

Court File No.: CV-18-005980-2019-07-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

D'ANDRA MONTAQUE

- and -

HANDA TRAVEL STUDENT TRIP LTD. o/a I LOVE TRAVEL, CAMPUS VACATIONS
HOLDINGS INC., 2504027 ONTARIO INC. o/a S-TRIP! and 2417988 ONTARIO INC. o/a
BREAKAWAY TOURS

Defendants

PROCEEDING UNDER THE CLASS PROCEEDING ACT, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

AMENDED THIS February 27, 2019
MODIFIEE
Pursuant to Rule 1.01
CONFORMEMENT A
RÈGLE/LA RÈGLE 26.02 (A)
THE ORDER OF THE COURT
L'ORDONNANCE DU JUGE
DATED / FAIT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COURT SUPÉRIEURE DE JUSTICE

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: May 22, 2018

Amended: _____

Issued by " S. Riccio "
Local registrar

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

TO: HANDA TRAVEL STUDENT TRIP LTD o/a I LOVE TRAVEL
337 Queen St. W.
Toronto, ON M5V 2A4

AND TO: CAMPUS VACATIONS HOLDINGS INC.
337 Queen St. W.
Toronto, ON M5V 2A4

AND TO: 2504027 ONTARIO INC. o/a S-TRIP!
337 Queen St. W.
Toronto, ON M5V 2A4

AND TO: 2417988 ONTARIO INC. o/a BREAKAWAY TOURS
337 Queen St. W.
Toronto, ON M5V 2A4

CLAIM

1. The Plaintiff, D'Andra Montaque (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) \$5 million in general damages for the Class, or such other sum as this Honourable Court deems just;
 - (c) A Declaration that the Class Members are, or were, employees of the Defendants who are operating as a common employer, for the purposes of the *Employment Standards Act, 2000* (the "ESA") and at common law;
 - (d) A Declaration that there exists a contract of employment between each Class Member and the Defendants;
 - (e) A Declaration that it is an implied or express term of all contracts of employment between the Class Members and the Defendants that the Class Members are or were to be paid wages, back pay, vacation pay, public holiday and premium pay and overtime pay in accordance with *ESA*, and that the Defendants were to make *Canada Pension Plan* ("CPP") and *Employment Insurance Act* ("EI") contributions as required by law;
 - (f) A Declaration that the terms and conditions of the Class Members' contracts of employment which contravene the prohibition on contracting out of employment standards set out at section 5(1) of the *ESA* are void and unenforceable;
 - (g) a Declaration that the Defendants breached the Class Members' contracts of employment and the duty of good faith owed to the Class Members by:
 - (i) failing to ensure that Class Members were properly classified as employees;

- (ii) failing to advise Class Members of their entitlement to compensation at or above the minimum wage as stipulated by the *ESA* (the “Minimum Wage”);
- (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
- (iv) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
- (v) 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;
- (vi) failing to record and maintain accurate records of all actual hours worked by the Class Members;
- (vii) failing to advise the Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the “Overtime Threshold”);
- (viii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* (“Vacation Pay”);
- (ix) failing to compensate Class Members for Vacation Pay;
- (x) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the “Public Holiday and Premium Pay”); and
- (xi) failing to compensate Class Members for Public Holiday and Premium Pay.

- (h) an interim, interlocutory and final Order that the provisions of the applicable employment standards legislation, as applicable, are express or implied terms of the contracts of employment of the Class Members (as described below);
- (i) an interim, interlocutory and final Order for specific performance directing that the Defendants comply with the contracts of employment with the Class Members, in particular, to:
 - (i) ensure that the Class Members are properly classified as employees;
 - (ii) ensure that the Class Members' hours of work are monitored and accurately recorded;
 - (iii) advise the Class Members of their entitlement to Minimum Wage, overtime pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay; and
 - (iv) ensure that the Class Members are appropriately compensated for all hours worked at a rate equal to or above Minimum Wage, overtime pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay.
- (j) a Declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of the unpaid hours worked by the Class Members without providing the appropriate compensation and without making *CPP* or *EI* contributions, with no lawful basis, and an order requiring the Defendant to disgorge to the Class all amounts withheld by them in respect of such unpaid hours;
- (k) a Declaration that the Defendants were negligent in the performance of their contracts of employment with the Class Members by, among other things:
 - (i) failing to ensure that Class Members were properly classified as employees;

- (ii) failing to advise Class Members of their entitlement to compensation at or above the Minimum Wage;
 - (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
 - (iv) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
 - (v) 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;
 - (vi) failing to record and maintain accurate records of all actual hours worked by the Class Members;
 - (vii) failing to advise the Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
 - (viii) failing to advise Class Members of their entitlement to Vacation Pay;
 - (ix) failing to compensate Class Members for Vacation Pay;
 - (x) failing to advise Class Members of their entitlement to Public Holiday and Premium Pay; and
 - (xi) failing to compensate Class Members for Public Holiday and Premium Pay; and
 - (xii) retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid compensation and *EI* and *CPP* premiums.
- (l) an Order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information concerning or

relating to 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 hours worked by members of the Class;

- (m) an Order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- (n) an Order directing the Defendants to preserve and disclose to the Plaintiff all records (in any form) relating to the hours of work, including hours of work both below and in excess of the overtime threshold, performed by the Class Members;
- (o) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (p) punitive, aggravated and exemplary damages in the amount of \$2 million, or such other amount as this Honourable Court deems just;
- (q) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (r) 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
- (s) such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff resides in the City of Toronto. She was employed by the Defendants as a Trip Leader in the summer of 2017 staffing an “S-Trip” grad trip from Toronto, Ontario to Cayo Coco, Cuba.

3. The Defendants, Handa Travel Student Trip Ltd. o/a I Love Travel, Campus Vacations Holdings Inc., 2504027 Ontario Inc. o/a Breakaway Tours and 2417988 Ontario Inc. o/a S-Trip! (collectively referred to as the “S-Trip” or the “Defendants”) are one employer within the

meaning of section 4 of the *ESA* and at common law who operate a travel agency catering to the student and youth market. The Defendants share the same registered office address at 337 Queen Street West, Toronto, Ontario, and all operate in the travel industry under the common control and direction of their principal, Alex Handa.

4. The Defendants operate and represent themselves to the public under several business names, including S-Trip, Breakaway Tours and I Love Travel, all of which offer substantially the same services to the youth travel market. S-Trip, Breakaway Tours and I Love Travel operate virtually identical websites advertising their services and all share one unified online “job board” to job post opportunities and to recruit staff. The Defendants share a single Destination Staffing Manual and describe themselves in the Manual as a “family of brands”.

5. The Defendants’ primary business is to sell and deliver vacation packages to student-age travellers under their I Love Travel, S-Trip and Breakaway Tours brands. The work of Trip Leaders such as the Plaintiff is central to their operations.

6. The Defendants were founded in 2005 and have experienced significant growth since their inception. In 2006, the Defendants’ revenue was reported at \$612,491. By 2011, this figure had ballooned to \$22,525,207. In 2013, the Defendants were ranked number 25 on the PROFIT 500 list of Canada’s fastest growing companies. Today, the Defendants take over 25,000 students on trips to more than 40 locations around the world each year.

7. The Defendants operate a private business which sells trips to vacationers in pursuit of profit. They are not a registered charity, and serve no civic, religious or charitable purpose. The Defendants provide a service to their customers in exchange for monetary payment, often in sums well in excess of \$1000 per passenger.

THE CLASS

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

All persons who worked as Trip Leaders for the Defendants on trips under their Breakaway Tours and/or S-Trip brands commencing in or departing from Ontario at any time during the period from ~~May 22, 2016~~ June 3, 2014 to the date of certification.

THE DEFENDANTS' OPERATIONS AND BUSINESS STRUCTURE

9. The Defendants are a travel company which employ "destination staff" to operate their trips. The Defendants' destination staff include Trip Leaders, Coordinators and Program Directors.

10. Trip Leaders are the Defendants' front-line staff. They are responsible for guiding travelers from their point of origin to their destination, and back home safely. Trip Leaders are the first point of contact between the Defendants and their customers during their trips and are the main point of contact whenever their passengers have questions or concerns.

11. Coordinators are senior staff members who manage and execute one specific aspect of a program. "Coordinator" positions include the Lead Coordinator, Staff Coordinator, Admin Coordinator, Student Coordinator, Volunteer Coordinator and Events Coordinator. Coordinators have typically worked as Trip Leaders on previous trips for the Defendants prior to assuming the role of Coordinator.

12. Program Directors are senior staff members who oversee all aspects of one program. They are responsible for managing the overall execution of the program and the Coordinators on

that program. Program Directors work closely with hotel staff and suppliers to make sure everything is going to plan and running up to the Defendants' standards. Programs Directors have typically worked as Trip Leaders and as Coordinators on previous trips prior to assuming the Program Director role.

13. The Defendants also employ full-time staff, primarily out of their headquarters in Toronto, Ontario. The Defendants represent on their website that 80% of their full-time staff started as destination staff and represent in their Destination Staff Manual that "some of our senior full-time staff members started off as Trip Leaders on our trips not too long ago!" Job postings for full-time staff are posted on the same "job board" as destination staff positions.

14. Because the Defendants' clientele are school-aged youth (some of whom are legal minors) who are travelling away from home without their parents, adult supervision and chaperoning of their passengers is an essential part of their operations.

15. The level of adult supervision on the Defendants' trips is a key concern for parents when considering whether to allow their children to go on a trip with the Defendants. These concerns have been heightened in the wake of recent media coverage scrutinizing the Defendants' operations.

16. In response to such concerns, the Defendants have developed a "Myths about S-Trip" section of the S-Trip website which addresses, among other things, the level of adult supervision on their trips and the amount of training provided to Trip Leaders. The S-Trip website boasts of a Trip Leader to student ratio of at least 1:25, and of its training and "extensive screening process" to "ensure we only have the best of the best".

THE DEFENDANTS' TRIP LEADER POSITION

17. Trip Leaders are integral to the Defendants' operations, which could not function without their services. Recognizing their essential contributions, the Defendants describes its Trip Leaders in their Destination Staff Manual as the "**heart and soul** of our Destination team!" [emphasis in original].

18. Given the central role played by Trip Leaders in their operations, the Defendants' subject their Trip Leaders to a rigorous six-step recruitment and training process which includes: a job application; a phone interview; an in-person training session; completion of an availability form; and, the successful completion of a Garda Pre-Employment Background Check.

19. Trip Leaders who successfully complete the Defendants' rigorous screening process and who are hired by the Defendants are provided in-depth training on all aspects of their employment duties and responsibilities with the Defendants. These duties and responsibilities are set out in detail in the Trip Leader Handbook. The Defendants strongly encourages their Trip Leaders to follow the Handbook.

20. Trip Leaders who are offered a position with the Defendants are required to sign a standard form Trip Leader Agreement with the Defendants.

21. The standard form Trip Leader Agreement stipulates that "I agree to cooperate and take direction from my supervising Coordinator(s), Program Director(s) and Office Staff. I will be prompt for my scheduled duties & at no point should I take upon myself to change my schedule or duties."

22. Trip Leaders' responsibilities set out in their Trip Leader Agreements include, but are not limited to:

- (a) Customer service and passenger assistance;
- (b) Communication with trip organizers, passengers and all full-time staff and volunteers;
- (c) Assisting with all activities, events, excursions, info desks and check-in and check-out procedures;
- (d) Collecting code of conduct letters and damage deposits/damage insurance from travellers;
- (e) Performing room checks and passenger sign-ins;
- (f) Completing detailed incident reports;
- (g) Escorting passengers on excursions and/or to the hospital or clinic;
- (h) Promoting trip program calendar;
- (i) Attending morning and evening staff meetings;
- (j) Ensuring passengers are having a great and safe trip; and
- (k) Following the S-Trip handbook and procedures.

23. Trip Leaders are subjected to uniform training practices and procedures and are provided standard manuals and handbooks, including the Destination Staff Manual and the Trip Leader Handbook. Trip Leaders are provided in-depth training on all aspects of their employment duties and responsibilities with the Defendants.

24. Section 2 of the Destination Staff Manual explains the duties that may be assigned to the Trip Leaders, including with respect to: Info Desk; Roaming/Hype/Pool/Beach Duties; Excursion/Event Duties; and, Staff Meetings.

25. Section 4 of the Destination Staff Manual explains the procedures and protocols the Trip Leaders are required to follow, including with respect to: pre-trip procedures; airport and flight procedures; bus procedures; emergency and on-site procedures; briefing sessions; check-ins; student sign-in and room checks; and, check-out and returning home.

26. The Trip Leader Handbook provides the following list of “trip leader responsibilities”:

- (a) Travel with students to and from destination;
- (b) Create a big sister/brother relationship with travellers;
- (c) Hype and participate in day time excursions/volunteer with travellers;
- (d) Hype and participate in night events on and off the resort;
- (e) Expect to work 14 hour days;
- (f) Care for and resolve low level traveller issues;
- (g) Accompany travellers to the clinic or hospital (as needed);
- (h) Minimize and resolve “high school drama”; and
- (i) Actively participate in team meetings twice daily.

27. The Trip Leader Handbook reiterates and expands upon the Destination Staff Manual by setting out further details regarding Trip Leaders’ duties and responsibilities with respect to the pre-trip meeting, preparation for the pre-trip meeting, organizer calls, money collection, form

collection, duties during overnight stays prior to travel day, duties and responsibilities on travel day, and all aspects of on-trip duties.

28. The Defendants use the Trip Leader Handbook to ensure the Class Members are consistent in their application of the Defendants' procedures and protocols. The Class Members are encouraged by the Defendants to refer to the Trip Leader Handbook for instructions. Trip Leaders are encouraged to review and memorize the Handbook in advance of their trip, and are advised to refer back to it when in doubt.

29. The Defendants set out strict mandates in the Destination Staff Manual and the Trip Leader Agreement with regard to the personal conduct of the Class Members. The Defendants requires that the Class Members not drink or use drugs or engage in any physical contact or sexual or romantic relations with passengers, staff, other guests or suppliers. The Defendants have a "zero tolerance" policy with respect to alcohol consumption, inappropriate relationships and drug consumption or possession.

SYSTEMIC MISCLASSIFICATION OF CLASS MEMBERS

30. Despite their centrality to the Defendants' operations, the Class Members are misclassified by the Defendants as "volunteers".

31. The Defendants require the Class Members to sign a standard form Trip Leader Agreement which purports to contract out of their rights under the *ESA*. It stipulates that "I understand that I am engaging as a volunteer providing services to the company, that I am not engaged as an employee, and that no employment relationship is established between myself and the company."

32. Despite the Trip Leader Agreement which purports to characterize Trip Leaders as “volunteers”, the Defendants otherwise use the language of employment to describe the work performed by Class Members: the Trip Leader position is referred to as a “job”; the Defendants represent that they are “hiring” destination staff; working for the Defendants is referred to as “staffing”; and Trip Leaders are referred to as “staff”.

33. Furthermore, the Defendants’ recruitment processes and techniques use the language of employment and represent destination staff positions to the public in a manner that is consistent with employment: the Defendants advertise their destination staff positions on their “job board” on their website alongside full-time salaried positions; the Defendants promote destination staff employment on their Instagram account using the Instagram handle “@JobOfALifeTime”; and, the Defendants regularly use and encourage the use of the hashtag #JobOfALifeTime in reference to their destination staff positions.

34. The Defendants represent to their current and prospective Trip Leaders that they can work their way through the ranks in the company, starting as a Trip Leader. To this effect, Trip Leaders are emailed to encourage them to apply for Coordinator positions as they come available, and the Defendants represent on their website that 80% of its full-time staff started as destination staff, and in their Destination Staff Manual that “some of our senior full-time staff members started off as Trip Leaders on our trips not too long ago!”

35. The Defendants compensate their destination staff with an “honorarium”. This “honorarium” is set out in the Destination Staff Manual in accordance with the following compensation grid:

Honorariums

The chart below will explain the different honorariums we provide every time you volunteer on one of our programs. The honorarium will differ based on the number of trips with I Love Travel, and responsibilities while on destination. Please review your Destination Staff Volunteer Agreement for full details.

<i>Position</i>	<i># of Trips</i>	<i># of Trips</i>	<i># of Trips</i>
	1 - 2	3 - 4	5+
Directors & Coordinators	\$300/Program	\$450/Program	\$600/Program
Trip Leaders	\$150/Program	\$225/Program	\$300/Program

36. The “honorarium” provided by the Defendants purports to provide increased payments to destination staff based on their seniority of service, as calculated by the number of trips they have completed, and differentiates between Trip Leaders, on the one hand, and Directors and Coordinators on the other. The Defendants do not deduct income tax or EI or CPP Premiums from the honorarium on behalf of its destination staff.

37. All destination staff are required to wear uniforms branded with the Defendants’ logos at all times throughout the duration of their trip. Uniforms include lanyards, badges, and branded hats, backpacks and outerwear. The Defendants deduct \$80 from its Trip Leaders’ honorarium on their first trip for the cost of their uniform.

38. The Defendants pay their destination staff their honorarium, less applicable uniform deductions, upon completion of their trip.

39. The Defendants’ require the Class Members to work long hours; however, the remuneration paid to the Class Members does not change based on the number of hours they work. Moreover, while the Defendants represent to Trip Leaders that they should expect to work

in excess of 14 hours per day, they have no systems in place to track or record the actual hours worked by Trip Leaders.

CLASS MEMBERS' EMPLOYMENT RELATIONSHIP WITH THE DEFENDANTS

40. The nature of the duties performed by Class Members for the Defendants and the training, supervision and control imposed on Class Members by the Defendants establishes an employment relationship. In particular:

- (a) Class Members are the face of the Defendants' operations and are the primary point of contact between the Defendants and their customers during their trips;
- (b) The Defendants' operations in general, and the work performed by Class Members specifically, serves no civic, religious or charitable purpose;
- (c) The Defendants are not a registered charity, but rather are for-profit corporations;
- (d) Class Members are subjected to a rigorous six-step interview and recruitment process which includes: a job application; a phone interview; an in-person group interview and training session; completion of an availability form; and the successful completion of a Garda Pre-Employment Background Check;
- (e) Class Members are provided extensive training by the Defendants which includes: the provision of detailed manuals and handbooks on all aspects of their work for the Defendants; a mandatory Certification Test; a pre-trip meeting training session; and continuous on-the-job training by the Defendants' full-time employees and senior destination staff;
- (f) Class Members are subjected to review and evaluation by the Defendants which includes: the interview process; the Certification Test; continuous on-the-job evaluation; and its post-trip "staff survey" and the recording of ratings on Class Members' staff profiles;

- (g) Class Members are required to wear their company branded uniform at all times throughout the duration of their trips;
- (h) Class Members are provided extensive instructions, guidelines and manuals on all aspects of their work for the Defendants;
- (i) Class Members are assigned mandatory duties and schedules by the Defendants. The Defendants schedule when, where and how the Class Members perform their work as Trip Leaders;
- (j) The duties and responsibilities assigned by the Defendants to Class Members are mandatory and obligatory, and not voluntary;
- (k) The Defendants' business cannot function without the work performed by the Class Members;
- (l) Class Members are remunerated by the Defendants in exchange for their work performed as Trip Leaders; and
- (m) The remuneration provided to the Class Members by the Defendants increases on a fixed scale based on the number of trips the Class Members have worked for the Defendants.

UNIFORMITY OF TERMS AND CONDITIONS OF EMPLOYMENT

41. At all material times, the terms and conditions of employment of the Class Members were uniform and consistent across the Class in all material respects.

42. At all material times, the policies and practices of the Defendants that affect the conditions of the Class Members' employment were materially uniform and consistent across the Defendants' operations.

43. At all material times, the duties performed by and associated with the Class Members were materially uniform and consistent across the Defendants' operations. All aspects of the

Class Members' duties and responsibilities are set out in the Destination Staff Manual, the Trip Leader Handbook, and the Trip Leader Agreement.

44. Class Members are subjected to a uniform six-step recruitment process, set out above at paragraph 18.

45. Class Members are required by the Defendants to sign a standard form Trip Leader Agreement.

46. Class Members are assigned uniform duties and responsibilities in their Trip Leader Agreements, set out above at paragraph 22.

47. Class Members are subjected to uniform training practices and procedures and are provided standard manuals and handbooks, set out above at paragraphs 23 to 29.

48. The Class Members are uniformly required to work extremely long hours as a condition of their employment with the Defendants. The Trip Leader Handbook stipulates that it is one of the Class Members' responsibility to "Expect to work 14 hour days".

THE PLAINTIFF'S EMPLOYMENT WITH THE DEFENDANTS

49. The Plaintiff was employed by the Defendants as a Trip Leader to staff an "S-Trip" grad trip from Toronto, Ontario to a resort in Cayo Coco, Cuba in July 2017.

50. The Plaintiff was employed pursuant to a standard form Trip Leader Agreement with the Defendants. She was recruited and trained pursuant to the Defendants' standard recruitment and training practices and her employment was subject to the Defendants' Destination Staff Manual, Trip Leader Handbook and other standard policies and procedures. The Plaintiff dutifully performed her standard Trip Leader duties as assigned to her by the Defendants.

Application and Interview Process

51. The Plaintiff applied to work for the Defendants in response to a Trip Leader job posting on the Defendants' online "job board" on two separate occasions in or around March and April 2017.

52. The Defendants responded to the Plaintiff's second application and invited the Plaintiff to participate in their recruitment process. Following the Defendants' response to her application, the Plaintiff participated in all remaining steps in the Defendants' standard interview and recruitment process, namely: a telephone interview; an in-person group interview session; completion of an availability form; and the successful completion of a Garda Pre-Employment Background Check.

53. The Plaintiff participated in a telephone interview with one of the Defendants' Destination Staffing Coordinators, Andrew Steven, on May 16, 2017. By all accounts, it was a typical job interview and Mr. Steven asked the Plaintiff typical job interview questions: general questions about herself and her background; questions about how she would conduct herself in the position, including several scenario-based questions; and questions about her job availability. Mr. Steven concluded the interview by inviting the Plaintiff for an in-person group interview, and explaining the next steps in the interview and recruitment process to her.

54. Later that same day, the Plaintiff received an email from Mr. Steven inviting her to the in-person group interview discussed in their call. In his email, Mr. Steven told the Plaintiff that "You're onto step 3 of the hiring process... **ALMOST THERE!**" [emphasis in original].

55. The Plaintiff registered and attended the group interview on Saturday May 27th, 2017 at the Defendants' office at 337 Queen Street West. The interview was scheduled for five hours

from 11:00 a.m. until 4:00 p.m., but only ended up taking about three and a half hours to complete, including a 30 minute lunch break. The group interview was facilitated by another Destination Staffing Coordinator for the Defendants, Lex Delpesche. The group interview process included a review of the Defendants' operations and their history, a review of the Trip Leader position and what the job entailed, and breakaway sessions and group exercises.

56. During the group interview, Ms. Delpesche discussed the pay for Trip Leaders. She explained to the interviewees that she knows it starts off "a little low", but that there's "opportunity to work your way up right away", or words to that effect. Ms. Delpesche told the interviewees that she used to be a Trip Leader herself, that she went on her first two trips within a week and a half, and that "opportunities present themselves" and "you never stay making a little amount of money for long", or words to that effect. Ms. Delpesche told the interviewees that by her second trip she was promoted to the role of Coordinator and was already making more money. The Plaintiff felt optimistic about the potential for advancement with the Defendants based on what Ms. Delpesche told the group.

57. At the end of the interview, Ms. Delpesche asked the interviewees if they were available for trips beginning in June, and let them know that the Defendants would get in contact with them in a couple weeks to let them know if they were hired. The Plaintiff had the impression leaving the interview that she and most of the other attendees would be hired by the Defendants.

58. On May 30, 2017, the Plaintiff was contacted via email by Ms. Delpesche, who advised her that "you have been selected to staff with I Love Travel as a **Trip Leader!**" [emphasis in original]. Ms. Delpesche provided the Plaintiff details of her job offer, including her trip date and location. The email advised the Plaintiff that she was required to sign and return her Trip

Leader Agreement, complete a Destination Staff Certification Test, fill out an availability form, and complete a Garda pre-employment criminal background check and asked the Plaintiff to **“Please have these steps completed by Thursday June 1st so we can start staffing you!”** [emphasis in original].

59. Enclosed in Ms. Delpesche’s May 30, 2017 email was a blank Consent to Disclosure form for Garda Pre-Employment Screening and a copy of the Defendants’ Destination Staff Manual. The Consent to Disclosure form granted Garda authority to perform a pre-employment background check on the Plaintiff and to share the results with the Defendants. The Destination Staff Manual set out the duties and responsibilities of Trip Leaders and other destination staff in detail.

60. Later that same evening, Ms. Delpesche sent the Plaintiff a further email enclosing the Plaintiff’s Trip Leader Agreement and providing the date and location for her pre-trip meeting.

61. The Plaintiff was excited to have been offered employment with the Defendants, and promptly completed her Trip Leader Agreement and returned it via email to Ms. Delpesche the next day.

62. Ms. Delpesche responded to the Plaintiff’s email moments after it was sent, telling her “Thank you so much for sending in your contract - we’re stoked to have you on the team!”

63. The Plaintiff proceeded to complete her Consent to Disclosure form for her Garda pre-employment background check, an online availability form, and an online Certification Test.

Training and Pre-Trip Duties

64. Once she was hired by the Defendants, the Plaintiff was required to perform the following training and pre-trip duties:

- (a) Completing the online Certification Test;
- (b) Attending a five hour pre-trip meeting at the Defendants' offices during which she was provided training and information regarding her trip;
- (c) Reviewing the Trip Leader Handbook, the Defendants' website and other documents in advance of her Trip; and
- (d) Calling all student organizers using the Defendants' Organizer Calls Script to introduce herself, reminding them what documents to bring, and advising them where to meet her, describing the check-in process at the Airport, explaining what to pack in carry-on, and answering any questions they may have.

65. All of the training and pre-trip duties performed by the Plaintiff were contemplated by and set out in the Defendants' standard policies, namely, the Destination Staffing Manual, Trip Leader Handbook and Trip Leader Agreement.

Pre-Trip Overnight Duties

66. The travellers in the Plaintiff's group of assigned passengers included groups of travellers from high schools in the Greater Toronto Area as well as British Columbia. The out-of-province travellers arrived in Toronto from British Columbia the evening prior to departure, and the Plaintiff was required to perform an overnight stay with these travellers the evening before their departure date. The Plaintiff's overnight duties included the following:

- (a) Arriving at the Airport one hour prior to the scheduled arrival of the out-of-province travellers in full uniform;

- (b) Greeting the out-of-province travellers when they arrived at the airport;
- (c) Performing a head count of the out-of-province travellers once they arrived and cross-referencing names with the passenger list to ensure that all travellers arrived safely;
- (d) Bringing out-of-province travellers to a local hotel;
- (e) Attending a meeting with the travellers and the Defendants' Airport Coordinators; and
- (f) Assisting the out-of-province travellers with check-in and answering whatever questions they had.

67. All of the pre-trip overnight duties performed by the Plaintiff were contemplated by and set out in the Defendants' standard policies, namely, the Destination Staffing Manual, Trip Leader Handbook and Trip Leader Agreement.

Departure Day Duties

68. Once her overnight hotel stay was complete, the Plaintiff was required to perform the following duties on the day of her departure:

- (a) Meeting the out-of-province travellers in the lobby of the hotel early on the morning of departure to Cuba in full uniform;
- (b) Performing a head count of the out-of-province travellers prior to leaving the hotel;
- (c) Travelling to the airport with the out-of-province travellers;
- (d) Attending the airport three hours prior to the scheduled departure time;
- (e) Meeting the remaining local travellers from the Greater Toronto Area at the airport;

- (f) Performing further headcounts and cross-referencing names with the passenger list to ensure all travellers were in attendance;
- (g) Collecting passengers' Code of Conduct forms, damage deposits and damage insurance fees;
- (h) Assisting all travellers with check-in and baggage check;
- (i) Assisting passengers with questions or concerns at the airport gate and performing a further headcount prior to boarding;
- (j) Assisting passengers with filling out their customs forms during the flight and attending to passengers as necessary;
- (k) Directing and supervising travellers at the customs line;
- (l) Performing a further headcount upon completion of customs;
- (m) Assisting travellers to locate and pick up their baggage;
- (n) Escorting the travellers to the bus and travelling with them to the resort;
- (o) Placing wrist bands on the travellers during the bus ride to the resort so they can be identified by the Defendants' destination staff; and
- (p) Answering questions and providing assistance to travellers as necessary.

69. All of the departure day duties performed by the Plaintiff were contemplated by and set out in the Defendants' standard policies, namely, the Destination Staffing Manual, Trip Leader Handbook and Trip Leader Agreement.

On-Trip Duties

70. The Plaintiff was required to work excessively long days during the on-resort portion of her work for the Defendants. The Plaintiff's on-resort duties for the Defendants included the following:

- (a) Attending a Briefing session hosted by the Program Coordinator;
- (b) Attending twice-daily destination staff meetings;
- (c) Informing travellers of daily activities;
- (d) Remaining in full uniform at all times throughout the duration of the trip;
- (e) Proactively and constantly scanning for potential problems;
- (f) Interacting and engaging with travellers; and
- (g) Performing all duties assigned on her daily schedule, including:
 - (i) Staffing the info desk at S-Trip Central;
 - (ii) "Roaming" duties to maintain a presence around the resort;
 - (iii) Setting up and attending the daily evening party;
 - (iv) Supervising travellers at the evening party and monitoring for fights, over-intoxication or other problems;
 - (v) Escorting students to their rooms and ensuring they went to bed at the end of evening party;
 - (vi) Staffing on- and off-resort events; and
 - (vii) Staffing off-resort excursions.

71. The Plaintiff was required to work extremely long days for the Defendants, which often exceeded the 14 hours stipulated in the Trip Leader Handbook.

72. All of the departure day duties performed by the Plaintiff were contemplated by and set out in the Defendants' standard policies, namely, the Destination Staffing Manual, Trip Leader Handbook and Trip Leader Agreement.

Passport Theft and end of Employment with the Defendants

73. One evening near the end of her employment with the Defendants, the Plaintiff's company-issued backpack with her passport and all of her belongings was stolen while she was working at the evening party. The Plaintiff was unable to return home without her passport, and after searching unsuccessfully for her belongings she was required to travel to the Canadian Embassy in Havana to obtain a new passport. Eventually, after struggling to obtain a new passport and navigating her way through the process with minimal support from the Defendants, the Plaintiff flew home alone from Havana, Cuba to Toronto, Ontario with a layover in Fort Lauderdale, Florida.

74. The Plaintiff was relieved of her duties prior to the end of her trip in order to attend the Canadian Embassy in Havana. However, prior to that time, the Plaintiff worked nearly one hundred hours for the Defendants, including many overtime hours during the week of her trip.

75. Despite her excessive hours of work for the Defendants, the Plaintiff was paid only \$70 by the Defendants once the \$80 uniform fee was deducted from her \$150 stipend. Accordingly, the Plaintiff was paid less than \$1 per hour during her employment with the Defendants. Moreover, the Defendants did not make EI or CPP contributions on behalf of the Plaintiff. The Plaintiff is owed significant unpaid wages for her work for the Defendants.

76. The Plaintiff never returned to work as a Trip Leader for the Defendants, despite receiving multiple emails soliciting her further involvement with the Defendants.

PREFERABLE PROCEDURE

77. A class proceeding is preferable to a multitude of individual employment standards complaints or individual claims in Small Claims Court.

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

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

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

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

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

SYSTEMIC BREACH OF THE *ESA*

83. The Defendants have systemically breached the provisions of the *ESA*, which are incorporated into the contracts of employment of the Class Members, with respect to all Class Members by:

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to compensation at or above the Minimum Wage;
- (c) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
- (d) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (e) 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;
- (f) failing to record and maintain accurate records of all actual hours worked by the Class Members;
- (g) failing to advise the Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
- (h) failing to advise Class Members of their entitlement to Vacation Pay;
- (i) failing to compensate Class Members for Vacation Pay;
- (j) failing to advise Class Members of their entitlement to Public Holiday and Premium Pay; and
- (k) failing to compensate Class Members for Public Holiday and Premium Pay.

SYSTEMIC BREACH OF CONTRACT

84. The Class Members' employment contracts are subject to the *ESA*, and the terms of the *ESA*, as set out above, are incorporated into the contracts of employment as a matter of law.

85. The Class Members plead that as a matter of law, the Defendants owed them a duty of good faith that was incorporated into their contracts of employment.

86. The Defendants have breached the express or implied terms of its contracts of employment with the Class Members, as set out above, including that it compensate for all hours worked, including its obligation to pay Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay pursuant to the *ESA*.

SYSTEMIC BREACH OF THE DUTY OF GOOD FAITH

87. The Class Members are in a position of vulnerability in relation to the Defendants. As a result and otherwise, the Defendants owe a duty to the Class Members to act in good faith, which includes a duty to honour its statutory and contractual obligations to them.

88. The Defendants have systemically breached their duty of good faith by, among other things:

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to compensation at or above the Minimum Wage;
- (c) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
- (d) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (e) 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;

- (f) failing to record and maintain accurate records of all actual hours worked by the Class Members;
- (g) failing to advise the Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
- (h) failing to advise Class Members of their entitlement to Vacation Pay;
- (i) failing to compensate Class Members for Vacation Pay;
- (j) failing to advise Class Members of their entitlement to Public Holiday and Premium Pay; and
- (k) failing to compensate Class Members for Public Holiday and Premium Pay.

UNJUST ENRICHMENT

89. The Defendants have been unjustly enriched as a result of receiving the benefit of the hours worked by the Plaintiff and the other members of the Class without having to pay wages and EI and CPP contributions. The precise value of such unpaid hours of work is not known to the Plaintiff but is within, or should be within, the exclusive knowledge of the Defendants as the Defendants are required under the *ESA* to accurately record the hours worked by the Class Members.

90. The Plaintiff and the other members of the Class have suffered a deprivation, in the form of wages and EI and CPP contributions corresponding to the unpaid hours that they have worked.

91. There is no juristic reason why the Defendants should be permitted to retain the benefit of the unpaid hours worked by the Plaintiff and the other members of the class. The Defendants'

systemic policies and practice of misclassifying its Trip Leaders as “volunteers” is similarly unlawful and does not provide a juristic reason.

SYSTEMIC NEGLIGENCE

92. The Defendants owed a duty of care to the Plaintiff and the other Class Members to ensure that they were accurately classified as employees and properly compensated for all hours worked. The Defendants have breached this duty by, among other things:

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to compensation at or above the Minimum Wage;
- (c) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
- (d) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
- (e) 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;
- (f) failing to record and maintain accurate records of all actual hours worked by the Class Members;
- (g) failing to advise the Class Members of their entitlement to overtime pay for hours worked in excess of the Overtime Threshold;
- (h) failing to advise Class Members of their entitlement to Vacation Pay;

- (i) failing to compensate Class Members for Vacation Pay;
- (j) failing to advise Class Members of their entitlement to Public Holiday and Premium Pay; and
- (k) failing to compensate Class Members for Public Holiday and Premium Pay.

93. The Plaintiff pleads that the actions, conduct and omissions of the Defendants as aforesaid were unlawful, high-handed and carried out in bad faith. Moreover, they were carried out to enrich the Defendants and with a complete disregard for the rights and interests of the Class Members, who were and are to the knowledge of the Defendants vulnerable to the actions, decisions and power of the Defendants.

94. The actions, conduct and omissions as aforesaid warrant awards of aggravated, exemplary and punitive damages.

95. 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;
- (c) *Canada Pension Plan, R.S.C. 1985*, c. C-8; and
- (d) *Employment Insurance Act, S.C. 1996*, c. 23.

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

May 22, 2018

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Court File No.: CV-18-00598257-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced Toronto

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

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