This is Exhibit "B" referred to in the affidavit of Samuel Berg sworn before me, this 18th day of February, 2015

A commissioner for taking affidavits

Court File No. CV-14-515637-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SAMUEL BERG

Plaintiff

and

MEDICINE HAT TIGERS HOCKEY CLUB LTD., PORTLAND WINTER HAWKS, INC., BRETT SPORTS & ENTERTAINMENT, INC., THUNDERBIRD HOCKEY ENTERPRISES, LLC, TOP SHELF ENTERTAINMENT, INC., SWIFT CURRENT TIER 1 FRANCHISE INC., 7759983 CANADA INC., LEWISTON MAINEIACS HOCKEY CLUB, INC., JOHN DOE CORPORATION "A" operating as THE KITCHENER RANGERS, JOHN DOE CORPORATION "B" operating as THE SUDBURY WOLVES, JOHN DOE CORPORATION "C" operating as THE KOOTENAY ICE, JOHN DOE CORPORATION "D" operating as THE MOOSE JAW WARRIORS, and JOHN DOE CORPORATION "E" operating as LES SAQUENEENS CHICOUTIMI

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C.6

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 statement of claim served with this notice of action.

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 notice of action 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.

Date: Oct Nov 5/14 **Issued By:**

Address of Court Office:
393 University Ave. - 10th Fl.
Toronto, Ontario
M5G 1E6

TO: **MEDICINE HAT TIGERS HOCKEY CLUB LTD.**
155 ASH VENUE SE
MEDICINE HAT, ALBERTA T1A 3B1

AND TO: **PORTLAND WINTER HAWKS, INC.**
300 N WINNING WAY
PORTLAND OR 97227 USA

AND TO: **THUNDERBIRD HOCKEY ENTERPRISES, LLC**
625 W JAMES ST
KENT, WA 98032 USA

AND TO: **BRETT SPORTS & ENTERTAINMENT, INC.**
700 W MALLON
SPOKANE , WA 99201 USA

AND TO: **SWIFT CURRENT TIER 1 FRANCHISE INC.**
BOX 2345, 2001 CHAPLIN ST. EAST
SWIFT CURRENT, SASKATCHEWAN S9H 4X6

AND TO: **TOP SHELF ENTERTAINMENT, INC.**
7000 W. GRANDRIDGE BLVD
KENNEWICK, WA 99336 USA

AND TO: **7759983 CANADA INC.**
360 RUE DU CÉGEP,
SHERBROOKE, QUÉBEC, J1E 2J9

AND TO: **LEWISTON MAINEIACS HOCKEY CLUB, INC.**
190 BIRCH STREET
LEWISTON, MAINE 04240 USA

AND TO: **JOHN DOE CORPORATION "A" operating as THE KITCHENER RANGERS**
400 EAST AVENUE
KITCHENER, ONTARIO, N2H 1Z6

AND TO: **JOHN DOE CORPORATION "B" operating as THE SUDBURY WOLVES**
240 ELGIN STREET
SUDBURY, ON P3E 3N6

AND TO: **JOHN DOE CORPORATION "C" operating as THE KOOTENAY ICE**
C/O WESTERN FINANCIAL PLACE
#2 - 1777 - 2ND STREET NORTH
CRANBROOK, BC V1C 7G9

AND TO: **JOHN DOE CORPORATION "D" operating as THE MOOSE JAW WARRIORS**
10 - 1ST AVENUE NW
MOOSE JAW, SASKATCHEWAN, S6H 0Y8

AND TO: **JOHN DOE CORPORATION "E" operating as LES SAQUENEENS CHICOUTIMI**
643, RUE BÉGIN,
CHICOUTIMI, QC G7H 4N7

DEFINED TERMS

1. The following definitions apply for the purpose of this statement of claim:

(a) "**20 Year Old Contract**" means the current standard player agreement used by the **Leagues** and the **Clubs** for all **Players** who are 20 years old or over at the time they signed;

(b) "**Applicable Employment Standards Legislation**" means the legislation governing wages in the jurisdiction where a **Club** is domiciled including: the *ESA*; *Employment Standards Code*, R.S.A. 2000, c. E-9; the *Employment Standards Act*, R.S.B.C. 1996, c. 113; *The Employment Standards Code*, C.C.S.M. c.E110; *Employment Standards Act*, S.N.B. 1982, c.E-7.2; *Labour Standards Code*, R.S.N.A. 1989, c. 246; *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2; *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1; *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1; Or. Rev. Stat. tit. 51 §653; Mich. Stat. §408, Pa. *Minimum Wage Act of 1968* Pub. L. No. 11, No. 5, as amended; Wash. Rev. C. tit. 49, §49.46, as amended; Me. Rev. Stat. tit. 26, §664, as amended; and their respective regulations.

(c) "**BC/NB/NS Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** located in the Provinces of British Columbia, New Brunswick, and Nova Scotia (a "team") or at some point commencing November 5, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 19 on November 5, 2012;

(d) "**CHL**" means the Canadian Hockey League;

(e) "**Class**" or "**Class Member(s)**" means the **BC/NB/NS Class**; the **Ontario/Alberta/Manitoba/PEI/Saskatchewan Class**; the **Pennsylvania Class**; the **Quebec Class**; and the **US Class.**

(f) "**Clubs**" means collectively the **OHL Clubs**, the **WHL Clubs**, and the **QMJHL Clubs**;

(g) "**Contract**" or "**Contracts**" means the standard player agreement approved by the **CHL** and the **Leagues** to be used as the agreement for the provision of employment services by the **Players** for the **Clubs** and includes the **Former Contract**, the **Current Contract**, and the **20 Year Old Contract**;

(h) "**Current Contract**" means the standard player agreement which is in effect as of September 2013 and includes the **Leagues'** regulation known as the "Rights and Obligations of Players"; Schedule "A" to that regulation known as "Commitment Form for 16-to-19-Year-Old Players"; and the **Leagues'** education policy;

(i) "**employee**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;

(j) "**employer**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation**;

(k) "**employment contract**" means the **Contract** or **Contracts** which are contracts of employment within the meaning of **Applicable Employment Standards Legislation**;

(l) "***ESA***" means the *Employment Standards Act, 2000*, S.O. 2000, c. 41.

(m) "**Former Contract**" means the standard player agreement which was in effect until September 2013;

(n) "**Leagues**" means collectively the **OHL**, **QMJHL**, and the **WHL**;

(o) "**OHL**" means the Ontario Hockey League;

(p) "**OHL Clubs**" means the teams participating, or who have participated, in the **OHL** who are or were owned and/or operated by the defendants John Doe Corporation "A" operating as The Kitchener Rangers, and John Doe Corporation "B" operating as The Sudbury Wolves;

(q) "**Ontario/Alberta/Manitoba/PEI/Saskatchewan Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** located in the Provinces of Ontario, Alberta, Manitoba, Prince Edward Island (a "team"), or at some point commencing November 5, 2012 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on November 5, 2012;

(r) "**Pennsylvania Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** located in the State of Pennsylvania, USA (a "team"), or at some point commencing November 5, 2010 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on November 5, 2010;

(s) "**Player(s)**" means all persons who play or have played hockey for one or more of the **Clubs** and are **Class Members**;

(t) "**Quebec Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** located in the Province of Quebec (a "team"), or at some point commencing November 5, 2011 and thereafter, were members of a team and all players who were members of a team who were under the age of 16 on November 5, 2011;

(u) "**QMJHL**" means the Quebec Major Junior Hockey League;

(v) "**QMJHL Clubs**" means the teams participating, or who have participated, in the **QMJHL** who are or were owned and/or operated by the defendants 7759983 Canada Inc., Lewiston Maineiacs Hockey Club, Inc., and John Doe Corporation "E" operating as Les Saqueneens Chicoutimi;

(w) "**US Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** located in the States of Maine, Michigan, Oregon, and Washington, USA, (a "team"), or at some point commencing November 5, 2008 and thereafter, were members of a team and all players who were members of a team who were under the age of 18 on November 5, 2008:

(x) "**wages**" or "**minimum wages**" has the same meaning as that attributed to it by the **Applicable Employment Standards Legislation;**

(y) "**WHL**" means the Western Hockey League; and

(a) "**WHL Clubs**" means the teams participating, or who have participated, in the **WHL** who are or were owned and/or operated by the defendants Swift Current Tier 1 Franchise Inc., Medicine Hat Tigers Hockey Club Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Thunderbird Hockey Enterprises, LLC, Top Shelf Entertainment, Inc., John Doe Corporation "C" operating as The Kootenay Ice, and John Doe Corporation "D" operating as The Moose Jaw Warriors.

CLAIM

2. The plaintiff claims on his own behalf and on behalf of the Class, against all of the defendants for:

(a) An Order certifying this action as a class proceeding and appointing him as the representative plaintiff of the Class;

(b) A Declaration that the plaintiff and Class Members are, or were, employees and the defendant Clubs are, or were, their employers within the meaning of the Applicable Employment Standards Legislation;

(c) A Declaration that the Contract is an Employment Contract within the meaning of the Applicable Employment Standards Legislation;

(d) A Declaration that, insofar as the Contract purports to limit wages to a fixed amount, the Contract is void pursuant to the Applicable Employment Standards Legislation;

(e) A Declaration that the defendants conspired together and with the CHL and the Leagues to compel the plaintiff and the Class Members to enter into the Contract and to pay them wages which contravene the Applicable

Employment Standards Legislation and therefore the defendants are jointly and severally liable for all damages;

(f) A Declaration that the plaintiff and the Class Members who entered into Contracts in all provinces and states except Quebec may elect to recover damages jointly and severally from all defendants based on the cause of action or remedy of waiver of tort;

(g) An order disgorging the profits that the defendants generated as a result of benefitting from their breach of Applicable Employment Standards Legislation;

(h) An Interim and Final Order restraining the defendants, their officers, directors, agents, and employees from engaging in any form of reprisal as a result of a Class Member electing to participate in this action, including in Ontario, breaching s. 74(1) of the *ESA* which states that:

(1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

(a) because the employee,

(i) asks the employer to comply with this Act and the regulations,

(ii) makes inquiries about his or her rights under this Act,

(iii) files a complaint with the Ministry under this Act,

(iv) exercises or attempts to exercise a right under this Act,

(v) gives information to an employment standards officer,

(vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,

(vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

(b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee.

(i) Damages as pleaded in an action in the Ontario Superior Court of Justice with Court File No. CV-14-514423 for outstanding wages including back pay, vacation pay, holiday pay, overtime pay and applicable employer payroll contributions required by law;

(j) Punitive damages as pleaded in an action in the Ontario Superior Court of Justice with Court File No. CV-14-514423;

(k) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(l) Pre-judgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c.43;

(m) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus the costs of distribution of an award under ss. 24 or 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*CPA*"), including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*; and

(n) Such further and other relief as this Honourable Court deems just.

OVERVIEW

3. The CHL oversees and is the governing body of sixty hockey teams in Canada and the United States participating in three hockey leagues: the OHL, WHL, and the QMJHL. The Players vary in age from 16-20 years of age and have all signed the Contracts containing identical or significantly similar terms.

4. The form and content of the Contracts are mandated, controlled, and/or regulated by the Leagues and the CHL who require all of the teams to use the standard form Contract when hiring Players, regardless of that Player's level or skill or experience or the team

with which he signs. Once executed by the Player and team hiring the Player, the Contract provides that it must then be approved by the commissioner of the League for that team.

5. For example, the Contract signed by Players in the OHL states, under a heading entitled "IMPORTANT NOTICE TO PLAYER", that:

> no player shall be permitted to participate in an Ontario Hockey League regular season or playoff game unless such Player has signed the standard agreement form and it has been filed with and approved by the Ontario Hockey League.

6. The Contracts used in the WHL and QMJHL contain identical or significantly similar clauses.

7. Under the terms of the Contract, the teams, owned and operated by the Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the Leagues which is 16-20 years of age. Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.

8. The Former Contract was the standard player agreement until the season commencing September 2013 when all players were required to sign a Current Contract which is now the standard player agreement. The Current Contract purports to supersede and replace the Former Contract.

9. The Former Contracts set a fixed fee for the Players' services which are either listed in a dollar amount, or by stating that they will receive the "league maximum" which are set by the bylaws of the Leagues. These fees varied from $50/week to $120/week in the OHL to $35/week to $150/week in the QMJHL, depending on the age of the Player. Players age 16-19 received a fee of $50/week in the OHL and $35/week in the QMJHL under the Former Contract and receive $60/week under the Current Contract, albeit the fee is now described as an "allowance". Under all versions of the Contract, teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

10. The Former Contract and the Current Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees for each complete season that the Player played for that team. To be eligible for this education package under the Former Contract, the Player must enroll in a post-secondary education program within 18 months after completing a season with the team and must not sign a professional contract or participate in a tryout contract with a professional hockey team in the National Hockey League, American Hockey League, or with a European team.

11. The Former Contract contains a term under which the Clubs and Leagues own the Players' images. The Former Contract used in the OHL states that:

> The Player hereby assigns irrevocably to the Club and the OHL and any licensees of the Club and the OHL on a non-exclusive basis, all rights to the Player's name, image likeness, signature, statistical record and biographical information (collectively the "Player's Image") and

> understands and accepts that the Club or the OHL may authorize, or otherwise license, any individual firm or corporation to take any pictures, films or any other images of the Player. The Player recognizes that all rights in such pictures, films and other images shall be the sole property of the Club or the OHL and that either the Club or the OHL may use or distribute such material in any manner as they see fit and that such use or distribution by the Club or the OHL may take place either during the Term or thereafter.

12. Players work on average 35-40 hours/week and occasionally up to 65 hours/week or more, including travel, practice, promotion, and participating in games three times a week. Under the Former Contracts and the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

13. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education package, including maintaining a grade point average and enrollment in high school or online courses.

14. While the Contracts purport to be academically based, many of the Players while playing for a team have already graduated from high school or have already signed contracts with NHL teams.

15. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the WHL and a Player is one of employer/employee, stating, "[t]he players are employees who receive remuneration - defined as cash - pursuant to the appropriate regulations

governing insurable earnings. It would require an amendment to subsection 5(2) of the Employment Insurance Act in order to exclude players in the WHL - and other junior hockey players within the CHL - from the category of insurable employment."

16. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.

17. Despite the Tax Court of Canada ruling made some fourteen years ago, the defendants failed to rewrite the Former Contract until September 2013 or pay wages in accordance with Applicable Employment Standards Legislation.

18. Instead, the defendants, the CHL, and the Leagues continued to include in the Former Contract a term where the relationship between the Players and the team is described as one of "independent contractor".

19. In 2013, the defendants, the CHL, and the Leagues redrafted the Contract to remove all references to a fee and to remove the term where the status between the Players and the

teams was one of independent contractor. Instead, the defendants' Current Contract recasts the $60.00 weekly fee as an allowance and redefines the status of 16 to 19 year old players as:

> Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level.

20. While the defendants, the CHL, and the Leagues have demanded that all Players ages 16 to 19 sign the Current Contract, in substance nothing changed in September 2013 with respect to the manner in which the teams operate or the degree of control exercised by the teams over of Players.

21. In addition to revising the Contracts, the CHL also undertook to remove all references to the Players being characterized as "professional athletes" in legal documents, despite nothing changing in the Leagues conducted business. In particular, CHL amended the bylaws of Hockey Canada, a national governing body for hockey in Canada that works in conjunction with the CHL. The 2009-2010 Hockey Canada bylaws read, under section 2 of the USAH/HC/CHL Transfer and Release Agreement, that: "It is agreed that CHL Teams are considered and treated by third parties as being professional". The 2011-2012 version of those same bylaws was revised and now reads that: "It is agreed that CHL Teams are considered the highest level of non-professional competition in Canada, administered as a development program under the auspices of Hockey Canada in a member league of the CHL."

22. The predominant purpose of the defendants, the CHL, and the Leagues in redrafting the Contract, redefining the professional status of the Players in the bylaws of Hockey Canada, and in requiring Players to sign the Current Contract was to avoid the application of Applicable Employment Standards Legislation.

PARTIES

The Plaintiff

23. The plaintiff, Samuel Berg ("Sam") resides in Ontario. In 2013, Sam played hockey for the Niagara Ice Dogs, an OHL team owned and operated by Niagara Ice Dogs Hockey Club Inc.

24. Sam signed the OHL standard player agreement form on August 20, 2013, as did the general manager of the team. Sam's contract provided *inter alia* that in exchange for providing the services under the agreement, Sam would receive a fee of $50 weekly for three seasons commencing August 31, 2013.

25. During the months of September and October 2013 Sam played for the team in a number of exhibition and league games. On average Sam devoted about six hours a day, seven days a week to providing services to the team in accordance with the Contract. When the team travelled he would devote longer hours, up to twelve hours a day.

26. Sam's hours varied but on average he supplied about thirty-two hours of services weekly and in some weeks over forty- four hours weekly.

27. Sam received $55.00 weekly by cheque less payroll deductions. Sam did not receive the minimum hourly wage rate governed by the ESA, nor vacation pay, holiday pay or overtime pay.

28. Sam's relationship with the Niagara Ice Dogs and the Contract he signed was a contract for service. Sam was an employee of the team. The facts in support of him being an employee and in support of the Class Members being employees are as follows:

(a) Under the Contract and in all dealings with the team, Sam was subject to the control of the team as to when, where and how he played hockey;

(b) The Leagues, the CHL and the team determine and control the method and amount of payment;

(c) Sam was required to adhere to the team's schedule of practices and games;

(d) The overall work environment between the team and Sam was one of subordination;

(e) The team provided tools, supplied room and board and a benefit package;

(f) The defendants used images of Sam for their own profit;

(g) The team made payroll deductions at source;

(h) Sam was not responsible for operating expenses and did not share in the profits;

(i) Sam was not financially liable if he did not fulfill the obligations of the Contract;

(j) The business of hockey belonged to the team-not to Sam;

(k) The team imposed restrictions on Sam's social life including a curfew that was monitored; and

(l) The team directed every aspect of his role as a Player, and the business of the team was to earn profits.

29. In or about October 2013, Sam was sent down to play Junior B hockey for the St Catherine Falcons and later traded to the Thorold Blackhawks. Sam played eight games for the Falcons and four games for the Blackhawks. Sam was injured, took a medical leave and ultimately could not return to hockey.

30. Sam was not paid the $55 weekly fee while he was playing Junior B hockey.

31. Sam enrolled in University. Pursuant to the Contract signed August 31, 2013, the team agreed in Schedule C to irrevocably guarantee funding for four years of a bachelor degree upon Sam playing at least one exhibition or regular season game.

32. Unbeknownst to Sam, the team failed to forward the Contract to the OHL for approval as required by the terms of the Contract. The Contract was not approved by the OHL while Sam was playing hockey, although he believed it had been approved in August 2013, having never heard anything to the contrary and having played in several games. The Contract expressly provides that a Player cannot play in a game until the Contract is approved by the OHL.

33. In January 2014, the OHL required that the Contract be revised before it would be approved. Knowing that Sam was injured and could not play, the OHL approved the Contract but reduced his tuition package from four years to half a year.

34. Sam pleads that the team breached its agreement to provide four years of tuition and violated the ESA by failing to pay minimum wages, holiday pay, vacation pay and overtime pay.

35. Sam claims damages against the defendants, who are jointly and severally liable with the Niagara Icedogs for damages as a result of the civil conspiracy described below, for back wages, overtime pay, vacation pay and holiday pay in accordance with the ESA as well as the tuition costs of four years of university.

The Defendants

36. The Clubs are various corporations, partnerships, and limited liability companies formed in various jurisdictions. The Clubs all own or owned teams in the Leagues under various trade names. Through these trade names, the Clubs entered into the Contracts with the Players.

37. The plaintiff has been unable to identify the legal entities who own the trade names for the Clubs known as the Kitchener Rangers, the Sudbury Wolves, the Kootenay Ice, the Moose Jaw Warriors, and les Saqueneens Chicoutimi. Therefore, the owners of these Clubs have been named in this lawsuit as John Doe Corporations "A" through "E" respectively.

THE FORMER CONTRACTS AND APPLICABLE EMPLOYMENT STANDARDS LEGISLATION

38. The Former Contracts are standard form contracts where the clauses relevant to wages and the terms of employment are identical or materially the same. Each League required the use of the Former Contracts, and that contract only, which must be approved by the commissioner of the applicable League before a Player is allowed to play hockey.

39. The clauses in the Former Contracts for the payment of wages all state that the Player is provided a set weekly fee. In the case of Players aged 16-19, this weekly fee ranged from $30-$150/week with no compensation provided on an hourly basis; no overtime pay; no vacation pay; and no holiday pay. The clauses in the Former Contract with respect to the payment of wages are identical or materially the same for each Class Member in each jurisdiction.

40. The Applicable Employment Standards Legislation for each jurisdiction in which the teams owned by the Clubs are domiciled is also materially the same in that it is mandatory that employers pay their employees minimum wage set by the legislation as follows:

(a) Section 23 of Ontario's *ESA* states "An employer shall pay employees at least the prescribed minimum wage";

(b) Section 40 of Quebec's *An Act Respecting Labour Standards*, CQLR c N-1.1, states that "An employee is entitled to be paid a wage that is at least equivalent to the minimum wage";

(c) Section 9 of Alberta's *Employment Standards Code*, RSA 2000, c E-9, states that "Employers must pay wages to employees at at least the following rates:...";

(d) New Brunswick's *Employment Standards Act*, SNB 1982, c E-7.2 contains regulations setting a minimum wage and section 9 requires that "Every employer...shall comply with the provisions of a regulation made under subsection (1)";

(e) In Nova Scotia, section 5 of the *Minimum Wage Order (General)*, NS Reg 5/99, Sch A, states "No employer shall employ an employee at a rate of wages less than the minimum wage fixed in this Order";

(f) Section 16 of British Columbia's *Employment Standards Act*, RSBC 1996, c 113, states that "An employer must pay an employee at least the minimum wage as prescribed in the regulations";

(g) Section 5(1) and (7) of the Prince Edward Island's *Employment Standards Act*, RSPEI 1988, c E-6.2 require a board to establish a minimum wage in PEI which "is binding upon the employer and employees";

(h) *The Saskatchewan Employment Act*, SS 2014, c S-15.1, s. 2-16 states that an employer shall pay an employee "at least the prescribed minimum wage";

(i) Section 6 of Manitoba's *The Employment Standards Code*, CCSM c E110, states that "Except as otherwise authorized under this Code, an employer shall not pay an employee less than the prescribed minimum wage";

(j) In the State of Michigan, the *Workforce Opportunity Wage Act*, Mich. Stat. §408.413 states that "An employer shall not pay any employee at a rate that is less than prescribed in this act."

(k) In the State of Washington, the *Minimum Wage Act*, Wash. Rev. C. tit. 49, at §49.46.020 s. (4)(a) states that "every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection" and also sets out minimum wages for employees under the age of 18 in regulations made under s. (5);

(l) In the State of Oregon, Or. Rev. Stat. tit. 51 §653.025, s. (1) sets out that "for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than [the prescribed minimum wage]";

(m) In the State of Pennsylvania, the *Minimum Wage Act of 1968*, Act of 1968, P.L. 11, No. 5, section 4 states that "Every employer shall pay to each of his or her employees wages for all hours worked at a rate of not less than [the prescribed minimum wage]"; and

(n) In the State of Maine, Me. Rev. Stat. tit. 26, §664, as amended, states that "an employer may not employ any employee at a rate less than the rates required by this section."

41. In addition to legislating a minimum wage, the Applicable Employment Standards Legislation in each jurisdiction also contains materially the same provisions which prevents employers from contracting out of their obligations under the Applicable Employment Standards Legislation:

(a) Section 5 of Ontario's *ESA* states, "no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void";

(b) Section 93 of Quebec's *An Act Respecting Labour Standards*, CQLR c N-1.1, states, "In an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null";

(c) Section 4 of Alberta's *Employment Standards Code*, RSA 2000, c E-9, states that "An agreement that this Act or a provision of it does not apply, or that the remedies provided by it are not to be available for an employee, is against public policy and void";

(d) New Brunswick's *Employment Standards Act*, SNB 1982, c E-7.2 states at section 4 that "this Act applies notwithstanding any agreement to the contrary between an employer and an employee";

(e) In Nova Scotia, section 6 of the Labour Standards Code, RSNS 1989, c 246 states that "This Act applies notwithstanding any other law or any custom, contract or arrangement";

(f) Section 4 of British Columbia's *Employment Standards Act*, RSBC 1996, c 113, states that "The requirements of this Act and the regulations are minimum requirements and an agreement to waive any of those requirements....has no effect";

(g) Section 2.1(2) of Prince Edward Island's *Employment Standards Act*, RSPEI 1988, c E-6.2 states that "A provision of a contract of service that confers upon an employee conditions or benefits less favourable than the conditions or benefits conferred upon the employee under a provision of this Act or the regulations is void and of no effect";

(h) *The Saskatchewan Employment Act*, SS 2014, c S-15.1, s. 2-6 states that "No provision of any agreement has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Part";

(i) Sections 3 and 4 of Manitoba's *The Employment Standards Code*, CCSM c E110, state that "This Code prevails over any enactment, agreement, right at common law or custom that (a) provides to an employee wages that are less than those provided under this Code; or (b) imposes on an employer an obligation or duty that is less than an obligation or duty imposed under this Code." The act also states that "An agreement to work for less than the applicable minimum wage, or under any term or condition that is contrary to this Code or less beneficial to the employee than what is required by this Code, is not a defence in a proceeding or prosecution under this Code";

(j) In the State of Michigan, the *Workforce Opportunity Wage Act*, Mich. Stat. §408.419 allows for a civil action to be brought where there is a violation of the act and sec. 9(2) states that "A contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action";

(k) In the State of Washington, the *Minimum Wage Act*, Wash. Rev. C. tit. 49, at §49.46.090 allows for a civil action to be brought where there is a violation of the act and sec. (2) states that "Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action."

(l) In the State of Oregon, Or. Rev. Stat. tit. 51 §653.055, allows for a civil action to be brought where there is a violation of the act and s. (2) sets out that "Any agreement between an employee and an employer to work at less than the wage rate required....is no defense to an action";

(m) In the State of Pennsylvania, the *Minimum Wage Act of 1968*, Act of 1968, P.L. 11, No. 5, section 13 allows for a civil action to be brought where there is a violation of the act and states that "any

agreement between the employer and the worker to work for less than such minimum wage shall be no defense to such action"; and

(n) In the State of Maine, Me. Rev. Stat. tit. 26, §672, as amended, states that "No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter". The subchapter referred to is the subchapter imposing minimum wage obligations on employers.

42. The plaintiff pleads on his own behalf, and on behalf of the Class, that the Former Contract is a contract of employment and therefore the pay received by him and each Class Member under the Former Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation in the jurisdiction in which the Class Member was employed and insofar as the Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

The Leagues Revise The Contracts

43. In or about July 2013, a new regulation for each of the Leagues, referred to as the "Rights and Obligations of Players", came into force (the "Regulations"). The Regulations' objectives are stated as:

> to clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

44. In addition to the Regulations, there is a Schedule "A": the "Commitment Form for 16-to-19-Year Old Players". The Regulations, Schedule "A", and the Leagues' policies known

as the "Education Policy" are referred to herein as the Current Contract. The defendants, the CHL, and the Leagues required all 16 to 19 year old Players to sign the Commitment Form whereby the Player agrees to abide by the constitution, the regulations (including the Regulations), the policies, and the directives of the Leagues. The Current Contract provides, *inter alia*, that:

(a) The player acknowledges that this present agreement terminates, cancels and replaces any existing standard contract, if any, between the player and the club;

(b) Players who belong to a club and who range in age from 16 years old to 19 years old are pursuing their academic careers while also benefiting from a framework which supports the development of their athletic potential as hockey players whose goal it is to pursue the practice of hockey at the professional level;

(c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career.

(d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [*sic*].

(e) During the regular schedule and the eliminatory schedule, the club will cover or reimburse the following expenses:...For expenses related to hockey practice and being away from home that is not otherwise reimbursed to the player, the club pays a fixed weekly allowance of $60.

45. Under the terms of all of the Current Contracts, the teams, owned and operated by the defendant Clubs, retain the rights of their Players for the life of the contract which generally covers all ages of eligibility in the Leagues which is 16-19 years of age.

Therefore, a Player who signs at the age of 16, signs a three year contract with an option for another year with the team.

46. The Current Contract sets a fixed fee for the Players' services which are $60 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

47. The Current Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the Leagues' "Education Policy".

48. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the Current Contracts, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

49. Because of the amount of time and dedication devoted to travel, practice, promotion, and playing, it is extremely difficult for the Players to meet the requirements of the education package, including maintaining a grade point average and enrolment in high school or online courses.

50. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823, that the relationship between a team in the WHL and a Player is one of employer/employee, stating, "[t]he players are employees who receive remuneration - defined as cash - pursuant to the appropriate regulations governing insurable earnings. It would require an amendment to subsection 5(2) of the

Employment Insurance Act in order to exclude players in the WHL - and other junior hockey players within the CHL - from the category of insurable employment."

51. In that case, the Court was asked to consider the relationship between the Player and the team based on the language of the Former Contract. The Court rejected the WHL team's argument that the remuneration was nothing more than an allowance paid to a student participating in a hockey program that offered scholarships subject to the pre-condition of possessing the ability to play hockey at a level permitting one to be a member of a WHL team. The Court found that the team operated a commercial organization carrying on business for profit and that the Players were employees. The requirement to play hockey was not found to be inextricably bound to a condition of scholarship since attendance at a post-secondary institution was not mandatory to stay on the roster.

52. Despite the Tax Court of Canada ruling made some fourteen years ago, the defendants under the Current Contract fail to pay wages in accordance with Applicable Employment Standards Legislation.

53. Instead, the defendants, the CHL, and the Leagues have reworded the Former Contract to describe the fee as an allowance and recast the status between the Players and Clubs as one of "student athletes" in an attempt avoid the application of the Applicable Employment Standards Legislation and the ruling in *McCrimmon*.

54. The plaintiff repeats paragraphs 40 and 41 above and pleads on behalf of the Class that the Current Contract is a contract of employment and therefore the pay received by the 16-19 year old Players during the 2013 season and the current season is below the minimum wages prescribed by the Applicable Employment Standards Legislation.

Insofar as the Current Contract avoided the minimum wage obligations imposed by the Applicable Employment Standards Legislation, it is void and not a defence to this action.

The 20 Year Old Contracts

55. In or about July 2013, the Regulations came into force. The Regulations' objectives are stated as:

> to clarify the status of the players who are called upon to play with each of the League's teams, to determine their rights and obligations, to determine the conditions which will or may be applicable to them and to detail the disciplinary measures applicable to the clubs regarding their adherence to the regulations which apply to the conditions granted to the players.

56. In addition to the Regulations, there is a Schedule "B": the "Standard Contract - 20-Year-Old Player". The Regulations, the Schedule "B", and the WHL "Education Policy", are referred to herein as the 20 Year Old Contract. The defendants, the CHL, and the Leagues required all 20 year old Players to sign the 20 Year Old Contract whereby those Players agree to abide by the constitution, the regulations (including the Regulations), the policies, and the directives of the Leagues. The 20 Year Old Contract provides, *inter alia*, that:

(a) The player acknowledges that this present contract terminates, cancels and replaces any existing standard contract, if any, between the player and the club;

(b) Players who are 20 years old and who are retained by a team are young adults who are called upon to exercise their leadership abilities and to act as mentors towards their teammates. They are considered to be salaried employees of the club and will be paid accordingly;

(c) The club is responsible towards the players that it retains for its team, in accordance with League regulations. The club is responsible for providing lodging and meals, for supporting the players through their academic pursuits, for

protecting their physical and mental health and for developing their athletic potential, to the extent possible, so that they may practice hockey at the professional level after their major junior career;

(d) The Player grants to the Club and to the League the right to authorize any person, firm, or corporation to take and make use of any photographs, motion pictures (including television) or digital images of the Player recorded during he participates within the Club and agrees that thereafter all rights attached to such photographs, pictures and images shall belong to the Club or the League exclusively. therefore, the Club or the League may use or reproduce or distribute such photographs, pictures and images in any way it desires [*sic*].

(e) All 20-year-old players must sign a standard contract supplied by the league and this contract must be registered with the league; he cannot sign any other contract that is not registered with the league;

(f) During the regular and playoff schedules, the club will cover or reimburse...the player's salary.

(g) This agreement is the sole understanding relating to the rights of the Player for his services as a 20-year-old player, and it supersedes or replaces any other prior verbal or written agreement or statement of intent.

57. The 20 Year Old Contract sets a fixed weekly fee for the Players' services which vary, but are capped by the Leagues at $1,000 a week. Teams make applicable employee payroll deductions at source and remit them to applicable government authorities.

58. The 20 Year Old Contract also includes an "education package" which provides for payment by the team towards a Player's post-secondary education fees pursuant to the Leagues' "Education Policy".

59. Players work on average 35-40 hours a week and occasionally up to 65 hours a week or more, including travel, practice, promotion, and participating in games three times a week. Under the 20 Year Old Contract, the Players receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

60. The plaintiff repeats paragraphs 40 and 41 above and pleads on behalf of the Class that the 20 Year Old Contract is a contract of employment and therefore the pay received by the Class Members who signed the 20 Year Old Contract was below the minimum wages prescribed by the Applicable Employment Standards Legislation. Insofar as the 20 Year Old Contract avoids the minimum wage obligations imposed by the Applicable Employment Standards Legislation, and to the extent the weekly fee or salary equates to less than a 40 or 44 hours a week at minimum wage, it is void and not a defence to this action.

CAUSES OF ACTION

Breach of Statute/Statutory Cause of Action

61. The Clubs entered into Contracts with the Class Members. Under the Contracts, the Class Members agreed to provide employment services to the Clubs in exchange for some remuneration.

62. The Clubs entered into an employer/employee relationship with the Class Members.

63. Many of the Players are or were under the age of majority while employed by the Clubs and therefore are or were protected by Provincial and State employment standards legislation, including, in Ontario, *ESA* section 23 and section 5 of O. Reg. 285/01. Subject to certain exceptions which are unrelated to this action, it is illegal (being a violation of the Applicable Employment Standards Legislation) in all Provinces and in those States where the Contracts were entered into, to pay minors less than minimum wage. The Contract provides for a fixed sum of between $30-$125/week .The Players

devote an average of 35-40 hours weekly and in some instances up to 65 hours weekly to employment related services. Therefore, the Contract violates the right of minors under the Applicable Employment Standards Legislation.

64. For those Players who are adults, Applicable Employment Standards Act Legislation provide for compulsory minimum wage standards, including in Ontario *ESA* section 23. It is illegal in all Provinces and in the States where Contracts were entered into to pay employees $30-$125/week for 35-65 hours of weekly employment related services.

65. Therefore, the Contracts violate the rights of the Players under the Applicable Employment Standards Legislation with respect to minimum wages, vacation pay, holiday pay, and overtime pay.

66. All Applicable Employment Standard Act Legislation provide that any term of an employment contract that violates statutorily prescribed minimum wages, vacation pay, holiday pay, and overtime pay is void and unenforceable. By way of example, in Ontario, s. 5(1) of the *ESA* states that "no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void."

67. Therefore, the terms of the Contract requiring Players to perform all employment related services for a fixed weekly sum are void and unenforceable. The Players are entitled to be compensated at statutory minimum hourly wage rates in the Province or State where

the Player was employed for back wages, and back overtime pay, and back holiday pay, and back vacation pay.

68. The Clubs are therefore liable to the plaintiff and Class Members for back wages at minimum wage levels, overtime pay, holiday pay, and vacation pay, in accordance with the Applicable Employment Standards Act Legislation.

Officers and Directors' Liability

69. The plaintiff pleads on his own behalf, and on behalf of all Class Members who were employed in Ontario, BC, Alberta, Saskatchewan, Manitoba, Quebec and New Brunswick, that the officers and directors of each Club in those provinces are jointly and severally liable with the Clubs to the Class Members for unpaid wages, including back minimum wages, vacation pay, overtime pay, and holiday pay owed to the plaintiff and the Class Members by the Clubs.

70. In the event that the Clubs do not make arrangements to pay all outstanding wages to the Class Members and instead continue to hold back the wages owed to the Class, the plaintiff intends to add the officers and directors as parties to this proceeding.

71. With respect to the liability of the officers and directors, the plaintiff and Class Members plead and rely on:

(a) s. 81(7) of the *ESA*;

(b) s. 96(1) of British Columbia's *Employment Standards Act*, RSBC 1996, c 113;

(c) s. 112 of Alberta's *Employment Standards Code*, RSA 2000, c E-9;

(d) s. 2-68 of *The Saskatchewan Employment Act*, SS 2014, c S-15.1;

(e) s. 90 of Manitoba's *The Employment Standards Code*, CCSM c E110;

(f) s. 113 of Quebec's *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1; and

(g) s. 65.1 of New Brunswick's *Employment Standards Act*, S.N.B. 1982, c.E-7.2.

Conspiracy

72. The plaintiff claims that the defendants, the CHL, and the Leagues unduly, unlawfully, maliciously, and lacking *bona fides*, conspired and agreed together, the one with the other, to act in concert to demand or require that all players sign a Contract which the defendants knew was unlawful. The defendants, the CHL, and the Leagues knew or recklessly disregarded the fact that the relationship between the Club and Class Members was one of employer/employee, and as such the Contracts contravened employment standards legislation, yet required the Contracts be signed so as to avoid paying the plaintiff and Class Members minimum wages, vacation pay, holiday pay or overtime pay.

73. The Clubs, Leagues and the CHL have access to legal opinions, judicial decisions, employment tribunal directives and decisions, and CRA bulletins on the criteria for determining whether the Player/Team relationship is one of independent contractor, student athlete, or employment. The defendants, the CHL, and the Leagues are well aware that the fees paid to the Players under the Contract probably violate employments standards legislation and are well aware of the jurisprudence where Courts have construed the relationship between the Players and the Clubs as an employer/employee

relationship. The defendants, the CHL, and the Leagues make, or direct that the Clubs make, employee payroll deductions and remit them in their capacity as employer to government agencies.

74. The Leagues and the CHL control the terms of the Contract by requiring that the Clubs use only the standard form contract and by making each and every Contract conditional on approval by the applicable League. The amount of fees received by the Players is set by the Leagues and the CHL and pursuant to the CHL and Leagues' bylaws and the Regulations; hence the Leagues and the CHL have unlawfully set the wages below the minimum legislated standards. The Leagues and the CHL direct that the Clubs must insist that Players sign the Contract as a condition of playing in a League.

75. The Clubs know, or ought to know, that the Contracts are unlawful pursuant to the Applicable Employment Standards Legislation, but have agreed and conspired with the CHL and the Leagues to use the Contracts and the Contracts only. The conspiracy between the CHL, the Leagues, and the Clubs occurred in Ontario and continues to occur in Ontario where the head office of the CHL is located.

76. The defendants, the CHL, and the Leagues were motivated to conspire, and their predominant purposes and concerns were to continue operating the Leagues without incurring costs that were to be lawfully paid by the Clubs to the plaintiff and the Class Members in the form of minimum wages, overtime pay, holiday pay and vacation pay.

77. The conspiracy was unlawful because the defendants, the CHL, and the Leagues knowingly caused the plaintiff and Class Members to enter into an unlawful contract and receive wages in contravention of the Applicable Employment Standards Legislation and because the defendants, the CHL, and the Leagues deliberately attempted to circumvent the legislation by inaccurately characterizing the status of Players as independent contractors and in 2013 as student athletes and in 2013 by inaccurately characterizing the fees payable to the Players as an allowance. The defendants, the CHL, and the Leagues knew that such conduct would more likely than not cause harm to the plaintiff and the Class Members.

78. The acts in furtherance of the conspiracy caused injury and loss to the plaintiff and other Class Members in that the Players' statutory protected right to fair wages were breached and they did not receive minimum wages, vacation pay, holiday pay or overtime pay that was owed to them as lawfully required under Applicable Employment Standards Legislation.

79. As a result of the conspiracy, which was committed by all defendants, the CHL, and the Leagues together, all of the defendants, are jointly and severally liable for all monies owing to the plaintiff and the Class Members under the Applicable Employment Standards Legislation regardless of which team employed the Class Member.

Waiver of Tort as against the CHL, OHL, the WHL, and the Canadian based teams in those two Leagues

80. The CHL, the OHL, the WHL and the Canadian based teams in those two Leagues control the terms of the Contracts by requiring that the Clubs use only the standard form

contract. They also require that the Clubs continue to insist that Players sign the Contract and provide employment related services for fees set by the Leagues' bylaws which are below legislated employment standards and the Clubs have agreed to do so.

81. The Leagues and the CHL have access to legal opinions and are well aware that the Contracts probably violates the Applicable Employments Standards Legislation and are well aware of jurisprudence where Courts have construed the relationship between the Players and the Clubs as an employer/employee relationship.

82. Nevertheless, the CHL and the Leagues require that the Clubs continue to insist that Players sign the Contracts and provide employment related services for below legislated employment standards. The Clubs agree to do so.

83. These defendants, the CHL, and the Leagues receive, in the aggregate, hundreds of millions of dollars in revenues annually including for marketing promotions, television rights and tickets sales, all based primarily on the services provided by the Players and the use of their images and names. The defendants', the CHL's, and the Leagues' illegal employment contracts and breach of employment legislation constitute unlawful acts by which the defendants have been unjustly enriched. The defendants, the CHL, and the Leagues are therefore liable to the plaintiff and Class Members in waiver of tort.

84. As a result, the plaintiffs seek an order requiring the CHL, the OHL, the WHL and the Canadian based teams in those two Leagues to disgorge all profits received commencing October 17, 2012 and ongoing, as a result of the illegal conduct as particularized above.

REMEDIES

85. The plaintiff and each Class Member has suffered damages and loss as a result of the Clubs' breach of statute and the defendants', the CHL's, and the Leagues' conspiracy, as particularized above.

86. The plaintiff pleads that he and the Class are entitled to recover back wages, holiday pay, vacation pay, and overtime pay pursuant to the Applicable Employment Standards Legislation in place in the jurisdiction in which the employment services were provided for the applicable Club, together with interest.

87. The plaintiff seeks on his own behalf, and on behalf of the Class, an order that all defendants, must disgorge all profits that the defendants generated as a result of benefitting from breaches of Applicable Employment Standards Legislation, the conspiracy and waiver of tort.

88. The plaintiff seeks on his own behalf, and on behalf of members of the Class, punitive damages for the defendants' conduct in violating Applicable Employment Standards Act Legislation while they were aware that certain terms of the Contracts were probably void. The defendants were lax, passive, ignorant with respect to the plaintiff and Class

Members' rights and to their own obligations; displayed ignorance, carelessness, and serious negligence; and such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, willful and in complete disregard for the rights of the plaintiff and Class Members.

89. The plaintiff pleads that only a punitive damages award will prevent the defendants from continuing their unlawful conduct as particularized herein.

VENUE

90. The plaintiffs propose that this action be tried in the City of Toronto in the Province of Ontario.

91. Pursuant to Rule 17.04(1), the plaintiff pleads and relies on Rules 17.02 (g), (o) and (p) of the *Rules of Civil Procedure* in support of service of originating process outside of Ontario without a court order.

92. The plaintiff pleads and relies upon the provisions of the *ESA*, the *Employment Standards Code*, R.S.A. 2000, c. E-9, the *Employment Standards Act*, R.S.B.C. 1996, c. 113, *Employment Standards Code*, C.C.S.M. c.E110, *Employment Standards Act*, S.N.B. 1982, c.E-7.2, *Labour Standards Code*, R.S.N.A. 1989, c. 246, *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2, *An Act Respecting Labour Standards*, C.Q.L.R. c. N-1.1, *Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, Or. Rev. Stat. tit. 51 §653, Mich. Stat. §408, Pa. *Minimum Wage Act of 1968* Pub. L. No. 11, No. 5, as amended, , Wash.

Rev. C. tit. 49, §49.46, as amended, Me. Rev. Stat. tit. 26, §591, as amended, and their respective regulations.

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Cv-14-515637-00CP

Court File No:

SAM BERG
Plaintiff

-and- **MEDICINE HAT TIGERS HOCKEY CLUB LTD..**

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced in TORONTO

STATEMENT OF CLAIM

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