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Toronto

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

TREVOR HOPMAN

Plaintiff

- and -

STARBUCKS COFFEE CANADA, INC.

Defendant

Proceeding under the *Class Proceeding Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT

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

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

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

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

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 7, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of 330 University Ave.  
court office Toronto ON M5G 1R7

TO: STARBUCKS COFFEE CANADA, INC.  
5140 Yonge Street, Suite 1205  
Toronto, ON M2N 6L7

## CLAIM

1. The Plaintiff, Trevor Hopman (the “Plaintiff”) claims:
  - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class (as described below);
  - (b) \$50 million in general damages for the Class, or such other sum as this Honourable Court deems just;
  - (c) a declaration that the provisions of the *Employment Standards Act, 2000* (the “*ESA*”) and its regulations, as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below):
  - (d) a declaration that the Defendant violated the terms of the *ESA* and breached the Class Members’ contracts of employment and duty of good faith owed to the Class Members by:
    - (i) classifying the Class Members as exempt from overtime pay;
    - (ii) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week (the “Overtime Threshold”);
    - (iii) failing to ensure that Class Members’ hours of work were monitored and accurately recorded;
    - (iv) failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by the Class Members and ensuring that the Class Members are appropriately compensated for all hours worked; and,

- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold.
- (e) an interim, interlocutory and final order that the provisions of the *ESA* and its regulations, as applicable, are express or implied terms of the contracts of employment of the Class Members (as described below);
- (f) an interim, interlocutory and final order for specific performance directing that the Defendant comply with the contracts of employment with the Class Members, in particular, to:
  - (i) classify the Class Members as entitled to overtime pay;
  - (ii) advise the Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
  - (iii) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
  - (iv) ensure that the Class Members are appropriately compensated for all hours worked in excess of the Overtime Threshold.
- (g) a declaration that the provisions of any applicable store management, scheduling, or overtime policy which may purport to exclude the Class Members from eligibility for overtime pay are void and unenforceable;
- (h) a declaration that the Defendant was unjustly enriched, to the deprivation of the Class Members, in that it received the value of the overtime hours worked by the Class Members without providing the appropriate compensation, with no lawful basis, and an order requiring the Defendant to disgorge to the Class all amounts withheld by it in respect of such unpaid hours;

- (i) a declaration that the Defendant was negligent in the performance of its contracts of employment with the Class Members by, among other things:
  - (i) classifying the Class Members as exempt from overtime pay;
  - (ii) failing to monitor, record and maintain records of all hours worked by the Class Members;
  - (iii) failing to pay for all hours worked by the Class Members, including hours in excess of the Overtime Threshold under the *ESA*, despite requiring and/or permitting and/or suffering such hours to be worked;
  - (iv) failing to advise the Class Members of their right to receive appropriate compensation for such unpaid hours and, in particular, of the express or implied terms of their contracts under the *ESA*;
  - (v) retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;
  - (vi) creating and/or permitting and/or suffering a working environment and circumstances in which the Class Members are: (i) required and/or permitted and/or suffered to work hours in excess of the Overtime Threshold under *ESA*, in order to carry out the duties assigned to them and in order to comply with the Defendant's policy of not permitting other store employees to work hours in excess of the Overtime Threshold; (ii) dissuaded from reporting hours worked in excess of those scheduled; and (iii) dissuaded from claiming or obtaining compensation for their unpaid hours worked in excess of the Overtime Threshold under the *ESA*;
  - (vii) imposing on the Class Members policies that purport to create an unlawful barrier to payment of overtime; and

- (viii) failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by the Class Members and ensuring that the Class Members are appropriately compensated for all hours worked.
- (j) an order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information concerning or relating to overtime hours of work performed by members of the Class, and an order directing the Defendant to preserve and disclose to the Plaintiff all records, in any form, relating to overtime hours worked by members of the Class;
- (k) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- (l) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the overtime hours of work in excess of the Overtime Threshold under the *ESA*, performed by the Class Members;
- (m) pre-judgment and post-judgement interest pursuant to the *Courts of Justice Act*;
- (n) punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as this Honourable Court deems just;
- (o) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (p) the costs of administering the plan of distribution of the recovery in this action in the sum of \$1 million or such other sum as this Honourable Court deems appropriate; and
- (q) such further and other relief as this Honourable Court may deem just.

## **THE PARTIES**

2. The Plaintiff, Trevor Hopman (“Hopman”), resides in Toronto, Ontario. He was employed as a store manager at Starbucks Coffee Canada Inc. (“Starbucks” or “the Defendant”) from 2010 to 2017. During the class period, Hopman worked at the Defendant’s Bay Street and Dundas Street West location from the start of the class period to 2017.

3. The Defendant owns and operates coffee shops serving espresso-based drinks, coffee, tea, and food items. The Defendant is the Canadian subsidiary of Starbucks Corporation, the world’s largest coffeehouse chain. Starbucks Corporation was founded in Seattle, Washington in 1971. Starbucks Corporation operates over 15,000 store locations worldwide, with approximately 1,000 of those locations owned and operated by the Defendant across Canada. In addition to stores owned and operated by the Defendant, a number of licensed Starbucks stores exist in Canada and Ontario. Employees in licensed stores are not employed by the Defendant.

4. The Defendant is a company incorporated pursuant to the laws of Canada.

5. The Defendant has not adopted a franchise structure in Canada. Except for licensed stores, the Defendant owns and operates all stores in Ontario, and employs all store managers in its stores.

6. The Defendant is provincially regulated and its employment contracts with the Class members are governed by the *ESA*.

## THE CLASS

7. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following class of persons:

All current and former employees of Starbucks Coffee Canada Inc. who held the position of Store Manager at Starbucks-operated stores in Ontario from October 1, 2014 to the date of certification.

(the “Class” or “Class Members”).

**Clarity note:** the proposed Class excludes those individuals who were employed at licensed stores.

## SYSTEMIC MISCLASSIFICATION OF CLASS MEMBERS AS OVERTIME EXEMPT

8. The Defendant has uniformly misclassified the Class Members as exempt from overtime, contrary to the provisions of the *ESA* and its regulations.

9. The *ESA* requires employers to pay overtime to employees for work beyond 44 hours per week unless the employees fall within a specific exemption. Section 4 of *O. Reg. 285/01* provides an exemption for “a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis”. Managers or supervisors who perform non-supervisory or non-managerial tasks on a regular and non-exceptional basis do not fall within the exemption. That is, the exemption does not apply to “working managers” who regularly work alongside the individuals they supervise performing the same non-exempt duties. Such “working managers” are entitled to overtime for hours worked beyond 44 hours per week in the same manner as the employees they supervise.



10. The Class Members do not fall within the managerial exemption to overtime in the *ESA* because they are regularly scheduled to perform non-supervisory and non-managerial duties in the ordinary course of their employment. The Class Members are required to perform non-supervisory and non-managerial duties on a weekly basis regardless of store location, size, or individual preference. The Class Members are “working managers” who regularly and routinely perform the non-supervisory and non-managerial work of the non-exempt individuals they supervise.

11. Class Members work in the Defendant’s storefront operations. Each Store Manager is assigned to work at a particular store and reports to a District Manager assigned to monitor and supervise a group of approximately 10 stores. There is only one Store Manager assigned to a particular Starbucks store at any given time.

12. It is acknowledged that the Store Manager role includes the performance of supervisory and managerial duties. The supervisory and managerial duties of Store Managers include hiring store employees, creating the weekly schedule, processing payroll, monitoring and maintaining inventory, attending meetings with their District Manager, and conducting one-on-one performance management meetings with store employees. However, the Store Managers are required, pursuant to the Defendant’s common policies, on a regular and non-exceptional basis, to perform duties that are not supervisory or managerial (and indeed are the very same duties performed by the store employees classified as non-exempt).

13. Class members’ hours and schedules are based on Starbucks’ standard scheduling policies and practice. The Class members are scheduled for a limited number of “non-coverage”

hours each week during which they are not covering the floor, and are instead performing administrative, managerial and supervisory duties.

14. Class Members are allotted a limited number of non-coverage hours per week by the Defendant, and the Defendant controls and limits the number of non-coverage hours allotted to each store. Class Members are required to submit their weekly schedules to their District Manager demonstrating that they have not exceeded the allotted number of non-coverage hours.

15. If a particular store has an Assistant Store Manager or a Manager-in-Training in addition to a Store Manager, the non-coverage hours allotted to the store can be divided between the Store Manager, Assistant Store Manager, and Manager-in-Training, further limiting the number of non-coverage hours worked by a Store Manager.

16. When not performing “non-coverage hours”, Class Members are required to work on the store floor, known as “coverage hours”, on a regular and non-exceptional basis every week. Regardless of store location, size or individual preference, Class Members are scheduled to work coverage hours for at least 26 hours per week. During their regularly scheduled coverage hours, Class Members are required to perform, and do perform, non-supervisory and non-managerial duties and tasks alongside the individuals they supervise. Work performed by Class Members during “coverage hours” on the floor includes:

- (a) opening and closing;
- (b) preparing drinks and food at the bar;
- (c) washing dishes;

- (d) serving customers by taking orders, processing transactions and performing general customer service and responding to customer inquiries;
- (e) cleaning all parts of the store from the floors, counters, tables, chairs, condiment bars, trash cans, patio areas, backroom and front-of-house cleaning tasks for sinks, coffee and espresso machines, pastry cases, and refrigerators;
- (f) routine maintenance and cleaning of all machines such as bean grinders and ice machines;
- (g) setting up displays in the store;
- (h) assisting on the floor and answering phones;
- (i) putting away deliveries of inventory; and,
- (j) re-stocking cups, lids, syrups, milks, prepared items, ready to drink items, as well as items in condiment bars.

17. The Class Members' performance of duties on the store floor such as making drinks and preparing food, cleaning the store, and serving customers is not unusual, exceptional, unexpected, unscheduled or sporadic. The Class Members perform these duties within the ordinary course of their employment on a routine and regular basis every week, as required by the Defendant and as contemplated by its standard policies.

18. When performing coverage hours and working on the store floor, Class Members complete the same duties and tasks performed by Baristas, Shift Supervisors, Trainers, Managers-in-Training, and Assistant Store Managers – employees of the Defendant who are classified by the Defendant as being entitled to overtime pay under their employment contracts. Class Members work alongside these other employees while supervising/managing their work.

Class Members are accordingly “working managers” who are entitled to overtime under the terms of the *ESA*.

19. Class Members are required pursuant to the Defendant’s October 2014 Store Management Scheduling Principles (“Scheduling Principles”) to work coverage hours on the floor during busy and peak periods each week.

20. Pursuant to the Defendant’s Scheduling Principles, the Class Members are required to:

- (a) work coverage hours on the three (3) busiest days at their store each week and work a minimum of four (4) weekend days each month;
- (b) work coverage hours during peak hours on the busiest days;
- (c) work for a minimum of one (1) opening shift and one (1) closing shift per month with their remaining shifts covering a range of the other parts of the day while ensuring that they are working coverage hours on the floor on the busiest days and the busiest times of day;
- (d) work opposite shifts to managers-in-training and shift supervisors.

21. These requirements necessitate the Class Members performing non-managerial and non-supervisory work on a routine and regular basis.

### **SYSTEMIC UNPAID OVERTIME WORKED BY THE CLASS MEMBERS**

22. The Defendant systemically classifies the Class Members as exempt from overtime.

23. The Defendant systematically requires and/or permits the Class Members to work hours in excess of their regular scheduled hours and the Overtime Threshold in order to perform their job responsibilities.

24. Class Members are regularly required to work additional hours and shifts in order to complete their necessary tasks and duties, or when employees call in sick, quit while still on the schedule, show up late, or no-show for their shifts. Class Members are also regularly required to work through their unpaid lunches and to start work prior to their scheduled shifts in order to complete their necessary tasks and duties. The need for such additional hours and shifts arises regularly and not only due to emergencies. Notwithstanding the foregoing, the Class Members are also on call if emergencies in the store arise. As a result of the additional hours and shifts, which are necessary to the operation of the Defendant's stores, Class Members work overtime for which they are not appropriately compensated.

25. The Defendant's Scheduling Principles require that overtime (i.e. for non-exempt employees) should only be used in emergency situations and requires prior approval from District Managers, who must in turn provide rationale for any authorized overtime to Regional Directors. Consistent with these principles, Store Managers do not schedule non-exempt employees for shifts that will place them over the Overtime Threshold, and instead must perform the additional shifts themselves. As a result, the Defendant induces, requires, permits or suffers Class Members to work overtime hours.

26. The Defendant also requires Class Members to work all statutory holidays so as to avoid paying overtime or holiday pay to store employees classified by the Defendant as entitled to overtime, such as Baristas and Shift Supervisors.

27. The Defendant was aware that the Class Members relied on the Defendant to advise them properly regarding eligibility for overtime pay, and to fulfill their contractual and statutory

employment responsibilities to keep track of and pay the Class Members for such overtime worked.

28. Contrary to the Defendant's duties, the Defendant has failed to monitor or accurately record the actual hours worked by Class Members. In fact, the Defendant prohibits Store Managers from tracking and recording their hours of work by 'clocking-in' or 'clocking-out' in the Defendant's timekeeping system, while requiring all other employees in a store, such as Baristas, Trainers, Shift Supervisors, Store Managers-in-Training, and Assistant Store Managers, to 'clock-in' and 'clock-out'.

29. The Defendant exerts systemic, pervasive pressure on Class Members to work hours in excess of the Overtime Threshold, including through its policies. If Class Members do not work the overtime as required to complete their employment responsibilities, such Class Members risk negative performance reviews, discipline, and termination.

#### **CLASS MEMBERS' CONTRACTS OF EMPLOYMENT - OVERTIME**

30. The Defendant systemically classifies the Class Members as exempt from overtime.

31. The provisions of the *ESA* are implied, by fact or by law, in the employment contracts of the Class Members. As such, the contracts require that Class Members shall be compensated at one and one half times their regular rate for every hour worked per week in excess of the Overtime Threshold of 44 hours per week as mandated by the *ESA*, plus vacation pay.

### **PLAINTIFF'S EMPLOYMENT – JOB DUTIES AND HOURS OF WORK**

32. From 2010 to 2017, Hopman worked at two different Starbucks stores in Toronto as a Store Manager. From September 2010 to November 2010, Hopman was a store manager-in-training at Starbucks' store at Toronto General Hospital. From November 2010 to August 2013, Hopman was the Store Manager at Starbucks' Queen Street West and Bathurst Street location. From August 2013 to October 2017, Hopman was the Store Manager at Starbucks' Bay Street and Dundas Street West location.

33. As Store Manager, Hopman was scheduled to work 8.5 hour days, with a 30 minute unpaid lunch each day, for a 40 hour work week. Hopman regularly worked significantly more than 40 hours per week to complete the demands associated with his position.

34. Hopman's store was allotted an average of twelve (12) non-coverage hours per week.

35. During non-coverage hours, Hopman created the store's weekly schedule, monitored and maintained inventory, hired new employees, attended meetings with his District Manager, reviewed and responded to e-mails, and conducted one-on-one performance reviews with store employees.

36. While Hopman's role was supervisory and managerial in character, Hopman regularly performed work that was not supervisory or managerial in character in the normal course of his employment. The non-managerial and non-supervisory duties which Hopman regularly performed during his required coverage hours on the store floor included making drinks, cleaning, serving customers, and working cash. During such hours, he performed the same

duties as Baristas, Trainers, Shift Supervisors, Managers-in-Training and Assistant Store Managers when they were scheduled to work on the store floor.

37. Although all other store employees 'clocked-in' and 'clocked-out' for all hours worked, Hopman, as the Store Manager, was not permitted by the Defendant to do so.

38. Hopman's regular and non-exceptional performance of non-exempt duties (e.g. the coverage work) is consistent with the responsibilities of and work performed by all Store Managers in the Class, and with the Defendant's standard policies.

39. As a Store Manager, Hopman worked between 50 to 80 hours per week, including weekends. Hopman regularly worked through his 30-minute unpaid lunch and regularly started working 30 minutes before his scheduled shift started. Hopman also worked additional hours and shifts to complete the necessary tasks and duties of his position. This included working additional coverage hours when employees called in sick, quit while still on the schedule, showed up late, or no-showed for their shifts. Hopman frequently worked 12- to 18-hour shifts where he would work from before the store opened until after it closed. Hopman was also on call to be contacted by store employees for emergencies as needed.

40. The Defendant was aware of and encouraged Hopman's overtime hours which were necessary in order to accomplish the duties he was assigned and avoid paying overtime to employees in the store who were classified as entitled to overtime, such as Baristas and Shift Supervisors.

41. The Defendant required, induced, suffered and/or permitted Hopman to work overtime and failed or refused to provide him compensation as required.



42. The Defendant required Hopman to work hours in excess of the Overtime Threshold without overtime pay, contrary to the *ESA*.

43. Starbucks represented to the Class Members through its common written policies that they were exempt from overtime, when they were not. Hopman relied on the Defendant's obligation of good faith and was unaware while working for the Defendant or afterwards that he was entitled to overtime pay for the hours he worked in excess of the Overtime Threshold while an employee of the Defendant. At the time, Hopman relied on the Defendant to properly advise him regarding his entitlement to overtime and was misled by the Defendant that he was not entitled to overtime pay. Hopman did not become aware that he was eligible for overtime because the Defendant had continually misrepresented to him his actual eligibility for, and entitlement to, such overtime pay.

44. Hopman pleads that he is owed tens of thousands of dollars in unpaid overtime, plus accrued interest and applicable vacation pay, for hours worked in excess of the Overtime Threshold at the rate of one and one-half his regular rate.

#### **CONTRACTUAL DUTIES OWED TO CLASS MEMBERS**

45. The Class Members relied on the Defendant to advise them properly regarding their eligibility for overtime pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for such overtime worked. As a result of their position of power and influence over the Class Members as their employer, and as a result of the vulnerable position of the Class Members vis-à-vis the Defendant, the Defendant owed a contractual duty of good faith to the Class Members.

46. The Defendant's contractual duties, including its duty of good faith, required the Defendant to:

- (a) classify the Class Members as entitled to overtime pay;
- (b) advise Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
- (c) ensure that the Class Members hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated for hours worked in excess of the Overtime Threshold.

**BREACH OF THE *ESA***

47. The Defendant has systemically breached the provisions of the *ESA* with respect to all Class Members by:

- (a) classifying the Class Members as exempt from overtime pay;
- (b) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of the applicable standard hours of work;
- (c) failing to ensure that the Class Members hours of work were monitored and accurately recorded; and
- (d) requiring and/or permitting the Class Members to work overtime hours but failing to ensure that Class Members were compensated for hours worked in excess of the Overtime Threshold.

48. Starbucks' misclassification and denial of overtime pay to Class Members is in violation of the *ESA* and is unlawful. To the extent that any internal Starbucks policy purports to exclude

the Class Members from eligibility for overtime pay, such provisions are void and unenforceable.

49. Such breaches were ongoing and continuous in respect of the Class Members since at least October 2014.

#### **SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH**

50. The Defendant systematically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) classifying the Class Members as exempt from overtime pay;
- (b) misrepresenting to the Class Members that the Class Members were not entitled to overtime pay;
- (c) failing to monitor and keep track of the overtime hours worked by the Class Members; and,
- (d) inducing, suffering, requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold.

51. The Class Members regularly and on a non-exceptional basis perform non-managerial and non-supervisory work. There is no legitimate basis for the Defendant's exclusion of the Class Members for eligibility for overtime pay. Such exclusion is contrary to the terms of the *ESA*, which are incorporated into the terms of the Class Members' employment contracts.

52. Such breaches are ongoing and continuous in respect of the Class Members since at least October 2014.

## **UNJUST ENRICHMENT**

53. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members in excess of the Overtime Threshold.

54. The Class Members have suffered a corresponding deprivation, in the form of the overtime wages for the hours worked in excess of the Overtime Threshold.

55. There is no juristic reason for the Defendant's unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from eligibility for overtime is unlawful.

56. The Defendant's unjust enrichment has been continuous and ongoing since at least October 2014.

## **SYSTEMIC NEGLIGENCE**

57. The Defendant owes a duty of care to the Plaintiff and to other Class Members to ensure that they were accurately classified as entitled to overtime and properly compensated for all hours worked. The Defendant breached this duty by, among other things:

- (a) classifying the Class Members as exempt from overtime pay;
- (b) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (c) failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by the Class Members and ensuring that the Class Members are compensated for all hours worked;

- (d) failing to record and maintain accurate records of all hours worked by the Class Members; and,
- (e) failing to advise the Class Members of their entitlement to Overtime Pay for hours worked in excess of the Overtime Threshold.

58. The Defendant's negligence has been continuous and ongoing since at least October 2014.

### **DAMAGES**

59. As a result of the Defendant's breaches of contract, breaches of the *ESA* and/or unjust enrichment and/or negligence, Class Members have been denied appropriate compensation for the hours they worked in excess of the Overtime Threshold, for which the Defendant is liable to the Class Members.

60. Furthermore, the Defendant's misclassification of the employees as being excluded from overtime pay, coupled with the Defendant's requirement of the Class Members to work overtime, is high handed and callous. The Defendant is in a position of power and owes a duty of good faith which the Defendant flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of aggravated, exemplary and punitive damages.

### **PREFERABLE PROCEDURE**

61. A class proceeding is preferable to a multitude of individual employment standards complaints or individual claims in Small Claims Court or Superior Court. A class proceeding is superior to all reasonably available means of determining the entitlement of the Class Members to relief and addressing the impugned conduct of the Defendant, including, a

multitude of individual employment standards complaints or individual claims in Small Claims Court or Superior Court. The questions of fact or law common to the Class Members in this action predominate over any questions affecting only individual Class Members.

62. A class proceeding will advance the three goals of the *Class Proceedings Act, 1992*, namely, judicial economy, access to justice, and behaviour modification.

63. A class proceeding will advance the goal of judicial economy by preventing the need for thousands of individual employment standards complaints or civil actions, and potential appeals therefrom.

64. A class proceeding will advance the goal of access to justice by providing a remedy for the Defendant's employees, who, as non-unionized employees, face well-documented systemic barriers to enforcing their rights under the *ESA*.

65. Finally, a class proceeding will promote behaviour modification by addressing the systemic policies and practices of the Defendant.

66. Accordingly, a class proceeding is the preferable procedure for addressing the Plaintiff's claims.

67. The Plaintiff pleads and relies on the following statutes and regulations:

- a. *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- b. *Employment Standards Act, 2000*, S.O. 2000, c. 41 and the regulations thereunder.

68. The Plaintiff proposes that this action be tried in Toronto.

August 7, 2020

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Plaintiff                      and                      Defendant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding Under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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