

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD OF THE PLAINTIFF
(MOTION FOR SETTLEMENT APPROVAL, DISTRIBUTION PROTOCOL
APPROVAL AND FEE APPROVAL)
(Returnable June 27, 2022)**

June 22, 2022

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a.
ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE
WINER

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(SETTLEMENT, DISTRIBUTION PROTOCOL AND
CLASS COUNSEL FEE APPROVAL)
(Returnable June 27, 2022)**

The Plaintiff will make a motion to Justice Morgan, on June 27, 2022, at 10:00 AM or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- In writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.**

at the Ontario Superior Court of Justice, Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

A video link will be provided by the Court.

THE MOTION IS FOR:

Settlement Approval and Administration

1. An Order:
 - a. approving the Minutes of Settlement and Release dated November 7 and 8, 2021 attached as **Schedule “A”** (the “Settlement Agreement”) as fair, reasonable and in the best interests of the class pursuant to section 27.1 of the *CPA*;
 - b. approving the Distribution Protocol attached as **Schedule “B”** (the “Distribution Protocol”) as fair, reasonable and in the best interests of the class pursuant to section 27.1 of the *CPA*;
 - c. declaring that the Distribution Protocol forms part of the Settlement Agreement;
 - d. declaring that the Settlement Agreement (including the Distribution Protocol) is binding upon the Representative Plaintiff, all Class Members who did not validly opt-out, and the Defendants;
 - e. appointing Ricepoint Administration Inc. to implement the terms of the Settlement Agreement (including the Distribution Protocol) and to administer the distribution of the Settlement Approval Notice as defined below;
 - f. approving the settlement approval notice attached hereto as **Schedule “C”** (the “Settlement Approval Notice”);
 - g. approving the dissemination of the Settlement Approval Notice to Class Members (“Notice Plan”);
 - h. approving the payment of an honorarium to the Representative Plaintiff in the amount of \$5,000.00 from the settlement funds; and
 - i. such further and other relief as this Honourable Court may deem just.

Class Counsel Fees

2. An Order:

- a. approving Class Counsel's retainer agreement with the Representative Plaintiff dated May 15, 2018 ("Retainer Agreement") under s. 32 of the *CPA*;
- b. approving Class Counsel fees of \$100,000.00 and HST of \$13,000.00 as fair and reasonable under s. 27.1 and 32 of the *CPA*;
- c. approving Class Counsel disbursements of \$22,634.99 and HST of \$2,796.95;
- d. approving the payment of Class Counsel's fees, disbursements and taxes thereon from the settlement funds;
- e. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Settlement Approval

- a) this certified Class Action arises out of the alleged misclassification of Trip Leaders and "volunteers" and non-payment of wages, overtime, vacation pay and public holiday pay owing to Class Members;
- b) this certified Class Action was commenced by way of Statement of Claim issued May 22, 2018, and subsequently amended;
- c) this Class Action was certified on October 23, 2020;
- d) the class definition for the purposes of this action has been ordered as follows:

All persons who worked as Trip Leaders for the Defendants 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 on trips under their Breakaway Tours and/or S-Trip brands commenced in or departing from Ontario at any time during the period from June 3, 2014 to October 23, 2020.

(the “Class” and/or “Class Members”)

- e) D’Andra Montaque has been appointed as the Representative Plaintiff of the Class (the “Representative Plaintiff”) and Goldblatt Partners LLP has been appointed as counsel for the Class (“Class Counsel”);
- f) the parties attended a mediation, following which the parties entered into minutes of settlement, pursuant to which the Defendants agreed to pay a total, gross amount of CAD \$450,000 to the Class in addition to behaviour changes;
- g) the Settlement Agreement is subject to court approval;
- h) the Settlement Agreement reflects a compromise that reflects the risks of litigation and that the conclusion of the litigation may have taken years;
- i) the Settlement Agreement is fair, reasonable and in the best interests of the Class;
- j) the Settlement Agreement is supported by the Representative Plaintiff and recommended by Class Counsel;
- k) pursuant to the terms of the Settlement Agreement, Class Counsel prepared a Distribution Protocol for distributing the settlement funds;
- l) the Representative Plaintiff supports the Distribution Protocol;
- m) the Defendants consent to the Distribution Protocol;
- n) the Distribution Protocol is subject to court approval;
- o) the Distribution Protocol is a fair and reasonable plan for the distribution of the settlement funds to the Class Members;

Administration

- p) RicePoint Administration Inc. (“RicePoint” or the “Administrator”), is an experienced class actions administrator;
- q) RicePoint has the necessary skills and infrastructure to distribute the Settlement Approval Notice in accordance with method of dissemination and to distribute settlement funds to the Class Members in accordance with the Distribution Protocol;
- r) the proposed Settlement Approval Notice clearly explains to the Class Members their rights and obligations under the Settlement Agreement in plain language;
- s) the Notice Plan will ensure that the Settlement Approval Notice reaches the Class Members and will ensure a high uptake of the settlement funds;
- t) the Notice Plan is as follows:
 - a. emailing a copy of the Notice to the last known email address of the Class Member as provided by the Defendants in the Class List or as otherwise in the possession of Class Counsel;
 - b. sending a link to the Notice by text message to the last known cell phone number of the Class Member as provided by the Defendants in the Class List or as otherwise in the possession of Class Counsel;
 - c. posting a copy of the Notice on the webpage www.s-tripclassaction.com; and
 - d. Class Counsel providing a copy of the Notice by mail as requested by any Class Member;

Class Counsel Fees, Disbursements and Honorarium

- u) the terms of the Retainer between the Representative Plaintiff and Class Counsel provided that Class Counsel would receive a contingency of 30% for this stage of the litigation;
- v) to date, Class Counsel's actual fees total approximately **\$312,275** (excl HST) and Class Counsel estimates a further \$40,000-\$50,000 in fees for additional work that may be necessary through the settlement implementation phase;
- w) Class Counsel has incurred disbursements of \$22,634.99 plus HST of \$2,796.95;
- x) the Representative Plaintiff supports Class Counsel's request for approval of fees and disbursements;
- y) no Class Member has objected to Class Counsel's proposed fees;
- z) Class Counsel's fees are fair and reasonable;
- aa) the Representative Plaintiff played a vital role in advancing the claims of the Class. She devoted a considerable amount of time to the success of this action, including communicating with other Class Members, meeting with and instructing Class Counsel, reviewing documents, swearing an affidavit, and attending mediation. The honorarium for the Representative Plaintiff is fair and reasonable. No Class Member has objected to the proposed honorarium;
- bb) the *Class Proceedings Act, 1992* SO 1992 c. 6, ss. 5, 12, 19, 20, 27.1, 32, 33 and
- cc) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) the Affidavit of D'Andra Montaque, sworn June 22, 2022;
- b) the Affidavit of Charles Sinclair, sworn June 21, 2022; and,
- c) such further and other material as counsel may advise and this Honourable Court may permit.

June 22, 2022

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Lawyers for the Defendants

SCHEDULE "A"

Court File No. CV-18-00598257-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

MINUTES OF SETTLEMENT AND RELEASE

WHEREAS, the Plaintiff commenced a Class Action, being Court File No. CV-18-00598257-CP, seeking to represent certain alleged former employees of the Corporate Defendants, 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 and claiming, among other things, a declaration that the Class Members were employees of the Corporate Defendants and compensation for minimum wage, EI, CPP and overtime;

AND WHEREAS, the Corporate Defendants and Director Defendants advised that they intend to vigorously defend the Action and deny the allegations that have been made;

AND WHEREAS, the Parties wish to fully and finally resolve all matters in dispute between them in relation to the Action;

AND WHEREAS, taking into account the burdens and expense of continued litigation, including the significant risks and uncertainties associated with completion of the litigation and any potential appeals, the Plaintiff, with the benefit of advice from Class Counsel, has concluded after a one day mediation and multiple days of written negotiations with William Kaplan, that the settlement on the terms and conditions set out in this Settlement Agreement are fair and reasonable, and in the best interests of the Class;

AND WHEREAS, the Parties intend by these Minutes of Settlement and Release (the “**Settlement Agreement**”) to resolve, terminate, and finally conclude any and all claims raised or which could have been raised in the Action and seek the approval of the terms of the Court, and further intend that the Defendants shall receive full and complete releases and finality and peace from the Class;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for good and valuable consideration received, the Parties stipulate and agree that the Action shall be fully and finally settled and resolved on the terms and conditions set forth in this Settlement Agreement, subject to approval by the Ontario Superior Court of Justice (the “**Court**”):

1. This settlement is conditional upon the Court approving this Settlement Agreement on the terms that follow.
2. The Plaintiff shall support the terms of this Settlement Agreement and shall take all necessary steps to bring a motion for its approval by the Court.
3. The Defendants agree to support the approval of the terms of this Settlement Agreement by the Court and, in particular, shall not object to the Class Counsel Fees, Class Counsel Disbursements, or Representative Plaintiff Honorarium as provided for in this Settlement Agreement.
4. The Parties shall use their best efforts to implement the terms of the settlement outlined in this Settlement Agreement.
5. For the purposes of this Settlement Agreement, the following definitions apply:

- (a) **Action** means the class proceeding commenced by D'Andra Montaque by way of Statement of Claim in the Ontario Superior Court of Justice under Court File No. CV-18-00598257-CP, as amended, including any and all claims made therein.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notices and translation and the costs of the Claims Administrator, but excluding Class Counsel Fees and Class Counsel Disbursements;
- (c) **Claim Fund** means the Settlement Amount remaining after deductions in respect of Class Counsel Fees, Class Counsel Disbursements, Administrative Expenses, Representative Plaintiff Honorarium (if any), and Holdback for Taxes;
- (d) **Claims** means any and all actions, causes of action, claims, complaints, debts, demands, liabilities, suits or other proceedings of any kind or nature whatsoever and howsoever arising, whether in law, equity, contract, extra-contractual liability (including negligence), obligations or otherwise, whether express or implied and whether presently known or unknown, including any proceedings under any statute, and in particular, but without limiting the generality of the foregoing, any and all claims up to the Effective Date that were advanced in the Action or could have been advanced in the Action;
- (e) **Claims Administrator** means the firm appointed by Class Counsel, and approved by the Defendant and the Court, to administer the Claim Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol;
- (f) **Claims Administrator Appointment Date** means the date Class Counsel advises the Defendant of the appointment of the Claims Administrator;
- (g) **Class** means 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 June 3, 2014 to the date of certification, being October 23, 2020;

- (h) ***Class Counsel*** means Goldblatt Partners LLP;
- (i) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
- (j) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes;
- (k) ***Class Member*** means a member of the Class;
- (l) ***Class Period*** means June 3, 2014 to the date of certification, being October 23, 2020;
- (m) ***Corporate Defendants*** means 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;
- (n) ***Counsel for the Defendants*** means Borden Ladner Gervais LLP;
- (o) ***Date of Execution*** or ***Execution Date*** means the date this Settlement Agreement is signed by all of the parties;
- (p) ***Defendants*** means Corporate Defendants and Director Defendants;
- (q) ***Director Defendants*** means Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer;
- (r) ***Distribution Protocol*** means the protocol developed by Class Counsel for the distribution of amounts from the Settlement Amount to the Class Members and agreed to by the Defendants or directed by William Kaplan, in accordance with Section 22;
- (s) ***Effective Date*** means the date when the Order received from the Court approving this Settlement Agreement has become a Final Order;
- (t) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals, and ***Final Approval*** shall have a corresponding meaning;

- (u) **Holdback for Taxes** is defined in Section 18(d);
 - (v) **Opt-Out Threshold** means ██████████ Class Members who opt-out as described in Section 6;
 - (w) **Plaintiff** means D'Andra Montaque, or any other person approved by the Court as the representative plaintiff in the Action;
 - (x) **Releasees** means the Defendants and all of their respective parents, associates, affiliates or related persons (as such terms are defined by the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16), which shall include, for greater specificity, the Defendants' predecessors, successors or assigns thereof, and all of their respective directors, officers, servants, employees, advisors and agents (both individually and in their official capacities with any of the preceding entities);
 - (y) **Releasors** means the Plaintiff and Class Members, for themselves, their heirs executors, successors and assigns;
 - (z) **Remaining Fund** means any funds remaining from the Settlement Amount after deduction and payment of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, Representative Plaintiff Honorarium, Holdback for Taxes, and distribution to Class Members pursuant to the Distribution Protocol (i.e., stale cheques where reasonable efforts to locate a Class Member have been exhausted);
 - (aa) **Representative Plaintiff Honorarium** means an honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (bb) **Settlement Amount** means \$450,000;
 - (cc) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution, as provided for in this Settlement Agreement.
6. Any notices in connection with the certification and settlement approval shall include an

opt-out procedure and be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court. The Opt-Out Threshold shall remain confidential to the Parties such that it shall be redacted from the Term Sheet and these Minutes of Settlement and shall not be included in the notice or otherwise disclosed by the Parties, except to the presiding Judge of the Court for the purposes of settlement approval. Notices shall be distributed by email and text message to the last known email addresses and cell phone number of the Class Members, to the extent such information is available in the Defendants' records. Notices shall also be posted on the website of Class Counsel.

7. The Defendants shall make reasonable efforts to locate and provide to Class Counsel and the Claims Administrator a list of the Class Members in Excel format listing the individuals' first name, middle name (if available), last name, start date, end date, number and type of trips worked as a Class Member and the date of each trip worked, phone number (if available), email address (if available) within thirty (30) days of the Execution Date, to the extent such information is available in the Defendants' records.
8. The Defendants shall make reasonable efforts to answer questions and inquiries of Class Counsel and the Claims Administrator required to implement the terms of this Settlement Agreement within ten (10) business days of such questions being provided in writing to Counsel for the Defendants.
9. This Settlement Agreement is made without any admission of liability by any of the Releasees, which liability is expressly denied. Specifically, and regardless of whether this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Action.
10. Class Counsel shall make best efforts to appoint the Claims Administrator within twenty (20) days of the Execution Date and shall appoint the Claims Administrator no later than

thirty (30) days of the Execution Date. Class Counsel shall advise the Defendants once the Claims Administrator has been appointed, and shall provide the name and contact information for the Claims Administrator to the Defendant for approval, as well as any other information the Defendants reasonably require to implement the terms of this Settlement Agreement. The Defendants shall, acting reasonably, provide approval of the Claims Administrator within fifteen (15) days of receiving notice of its appointment. In determining its approval of the Claims Administrator, the Defendants may, acting reasonably, require the Claims Administrator to confirm and verify that its data handling practices and policies comply with applicable privacy laws and legislation to which the Defendants may be subject. In the event of a dispute, the Parties agree that the presiding case management Judge shall have the right to select a Claims Administrator and that this selection shall be binding upon the Parties.

11. The Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account for the benefit of the Class within fifteen (15) business days of the Effective Date. The Plaintiff may agree in writing to extend the deadline.
12. Payment of the Settlement Amount to Class Counsel shall be made by wire transfer. Class Counsel shall provide to Counsel for the Defendants, in writing, the banking information necessary to complete the wire transfer within no later than two (2) business days of Final Approval.
13. The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, interest, all costs, all cost awards, Administration Expenses, Class Counsel Fees, taxes payable or that may become payable, Class Counsel Disbursements and the Representative Plaintiff Honorarium. For clarity, the Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Action, or any other actions related to the released Claims, including any amount for employees' deductions and withholdings, or any employer remittances, relating to payments made to Class Members in accordance with this Settlement Agreement and including without limitation any disbursement or administration fees to Class Counsel and/or the Class Administrator.
14. The Corporate Defendants shall classify destination staff as employees pursuant to the

Employment Standards Act, 2000, S.O. 2000, c. 41 (*ESA*), *Employment Insurance Act*, S.C. 1996, c. 23, and the Canada Pension Plan, R.S.C., 1985, c. C-8 (*CPP*) on a go-forward basis following Final Approval. For greater clarity, destination staff includes, Directors, Coordinators, Trip Leaders/Bus Captains and any future positions performing substantively similar duties or roles under different job titles.

15. In accordance with the classification of destination staff as employees pursuant to the *ESA*, the Corporate Defendants shall implement a system to track and record their hours of work for the purposes of compensating hours of work and overtime and maximum allowable hours of work, and any other obligations imposed by the *ESA* or subsequent amendments.
16. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the released Claims against the Releasees.
17. Except as otherwise provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account. All taxes payable on any interest that accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account, and Class Counsel shall be responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account. For clarity, the Defendants shall have no responsibility to make any filings relating to the Trust Account and shall have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.
18. The Settlement Amount shall be distributed as follows following the Effective Date:
 - (a) **Class Counsel Fees:** Subject to the approval of the Court, Class Counsel Fees shall be \$100,000, plus HST, or such other amount as approved by the Court;

- (b) **Class Counsel Disbursements:** The disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
 - (c) **Representative Plaintiff Honorarium:** An honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (d) **Holdback for Taxes:** A reasonable amount as may be required for payment of taxes on account of any interest earned in the Trust Account;
 - (e) **Claim Fund:** The amount remaining after the payments contemplated by Sections (a)-(d) shall be distributed by the Claims Administrator to Class Members in accordance with the Distribution Protocol, as directed by Class Counsel and approved by the Court;
 - (f) **Remaining Fund:** As a result of Class Members claiming funds in accordance with the Distribution Protocol, the Parties anticipate that no funds will be left over. In the event a Class Member does not deposit their cheque within 6 months of distribution such amount shall be paid to the Eshkiniigjik Naandwechigegamig, Aabiish Gaa Binjibaaying, aka the “ENAGB Youth Agency”, or as directed by the Court, after reasonable efforts to locate the Class Member and after accounting for any outstanding taxes or Administration Expenses.
19. Class Counsel may share with the Claims Administrator any documents disclosed by the Defendants in these proceedings as may be reasonably necessary for the purposes of administering the settlement.
20. The Claims Administrator shall provide a report to the Parties at the conclusion of the administration of the Claim Fund accounting for the funds paid and shall answer any questions or provide any information the Parties may request or require regarding the administering of the settlement.
21. No amounts shall be paid from the Settlement Amount except in accordance with this Settlement Agreement, the Distribution Protocol, or an order of the Court obtained after notice to the Parties.

22. Class Counsel shall prepare a draft Distribution Protocol and shall provide this to the Defendants no later than ten (10) days from the Execution Date. The Parties shall endeavor to reach agreement on a Distribution Protocol within twenty (20) days from the Execution Date. In the event no agreement is reached, the Parties agree to remit the matter of the Distribution Protocol to William Kaplan for determination. The Distribution Protocol as agreed to by the Parties or as determined by William Kaplan shall form part of this Settlement Agreement. The Distribution Protocol will outline the process by which taxes or any other amounts payable on the proceeds of the Claim Fund which are paid to the Class, and will confirm that the Defendants are not responsible to withhold any amounts and that the Claims Administrator and that each member of the Class is responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.
23. Class Counsel's preparation of the Distribution Protocol and representation of the Class does not in any way extend to tax inquiries that may arise as a result of the Distribution Protocol. Class Members shall be advised to seek independent tax advice.
24. In the event that the Court declines to approve this Settlement Agreement, or approves this Settlement Agreement in a materially modified form not acceptable to either Party, the Plaintiff and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) days following an event described above. In the event that the Opt-Out Threshold is reached, the Defendants shall have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) business days following the Defendants being advised in writing by the Plaintiff that the Opt-Out Threshold has been exceeded. In the event the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.
25. The Plaintiff, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.
26. The Parties shall share equally (50% each between the Plaintiff and the Defendants) the

fees of the mediation held with William Kaplan.

27. Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors do hereby release and forever discharge the Releasees of and from all Claims that any of the Releasors has had, now has or may hereafter have against the Releasees, which were raised in the Action, whether known or unknown, and whether legal, equitable, in contract or tort. The Releasors further acknowledge and agree that this release is intended to cover, and does cover, all of the effects and consequences of such Claims that were raised in the Action. If such a Claim is filed, this Settlement Agreement shall constitute a full and final bar and/or answer to such Claims. For clarity, each Releasor further covenants and agrees that, as a condition of receiving any payment under this Settlement Agreement, they shall take all necessary steps to ensure the withdrawal or dismissal of any such Claims filed in any forum. This term shall be incorporated into the Final Order.
28. Upon the Effective Date, the Releasors and the Releasees absolutely and unconditionally release and forever discharge the Plaintiff, (other) Class Members, Class Counsel, and the Claims Administrator from any and all Claims relating to the institution, prosecution and/or administration of this proceeding excluding any action relating to a breach of this Settlement Agreement.
29. The Releasors covenant and agree that they shall not make, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims (including any cross-Claims, counter-Claims or third party Claims) against any person or entity who might claim contribution or indemnity against the Releasees in connection with any matter released under this Settlement Agreement. The Releasors further covenant, represent, and warrant that they shall not voluntarily participate in or assist with, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims raised or brought by any person or entity against the Releasees in connection with any matter released under this Settlement Agreement.
30. The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendants in respect of the Settlement is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in respect of the Settlement Amount or


the administration of the Settlement, including in respect of costs (including fees and disbursements), taxes and interest.

31. Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendants.
32. Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she, they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.
33. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
34. The Ontario Superior Court shall exercise ongoing jurisdiction in relation to the implementation, administration and enforcement of the terms of this Settlement Agreement and Class Counsel or the Defendants may apply to the Ontario Superior Court as may be required for directions in respect to the interpretation, implementation and administration of this Settlement Agreement.
35. In the computation of time under this Settlement Agreement, where there is a reference to a number of days between two events, the number of days shall be counted by excluding

the day on which the first event happens and including the day on which the second event happens, including all calendar days; and only in the case where the time for doing an act expires on a weekend or on a holiday, as “holiday” is defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the act may be done on the next day that is not a weekend or holiday.

36. This Settlement Agreement may be signed in counterparts each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement.
37. This Settlement Agreement may be signed electronically and a facsimile copy or electronic signature shall be deemed an original signature for the purposes of this Settlement Agreement.
38. The Parties agree that the recitals to this Settlement Agreement are true and form part of this Settlement Agreement.
39. A scanned, facsimile, or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

Counsel for the Plaintiff



Dated at TORONTO this 8th day of November, 2021

Counsel for the Defendants.



DAVID DI PAOLO

Dated at HAMILTON this 7th day of November, 2021

SCHEDULE "B"

MONTAQUE v. HANDA TRAVEL STUDENT TRIP LTD., et al.**Court File No.: CV-18-00598257-CP****Administration and Distribution Protocol****A. DEFINITIONS**

1. For the purpose of this Administration and Distribution Protocol the defined terms have the same meaning as in the Settlement Agreement, executed on November 8, 2021, unless otherwise specified.
2. In addition, the following definitions apply:
 - (a) *Administration Form* means the form provided for in section D below inclusive of any electronic version;
 - (b) *Claims Administrator* means RicePoint Administration Inc.;
 - (c) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
 - (d) *Class List* means the list of Class Members' last known contact information, dates of employment, and number of trips as available provided by the Defendants to Class Counsel on February 22, 2022 pursuant to Section 7 of the Settlement Agreement;
 - (e) *Court* means the Ontario Superior Court of Justice;
 - (f) *Dispute* means a dispute by a Class Member regarding the Records used to calculate a Class Member's entitlement as detailed on the Administration Form;
 - (g) *Distribution* means a distribution of the Relative Share to a Class Member;
 - (h) *Notification Letter* means a letter delivered by email or a text message provided to each Class Member notifying the Class Member that the Settlement has been approved, providing a unique claim ID number and advising the Class Member how they can make a claim;
 - (i) *Post-limitation period* means any time worked in the Class Period on May 22, 2016 or thereafter;
 - (j) *Pre-limitation period* means any time worked in the Class Period prior to May 22, 2016;
 - (k) *Referee* means Mika Imai at Karimjee Law;

- a) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to; and
- b) *Trip* means an S-Trip or Breakaway Tours trip worked by a Class Member as a Trip Leader during the Class Period.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

- 3. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund in *Montaque v. Handa Travel Student Trip Ltd., et al.* (the “Action”). This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class Members.

C. CLAIMS ADMINISTRATOR DUTIES AND RESPONSIBILITIES

- 4. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, the directions given by Class Counsel and the ongoing authority and supervision of the Court.
- 5. The Claims Administrator’s duties and responsibilities shall include the following:
 - a) providing notice(s) to the Class Members as may be required as directed by Class Counsel;
 - b) developing, implementing and operating the administration process including a website;
 - c) making timely calculations of Class Members’ Relative Share of the Claim Fund and notifying Class Members;
 - d) arranging payment to Class Members in a timely fashion;
 - e) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - f) maintaining the administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
 - g) responding to Class Member inquiries and communications with Class Counsel;
 - h) calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
 - i) preparing and distributing T4 forms to Class Members in accordance with paragraph 20, below;
 - j) reporting to Class Counsel respecting Claims received and administered and administration expenses;

- k) holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Claim Fund from that account as authorized;
 - l) cash management and audit control;
 - m) preparing and submitting reports and records as directed by Class Counsel or the Court; and
 - n) other steps as directed by Class Counsel or the Court, as needed.
6. All information in the course of administration is retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

D. CLAIMS BY CLASS MEMBERS

i. Requirement to Submit Timely Administrative Form

7. The Defendants shall respond to any questions or inquiries by the Claims Administrator or Class Counsel regarding the Class List within twenty (20) days of such request.
8. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form shall be pre-populated by the Administrator with data regarding the type and number of Trips worked during the Class Period and the date of these Trips from the Records provided by the Defendants and must be completed and submitted by email or an online portal to the Claims Administrator within one hundred and twenty (120) days of distribution of the Notification Letter. Submission of a Dispute shall satisfy the requirement to submit an Administration Form.
9. In the event of a Dispute, the Class Member shall advise the Claims Administrator of the Dispute and provide documentation or reasons in support of an alternative calculation within the one hundred and twenty (120) days following distribution of the Notification Letters. Class Counsel shall review the information provided by any Class Member and if necessary, seek input from the Defendants and Claims Administrator. Class Counsel shall then instruct the Claims Administrator on how compensation to the Class Member shall be calculated and the Administrator shall advise the Class Member of any new calculation or the reason for maintaining the original calculation within thirty (30) days of receiving the Dispute.
10. If the Class Member disagree with the resolution of the Dispute and wishes to appeal the decision reached from paragraph 8 such appeal shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days and is not required to provide reasons. The decision of the Referee is final and not subject to any further appeal ("Dispute Appeal").

11. If the Claims Administrator finds that deficiencies exist in a completed Administration Form, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member must correct the deficiencies to the satisfaction of the Claims Administrator by the deadline for submission of the Administration Form, although the Administrator may consider late corrections of deficiencies in their discretion.
12. Payments to Class Members who do not submit an Administration Form within the time prescribed by paragraph 8 are at the discretion of Class Counsel. Once a distribution of the Relative Shares has occurred, Class Members who submit a late Administration Form will only be eligible to receive a payment in the event surplus funds remaining after Distribution (e.g. due to stale-dated cheques). Such payments may be in an amount lesser than the Relative Share. Such amounts are final and not subject to any appeal. A decision that an Administration Form was not submitted within the time prescribed by paragraph 8 is final and not subject to any appeal. Class Members who submit a late Administrative Form which cannot be considered because a distribution of the Relative Shares has occurred will only be eligible to receive any compensation in the event there are surplus funds remaining after the distribution, for example due to stale dated cheques, or in the event the holdback for administration or taxes exceeds what is required. Payments to Class Members who submit late Administrative Forms are in the discretion of Class Counsel and may be in amounts less than the compensation provided to Class Members who submitted a timely Administrative Form, depending on the sufficiency of funds. There is no appeal regarding the determination that an Administrative Form is late or from the amount of funds provided to Class Members who submitted a late Administrative Form.
13. An Administration Form will not be considered late solely because the Class Member is required to prove their membership in the Class pursuant to the process set out in paragraphs 14-16 below, where the Class Member submitted their Administration Form to the Claims Administrator prior to the deadline and the Administration Form was otherwise complete.

ii. Confirmation of Membership in Class

14. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendants. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator shall ask the individual to provide proof of membership in the Class, as set out in paragraph 15, within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendants to confirm the individual's employment history and membership in the Class. The Claims Administrator shall determine the individual's membership in the Class within ten (10) days of the date the individual provides proof of Class Membership.
15. Proof of Class Membership may be provided by submission of documents such as Trip Leader agreements, tax forms, paystubs or other records of payment, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendants to review any documents submitted to verify their authenticity.

16. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the Referee is final and not subject to any appeal.

iii. Calculation of Class Member Compensation

17. Class members will be compensated based on the type of Trip they attended as Trip Leaders, the number of Trips that they attended as Trip Leaders, and whether these Trips occurred during the pre-limitation period or the post-limitation period.
18. Each Class Member's relative share will be calculated in general as follows:
- (a) The proportionate value of each trip worked will be assigned an X value as follows:
 - (i) Each Trip worked during the pre-limitation period will be assigned an X value of 1;
 - (ii) Each Breakaway Tours Trip worked during the post-limitation period will be assigned an X value of 3.2478; and
 - (iii) Each S-Trip Trip worked during the post-limitation period will be assigned an X value of 6.683.
 - (b) To determine the value of "X" and therefore determine the exact share for each class member, the Claims Administrator will add up the total of all Class Members' shares as a function of "X" and divide that number into the total value of the Claim Fund.
19. For example, based on an estimated 50% take-up rate within each category, the payment for each Trip worked during the pre-limitation period would be \$100, the payment for each Breakaway Tours Trip worked during the post-limitation period would be \$324.78, and the payment for each S-Trip Trip worked during the post-limitation period would be \$668.30. When factoring in their \$150 honoraria and the deemed value of their room at board under the *Employment Standards Act, 2000*, this means that Class Members would be paid the equivalent of just over eight hours at the weighted average minimum wage during the Class Period for Trips during the post-limitation period.
20. The Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4 forms as necessary. The Defendants are not responsible to withhold any amounts. The Claims Administrator and each Class Member are responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.
21. Amounts may be distributed to Class Members by the Claims Administrator by cheque.

22. Class Members are responsible for providing the Claims Administrator with accurate and timely information to facilitate the distribution of funds. In the case of incomplete, incorrect or missing contact or banking information necessary to distribute funds to a Class Member, and in the case of stale cheques, the Claims Administrator shall make at least one attempt to reach out to the Class Member, and the Class Member shall have thirty (30) days from the date of this attempt to provide the corrected information to the Claims Administrator or to request a fresh cheque in the case of a stale cheque.
23. If the Class Member cannot be located or fails to respond to communication from the Claims Administrator, their Relative Share may be treated as surplus funds available for distribution in accordance with Step 6 described below. The Claims Administrator will provide Class Counsel with information concerning its efforts to contact a Class Member prior to taking this step.

E. DISTRIBUTION PROCESS

24. Generally, the Claims Administration Process will be as follows:

Step 1: Distribution of Notification Letters.

Step 2: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 3: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/EI/CRA as necessary.

Step 5: Report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

Step 7: If any amount is remaining from the Settlement Amount and the Administrative Holdback after the distribution set out above and the payment of any taxes on account of interest earned in the Trust Account, such amount shall be paid to the ENAGG Indigenous Youth Agency or as directed by the Court.

F. ROLE OF COUNSEL

25. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol and Distribution Protocol and the claims process.

26. Notwithstanding the foregoing, if, during the administration process, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions. Class Counsel shall seek input from the Claims Administrator and Defendants before taking any such steps.

G. CONFIDENTIALITY

27. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.
28. The Claims Administrator shall destroy any information in connection with this matter following the distribution of the Claim Fund to the Class Members, save and except as may be required to meet the Claims Administrator's statutory or professional retention obligations.

SCHEDULE "C"

**A SETTLEMENT HAS BEEN APPROVED
IN THE S-TRIP CLASS ACTION****PLEASE READ THIS CAREFULLY as it describes how to claim your share of
the settlement**

For more information about this class action and the settlement, please visit the following website: <https://s-tripsettlement.com/>. If you have questions, you may also contact the Claims Administrator at tripclassaction@ricepoint.com.

PURPOSE OF THIS NOTICE

On May 22, 2018, a class action lawsuit was commenced in the Ontario Superior Court of Justice by D'Andra Montaque ("Montaque" and/or the "Plaintiff") against 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, Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer ("S-Trip" and/or the "Defendants").

The lawsuit alleged, among other things, that S-Trip violated the *Employment Standards Act*, 2000 (the "ESA") and its contracts of employment with the Trip Leaders by misclassifying Trip Leaders as "volunteers" and failing to pay them wages, overtime, vacation pay and public holiday pay in accordance with the ESA.

The Action was certified as a class action on October 23, 2020.

Following a mediation in May 2021, Montaque and the Defendants reached an agreement to settle the Action (the "Settlement"). The settlement has been approved by the Ontario Superior Court of Justice (the "Court").

This Notice describes the Settlement in greater detail, including who it applies to, the details of the Settlement, and the process by which Class Members will be compensated.

WHO DOES THE SETTLEMENT APPLY TO?

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 June 3, 2014 to the date of certification, being October 23, 2020.

Members of the Class are bound by the terms of the settlement unless they validly opted out by May 15, 2022.

MAKING A CLAIM

To receive a payment under the Settlement you must complete an Administration Form and submit it to the Claims Administrator by [6 months after notice distribution].

Class Members will be required to make a claim on the online claims portal on the class action settlement website: <https://s-tripsettlement.com/>.

If your name is on the Class list provided by the Defendants, you will be considered a member of the Class. If your name is not on the Class list, you may be required to submit documents proving your membership in the Class. If the Claims Administrator determines you are not a Class Member, you may appeal to a referee, provided you pay a fee.

If you have a dispute regarding the Records used to calculate your entitlement as detailed on the Administration Form (“Dispute”) you must advise the Claims Administrator of the Dispute and provide documentation or reasons in support of an alternative calculation within the one hundred and twenty (120) days following distribution of the Notification Letters. Class Counsel shall review the information provided by any Class Member and if necessary, seek input from the Defendants and Claims Administrator. Class Counsel shall then instruct the Claims Administrator on how compensation to the Class Member shall be calculated and the Claims Administrator shall advise the Class Member of any new calculation or the reason for maintaining the original calculation within thirty (30) days of receiving the Dispute. If this Dispute is not resolved to your satisfaction, you may appeal the Claims Administrator’s determination to a referee, provided you pay a fee (“Dispute Appeal”).

You will receive payment by cheque. Class Members will need to ensure their updated address and contact information is provided to the Claims Administrator. The settlement payments are taxable and subject to employment-related deductions such as CPP/EI. Cheques not cashed within six months will be treated as stale and any such amounts may be donated to charity in accordance with the terms of the Settlement.

WHAT IS THE EFFECT OF THE SETTLEMENT?

The settlement entirely resolves the issues in this Class Action. The settlement represents a compromise of the disputed issues in the litigation. The settlement takes into account a variety of factors including the risks inherent in continuing the litigation and the time that would be required to finally resolve the matter including appeals.

MORE INFORMATION AND CLASS COUNSEL

For more information, or if you have any questions, please contact Class Counsel at the address below:

Goldblatt Partners LLP
 Attention: Tanya Atherfold-Desilva
 20 Dundas Street West, Suite 1039
 Toronto, Ontario M5G 2C2
 Tel: 416-979-4233 / Fax: 416-591-7333
 Email: tatherfold@goldblattpartners.com

THIS NOTICE WAS APPROVED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(SETTLEMENT ADMINISTRATION, FEES
APPROVAL)**

GOLDBLATT PARTNERS LLP
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Lawyers for the Plaintiff

TAB 2

Court File No.: CV-18-00598257-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

D’ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

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**AFFIDAVIT OF CHARLES SINCLAIR
(MOTION FOR SETTLEMENT APPROVAL, DISTRIBUTION PROTOCOL
APPROVAL AND FEE APPROVAL)
(Sworn June 21, 2022)**

1. I am a Partner with Goldblatt Partners LLP (“GP” or “Class Counsel”). I have direct knowledge of the substantive matters that have transpired in the litigation as described herein. As such, I have knowledge of the matters deposed to herein, except where indicated to be based on information and belief and, where so indicated, I verily believe the same to be true.

2. This affidavit is sworn in support of the plaintiff’s motion for settlement approval, approval of the distribution protocol, approval of the honorarium for the representative

plaintiff, and approval of Class Counsel's fees. I swear this affidavit for no other or improper purpose.

3. When I use capitalized terms in this affidavit, the terms are intended to have the same meaning as in the Minutes of Settlement and the Distribution Protocol, unless indicated otherwise.

A. OVERVIEW

4. This proposed settlement and the distribution of the settlement proceeds to the Class Members comes at a time when the travel industry has suffered two years of decimating restrictions and the Defendants in this proceeding have suffered significant business restrictions. I am aware that the social media presence for S-Trip has announced that **“the pandemic has impacted us all and after a long period of uncertainty we are closing”**.

5. Given the solvency risks being faced by the Class, the immediate compensation available to the Class, Class Counsel and the representative plaintiff believe that the proposed settlement represents a good resolution for Class Members and request that the Court approve it.

B. THE CLASS

6. The class is as follows:

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 June 3, 2014 to the date of certification.

7. The case was certified on October 23, 2020 and the class has a total of 936 class members.

C. BACKGROUND

(i) Retainer

8. The plaintiff and Class Counsel entered into a retainer agreement on May 15th, 2018, a copy of which is attached to my affidavit as **Exhibit “A”**.

9. The retainer agreement provides that upon successful resolution of the action consisting of (i) a final judgment on the common issues in favour of some or all of the Class Members, or (ii) a court-approved settlement benefitting one or more Class Members, Class Counsel will be entitled to payment of its fees and disbursements on a contingency basis.

10. In particular, the retainer agreement provides that in the event that an agreement to settle the action is reached after the certification hearing, as is the case in the within matter, Class Counsel shall be entitled to 30% of the amount recovered by the Class Members pursuant to any settlement agreement, plus disbursements and taxes.

11. As is set out in greater detail below, having regard to the present solvency concerns and settlement being reached shortly after certification, Class Counsel is requesting a flat fee of \$100,000 plus disbursements and taxes, equivalent to a contingency of 22%.

(ii) The Claim

12. The Statement of Claim in this action was issued in Toronto on May 22, 2018 and the current Amended Amended Statement of Claim is attached as **Exhibit “B”** to the affidavit of the Representative Plaintiff.

13. Prior to the onset of the COVID-19 pandemic, the Corporate Defendants took over 25,000 students on trips to more than 40 locations around the world each year. The Corporate Defendants at one point were a leading provider of trips for high school students. As of the date of this affidavit, the S-Trip brand has announced it is no longer in business.

14. The plaintiff pleaded that the Class Members’ were not volunteers but employees and subject to the applicable provincial employment standards legislation, which were incorporated into the alleged contracts of employment as a matter of law, and that the Corporate Defendants breached these requirements by:

- a) failing to correctly classify the Class Members as employees;
- b) failing to pay the Class Members minimum wage, overtime and holiday pay and other employment entitlements; and
- c) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;

15. The Director Defendants were named pursuant to statutory liability imposed on directors for wages in the event the Corporate Defendants could not pay.

(iii) The Certification Record

16. The plaintiff prepared a full certification record and served it on March 1, 2019. The evidentiary record put forward by the plaintiff contained affidavits from three former Trip Leaders and the representative plaintiff. In order to prepare the certification record Class counsel spent a significant amount of time interviewing and meeting with numerous Class Members to create a record of evidence to support a finding that employment status could be determined in common.

17. The defendant did not file a responding certification record and eventually consented to certification and the action was certified as a class proceeding on October 23, 2020.

(iv) Settlement and Mediation

18. The parties attended a one day mediation with William Kaplan on May 17, 2021.

19. The parties exchanged detailed mediation briefs in advance of the mediation, including a reply brief on behalf of the plaintiff. The parties were unable to obtain a settlement at the mediation. For several months following the mediation, with the assistance of Mr. Kaplan, the parties continued to negotiate. The continued negotiations included the exchange of written offers and conference calls with the mediator and the parties.

20. On November 7, 2021, all parties signed Minutes of Settlement. A copy of the Minutes of Settlement are attached as **Exhibit "C"** (the "Minutes").

(i) Settlement Terms

21. The settlement provides for behaviour modification by reclassifying the Class Members and compensation.

22. The settlement provides that:

The Corporate Defendants shall classify destination staff as employees pursuant to the *Employment Standards Act*, 2000, S.O. 2000, c. 41 (ESA), *Employment Insurance Act*, S.C. 1996, c. 23, and the *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP) on a go-forward basis following Final Approval. For greater clarity, destination staff includes, Directors, Coordinators, Trip Leaders/Bus Captains and any future positions performing substantively similar duties or roles under different job titles.

23. The commitment to reclassifying is an important benefit as it sets an example for the travel industry at large for similar businesses. A change in classification practices fulfills a central goal of certification and the *Class Proceedings Act*, being behaviour modification. Furthermore, to the extent that the Corporate Defendants continue to operate trips under their Breakaway Tours brand, this behaviour modification will benefit the Class Members and others who work for the Corporate Defendants as destination staff in the future.

24. Although we have been able to negotiate other policy changes in our previous employment class actions, to our knowledge as class counsel, this is the first time in an employment class action settlement that the Plaintiff has been able to successfully negotiate for the re-classification of workers as employees on a go-forward basis as part of a settlement.

25. The settlement also provides for a gross payment of \$450,000, which is all inclusive of fees and administration expenses. The payment is not subject to any reversion.

26. We estimate that after all fees and administration expenses, a net claim fund of approximately \$210,700 will be available for distribution (the "Claim Fund").

27. The Claim Fund is sufficient to provide fair and adequate compensation to the Class Members based on the Distribution Protocol. In summary, compensation will be divided

between Class Members based on the number of trips worked, when they worked on Trips, and whether trips worked on or after May 22, 2016 were for Breakaway Tours or S-Trip.

28. Assuming a take-up rate of 50% and factoring in the \$150 honoraria paid to each Class Member per trip and the deemed value of their room at board under the *Employment Standards Act, 2000*, each Class Member would be paid the equivalent of just over eight hours at the weighted average minimum wage for each day of their trip during the non-time barred period of the class. In other words, Class Members whose claims would not be presumptively time barred will be paid the equivalent of 8 hours per day of work at the minimum wage. Given that Class Members will be compensated in the range of a minimum wage payments for an 8 hour work day, we believe the settlement is fair and reasonable given the risks in the proceeding.

29. Based on Class Counsel's combined experience in claims administration, the nature of the case, and the passage of time, we do not anticipate the take-up rate to exceed 50%. Lawyers in our firm have experience in administering claims-based employment class action settlements in *Rosen v BMO Nesbitt Burns Inc.*¹, *Fulawka v Bank of Nova Scotia*,² *Bozsik v Livingston*³ and *Aps. v Flight Centre Travel Group*⁴ in which the take-up rates never exceeded 65%. The ultimate payment to class members will vary depending on the precise number of claimants and how many are in the time-barred and non time-barred period.

D. ADMINISTRATION OF THE SETTLEMENT

30. A copy of the proposed Distribution Protocol agreed to by the parties is attached to my affidavit as **Exhibit "D"**. All Class Members who do not opt-out will be eligible to participate in the settlement.

(i) Distribution Protocol

31. The Distribution Protocol ensures fair and reasonable compensation will be delivered to the Class Members. The corner stone of the Protocol is that Class Members will be paid

¹ 2016 ONSC 4752.

² 2016 ONSC 1576.

³ 2019 ONSC 5340.

⁴ 2020 ONSC 6779.

based on the number of trip they took, providing for targeting compensation to the Class Members.

32. The following facts are built into the Distribution Protocol:

- (a) There 936 class members who took a total 1430 trips, of which 707 are trips taken in the presumptively time barred period of more than 2 years prior to the issuance of the claim;
- (b) Trips taken more than 2 years before the claim was issued are compensated/weighted less than trips that would not be presumptively time-barred;
- (c) Class Member trips varied in length depending on whether they took a trip with Breakaway Tours or S-Trip. The Average length of a Breakaway Tours trip was 4.5 days and the average length of a S-Trip Trip was 8.5 days. As a result, Breakaway Tours trips are paid/weighted less than an S-Trip Trip;
- (d) The weighting used for the trips is as follows:
 - (i) Each trip worked during the time barred period will be assigned a value of 1;
 - (ii) Each Breakaway Tours trip worked during the post-limitation period will be assigned a value of 3.2478; and
 - (iii) Each S-Trip Trip worked during the post-limitation period will be assigned a value of 6.683.

In other words, an S-Trip trip that is not time-barred is valued at roughly 6.7 time more than a time-barred trip.

- (e) Each Class Member is credited the \$150 honoraria paid and the room and board amounts permitted under the *ESA*, which is \$44.61 for Breakaway Tours and \$84.27 for S-Trip. These represent amounts the Defendants would be permitted to claim as offsets against any wages award; and

(f) The weighted average minimum wage over the class period was \$11.81.

33. Using the above considerations, Class Counsel has crafted a protocol that provides targeted compensation that aligns realistically with what could have been an outcome at any common issues resolution. The protocol is not a one size fits all compensation scheme.

34. Assuming a 50% take up rate, we estimate that Class Members in the time-barred period would receive \$100 per trip, Class Members who took trips with Breakaway Tours would receive \$324.78 per trip and Class Members who took trips with S-Trip would receive \$668.30 for each trip.

35. The payments above, when factored with the credited honoraria and room and board credits, are equivalent to paying for an 8 hour day at the minimum wage for each day of the trip taken during the time period that is not presumptively time-barred. Assuming a 50% take-up rate, Class Members whose claims are presumptively time barred will receive an estimated payment of \$100 per trip. This amount will significantly increase their take-home payment for their work on these trips, in most cases more than doubling it when factoring in the \$80 uniform deduction that was deducted by the Corporate Defendants from their \$150 honoraria.

36. Class Members will not be required to remember the number of trips taken, when taken or with what company. Each Class Member who responds to the claims notice will have all the information necessary for their claim pre-populated into a claim form. In essence, all a Class Member must do to participate in the settlement is say they want compensation.

(iii) Administration of the Distribution

37. Class Counsel has retained RicePoint administration, who have extensive experience in the administration of class action settlement and employment settlements. RicePoint estimates that administration will be cost between \$80,638 to \$83,035, assuming a take-up rate of between 50%-60%. The administration estimate from RicePoint is attached as **Exhibit “E”**.

38. Generally, the Claims Administration Process will be as follows:

Step 1: Distribution of Notification Letters.

Step 2: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 3: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/EI/CRA as necessary.

Step 5: Report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

Step 7: If any amount is remaining from the Settlement Amount and the Administrative Holdback after the distribution set out above and the payment of any taxes on account of interest earned in the Trust Account, such amount shall be paid to the ENAGG Indigenous Youth Agency or as directed by the Court.

E. EXPERIENCE OF CLASS COUNSEL

39. GP has considerable experience with class actions, particularly employment class actions concerning unpaid hours of work and overtime. We were counsel in a number of leading unpaid hours of work and overtime class actions, including *Fresco v CIBC*, *Fulawka v BNS*, *McCracken v CN Rail*, *Bozsik v Livingston*, *Walter v Western Hockey League*, *Berg v Canadian Hockey League*, *Eklund v GoodLife Fitness Centres Inc.*, and *Aps v Flight Centre Travel Group*. In addition, we have acted on a number of other class actions concerning employment, consumer protection, intellectual property, and pension matters.

G. BENEFITS OF SETTLEMENT

40. In class counsel's view, there are a number of significant benefits to the proposed settlement. These benefits include that the proposed settlement:

- (i) Avoids delays associated with trial and appeals, if successful;

- (ii) Achieves behaviour modification;
- (iii) Provides for stream lined payments proportionate to the length of trips taken without the requirement that individuals prove their damages;
- (iv) Achieves a benefit for all Class Members;
- (v) Avoids litigation funding costs;
- (vi) Avoids the risk that the Defendants will be unable to satisfy a judgement; and,
- (vii) Provides recovery for Class Members whose claims may now be otherwise barred.

(i) Settlement Avoids Delays Associated with Trial and Appeals if Successful

41. If this case were to proceed, we estimate it would likely take up to 5 years to reach a summary judgment hearing, if summary judgment would be appropriate. Following a successful summary judgment, there may or may not be an aggregate award, in which case individual compensation procedures could take another 2-3 years.

(ii) Settlement Achieves Behaviour Modification

42. The proposed settlement provides for the Corporate Defendants to reclassify Trip Leaders and other destination staff as employees. This is a very significant behaviour modification achievement.

(iii) Settlement Provides For Payments Without Individual Proof of Damages

43. Under the proposed settlement, Class Members will receive a payment based on the number of trips taken, when the trip was taken and with which defendant.

44. While the plaintiff sought an aggregate award of damages in this case, because the claim related to work hours, it remained a possibility that a court would find that individual inquiries regarding damages were required. This could be a particular issue given the nature of the case and the Defendants' position that certain parts of the trips were not compensable work but were leisure.

45. Taking into account the benefit to Class Members of a simplified procedure for proving damages as well as the relatively quick payment they will enjoy by reason of the settlement as compared to ongoing litigation. In the view of Class Counsel, the simplification of the determination of damages, and a relatively quick payment to Class Members, offers a real benefit to Class Members as compared to proceeding with further litigation.

(iv) Settlement Achieves Benefit for All Class Members

46. From the very outset of this matter, it was important to Class Counsel and the representative plaintiff that we obtain some amount of recovery for as many Trip Leaders as possible. A significant benefit of the Settlement is that it provide some level of compensation to every class member.

(v) Settlement Avoids Litigation Funding Costs

47. Settling the claim at this stage of the proceeding meant that the Settlement Amount would not be subject to a levy payable to the Class Proceedings Fund. If this case proceeded, the plaintiff would have to seek a third party funder to provide a cost indemnity. It was a term of the retainer between the representative plaintiff and Class Counsel that funding would be obtained from the Class Proceedings Fund. At the time of the mediation, Class Counsel had prepared an application to the Class Proceedings Fund, which would have been filed had the action not settled. If granted funding, 10% of the net recovery would have been payable to the Class Proceedings Fund rather than to the Class Members.

(vi) Settlement Avoids Risk that the Defendants Will Be Unable to Satisfy a Judgement

48. There is a real risk that the Defendants may be unable to satisfy a judgement in this case if the matter did not settle (or the settlement was not approved) and instead went to trial.

49. As detailed in the affidavit of Ms. Montaque, the Corporate Defendants in this proceeding faced significant business interruptions from negative press in 2019 and then a complete business shutdown as a result of COVID-19. The S-Trip brand has confirmed as well through its social media channel on Instagram that it is closing.

50. Class Counsel is aware that the Defendant in the *Omarali v Just Energy* (“*Just Energy*”) became insolvent in 2021. *Just Energy* was a certified employment misclassification class action concerning door-to-door salespeople. The most recent update on the state of that class action as of January 28, 2022 was that class counsel in *Just Energy* was seeking to file a claim through the CCAA claims process.

51. Class Counsel believes the Settlement in this proceeding avoids a realistic risk some or all the Corporate Defendants would be unable to satisfy any judgment.

J. RESPONSE BY CLASS MEMBERS

52. The notice of certification and notice of the proposed settlement were provided at the same time. As of the date of this affidavit a total of 4 class members have opted-out.

53. As of the date of this affidavit, a total of 5 class members have written in supportive statements for the settlement which they have given us permission to share. A copy of the supportive statements is attached as **Exhibit “F”**.

K. FEE APPROVAL

(i) Summary of Time Spent and Fee Sought

54. Given the solvency concerns regarding the defendants, Class Counsel committed to a flat fee of \$100,000, plus disbursements and taxes. This represents a contingency of approximately 22%, relative to the 30% contingency that would be applicable under the retainer agreement.

55. As of the date of this affidavit Class Counsel has committed a total of 707.7 hours valued at **\$312,275** and disbursements of **\$25,431.94**. The proposed fee of **\$100,000** represents a *divider* on Class Counsel’s time of approximately 3.1. Class Counsel’s time to date does not include time which will be required to see the administration of the Settlement through to the end of the distribution. Class Counsel anticipates it will incur a further \$40,000-\$50,000 in time to complete the administration. A detailed summary of the time incurred and disbursements of Class Counsel is attached as **Exhibit “G”**.

56. The fee is within the range regularly approved in class proceedings. It is reasonable on its face and should be approved. The fee sought is also reasonable having regard to the amount of time spent on this case.

(ii) Result Achieved for the Class

57. Class Counsel believe that the proposed settlement represents a very good result for the Class. The inclusion of all Class Members, combined with behaviour modification and compensation which approximates payment for an 8 hour day for each day of work is noteworthy.

(ii) Risk Assumed by Class Counsel / Merits of the Claim

58. This was the first volunteer misclassification class action in Canada. No other employment class actions have considered a common determination when someone is treated as a volunteer for work performed predominantly outside Ontario. Furthermore, the Class Members were typically college or university students supervising high school students. These facts gave rise to three defences on the merits:

- (a) That the Trip Leaders were actually volunteers who elected to go on the trips for the purposes of free travel and to create big brother/sister type relationships to the high school students;
- (b) Because the majority of time spent on the trip was in locations outside of Ontario the *ESA* did not apply to determine the wages or employment status of the Trip Leaders;
- (c) The Trip Leaders were exempt from the minimum wage requirements under section 7 of o. reg. 285/01 because they were:
 - “(b) a person employed as a student to instruct or supervise children unless the person is a wilderness guide; or
 - (c) a person employed as a student at a camp for children unless the person is a wilderness guide;....”

(iii) Importance of the Matter to the Class

59. Given many Class Members were only connected to the Defendants for trips lasting between 4.5 to 8.5 days, individual losses were not sufficient to ground individually-viable claims. That is, without this class action, issues in this litigation could not reasonably have been adjudicated in Court. Class Counsel believe that the extremely small number of opt-outs and supportive email for the settlement speaks to the fact that Class Members do not view their individual claims as worthy of pursuit and require the class action.

(iv) Expectations of the Class

60. As per the notification process that preceded this approval hearing, the Class was expressly advised that Class Counsel would be seeking a \$100,000 fee. As of the date of the swearing of this affidavit, we have received no objections, 4 opt-outs and 5 emails expressing support for the settlement.

L. HONORARIUM FOR REPRESENTATIVE PLAINTIFF

61. Class Counsel is requesting a \$5,000 honorarium for Ms. Montaque. The fact of seeking the honorarium and the proposed amount was included in the notice to the Class Members. Ms. Montaque was the only Trip Leader willing to act as a representative plaintiff in this case. Even in light of some of the negative media coverage regarding S-Trip in 2019, no other Trip Leader was willing to come forward and be named as a representative plaintiff.

62. Ms. Montaque's participation as a representative plaintiff is reported online in several media articles and will always be available for any future employers, clients or schools to see.

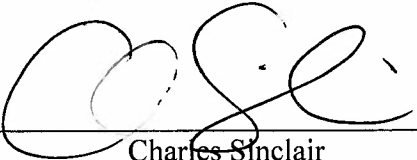
63. I am also aware that Ms. Montaque devoted a considerable amount of time to the success of this action, including communicating with other Class Members (many of whom reached out to her directly), providing statements to the media, meeting with and instructing counsel, reviewing documents, swearing an affidavit for certification and continually participating in the settlement discussions.

64. As of the date of the swearing of this affidavit, no Class Member has objected to the proposed payment to Ms. Montaque.

SWORN BEFORE ME in person by Charles Sinclair of the City of Toronto in the Province of Ontario, on June 21, 2022.


A Commissioner for taking Affidavits *(or as may be)*

Tara-Cailey Sheppard, a Commissioner, etc.,
Province of Ontario, for Goldblatt Partners LLP,
Barristers and Solicitors. Expires March 2, 2025.


Charles Sinclair

This is **Exhibit "A"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.



A Commissioner for taking affidavits etc., or as may be

CLASS ACTION CONTINGENCY FEE RETAINER AGREEMENT

BETWEEN:

D'ANDRA MONTAQUE

ADDRESS: 49 Kingdom St
Etobicoke, Ontario
M9P 1W4
(416)-912-6044

- and -

GOLDBLATT PARTNERS LLP

ADDRESS: 20 Dundas Street West, Suite 1039
Toronto, Ontario
M5G 2C2
(416) 977-6070

THE PARTIES AGREE AS FOLLOWS:

Retainer

1. D'Andra Montaque (the "Client") hereby retains, authorizes and instructs the firm of Goldblatt Partners LLP ("Class Counsel") as her counsel to commence and prosecute a class proceeding in Ontario (the "Class Proceeding") against Handa Travel Student Trip Ltd. o/a I Love Travel, Campus Vacations Holdings Inc.,

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2504027 Ontario Inc. o/a Breakaway Tours and 2417988 Ontario Inc. o/a S-Trip! (collectively referred to as the "Defendants") concerning volunteer misclassification and unpaid wages, overtime and CPP and EI premiums accrued during her employment by the defendants. The Client agrees to be the representative plaintiff in the Class Proceeding. The Client further agrees that by entering into this retainer agreement, the Client and Class Counsel are hereby terminating the individual retainer agreement entered into between the Client and Class Counsel on December 21, 2017.

2. The Client authorizes Class Counsel to retain and instruct other counsel ("Other Counsel") to assist in preparing and prosecuting the Class Proceeding and otherwise representing the interests of class members, should Class Counsel determine that it is prudent to do so. Class Counsel agrees to consult the Client in advance of taking such steps.
3. The Client agrees that the costs of Class Counsel's representation will be pursued on a contingency basis, such that all fees and disbursements and taxes of Class Counsel and other counsel whom Class Counsel may retain to assist with the prosecution of the class proceeding ("Other Counsel") (collectively, "Counsel Fees"), will be payable only in the event of success, as defined below. The Client has discussed with Class Counsel retainer options other than by way of the contingency fee agreement set out below, including retainer by way of an

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hourly rate retainer. The Client has chosen to retain Class Counsel by way of a contingency fee agreement.

Terms of Payment of Fees and Disbursements

4. The provisions of this agreement regarding fees and disbursements are subject to court approval as provided under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), Class Counsel shall seek court approval of its fees at the appropriate time, in its sole and unfettered discretion. If a court does not approve the fee provisions set out under this agreement, Class Counsel shall be permitted to terminate this Agreement.
5. The Client agrees that any motion for court approval of Counsel Fees and disbursements brought by Class Counsel shall constitute a motion for court approval of an “agreement respecting fees and disbursements between a solicitor and a representative party” within the meaning of s. 32(2) of the CPA. The Client further agrees that any court approval or any court determination or direction regarding fees and disbursements under the CPA is enforceable such that any fees and disbursements owing to Counsel, as determined by the court, shall constitute “a first charge on any settlement funds or monetary award” within the meaning of s. 32(3) of the CPA.
6. Class Counsel shall be entitled to payment of its fees and disbursement upon the successful resolution of the class proceeding consisting of (a) a final judgment on

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the common issues in favour of some or all class members, or (b) a court-approved settlement that benefits one or more class members. Class Counsel has explained to the Client that this claim involves significant uncertainty and risk, and that it is not possible at this time to accurately predict either the amount of time that will be necessary or the potential value of the recovery. Class Counsel has provided an estimate of its potential fee as follows, calculated on the basis of the Client paying Class Counsel's regular hourly rate for complex class action litigation:

- (a) if this action is resolved after filing the Statement of Claim, but prior to any certification motion and prior to a defence being filed: at least \$100,000;
 - (b) If this action is resolved after a defence is filed, but before a certification motion: at least \$200,000;
 - (c) If this action is resolved after a certification motion, but prior to a trial of common issues: at least \$750,000;
 - (d) If this action is resolved after a trial of common issues: at least \$1,500,000.
7. Notwithstanding the foregoing, Class Counsel shall seek its fees upon achieving success in the class proceeding, whether by obtaining judgment on the common issues in favour of some or all class members or by obtaining a settlement that benefits one or more class members. The fees shall be paid by a lump sum payment to the extent possible, or by periodic payments, if a lump sum payment is not possible, out of the proceeds of any judgment, order or settlement

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awarding or providing monetary relief, damages, interest or costs to the class or any class member.

8. Counsel Fees shall be calculated in one of two possible ways as set out in paragraphs 9-10 below. Class Counsel shall have the sole right to determine which of the methods will be advanced to the court for approval. In the event that the court rejects one method of calculating the Counsel Fee, Class Counsel shall have the right to advance the alternative method not initially proposed.

Method "A": Base Fee and Multiplier

9. If fees are sought as calculated by the "Multiplier" method, the fee arrangement shall be determined as follows:
 - a) the Base Fee shall be the hourly rate of the legal professionals (e.g. lawyers, law clerks or students) who perform work on the Class Proceeding multiplied by the number of hours worked by each such professional. The hourly rates of the legal professionals expected to perform the work on the class proceeding are set out in Schedule "A" attached hereto. The hourly rates may change from time to time and the Client shall be provided with a list of current rates on request. Without limiting the generality of this retainer, the Base Fee shall include, but not limited to, time spent preparing pleadings, time spent advising the Client regarding common issues, time spent with individual class members or their counsel (but excluding time spent exclusively or primarily

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regarding individual issues of class members who have retained Class Counsel or Other Counsel regarding individual issues), time spent in respect of the motion for certification as a class proceeding and any other motion or application in furtherance of the action and any appeals or motions for leave to appeal therefrom, time spent regarding notices to the class, time spent on the trial of the action, or on any appeal or motions for leave to appeal therefrom, time spent relating to the management of the class action, and time spent negotiating any settlement of the class action and on any motion to approve such settlement. It shall not include time spent relating solely to obtaining court approval of this agreement or to the court's fixing of the "Multiplier"; and

- b) the "Multiplier" shall be determined by the court pursuant to s. 33(4) of the CPA, and the Client agrees to support payment of fees on the basis of a multiplier as follows:
 - i. a multiplier of not less than 2 shall apply if success in the Class Proceeding is secured prior to the hearing of the certification motion;
 - ii. a multiplier of not less than 3 shall apply if success in the Class Proceeding is secured after certification of the Class Proceeding but prior to trial; and

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- iii. a multiplier of not less than 4 shall apply if success in the Class Proceeding is secured after trial.

Method "B": Percentage Recovery

10. If fees are sought as calculated by the percentage method, the Client and Class Counsel agree for such percentage fees to be calculated as follows:
 - a) In the event that an agreement to settle the action is reached prior to the commencement of the certification hearing, Class Counsel shall be entitled to 25% of the amount (including partial indemnity or substantial indemnity costs and disbursements), recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount;
 - b) In the event that an agreement to settle the action is reached after the commencement of the certification hearing, but prior to the commencement of a common issues trial of this action, Class Counsel shall be entitled to 30% of the amount (including partial indemnity or substantial indemnity costs and disbursements) recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount;
 - c) In the event that judgment is obtained at the common issues trial, or an agreement to settle the action is reached after the commencement of a trial of

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this action, but before any appeal, Class Counsel shall be entitled to 35% of the amount (including partial indemnity or substantial indemnity costs and disbursements) recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount; and,

- d) In the event that final judgment is obtained, or an agreement to settle the action is reached, after the conclusion of any appeals from the common issues trial, Class Counsel shall be entitled to 40% of the amounts (including damages and interest but excluding partial indemnity or substantial indemnity costs and disbursements recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s) plus the fee portion of any costs obtained by Class Counsel.

For the purpose of calculating the fees, the amount to which the above-referenced percentages apply includes any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements, except in (d) above.

11. In the event that recovery is by way of a structured settlement, Counsel Fee shall be calculated based on the funding amount of the structure.
12. Counsel Fee shall be calculated on any settlement or any judgment after all disbursements and case expenses incurred by Class Counsel have been deducted.

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13. Disbursements are those costs incurred by Class Counsel to prosecute the class proceeding, such as filing fees, court fees, process server charges, etc. Case expenses include reasonable photocopy charges, couriers, travel expenses, fees paid to agents, experts and other lawyers.
14. The Client authorizes Class Counsel to pay disbursements and case expenses to prosecute the claim as Class Counsel deems necessary and as the Client so instructs. The Client agrees that Class Counsel shall be entitled to 100% recovery of disbursements and case expenses from moneys payable to the class or the Client from any award of costs or any monetary award or relief available pursuant to the terms of any order, judgment or court approved settlement.
15. The Client shall not be obliged to fund any disbursements or taxes, including the any applicable taxes on counsel's fees. Ultimately, if the class proceeding is successful, the disbursements and taxes, including the tax payable on counsel's fees, will be paid out of any court award of costs or any monetary award or relief available pursuant to the terms of any order, judgment or settlement.
16. The Client agrees and directs that all funds claimed by Counsel for legal fees, costs, taxes and disbursements shall be paid to Class Counsel in trust from any monies owing under any judgment or settlement.
17. Counsel shall not recover more in fees than the total aggregate amount the Class recovers as monetary relief or damages by way of judgment or settlement.

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Example of Fee Calculation in the Event Class Counsel Seeks Fee Approval on the Basis of a Contingency Percentage.

18. If the class proceeding results in a settlement or judgment equal to \$2,000,000.00 inclusive of costs and disbursements after certification (but before the commencement of trial), and if Class Counsel and Other Counsel have incurred disbursements, and taxes on these disbursements, totalling \$100,000.00, then the sum of \$100,000.00 will be paid first to Class Counsel as reimbursement for those disbursements and taxes incurred by them. The contingency fee will then be \$570,000.00 (30% of \$1,900,000.00) plus 13% H.S.T., for a total of \$644,100.00 leaving a maximum of \$1,355,900.00 for distribution to class members. (i.e. \$2,000,000.00, less \$100,000.00 disbursements, less \$570,000.00 contingency percentage, less HST on fees).

Example of Fee Calculation Under Contingency Multiplier

19. If the class proceeding results in a settlement or judgment equal to \$2,000,000.00 inclusive of costs and disbursements after certification (but before the commencement of trial), a multiplier of not less than 3 shall apply. If Class Counsel and Other Counsel have incurred disbursements, and taxes on these disbursements, of \$100,000.00, and docketed time at their ordinary hourly rates (set out in Schedule "A") totalling \$150,000.00, then the sum of \$100,000.00 will be paid first to Class Counsel and Other Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be not less than

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\$450,000.00 (3x docketed time of \$150,000) plus H.S.T., leaving a maximum of \$1,391,500.00 for distribution to class members (i.e, \$2,000,000.00, less \$100,000.00 disbursements, less contingency multiplier, less \$HST on fees).

Costs

20. The Client has been advised by Class Counsel that a Court may order one party to make a payment to the other party as a contribution towards the other party's reasonable legal fees and disbursements if the other party is successful in the overall litigation or successful in the context of any discrete step in the litigation, such as a motion. If the court does make such an order for costs in favour of the Client, such costs be applied to counsel fees and disbursements, regardless of the outcome of the action.
21. The Client agrees to assign to Class Counsel any court award of costs made in favour of the Client. The Client and Class Counsel agree that Class Counsel may apply such assigned costs towards the current fees and disbursements of Class Counsel and Other Counsel and may also hold and apply any remainder or balance of such assigned costs towards future fees and disbursements.
22. The Client has been advised by Class Counsel that an application or applications shall be made to the Class Proceedings Fund (the "Fund") or a third-party funder for payment of disbursements and for indemnification against an adverse costs order at various stages of the litigation. If an application is made to the Fund for

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payment of disbursements and indemnification against costs and such application is accepted, the Fund will be entitled to 10% of any judgment or settlement monies payable to the class. Presently the practice is that the Fund is entitled to receive 10% of any settlement or judgement, plus repayment of any disbursements advanced by the Fund. As negotiated by Class Counsel and approved by the Client, if an application is made to a third-party funder other than the Fund for indemnification against costs and such application is accepted, the third-party funder will be entitled to a portion of any judgment or settlement monies payable to the class.

23. The Client and Class Counsel hereby agree that Class Counsel has the authority to make an application to the Fund or a third-party funder on behalf of the Client for indemnification to the Client in respect of any adverse costs order that may be made against the Client in the class action, and the Client shall co-operate with Class Counsel in this regard.
24. In the event that indemnification from the Fund or a third-party funder cannot be obtained, the Client agrees that the Class Proceeding will not be pursued. Class Counsel will not indemnify the Client against any adverse costs awards.

Assessment of Account

25. The Client has the right to ask the Superior Court of Justice to review and approve Class Counsel's Account. For purposes of assessment, if a contingency

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fee agreement is one to which subsection 28.1(6) or 28.1(8) of the *Solicitors Act* applies (insofar as the fee sought is in excess of the maximum percentage proscribed by regulation), the Client or Class Counsel may apply to the Superior Court of Justice for an assessment within six months after its delivery. If a contingency fee agreement is not one to which subsection 28.1(6) or 28.1(8) of the *Solicitors Act* applies, the Client may apply to the Superior Court of Justice for an assessment of Class Counsel's bill within 30 days after its delivery or within one year after its payment.

Submissions to Court: Costs Payable to Class Counsel

26. The Client hereby authorizes Class Counsel to make submissions regarding remedy and costs payable to Class Counsel that will enable the Court to fashion a judgment to ensure that the fees and disbursements owing to Class Counsel, calculated pursuant to this Agreement, can be paid out of the monies awarded to the Class or can be paid prior to or as a condition of the Class Member realizing any benefit pursuant to the judgment.

Client and Class Counsel to Act in the Best Interests of the Class

27. The Client acknowledges her obligation and the obligation of Class Counsel to act in the best interests of the Class.

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28. The Client retains the right to make all critical decisions regarding the conduct of the class action, provided that any such decisions are made in the best interests of the class.

Settlement Negotiations

29. The Client hereby authorizes Class Counsel, in its discretion, to enter into negotiations with the defendants for the purpose of reaching a settlement of the class proceeding. The Client understands that any settlement affecting the class is subject to approval by the court. The Client agrees and acknowledges that any negotiations are for the purpose of reaching a settlement of the class proceeding, not simply the individual claim of the Client.
30. In the event the Client desires to withdraw as representative plaintiff or desires to settle her individual claim without settling the claims of the class, the Client agrees to first notify Class Counsel of that desire in advance. The Client agrees only to seek such withdrawal or individual settlement in a manner and on a schedule that reasonably protects the best interests of the Class as a whole. If the Client does settle her individual claim or withdraws as representative plaintiff, the Client expressly agrees and acknowledges that Class Counsel is permitted to be retained by another representative of the class and to continue to assert the claims on behalf of the class pursuant to the class proceeding. In such event, privileged communications between Class Counsel and/or Other Counsel, and

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the Client made for the purpose of advancing the claims of the class in the class proceeding and the work product created by Class Counsel and/ or Other Counsel for the purpose of advancing the claims of the class shall be disclosed to the new class representative. The Client agrees to maintain the confidentiality and privilege of such communications and work product, and agrees not to discuss or otherwise divulge such communications and work product, or their contents, to any other person at any time.

31. In the event that the Client wishes to withdraw from participation as a class representative, Class Counsel shall make its best efforts to find a replacement for the Client. However, the Client acknowledges that any withdrawal by the Client is subject to the approval of the court.

Resolution of Disagreements between the Client and Class Counsel

32. The Client and Class Counsel agree to make their best efforts to resolve any disagreements or conflicts that may arise between them relating to, or affecting, the conduct of this action.
33. The Client hereby agrees that in the event that the Client gives instructions that Class Counsel believes are not in the best interests of the Class, Class Counsel may, and is entitled to, schedule and bring an application, motion or case conference with the court (*ex parte* or otherwise as may be appropriate or as may be directed by the court) for directions under s. 12 of the *CPA* or otherwise

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as may be appropriate. The Client and Class Counsel acknowledge that the outcome of such an application, motion or conference, and subject to any motions for leave to appeal or appeals therefrom, may result in the removal of the Client as representative plaintiff or the removal of Class Counsel (or either of them) as counsel or solicitor of record in the Action.

34. Without limiting the general application of the preceding paragraph, the Client agrees that in the event that the Client does not agree to accept a proposed settlement that is in the opinion of Class Counsel in the best interests of the class, Class Counsel is hereby authorized to conditionally accept the offer. The condition shall be a ruling by the court that the proposed settlement is in the best interests of the class. On the motion for such court approval, an affidavit fully disclosing the Client's stated concerns with the proposed settlement shall be filed with the court.
35. While any application, motion or case conference referred to in the two preceding paragraphs, or any decision or motion for leave to appeal or appeal therefrom, is outstanding, neither the Client nor the Class Counsel may terminate this Agreement.

Termination

36. The Client acknowledges and agrees that, notwithstanding any other provision of this agreement, but subject to orders or directions of the court, Class Counsel

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shall have the right to terminate this retainer agreement in any of the following circumstances:

- (b) at any time prior to the certification at the sole discretion of Class Counsel;
 - (c) upon the denial of class certification at first instance or on appeal, including by way of a subsequent decertification order;
 - (d) loss at trial of the common issues at first instance or on appeal;
 - (e) after certification, if in the reasonable opinion of Class Counsel new evidence arises or changes in the law occur which would make it materially less likely that the class proceeding would succeed at trial;
 - (f) after certification, in the event that Class Counsel has reasonable grounds to believe that any costs, monetary relief, damages, interest or settlement monies that could be recovered in the action will not be sufficient to cover: (i) the total fees and disbursements actually approved by the Court to that date or the total fees that Class Counsel reasonably estimates may be approved by the court in the future; or, (ii) the actual Counsel Fees incurred to that date or a reasonable estimate by Class Counsel of the total Counsel Fees that would reasonably be incurred in prosecuting the action through to its conclusion; and;
 - (g) any refusal of the court to award Class Counsel its fees.
37. Subject to the other terms of this Agreement, the Client may terminate this Agreement and pursue this Class Action with new counsel. Subject to the other terms of this Agreement, the Client may withdraw as representative plaintiff and

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Class Counsel may attempt to locate an appropriate replacement representative plaintiff and continue to prosecute this Class Action as set out herein.

38. In the event this agreement is terminated and the Class Action is subsequently successful (as defined in paragraph 7 above), the hours expended by Class Counsel to the date of termination will be added to the hours of the lawyer or lawyers subsequently retained to prosecute the Class Action for the purpose of the Court settling or approving the legal fees for all counsel in this action. Class Counsel shall be entitled to, and will be paid, a percentage of the amount awarded by the Court as fees in the action. The percentage shall be calculated by taking the number of hours expended by Class Counsel's legal professionals (including clerks and students) multiplied by their respective hourly rates, divided by the total number of hours expended by professionals (including clerks and students) of Class Counsel and any lawyers or law firm(s) subsequently retained to prosecute the Class Action multiplied by their respective hourly rates. In no circumstance, however, will Counsel be entitled to or be paid less than its straight time, that is, the total number of hours expended by Class Counsel's professionals (including clerks and students) multiplied by their respective hourly rates. Class Counsel will also be entitled to, and be paid, its disbursements or case expenses.
39. The Client agrees that any lawyer retained to prosecute the Class Action after the termination of this Agreement will be:

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- a) competent and experienced in the prosecution of class actions;
 - b) provided with a copy of this Agreement;
 - c) required to acknowledge and agree to the provisions of this Agreement;
- and,
- c) required to protect the fees and disbursements of Class Counsel and Other Counsel as set out herein.

Prohibition on Commencing a Parallel or Overlapping Class Action

40. The Client hereby agrees not to commence a rival, parallel or overlapping class action, including any class proceeding raising the same or similar claims against the defendants, in the event that the Client's participation in this Class Action is terminated, whether by withdrawal, termination or otherwise.

Laws of Ontario Apply

41. This Agreement will be governed, construed, interpreted and enforced in accordance with the laws of the Province of Ontario. It is the parties' intention that all requirements of contingency fee retainer agreements and class action retainer agreements be included herein and, for such purpose, the parties agree that this agreement shall be deemed to include any such further requirements arising from amendments to the *Solicitors Act*, R.S.O. 1990, c. S.15, the regulations under that act, and the *Rules of Professional Conduct* of Ontario and of other applicable jurisdictions. Alternatively, the parties to this agreement agree

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to execute, from time to time, any amendment to this agreement for the purpose of incorporating any such further requirements into this agreement.

Division of Fees

42. The Client consents to the reasonable splitting of fees between lawyers who are assisting in this action but are not part of Class Counsel (if applicable).

Carriage of Lawsuit

43. The Client acknowledges that Class Counsel are incurring a significant financial risk in agreeing to pursue this action on a contingency fee basis and that Class Counsel are doing so on the basis that it will have carriage of the lawsuit.

Successor of Lawsuit

44. In the event that Goldblatt Partners LLP dissolves or is terminated, this agreement shall apply to successor law firms, as designated and confirmed by the Client in accordance with the terms hereof.

Confidentiality

45. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the class are legally privileged but that such privilege may be lost if the Client was to disclose such information to third persons and that the interests of the class could thereby be adversely

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affected. The Client agrees to protect the confidentiality and privilege of such information indefinitely.

46. The Client acknowledges and agrees that, in retaining Class Counsel to provide the legal services described in this retainer, the collection, use, retention and disclosure of personal and other sensitive information may be required in order to fulfill those services and related obligations.

Severability

47. In the event that any particular provision or provisions or a part of one in this agreement is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this agreement and all other provisions shall remain in force.

Entire Agreement

48. It is agreed there is no representation, warranty, collateral agreement, or condition affecting this agreement except as expressed in it.

Execution in Counterpart

49. This agreement may be executed in counterpart.

Signed this 15th day of May, 2018.

C. Meggs
Witness
Caitlin Meggs

D'Andra Montaque
D'Andra Montaque
1

Signed this 15th day of May, 2018.

GOLDBLATT PARTNERS LLP

C. Meggs
Witness
Caitlin Meggs

Per: J. Mandryk
Josh Mandryk

Schedule "A" – Current Hourly Rates of Class Counsel

Steven Barrett \$800.00

James McDonald \$800.00

Ethan Poskanzer \$800.00

Charles Sinclair \$600.00

Christine Davies \$525.00

Joshua Mandryk \$450.00

Tanya Atherford-DeSilva \$200.00

Students \$250.00

This is **Exhibit "B"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.


A Commissioner for taking affidavits etc., or as may be

Court File No.: CV-18-00598257-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDING ACT, 1992*

AMENDED 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.

AMENDED THIS Sept 25, 2020 PURSUANT TO
 MODIFIÉ CE _____ CONFORMÉMENT À

RULE/LA RÈGLE 29.02
 THE ORDER OF The Honourable Justice Morgan
 L'ORDONNANCE DU _____

DATED / FAIT LE _____

 REGISTRAR SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

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: May 22, 2018

Amended: _____

Issued by "S. Riccio"
Local registrar

Address of 393 University Avenue,
court office 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

AND TO: ALEXANDRE JIT HANDA aka ALEXANDRE HANDA aka ALEXANDER
HANDA aka ALEX HANDA
184 Lippincott Street
Toronto, ON M5S 2P1
-and-
652 Richmond Street West
Toronto, ON M6G 2L9

AND TO: JUSTIN VAN CAMP
18 Beverly Street, Suite 318
Toronto, ON M5T 3L2

AND TO: EUGENE WINER

231 Markham Street
Toronto, ON M6G 2K8

-and-

392 ½ Markham Street
Toronto, ON M6G 2K9

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.

- (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.

DIRECTORS' LIABILITY FOR WAGES

95. Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a Alex Handa, is and was at all material times a director, and the operating mind of 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! and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the Ontario Business Corporations Act, 1990 (the "OBCA").

96. Justin Van Camp is and was at all material times a director of the Defendant Handa Travel Student Trip Ltd. o/a I Love Travel and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the OBCA.

97. Eugene Winer is and was at all material times a director of the Defendant Handa Travel Student Trip Ltd. o/a I Love Travel and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the OBCA.

98. The Plaintiff only claims as against Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a Alex Handa, Justin Van Camp and Eugene Winer pursuant to the statutory liability imposed by sections 80 and 81 of the ESA and/or Section 131 of the OBCA.

99. 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; and
- (e) Business Corporations Act, R.S.O. 1990, c. B. 16.

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

May 22, 2018

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Lawyers for the Plaintiff

MONTAQUE
Plaintiff and
HANDA TRAVEL, et al.
Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced Toronto

Proceeding under the *Class Proceedings Act, 1992*

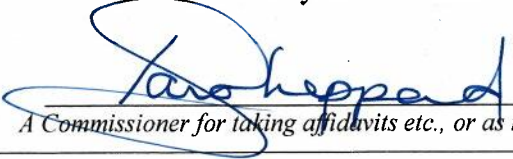
AMENDED AMENDED STATEMENT OF CLAIM

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Lawyers for the Plaintiff

This is **Exhibit "C"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.


A Commissioner for taking affidavits etc., or as may be

Court File No. CV-18-00598257-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

MINUTES OF SETTLEMENT AND RELEASE

WHEREAS, the Plaintiff commenced a Class Action, being Court File No. CV-18-00598257-CP, seeking to represent certain alleged former employees of the Corporate Defendants, 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 and claiming, among other things, a declaration that the Class Members were employees of the Corporate Defendants and compensation for minimum wage, EI, CPP and overtime;

AND WHEREAS, the Corporate Defendants and Director Defendants advised that they intend to vigorously defend the Action and deny the allegations that have been made;

AND WHEREAS, the Parties wish to fully and finally resolve all matters in dispute between them in relation to the Action;

AND WHEREAS, taking into account the burdens and expense of continued litigation, including the significant risks and uncertainties associated with completion of the litigation and any potential appeals, the Plaintiff, with the benefit of advice from Class Counsel, has concluded after a one day mediation and multiple days of written negotiations with William Kaplan, that the settlement on the terms and conditions set out in this Settlement Agreement are fair and reasonable, and in the best interests of the Class;

AND WHEREAS, the Parties intend by these Minutes of Settlement and Release (the “**Settlement Agreement**”) to resolve, terminate, and finally conclude any and all claims raised or which could have been raised in the Action and seek the approval of the terms of the Court, and further intend that the Defendants shall receive full and complete releases and finality and peace from the Class;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for good and valuable consideration received, the Parties stipulate and agree that the Action shall be fully and finally settled and resolved on the terms and conditions set forth in this Settlement Agreement, subject to approval by the Ontario Superior Court of Justice (the “**Court**”):

1. This settlement is conditional upon the Court approving this Settlement Agreement on the terms that follow.
2. The Plaintiff shall support the terms of this Settlement Agreement and shall take all necessary steps to bring a motion for its approval by the Court.
3. The Defendants agree to support the approval of the terms of this Settlement Agreement by the Court and, in particular, shall not object to the Class Counsel Fees, Class Counsel Disbursements, or Representative Plaintiff Honorarium as provided for in this Settlement Agreement.
4. The Parties shall use their best efforts to implement the terms of the settlement outlined in this Settlement Agreement.
5. For the purposes of this Settlement Agreement, the following definitions apply:

- (a) **Action** means the class proceeding commenced by D’Andra Montaque by way of Statement of Claim in the Ontario Superior Court of Justice under Court File No. CV-18-00598257-CP, as amended, including any and all claims made therein.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notices and translation and the costs of the Claims Administrator, but excluding Class Counsel Fees and Class Counsel Disbursements;
- (c) **Claim Fund** means the Settlement Amount remaining after deductions in respect of Class Counsel Fees, Class Counsel Disbursements, Administrative Expenses, Representative Plaintiff Honorarium (if any), and Holdback for Taxes;
- (d) **Claims** means any and all actions, causes of action, claims, complaints, debts, demands, liabilities, suits or other proceedings of any kind or nature whatsoever and howsoever arising, whether in law, equity, contract, extra-contractual liability (including negligence), obligations or otherwise, whether express or implied and whether presently known or unknown, including any proceedings under any statute, and in particular, but without limiting the generality of the foregoing, any and all claims up to the Effective Date that were advanced in the Action or could have been advanced in the Action;
- (e) **Claims Administrator** means the firm appointed by Class Counsel, and approved by the Defendant and the Court, to administer the Claim Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol;
- (f) **Claims Administrator Appointment Date** means the date Class Counsel advises the Defendant of the appointment of the Claims Administrator;
- (g) **Class** means 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 June 3, 2014 to the date of certification, being October 23, 2020;

- (h) ***Class Counsel*** means Goldblatt Partners LLP;
- (i) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
- (j) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes;
- (k) ***Class Member*** means a member of the Class;
- (l) ***Class Period*** means June 3, 2014 to the date of certification, being October 23, 2020;
- (m) ***Corporate Defendants*** means 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;
- (n) ***Counsel for the Defendants*** means Borden Ladner Gervais LLP;
- (o) ***Date of Execution*** or ***Execution Date*** means the date this Settlement Agreement is signed by all of the parties;
- (p) ***Defendants*** means Corporate Defendants and Director Defendants;
- (q) ***Director Defendants*** means Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer;
- (r) ***Distribution Protocol*** means the protocol developed by Class Counsel for the distribution of amounts from the Settlement Amount to the Class Members and agreed to by the Defendants or directed by William Kaplan, in accordance with Section 22;
- (s) ***Effective Date*** means the date when the Order received from the Court approving this Settlement Agreement has become a Final Order;
- (t) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals, and ***Final Approval*** shall have a corresponding meaning;

- (u) **Holdback for Taxes** is defined in Section 18(d);
 - (v) **Opt-Out Threshold** means [REDACTED] Class Members who opt-out as described in Section 6;
 - (w) **Plaintiff** means D'Andra Montaque, or any other person approved by the Court as the representative plaintiff in the Action;
 - (x) **Releasees** means the Defendants and all of their respective parents, associates, affiliates or related persons (as such terms are defined by the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16), which shall include, for greater specificity, the Defendants' predecessors, successors or assigns thereof, and all of their respective directors, officers, servants, employees, advisors and agents (both individually and in their official capacities with any of the preceding entities);
 - (y) **Releasors** means the Plaintiff and Class Members, for themselves, their heirs executors, successors and assigns;
 - (z) **Remaining Fund** means any funds remaining from the Settlement Amount after deduction and payment of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, Representative Plaintiff Honorarium, Holdback for Taxes, and distribution to Class Members pursuant to the Distribution Protocol (i.e., stale cheques where reasonable efforts to locate a Class Member have been exhausted);
 - (aa) **Representative Plaintiff Honorarium** means an honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (bb) **Settlement Amount** means \$450,000;
 - (cc) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution, as provided for in this Settlement Agreement.
6. Any notices in connection with the certification and settlement approval shall include an

opt-out procedure and be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court. The Opt-Out Threshold shall remain confidential to the Parties such that it shall be redacted from the Term Sheet and these Minutes of Settlement and shall not be included in the notice or otherwise disclosed by the Parties, except to the presiding Judge of the Court for the purposes of settlement approval. Notices shall be distributed by email and text message to the last known email addresses and cell phone number of the Class Members, to the extent such information is available in the Defendants' records. Notices shall also be posted on the website of Class Counsel.

7. The Defendants shall make reasonable efforts to locate and provide to Class Counsel and the Claims Administrator a list of the Class Members in Excel format listing the individuals' first name, middle name (if available), last name, start date, end date, number and type of trips worked as a Class Member and the date of each trip worked, phone number (if available), email address (if available) within thirty (30) days of the Execution Date, to the extent such information is available in the Defendants' records.
8. The Defendants shall make reasonable efforts to answer questions and inquiries of Class Counsel and the Claims Administrator required to implement the terms of this Settlement Agreement within ten (10) business days of such questions being provided in writing to Counsel for the Defendants.
9. This Settlement Agreement is made without any admission of liability by any of the Releasees, which liability is expressly denied. Specifically, and regardless of whether this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Action.
10. Class Counsel shall make best efforts to appoint the Claims Administrator within twenty (20) days of the Execution Date and shall appoint the Claims Administrator no later than

thirty (30) days of the Execution Date. Class Counsel shall advise the Defendants once the Claims Administrator has been appointed, and shall provide the name and contact information for the Claims Administrator to the Defendant for approval, as well as any other information the Defendants reasonably require to implement the terms of this Settlement Agreement. The Defendants shall, acting reasonably, provide approval of the Claims Administrator within fifteen (15) days of receiving notice of its appointment. In determining its approval of the Claims Administrator, the Defendants may, acting reasonably, require the Claims Administrator to confirm and verify that its data handling practices and policies comply with applicable privacy laws and legislation to which the Defendants may be subject. In the event of a dispute, the Parties agree that the presiding case management Judge shall have the right to select a Claims Administrator and that this selection shall be binding upon the Parties.

11. The Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account for the benefit of the Class within fifteen (15) business days of the Effective Date. The Plaintiff may agree in writing to extend the deadline.
12. Payment of the Settlement Amount to Class Counsel shall be made by wire transfer. Class Counsel shall provide to Counsel for the Defendants, in writing, the banking information necessary to complete the wire transfer within no later than two (2) business days of Final Approval.
13. The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, interest, all costs, all cost awards, Administration Expenses, Class Counsel Fees, taxes payable or that may become payable, Class Counsel Disbursements and the Representative Plaintiff Honorarium. For clarity, the Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Action, or any other actions related to the released Claims, including any amount for employees' deductions and withholdings, or any employer remittances, relating to payments made to Class Members in accordance with this Settlement Agreement and including without limitation any disbursement or administration fees to Class Counsel and/or the Class Administrator.
14. The Corporate Defendants shall classify destination staff as employees pursuant to the

Employment Standards Act, 2000, S.O. 2000, c. 41 (*ESA*), *Employment Insurance Act*, S.C. 1996, c. 23, and the Canada Pension Plan, R.S.C., 1985, c. C-8 (*CPP*) on a go-forward basis following Final Approval. For greater clarity, destination staff includes, Directors, Coordinators, Trip Leaders/Bus Captains and any future positions performing substantively similar duties or roles under different job titles.

15. In accordance with the classification of destination staff as employees pursuant to the *ESA*, the Corporate Defendants shall implement a system to track and record their hours of work for the purposes of compensating hours of work and overtime and maximum allowable hours of work, and any other obligations imposed by the *ESA* or subsequent amendments.
16. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the released Claims against the Releasees.
17. Except as otherwise provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account. All taxes payable on any interest that accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account, and Class Counsel shall be responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account. For clarity, the Defendants shall have no responsibility to make any filings relating to the Trust Account and shall have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.
18. The Settlement Amount shall be distributed as follows following the Effective Date:
 - (a) **Class Counsel Fees:** Subject to the approval of the Court, Class Counsel Fees shall be \$100,000, plus HST, or such other amount as approved by the Court;

- (b) **Class Counsel Disbursements:** The disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
 - (c) **Representative Plaintiff Honorarium:** An honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (d) **Holdback for Taxes:** A reasonable amount as may be required for payment of taxes on account of any interest earned in the Trust Account;
 - (e) **Claim Fund:** The amount remaining after the payments contemplated by Sections (a)-(d) shall be distributed by the Claims Administrator to Class Members in accordance with the Distribution Protocol, as directed by Class Counsel and approved by the Court;
 - (f) **Remaining Fund:** As a result of Class Members claiming funds in accordance with the Distribution Protocol, the Parties anticipate that no funds will be left over. In the event a Class Member does not deposit their cheque within 6 months of distribution such amount shall be paid to the Eshkiniigjik Naandwechigegamig, Aabiish Gaa Binjibaaying, aka the “ENAGB Youth Agency”, or as directed by the Court, after reasonable efforts to locate the Class Member and after accounting for any outstanding taxes or Administration Expenses.
19. Class Counsel may share with the Claims Administrator any documents disclosed by the Defendants in these proceedings as may be reasonably necessary for the purposes of administering the settlement.
20. The Claims Administrator shall provide a report to the Parties at the conclusion of the administration of the Claim Fund accounting for the funds paid and shall answer any questions or provide any information the Parties may request or require regarding the administering of the settlement.
21. No amounts shall be paid from the Settlement Amount except in accordance with this Settlement Agreement, the Distribution Protocol, or an order of the Court obtained after notice to the Parties.

22. Class Counsel shall prepare a draft Distribution Protocol and shall provide this to the Defendants no later than ten (10) days from the Execution Date. The Parties shall endeavor to reach agreement on a Distribution Protocol within twenty (20) days from the Execution Date. In the event no agreement is reached, the Parties agree to remit the matter of the Distribution Protocol to William Kaplan for determination. The Distribution Protocol as agreed to by the Parties or as determined by William Kaplan shall form part of this Settlement Agreement. The Distribution Protocol will outline the process by which taxes or any other amounts payable on the proceeds of the Claim Fund which are paid to the Class, and will confirm that the Defendants are not responsible to withhold any amounts and that the Claims Administrator and that each member of the Class is responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.
23. Class Counsel's preparation of the Distribution Protocol and representation of the Class does not in any way extend to tax inquiries that may arise as a result of the Distribution Protocol. Class Members shall be advised to seek independent tax advice.
24. In the event that the Court declines to approve this Settlement Agreement, or approves this Settlement Agreement in a materially modified form not acceptable to either Party, the Plaintiff and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) days following an event described above. In the event that the Opt-Out Threshold is reached, the Defendants shall have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) business days following the Defendants being advised in writing by the Plaintiff that the Opt-Out Threshold has been exceeded. In the event the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.
25. The Plaintiff, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.
26. The Parties shall share equally (50% each between the Plaintiff and the Defendants) the

fees of the mediation held with William Kaplan.

27. Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors do hereby release and forever discharge the Releasees of and from all Claims that any of the Releasors has had, now has or may hereafter have against the Releasees, which were raised in the Action, whether known or unknown, and whether legal, equitable, in contract or tort. The Releasors further acknowledge and agree that this release is intended to cover, and does cover, all of the effects and consequences of such Claims that were raised in the Action. If such a Claim is filed, this Settlement Agreement shall constitute a full and final bar and/or answer to such Claims. For clarity, each Releasor further covenants and agrees that, as a condition of receiving any payment under this Settlement Agreement, they shall take all necessary steps to ensure the withdrawal or dismissal of any such Claims filed in any forum. This term shall be incorporated into the Final Order.
28. Upon the Effective Date, the Releasors and the Releasees absolutely and unconditionally release and forever discharge the Plaintiff, (other) Class Members, Class Counsel, and the Claims Administrator from any and all Claims relating to the institution, prosecution and/or administration of this proceeding excluding any action relating to a breach of this Settlement Agreement.
29. The Releasors covenant and agree that they shall not make, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims (including any cross-Claims, counter-Claims or third party Claims) against any person or entity who might claim contribution or indemnity against the Releasees in connection with any matter released under this Settlement Agreement. The Releasors further covenant, represent, and warrant that they shall not voluntarily participate in or assist with, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims raised or brought by any person or entity against the Releasees in connection with any matter released under this Settlement Agreement.
30. The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendants in respect of the Settlement is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in respect of the Settlement Amount or


the administration of the Settlement, including in respect of costs (including fees and disbursements), taxes and interest.

31. Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendants.
32. Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she, they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.
33. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
34. The Ontario Superior Court shall exercise ongoing jurisdiction in relation to the implementation, administration and enforcement of the terms of this Settlement Agreement and Class Counsel or the Defendants may apply to the Ontario Superior Court as may be required for directions in respect to the interpretation, implementation and administration of this Settlement Agreement.
35. In the computation of time under this Settlement Agreement, where there is a reference to a number of days between two events, the number of days shall be counted by excluding

the day on which the first event happens and including the day on which the second event happens, including all calendar days; and only in the case where the time for doing an act expires on a weekend or on a holiday, as “holiday” is defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the act may be done on the next day that is not a weekend or holiday.

36. This Settlement Agreement may be signed in counterparts each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement.
37. This Settlement Agreement may be signed electronically and a facsimile copy or electronic signature shall be deemed an original signature for the purposes of this Settlement Agreement.
38. The Parties agree that the recitals to this Settlement Agreement are true and form part of this Settlement Agreement.
39. A scanned, facsimile, or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

Counsel for the Plaintiff



Dated at TORONTO this 8th day of November, 2021

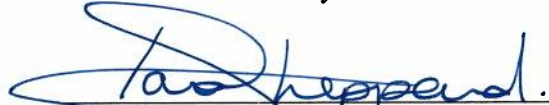
Counsel for the Defendants.



DAVID DI PAOLO

Dated at HAMILTON this 7th day of November, 2021

This is **Exhibit "D"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.

A handwritten signature in blue ink, appearing to read "T. A. Sheppard", written over a horizontal line.

A Commissioner for taking affidavits etc., or as may be

MONTAQUE v. HANDA TRAVEL STUDENT TRIP LTD., et al.

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

Administration and Distribution Protocol

A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol the defined terms have the same meaning as in the Settlement Agreement, executed on November 8, 2021, unless otherwise specified.
2. In addition, the following definitions apply:
 - (a) *Administration Form* means the form provided for in section D below inclusive of any electronic version;
 - (b) *Claims Administrator* means RicePoint Administration Inc.;
 - (c) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
 - (d) *Class List* means the list of Class Members' last known contact information, dates of employment, and number of trips as available provided by the Defendants to Class Counsel on February 22, 2022 pursuant to Section 7 of the Settlement Agreement;
 - (e) *Court* means the Ontario Superior Court of Justice;
 - (f) *Dispute* means a dispute by a Class Member regarding the Records used to calculate a Class Member's entitlement as detailed on the Administration Form;
 - (g) *Distribution* means a distribution of the Relative Share to a Class Member;
 - (h) *Notification Letter* means a letter delivered by email or a text message provided to each Class Member notifying the Class Member that the Settlement has been approved, providing a unique claim ID number and advising the Class Member how they can make a claim;
 - (i) *Post-limitation period* means any time worked in the Class Period on May 22, 2016 or thereafter;
 - (j) *Pre-limitation period* means any time worked in the Class Period prior to May 22, 2016;
 - (k) *Referee* means Mika Imai at Karimjee Law;

- a) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to; and
- b) *Trip* means an S-Trip or Breakaway Tours trip worked by a Class Member as a Trip Leader during the Class Period.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

- 3. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund in *Montaque v. Handa Travel Student Trip Ltd., et al.* (the “Action”). This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class Members.

C. CLAIMS ADMINISTRATOR DUTIES AND RESPONSIBILITIES

- 4. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, the directions given by Class Counsel and the ongoing authority and supervision of the Court.
- 5. The Claims Administrator’s duties and responsibilities shall include the following:
 - a) providing notice(s) to the Class Members as may be required as directed by Class Counsel;
 - b) developing, implementing and operating the administration process including a website;
 - c) making timely calculations of Class Members’ Relative Share of the Claim Fund and notifying Class Members;
 - d) arranging payment to Class Members in a timely fashion;
 - e) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - f) maintaining the administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
 - g) responding to Class Member inquiries and communications with Class Counsel;
 - h) calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
 - i) preparing and distributing T4 forms to Class Members in accordance with paragraph 20, below;
 - j) reporting to Class Counsel respecting Claims received and administered and administration expenses;

- k) holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Claim Fund from that account as authorized;
 - l) cash management and audit control;
 - m) preparing and submitting reports and records as directed by Class Counsel or the Court; and
 - n) other steps as directed by Class Counsel or the Court, as needed.
6. All information in the course of administration is retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

D. CLAIMS BY CLASS MEMBERS

i. Requirement to Submit Timely Administrative Form

7. The Defendants shall respond to any questions or inquiries by the Claims Administrator or Class Counsel regarding the Class List within twenty (20) days of such request.
8. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form shall be pre-populated by the Administrator with data regarding the type and number of Trips worked during the Class Period and the date of these Trips from the Records provided by the Defendants and must be completed and submitted by email or an online portal to the Claims Administrator within one hundred and twenty (120) days of distribution of the Notification Letter. Submission of a Dispute shall satisfy the requirement to submit an Administration Form.
9. In the event of a Dispute, the Class Member shall advise the Claims Administrator of the Dispute and provide documentation or reasons in support of an alternative calculation within the one hundred and twenty (120) days following distribution of the Notification Letters. Class Counsel shall review the information provided by any Class Member and if necessary, seek input from the Defendants and Claims Administrator. Class Counsel shall then instruct the Claims Administrator on how compensation to the Class Member shall be calculated and the Administrator shall advise the Class Member of any new calculation or the reason for maintaining the original calculation within thirty (30) days of receiving the Dispute.
10. If the Class Member disagree with the resolution of the Dispute and wishes to appeal the decision reached from paragraph 8 such appeal shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days and is not required to provide reasons. The decision of the Referee is final and not subject to any further appeal ("Dispute Appeal").

11. If the Claims Administrator finds that deficiencies exist in a completed Administration Form, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member must correct the deficiencies to the satisfaction of the Claims Administrator by the deadline for submission of the Administration Form, although the Administrator may consider late corrections of deficiencies in their discretion.
12. Payments to Class Members who do not submit an Administration Form within the time prescribed by paragraph 8 are at the discretion of Class Counsel. Once a distribution of the Relative Shares has occurred, Class Members who submit a late Administration Form will only be eligible to receive a payment in the event surplus funds remaining after Distribution (e.g. due to stale-dated cheques). Such payments may be in an amount lesser than the Relative Share. Such amounts are final and not subject to any appeal. A decision that an Administration Form was not submitted within the time prescribed by paragraph 8 is final and not subject to any appeal. Class Members who submit a late Administrative Form which cannot be considered because a distribution of the Relative Shares has occurred will only be eligible to receive any compensation in the event there are surplus funds remaining after the distribution, for example due to stale dated cheques, or in the event the holdback for administration or taxes exceeds what is required. Payments to Class Members who submit late Administrative Forms are in the discretion of Class Counsel and may be in amounts less than the compensation provided to Class Members who submitted a timely Administrative Form, depending on the sufficiency of funds. There is no appeal regarding the determination that an Administrative Form is late or from the amount of funds provided to Class Members who submitted a late Administrative Form.
13. An Administration Form will not be considered late solely because the Class Member is required to prove their membership in the Class pursuant to the process set out in paragraphs 14-16 below, where the Class Member submitted their Administration Form to the Claims Administrator prior to the deadline and the Administration Form was otherwise complete.

ii. Confirmation of Membership in Class

14. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendants. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator shall ask the individual to provide proof of membership in the Class, as set out in paragraph 15, within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendants to confirm the individual's employment history and membership in the Class. The Claims Administrator shall determine the individual's membership in the Class within ten (10) days of the date the individual provides proof of Class Membership.
15. Proof of Class Membership may be provided by submission of documents such as Trip Leader agreements, tax forms, paystubs or other records of payment, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendants to review any documents submitted to verify their authenticity.

16. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the Referee is final and not subject to any appeal.

iii. Calculation of Class Member Compensation

17. Class members will be compensated based on the type of Trip they attended as Trip Leaders, the number of Trips that they attended as Trip Leaders, and whether these Trips occurred during the pre-limitation period or the post-limitation period.
18. Each Class Member's relative share will be calculated in general as follows:
 - (a) The proportionate value of each trip worked will be assigned an X value as follows:
 - (i) Each Trip worked during the pre-limitation period will be assigned an X value of 1;
 - (ii) Each Breakaway Tours Trip worked during the post-limitation period will be assigned an X value of 3.2478; and
 - (iii) Each S-Trip Trip worked during the post-limitation period will be assigned an X value of 6.683.
 - (b) To determine the value of "X" and therefore determine the exact share for each class member, the Claims Administrator will add up the total of all Class Members' shares as a function of "X" and divide that number into the total value of the Claim Fund.
19. For example, based on an estimated 50% take-up rate within each category, the payment for each Trip worked during the pre-limitation period would be \$100, the payment for each Breakaway Tours Trip worked during the post-limitation period would be \$324.78, and the payment for each S-Trip Trip worked during the post-limitation period would be \$668.30. When factoring in their \$150 honoraria and the deemed value of their room at board under the *Employment Standards Act, 2000*, this means that Class Members would be paid the equivalent of just over eight hours at the weighted average minimum wage during the Class Period for Trips during the post-limitation period.
20. The Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4 forms as necessary. The Defendants are not responsible to withhold any amounts. The Claims Administrator and each Class Member are responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.
21. Amounts may be distributed to Class Members by the Claims Administrator by cheque.

22. Class Members are responsible for providing the Claims Administrator with accurate and timely information to facilitate the distribution of funds. In the case of incomplete, incorrect or missing contact or banking information necessary to distribute funds to a Class Member, and in the case of stale cheques, the Claims Administrator shall make at least one attempt to reach out to the Class Member, and the Class Member shall have thirty (30) days from the date of this attempt to provide the corrected information to the Claims Administrator or to request a fresh cheque in the case of a stale cheque.
23. If the Class Member cannot be located or fails to respond to communication from the Claims Administrator, their Relative Share may be treated as surplus funds available for distribution in accordance with Step 6 described below. The Claims Administrator will provide Class Counsel with information concerning its efforts to contact a Class Member prior to taking this step.

E. DISTRIBUTION PROCESS

24. Generally, the Claims Administration Process will be as follows:

Step 1: Distribution of Notification Letters.

Step 2: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 3: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/EI/CRA as necessary.

Step 5: Report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

Step 7: If any amount is remaining from the Settlement Amount and the Administrative Holdback after the distribution set out above and the payment of any taxes on account of interest earned in the Trust Account, such amount shall be paid to the ENAGG Indigenous Youth Agency or as directed by the Court.

F. ROLE OF COUNSEL

25. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol and Distribution Protocol and the claims process.

26. Notwithstanding the foregoing, if, during the administration process, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions. Class Counsel shall seek input from the Claims Administrator and Defendants before taking any such steps.

G. CONFIDENTIALITY

27. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.
28. The Claims Administrator shall destroy any information in connection with this matter following the distribution of the Claim Fund to the Class Members, save and except as may be required to meet the Claims Administrator's statutory or professional retention obligations.

This is **Exhibit "E"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.



Tara Sheppard
A Commissioner for taking affidavits etc., or as may be

Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 30% and 40% Claims Rates



March 18, 2022

Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611

Key Assumptions Used in Estimate Preparation

Size of Class: 1,170 class members

Case Duration:	12 months
# of Electronic, Finalized Data Files Provided (Excel, Access, etc.):	1 file(s)
# of Provinces that Employed Class Members:	1
Quebec Employment Case:	No <i>Ontario Only</i>
Claims Processing:	Yes
Returned Mail Handling:	No
Media Campaign Required:	No
English Only:	Yes
# of Email Campaigns (Per Phase):	1
% of emails bounced back ("Bouncebacks"):	20%
Reminder Mailing:	No
Duration of Claims Filing Period:	8 weeks
% of class members that will file a claim:	30% to 40%
% of claims filed online:	100%
% of claims filed by postal mail:	0%
% of disputed claims:	5%
% of deficient claims filed by postal mail:	0%
Type of Telephone Support:	Live (<i>Optional</i>)
% of class that will call:	5%
Duration of Telephone Support:	12 months
Type of Website Support:	Dynamic
Online Claims Filing:	Yes
Duration of Website Support:	12 months

SUMMARY OF COSTS	
Estimated Claims Filing Rate:	30%
Estimated # of Claims Filed:	351
Project Set-Up	\$42,475
Noticing Effort	\$11,604
Claims Administration	\$2,864
Disbursements & Tax Reporting	\$17,017
Sub-Total Administration Costs	\$73,960
Plus Estimated Postage*	\$646
Total Estimated Cost**	\$74,606
Estimated Claims Filing Rate:	40%
Estimated # of Claims Filed:	468
Project Set-Up	\$42,475
Noticing Effort	\$11,604
Claims Administration	\$3,219
Disbursements & Tax Reporting	\$18,998
Sub-Total Administration Costs	\$76,295
Plus Estimated Postage*	\$861
Total Estimated Cost**	\$77,156

Please see below for Additional Services

PROJECT SET-UP	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Data and Forms Set-up					
- Database / Project Setup		10 hrs	\$150.00	\$1,500	
- Data Development		25 hrs	\$150.00	\$3,750	
- Document Formatting		20 hrs	\$150.00	\$3,000	
Sub-total of Data and Forms Set-up					\$8,250
Website Set-up & Maintenance					
- Website Development		75 hrs	\$150.00	\$11,250	
- Website Maintenance		6 hrs	\$150.00	\$900	
- Domain Registration (5 yrs/Privacy Registration)				\$175	
- Server Space rental		12 mos	\$50.00	\$600	
Sub-total of Website Set-up & Maintenance					\$12,925
Project Management					
- Project Management		100 hrs	\$150.00	\$15,000	
- Project Setup		15 hrs	\$150.00	\$2,250	
- Client Communications		10 hrs	\$150.00	\$1,500	
- Opt-Outs / Objections					
- Estimated # of Opt-Outs / Objections		10 units			
- Opt-Out / Objection Processing (per hr)		2 hrs	\$150.00	\$300	
- Mail / Email Correspondence		5 hrs	\$150.00	\$750	
- Reporting and Declarations		10 hrs	\$150.00	\$1,500	
Sub-total of Project Management					\$21,300
SUB-TOTAL OF PROJECT SET-UP					\$42,475

NOTICING EFFORT	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
NOTICE OF CERTIFICATION HEARING AND SETTLEMENT APPROVAL HEARING					
Text Message (SMS)					
- Campaign Set-Up				\$250	
- Text Messaging Service		1,170 units	\$0.250	\$293	
- Text Messaging Campaign Management		10 hrs	\$150.00	\$1,500	
Sub-total of Text Message (SMS)					\$2,043
Email Campaign					
- Email Service		1,170 units	\$1.290	\$1,509	
- Email Campaign Management		10 hrs	\$150.00	\$1,500	
- Estimated # of Bouncebacks	20%	234 units			
- Track/Manage Bouncebacks		5 hrs	\$150.00	\$750	
Sub-total of Email Campaign					\$3,759

Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 30% and 40% Claims Rates
 March 18, 2022



Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611

NOTICE OF SETTLEMENT APPROVAL

Text Message (SMS)			
- Campaign Set-Up			\$250
- Text Messaging Service	1,170 units	\$0.250	\$293
- Text Messaging Campaign Management	10 hrs	\$150.00	\$1,500
Sub-total of Text Message (SMS)			\$2,043
Email Campaign			
- Email Service	1,170 units	\$1.290	\$1,509
- Email Campaign Management	10 hrs	\$150.00	\$1,500
- Estimated # of Bouncebacks	20%	234 units	
- Track/Manage Bouncebacks	5 hrs	\$150.00	\$750
Sub-total of Email Campaign			\$3,759
SUB-TOTAL OF NOTICING EFFORT			\$11,604

CLAIMS ADMINISTRATION	30% Filing Rate				40% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total
Estimated # of Claims	30%	351 claims			40%	468 claims		
Process Claims Filed Online	100%	351 claims	\$1.75	\$614	100%	468 claims	\$1.75	\$819
Disputed Claims	5%	18 units			5%	23 units		
- Process Responses		15 min/response				15 min/response		
- Staff Hours Processing Disputes		5 hrs	\$150.00	\$750		6 hrs	\$150.00	\$900
Status Reports		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
SUB-TOTAL OF CLAIMS ADMINISTRATION				\$2,864	\$3,219			

DISBURSEMENTS & TAX REPORTING	30% Filing Rate				40% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total
Funds Management, Obtain Tax ID		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Distribution Preparation		20 hrs	\$150.00	\$3,000		20 hrs	\$150.00	\$3,000
Quality Control and Assurance		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Payroll Set-up & Reporting		6 hrs	\$150.00	\$900		6 hrs	\$150.00	\$900
Print/Mail Cheques		351 units	\$1.95	\$684		468 units	\$1.95	\$913
- Estimated Postage*		351 units	\$0.920	(actual)		468 units	\$0.920	(actual)
Distribution Management		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Issue T4 Slip	100%	351 units	\$7.50	\$2,633	100%	468 units	\$7.50	\$3,510
- Estimated Postage*		351 units	\$0.920	(actual)		468 units	\$0.920	(actual)
Returned Undeliverable Cheques	1%	4 units			1%	5 units		
- Handling of Returned Undeliverable Mail		2 hrs	\$150.00	\$300		3 hrs	\$150.00	\$450
Case Closing		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Final Accounting		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Settlement Fund Tax Returns (annual)		1 yrs	\$2,000.00	\$2,000		1 yrs	\$2,000.00	\$2,000
SUB-TOTAL OF DISBURSEMENTS & TAX REPORTING				\$17,017	\$18,998			

SUB-TOTAL ADMINISTRATION COSTS	\$73,960	\$76,295
Plus Estimated Postage*	\$646	\$861
TOTAL ESTIMATED COST**	\$74,606	\$77,156

ADDITIONAL SERVICES	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Additional Translations					
- Translate Additional Documents into French for Website (10 more pages of documents)		20 hrs	\$150.00	\$3,000	
Sub-total of Additional Translations					\$3,000
Call Center Support					
- Script Development and Maintenance		5 hrs	\$150.00	\$750	
- Monthly Maintenance Fees		12 mos	\$50.00	\$600	
- Estimated # of Calls	5%	59 calls			
- Average Call Duration (minutes)		5 mins			
- Live Operator Line Charges		295 mins	\$1.95 /min	\$575	
SUB-TOTAL OF TELEPHONE SUPPORT					\$1,925
Email Change of Address					
- Check for Additional Emails associated with Class Member				\$1,500	
Sub-total of Email Change of Address					\$1,500
Uncashed Cheque & Returned Cheque Handling					
- Reissue Cheques	1%	4 units	\$4.50	\$18	
- Estimated Postage*		4 units	\$0.920	(actual)	
- Reissue Processing		10 hrs	\$150.00	\$1,500	
Sub-total - Uncashed Cheque Processing				\$1,518	\$1,523
Plus Estimated Postage*				\$4	\$5
Total Estimated Cost**				\$1,522	\$1,527

Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 30% and 40% Claims Rates
March 18, 2022



Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611

OTHER SERVICES AND OUT-OF-POCKET EXPENSES **ESTIMATED COST**

Other Services and Ad Hoc Reporting, as needed or requested (standard hourly rates)
Other Charges and Out-of-Pocket Costs*** (actual)

- * Estimated Postage and Handling.
- ** Does not include applicable taxes or escheatment services.
- *** Includes, but is not limited to long distance calls, overnight shipping, photocopies, storage, PO Box rentals, broker fees, etc.

This Class Action Administration Services Estimate and the accompanying cover letter (together, the "Proposal") are valid for ninety days from 3/18/2022. After such period, RicePoint reserves the right to amend the Proposal (including, without limitation, by increasing fees and costs) or to withdraw the Proposal in its sole discretion.

All services to be provided to the undersigned (the "Client") and all fees and costs set forth in the Proposal are subject to the terms, specifications, assumptions and conditions set forth in the Proposal. The estimated fees and charges in the Proposal are based on certain information provided to RicePoint as well as significant assumptions. Accordingly, this estimate is not intended to limit RicePoint's actual fees and charges, which may be less or more than estimated due to the scope of actual services or changes to the underlying facts or assumptions.

RicePoint 

BY: _____ DATE: _____

TITLE:

Goldblatt Partners
Joshua Mandryk March 22, 2022

BY: _____ DATE: _____

TITLE: Associate, Goldblatt Partners LLP

**Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 50% and 60% Claims Rates**



March 18, 2022

Michael Mooney; mmooney@ricepoint.com; +1-226-235-1611

Key Assumptions Used in Estimate Preparation

Size of Class: 1,170 class members

Case Duration:	12 months
# of Electronic, Finalized Data Files Provided (Excel, Access, etc.):	1 file(s)
# of Provinces that Employed Class Members:	1
Quebec Employment Case:	No <i>Ontario Only</i>
Claims Processing:	Yes
Returned Mail Handling:	No
Media Campaign Required:	No
English Only:	Yes
# of Email Campaigns (Per Phase):	1
% of emails bounced back ("Bouncebacks"):	20%
Reminder Mailing:	No
Duration of Claims Filing Period:	8 weeks
% of class members that will file a claim:	50% to 60%
% of claims filed online:	100%
% of claims filed by postal mail:	0%
% of disputed claims:	5%
% of deficient claims filed by postal mail:	0%
Type of Telephone Support:	Live (<i>Optional</i>)
% of class that will call:	5%
Duration of Telephone Support:	12 months
Type of Website Support:	Dynamic
Online Claims Filing:	Yes
Duration of Website Support:	12 months

SUMMARY OF COSTS	
Estimated Claims Filing Rate:	50%
Estimated # of Claims Filed:	585
Project Set-Up	\$42,475
Noticing Effort	\$11,604
Claims Administration	\$4,024
Disbursements & Tax Reporting	\$19,228
Sub-Total Administration Costs	\$77,331
Plus Estimated Postage*	\$1,076
Total Estimated Cost**	\$78,407
Estimated Claims Filing Rate:	60%
Estimated # of Claims Filed:	702
Project Set-Up	\$42,475
Noticing Effort	\$11,604
Claims Administration	\$4,079
Disbursements & Tax Reporting	\$21,209
Sub-Total Administration Costs	\$79,366
Plus Estimated Postage*	\$1,292
Total Estimated Cost**	\$80,658
<i>Please see below for Additional Services</i>	

PROJECT SET-UP	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
Data and Forms Set-up					
- Database / Project Setup		10 hrs	\$150.00	\$1,500	
- Data Development		25 hrs	\$150.00	\$3,750	
- Document Formatting		20 hrs	\$150.00	\$3,000	
Sub-total of Data and Forms Set-up					\$8,250
Website Set-up & Maintenance					
- Website Development		75 hrs	\$150.00	\$11,250	
- Website Maintenance		6 hrs	\$150.00	\$900	
- Domain Registration (5 yrs/Privacy Registration)				\$175	
- Server Space rental		12 mos	\$50.00	\$600	
Sub-total of Website Set-up & Maintenance					\$12,925
Project Management					
- Project Management		100 hrs	\$150.00	\$15,000	
- Project Setup		15 hrs	\$150.00	\$2,250	
- Client Communications		10 hrs	\$150.00	\$1,500	
- Opt-Outs / Objections					
- Estimated # of Opt-Outs / Objections		10 units			
- Opt-Out / Objection Processing (per hr)		2 hrs	\$150.00	\$300	
- Mail / Email Correspondence		5 hrs	\$150.00	\$750	
- Reporting and Declarations		10 hrs	\$150.00	\$1,500	
Sub-total of Project Management					\$21,300
SUB-TOTAL OF PROJECT SET-UP					\$42,475

NOTICING EFFORT	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL
NOTICE OF CERTIFICATION HEARING AND SETTLEMENT APPROVAL HEARING					
Text Message (SMS)					
- Campaign Set-Up				\$250	
- Text Messaging Service		1,170 units	\$0.250	\$293	
- Text Messaging Campaign Management		10 hrs	\$150.00	\$1,500	
Sub-total of Text Message (SMS)					\$2,043
Email Campaign					
- Email Service		1,170 units	\$1.290	\$1,509	
- Email Campaign Management		10 hrs	\$150.00	\$1,500	
- Estimated # of Bouncebacks	20%	234 units			
- Track/Manage Bouncebacks		5 hrs	\$150.00	\$750	
Sub-total of Email Campaign					\$3,759

Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 50% and 60% Claims Rates
 March 18, 2022



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NOTICE OF SETTLEMENT APPROVAL

Text Message (SMS)			
- Campaign Set-Up			\$250
- Text Messaging Service	1,170 units	\$0.250	\$293
- Text Messaging Campaign Management	10 hrs	\$150.00	\$1,500
Sub-total of Text Message (SMS)			\$2,043
Email Campaign			
- Email Service	1,170 units	\$1.290	\$1,509
- Email Campaign Management	10 hrs	\$150.00	\$1,500
- Estimated # of Bouncebacks	20%	234 units	
- Track/Manage Bouncebacks	5 hrs	\$150.00	\$750
Sub-total of Email Campaign			\$3,759
SUB-TOTAL OF NOTICING EFFORT			\$11,604

CLAIMS ADMINISTRATION	50% Filing Rate				60% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total
Estimated # of Claims	50%	585 claims			60%	702 claims		
Process Claims Filed Online	100%	585 claims	\$1.75	\$1,024	100%	702 claims	\$1.75	\$1,229
Disputed Claims	5%	29 units			5%	35 units		
- Process Responses		15 min/response				15 min/response		
- Staff Hours Processing Disputes		10 hrs	\$150.00	\$1,500		9 hrs	\$150.00	\$1,350
Status Reports		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
SUB-TOTAL OF CLAIMS ADMINISTRATION				\$4,024	\$4,079			

DISBURSEMENTS & TAX REPORTING	50% Filing Rate				60% Filing Rate			
	%	Quantity	Rate	Total	%	Quantity	Rate	Total
Funds Management, Obtain Tax ID		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Distribution Preparation		20 hrs	\$150.00	\$3,000		20 hrs	\$150.00	\$3,000
Quality Control and Assurance		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Payroll Set-up & Reporting		6 hrs	\$150.00	\$900		6 hrs	\$150.00	\$900
Print/Mail Cheques		585 units	\$1.95	\$1,141		702 units	\$1.95	\$1,369
- Estimated Postage*		585 units	\$0.920	(actual)		702 units	\$0.920	(actual)
Distribution Management		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Issue T4 Slip	100%	585 units	\$7.50	\$4,388	100%	702 units	\$7.50	\$5,265
- Estimated Postage*		585 units	\$0.920	(actual)		702 units	\$0.920	(actual)
Returned Undeliverable Cheques	1%	6 units			1%	8 units		
- Handling of Returned Undeliverable Mail		2 hrs	\$150.00	\$300		3 hrs	\$150.00	\$450
Case Closing		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Final Accounting		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Settlement Fund Tax Returns (annual)		1 yrs	\$2,000.00	\$2,000		1 yrs	\$2,000.00	\$2,000
SUB-TOTAL OF DISBURSEMENTS & TAX REPORTING				\$19,228	\$21,209			
SUB-TOTAL ADMINISTRATION COSTS				\$77,331	\$79,366			
Plus Estimated Postage*				\$1,076	\$1,292			
TOTAL ESTIMATED COST**				\$78,407	\$80,658			

ADDITIONAL SERVICES	RESPONSE RATE	QUANTITY	RATE PER UNIT	ESTIMATED COST	TOTAL			
Additional Translations								
- Translate Additional Documents into French for Website (10 more pages of documents)		20 hrs	\$150.00	\$3,000				
Sub-total of Additional Translations					\$3,000			
Call Center Support								
- Script Development and Maintenance		5 hrs	\$150.00	\$750				
- Monthly Maintenance Fees		12 mos	\$50.00	\$600				
- Estimated # of Calls	5%	59 calls						
- Average Call Duration (minutes)		5 mins						
- Live Operator Line Charges		295 mins	\$1.95 /min	\$575				
SUB-TOTAL OF TELEPHONE SUPPORT					\$1,925			
Email Change of Address								
- Check for Additional Emails associated with Class Member				\$1,500				
Sub-total of Email Change of Address					\$1,500			
Uncashed Cheque & Returned Cheque Handling								
- Reissue Cheques	1%	6 units	\$4.50	\$27	1%	8 units	\$4.50	\$36
- Estimated Postage*		6 units	\$0.920	(actual)		8 units	\$0.920	(actual)
- Reissue Processing		10 hrs	\$150.00	\$1,500		10 hrs	\$150.00	\$1,500
Sub-total - Uncashed Cheque Processing				\$1,527	\$1,536			
Plus Estimated Postage*				\$6	\$7			
Total Estimated Cost**				\$1,533	\$1,543			

Administration Services Estimate
Montaque v. Handa Travel
Scenario 1: 50% and 60% Claims Rates
March 18, 2022



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OTHER SERVICES AND OUT-OF-POCKET EXPENSES **ESTIMATED COST**

Other Services and Ad Hoc Reporting, as needed or requested (standard hourly rates)
Other Charges and Out-of-Pocket Costs*** (actual)

- * Estimated Postage and Handling.
- ** Does not include applicable taxes or escheatment services.
- *** Includes, but is not limited to long distance calls, overnight shipping, photocopies, storage, PO Box rentals, broker fees, etc.

This Class Action Administration Services Estimate and the accompanying cover letter (together, the "Proposal") are valid for ninety days from 3/18/2022. After such period, RicePoint reserves the right to amend the Proposal (including, without limitation, by increasing fees and costs) or to withdraw the Proposal in its sole discretion.

All services to be provided to the undersigned (the "Client") and all fees and costs set forth in the Proposal are subject to the terms, specifications, assumptions and conditions set forth in the Proposal. The estimated fees and charges in the Proposal are based on certain information provided to RicePoint as well as significant assumptions. Accordingly, this estimate is not intended to limit RicePoint's actual fees and charges, which may be less or more than estimated due to the scope of actual services or changes to the underlying facts or assumptions.

RicePoint 

BY: _____ DATE: _____

TITLE:

Goldblatt Partners
 March 22, 2022

BY: _____ DATE: _____

TITLE: Associate, Goldblatt Partners LLP

TERMS AND CONDITIONS

All services to be provided by RicePoint Administration Inc. (together with its affiliates, "RicePoint"), including services provided to Client as set forth in the attached Proposal, are subject to the following Terms and Conditions:

1. SERVICES. RicePoint agrees to provide the services set forth in the Proposal attached hereto as well as any additional services as directed by the Client (the "Services"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the Proposal. RicePoint will often take direction from Client's representatives, employees, agents and/or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that RicePoint may rely upon, and Client agrees to be bound by, any directions, requests, advice or information provided by the Client Parties to the same extent as if such directions, requests, advice or information were provided by Client. Client agrees and understands that RicePoint shall not provide Client or any other party with any legal advice.

2. PRICES, CHARGES AND PAYMENT. RicePoint agrees to charge and Client agrees to pay, subject to the terms herein, RicePoint for its fees and expenses as set forth in the Proposal. Client acknowledges that any estimate in the Proposal is based on information provided by Client to RicePoint and actual fees and expenses may vary depending on the circumstances and length of the case. Notwithstanding the foregoing, where total expenses are expected to exceed \$10,000 in any single month, RicePoint may require advance payment from Client due and payable upon demand and prior to the performance of services. RicePoint's prices are inclusive of commission and other charges (but exclusive of harmonized sales taxes) and are generally adjusted periodically to reflect changes in the business and economic environment. RicePoint reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceeds 10%, RicePoint will give thirty (30) days written notice to Client. Client agrees to pay the reasonable out of pocket expenses incurred by RicePoint in connection with Services, including, but not limited to, transportation, lodging and meals. RicePoint agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt.

RicePoint agrees to submit its invoices to Client and Client agrees that the amount invoiced is due and payable upon receipt. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Client further agrees to pay a late charge (the "Finance Charge"), calculated at a monthly rate of one and one-half percent (1-1/2%) (being an annual rate of eighteen percent (18%)) of the total amount unpaid. In the case of a dispute in the invoice amount, Client shall give written notice to RicePoint within twenty (20) days of receipt of the invoice by Client. Client agrees the Finance Charge is applicable to instances where RicePoint agreed to provide certain pre-settlement work while deferring the billing of said work until the settlement phase.

3. FURTHER ASSURANCES. Client agrees that it will use its best efforts to include provisions reasonably acceptable to RicePoint in any relevant court order, settlement agreement or similar document that provide for the payment of RicePoint's fees and expenses hereunder. No agreement to which RicePoint is not a party shall reduce or limit the full and prompt payment of RicePoint's fees and expenses as set forth herein and in the Proposal.

4. RIGHTS OF OWNERSHIP. The parties understand that the software programs and other materials furnished by RicePoint to Client and/or developed during the course of the performance of Services are the sole property of RicePoint. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by RicePoint.

5. CONFIDENTIALITY. Each of RicePoint and Client, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the Services; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party (unless notice is prohibited by such order), release the required information. These provisions shall survive termination of Services.

6. BANK ACCOUNTS. BANK ACCOUNTS. At Client's request, RicePoint shall be authorized to establish accounts with financial institutions as agent for Client or as otherwise agreed by the parties. All Client accounts established by RicePoint shall be segregated in the records of RicePoint and shall be deposit accounts of commercial banks with capital exceeding \$1 billion and an FIR rating of above Investment Grade or higher (each, an "Approved Bank"). Notwithstanding the foregoing, the parties may utilize any financial institution or electronic payment service provider specified in the Proposal in connection with the services to be provided hereunder, or as otherwise agreed to in writing, which institution or provider will be deemed an Approved Bank. In some cases, RicePoint may derive financial benefits from financial institutions resulting from settlement funds and other moneys on deposit or invested with them including, for example, interest or discounts provided on certain banking services and

service fees. The amounts held pursuant to these Terms and Conditions ("Amounts Held") are at the sole risk of Client and, without limiting the generality of the foregoing, RicePoint shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with an Approved Bank including any losses resulting from a default by the Approved Bank or other credit losses. RicePoint shall have no responsibility or liability for any claims or losses arising from or related to the delivery of electronic payments. It is acknowledged and agreed that RicePoint will have acted prudently in depositing the fund at any Approved Bank, and RicePoint is not required to make any further inquiries in respect of any such bank. The delivery of the Amount Held to RicePoint shall not give rise to a debtor-creditor or other similar relationship. It is acknowledged and agreed that RicePoint will have acted prudently in depositing the Amount Held at any Approved Bank, and that RicePoint is not required to make any further inquiries in respect of any such bank

7. TERMINATION. The Services may be terminated by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of RicePoint that causes serious and material harm to Client, (ii) the failure of Client to pay RicePoint invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services where RicePoint reasonably believes it will not be paid. Termination of Services shall not relieve Client of its obligations to pay all fees and expenses incurred prior to such termination.

In the event that the Services are terminated, regardless of the reason for such termination, RicePoint shall reasonably coordinate with Client to maintain an orderly transfer of data, programs, storage media or other materials furnished by Client to RicePoint or received by RicePoint in connection with the Services. Client agrees to pay for such services in accordance with RicePoint's then existing prices for such services.

8. LIMITATIONS OF LIABILITY AND INDEMNIFICATION. Client shall indemnify and hold RicePoint, its affiliates, shareholders, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to RicePoint's performance of the Services under the terms of applicable settlement documents, court orders, and the Client's direction. Such indemnification shall exclude Losses resulting from RicePoint's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. Client shall notify RicePoint in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that Client becomes aware of with respect to the Services provided by RicePoint.

Except as provided herein, RicePoint's liability to Client or any person making a claim through or under Client or in connection with Services for any Losses of any kind, even if RicePoint has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of RicePoint, shall be limited to the total amount billed to Client and actually paid to RicePoint for the Services. In no event shall RicePoint be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the Services. Except as expressly set forth herein, RicePoint makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity. The provisions of this Section 8 shall survive termination of Services.

9. FORCE MAJEURE. RicePoint will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

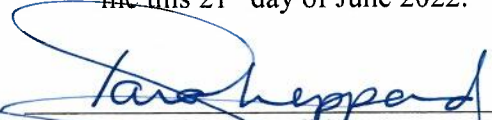
10. INDEPENDENT CONTRACTORS. RicePoint is and shall be an independent contractor of Client and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of the Services or these Terms and Conditions.

11. NOTICES. All notices and requests hereunder shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited with Canada Post, postage pre-paid or on the day it is given if sent by facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth in the Proposal or to such other address as the party to receive the notice or request so designates by written notice to the other.

12. APPLICABLE LAW. These Terms and Conditions will be governed by and construed in accordance with the laws of the Province of Ontario, without giving effect to any choice of law principles.

13. ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY; BINDING EFFECT. These Terms and Conditions, together with the Proposal delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof. If any provision herein shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. These Terms and Conditions may be modified only by a written instrument duly executed by the parties. All of the terms, agreements, covenants, representations, warranties and conditions of these Terms and Conditions are binding upon, and enure to the benefit of and are enforceable by, the parties and their respective successors and permitted assigns.

This is **Exhibit "F"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.



Sara Hepperd
A Commissioner for taking affidavits etc., or as may be

Tanya Atherfold

From: Shaniqua Richards <[REDACTED]>
Sent: April 25, 2022 5:44 PM
To: Tanya Atherfold
Subject: ATTN Tanya Atherfold-Desilva / CLASS COUNSEL BREAK AWAY S TRIP

Good Evening, Tanya,

I have received your notices regarding the Class Counsel Settlement and I below have responded with my responses to the class list questions below:

Name: Shaniqua Nicolette Janay Richards

Reasons I support:

- S-TRIP took so much advantage of me just wanting to travel, and I only realise it being 29 years old now
- I quit before even completing my first trip, I was still abroad, it was a lot of emotional and physical endurance for so little pay – it was hard to ignore
- I didn't know they put us as volunteers, they never told us that so I for sure believe they need to be reprimanded
- I always wanted to fight back about this but didn't know how, I personally knew D as we went to Public Relations – Humber College together and I remember telling her I was proud she had a voice about this, she really stayed strong – as she should because it's what we need!

Attendance:

- I have a trip booked for this time, but I do plan on catching it online if I can with the time difference.

In regard to being a part of the class members;

I was hired with S TRIP March 2016, and I went with them to a Puerto Plata Trip, so if I am not on the defendant's class list I can most definitely provide proof I was.

Thank you,

Shaniqua Richards

Tanya Atherfold

From: Rylie Mullen <[REDACTED]>
Sent: May 16, 2022 7:14 PM
To: Tanya Atherfold
Subject: S-Trip Class Member Support Statement

Hello,

Below I have listed out my statement of support for the S-Trip settlement.

Name:

- Rylie Mullen

Brief reasons why the Class Member supports or opposes the Proposed Settlement; and:

• Working for I Love Travel as long as I did has been the most humiliating and gut wrenching experiences of my life. The ability to manipulate the staff on the 'experience of a lifetime' so they would not need to be paid is disgusting, and no amount of money will make up for reoccurring memory some of us face when dealing with numerous incidents on-site. Staff were undervalued, under-compensated, and under-appreciated. I am thrilled to see that something is being done and completely support the proposed settlement; although truly don't think it is enough. These under-trained staff had to deal with intoxication, sexual assaults, theft, harassment, and even death. Could you imagine knowing that your son or daughters life is being left in the hands of a 20-something year old staff member that hasn't slept in 72 hours, got paid about \$1.50/hour for the whole trip, and was promised an 'experience of a lifetime' to get them there? It wasn't fair to the staff, it's not fair to the students, and it's definitely not fair to the parents.

Whether the Class Member intends to attend the hearing to approve the Proposed:

- I will try to attend if it is online as I currently reside in Ottawa now, but can't confirm

Kind Regards,
Rylie Mullen (Godoy Díaz)

Tanya Atherfold

From: #CA ALL tripclassaction <tripclassaction@ricepoint.com>
Sent: April 29, 2022 9:10 AM
To: Shelby Bolitsky; #CA ALL tripclassaction
Cc: Tanya Atherfold
Subject: RE: Notice of Certification and Settlement Approval Hearing

Hello Shelby,

Thank you for confirming your intention to attend the Settlement Approval Hearing.

Regards,

Colin

From: Shelby Bolitsky <[REDACTED]>
Sent: Monday, April 25, 2022 5:13 PM
To: #CA ALL tripclassaction <tripclassaction@ricepoint.com>
Cc: tatherfold@goldblattpartners.com
Subject: Re: Notice of Certification and Settlement Approval Hearing

Hello there,

Below is my written submission in relation to this matter.

Name: Shelby Bolitsky

Reasons: **SUPPORTS** this proposed settlement. I've worked *many* trips with S-Trip! / Breakaway Tours / Campus Vacations and agree that I was not compensated fairly, and neither were any of our staff. I was hired in November 2015 and my first trip was March 2016, and I continued to work trips in May-July 2016, January-July 2017, January-July 2018. I became a full-time employee of Campus Vacations in August 2018, but continued to work our trips during the January-July 2019 season, but at this point Campus Vacations was "owned" by another company (Verve, which later became Pollen). I was let go from Pollen in March 2020, citing the pandemic as the reason for dismissal.

Hearing: **YES**, will be attending

Thank you. Please let me know if I can be helpful in any way - I very much so support this proposed settlement.

Cheers,

Shelby Bolitsky

On Mon, Apr 25, 2022 at 4:33 PM S-Trip Notice Administrator <tripclassaction@ricepoint.com> wrote:

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

MONTAQUE v. HANDA TRAVEL STUDENT TRIP LTD., et al.

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

THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.

Tanya Atherfold

From: Michelle Newlands <[REDACTED]>
Sent: May 26, 2022 5:50 PM
To: Tanya Atherfold
Subject: Written Submission for law suit against Handa Travel Student Trip Ltd. o/a I Love Travel, Breakaway Tours

- My name is Michelle Newlands. I worked with Breakaway Tours and S-Trip on more than 3 occasions between 2014-2015.
- As a past employee I support the Proposed Settlement for multiple reasons, including and not limited to:
 1. Employees were not considered staff and were instead considered volunteers; however as "volunteers" I was required and expected to be on duty without ample breaks or proper staffing, often for more than 12 hours straight; and once for up to 30 consecutive days (for longer programs such as the one I attended in February 2015). On one particular occasion I was required to report for duty at 7:30am and was responding to onsite emergencies of vandalism and accounts of suicidal ideation until the following day at 3am (18 hours!).
 2. When in the role of "volunteer" I was responsible to respond to emergency calls on behalf of S-trip clients which included injury by vehicle resulting in hospital visits, theft, negotiations with hotel and resort security, physical confrontation between clients and the public, suicidal ideation resulting in self-harm, under-age intoxication, accusations of sexual assault, verbal and sexual harassment, recreational drug use and vandalism resulting in damage to private and public property.
- I believe this organization took advantage of young professionals by classifying them as volunteers, and when I personally questioned their pay scale and asked for an increase I was denied. This is what led to my resignation from the company in 2015.
- As someone who has since worked in provincial legislation in regards to Employment Standards, I stand by my support of this proposed settlement and strongly advocate for staff to be compensated for their time.
- Should online attendance to the hearing be available, yes I do intend to be present.
- Thank you.
Michelle Newlands

--

Michelle Newlands

Cell: [REDACTED]
<[REDACTED]> (Amiskwacîwâskahikan) Treaty 6/Métis Territory

Hi There,

Please see information below for *MONTAQUE v. HANDA TRAVEL STUDENT TRIP LTD., et al.*

Name: Anthony Nguyen ([REDACTED])

Reason why I support the claim: I believe that S-Trip did violate the Employment Standards Act. They hired Trip Leaders, Field Coordinators, Bus Captains, and other destination staff members and labelled them as “volunteers.” I am attaching a “Destination Staff Volunteer Agreement” form from 2015 to this letter. I believe staff members at S-Trip were overworked. I would often work from after breakfast (9am) until early morning (3-5am) as a Trip Leader and Field Coordinator (Student Coordinator, Admin Coordinator, Hotel Coordinator, Airport Coordinator). S-Trip asked staff members to attend predeparture training and would not pay them. I’ve been invited to many “Coordinator Trainings” and have not attended because they are unpaid.

Dates I Worked:

Date	Location	Role
Feb 13-16, 2015	Mont Tremblant, QC	Trip Leader
March 15-22, 2015	Punta Cana, D.R.	Trip Leader
Feb 10-16, 2016	Mont Tremblant, QC	Student & Hotel Coordinator
March 6-22, 2016	Varadero, Cuba	Student & Hotel Coordinator

I do not intend to attend the hearing.



TRAVEL

140
337 Queen Street West
Toronto, ON, M5V 2A4

Tel. 866.627.8747

Fax. 866.800.6950

info@s-trip.com

Destination Staff - Coordinator

Name: _____ Phone: _____

Address: _____

This agreement confirms your attendance to:

Coordinator Program Meeting on: _____, 2014 at ____:_____

Pre-Trip Meeting on: _____, 2014 at ____:_____

and confirms your commitment for the trip dates: _____

Honorarium: \$ _____ / Program @ _____ number of programs = \$ _____ Total

\$80.00 will come out of your honorarium for the first trip you staff in 2015 for you uniform

I would like my uniform size to be a MEN'S/ WOMEN'S SM MD LG XL

Being a Destination Staff member is an exciting opportunity to travel and work with young adults. Along with this comes a responsibility to provide a fun and safe trip. We are happy that you have made the commitment to work with us.

A **duty of care** is a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could preventively harm others. We have a **duty of care** to keep students/youth safe and protect them from physical and emotional harm. In our trips/programs, this duty is exercised through a respectful, caring, empathetic and friendly relationship with young people. In the recruitment and selection of Destination Staff, their personal standards and character are much more important than any other skills or experience.

In order to have a clear understanding between you and I Love Travel, the following is a list of the terms and conditions that must be agreed to in order to staff any of our programs:

Responsibilities

Coordinators are senior I Love Travel staff members who are selected to manage and execute specific aspects of a program.

Coordinator responsibilities may include (but not limited to):

- o Communication with Hotel Staff, Suppliers, Trip Leaders/Bus Captains, Supervising Manager & Head Office
- o Creating & Managing Destination Staff Team Schedules
- o Promoting I Love Travel Excursions, Activities & Events
- o Ensuring I Love Travel Signage, Information and Staff are visible at Info Desk, Excursions, Events & Activities
- o Encouraging Trip Leaders/Bus Captains & Travelers to actively use social media to post photos & comments throughout the trip
- o Maintaining Supplier & Hotel Relations
- o Conducting Pre-Con Meetings, Group Briefings, Coordinator Huddles and 2 daily Team Staff Meetings
- o Selling Excursions, Event Bracelets & Merchandise
- o Collecting Damage Protection/Deposits from all Travelers
- o Managing onsite accounting; and reconciling all program payments & sales with Head Office
- o Completing Happy Traveler Index daily
- o Enforcing I Love Travel and Hotel Policies & Conduct to all Travelers & Staff
- o Following all policies and guidelines of the Destination Staff & Coordinator Training Manuals
- o Following all processes and checklists of the Coordinator Onsite Handbook



TRAVEL

337 Queen Street West
Toronto, ON, M5V 2A4

Tel. 866.627.8747
Fax. 866.800.6950

info@s-trip.com

Conduct

- o I have fully read and understood the Destination Staff Training Manual.
- o When working as a Destination Staff member, I agree to follow the processes & instructions in the Coordinator Onsite Handbook. If I have questions or a situation arises that is not referenced in Coordinator Onsite Handbook or Coordinator Training Manual, I will seek guidance from the Program Director(s) or Head Office before taking any action.
- o I agree that I'm personally liable for any property damages resulting from my actions or neglect.
- o I agree to indemnify and save I Love Travel harmless from all costs, claims, and demands or otherwise, which might be made upon it by reason of my actions, neglect, or wrongdoing.
- o
- o I will complete detailed reports & notify the Program Director of any incidents
- o I will receive my honorarium only after fully completing my commitment and returning all materials to I Love Travel
- o I agree to collect "The Code" forms, outstanding balances and Damage Protection/ Deposits from Travelers. I understand that all money collected & onsite payments are to be documented on the Program Accounting Doc.
- o If I cannot fulfill my commitment in part or full for whatever reason, I must inform I Love Travel immediately.
- o If I break any of the rules of conduct stated in the Destination Staff Training Manual, I will be sent home at my own expense.
- o I understand that I must respect all rules & laws of the country in which I am travelling in, and that I will be held liable for any actions that are outside I Love Travel Company policies.
- o I agree to follow all rules of professionalism in regards to dress code, appropriate language, inclusive language, use of tobacco, social media posting of pictures, videos & comments, zero tolerance for alcohol consumption and all other areas of conduct explained to me in my Destination Staff & Coordinator Training Manuals.
- o I understand that I am not to engage in any physical contact with any hotel guests, residences of the local area, passengers, suppliers & I Love Travel Staff in a violent behavior and/or romantic or sexual nature.
- o I agree to cooperate and take direction from my supervising Program Director(s) and Office Staff. I will be prompt for my scheduled duties & at no point should I take it upon myself to make changes to my schedule or duties.
- o I understand that a room will be assigned to me with roommates and will not be behind closed doors of Travelers' rooms unless I am require to assist with an emergency incident. I agree to seek a conference room or other common area meeting space to conduct private student or staff meetings; and will seek attendance of another staff member when deemed necessary.
- o I agree not to discuss any information given to me in my Coordinator Training Manual, Handbook, & Staff Binder to anyone outside of I Love Travel. This also includes discussing my compensation and speaking to media personnel.
- o I agree to a police background check and will inform I Love Travel of any previous criminal record(s) immediately.
- o I understand that I am provided an honorarium to mitigate any costs associated with this volunteer position including: cell phone usage, transportation costs, additional meal costs and that I am not receiving a wage or salary for work provided to the company.
- o I understand that I am engaged as a volunteer providing services to I Love Travel, that I am not engaged as an employee, and that no employment relationship is established between myself and I Love Travel. I acknowledge and agree that I am responsible for payment of all taxes, Canadian pension plan and employment insurance (if applicable) and that I Love Travel will not withhold or remit payment for any of these amounts.

I _____, agree to the terms and conditions stated above and agree to participate as a volunteer Coordinator for I Love Travel.

Name (Please Print)	Signature	Date (dd/mm/yyyy)



This is **Exhibit "G"** referred to in the
Affidavit of Charles Sinclair sworn before
me this 21st day of June 2022.



J. Sheppard
A Commissioner for taking affidavits etc., or as may be

S-Trip Class Action
Lawyer Summary

Lawyer	Year of Call	Rate	Hours	Fees
James K McDonald	1978	\$800.00	0.4	\$320.00
Ethan Poskaner		\$800.00	7.3	\$5,840.00
Charles Sinclair	2000	\$625.00	18.3	\$11,437.50
Christine Davies	2009	\$600.00	1.5	\$900.00
Jody Brown	2010	\$550.00	193.7	\$106,535.00
Miriam Moktar	2013	\$525.00	23.5	\$12,337.50
Joshua Mandryk	2015	\$475.00	269.6	\$128,060.00
Willow Peterson	2019	\$350.00	1.2	\$420.00
Emily Li	2019	\$350.00	29.5	\$10,325.00
Melanie Anderson	2020	\$325.00	5.2	\$1,690.00
Anna Goldfinch	2020	\$325.00	3.4	\$1,105.00
Student (BM)		\$250.00	16.1	\$4,025.00
Student (SA)		\$250.00	18.0	\$4,500.00
Student (SN)		\$250.00	15.6	\$3,900.00
Law Clerks		\$200.00	104.4	\$20,880.00
Subtotal			707.7	\$312,275.00
HST				<u>\$40,595.75</u>
TOTAL FEES + HST				\$352,870.75

**S-Trip
Disbursements**

<i>Non-Taxable</i>	
Minister of Finance	\$1,120.00
<i>Taxable</i>	
Corporate Searches	\$726.24
Process Server	\$528.29
Mediation	\$10,662.50
Research	\$392.00
Photocopies	\$902.75
Teranet Searches	\$228.96
Social Media / Website	\$8,034.23
Courier	\$24.07
Conference Calls	\$5.76
Meals	<u>\$10.19</u>
Subtotal	\$21,514.99
HST	<u>\$2,796.95</u>
Total (incl HST)	\$24,311.94
TOTAL	\$25,431.94

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF CHARLES SINCLAIR
(Sworn June 21, 2022)**

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Jody Brown LS#: 58844D
Tel: 416-979-4251
Email: jbrown@goldblattpartners.com

Joshua Mandryk LS#: 68823D
Tel: 416-979-6970
Email: jmandryk@goldblattpartners.com

Lawyers for the Plaintiff

TAB 3

Court File No.: CV-18-00598257-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF D'ANDRA MONTAQUE
(Sworn June 22, 2022)**

I, D'Andra Montaque, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the representative plaintiff in this action. As such, I have knowledge of the matters to which I hereinafter depose. Where the information in this affidavit is not based on my direct knowledge but is based upon information and belief from other sources, I have stated the source of that information and I believe that information to be true.

2. This affidavit is in support of the motion for settlement approval, approval of the distribution protocol, approval of an honorarium to me as the representative plaintiff, and approval of Class Counsel's fees. I swear this affidavit for no other or improper purpose.

BACKGROUND

3. This certified class action concerns the alleged misclassification of Trip Leaders as volunteers, rather than employees under the *Employment Standards Act, 2000* (the “ESA”).

4. The original Statement of Claim in this action was issued in Toronto, Ontario on May 22, 2018. A copy of the Statement of Claim is marked as **Exhibit “A”** to my affidavit. The current Amended Amended Statement of Claim was amended on September 25, 2020 and is attached as **Exhibit “B”**.

5. The central allegation of this case concerns alleged unpaid hours of work and unpaid overtime flowing from the misclassification of Trip Leaders as volunteers.

6. This action was certified on consent on October 23, 2020 with reasons at *Montaque v. Handa Travel Student Trip Ltd.*, 2020 ONSC 6459. A copy of the reasons certifying this action as a class proceeding is attached as **Exhibit “C”**. A copy of the certification order is attached as **Exhibit “D”**.

The Defendants

7. The Defendants, Handa Travel Student Trip Ltd. o/a I Love Travel (“Handa Travel”), Campus Vacations Holdings Inc. (“Campus Vacations”), 2504027 Ontario Inc. o/a S-Trip (“S-Trip”) and 2417988 Ontario Inc. o/a Breakaway Tours (“Breakaway Tours”) operated as travel companies offering trips for high school students, such as graduation trips (collectively referred to as the “Corporate Defendants”). Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer were directors of the Corporate Defendants (the “Director Defendants”). The Director Defendants were added on consent in the

Amended Amended Claim in light of concerns regarding the Corporate Defendants' ongoing financial viability.

The Class Members

8. The class members consist of:

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 June 3, 2014 to the date of certification.

9. The case was certified on October 23, 2020. The most recent class list produced after settlement has a total of 936 class members.

10. Trip Leaders were typically college or university students who worked for the Corporate Defendants during summer break or other academic breaks.

11. Trip Leaders' responsibilities generally included guiding and chaperoning high school students on the trips provided by the Corporate Defendants. The duties of Trip Leaders included:

- 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;

- 4 -

- 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.

12. In general, Trip Leaders were responsible for travelling with students to and from destinations and creating a big sister/brother relationship with travellers.

13. Trip Leaders were classified by the Defendants as “volunteers”, and not employees. The Trip Leader Agreement, which was signed by all of the Trip Leaders stated 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.” The Defendants never recorded or tracked any hours worked.

14. Trip Leaders were not paid wages but were paid an honorarium for each trip they took. The honorarium was 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

15. The honorarium is paid, less applicable uniform deductions, upon completion of their trips. For example, for one trip I was compensated \$150, less my \$80 uniform deduction. If Trip Leaders do more than one trip, they can generally reuse the uniform.

My Work as a Trip Leader

16. I applied for a job as a Trip Leader after speaking to a friend who worked as a Trip Leader on a Breakaway Tours trip to Montreal, Quebec in or around March 2017. I was a Humber College student at the time and was starting to look for a summer job.

17. I worked for the Corporate Defendants as a Trip Leader during the summer of 2017 on an S-Trip graduation trip to Cayo Coco, Cuba.

18. As a Trip Leader I was responsible for contacting all the trip participants prior to the day of departure and then accompanying them at the airport and buses to the final trip destination. Once at the final trip destination, my duties could be generally grouped into three categories:

- a) **Staffing the info desk at S-Trip Central:** the info desk was the main point of contact for passengers with questions. I was responsible for answering these questions when I staffed the desk. The info desk was also where the three daily sign-ins occurred. I was responsible for maintaining the sign in binders when I staffed the info desk;
- b) **“Roaming” duties:** roaming duties were assigned to Trip Leaders to maintain a presence around the resort. When I was assigned roaming duties, I was responsible for getting students involved in activities or getting them excited for events and

excursions. I was also responsible for keeping an eye on the students and for answering any questions they may have; and,

- c) **Excursions and events:** Trip Leaders were assigned to staff various on-and-off resort events and excursions. When I was assigned to excursions I was required to perform headcounts, ensure safety and supervise the students on the excursion.

19. In addition to the above responsibilities, each night there was an evening party that I would have to chaperone.

Solvency Concerns

20. Solvency concerns regarding the Corporate Defendants has been a concern since early in this case.

21. In February of 2017, a CBC Marketplace investigation aired a TV piece entitled “Grad trips gone wild: S-Trip's high school trips”. The CBC short summary stated that “S-Trip says its grad trips are safe & supervised. But the reality includes underage binge drinking and some staff that don't do much to stop the party.” In July of 2017, a teenager died while on a trip organized by S-trip, this was similarly reported across several media outlets. I believe these two events negatively impacted the finances of the Corporate Defendants.

22. On January 3, 2020, my counsel became aware and advised me that there was a real estate listing which advertised for lease the office space of S-Trip at 337 Queen St. West, which was the former head office for the Corporate Defendants. Similarly, on January 2020, we became aware that S-Trip had deactivated its pre-existing Instagram page, under the handle www.instagram.com/studenttrip/.

23. The last update to the twitter account of S-Trip, at “twitter.com/studenttrip”, was June 5, 2019.

24. In March of 2020, the COVID-19 pandemic shut down virtually all of the travel industry. The S-Trip Instagram handle currently links to a “thanks and goodbye” message which states that “*the pandemic has impacted us all and after a long period of uncertainty we are closing*”.

Mediation and Settlement

25. There was a one-day mediation with William Kaplan on May 17, 2021. I attended the mediation virtually, along with my lawyers. The mediation did not result in a settlement. After the mediation, the parties engaged in extensive written negotiations over several months, with the assistance of William Kaplan.

26. I was involved with Class Counsel’s ongoing negotiations. On November 7, 2021, all parties signed Minutes of Settlement. A copy of the Minutes of Settlement are attached as **Exhibit “E”** (the “Minutes”).

27. The Minutes provided for two key terms from my perspective as a former Trip Leader and representative plaintiff:

- a) “The Corporate Defendants shall classify destination staff as employees pursuant to the *Employment Standards Act, 2000, S.O. 2000, c. 41 (ESA)*, *Employment Insurance Act, S.C. 1996, c. 23*, and the *Canada Pension Plan, R.S.C., 1985, c. C-8 (CPP)* on a go-forward basis following Final Approval. For greater clarity, destination staff includes, Directors, Coordinators, Trip Leaders/Bus Captains and any future positions performing substantively similar duties or roles under different job titles”; and,

b) A settlement payment of \$450,000.

28. Going into the mediation, one of my primary objectives was to obtain some form of behaviour modification to ensure that future Trip Leaders for S-Trip and Breakaway Tours trips would be treated more fairly, and that could be an example to similar companies and industries using unpaid labour. I also wanted compensation for all the Trip Leaders. By the time the extended negotiation concluded with the Minutes, I believe my two primary objectives had been met.

29. Rather than proceed with further litigation, I believe that it is in the best interests of the class to settle this action on the terms set forth in the proposed settlement and provide compensation to class members in relatively short order. I believe that the proposed settlement provides a fair, workable, and economical method of compensating members of the class. Negative media prior to the COVID-19 pandemic and then the shuttering of the travel industry created a significant risk to any recover in this proceeding. The settlement will avoid all risk associated with the Corporate Defendants' solvency.

Distribution Protocol

30. After the payment of lawyers fees and holding back funds to pay for administration, I understand that the available funds for class members will be approximately \$210,700 (the "Claim Fund").

31. The Claim Fund will be used to pay Class Members based on the number of trips they took. The more trips someone took, the more money they will get. I believed this was fair in order to more accurately compensate some of the class members.

32. There will also be less money paid to Trip Leaders for trips worked more than two years before the start of the Class Action, i.e. Trips prior to May 22, 2016. I understand this is meant to reflect the risk that those trips could be subject to a limitations period.

33. The distribution protocol provides for different levels of payment for S-Trips and Breakaway Tours trips which occurred between May 22, 2016 and October 23, 2020. I understand that this distinction is to reflect the different average lengths of the trips under these two brands. I believe that this is fair since a longer trip would mean that the Trip Leader was performing more unpaid work.

34. Most importantly the protocol is user friendly. There is no complicated claims procedure, all a Class Member must do is respond to the claims notice and they are automatically entitled to receive compensation.

Retainer and Fees

35. I signed a contingency retainer for this action dated May 15th, 2018. A copy of that retainer is attached as **Exhibit “F”**. The contingency fee retainer provided for a contingency of 30% on any recovery, plus HST and disbursements, for this stage of the action (post-certification).

36. I understand that Class Counsel is asking for a \$100,000 flat fee, plus HST and Disbursements. This is a reduction of approximately \$35,000 from what class counsel would be otherwise entitled to ask for and I support the fee request of Class Counsel.

Honorarium

37. I understand Class Counsel will be asking for an honorarium to recognize my contribution to the class action.

38. I have been personally involved in bringing attention to this class action and my face and name have been associated with the case. When the case was first launched, an extensive CBC article was published with my photo entitled "\$7M class action lawsuit filed against S-Trip student travel firm". A further article was published on Narcity entitled "S-Trip Just Got Slapped With A \$7 Million Class Action Lawsuit"

39. It is nerve racking to sue a large company and understand that your name will be on the internet as a class action representative plaintiff for anyone to find, such as clients, schools or potential employers. This is especially the case as a young worker just entering the job market and starting my career. Today, when a prospective employer or client googles my name, articles about this class action and my role as the representative plaintiff show up as some of the top results.

40. Class members contacted me over social media and email after reading the articles on the launching of the class action. I directed class members who contacted me to the website for the class action to register and get more information.

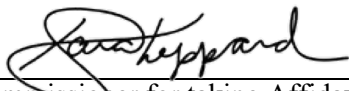
41. In the course of this litigation, I met many times with class counsel. I provided feedback and instruction on documents, and class counsel consulted me regularly about the steps in the action. I swore an affidavit on February 25, 2019 concerning my experiences as part of the certification motion record.

42. Class counsel met with me in advance of the mediation and to plan the strategy for the negotiations. I attended the mediation and I also spoke with counsel throughout the extended negotiations.

43. While I appreciate receiving an honorarium recognizing all the work I have put into this action, I would support the proposed settlement regardless. I did not pursue this class action in order to get an honorarium, and in fact I was not aware that an honorarium was an option until some time after I had signed my class action contingency fee retainer agreement and the Statement of Claim was issued. In my communications with other class members about the settlement, no one has raised with me any concern about either class counsel fees or the honorarium.

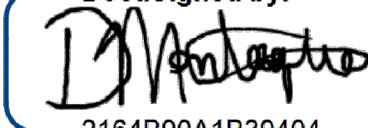
44. I swear this affidavit is in support of an Order approving the proposed settlement of this action, approving the distribution protocol, approving class counsel fees, and approving an honorarium to me as the representative plaintiff, and for no other or improper reason.

SWORN BEFORE ME by video conference by D’Andra Montaque of the City of Toronto in the Province of Ontario, on June 22, 2022, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely.



A Commissioner for taking Affidavits *(or as may be)*

Tara-Cailey Sheppard, a Commissioner, etc.,
Province of Ontario, for Goldblatt Partners LLP,
Barristers and Solicitors. Expires March 2, 2025.

DocuSigned by:

2164B90A1B39404...
D’Andra Montaque

This is **Exhibit "A"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely



A Commissioner for taking affidavits etc., or as may be

CV-18-00598 257-00CP

Court File No.: _____



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

D'ANDRA MONTAQUE

Plaintiff

- 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***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.

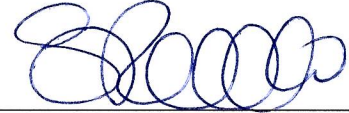
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

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

Issued by



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 commencing in or departing from Ontario at any time during the period from May 22, 2016 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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Lawyers for the Plaintiff

MONTAQUE
Plaintiff and HANDA TRAVEL, et al.
Defendant

CV-18-00598257-200CF

Court File No.: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced Toronto

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
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Fax: 416-591-7333

Lawyers for the Plaintiff

This is **Exhibit "B"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely



A Commissioner for taking affidavits etc., or as may be

Court File No.: CV-18-00598257-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDING ACT, 1992*

AMENDED 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.

AMENDED THIS Sept 25, 2020 PURSUANT TO
 MODIFIÉ CE _____ CONFORMÉMENT À

RULE/LA RÈGLE 29.02
 THE ORDER OF The Honourable Justice Morgan
 L'ORDONNANCE DU _____

DATED / FAIT LE _____

 REGISTRAR SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

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: May 22, 2018

Amended: _____

Issued by "S. Riccio"
Local registrar

Address of 393 University Avenue,
court office 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

AND TO: ALEXANDRE JIT HANDA aka ALEXANDRE HANDA aka ALEXANDER
HANDA aka ALEX HANDA
184 Lippincott Street
Toronto, ON M5S 2P1
-and-
652 Richmond Street West
Toronto, ON M6G 2L9

AND TO: JUSTIN VAN CAMP
18 Beverly Street, Suite 318
Toronto, ON M5T 3L2

AND TO: EUGENE WINER

231 Markham Street
Toronto, ON M6G 2K8

-and-

392 ½ Markham Street
Toronto, ON M6G 2K9

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 hvertime threshold, performed by the Class Members;
 - (o) pre-judgment and post-judgement 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.

- (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.

DIRECTORS' LIABILITY FOR WAGES

95. Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a Alex Handa, is and was at all material times a director, and the operating mind of 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! and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the Ontario Business Corporations Act, 1990 (the "OBCA").

96. Justin Van Camp is and was at all material times a director of the Defendant Handa Travel Student Trip Ltd. o/a I Love Travel and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the OBCA.

97. Eugene Winer is and was at all material times a director of the Defendant Handa Travel Student Trip Ltd. o/a I Love Travel and is liable for unpaid wages under sections 80 and 81 of the ESA and section 131 of the OBCA.

98. The Plaintiff only claims as against Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a Alex Handa, Justin Van Camp and Eugene Winer pursuant to the statutory liability imposed by sections 80 and 81 of the ESA and/or Section 131 of the OBCA.

99. 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; and
- (e) Business Corporations Act, R.S.O. 1990, c. B. 16.

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

May 22, 2018

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto ON M5G 2C2

Charles Sinclair LS#: 43178A
csinclair@goldblattpartners.com
Joshua Mandryk LS#: 68823D
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Tel: 416-979-4234 / 416-979-6970
Fax: 416-591-7333

Lawyers for the Plaintiff

MONTAQUE
Plaintiff and
HANDA TRAVEL, et al.
Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced Toronto

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED STATEMENT OF CLAIM

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto ON M5G 2C2

Charles Sinclair LS#: 43178A
csinclair@goldblattpartners.com
Joshua Mandryk LS#: 68823D
jmandryk@goldblattpartners.com
Tel: 416-979-4234 / 416-979-6970
Fax: 416-591-7333

Lawyers for the Plaintiff

This is **Exhibit "C"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

A handwritten signature in black ink, appearing to read "J. Sheppard". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

A Commissioner for taking affidavits etc., or as may be

CITATION: Montaque v. Handa Travel Student Trip Ltd., 2020 ONSC 6459
COURT FILE NO.: CV-18-00598257-CP
DATE: 20201023

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: D’ANDRA MONTAQUE, Plaintiff

– 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER, Defendants

BEFORE: E.M. Morgan J.

COUNSEL: *Jody Brown and Joshua Mandryk*, for the Plaintiff

David Di Paolo and Nadia Effendi, for the Defendants

HEARD: October 22, 2020

CERTIFICATION OF CLASS ACTION

I. The misclassification claim

[1] The Plaintiff brings this motion, with consent of the Defendants, for certification of the action under section 5(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”).

[2] The hearing of this motion was held over Zoom. The representative Plaintiff, along with several other class members, were in attendance. There were no objections to the proposal to certify the action.

[3] In brief, the claim is a variation on what has become a familiar pattern of employment classification cases. The Plaintiff claims that she and those she represents have been misclassified by their employers – i.e. the corporate Defendants – and that they are entitled to wages and benefits commensurate with their proper classification.

[4] The claim has been brought on behalf of a group of people who work as “Trip Leaders” on guided tours for students. The corporate Defendants operate a travel company under a number of different brand names. They sell and deliver vacation packages to student-age travelers. Trip Leaders such as the Plaintiff are alleged to play an important role in the Defendants’ operations.

[5] Trip Leaders' job duties and responsibilities are set out in their standard-form Trip Leader Agreements prepared by the Defendants. These include:

- (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.

[6] Further, Trip Leaders are required to follow detailed procedures and protocols set out in the Destination Staff Manual. These procedures relate to pre-trip planning and procedures, airport and flight procedures, emergency and on-site procedures, briefing sessions, hotel check-ins, student sign-in and room checks, and check-out and return trip procedures.

[7] The Defendants classify the Trip Leaders as volunteers. They are paid only a small honorarium, which is well under the province's minimum wage. Moreover, they do not receive the range of benefits that employees are required to receive under the *Employment Standards Act, 2000*, SO 2000, c. 41. The Plaintiff claims that the Trip Leaders are, in fact, employees, who are therefore underpaid and deprived of the employment benefits to which they are entitled.

[8] The question of whether the putative class members are employees or volunteers appears to be a novel one for Ontario class actions. However, the general structure of an employment classification claim is by now familiar. The Amended Statement of Claim describes a dispute that fits the pattern of previous cases that have been certified under section 5(1) of the CPA.

II. Requirements for certification

[9] Although they are well-known, it is worth setting out the bases for certification under the CPA:

5 (1) The court shall, subject to subsection (6) and to section 5.1, certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[10] The claim satisfies each of the section 5(1) criteria. I will briefly go through them, one at a time.

a) Cause of action

[11] The certification motion is a procedural inquiry. As such, it is not intended to rule on the merits of the issues to be determined at trial: *Pro Sys Consultants Ltd. v. Microsoft Corporation*, [2013] 3 SCR 477, at paras 102, 105.

[12] The Amended Statement of Claim pleads the following causes of action:

- breach of contract;
- breach of duty of good faith;
- unjust enrichment;
- denial of employment benefits by common employer; and
- directors' statutory liability.

[13] Similar causes of action have been permitted to go forward in other employment actions: see, *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444, at paras 74, 83. All of the causes of action have been recognized by the courts as existing and have been used in the context of employment actions. They easily meet the cause of action requirement in section 5(1)(a) of the CPA.

b) Identifiable class

[14] The proposed class is defined by Plaintiff's counsel as follows:

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 June 3, 2014 to the date of certification.

[15] Trip Leaders are alleged to be the Defendants' front-line staff. They 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. As indicated above, they share many duties in common and have a common compensation arrangement.

[16] To satisfy the class requirement in section 5(1)(b) of the CPA, the class must be composed of "two or more persons" and must also be objectively defined and limited by rational criteria bearing a relationship to the common issues. The class definition set out above fulfills the overall purpose of a class definition in that it identifies those with a potential claim, forms the parameters of the claim itself, and describes those entitled to notice of certification: *Goodridge v. Pfizer Canada Inc.*, 2010 ONSC 1095, at para 113.

[17] The class definition agreed upon by the parties satisfies the requirement in section 5(1)(b) of the CPA.

c) Common issues

[18] The critical question under section 5(1)(c) of the CPA is whether resolution of the common issues would significantly advance the action. The resolution of any one or all of the common issue does not have to be, in and of itself, sufficient to support relief: *Cloud v. Canada (Attorney General)*, [2004] OJ No 4924 (CA), at para 53, leave to appeal dismissed [2005] SCCA No 50.

[19] At this stage, all that a Plaintiff needs to show is that there exists a minimal evidentiary basis to establish the existence of common issues. The requirement that a plaintiff provide "some basis in fact" for the proposed common issues is a significantly lower threshold than the obligation imposed upon a respondent on a summary judgment motion: *Pro-Sys*, at paras 99-105. Here, the evidence that the class members have similar job functions and that there is a common compensation structure and control of them by the corporate Defendants suffices to meet the standard.

[20] The evidence put forward in the Motion Record is certainly sufficient to establish some basis in fact for the commonality of the issues. In this respect, the case is distinguishable from cases such as *Brown v. CIBC*, 2012 ONSC 2377, at para 101, where there were 52 positions at issue. The issues are even more common than in *Rosen v. BMO Nesbitt Burns Inc*, 2013 ONSC 2144, which was certified as an employment misclassification class action involving three substantially similar positions.

[21] The following are the common issues proposed by the Plaintiff and agreed upon by the Defendants:

As against the Defendants 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:

- (1) Are the Class Members “employees” of the Defendants pursuant to the *Employment Standards Act, 2000* (“ESA”)?
- (2) If the answer to (1) is “yes”, are the Class Members in “pensionable employment” of the Defendants pursuant to the *Canada Pension Plan* (“CPP”)?
- (3) If the answer to (1) is “yes”, are the Class Members in “insurable employment” of the Defendants pursuant to the *Employment Insurance Act* (“EI”)?

Contractual Terms and Breach

- (4) If the answers to (1) and (3) are “yes”, do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?
- (5) If the answers to questions (1) and (4) are “yes”, do the Defendants owe contractual duties and/or a duty of good faith to:
 - (a) Ensure that the Class Members were compensated with the minimum wage?
 - (b) Ensure that the Class Members’ hours of work were monitored and accurately recorded?
 - (c) Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - (d) Ensure that the Class Members were compensated with vacation pay?
 - (e) Ensure that the Class Members were compensated with public holiday and premium pay?
- (6) Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
- (7) If the answers to (1) and (4) are “yes”, did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
- (8) If the answers to (2) and/or (3) are “yes”, did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Unjust Enrichment

- (9) Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

As against the Defendants Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer:

Directors' Liability

- (10) Are Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and/or Eugene Winer liable for unpaid wages under sections 80 and 81 of the *ESA* and/or section 131 of the Ontario *Business Corporations Act*, 1990 (the "OBCA")?

d) Preferable procedure

[22] In *Cloud*, at para 73, the court explained that the overarching policy goals that inform the preferability analysis are: (a) judicial economy, (b) access to justice, and (c) behaviour modification. Here, there are 1000 affected class members, each with basic minimum wage and overtime claims. The individual claims of these 1000 will be very small and would not warrant individual litigation despite the importance of that income to these low-income workers. Common determinations on their employment status will significantly contribute to these claimants' access to justice.

[23] In similar employment classification actions, the courts have held that a class action is the preferable procedure: see, *Rosen, supra*; *Fresco, supra*. The Court of Appeal in *Fulawka v. Bank of Nova Scotia*, 2012 ONCA, at para 156, observed that, like here, "there is every reason to believe that a common issues trial judge, assisted by the parties and their experts, will be able to design and successfully implement a satisfactory compensation system."

[24] In these circumstances, a class action is undoubtedly the preferable procedure, as required by section 5(1)(d) of the CPA.

e) Proposed representative Plaintiff

[25] It is by now well accepted that a proposed representative need not be 'typical' of the class, but must be 'adequate' in the sense that she must be capable of instructing counsel and willing to vigorously prosecute the claim: *Rosen*, at paras 73-74.

[26] Plaintiff's counsel submit that the Plaintiff here has undertaken all the essential steps of a class representative in litigating this action. She has apparently been involved in reviewing evidence produced to date, retaining and instructing class counsel and providing them with evidence for use in this motion. She shares common interests with the other class members, and there has been no suggestion that she is in any form of conflict with them.

[27] The Plaintiff is therefore a suitable representative Plaintiff.

f) Litigation plan

[28] The plaintiff has produced a litigation plan which appears to set out a workable method of advancing the current proceeding. If necessary, it can always be modified as the litigation progresses, and at the common issues trial: *Rosen*, at para 75; *Cloud*, at para 95.

[29] At the certification stage, the litigation plan is always a tentative one. Its purpose at this stage is to assist the court in determining whether the goals of the CPA will be served by certification, not to provide a concrete plan with all procedural elements spelled out in detail. The current plan submitted by the Plaintiff satisfies the requirement for a litigation plan set out in section 5(1)(e)(ii) of the CPA.

III. Disposition

[30] The action is certified as a class proceeding pursuant to section 5(1) of the CPA.

[31] The class is as defined in paragraph 14 above. The Plaintiff is the representative Plaintiff for the class.

[32] Plaintiff's counsel are appointed as class counsel.

[33] The common issues are as set out in paragraph 21 above.



Morgan J.

Date: October 23, 2020

This is **Exhibit "D"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely



A Commissioner for taking affidavits etc., or as may be

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

THURSDAY, THE

)

JUSTICE MORGAN

)

29th DAY OF OCTOBER 2020

)

BETWEEN:

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a.
ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN
VAN CAMP and EUGENE WINER**

Defendants



PROCEEDING UNDER THE *CLASS PROCEEDING ACT*, 1992

**ORDER
(CERTIFICATION)**

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding was heard this day at the courthouse at 130 Queen Street West in Toronto, Ontario.

ON READING the motion record, factum of the Plaintiff and on hearing the submissions of counsel for the Plaintiff ("class counsel") and counsel for the Defendants.

AND ON BEING ADVISED that the parties consent to this Order.

Certification

1. **THIS COURT ORDERS** that this proceeding is certified on consent as a class proceeding.

Class Definition & Representative Plaintiff

2. **THIS COURT ORDERS** that the class definition for the purposes of this action is as follows:

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

3. **THIS COURT ORDERS** that D'Andra Montaque is appointed as the representative plaintiff of the class, and Goldblatt Partners LLP is appointed as counsel for the class;

Nature of the Claims and Common Issues

4. **THIS COURT ORDERS** that the claims asserted on behalf of the Class are breach of contract and unjust enrichment.
5. **THIS COURT ORDERS** that the common issues shall be those attached hereto as Schedule "A".

Notice of Certification & Opting Out

6. **THIS COURT ORDERS** that, pursuant to section 17 of the *CPA*, the form of notice of certification, the manner of giving notice, the manner by which class members can opt out and all other matters related to notice of certification shall be determined by further order of the court.

Costs

7. **THIS COURT ORDERS** that the Defendants, 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 shall pay the Plaintiff costs in the amount of \$15,000, payable forthwith

and there shall be no costs in respect of the Defendants Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:



NOV 04 2020

PER / PAR:



SCHEDULE "A" – LIST OF COMMON ISSUES

The following common issues shall be certified as against the Defendants 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:

1. Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
2. If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the *Canada Pension Plan* ("CPP")?
3. If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the *Employment Insurance Act* ("EI")?

Contractual Terms and Breach

4. If the answers to (1) and (3) are "yes", do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?
5. If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:
 - a. Ensure that the Class Members were compensated with the minimum wage?

- b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
 - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - d. Ensure that the Class Members were compensated with vacation pay?
 - e. Ensure that the Class Members were compensated with and public holiday and premium pay?
6. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
 7. If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
 8. If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Unjust Enrichment

9. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

The following common issue shall be certified as against the Defendants Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer:

Directors' Liability

1. Are Alexandre Jit Handa a.k.a Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and/or Eugene Winer liable for unpaid wages under sections 80 and 81 of the *ESA* and/or section 131 of the Ontario *Business Corporations Act*, 1990 (the "*OBCA*")?

MONTAQUE
Plaintiff and
S-TRIP, et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceeding Act, 1992*

**ORDER
(CERTIFICATION)**

Goldblatt Partners LLP
20 Dundas Street West, Suite 1039
Toronto ON M5G 2C2

Charles Sinclair LS#: 43178A
Tel: 416-979-4234 / Fax: 416-591-7333
Joshua Mandryk LS#: 68823D
Tel: 416-979-6970 / Fax: 416-591-7333
Jody Brown LS#: 58844D
Tel: 416-979-4251 / Fax: 416-591-7333

Lawyers for the Plaintiff

This is **Exhibit "E"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

A handwritten signature in black ink, appearing to read "Jean Sheppard". The signature is fluid and cursive, with a large initial "J" and "S".

A Commissioner for taking affidavits etc., or as may be

Court File No. CV-18-00598257-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

D'ANDRA MONTAQUE

Plaintiff

- 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, ALEXANDRE JIT HANDA a.k.a. ALEXANDRE HANDA a.k.a. ALEXANDER HANDA a.k.a. ALEX HANDA, JUSTIN VAN CAMP and EUGENE WINER

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

MINUTES OF SETTLEMENT AND RELEASE

WHEREAS, the Plaintiff commenced a Class Action, being Court File No. CV-18-00598257-CP, seeking to represent certain alleged former employees of the Corporate Defendants, 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 and claiming, among other things, a declaration that the Class Members were employees of the Corporate Defendants and compensation for minimum wage, EI, CPP and overtime;

AND WHEREAS, the Corporate Defendants and Director Defendants advised that they intend to vigorously defend the Action and deny the allegations that have been made;

AND WHEREAS, the Parties wish to fully and finally resolve all matters in dispute between them in relation to the Action;

AND WHEREAS, taking into account the burdens and expense of continued litigation, including the significant risks and uncertainties associated with completion of the litigation and any potential appeals, the Plaintiff, with the benefit of advice from Class Counsel, has concluded after a one day mediation and multiple days of written negotiations with William Kaplan, that the settlement on the terms and conditions set out in this Settlement Agreement are fair and reasonable, and in the best interests of the Class;

AND WHEREAS, the Parties intend by these Minutes of Settlement and Release (the “**Settlement Agreement**”) to resolve, terminate, and finally conclude any and all claims raised or which could have been raised in the Action and seek the approval of the terms of the Court, and further intend that the Defendants shall receive full and complete releases and finality and peace from the Class;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for good and valuable consideration received, the Parties stipulate and agree that the Action shall be fully and finally settled and resolved on the terms and conditions set forth in this Settlement Agreement, subject to approval by the Ontario Superior Court of Justice (the “**Court**”):

1. This settlement is conditional upon the Court approving this Settlement Agreement on the terms that follow.
2. The Plaintiff shall support the terms of this Settlement Agreement and shall take all necessary steps to bring a motion for its approval by the Court.
3. The Defendants agree to support the approval of the terms of this Settlement Agreement by the Court and, in particular, shall not object to the Class Counsel Fees, Class Counsel Disbursements, or Representative Plaintiff Honorarium as provided for in this Settlement Agreement.
4. The Parties shall use their best efforts to implement the terms of the settlement outlined in this Settlement Agreement.
5. For the purposes of this Settlement Agreement, the following definitions apply:

- (a) **Action** means the class proceeding commenced by D’Andra Montaque by way of Statement of Claim in the Ontario Superior Court of Justice under Court File No. CV-18-00598257-CP, as amended, including any and all claims made therein.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notices and translation and the costs of the Claims Administrator, but excluding Class Counsel Fees and Class Counsel Disbursements;
- (c) **Claim Fund** means the Settlement Amount remaining after deductions in respect of Class Counsel Fees, Class Counsel Disbursements, Administrative Expenses, Representative Plaintiff Honorarium (if any), and Holdback for Taxes;
- (d) **Claims** means any and all actions, causes of action, claims, complaints, debts, demands, liabilities, suits or other proceedings of any kind or nature whatsoever and howsoever arising, whether in law, equity, contract, extra-contractual liability (including negligence), obligations or otherwise, whether express or implied and whether presently known or unknown, including any proceedings under any statute, and in particular, but without limiting the generality of the foregoing, any and all claims up to the Effective Date that were advanced in the Action or could have been advanced in the Action;
- (e) **Claims Administrator** means the firm appointed by Class Counsel, and approved by the Defendant and the Court, to administer the Claim Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol;
- (f) **Claims Administrator Appointment Date** means the date Class Counsel advises the Defendant of the appointment of the Claims Administrator;
- (g) **Class** means 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 June 3, 2014 to the date of certification, being October 23, 2020;

- (h) ***Class Counsel*** means Goldblatt Partners LLP;
- (i) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
- (j) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes;
- (k) ***Class Member*** means a member of the Class;
- (l) ***Class Period*** means June 3, 2014 to the date of certification, being October 23, 2020;
- (m) ***Corporate Defendants*** means 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;
- (n) ***Counsel for the Defendants*** means Borden Ladner Gervais LLP;
- (o) ***Date of Execution*** or ***Execution Date*** means the date this Settlement Agreement is signed by all of the parties;
- (p) ***Defendants*** means Corporate Defendants and Director Defendants;
- (q) ***Director Defendants*** means Alexandre Jit Handa a.k.a. Alexandre Handa a.k.a. Alexander Handa a.k.a. Alex Handa, Justin Van Camp and Eugene Winer;
- (r) ***Distribution Protocol*** means the protocol developed by Class Counsel for the distribution of amounts from the Settlement Amount to the Class Members and agreed to by the Defendants or directed by William Kaplan, in accordance with Section 22;
- (s) ***Effective Date*** means the date when the Order received from the Court approving this Settlement Agreement has become a Final Order;
- (t) ***Final Order*** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals, and ***Final Approval*** shall have a corresponding meaning;

- (u) **Holdback for Taxes** is defined in Section 18(d);
 - (v) **Opt-Out Threshold** means [REDACTED] Class Members who opt-out as described in Section 6;
 - (w) **Plaintiff** means D'Andra Montaque, or any other person approved by the Court as the representative plaintiff in the Action;
 - (x) **Releasees** means the Defendants and all of their respective parents, associates, affiliates or related persons (as such terms are defined by the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16), which shall include, for greater specificity, the Defendants' predecessors, successors or assigns thereof, and all of their respective directors, officers, servants, employees, advisors and agents (both individually and in their official capacities with any of the preceding entities);
 - (y) **Releasors** means the Plaintiff and Class Members, for themselves, their heirs executors, successors and assigns;
 - (z) **Remaining Fund** means any funds remaining from the Settlement Amount after deduction and payment of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, Representative Plaintiff Honorarium, Holdback for Taxes, and distribution to Class Members pursuant to the Distribution Protocol (i.e., stale cheques where reasonable efforts to locate a Class Member have been exhausted);
 - (aa) **Representative Plaintiff Honorarium** means an honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (bb) **Settlement Amount** means \$450,000;
 - (cc) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution, as provided for in this Settlement Agreement.
6. Any notices in connection with the certification and settlement approval shall include an

opt-out procedure and be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court. The Opt-Out Threshold shall remain confidential to the Parties such that it shall be redacted from the Term Sheet and these Minutes of Settlement and shall not be included in the notice or otherwise disclosed by the Parties, except to the presiding Judge of the Court for the purposes of settlement approval. Notices shall be distributed by email and text message to the last known email addresses and cell phone number of the Class Members, to the extent such information is available in the Defendants' records. Notices shall also be posted on the website of Class Counsel.

7. The Defendants shall make reasonable efforts to locate and provide to Class Counsel and the Claims Administrator a list of the Class Members in Excel format listing the individuals' first name, middle name (if available), last name, start date, end date, number and type of trips worked as a Class Member and the date of each trip worked, phone number (if available), email address (if available) within thirty (30) days of the Execution Date, to the extent such information is available in the Defendants' records.
8. The Defendants shall make reasonable efforts to answer questions and inquiries of Class Counsel and the Claims Administrator required to implement the terms of this Settlement Agreement within ten (10) business days of such questions being provided in writing to Counsel for the Defendants.
9. This Settlement Agreement is made without any admission of liability by any of the Releasees, which liability is expressly denied. Specifically, and regardless of whether this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Action.
10. Class Counsel shall make best efforts to appoint the Claims Administrator within twenty (20) days of the Execution Date and shall appoint the Claims Administrator no later than

thirty (30) days of the Execution Date. Class Counsel shall advise the Defendants once the Claims Administrator has been appointed, and shall provide the name and contact information for the Claims Administrator to the Defendant for approval, as well as any other information the Defendants reasonably require to implement the terms of this Settlement Agreement. The Defendants shall, acting reasonably, provide approval of the Claims Administrator within fifteen (15) days of receiving notice of its appointment. In determining its approval of the Claims Administrator, the Defendants may, acting reasonably, require the Claims Administrator to confirm and verify that its data handling practices and policies comply with applicable privacy laws and legislation to which the Defendants may be subject. In the event of a dispute, the Parties agree that the presiding case management Judge shall have the right to select a Claims Administrator and that this selection shall be binding upon the Parties.

11. The Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account for the benefit of the Class within fifteen (15) business days of the Effective Date. The Plaintiff may agree in writing to extend the deadline.
12. Payment of the Settlement Amount to Class Counsel shall be made by wire transfer. Class Counsel shall provide to Counsel for the Defendants, in writing, the banking information necessary to complete the wire transfer within no later than two (2) business days of Final Approval.
13. The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, interest, all costs, all cost awards, Administration Expenses, Class Counsel Fees, taxes payable or that may become payable, Class Counsel Disbursements and the Representative Plaintiff Honorarium. For clarity, the Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Action, or any other actions related to the released Claims, including any amount for employees' deductions and withholdings, or any employer remittances, relating to payments made to Class Members in accordance with this Settlement Agreement and including without limitation any disbursement or administration fees to Class Counsel and/or the Class Administrator.
14. The Corporate Defendants shall classify destination staff as employees pursuant to the

Employment Standards Act, 2000, S.O. 2000, c. 41 (*ESA*), *Employment Insurance Act*, S.C. 1996, c. 23, and the *Canada Pension Plan*, R.S.C., 1985, c. C-8 (*CPP*) on a go-forward basis following Final Approval. For greater clarity, destination staff includes, Directors, Coordinators, Trip Leaders/Bus Captains and any future positions performing substantively similar duties or roles under different job titles.

15. In accordance with the classification of destination staff as employees pursuant to the *ESA*, the Corporate Defendants shall implement a system to track and record their hours of work for the purposes of compensating hours of work and overtime and maximum allowable hours of work, and any other obligations imposed by the *ESA* or subsequent amendments.
16. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the released Claims against the Releasees.
17. Except as otherwise provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account. All taxes payable on any interest that accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account, and Class Counsel shall be responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account. For clarity, the Defendants shall have no responsibility to make any filings relating to the Trust Account and shall have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.
18. The Settlement Amount shall be distributed as follows following the Effective Date:
 - (a) **Class Counsel Fees:** Subject to the approval of the Court, Class Counsel Fees shall be \$100,000, plus HST, or such other amount as approved by the Court;

- (b) **Class Counsel Disbursements:** The disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
 - (c) **Representative Plaintiff Honorarium:** An honorarium for the Plaintiff in the amount of \$5,000, or such lesser amount, subject to approval by the Court;
 - (d) **Holdback for Taxes:** A reasonable amount as may be required for payment of taxes on account of any interest earned in the Trust Account;
 - (e) **Claim Fund:** The amount remaining after the payments contemplated by Sections (a)-(d) shall be distributed by the Claims Administrator to Class Members in accordance with the Distribution Protocol, as directed by Class Counsel and approved by the Court;
 - (f) **Remaining Fund:** As a result of Class Members claiming funds in accordance with the Distribution Protocol, the Parties anticipate that no funds will be left over. In the event a Class Member does not deposit their cheque within 6 months of distribution such amount shall be paid to the Eshkiniigjik Naandwechigegamig, Aabiish Gaa Binjibaaying, aka the “ENAGB Youth Agency”, or as directed by the Court, after reasonable efforts to locate the Class Member and after accounting for any outstanding taxes or Administration Expenses.
19. Class Counsel may share with the Claims Administrator any documents disclosed by the Defendants in these proceedings as may be reasonably necessary for the purposes of administering the settlement.
20. The Claims Administrator shall provide a report to the Parties at the conclusion of the administration of the Claim Fund accounting for the funds paid and shall answer any questions or provide any information the Parties may request or require regarding the administering of the settlement.
21. No amounts shall be paid from the Settlement Amount except in accordance with this Settlement Agreement, the Distribution Protocol, or an order of the Court obtained after notice to the Parties.

22. Class Counsel shall prepare a draft Distribution Protocol and shall provide this to the Defendants no later than ten (10) days from the Execution Date. The Parties shall endeavor to reach agreement on a Distribution Protocol within twenty (20) days from the Execution Date. In the event no agreement is reached, the Parties agree to remit the matter of the Distribution Protocol to William Kaplan for determination. The Distribution Protocol as agreed to by the Parties or as determined by William Kaplan shall form part of this Settlement Agreement. The Distribution Protocol will outline the process by which taxes or any other amounts payable on the proceeds of the Claim Fund which are paid to the Class, and will confirm that the Defendants are not responsible to withhold any amounts and that the Claims Administrator and that each member of the Class is responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.
23. Class Counsel's preparation of the Distribution Protocol and representation of the Class does not in any way extend to tax inquiries that may arise as a result of the Distribution Protocol. Class Members shall be advised to seek independent tax advice.
24. In the event that the Court declines to approve this Settlement Agreement, or approves this Settlement Agreement in a materially modified form not acceptable to either Party, the Plaintiff and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) days following an event described above. In the event that the Opt-Out Threshold is reached, the Defendants shall have the right to terminate this Settlement Agreement by delivering a written notice within ten (10) business days following the Defendants being advised in writing by the Plaintiff that the Opt-Out Threshold has been exceeded. In the event the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.
25. The Plaintiff, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.
26. The Parties shall share equally (50% each between the Plaintiff and the Defendants) the

fees of the mediation held with William Kaplan.

27. Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors do hereby release and forever discharge the Releasees of and from all Claims that any of the Releasors has had, now has or may hereafter have against the Releasees, which were raised in the Action, whether known or unknown, and whether legal, equitable, in contract or tort. The Releasors further acknowledge and agree that this release is intended to cover, and does cover, all of the effects and consequences of such Claims that were raised in the Action. If such a Claim is filed, this Settlement Agreement shall constitute a full and final bar and/or answer to such Claims. For clarity, each Releasor further covenants and agrees that, as a condition of receiving any payment under this Settlement Agreement, they shall take all necessary steps to ensure the withdrawal or dismissal of any such Claims filed in any forum. This term shall be incorporated into the Final Order.
28. Upon the Effective Date, the Releasors and the Releasees absolutely and unconditionally release and forever discharge the Plaintiff, (other) Class Members, Class Counsel, and the Claims Administrator from any and all Claims relating to the institution, prosecution and/or administration of this proceeding excluding any action relating to a breach of this Settlement Agreement.
29. The Releasors covenant and agree that they shall not make, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims (including any cross-Claims, counter-Claims or third party Claims) against any person or entity who might claim contribution or indemnity against the Releasees in connection with any matter released under this Settlement Agreement. The Releasors further covenant, represent, and warrant that they shall not voluntarily participate in or assist with, either directly or indirectly, on their own behalf or on behalf of any other person or entity, any Claims raised or brought by any person or entity against the Releasees in connection with any matter released under this Settlement Agreement.
30. The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendants in respect of the Settlement is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in respect of the Settlement Amount or


the administration of the Settlement, including in respect of costs (including fees and disbursements), taxes and interest.

31. Upon the Effective Date, the Action shall be dismissed with prejudice and without costs as against the Defendants.
32. Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she, they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.
33. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
34. The Ontario Superior Court shall exercise ongoing jurisdiction in relation to the implementation, administration and enforcement of the terms of this Settlement Agreement and Class Counsel or the Defendants may apply to the Ontario Superior Court as may be required for directions in respect to the interpretation, implementation and administration of this Settlement Agreement.
35. In the computation of time under this Settlement Agreement, where there is a reference to a number of days between two events, the number of days shall be counted by excluding

the day on which the first event happens and including the day on which the second event happens, including all calendar days; and only in the case where the time for doing an act expires on a weekend or on a holiday, as “holiday” is defined in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the act may be done on the next day that is not a weekend or holiday.

36. This Settlement Agreement may be signed in counterparts each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement.
37. This Settlement Agreement may be signed electronically and a facsimile copy or electronic signature shall be deemed an original signature for the purposes of this Settlement Agreement.
38. The Parties agree that the recitals to this Settlement Agreement are true and form part of this Settlement Agreement.
39. A scanned, facsimile, or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

Counsel for the Plaintiff



Dated at TORONTO this 8th day of November, 2021

Counsel for the Defendants.



DAVID DI PAOLO

Dated at HAMILTON this 7th day of November, 2021

This is **Exhibit "F"** referred to in the
Affidavit of D'Andra Montaque sworn
before me this 22nd day of June 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely



A Commissioner for taking affidavits etc., or as may be

CLASS ACTION CONTINGENCY FEE RETAINER AGREEMENT

BETWEEN:

D'ANDRA MONTAQUE

ADDRESS: 49 Kingdom St
Etobicoke, Ontario
M9P 1W4
(416)-912-6044

- and -

GOLDBLATT PARTNERS LLP

ADDRESS: 20 Dundas Street West, Suite 1039
Toronto, Ontario
M5G 2C2
(416) 977-6070

THE PARTIES AGREE AS FOLLOWS:**Retainer**

1. D'Andra Montaque (the "Client") hereby retains, authorizes and instructs the firm of Goldblatt Partners LLP ("Class Counsel") as her counsel to commence and prosecute a class proceeding in Ontario (the "Class Proceeding") against Handa Travel Student Trip Ltd. o/a I Love Travel, Campus Vacations Holdings Inc.,

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2504027 Ontario Inc. o/a Breakaway Tours and 2417988 Ontario Inc. o/a S-Trip! (collectively referred to as the "Defendants") concerning volunteer misclassification and unpaid wages, overtime and CPP and EI premiums accrued during her employment by the defendants. The Client agrees to be the representative plaintiff in the Class Proceeding. The Client further agrees that by entering into this retainer agreement, the Client and Class Counsel are hereby terminating the individual retainer agreement entered into between the Client and Class Counsel on December 21, 2017.

2. The Client authorizes Class Counsel to retain and instruct other counsel ("Other Counsel") to assist in preparing and prosecuting the Class Proceeding and otherwise representing the interests of class members, should Class Counsel determine that it is prudent to do so. Class Counsel agrees to consult the Client in advance of taking such steps.
3. The Client agrees that the costs of Class Counsel's representation will be pursued on a contingency basis, such that all fees and disbursements and taxes of Class Counsel and other counsel whom Class Counsel may retain to assist with the prosecution of the class proceeding ("Other Counsel") (collectively, "Counsel Fees"), will be payable only in the event of success, as defined below. The Client has discussed with Class Counsel retainer options other than by way of the contingency fee agreement set out below, including retainer by way of an

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hourly rate retainer. The Client has chosen to retain Class Counsel by way of a contingency fee agreement.

Terms of Payment of Fees and Disbursements

4. The provisions of this agreement regarding fees and disbursements are subject to court approval as provided under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”), Class Counsel shall seek court approval of its fees at the appropriate time, in its sole and unfettered discretion. If a court does not approve the fee provisions set out under this agreement, Class Counsel shall be permitted to terminate this Agreement.
5. The Client agrees that any motion for court approval of Counsel Fees and disbursements brought by Class Counsel shall constitute a motion for court approval of an “agreement respecting fees and disbursements between a solicitor and a representative party” within the meaning of s. 32(2) of the CPA. The Client further agrees that any court approval or any court determination or direction regarding fees and disbursements under the CPA is enforceable such that any fees and disbursements owing to Counsel, as determined by the court, shall constitute “a first charge on any settlement funds or monetary award” within the meaning of s. 32(3) of the CPA.
6. Class Counsel shall be entitled to payment of its fees and disbursement upon the successful resolution of the class proceeding consisting of (a) a final judgment on

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the common issues in favour of some or all class members, or (b) a court-approved settlement that benefits one or more class members. Class Counsel has explained to the Client that this claim involves significant uncertainty and risk, and that it is not possible at this time to accurately predict either the amount of time that will be necessary or the potential value of the recovery. Class Counsel has provided an estimate of its potential fee as follows, calculated on the basis of the Client paying Class Counsel's regular hourly rate for complex class action litigation:

- (a) if this action is resolved after filing the Statement of Claim, but prior to any certification motion and prior to a defence being filed: at least \$100,000;
 - (b) If this action is resolved after a defence is filed, but before a certification motion: at least \$200,000;
 - (c) If this action is resolved after a certification motion, but prior to a trial of common issues: at least \$750,000;
 - (d) If this action is resolved after a trial of common issues: at least \$1,500,000.
7. Notwithstanding the foregoing, Class Counsel shall seek its fees upon achieving success in the class proceeding, whether by obtaining judgment on the common issues in favour of some or all class members or by obtaining a settlement that benefits one or more class members. The fees shall be paid by a lump sum payment to the extent possible, or by periodic payments, if a lump sum payment is not possible, out of the proceeds of any judgment, order or settlement

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awarding or providing monetary relief, damages, interest or costs to the class or any class member.

8. Counsel Fees shall be calculated in one of two possible ways as set out in paragraphs 9-10 below. Class Counsel shall have the sole right to determine which of the methods will be advanced to the court for approval. In the event that the court rejects one method of calculating the Counsel Fee, Class Counsel shall have the right to advance the alternative method not initially proposed.

Method "A": Base Fee and Multiplier

9. If fees are sought as calculated by the "Multiplier" method, the fee arrangement shall be determined as follows:
 - a) the Base Fee shall be the hourly rate of the legal professionals (e.g. lawyers, law clerks or students) who perform work on the Class Proceeding multiplied by the number of hours worked by each such professional. The hourly rates of the legal professionals expected to perform the work on the class proceeding are set out in Schedule "A" attached hereto. The hourly rates may change from time to time and the Client shall be provided with a list of current rates on request. Without limiting the generality of this retainer, the Base Fee shall include, but not limited to, time spent preparing pleadings, time spent advising the Client regarding common issues, time spent with individual class members or their counsel (but excluding time spent exclusively or primarily

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regarding individual issues of class members who have retained Class Counsel or Other Counsel regarding individual issues), time spent in respect of the motion for certification as a class proceeding and any other motion or application in furtherance of the action and any appeals or motions for leave to appeal therefrom, time spent regarding notices to the class, time spent on the trial of the action, or on any appeal or motions for leave to appeal therefrom, time spent relating to the management of the class action, and time spent negotiating any settlement of the class action and on any motion to approve such settlement. It shall not include time spent relating solely to obtaining court approval of this agreement or to the court's fixing of the "Multiplier"; and

- b) the "Multiplier" shall be determined by the court pursuant to s. 33(4) of the CPA, and the Client agrees to support payment of fees on the basis of a multiplier as follows:
 - i. a multiplier of not less than 2 shall apply if success in the Class Proceeding is secured prior to the hearing of the certification motion;
 - ii. a multiplier of not less than 3 shall apply if success in the Class Proceeding is secured after certification of the Class Proceeding but prior to trial; and

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- iii. a multiplier of not less than 4 shall apply if success in the Class Proceeding is secured after trial.

Method "B": Percentage Recovery

10. If fees are sought as calculated by the percentage method, the Client and Class Counsel agree for such percentage fees to be calculated as follows:
 - a) In the event that an agreement to settle the action is reached prior to the commencement of the certification hearing, Class Counsel shall be entitled to 25% of the amount (including partial indemnity or substantial indemnity costs and disbursements), recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount;
 - b) In the event that an agreement to settle the action is reached after the commencement of the certification hearing, but prior to the commencement of a common issues trial of this action, Class Counsel shall be entitled to 30% of the amount (including partial indemnity or substantial indemnity costs and disbursements) recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount;
 - c) In the event that judgment is obtained at the common issues trial, or an agreement to settle the action is reached after the commencement of a trial of

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this action, but before any appeal, Class Counsel shall be entitled to 35% of the amount (including partial indemnity or substantial indemnity costs and disbursements) recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s), plus HST on that amount; and,

- d) In the event that final judgment is obtained, or an agreement to settle the action is reached, after the conclusion of any appeals from the common issues trial, Class Counsel shall be entitled to 40% of the amounts (including damages and interest but excluding partial indemnity or substantial indemnity costs and disbursements recovered by the class or class members under any judgment(s), order(s), report(s) on a reference, or settlement(s) plus the fee portion of any costs obtained by Class Counsel.

For the purpose of calculating the fees, the amount to which the above-referenced percentages apply includes any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements, except in (d) above.

11. In the event that recovery is by way of a structured settlement, Counsel Fee shall be calculated based on the funding amount of the structure.
12. Counsel Fee shall be calculated on any settlement or any judgment after all disbursements and case expenses incurred by Class Counsel have been deducted.

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13. Disbursements are those costs incurred by Class Counsel to prosecute the class proceeding, such as filing fees, court fees, process server charges, etc. Case expenses include reasonable photocopy charges, couriers, travel expenses, fees paid to agents, experts and other lawyers.
14. The Client authorizes Class Counsel to pay disbursements and case expenses to prosecute the claim as Class Counsel deems necessary and as the Client so instructs. The Client agrees that Class Counsel shall be entitled to 100% recovery of disbursements and case expenses from moneys payable to the class or the Client from any award of costs or any monetary award or relief available pursuant to the terms of any order, judgment or court approved settlement.
15. The Client shall not be obliged to fund any disbursements or taxes, including the any applicable taxes on counsel's fees. Ultimately, if the class proceeding is successful, the disbursements and taxes, including the tax payable on counsel's fees, will be paid out of any court award of costs or any monetary award or relief available pursuant to the terms of any order, judgment or settlement.
16. The Client agrees and directs that all funds claimed by Counsel for legal fees, costs, taxes and disbursements shall be paid to Class Counsel in trust from any monies owing under any judgment or settlement.
17. Counsel shall not recover more in fees than the total aggregate amount the Class recovers as monetary relief or damages by way of judgment or settlement.

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Example of Fee Calculation in the Event Class Counsel Seeks Fee Approval on the Basis of a Contingency Percentage.

18. If the class proceeding results in a settlement or judgment equal to \$2,000,000.00 inclusive of costs and disbursements after certification (but before the commencement of trial), and if Class Counsel and Other Counsel have incurred disbursements, and taxes on these disbursements, totalling \$100,000.00, then the sum of \$100,000.00 will be paid first to Class Counsel as reimbursement for those disbursements and taxes incurred by them. The contingency fee will then be \$570,000.00 (30% of \$1,900,000.00) plus 13% H.S.T., for a total of \$644,100.00 leaving a maximum of \$1,355,900.00 for distribution to class members. (i.e. \$2,000,000.00, less \$100,000.00 disbursements, less \$570,000.00 contingency percentage, less HST on fees).

Example of Fee Calculation Under Contingency Multiplier

19. If the class proceeding results in a settlement or judgment equal to \$2,000,000.00 inclusive of costs and disbursements after certification (but before the commencement of trial), a multiplier of not less than 3 shall apply. If Class Counsel and Other Counsel have incurred disbursements, and taxes on these disbursements, of \$100,000.00, and docketed time at their ordinary hourly rates (set out in Schedule "A") totalling \$150,000.00, then the sum of \$100,000.00 will be paid first to Class Counsel and Other Counsel as reimbursement for those expenses incurred by them. The contingency fee will then be not less than

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\$450,000.00 (3x docketed time of \$150,000) plus H.S.T., leaving a maximum of \$1,391,500.00 for distribution to class members (i.e, \$2,000,000.00, less \$100,000.00 disbursements, less contingency multiplier, less \$HST on fees).

Costs

20. The Client has been advised by Class Counsel that a Court may order one party to make a payment to the other party as a contribution towards the other party's reasonable legal fees and disbursements if the other party is successful in the overall litigation or successful in the context of any discrete step in the litigation, such as a motion. If the court does make such an order for costs in favour of the Client, such costs be applied to counsel fees and disbursements, regardless of the outcome of the action.
21. The Client agrees to assign to Class Counsel any court award of costs made in favour of the Client. The Client and Class Counsel agree that Class Counsel may apply such assigned costs towards the current fees and disbursements of Class Counsel and Other Counsel and may also hold and apply any remainder or balance of such assigned costs towards future fees and disbursements.
22. The Client has been advised by Class Counsel that an application or applications shall be made to the Class Proceedings Fund (the "Fund") or a third-party funder for payment of disbursements and for indemnification against an adverse costs order at various stages of the litigation. If an application is made to the Fund for

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payment of disbursements and indemnification against costs and such application is accepted, the Fund will be entitled to 10% of any judgment or settlement monies payable to the class. Presently the practice is that the Fund is entitled to receive 10% of any settlement or judgement, plus repayment of any disbursements advanced by the Fund. As negotiated by Class Counsel and approved by the Client, if an application is made to a third-party funder other than the Fund for indemnification against costs and such application is accepted, the third-party funder will be entitled to a portion of any judgment or settlement monies payable to the class.

23. The Client and Class Counsel hereby agree that Class Counsel has the authority to make an application to the Fund or a third-party funder on behalf of the Client for indemnification to the Client in respect of any adverse costs order that may be made against the Client in the class action, and the Client shall co-operate with Class Counsel in this regard.
24. In the event that indemnification from the Fund or a third-party funder cannot be obtained, the Client agrees that the Class Proceeding will not be pursued. Class Counsel will not indemnify the Client against any adverse costs awards.

Assessment of Account

25. The Client has the right to ask the Superior Court of Justice to review and approve Class Counsel's Account. For purposes of assessment, if a contingency

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fee agreement is one to which subsection 28.1(6) or 28.1(8) of the *Solicitors Act* applies (insofar as the fee sought is in excess of the maximum percentage proscribed by regulation), the Client or Class Counsel may apply to the Superior Court of Justice for an assessment within six months after its delivery. If a contingency fee agreement is not one to which subsection 28.1(6) or 28.1(8) of the *Solicitors Act* applies, the Client may apply to the Superior Court of Justice for an assessment of Class Counsel's bill within 30 days after its delivery or within one year after its payment.

Submissions to Court: Costs Payable to Class Counsel

26. The Client hereby authorizes Class Counsel to make submissions regarding remedy and costs payable to Class Counsel that will enable the Court to fashion a judgment to ensure that the fees and disbursements owing to Class Counsel, calculated pursuant to this Agreement, can be paid out of the monies awarded to the Class or can be paid prior to or as a condition of the Class Member realizing any benefit pursuant to the judgment.

Client and Class Counsel to Act in the Best Interests of the Class

27. The Client acknowledges her obligation and the obligation of Class Counsel to act in the best interests of the Class.

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28. The Client retains the right to make all critical decisions regarding the conduct of the class action, provided that any such decisions are made in the best interests of the class.

Settlement Negotiations

29. The Client hereby authorizes Class Counsel, in its discretion, to enter into negotiations with the defendants for the purpose of reaching a settlement of the class proceeding. The Client understands that any settlement affecting the class is subject to approval by the court. The Client agrees and acknowledges that any negotiations are for the purpose of reaching a settlement of the class proceeding, not simply the individual claim of the Client.
30. In the event the Client desires to withdraw as representative plaintiff or desires to settle her individual claim without settling the claims of the class, the Client agrees to first notify Class Counsel of that desire in advance. The Client agrees only to seek such withdrawal or individual settlement in a manner and on a schedule that reasonably protects the best interests of the Class as a whole. If the Client does settle her individual claim or withdraws as representative plaintiff, the Client expressly agrees and acknowledges that Class Counsel is permitted to be retained by another representative of the class and to continue to assert the claims on behalf of the class pursuant to the class proceeding. In such event, privileged communications between Class Counsel and/or Other Counsel, and

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the Client made for the purpose of advancing the claims of the class in the class proceeding and the work product created by Class Counsel and/ or Other Counsel for the purpose of advancing the claims of the class shall be disclosed to the new class representative. The Client agrees to maintain the confidentiality and privilege of such communications and work product, and agrees not to discuss or otherwise divulge such communications and work product, or their contents, to any other person at any time.

31. In the event that the Client wishes to withdraw from participation as a class representative, Class Counsel shall make its best efforts to find a replacement for the Client. However, the Client acknowledges that any withdrawal by the Client is subject to the approval of the court.

Resolution of Disagreements between the Client and Class Counsel

32. The Client and Class Counsel agree to make their best efforts to resolve any disagreements or conflicts that may arise between them relating to, or affecting, the conduct of this action.
33. The Client hereby agrees that in the event that the Client gives instructions that Class Counsel believes are not in the best interests of the Class, Class Counsel may, and is entitled to, schedule and bring an application, motion or case conference with the court (*ex parte* or otherwise as may be appropriate or as may be directed by the court) for directions under s. 12 of the *CPA* or otherwise

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as may be appropriate. The Client and Class Counsel acknowledge that the outcome of such an application, motion or conference, and subject to any motions for leave to appeal or appeals therefrom, may result in the removal of the Client as representative plaintiff or the removal of Class Counsel (or either of them) as counsel or solicitor of record in the Action.

34. Without limiting the general application of the preceding paragraph, the Client agrees that in the event that the Client does not agree to accept a proposed settlement that is in the opinion of Class Counsel in the best interests of the class, Class Counsel is hereby authorized to conditionally accept the offer. The condition shall be a ruling by the court that the proposed settlement is in the best interests of the class. On the motion for such court approval, an affidavit fully disclosing the Client's stated concerns with the proposed settlement shall be filed with the court.
35. While any application, motion or case conference referred to in the two preceding paragraphs, or any decision or motion for leave to appeal or appeal therefrom, is outstanding, neither the Client nor the Class Counsel may terminate this Agreement.

Termination

36. The Client acknowledges and agrees that, notwithstanding any other provision of this agreement, but subject to orders or directions of the court, Class Counsel

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shall have the right to terminate this retainer agreement in any of the following circumstances:

- (b) at any time prior to the certification at the sole discretion of Class Counsel;
 - (c) upon the denial of class certification at first instance or on appeal, including by way of a subsequent decertification order;
 - (d) loss at trial of the common issues at first instance or on appeal;
 - (e) after certification, if in the reasonable opinion of Class Counsel new evidence arises or changes in the law occur which would make it materially less likely that the class proceeding would succeed at trial;
 - (f) after certification, in the event that Class Counsel has reasonable grounds to believe that any costs, monetary relief, damages, interest or settlement monies that could be recovered in the action will not be sufficient to cover: (i) the total fees and disbursements actually approved by the Court to that date or the total fees that Class Counsel reasonably estimates may be approved by the court in the future; or, (ii) the actual Counsel Fees incurred to that date or a reasonable estimate by Class Counsel of the total Counsel Fees that would reasonably be incurred in prosecuting the action through to its conclusion; and;
 - (g) any refusal of the court to award Class Counsel its fees.
37. Subject to the other terms of this Agreement, the Client may terminate this Agreement and pursue this Class Action with new counsel. Subject to the other terms of this Agreement, the Client may withdraw as representative plaintiff and

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Class Counsel may attempt to locate an appropriate replacement representative plaintiff and continue to prosecute this Class Action as set out herein.

38. In the event this agreement is terminated and the Class Action is subsequently successful (as defined in paragraph 7 above), the hours expended by Class Counsel to the date of termination will be added to the hours of the lawyer or lawyers subsequently retained to prosecute the Class Action for the purpose of the Court settling or approving the legal fees for all counsel in this action. Class Counsel shall be entitled to, and will be paid, a percentage of the amount awarded by the Court as fees in the action. The percentage shall be calculated by taking the number of hours expended by Class Counsel's legal professionals (including clerks and students) multiplied by their respective hourly rates, divided by the total number of hours expended by professionals (including clerks and students) of Class Counsel and any lawyers or law firm(s) subsequently retained to prosecute the Class Action multiplied by their respective hourly rates. In no circumstance, however, will Counsel be entitled to or be paid less than its straight time, that is, the total number of hours expended by Class Counsel's professionals (including clerks and students) multiplied by their respective hourly rates. Class Counsel will also be entitled to, and be paid, its disbursements or case expenses.
39. The Client agrees that any lawyer retained to prosecute the Class Action after the termination of this Agreement will be:

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- a) competent and experienced in the prosecution of class actions;
 - b) provided with a copy of this Agreement;
 - c) required to acknowledge and agree to the provisions of this Agreement;
- and,
- c) required to protect the fees and disbursements of Class Counsel and Other Counsel as set out herein.

Prohibition on Commencing a Parallel or Overlapping Class Action

40. The Client hereby agrees not to commence a rival, parallel or overlapping class action, including any class proceeding raising the same or similar claims against the defendants, in the event that the Client's participation in this Class Action is terminated, whether by withdrawal, termination or otherwise.

Laws of Ontario Apply

41. This Agreement will be governed, construed, interpreted and enforced in accordance with the laws of the Province of Ontario. It is the parties' intention that all requirements of contingency fee retainer agreements and class action retainer agreements be included herein and, for such purpose, the parties agree that this agreement shall be deemed to include any such further requirements arising from amendments to the *Solicitors Act*, R.S.O. 1990, c. S.15, the regulations under that act, and the *Rules of Professional Conduct* of Ontario and of other applicable jurisdictions. Alternatively, the parties to this agreement agree

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to execute, from time to time, any amendment to this agreement for the purpose of incorporating any such further requirements into this agreement.

Division of Fees

42. The Client consents to the reasonable splitting of fees between lawyers who are assisting in this action but are not part of Class Counsel (if applicable).

Carriage of Lawsuit

43. The Client acknowledges that Class Counsel are incurring a significant financial risk in agreeing to pursue this action on a contingency fee basis and that Class Counsel are doing so on the basis that it will have carriage of the lawsuit.

Successor of Lawsuit

44. In the event that Goldblatt Partners LLP dissolves or is terminated, this agreement shall apply to successor law firms, as designated and confirmed by the Client in accordance with the terms hereof.

Confidentiality

45. The Client acknowledges being advised that the communications between Class Counsel and the Client relating to the claims of the class are legally privileged but that such privilege may be lost if the Client was to disclose such information to third persons and that the interests of the class could thereby be adversely

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affected. The Client agrees to protect the confidentiality and privilege of such information indefinitely.

46. The Client acknowledges and agrees that, in retaining Class Counsel to provide the legal services described in this retainer, the collection, use, retention and disclosure of personal and other sensitive information may be required in order to fulfill those services and related obligations.

Severability

47. In the event that any particular provision or provisions or a part of one in this agreement is found to be void, voidable, or unenforceable for any reason whatever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this agreement and all other provisions shall remain in force.

Entire Agreement

48. It is agreed there is no representation, warranty, collateral agreement, or condition affecting this agreement except as expressed in it.

Execution in Counterpart

49. This agreement may be executed in counterpart.

Signed this 15th day of May, 2018.

C. Meggs
Witness
Caitlin Meggs

D'Andra Montaque
D'Andra Montaque
1

Signed this 15th day of May, 2018.

GOLDBLATT PARTNERS LLP

C. Meggs
Witness
Caitlin Meggs

Per: J. Mandryk
Josh Mandryk

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Schedule "A" – Current Hourly Rates of Class Counsel

Steven Barrett \$800.00

James McDonald \$800.00

Ethan Poskanzer \$800.00

Charles Sinclair \$600.00

Christine Davies \$525.00

Joshua Mandryk \$450.00

Tanya Atherford-DeSilva \$200.00

Students \$250.00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF D'ANDRA MONTAQUE
(Sworn June 22, 2022)

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Lawyers for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

**MOTION RECORD OF THE PLAINTIFFS
(Returnable June 27, 2022)**

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