding (the "**Class**", "**Class Members**", and "**Class Period**").

5. The Defendant Fiverr Inc. is a company incorporated pursuant to the laws of the State of Delaware with a registered address for service of c/o The Corporation Trust Company at 1209 Orange Street, Wilmington, Delaware, USA.

6. The Defendant Fiverr International Ltd. is a company incorporated pursuant to the laws of the State of Israel with a registered address for service at 8 Eliezer Kaplan Street, Tel Aviv, Israel, 6473409.

7. Fiverr Inc. and Fiverr International Ltd. are collectively "**Fiverr**". At all material times, the Defendants functioned as a joint enterprise within which the Defendants individually and jointly operated and made pricing representations regarding the Booking Services. Each of the Defendants is an agent of the other for the purposes of the conduct alleged in this claim. Fiverr carries on business in Canada, including British Columbia, by making their Booking Services available for use by Canadians in Canada.

Fiverr's Booking Services

8. Fiverr's platform is available through its website, fiverr.com, and mobile application, Fiverr – Freelance Services (the "**Fiverr Mobile Application**"). The website fiverr.com and the Fiverr Mobile Application are the "**Platforms**". The Platforms function in a substantially similar manner. The access to and use of the Platforms to hire service providers constitute the "**Booking Services**".

The Service Fee

9. Fiverr imposes a "**Service Fee**" to use the Booking Services without disclosing this fee at the outset of the purchasing process. The Service Fee is not imposed by an Act of

Parliament or the legislature of a province. As of the date of filing this Notice of Civil Claim, the Service Fee is equal to:

a) A flat fee of USD $3.50 for services where the First Price plus the cost of optional add-ons is less than USD $100 (the "**Small Order Fee**"); and

b) 5.5% of the following amounts:

   i. The First Price (defined below);

   ii. Any optional add-ons selected by the user; and

   iii. The Small Order Fee, if applicable.

10. The manner in which the Service Fee was represented to Class Members during the purchasing process was consistent throughout the Class Period.

Using Fiverr's Booking Services

<u>fiverr.com</u>

11. When a user visits fiverr.com, they begin by selecting the type of service for which they are seeking to hire a freelancer. After making a selection, the user is taken to a webpage where Fiverr represents a price for hiring a freelancer through the Platform (the "**First Price**").

12. After the user clicks on a freelancer's advertisement, the user is taken to that freelancer's webpage. Fiverr again represents the First Price on this webpage.

13. After the user clicks "Continue", the user is presented with a pop-up through which the user may select optional add-ons, such as expedited delivery or the ability to request additional revisions from the freelancer. Fiverr again represents the First Price on this pop-up.

14. After the user has selected any optional add-ons and clicks "Continue", the user is taken to a webpage on which the user is invited to enter and/or confirm their payment

information. On this webpage, Fiverr represents, for the first time, that the user will be charged a Service Fee in addition to the First Price.

15. The "**Second Price**" is the sum of the First Price, the cost of any selected add-ons, the Service Fee, and taxes.

16. Fiverr does not disclose the fact or amount of the Service Fee until after the user has searched for a service, selected a freelancer, customized their order, and proceeded to the checkout page. At that stage, clicking the question mark icon next to the words "Service fee" opens a pop-up, in which Fiverr states: "This helps us operate our platform and offer 24/7 customer support for your orders".

<u>The Fiverr Mobile Application</u>

17. When a user opens the Fiverr Mobile Application, they begin by selecting the type of service for which they are seeking to hire a freelancer. After making a selection, the user is taken to a mobile page where Fiverr represents the First Price of hiring a freelancer through the Platform.

18. After the user clicks on a freelancer's advertisement, the user is taken to that freelancer's mobile page. Fiverr again represents the First Price on this mobile page.

19. After the user clicks "Continue", the user is taken to a mobile page where the user may select optional add-ons. Fiverr again represents the First Price on this mobile page.

20. After the user clicks "Continue", the user is taken to a mobile page on which the user is invited to enter and/or confirm their payment information. On this mobile page, Fiverr represents, for the first time, that the user will be charged a Service Fee in addition to the First Price (i.e. the Second Price).

21. Fiverr does not disclose the fact or amount of the Service Fee until after the user has searched for a service, selected a freelancer, customized their order, and proceeded to the checkout page. At that stage, clicking the question mark icon next to the words "Order summary" opens a pop-up, in which Fiverr states that the Service Fee: "Helps us operate our platform and offer 24/7 customer support for your orders".

Fiverr's Misconduct

22. At material times, Fiverr represented and clearly expressed that the Booking Services were available at the First Price. Fiverr represented and clearly expressed the First Price on the Platforms, each of which constitutes a point-of-purchase display.

23. At material times further along in the purchasing process, Fiverr then represented that the Booking Services were available only at the Second Price. Fiverr did this on the Platforms, each of which constitutes a point-of-purchase display.

24. At material times, the Booking Services were not available at the First Price due to the addition of the Service Fee, which constitutes a fixed obligatory charge or fee imposed by Fiverr.

25. At material times, Fiverr represented two different prices for the Booking Services.

26. Fiverr did not represent the Service Fee or the Second Price when it represented the First Price to users. The Second Price exceeded the First Price. Fiverr charged, and users paid, the Second Price.

27. At material times, Fiverr represented the First Price and the Second Price at different stages of the same booking process. Fiverr did not add an additional service element or provide an additional service when it added the Service Fee. The Booking Services remained the same product at every stage of the booking process.

28. Fiverr's representation of the First Price was false and misleading because users were never able to pay the First Price but instead had to pay the higher Second Price.

29. At material times, Fiverr knew or ought to have known that representing that the Booking Services would cost the First Price was false or misleading in a material respect because these products were never available at the First Price.

30. At material times, Fiverr exercised total control over how they represented the prices of the Booking Services to the Plaintiff and Class Members.

31. At material times, there existed a cognitive asymmetry between Fiverr and the Plaintiff and Class Members as to how the prices of the Booking Services were represented.

32. At material times, the reasonable expectations of the Plaintiff and Class Members regarding the Booking Services at the times that they viewed the First Price included, *inter alia*, that:

a) the Booking Services would be attainable at the First Price; and

b) the First Price was an accurate representation of the price at which the Plaintiff and Class Members could purchase the Booking Services.

33. At material times, and contrary to the reasonable expectations of the Plaintiff and Class Members, the material terms and conditions of the bargain for the Booking Services included, *inter alia*:

a) the Booking Services could not be purchased for the First Price; and/or

b) the First Price was not an accurate representation of the price at which the Plaintiff and Class Members could purchase the Booking Services.

34. At material times, the terms and conditions of the bargain for the Booking Services violated the reasonable expectations of the Plaintiff and Class Members.

35. Fiverr obtained a portion of the purchase price paid by the Plaintiff and Class Members for the Booking Services as a result of Fiverr's breaches of the *Competition Act,* the *BPCPA*, and/or related provincial consumer protection legislation.

36. The Plaintiff and Class Members were the source of the money acquired by Fiverr, in the form and quantity of some of the purchase price paid by them for the Booking Services.

37. The Plaintiff and Class Members each have an interest in some of the funds received from them by Fiverr, either directly or indirectly, for the Booking Services.

38. The Plaintiff has sent a letter to Fiverr advising therein that Consumer Subclass Members who are "consumers" within the meaning of the *Consumer Protection Act (2002)*, SO 2002, c 30, Sched. A (the "***Ontario CPA***"), the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"), the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "***Alberta CPA***"), and the *Consumer Protection Act*, SNB 2024 c 1 (the "***New Brunswick CPA***") seek damages and/or restitution pursuant to the *Ontario CPA*, the *PEI BPA*, the *Alberta CPA*, and the *New Brunswick CPA*, respectively, due to Fiverr's misconduct particularized in this Notice of Civil Claim. In the alternative, the notice requirements in the *Ontario CPA, PEI BPA, Alberta CPA*, and *New Brunswick CPA* are fulfilled by the filing of this Notice of Civil Claim. In the further alternative, the interests of justice warrant dispensing of the notice requirement for Consumer Subclass Members in Ontario, PEI, Alberta, and New Brunswick.

39. Fiverr entered into contracts with the Plaintiff and Class Members for the sale and supply of the Booking Services. Fiverr has been enriched by the receipt of some of the purchase price paid by the Plaintiff and Class Members and received by Fiverr, directly or indirectly, for the Booking Services. The Plaintiff and Class Members have suffered a corresponding deprivation of these same amounts.

Harm to the Plaintiff and Class Members

40. As a result of Fiverr's breaches of the *Competition Act*, the Plaintiff and Class Members suffered loss and/or damage in an amount equal to the Service Fees, plus taxes on the Service Fees, paid by the Plaintiff and Class Members during the Class Period.

41. As a result of Fiverr's breaches of the *BPCPA* and/or related provincial consumer protection legislation, the Plaintiff and Consumer Subclass Members suffered loss and/or damage in an amount equal to the Service Fees, plus taxes on the Service Fees, paid by the Plaintiff and Class Members during the Class Period.

42. Due to Fiverr's representations that the Booking Services were available at the First Price, the Plaintiff and Class Members obtained less value for money than they had expected to obtain after having viewed the First Price because the Booking Services were unattainable at the First Price and could only be purchased at the Second Price.

43. Further or in the alternative, Fiverr's representations that the Booking Services were available at the First Price caused the price of the Booking Services to be higher than the market otherwise would have tolerated absent this conduct.

Part 2: RELIEF SOUGHT

44. The Plaintiff claims on his own behalf and on behalf of other members of the Class:

a) an order certifying this action as a class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 (the "***Class Proceedings Act***");

b) an order appointing him as representative Plaintiff under the *Class Proceedings Act*;

c) a declaration that Fiverr has engaged in conduct contrary to Part VI of the *Competition Act*;

d) damages under section 36 of the *Competition Act*, in an amount which includes but is not limited to the Service Fees, plus taxes on the Service Fees, paid by the Plaintiff and Class Members during the Class Period;

e) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;

f) a declaration under subsection 172(1)(a) of the *BPCPA* that Fiverr has breached sections 4-5 and/or 8-9 of the *BPCPA*;

g) an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring Fiverr to represent the full price of its Booking Services at the outset of the purchasing process on the Platforms;

h) damages under section 171 of the *BPCPA*, in an amount which includes but is not limited to the Service Fees, plus taxes on the Service Fees, paid by the Plaintiff and Consumer Subclass Members in British Columbia during the Class Period;

i) a restoration order under subsection 172(3)(a) of the *BPCPA* in the amount of the Service Fees, plus taxes on the Service Fees, paid by the Plaintiff and Consumer Subclass Members in British Columbia during the Class Period;

j) relief for contraventions of extra-provincial consumer protection legislation (collectively with the *BPCPA*, the "**Consumer Protection Legislation**"), as follows:

   i. damages and/or restitution pursuant to subsections 7(1), 7(3), 13(2), and/or 142.1(2) of the *Alberta CPA*;

   ii. damages and/or restitution pursuant to subsection 93(1) of *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2;

   iii. damages and/or repayment pursuant to subsection 23(2) of *The Business Practices Act*, CCSM, c B120;

   iv. damages, or in the alternative restitution, pursuant to subsections 18(1) and/or 18(2) of the *Ontario CPA*;

   v. damages, or in the alternative restitution, pursuant to subsection 4(1) of the *PEI BPA*;

   vi. damages pursuant to section 10 of the *Consumer Protection and Business Practices Act,* SNL 2009, c C-31.1; and

   vii. damages pursuant to subsections 14(2) and/or 16(3) of the *New Brunswick CPA*;

k) a declaration that Fiverr has been unjustly enriched by the receipt of some, or all, of the purchase price paid by the Plaintiff and Class Members and received by Fiverr, directly or indirectly, for the Booking Services;

l) an order that Fiverr account for and make restitution to the Plaintiff and Class Members an amount equal to the amount by which Fiverr is found to have been unjustly enriched;

m) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79 (the "***Court Order Interest Act***"); and

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

Part 3: LEGAL BASIS

45. The Plaintiff and Class Members plead and rely on the *Competition Act*, the Consumer Protection Legislation, the *Class Proceedings Act*, the *Limitation Act*, SBC 2012, c 13, the *Limitation Act*, RSBC 1996, c 266, the *Court Order Interest Act*, the *Court Jurisdiction And Proceedings Transfer Act,* SBC 2003, c 28 (the "***Court Jurisdiction And Proceedings Transfer Act***"), the Supreme Court Civil Rules, and related enactments.

Competition Act – General Provisions

46. The *Competition Act* applies to business transacted in Canada. Fiverr has breached sections 52, 52(1.3), and/or 54 of the *Competition Act*, as amended from time to time.

47. The Booking Services constitute a "product" within the meaning of sections 2, 52, 52(1.3), and 54 of the *Competition Act.*

Competition Act – Sections 52 and 52(1.3) (False or Misleading Representations and Drip Pricing)

48. Section 52 of the *Competition Act* prohibits false or misleading representations.

49. Section 52(1.3) of the *Competition Act* prescribes that making a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation. This conduct is known as drip pricing.

50. Fiverr breached sections 52 and/or 52(1.3) of the *Competition Act* by representing that the Booking Services were available at the First Price when Fiverr knew or was reckless or willfully blind to the fact that this representation was false or misleading in a material respect.

51. Fiverr's representations that the Booking Services were available at the First Price were false or misleading in a material respect because the Booking Services were not attainable at the First Price due to the addition of the Service Fee, which constitutes a fixed obligatory charge and/or fee imposed by Fiverr.

52. This conduct was done for the purpose of promoting, directly or indirectly, the supply or use of the Booking Services and Fiverr's business interests in attracting customers to purchase the Booking Services.

53. The First Price was represented on a point-of-purchase display or was otherwise made available to members of the public.

Competition Act – Section 54 (Double Ticketing)

54. Further, and in the alternative, Fiverr breached section 54 of the *Competition Act*.

55. Section 54 of the *Competition Act* prohibits the supply of a product at a price that exceeds the lowest of two or more prices which are clearly expressed on, *inter alia*, a point-of-purchase display. This conduct is referred to as double ticketing.

56. Fiverr expressed both the First Price and the Second Price on the point-of-purchase displays on the Platforms and supplied the Booking Services at the Second Price, which exceeded the First Price.

57. Fiverr at all times controlled how prices were displayed on the point-of-purchase displays on the Platforms, and Fiverr at all times knew or ought to have known it represented of two different prices for the same product.

Competition Act - Damages

58. As a result of Fiverr's breaches of sections 52, 52(1.3), and/or 54 of the *Competition Act*, the Plaintiff and Class Members suffered loss and/or damage. In particular, by paying the Second Price for the Booking Services, the Plaintiff and Class Members obtained less value for money than they expected to obtain after having viewed the First Price because the Booking Services were unattainable at the First Price and could only be purchased at the Second Price. Further or in the alternative, Fiverr's

breaches of the *Competition Act* caused the prices of the Booking Services to be higher than the market otherwise would have tolerated absent this conduct. By paying these higher prices, the Plaintiff and Class Members suffered loss and/or damage.

59. The Plaintiff and Class Members were entitled to pay Fiverr only the First Price, plus the price of any selected add-ons and lawful taxes, for the Booking Services. The Plaintiff and Class Members are entitled to damages in an amount equal to the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period. Further or in the alternative, the Plaintiff and Class Members are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Competition Act*.

***Business Practices and Consumer Protection Act* – General Provisions**

60. Fiverr has breached the *BPCPA*.

61. The Plaintiff and Consumer Subclass Members in British Columbia are "consumers" within the meaning of section 1 of the *BPCPA*. The Booking Services are "services" within the meaning of section 1. Fiverr is a "supplier" within the meaning of section 1. The sale and/or supply of each of the Booking Services in British Columbia is a "consumer transaction" within the meaning of section 1.

62. Consumer Subclass Members resident outside of British Columbia additionally plead and rely on the equivalent provisions of the other Consumer Protection Legislation applicable to them, each as amended from time to time and with regulations in force at material times, as set out in Schedule A to this Notice of Civil Claim.

***Business Practices and Consumer Protection Act* – Sections 4-5 (Deceptive Acts or Practices)**

63. Fiverr has breached sections 4-5 of the *BPCPA*. Fiverr's actions constitute deceptive acts or practices.

64. Section 5 of the *BPCPA* prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed

or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

65. Fiverr engaged in conduct contrary to, *inter alia*, subsections 4(3)(a)(v)-(vi), 4(3)(b)(vi), and/or 4(3)(c)(i)-(ii) by representing:

a) that the Booking Services were available at the First Price when these services were not available at the First Price and were only available at the Second Price; and/or

b) two different prices for the Booking Services (i.e. the First Price and the Second Price) and charging the higher of the two prices (i.e. the Second Price).

66. Further and in the alternative, the entire process users must go through to use the Booking Services set out in paragraphs 11 to 16 and 17 to 21 above is deceptive because the manner and sequence in which the First Price and Second Price are presented to the user have the capability, tendency, or effect of deceiving or misleading a consumer regarding the price they are paying and/or the value they are receiving for the Booking Services.

67. Fiverr breached sections 4-5 of the *BPCPA* regardless of whether their conduct was contrary to any of the factors enumerated under subsection 4(3) as their conduct had the capability, tendency, or effect of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia.

***Business Practices and Consumer Protection Act* – Sections 8-9 (Unconscionable Acts or Practices)**

68. Fiverr has breached sections 8-9 of the *BPCPA.* Fiverr's actions constitute unconscionable acts or practices.

69. Section 9 of the *BPCPA* prohibits suppliers from engaging in unconscionable acts or practices in respect of consumer transactions. Once it is alleged that a supplier

committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.

70. That the above-described conduct constitutes an unconscionable act or practice is informed by the circumstances enumerated under subsection 8(3) of the *BPCPA,* and in particular subsection 8(3)(b). However, Fiverr's conduct breached sections 8-9 of the *BPCPA* regardless of whether it was contrary to any of the factors enumerated under subsection 8(3).

71. Through their total control over how the pricing of the Booking Services was represented to the Plaintiff and Consumer Subclass Members in British Columbia, Fiverr misled consumers as to the price of the Booking Services. Fiverr's total control over how the pricing of the Booking Services was represented created a cognitive asymmetry whereby the Plaintiff and Consumer Subclass Members in British Columbia could not understand or appreciate important terms and conditions of the bargain for the Booking Services, namely that:

a) the Booking Services could not be purchased for the First Price; and/or

b) the First Price was not an accurate representation of the price at which the Plaintiff and Class Members could purchase the Booking Services.

72. These terms and conditions of the bargains between Fiverr and Consumer Subclass Members in British Columbia were inequitable and/or excessive because they violated the reasonable expectations of the Consumer Subclass Members in British Columbia at the time that they viewed the First Price, including, *inter alia*, that:

a) the Booking Services would be attainable at the First Price; and

b) the First Price was an accurate representation of the price at which the Plaintiff and Consumer Subclass Members in British Columbia could purchase the Booking Services.

73. The Plaintiff and Consumer Subclass Members in British Columbia have been unduly disadvantaged by these inequitable and/or excessive terms and conditions of the

bargain for the Booking Services as a result of acquiring less value for money than they expected to receive when they viewed the First Price. Fiverr was unduly advantaged through their unlawful receipt of these amounts.

74. The cognitive asymmetry resulting from Fiverr's total control over how the pricing of the Booking Services was represented amounted to an inequality of bargaining power which created the potential for Fiverr to receive an undue advantage, and for the Plaintiff and Consumer Subclass Members in British Columbia to be unduly disadvantaged. This potential was realized when Fiverr leveraged the cognitive asymmetry between the parties and misrepresented the estimated value of the Booking Services at the First Price. These misrepresentations, the falsehood of which the Plaintiff and Consumer Subclass Members in British Columbia were ignorant as a result of the cognitive asymmetry, resulted in the bargain for the Booking Services being improvident. Fiverr has therefore committed an unconscionable act or practice.

Business Practices and Consumer Protection Act - Remedies

75. The Plaintiff and Consumer Subclass Members in British Columbia have an interest in, and were the source of, the funds received from them by Fiverr for the Booking Services obtained due to Fiverr's breaches of sections 4-5 and/or 8-9 of the *BPCPA*.

76. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to a declaration under subsection 172(1)(a) of the *BPCPA* that Fiverr has breached sections 4-5 and/or 8-9 of the *BPCPA*.

77. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to an injunction under subsection 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* by requiring Fiverr to represent the full price of using its Booking Services at the outset of the purchasing process on the Platforms.

78. As a result of Fiverr's breaches of sections 4-5 and/or 8-9 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia have suffered loss and/or damage. In particular, by paying the Second Price for the Booking Services, the Plaintiff and Consumer Subclass Members in British Columbia obtained less value for money than

they had expected to obtain after having viewed the First Price because the Booking Services were unattainable at the First Price and could only be purchased at the Second Price. Further or in the alternative, Fiverr's breaches of the *BPCPA* caused the prices of the Booking Services to be higher than the market otherwise would have tolerated absent this conduct. By paying these higher prices, the Plaintiff and Consumer Subclass Members in British Columbia suffered loss and/or damage.

79. The Plaintiff and Consumer Subclass Members in British Columbia were entitled to pay Fiverr only the First Price, plus the price of any selected add-ons and lawful taxes, for the Booking Services. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to damages in an amount equal to the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period. Further or in the alternative, the Plaintiff and Consumer Subclass Members in British Columbia are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *BPCPA*.

80. These same breaches entitle the Plaintiff and Consumer Subclass Members in British Columbia to restoration of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 172(3)(a).

Unjust Enrichment

81. As set out above, Fiverr has been unjustly enriched by the amounts received from the Plaintiff and Class Members, directly or indirectly, through the sale of the Booking Services. The Plaintiff and Class Members have suffered a corresponding deprivation of this same amount.

82. There is no juristic reason for Fiverr to retain these benefits as the contracts between Fiverr and the Plaintiff and Class Members are illegal, void, and/or voidable due to Fiverr's breaches of sections 52, 52(1.3), and/or 54 of the *Competition Act*.

83. The Plaintiff and Class Members are entitled to restitution for the benefits received from them by Fiverr, directly or indirectly, on account of the sale of the Booking Services in Canada.

Limitation Periods

84. Class Members who paid for the Booking Services on or after June 1, 2013 plead and rely on the doctrine of discoverability and section 8 of the *Limitation Act*, SBC 2012, c 13 to postpone the running of the limitation period. Class Members who paid for the Booking Services on or before May 31, 2013 plead and rely on subsection 6(4) of the *Limitation Act*, RSBC 1996, c 266 to postpone the running of the limitation period. Class Members could not have reasonably known that a claim existed against Fiverr until the date on which this Notice of Civil Claim was filed.

Joint and Several Liability

85. Fiverr Inc. and Fiverr International Ltd. are jointly and severally liable for the actions and damages allocable to either of them with respect to the sale and/or use of the Booking Services in Canada.

Service on the Defendants

86. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 of the *Court Jurisdiction And Proceedings Transfer Act* because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to subsections 10(e)(i), (f), (h), and/or (i)(i) of the *Court Jurisdiction And Proceedings Transfer Act* as this action concerns:

a) contractual obligations that to a substantial extent were to be performed in British Columbia (subsection 10(e)(i));

b) restitutionary obligations that, to a substantial extent, arose in British Columbia (subsection 10(f));

c) a business carried on in British Columbia (subsection 10(h)); and/or

d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia (subsection 10(i)(i)).

Plaintiff's address for service:

Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: July 8, 2025

Signature of lawyer for plaintiff

Sam Jaworski
Saro Turner
Justin Giovannetti

Slater Vecchio LLP

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 plaintiff claims the right to serve this pleading on the defendants FIVERR INC. and FIVERR INTERNATIONAL INC. in British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "***Court Jurisdiction and Proceedings Transfer Act***") applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

a) contractual obligations that to a substantial extent were to be performed in British Columbia (subsection 10(e)(i));

b) restitutionary obligations that, to a substantial extent, arose in British Columbia (subsection 10(f));

c) a business carried on in British Columbia (subsection 10(h)); and/or

d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia (subsection 10(i)(i)).

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 proposed class proceeding regarding Fiverr, Inc. and Fiverr International Inc.'s pricing practices.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[*Check one box below for the case type that best describes this case.*]

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

[x] 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:

[*Check all boxes below that apply to this case*]

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

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

Limitation Act, SBC 2012, c 13

Limitation Act, RSBC 1996, c 266

Court Order Interest Act, RSBC 1996, c 79

Competition Act, RSC 1985, c C-34

Business Practices and Consumer Protection Act, SBC 2004 c 2

Consumer Protection Act (2002), SO 2002, c 30, Sched. A

Business Practices Act, RSPEI 1988, c B-7

Consumer Protection Act, RSA 2000, c C-26.3

The Consumer Protection and Business Practices Act, SS 2014, c C-30.2

The Business Practices Act, CCSM, c B120

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

Consumer Protection Act, SNB 2024 c 1

Class Proceedings Act, RSBC 1996, c 50

Consumer Protection Act, SNB 2024 c 1

SCHEDULE A

Other Consumer Protection Legislation

Alberta

1. Fiverr has breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "***Alberta CPA***"). Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta are each a "consumer" within the meaning of subsection 1(1)(b) of the *Alberta CPA*. The Booking Services are "services" within the meaning of subsection 1(1)(k). Fiverr is a "supplier" within the meaning of subsection 1(1)(l). The supply of the Booking Services in Alberta are "consumer transaction[s]" within the meaning of subsection 1(1)(c).

2. By reason of Fiverr's conduct, Fiverr breached sections 5-6 of the *Alberta CPA*. Fiverr's actions violate subsections 6(2)(b)-(c), 6(4)(a), 6(4)(j), 6(4)(o), and/or 6(4)(s)(i)-(ii) and constitute "unfair practices" in breach of subsection 6(1.1).

3. As a result of Fiverr's breaches of the *Alberta CPA*, Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsections 7(1), 7(3), 13(2)(b), and/or 142.1(2)(a). Further or in the alternative, Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Alberta CPA.* Further or in the other alternative, Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta are entitled to restitution of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsections 13(2)(d)(ii) and/or 142.1(2)(c)(ii).

4. Fiverr cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a "supplier" and a "consumer" in respect of a "consumer transaction" rendering such a clause void and unenforceable.

5. Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta further plead that the notice requirement pursuant to subsection 7.1(1) of the *Alberta CPA* is fulfilled by the delivery of written notice to Fiverr as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

6. In the further alternative, Consumer Subclass Members who paid Service Fees while resident and/or located in Alberta plead that the Court should disregard the requirement for notice in the interests of justice.

Saskatchewan

7. Fiverr has breached *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the "***Saskatchewan CPBPA***"). Consumer Subclass Members in Saskatchewan are each a "consumer" within the meaning of subsection 2(b) of the *Saskatchewan CPBPA*. The Booking Services are "services" within the meaning of subsection 2(h). Fiverr is a "supplier" within the meaning of subsection 2(i)(i).

8. By reason of Fiverr's conduct, Fiverr breached sections 4-9 of the *Saskatchewan CPBPA*. Fiverr's actions violate subsections 6(a)-(d), 7(g), 7(i), 7(l), 7(o), and/or 7(p) and constitute "unfair practices" in breach of section 8.

9. As a result of Fiverr's breaches of the *Saskatchewan CPBPA*, Consumer Subclass Members in Saskatchewan are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 93(1)(b). Further or in the alternative, Consumer Subclass Members in Saskatchewan are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Saskatchewan CPBPA.* Further or in the other alternative, Consumer Subclass Members in Saskatchewan are entitled to restitution of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 93(1)(a).

10. Fiverr cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 101 of the *Saskatchewan CPBPA* which invalidates any such clause or waiver, rendering it void.

Manitoba

11. Fiverr has breached *The Business Practices Act,* CCSM, c B120 (the "***Manitoba BPA***"). Consumer Subclass Members in Manitoba are each a "consumer" within the meaning of section 1 of the *Manitoba BPA.* The Booking Services are "goods" within the meaning of section 1. Fiverr is a "supplier" within the meaning of section 1. The supply of each of the Booking Services in Manitoba is a "consumer transaction" within the meaning of section 1.

12. By reason of Fiverr's conduct, Fiverr breached sections 2-3 and 5 of the *Manitoba BPA*. Fiverr's actions violate subsections 2(1)(a)-(b), 2(3)(h), 2(3)(l), 2(3)(p), 2(3)(r), 3(1)(a), and/or 3(2)(a) and constitute "unfair business practices" in breach of section 5.

13. As a result of Fiverr's breaches of the *Manitoba BPA*, Consumer Subclass Members in Manitoba are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 23(2)(a). Further or in the alternative, Consumer Subclass Members in Manitoba are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Manitoba BPA.* Further or in the other alternative, Consumer Subclass Members in Manitoba are entitled to repayment in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 23(2)(d).

Ontario

14. Fiverr has breached the *Consumer Protection Act*, 2002, SO 2002, c 30, Sched A (the "***Ontario CPA***"). Consumer Subclass Members who were located in Ontario when they paid for the Booking Services are each a "consumer" within the meaning of section 1 of the *Ontario CPA*. The Booking Services are "services" within the meaning of section 1. Fiverr is a "supplier" within the meaning of section 1. The supply of each of the Booking Services constitutes a "consumer agreement" and a "consumer transaction" within the meaning of section 1. Fiverr made "representations" within the meaning of section 1.

15. By reason of Fiverr's conduct, Fiverr breached sections 14, 15, and 17 of the *Ontario CPA*. Fiverr's actions violate subsections 14(2)(7), 14(2)(11), 14(2)(14), and/or 15(2)(a) and constitute "unfair practices" in breach of subsection 17(1). Fiverr breached subsection 17(1) regardless of whether their conduct was contrary to any of the factors enumerated under subsection 14(2) because Fiverr made false, misleading, and/or deceptive representations in breach of section 14(1).

16. As a result of Fiverr's breaches of the *Ontario CPA*, Consumer Subclass Members who were located in Ontario when they paid for the Booking Services are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsections 18(1) and/or 18(2). Further or in the alternative, Consumer Subclass Members who were located in Ontario when they paid for the Booking Services are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Ontario CPA.* In the other alternative, Consumer Subclass Members who were located in Ontario when they paid for the Booking Services are entitled to restitution of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 18(1).

17. Fiverr cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to sections 7 and 8 of the *Ontario CPA*, which provide the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

18. Consumer Subclass Members who were located in Ontario when they paid for the Booking Services further plead that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to Fiverr as set out in the Notice of Civil Claim, or in the alternative by the filing of the Notice of Civil Claim. In the further alternative, Consumer Subclass Members who were located in Ontario when they paid for the Booking Services plead that the Court should disregard the requirement for notice in the interests of justice pursuant to subsection 18(15) of the *Ontario CPA.*

Prince Edward Island

19. Fiverr has breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"). Consumer Subclass Members in Prince Edward Island are each a "consumer" within the meaning of subsection 1(b) of the *PEI BPA*. The Booking Services are "services" within the meaning of subsection (1)(i). Fiverr made "consumer representations" within the meaning of subsection 1(c).

20. By reason of Fiverr's conduct, Fiverr breached sections 2 and 3 of the *PEI BPA*. Fiverr's actions violate subsections 2(a)(vii), 2(a)(x), 2(a)(xiii), and/or 2(b)(i) and constitute "unfair practices" in breach of subsection 3(1).

21. As a result of Fiverr's breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 4(1). Further or in the alternative, Consumer Subclass Members in Prince Edward Island are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *PEI BPA*. In the other alternative, Consumer Subclass Members in Prince Edward Island are entitled to restitution of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 4(1).

22. Consumer Subclass Members in Prince Edward Island further plead that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to Fiverr as set out in the Notice of Civil Claim, or in the alternative by the filing of the Notice of Civil Claim.

23. In the further alternative, Consumer Subclass Members in Prince Edward Island plead that the Court should disregard the requirement for notice in the interests of justice.

Newfoundland and Labrador

24. Fiverr has breached the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the "***Newfoundland CPBPA***"). Consumer Subclass Members in Newfoundland and Labrador each a "consumer" within the meaning of subsection 2(a)

of the *Newfoundland CPBPA*. The Booking Services are "services" within the meaning of subsection 2(i). Fiverr is a "supplier" within the meaning of subsection 2(j). The supply of the Booking Services in Newfoundland and Labrador constitute "consumer transaction[s]" within the meaning of subsection 2(b).

25. By reason of Fiverr's conduct, Fiverr breached sections 7-9 of the *Newfoundland CPBPA*. Fiverr's actions violate subsections 7(1)(h), 7(1)(l), 7(1)(t), 7(1)(w), and/or 8(1)(f) and constitute "unfair business practices" in breach of section 9(1).

26. As a result of Fiverr's breaches of the *Newfoundland CPBPA*, Consumer Subclass Members in Newfoundland and Labrador are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 10(2)(b). Further or in the alternative, Consumer Subclass Members in Newfoundland and Labrador are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *Newfoundland CPBPA.*

27. Fiverr cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPBPA*, which invalidates any such clause or waiver, rendering it void.

New Brunswick

28. Fiverr has breached the *Consumer Protection Act*, SNB 2024 c 1 (the "***New Brunswick CPA***"). Consumer Subclass Members in New Brunswick are each a "consumer" within the meaning of section 1 of the *New Brunswick CPA*. Fiverr is a "supplier" within the meaning of section 8. The agreements between Fiverr and Consumer Subclass Members in New Brunswick to purchase the Booking Services are each a "consumer agreement" within the meaning of section 1. The sale and supply of the Booking Services from Fiverr to Consumer Subclass Members in New Brunswick are each a "consumer transaction" within the meaning of section 1.

29. By reason of Fiverr's conduct, Fiverr breached sections 8-11 of the *New Brunswick CPA*. Fiverr's actions violate subsections 10(1)(a)-(d), 10(2)(a), 10(2)(j), and/or 10(2)(t)(i)-(ii) and constitute "unfair practice[s]" in breach of subsection 11(1).

30. As a result of Fiverr's breaches of the *New Brunswick CPA*, Consumer Subclass Members in New Brunswick are entitled to damages in the amount of the Service Fees, plus taxes on the Service Fees, paid by them during the Class Period pursuant to subsection 14(2) and/or subsections 16(3)(b) and/or (d)(ii). Further or in the alternative, Consumer Subclass Members in New Brunswick are entitled to damages equal to the amount that they would have paid for the Booking Services absent Fiverr's conduct in breach of the *New Brunswick CPA.*

31. Fiverr cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 6 of the *New Brunswick CPA*, which invalidates any such clause or waiver, rendering it void.

32. Consumer Subclass Members in New Brunswick further plead that the notice requirement pursuant to section 15 of the *New Brunswick CPA* is fulfilled by the delivery of written notice to Fiverr as set out in the Notice of Civil Claim, or in the alternative by the filing of the Notice of Civil Claim. In the further alternative, Consumer Subclass Members in New Brunswick plead that the Court should disregard the requirement for notice in the interests of justice.