COURT FILE NUMBER	1401-11912
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	LUKAS WALTER, TRAVIS MCEVOY, and KYLE O'CONNOR as REPRESENTATIVE PLAINTIFFS
DEFENDANTS	WESTERN HOCKEY LEAGUE, McCRIMMON HOLDINGS, LTD. AND 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS., BRANDON WHEAT KINGS LIMITED PARTNERSHIP, 1056648 ONTARIO INC., CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, REXALL SPORTS CORP., EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, EDMONTON OILERS HOCKEY CORP., EHT, INC., KAMLOOPS BLAZERS HOCKEY CLUB, INC., KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., HURRICANES HOCKEY LIMITED PARTNERSHIP, PRINCE ALBERT RAIDERS HOCKEY CLUB INC., BRODSKY WEST HOLDINGS LTD., EDGEPRO SPORTS & ENTERTAINMENT LTD., REBELS SPORTS LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP, VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD., WEST COAST HOCKEY ENTERPRISES LTD., WEST COAST HOCKEY LLP, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD., PORTLAND WINTER HAWKS, INC., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC. d.b.a. SPOKANE CHIEFS HOCKEY CLUB, THUNDERBIRD HOCKEY ENTERPRISES, LLC, TOP SHELF ENTERTAINMENT, INC., SWIFT CURRENT

Clerk's Stamp

	TIER 1 FRANCHISE INC., SWIFT CURRENT BRONCO HOCKEY CLUB INC., KOOTENAY ICE HOCKEY CLUB LTD., MOOSE JAW TIER 1 HOCKEY INC. d.b.a. MOOSE JAW WARRIORS, MOOSE JAW WARRIORS TIER 1 HOCKEY, INC., LETHBRIDGE HURRICANES HOCKEY CLUB, and CANADIAN HOCKEY LEAGUE
DOCUMENT	**FRESH AS AMENDED STATEMENT OF CLAIM** Brought under the *Class Proceedings Act*, S.A. 2003, c. C-16.5
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**CHARNEY LAWYERS P.C.** 151 Bloor St. W., Suite 602 Toronto, ON M5S 1P7 Theodore P. Charney / Tina Q. Yang Brendan O'Grady / Glenn Brandys Phone: 416.964.7950 Fax: 416.964.7416

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

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

   (a) "**2007 WHL SPA**" means the Western Hockey League Standard Player Agreement Execution Schedule together with the Addendum and the Terms and Conditions Schedule used in the 2007-2008 season;

   (b) "**2011 WHL SPA**" means the Western Hockey League Standard Player Agreement Execution Schedule together with the Addendum and the Terms and Conditions Schedule used in the 2011-2012 season;

(c) "**2013 WHL SPA**" means the Western Hockey League Standard Player Agreement Execution Schedule together with the Addendum and the Terms and Conditions Schedule used in the 2013-2014 season;

(d) "**2014 WHL SPA**" means the Western Hockey League Standard Player Agreement Execution Schedule together with the Addendum and the Terms and Conditions Schedule used in the 2014-2015 season;

(e) "**SPA**" means the standard player agreements used in the WHL including the **2007 WHL SPA**, **2011 WHL SPA**, **2013 WHL SPA** and **2014 WHL SPA**;

(f) "**2007 OHL SPA**" means the Ontario Hockey League Standard Player Agreement, together with Schedule "A" and Schedule "B" used in the 2007-2008 season;

(g) "**2010 OHL SPA**" means the Ontario Hockey League Standard Player Agreement, together with Schedule "A", Schedule "B" and Schedule "C" used in the 2010-2011 season;

(h) "**2013 OHL SPA**" means the Ontario Hockey League Standard Player Agreement, together with Schedule "A", Schedule "B" and Schedule "C" used in the 2013-2014 season;

(i) "**2013 QMJHL SPA for 16 to 19 Year Olds**" means the Quebec Major Junior Hockey League Rights and Obligations of Players and Schedule A: Commitment Form for 16-to-19-Year-Old Players that was used in the 2013-2014 season;

(j) "**2013 QMJHL SPA for 20 Year Olds**" means the Quebec Major Junior Hockey League Rights and Obligations of Players and Schedule B: Standard Contract – 20-Year-Old Player that was used in the 2013-2014 season;

(k) "**Alberta/Manitoba/Saskatchewan Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** in the Provinces of Alberta, Manitoba, and Saskatchewan (a "team") or at some point commencing October 30, 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 October 30, 2012;

(l) "**Applicable Employment Standards Legislation**" means the legislation governing wages in the jurisdiction where a **Club** is domiciled including: the *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; *The Saskatchewan Employment Act*, S.S. 2014, c. S-15.1; Or. Rev. Stat. tit. 51 §653; Wash. Rev. C. tit. 49, §49.46, as amended; *Fair Labor Standards Act of 1938*, 29 U.S.C. §201; and their respective regulations;

(m) "**BC Class**" means all players who are members of a team owned and/or operated by one or more of the **Clubs** in the Province of British Columbia, or at some point commencing October 30, 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 October 30, 2012;

(n) "**CHL**" means the defendant Canadian Hockey League;

(o) "**Class**" or "**Class Member(s)**" means the **BC Class**; the **Alberta/Manitoba/ Saskatchewan Class**; and the **US Class**;

(p) "**Clubs**" means the teams participating, or who have participated, in the **WHL** who are or were owned and/or operated by the defendants McCrimmon Holdings, Ltd., 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings, Brandon Wheat

Kings Limited Partnership, 1056648 Ontario Inc., Calgary Flames Limited Partnership, Calgary Sports and Entertainment Corporation, Rexall Sports Corp., Edmonton Major Junior Hockey Corporation, Edmonton Oilers Hockey Corp., EHT, Inc., Kamloops Blazers Hockey Club, Inc., Kamloops Blazers Holdings Ltd., Kelowna Rockets Hockey Enterprises Ltd., Hurricanes Hockey Limited Partnership, Prince Albert Raiders Hockey Club Inc., Brodsky West Holdings Ltd., EDGEPro Sports & Entertainment Ltd., Rebels Sports Ltd., Queen City Sports & Entertainment Group Ltd., Braken Holdings Ltd., Saskatoon Blades Hockey Club Ltd., Vancouver Junior Hockey Limited Partnership, Vancouver Junior Hockey Partnership, Ltd., West Coast Hockey Enterprises Ltd., West Coast Hockey LLP, Medicine Hat Tigers Hockey Club Ltd., 1091956 Alta. Ltd., Portland Winter Hawks, Inc., Brett Sports & Entertainment, Inc., Hat Trick, Inc. d.b.a. Spokane Chiefs Hockey Club, Thunderbird Hockey Enterprises, LLC Top Shelf Entertainment, Inc., Swift Current Tier 1 Franchise Inc., Swift Current Bronco Hockey Club Inc., Kootenay Ice Hockey Club Ltd., Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors, Moose Jaw Warriors Tier 1 Hockey, Inc., and Lethbridge Hurricanes Hockey Club;

(q) "***CPA***" means the Alberta *Class Proceedings Act*, SA 2003, c. C-16.5, as amended;

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

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

(t) "**employer payroll contributions**" includes contributions to the Canada Pension Plan pursuant the *Canada Pension Plan*, R.S.C., 1985, c. C-8, contributions to

unemployment insurance pursuant to the *Employment Insurance Act*, S.C. 1996, c. 23 and other statutes, and equivalent contributions required by the laws of Washington and Oregon;

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

(v) "**OHL**" means the Ontario Major Junior Hockey League operating as the Ontario Hockey League;

(w) "**Oregon 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 Oregon, USA (a "team"), or at some point commencing October 30, 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 October 30, 2008;

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

(y) "**QMJHL"** means the Quebec Major Junior Hockey League Inc.;

(z) "**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 Oregon, and Washington, USA (a "team"), or at some point commencing October 30, 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 October 30, 2008;

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

(bb) "**Washington 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 Washington, USA (a

"team"), or at some point commencing October 30, 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 October 30, 2008; and,

(cc) "**WHL**" means the defendant Western Hockey League.

THE PARTIES

The plaintiffs

2. The plaintiff Lukas Walter ("Luke") resides in Langley, British Columbia, Canada. During the 2011-2012 and 2012-2013 seasons, Luke played hockey for the Tri-City Americans, a team owned and operated by the defendant, Top Shelf Entertainment, Inc. (the "Americans").

3. The plaintiff Travis McEvoy ("Travis") resides in Thorsby, Alberta, Canada. Travis attended training camp with the Kamloops Blazers prior to the 2010-11 WHL season. Between 2011 and 2014, Travis played hockey for the Saskatoon Blades (the "Blades"), the Vancouver Giants (the "Giants"), and the Portland Winterhawks (the "Winterhawks"), teams owned and operated by the defendants Saskatoon Blades Hockey Group Ltd., Vancouver Junior Hockey Limited Partnership and/or Vancouver Junior Hockey Partnership, Ltd., and Portland Winter Hawks Inc., respectively.

4. The plaintiff Kyle O'Connor ("Kyle") resides in Calgary, Alberta, Canada. During the 2012-2013, 2013-2014, and 2014-15 seasons, Kyle played hockey for the Kootenay Ice (the "Ice"), a team owned and operated by the defendant Kootenay Ice Hockey Club Ltd..

The defendants

5. The CHL office is located in Scarborough, Ontario. It is the umbrella organization that, through its constitution, by-laws and regulations, oversees, controls and administers the

operations of North America's three major junior hockey leagues: the WHL, the OHL and the QMJHL. Sixty Clubs across Canada and in the United States participate in the three leagues.

6. The defendant WHL is a corporation incorporated under the laws of Canada. It operates a major junior hockey league from its offices in Calgary, Alberta under the supervision of the Canadian Hockey League, with member franchises called Clubs located in the Provinces of Alberta, Manitoba, Saskatchewan, and British Columbia. The WHL also has member franchises located in the States of Washington and Oregon, USA. The teams playing in the WHL consist of the teams owned by the Clubs.

7. The Clubs are various corporations, partnerships, and limited liability companies formed in various jurisdictions. The Clubs all own or owned teams in the WHL under various trade names, as follows:

CLUB(S)/DEFENDANT(S)	**TEAM**
McCrimmon Holdings, Ltd., 32155 Manitoba Ltd., a Partnership c.o.b. as Brandon Wheat Kings and/or Brandon Wheat Kings Limited Partnership	Brandon Wheat Kings
1056648 Ontario Inc. and/or Calgary Flames Limited Partnership and/or Calgary Sports and Entertainment Corporation	Calgary Hitmen
Rexall Sports Corp. and/or Edmonton Major Junior Hockey Corporation and/or Edmonton Oilers Hockey Corp.	Edmonton Oil Kings
EHT, Inc.	Everett Silvertips
Kamloops Blazers Hockey Club, Inc. and/or Kamloops Blazers Holdings Ltd.	Kamloops Blazers
Kelowna Rockets Hockey Enterprises Ltd.	Kelowna Rockets
Kootenay Ice Hockey Club Ltd.	Kootenay Ice
Hurricanes Hockey Limited Partnership and/or Lethbridge Hurricanes Hockey Club	Lethbridge Hurricanes
Medicine Hat Tigers Hockey Club Ltd.	Medicine Hat Tigers
Moose Jaw Tier 1 Hockey Inc. d.b.a. Moose Jaw Warriors and/or Moose Jaw Warriors Tier 1 Hockey, Inc.	Moose Jaw Warriors
Portland Winter Hawks, Inc.	Portland Winterhawks
Prince Albert Raiders Hockey Club Inc.	Prince Albert Raiders

Brodsky West Holdings Ltd. and/or EDGEPro Sports & Entertainment Ltd.	Prince George Cougars
Rebels Sports Ltd.	Red Deer Rebels
Queen City Sports & Entertainment Group Ltd. and/or Braken Holdings Ltd.	Regina Pats
Saskatoon Blades Hockey Club Ltd.	Saskatoon Blades
Thunderbird Hockey Enterprises, LLC	Seattle Thunderbirds
Brett Sports & Entertainment, Inc. and/or Hat Trick, Inc. d.b.a. Spokane Chiefs Hockey Club	Spokane Chiefs
Swift Current Tier 1 Franchise Inc. and/or Swift Current Bronco Hockey Club Inc.	Swift Current Broncos
Top Shelf Entertainment, Inc.	Tri-City Americans
Vancouver Junior Hockey Limited Partnership and/or Vancouver Junior Hockey Partnership, Ltd.	Vancouver Giants
West Coast Hockey Enterprises Ltd. and/or West Coast Hockey LLP	Victoria Royals

8. Through the above-listed trade names, the Clubs entered into the Contracts with the Players.

THE FACTS

Facts in support of the misclassification of the Players

9. The CHL oversees and is the governing body of major junior hockey in Canada and the United States, which consists of sixty clubs participating in three leagues: the WHL, OHL and QMJHL.

10. The WHL oversees and is the governing body of twenty-two hockey teams in Canada and the United States participating in the hockey league known as the WHL. The Players vary in age from 16-20 years of age and have all signed an SPA containing identical or significantly similar terms.

11. The form and content of the SPAs are mandated, controlled, drafted and/or regulated by the CHL and WHL who require all of the Clubs to use the standard form player agreement (the

SPA) when hiring Players, regardless of that Player's level or skill or experience or the team with which he signs. The Players are afforded no opportunity for bargaining – they either sign the SPA as drafted by the CHL and WHL, or they are precluded from playing major junior hockey. Once executed by the Player and Club, the SPA provides that it must then be approved by the Commissioner of the WHL. The purpose of having every signed SPA approved by the WHL is to monitor compliance with adherence to the standard language in the SPA and to ensure that there have been no modifications to individual SPAs at the Club level.

12. For example, the 2011 WHL SPA and 2013 WHL SPA states, "The Agreement will not become effective until it has been approved by and registered with the WHL." The corresponding standard player agreements used in the OHL and QMJHL contain identical or similar clauses.

13. The Players' duties, functions, obligations and responsibilities are uniform across the Clubs, as set out in the SPA and in the Bylaws of the CHL and WHL. Players uniformly devote on average 43-50 hours/week and during weeks with road trips up to 65 hours/week or more, performing services in accordance with the SPA including travel, practice, promotion, and participating in games three times a week. Under the SPA, the Players uniformly receive no hourly wages, no overtime pay, no holiday pay, and no vacation pay.

14. The Tax Court of Canada ruled in *McCrimmon Holdings v. Canada (Minister of National Revenue - M.N.R.)*, [2000] T.C.J. No. 823 ("*McCrimmon Holdings*"), that the relationship between a Club in the WHL, and a Player is one of employer/employee, finding, "[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."

15. In *McCrimmon Holdings*, the Court was asked to consider the relationship between the Player and the Club based on the language of the SPA. The Court rejected the Club'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 Club. 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.

16. Despite the Tax Court of Canada ruling made some fourteen years ago, the defendants failed to pay wages in accordance with Applicable Employment Standards Legislation.

17. Instead, the defendants caused the SPA to be reformulated in a concerted effort to recast the legal classification of its Players. The terminology in the SPA has changed. However, the duties, functions, obligations and responsibilities of the Players as well as the coaching, training and access to compensation, scholarships and benefits have remained substantively the same since *McCrimmon Holdings*.

18. The 2007 WHL SPA and 2011 WHL SPA expressly provide financial "remuneration" to the Players in the form of an "allowance" ranging from $160/month in the first year up to $600/month in the fifth year as "consideration" for the Player's "services as a hockey player". The "allowance" is "subject to any statutory withholdings and deductions." The Player's duties, functions, obligations and responsibilities are described in the language of employment law

requiring the Player "to provide his services faithfully, diligently and to the best of his abilities". The nature of the business relationship between the Player and Club is not expressly defined.

19. The defendants reformulated the SPA at some point after 2011. The 2013 WHL SPA and 2014 WHL SPA no longer contain the terms "remuneration", "allowance" or "consideration". Instead, the Players are purportedly to receive a "reimbursement for travel or training related expenses" in the amount of $250/month. This reimbursement is not subject to statutory withholdings or deductions. The reimbursement is purportedly not provided as consideration for the Player's "services" however the Player's duties, functions, obligations and responsibilities are still essentially described in the language of employment law as "to play hockey for the Club faithfully, diligently and to the best of his abilities." The nature of the business relationship is still not precisely defined however an acknowledgement has been added whereby the parties purportedly "agree that this Agreement is not a contract of employment between the Club and Player."

20. Similar efforts to recast the classification of Players have been made in the OHL and QMJHL.

21. In the 2007 OHL SPA, a player's relationship with his club was not expressly defined. The player received an "allowance" of $65/week in exchange for the player's exclusive services. Of the $65 weekly "allowance", $15/week was subject to a holdback (presumably to account for potential payroll tax remittances).

22. The OHL SPA was reformulated at some point after 2007. In the 2010 OHL SPA and 2013 OHL SPA, the OHL players are described as "independent contractors" who receive weekly "fees" of $50 as consideration for their services.

23. The OHL SPA in 2014 reveals efforts by that league and its clubs to recast the classification of its players as participants in a development program. Players previously received a fee or "allowance". In the 2014 OHL SPA, the clubs no longer provide fees. Instead, the clubs purport to reimburse players for expenses.

24. The 2013 QMJHL SPA also reveals efforts by that league and its clubs to recast the classification of its players as participants in a development program. Players in the QMJHL previously received a "salary/bonus". The 2013 QMJHL SPA purports that 16 to 19 year old players are now "reimbursed" for "expenses". It also includes a new "Declaration on the Status of the Players" which purports to explain "that players who belong to a club who range in age from 16 to 19 years old are pursuing their academic careers while also benefitting from a framework which supports the development of their athletic potential as hockey players whose goal is to pursue the practice of hockey at the professional level". Twenty year old players, who perform identical services, playing on the same lines of the same teams, are expressly defined as "salaried employees" and their remuneration is considerably higher.

25. The CHL also removed all references to the Players being characterized as "professional athletes" in legal documents despite nothing otherwise changing in the WHL's conducted business. In particular, the 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."

26. The predominant purpose of the Defendants in redrafting the SPA and requiring Players to sign the new version was to engage in a policy or practice of misclassifying the Players' relationships with their Clubs in an attempt to avoid, evade or disregard the Applicable Employment Standards Legislation, despite the fact that the true nature of the legal relationship between the Players and Clubs is, and has always been, one of employment.

27. 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 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:...";

(b) 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";

(c) *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";

(d) 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";

(e) 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), and this legislation applied to the Players until an amendment came into effect on July 24, 2015;

(f) 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]"; and

(g) In the United States of America, the *Fair Labor Standards Act of 1938*, 29 USC §§ 206(a) states that "every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the productions of goods for commerce" the prescribed minimum wage.

28. 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 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";

(b) 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";

(c) *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";

(d) 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";

(e) 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";

(f) 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", and,

(g) In the United States of America, the *Fair Labor Standards Act of 1938*, 29 USC §§ 218(a) provides that "no provision of this chapter or any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter".

Facts giving rise to the plaintiffs' claims

Lukas Walter

29. Luke signed the 2011 WHL SPA in or about September 2011, as did the general manager of the Americans. Luke's SPA provided *inter alia* that in exchange for providing the services under the agreement, Luke would receive an "allowance" of $200 USD/month for the first season and $240 USD/month for the second season with the team. Luke's contract was approved by the commissioner of the WHL.

30. In the two seasons that Luke played for the Americans (2011-2012 and 2012-2013), he played a total of 118 games as left wing. As an "enforcer" for the team, Luke was encouraged by his coach to play physically tough hockey and to drop the gloves and fight opponents. During the two seasons, he spent a total of 165 minutes in the penalty box for his physically tough play.

31. On average, Luke devoted about 7-8 hours per day, 6-7 days a week to providing services under the terms of the Contract including practicing, playing games, promoting, and travelling with the team. When the team was required to travel, he would devote longer hours, sometimes up to over 12 hours a day.

32. Luke's hours varied but on average he supplied over 40 hours of services weekly and in some weeks over 40 hours per week, up to 65 hours per week.

33. In order for Luke, a Canadian citizen, to be able to play for the Americans, a team located in Kennewick, Washington, USA, Luke had to be cleared by United States Citizenship & Immigration Service (USCIS). In doing so, the USCIS approved the Americans for a "Petition for a Nonimmigrant Worker". The approval notice issued by the USCIS states: "The above petition has been approved. Since the petition indicates that the foreign workers will not require a visa to enter the U.S., we notified the listed port-of-entry or pre-flight inspection office. You may also send the tear-off bottom part of this notice to the worker(s) to show the approval. When the workers are granted status upon admission to the United States, they can then work for the petitioner, but only as detailed in the petition and for the period authorized. Please contact the IRS with any questions about tax withholding."

34. The class of petition that was approved was P-1 which is issued for workers who are "internationally recognized athletes". The approved petition for the Americans lists a total of 42 workers, including Luke and his teammates. During the entire time period that Luke played for the Americans, the United States of America required the Americans to employ him and that Luke be employed by the team pursuing the occupation of a hockey player.

35. At the time that Luke signed the 2011 WHL SPA, he had already graduated from high school. The entire time that he played for the Americans, he was not attending or enrolled in any kind of educational program. He was never a student at any time during which he played for the Americans.

36. Luke's bi-weekly pay was always the same, no matter how many hours each week he worked for the club. He did not receive an hourly wage equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable

Employment Standards Legislation, even when he worked on holidays or for in excess of 40 hours per week.

37. Luke's relationship with the Americans was one of employment. He was an employee of the Club. The facts in support of him being an employee are as follows:

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

(b) The WHL and the Club determine and control the method and amount of payment;

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

(d) The overall work environment between the Club and Luke was one of subordination;

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

(f) The 2011 WHL SPA expressly provide financial "remuneration" to the Players in the form of an "allowance" ranging from $160/month in the first year up to $600/month in the fifth year as "consideration" for the Player's "services as a hockey player". The "allowance" is "subject to any statutory withholdings and deductions." The Player's duties, functions, obligations and responsibilities are described in the language of employment law requiring the Player "to provide his services faithfully, diligently and to the best of his abilities";

(g) The defendants used images of Luke for their own profit, including, but not limited to selling the use of his image and name to video game companies for use in a video game which Luke purchased at full price with his own money;

(h) The Club applied, and was approved by USCIS, for a petition for the Players, including Luke, who are described as nonimmigrant workers;

(i) Luke was not responsible for operating expenses and did not share in the profits;

(j) Luke was not in business on his own account;

(k) Luke was not financially liable if he did not fulfill the duties, functions, obligations and responsibilities under the SPA;

(l) The business of hockey belonged to the Club – not to Luke;

(m) The Club imposed restrictions on Luke's social life including a curfew that was monitored;

(n) The Club directed every aspect of his role as a Player, and the business of the Club was to earn profits; and,

(o) The petition for a nonimmigrant worker establishes that the Club considered Luke to be an employee.

38. Luke pleads that the team violated the *Minimum Wage Act*, Wash. Rev. C. tit. 49, §49.46, as amended, and the *Fair Labor Standards Act of 1938*, 29 USC §§, as amended, by failing to pay minimum wages and overtime pay.

39. Luke claims damages against the defendant, Top Shelf Entertainment, Inc., for back wages, overtime pay, pay in accordance with the *Minimum Wage Act*, Wash. Rev. C. tit. 49, §49.46, as amended, and the *Fair Labor Standards Act of 1938*, 29 USC §§, as amended, and against all of the defendants who are jointly and severally liable with the Americans for those same damages as a result of the civil conspiracy described below. Pursuant to the *Minimum Wage Act*, Wash. Rev. C. tit. 49, at §49.52.070, Luke claims damages for twice the amount of wages withheld from him by the defendant Top Shelf Entertainment, Inc.

Travis McEvoy

40. Travis signed the 2011 WHL SPA in or about September 2011, as did the general manager of the Blades. Travis' SPA provided *inter alia* that in exchange for providing the

services under the agreement, Travis would receive an "allowance" of $180 CAD/month for the first season, $200 CAD/month for the second season, $240 CAD/month for the third season, and $600 CAD/month for the fourth season. Travis' contract was approved by the commissioner of the WHL.

41. In the seasons that Travis played in the WHL (2011-2012 to 2014-2015), he played a total of 193 games as a forward. Travis' hours varied but, on average, he supplied over 40 hours of services weekly and in some weeks over 40 hours per week, up to 65 hours per week.

42. At the time that Travis signed the 2011 WHL SPA, he had one year of high school remaining. Travis struggled to balance the demands of attending school and providing over 30 hours of services to the Blades, but he managed to graduate on time by working extremely hard. For the rest of the time that Travis played in the WHL, he was not enrolled in any kind of educational program.

43. Travis' bi-weekly pay was always the same, no matter how many hours each week he worked for his clubs. He did not receive an hourly wage equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable Employment Standards Legislation, even when he worked on holidays or for in excess of 40 hours per week.

44. Travis' relationship with the Blades, and then the Giants and the Winterhawks, was one of employment. He was an employee of his Clubs. The facts in support of him being an employee are as follows:

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

(b) The WHL and the Clubs determine and control the method and amount of payment;

(c) Travis was required to adhere to the teams' schedule of practices and games;

(d) The overall work environment between the Clubs and Travis was one of subordination;

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

(f) The 2011 WHL SPA expressly provide financial "remuneration" to the Players in the form of an "allowance" ranging from $160/month in the first year up to $600/month in the fifth year as "consideration" for the Player's "services as a hockey player". The "allowance" is "subject to any statutory withholdings and deductions." The Player's duties, functions, obligations and responsibilities are described in the language of employment law requiring the Player "to provide his services faithfully, diligently and to the best of his abilities";

(g) The defendants used images of Travis for their own profit, including, but not limited to selling the use of his image and name to video game companies for use in a video game which Travis purchased at full price with his own money;

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

(i) Travis was not in business on his own account;

(j) Travis was not financially liable if he did not fulfill the duties, functions, obligations and responsibilities under the SPA;

(k) The business of hockey belonged to the Clubs – not to Travis;

(l) The Clubs imposed restrictions on Travis' social life including curfews that were monitored; and

(m) The Clubs directed every aspect of Travis' role as a Player, and the business of the Clubs was to earn profits.

45. Travis pleads that the Saskatoon Blades, the Vancouver Giants and the Portland Winterhawks violated the Applicable Employment Standards Legislation, by failing to pay minimum wages, holiday pay, vacation pay and overtime pay.

46. Travis claims damages against the defendants Saskatoon Blades Hockey Group Ltd., Vancouver Junior Hockey Limited Partnership and/or Vancouver Junior Hockey Partnership, Ltd., and Portland Winter Hawks Inc. for back wages, overtime pay, pay in accordance with the Applicable Employment Standards Legislation, and against all of the defendants who are jointly and severally liable with the Blades, Giants, and/or Winterhawks for those same damages as a result of the civil conspiracy described below.

Kyle O'Connor

47. Kyle signed the 2011 WHL SPA in or about September 2012, as did the general manager of the Kootenay Ice Hockey Club Ltd. Kyle's SPA provided *inter alia* that in exchange for providing the services under the agreement, Kyle would receive an "allowance" of $180 CAD/month for the first season, $200 CAD/month for the second season, $240 CAD/month for the third season, and $600 CAD/month for the fourth season. Kyle's contract was approved by the commissioner of the WHL.

48. In or about September 2013, Kyle signed a new SPA with the Ice.. Kyle's second SPA provided *inter alia* that in exchange for providing services under the agreement, Kyle would receive $250 CAD/month for the 2013-2014 through 2015-2016 seasons, and $600 CAD/month for the 2016-2017 season. Kyle's new contract was approved by the commissioner of the WHL.

49. In the seasons that Kyle played in the WHL (2012-2013 to 2014-2015), he played a total of 132 games as a forward. Kyle's hours varied but, on average, he supplied over 40 hours of services weekly and, on weeks involving a long road trip, up to 87 hours per week.

50. At the time that Kyle signed the 2011 WHL SPA, he had two years of high school remaining. Kyle struggled to balance the demands of attending school and fulfilling his contractual duties to the Ice, but he managed to graduate on time by working extremely hard. For the rest of the time that Travis played for his Club, he was not enrolled in any kind of educational program.

51. Kyle's bi-weekly pay was always the same, no matter how many hours each week he worked for his clubs. He did not receive an hourly wage equivalent to minimum wage, nor did he receive any vacation pay, holiday pay or overtime pay as required under the Applicable Employment Standards Legislation, even when he worked on holidays or for in excess of 40 hours per week.

52. Kyle's relationship with the Ice was one of employment. He was an employee of the Club. The facts in support of him being an employee are as follows:

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

(b) The WHL and the Club determine and control the method and amount of payment;

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

(d) The overall work environment between the Club and Kyle was one of subordination;

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

(f) The 2011 WHL SPA expressly provides financial "remuneration" to the Players in the form of an "allowance" ranging from $160/month in the first year up to $600/month in the fifth year as "consideration" for the Player's "services as a hockey player". The "allowance" is "subject to any statutory withholdings and deductions." The Player's duties, functions, obligations and responsibilities are described in the

language of employment law requiring the Player "to provide his services faithfully, diligently and to the best of his abilities";

(g) The 2013 WHL SPA expressly provides financial "remuneration" to the Players in the form of an "allowance" ranging from $250/month in the first four seasons up to $600/month in the fifth season, in return for the Player's exclusive services as a hockey player. The "allowance" is "subject to any statutory withholdings and deductions". The Player's duties, functions, obligations and responsibilities are described in the language of employment law requiring the Player "to provide his services faithfully, diligently and to the best of his abilities";

(h) The defendants used images of Kyle for their own profit, including, but not limited to selling the use of his image and name to video game companies for use in a video game which Kyle purchased at full price with his own money;

(i) Kyle was not responsible for operating expenses and did not share in the profits;

(j) Kyle was not in business on his own account;

(k) Kyle was not financially liable if he did not fulfill the duties, functions, obligations and responsibilities under the SPA;

(l) The business of hockey belonged to the Club – not to Kyle;

(m) The Club imposed restrictions on Kyle' social life including a curfew that was monitored; and

(n) The Club directed every aspect of Kyle's role as a Player, and the business of the Club was to earn profits.

53. Kyle pleads that the Kootenay Ice violated the *Employment Standards Act*, R.S.B.C. 1996, c. 113 by failing to pay minimum wages, holiday pay, vacation pay and overtime pay.

54. Kyle claims damages against the defendants Kootenay Ice Hockey Club Ltd. for back wages, overtime pay, pay in accordance with the *Employment Standards Act*, R.S.B.C. 1996, c. 113, and against all of the defendants who are jointly and severally liable with the Ice for those same damages as a result of the civil conspiracy described below.

SYSTEMIC MISCONDUCT / AVOIDING OR DISREGARDING PAYMENT OF STATUTORY WAGES

55. The defendant clubs, the WHL and the CHL, engaged in a systemic policy or practice of avoiding or disregarding the payment of wages – including back pay, vacation pay, holiday pay, overtime pay and applicable employer payroll contributions – in contravention of the Applicable Employment Standards Legislation, despite the fact that the true nature of the legal relationship between the Players and Clubs is, and has always been, one of employment.

56. Facts supporting the systemic practice or policy of avoiding or disregarding the Applicable Employment Standards Legislation are as follows:

(a) the defendants misclassified the Players, as pleaded under the heading entitled "Facts in Support of the Misclassification of Players";

(b) the defendants inserted a term or condition in the SPA whereby the Players were required to acknowledge that the SPA was not a contract of employment. The Players had no choice but to sign the SPA with the acknowledgment or forfeit playing in the WHL;

(c) the defendants concealed from the Players that in all likelihood the true nature of the legal relationship between the Players and Clubs is, and has always been, one of employment;

(d) the defendants concealed from the Players that the SPA had been drafted to mischaracterize the true nature of the legal relationship between the Players and Clubs so as to avoid paying the Players wages;

(e) the defendants' failure to have any system in place to inform Players of their entitlements to wages under the Applicable Employment Standards Legislation;

(f) the defendants' failure to have any system in place to track the work performed by the Players;

(g) the defendants' failure to have any system in place to calculate wages owed to Players under the Applicable Employment Standards Legislation;

(h) the defendants' failure to track and record the hours of work by the Players is a barrier or impediment to the Players learning whether and what amount they are owed in outstanding wages;

(i) the provisions in the SPA attempting to recast the Players as non-employees is a barrier or impediment to the Players receiving wages; and,

(j) the provision in the SPA requiring the Players to keep the SPA "strictly confidential" is a barrier or impediment to the Players learning whether they were employees at law.

CAUSES OF ACTION

Breach of the contract of employment (Clubs located in the Provinces) – Law of British Columbia, Alberta, Saskatchewan and Manitoba

57. The Players each entered into a contract of employment with their respective Clubs in the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba. Compliance with Applicable Employment Standards Legislation is an implied term or, alternatively, an express term of each contract of employment. Express terms of the contract of employment are set out in

the SPA; including the terms and conditions which do not violate Applicable Employment Standards Legislation and which do not purport to classify the Players as non-employees.

58. The Clubs all breached the implied or express term of each contract of employment by failing to pay wages in accordance with Applicable Employment Standards Legislation.

59. Every Player devotes on average 43-50 hours/week during the season – and during weeks with road trips up to 65 hours/week – while receiving no pay or pay below minimum wage set by Applicable Employment Standards Legislation. Every Player has sustained damages for breach of contract equivalent to the amount that Player should have received if his Club had complied with Applicable Employment Standards Legislation.

60. The duties, functions, obligations and responsibilities of each Player under the SPA are identical and are dictated by the Clubs. The Clubs' degree of supervision and control over each Player under the SPA are identical. The Clubs control virtually every aspect of every Players' time during the hockey season and monitor compliance with the terms and conditions of the SPA.

61. All Players are similarly situated in terms of their duties, functions, obligations and responsibilities, as well as the degree of control and supervision imposed on the Players by the Clubs.

62. The true nature of the legal relationship between the Players and Clubs is one of employment.

63. The facts that support an employment relationship and a contract of employment are common to all Players, or substantially similar, and are as follows:

(a) The decision in *McCrimmon Holdings* found a Player to be an employee, and Players in the WHL continue to have identical duties, functions, obligations and responsibilities;

(b) Under the terms and conditions of the SPA and in all dealings with the Clubs, the Class Members are or were subject to the control of the Clubs as to when, where and how he played hockey;

(c) The WHL, the CHL and the Clubs determine and control the method and amount of payment;

(d) The Players are required to adhere to the Clubs' schedule of practices and games;

(e) The overall work environment between the Clubs and the Players is one of subordination;

(f) The Clubs provide tools, supply room and board and a benefit package;

(g) The defendants use images of the Players for the defendants' profit;

(h) The Players are not responsible for operating expenses and do not share in the profits;

(i) The Players are not financially liable if they do not fulfill the obligations of the SPA;

(j) The business of hockey belongs to the defendants and not to the Players;

(k) The Players were not in business on their own account;

(l) The Clubs' business is for profit;

(m) The Clubs benefit from the activities of the Players;

(n) The Clubs' business depends entirely on the services performed by the Players;

(o) The Clubs earn millions of dollars in revenues from the services performed by the Players including ticket sales, television rights, sponsors, advertising, NHL subsidies, memorabilia, the images of Players, and food and beverage sales;

(p) The Players are not independent contractors despite the language of the SPA;

(q) The Players are not amateur students enrolled in a training program despite the language of the SPA;

(r) The majority of the Players when playing in the WHL do not attend school or study and are not students;

(s) A number of players who are employed by a team in the NHL and play in the NHL, a professional league where the players are acknowledged to be employees and have a collective bargaining agreement, are reassigned during the season to the Clubs and play hockey with the Players, performing exactly the same functions as the Players perform;

(t) The Players are not interns. The Clubs earn millions of dollars in revenues from the services performed by the Players and therefore the Players cannot be classified as interns;

(u) The Clubs impose restrictions on the Players' social life including a curfew that is monitored;

(v) The Clubs direct every aspect of the Players' roles on the teams;

(w) The Clubs retain the right to hire, fire and discipline the Players;

(x) Based on the provisions of the SPA, including versions that are not available to the plaintiffs at the time of pleading as well as the standard player agreements in the OHL and QMJHL;

(y) The 2007 WHL SPA demonstrates that the Players are employees:

i. The Execution Schedule to the 2007 WHL SPA expressly provides financial "remuneration" and an "allowance" in exchange for the player's "services". Section 3 provides:

> 3. Remuneration: In consideration of the Player providing his services as a hockey player and otherwise to the Club, and in further consideration of the Player playing hockey exclusively for the Club during the Term of this Agreement, the Club agrees, subject to the limitations, restrictions, provisions and exceptions contained in this Agreement:
> (a) to pay or reimburse or cause to be paid, as the case may be, the Player an allowance (the "Allowance") as follows…
>
> **HOCKEY SEASON ALLOWANCE**
>
2007 to 2008	$160.00/month
2008 to 2009	$180.00/month
2009 to 2010	$200.00/month
2010 to 2011	$240.00/month
2011 to 2012	$600.00/month *overage year

ii. The 2007 WHL SPA also provides other benefits such as payment of room and board, travel expenses, school tuition and expenses, and others;

iii. The 2007 WHL SPA provides "the Club hereby retains the services of the Player for a period of five years";

(z) The 2011 WHL SPA demonstrates that the Players in the WHL were employees:

i. The Execution Schedule to the 2011 WHL SPA expressly provides financial "remuneration" and an "allowance" in exchange for the Players services. Section 3 provides:

> 3. Remuneration: In consideration of the Player providing his services as a hockey player and otherwise to the Club, and in further consideration of the Player playing hockey exclusively for the Club during the Term of this Agreement, the Club agrees, subject to the limitations, restrictions, provisions and exceptions contained in this Agreement:
> (a) to pay or reimburse or cause to be paid, as the case may be, the Player an allowance (the "Allowance") as follows…

HOCKEY SEASON ALLOWANCE (dollars/month)	
2011 to 2012	$200.00
2012 to 2013	$240.00
2013 to 2014	$600.00
20 to 20	$
20 to 20	$

ii. The 2011 WHL SPA also provides other benefits such as payment of room and board, travel expenses, school tuition and expenses, and others;

iii. The Terms and Condition Schedule to the 2011 WHL SPA further describes the remuneration as follows:

> 2.2 Payment of the Allowance will be subject to any statutory withholdings and deductions with the pay period effective from September 15 of each year of this Agreement to the conclusion of the Hockey Season. Any bonuses payable by the Club to the Player, in accordance with the regulations of the WHL in place from time to time, will be paid by the Club to the Player at the conclusion of the Hockey Season;

iv. The Terms and Condition Schedule to the 2011 WHL SPA also describes the player's obligations at 4.2 as follows:

> j) to provide his services faithfully, diligently and to the best of his abilities as a hockey player;

v. The 2011 WHL SPA provides "the Club hereby retains the services of the player for a period of 3 years";

(aa) The 2013 WHL SPA, the defendants recast the classification of the Players, demonstrating by implication that the defendants knew that the true nature of the relationship between the clubs and Players was one of employment:

i. The Terms and Conditions Schedule purports to expressly classify the Players as non-employees. Section 1.1(a) provides:

> 1.1 (a) …The Purpose of this Agreement is to define the obligations of the Club and Player as the parties to this

> Agreement. The parties agree that this Agreement is not a contract of employment between the Clubs and Player….;

ii. The Execution Schedule to the 2013 WHL SPA purports to characterize the Players' wages as "reimbursements" and omits all references to "remuneration" and "allowances" paid to the Players that existed in earlier versions of the WHL SPA. Section 3 provides:

> 3. Player Reimbursement for Travel or Training Related Expenses: Any and all amounts received by the player under this part shall be strictly and solely provided for and related to the reimbursement of travel or training expenses…

HOCKEY SEASON	**MONTHLY EXPENSE REIMBURSEMENT**	**OVERAGE HONORARIUM**
2013 - 14	$250.00	--
2014 - 15	$250.00	--
2015 - 16	$250.00	--
2016 - 17	$250.00	--
2017 - 18	$250.00	$350.00

iii. The Terms and Conditions Schedule to the 2013 WHL SPA further describes the player's wages as reimbursements at 2.1 as follows:

> 2.1 Commencing September 15 of each Hockey Season, subject to the provisions of this Agreement and while the Player is on the Club's active player roster, the Club shall reimburse the Player for certain costs incurred by the Player on behalf of the Club in respect of the travel and training expenses as set forth in paragraph 3 of the WHL Standard Player Agreement Execution Schedule. This reimbursement shall be limited by and paid in accordance with the regulations of the WHL;

iv. The Terms and Conditions Schedule to the 2013 WHL SPA makes no mention of statutory payroll deductions;

v. The Terms and Condition Schedule to the 2013 WHL SPA removes all references to the Players' services and instead describes the Player's role at 4.2 as follows:

> k) to play hockey for the Club faithfully, diligently and to the best of his abilities as a hockey player;

(bb) The 2007 OHL SPA demonstrates that the OHL players were employees. The Players are similarly situated:

i. The 2007 OHL SPA provides that "The Club shall pay the Player the allowance and provide to the Player the "benefits" set out in Schedule "A" " in exchange "for the Player's exclusive services";

ii. The benefits in Schedule "A" to the 2007 OHL SPA include an "allowance" for the first three seasons in the amount of $65/week with a $15/week holdback to be held in trust (presumably for employment payroll contributions), and for the fourth season in the amount of $150 per week, all paid on a biweekly basis, plus a weekly bonus of $50 throughout the season in each year of the SPA, as well as payment of the cost of school tuition and expenses, travel expenses, lodging expenses and other expenses;

iii. The 2007 OHL SPA provides that if the player's services are no longer required by the club, the allowance may be reduced on a *pro rata* basis according to the number of days on which the player's services were provided;

(cc) In the 2010 OHL SPA, the OHL recast the classification of the OHL players to be independent contractors thus demonstrating by implication that the OHL knew that absent efforts to recast the SPA the true nature of the relationship between the OHL clubs and their players was one of employment:

i. The 2010 OHL SPA provides that the "The Club shall pay the Player the fees and provide to the Player the benefits set out in Schedule "A" " in exchange "for the Player's services";

ii. Schedule "A" to the 2010 OHL SPA provides payment to players aged 16-19 a weekly sum of $50 and to players aged 20 a weekly sum of $150, paid on a biweekly basis, plus payment of the cost of school tuition and expenses, travel expenses, lodging expenses and others, as well as a one-time bonus ranging from $100 to $450 depending on how far the Club advanced in the playoffs;

iii. The 2010 OHL SPA provides if the player's services are no longer required by the club, the allowance may be reduced on a *pro rata* basis according to the number of days on which the player's services were provided;

iv. Schedule "C" to the 2010 OHL SPA provides that the benefits in Schedule "A" will continue even if the player is unable to play due to injury;

v. The 2010 OHL SPA contains language absent from the 2007 OHL SPA purporting to describe the player as an independent contractor despite no changes in the actual duties, functions, obligations or responsibilities of the players:

> It is expressly acknowledged and agreed by the parties involved that the relationship between the OHL and the Player is that of an independent contractor. Nothing in this Agreement shall constitute the parties as employer/employee, or as agents, partner, or co-venturers of each other;

(dd) The 2013 OHL SPA demonstrates that the OHL players are employees. The Players are similar situated:

i. The 2013 OHL SPA provides that the "The Club shall pay the Player the fees and provide to the Player the benefits set out in Schedule "A" " in exchange for the "Player's services";

ii. Schedule "A" to the 2013 OHL SPA provides payment to players aged 16-19 a weekly sum of $50 and to players aged 20 a weekly sum of $150, paid on a biweekly basis, plus payment of the cost of school tuition and expenses, travel expenses, lodging expenses and others, as well as a one-time bonus ranging from $100 to $450 depending on how far the club advanced in the playoffs;

iii. The 2013 OHL SPA provides if the player's services are no longer required by the club, the allowance may be reduced on a pro rata basis according to the number of days on which the player's services were provided;

iv. Schedule "C" to the 2013 OHL SPA provides that the benefits in Schedule "A" will continue even if the player is unable to play due to injury;

v. The 2013 OHL SPA contains language absent from the 2007 OHL SPA purporting to capture the parties' acknowledgement that the players are independent contractors and not employees, despite no changes in the actual duties, functions, obligations and responsibilities of the players:

> It is expressly acknowledged and agreed by the parties involved that the relationship between the OHL and the Player is that of an independent contractor. Nothing in this Agreement shall constitute the parties as

> employer/employee, or as agents, partner, or co-venturers of each other;

(ee) In 2013, the QMJHL made concerted efforts to misclassify their players, demonstrating by implication that the QMJHL knew that the true nature of the relationship between the Clubs and players was one of employment:

i. Under the heading DECLARATION OF THE STATUS OF THE PLAYERS, 16-19 year old players are not described as employees but rather as:

> …pursuing their academic careers while also benefitting 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;

ii. Under the heading DECLARATION OF THE STATUS OF THE PLAYERS, 20 year old players, who perform identical duties and share identical responsibilities and duties, functions, obligations and responsibilities under the 2013 QMJHL SPA are described employees:

> …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; and,

iii. Twenty year old players are expressly classified as employees in the DECLARATION OF THE STATUS OF THE PLAYERS whereas 16-19 year old players are not despite the fact that the 20 year old players perform the exact same services and play hockey on the same line and on the same team as the 16 to 19 year old players.

64. Many of the Players are or were under the age of majority while employed by the Clubs and therefore are or were protected by Applicable Employment Standards Legislation. 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 States where the SPAs were entered into, to pay minors less than minimum wage. The SPA provides less than the minimum wage. The Players devote an average of 43-50 hours/week and up to 65 hours/week to employment related services. Therefore, the SPA violates the rights of minors under the Applicable Employment Standards Legislation.

65. For those Players who are adults, Applicable Employment Standards Act Legislation provide for compulsory minimum wage standards. It is illegal in all Provinces and in the States where SPAs were entered into to pay employees the amounts provided in the SPAs as consideration for the number of weekly hours worked by the Players. Therefore, the SPAs violate the rights of the adult 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 agreement that violates statutorily prescribed minimum wages, vacation pay, holiday pay, and overtime pay is void and unenforceable. By way of example, section 4 of the *Alberta Employment Standards Code*, RSA 2000, c E-9, provides that "[a]n 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".

67. Therefore, the terms of the SPA requiring Players to perform employment related services for no fee or a fixed weekly sum are void, unenforceable and not a defence to this action. 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 Applicable Employment Standards Legislation requires employers to keep records of the hours worked by employees. The defendants failed to keep records of the hours worked by the Players and thereby breached sections of the Applicable Employment Standards Legislation.

69. The violations of the Applicable Employment Standards Legislation described herein constitute breaches of contract. The provisions of the Applicable Employment Standards Legislation are implied terms of the contract of employment. It is an implied term of the contract of employment that the Class Members shall be compensated at a rate equal to or greater than the minimum wage plus compensation back pay, vacation pay, holiday pay and overtime pay in accordance with Applicable Employment Standards Legislation, that the Clubs shall render employer payroll contributions required by law, and that the Clubs will track and record the Players' hours of work. The Defendants breached these implied provisions of the contract of employment.

Breach of contractual duties of honesty, good faith and fair dealing (Clubs Located in the Provinces) – Law of British Columbia, Alberta, Saskatchewan and Manitoba

70. The plaintiffs state that in drafting the SPA, the defendants must be guided by a duty of honesty, good faith and fair dealing especially since the Players have no bargaining power. At minimum, the defendants were required to use an SPA that complied with the law and accurately characterized the nature of the business relationship between the Players and the Clubs.

71. The evolution of the SPA from one where the Players were remunerated for their services, to one where the Players are independent contractors, to one where the Players are amateur athletes in a development program, when all along there have been no substantive changes to the underlying relationship, is a breach of the defendants' duties of honesty, good faith and fair dealing.

72. Through all iterations of the SPA, the defendants have attempted to use various labels to misclassify the Players as non-employees, mischaracterize the Players' wages and mischaracterize the Player's contributions as something other than services of employment. The defendants also included an acknowledgement in the SPA whereby the Player is required to acknowledge that he is not an employee. Every Player must either sign the SPA with the acknowledgement or he will forfeit his career playing hockey for the Club.

73. The defendants knew that the Players were in a position of unequal bargaining power, vulnerable and under the Club's direct control, and in that context the defendants required the Players to sign the SPA as drafted, failing which the Players would be precluded from playing major junior hockey.

74. In doing so the defendants acted in bad faith and with unfair dealing because the language used to mischaracterize the legal relationship was done without *bona fides*. It was designed to create a fiction for the purposes of avoiding the Applicable Employment Standards Legislation and payment of minimum wages. As such, the defendants created an unlawful agreement and dictated that each and every Player sign the unlawful agreement.

75. Because of the defendants breach of the duties of honesty, good faith and fair dealing and because the SPA is drafted by the defendants, the acknowledgement by the Player that he is not an employee cannot be used as evidence of the parties' intentions.

76. The defendants' systemic misconduct as set out in the section entitled, SYSTEMIC MISCONDUCT / AVOIDING OR DISREGARDING PAYMENT OF STATUTORY WAGES, also constitutes a breach of the contractual duties of honesty, good faith and fair dealing.

Breach of statute (Clubs located in the States) – Law of Washington, Oregon and the *Fair Labor Standards Act of 1938*

77. The defendant Clubs located in the states of Washington and Oregon breached applicable employment standards legislation by failing to pay the plaintiffs and the Players wages and overtime pay.

78. The facts that support an employment relationship between the Clubs and the Players who played for those teams are the facts set out under the Cause of Action of Breach of the Contract of Employment.

79. In the states of Washington and Oregon, there are statutory definitions in the applicable wage legislation for both states, which define employment, employer and employee.

80. In the states of Washington and Oregon, the common law factors for determining whether the Clubs are employers and the Players are employees of the Clubs are the same as the common law of Alberta.

81. In the alternative, the factors that are considered under the common law of both states in determining whether a person is an employee within the meaning of the *Washington State Minimum Wage Act* and the *Oregon Wage Claims Act*, is the "economic realities" test. which consists of 6 criteria:

(a) The permanence of the working relationship between the parties;

(b) The degree of skilled work entailed;

(c) The extent of the worker's investment in equipment or materials;

(d) The worker's opportunity for profit or loss;

(e) The degree of the alleged employer's control over the worker; and,

(f) Whether the service rendered by the worker is an integral part of the alleged employer's business.

82. When applying the economic realities test, the law of the state of Washington and the law of the state of Oregon require the Court to look to the totality of the circumstances and no single factor is determinative of whether an individual is an employee. The focus is on whether the individual is economically dependent on the employer. The parties' characterization of their employment relationship is not determinative as to whether an employment relationship exists. Damages are recoverable by civil actions for violations of applicable employment legislation.

83. In the further alternative, with respect to the Players who played for Clubs in the states of Washington and Oregon, the plaintiffs plead and rely on the *Fair Labor Standards Act of 1938*, 29 U.S.C. 201 (the *FLSA*). Under the *FLSA*, the factors which are considered in determining whether a person is an employee within the meaning of *FLSA* are the same factors as found in the economic realities test.

84. Eligible compensable work/activities under the laws of Oregon and Washington and the *FLSA* must meet the same criteria as under the laws of Alberta.

85. Alternatively, the law of the states of Oregon and Washington and the *FLSA* is that compensable activities are activities which form an integral or indispensable part of the principal activities that an employee is employed to perform. If it is an intrinsic element of those activities, and one which the employee cannot dispense with if he is to perform his principal activities, then it is compensable. Also, compensable activities include all hours that an employee is required to be on duty on the employer's premises or the prescribed workplace.

Breach of statute (Clubs located in the Provinces) – Law of British Columbia, Alberta, Saskatchewan and Manitoba

86. The Players have a statutory civil action for wages, overtime pay, holiday pay, and vacation pay against the Clubs located in the Provinces, for breach of the Applicable Employment Standards Legislation. Facts in support of the breach and the Players being

employees of the Clubs located in the Provinces are pleaded under the cause of action for breach of contract.

Common employer doctrine

87. The plaintiffs state that, with respect to the causes of action of breach of contract, breach of the duty of good faith, and breach of the statutes of employment, the WHL is jointly and severally liable with each and every Club, on the basis that the WHL is a common/joint employer or forms a single employer with each and every Club and its Players.

88. The plaintiffs state that the WHL is liable directly to every Player for all damages with respect to the causes of action for breach of contract, breach of the duty of good faith, and breach of the statutes of employment because the WHL is a common/joint employer or forms a single employer with each and every Club and its Players.

89. The plaintiffs state that the law of Alberta is the governing law for determining whether the Clubs and the WHL form a common employer. Facts in support of the law of Alberta include: the WHL is domiciled in Alberta; the WHL passes all of its bylaws, articles, rules and regulations governing the operations of the Clubs and Players in Alberta; the Clubs are all member franchises of the WHL who must, in purchasing a franchise, agree to abide by all WHL bylaws, articles, rules and regulations; the WHL oversees and controls the Clubs and Players through its use of bylaws, articles, rules and regulations from Alberta; the WHL drafted the SPAs in Alberta; the WHL requires all Clubs to sign Players using the SPAs drafted by the WHL; the WHL must approve every SPA and sign its endorsement to every SPA, which process occurs in Alberta; the WHL, through its regulations, exercises control from Alberta over the amount of wages (described as “allowances”) and expense reimbursement the Clubs paid the

Players; and, the former SPA provides in sections 2.1 and 2.2 that the allowance be paid in accordance with the regulations of the WHL.

90. The former and current SPA include choice of law clauses. The former SPA has two choice of law clauses at paragraph 13.2 of the terms and conditions schedule and paragraph 8 of the execution schedule. The current SPA has two choice of law clauses at paragraph 13.2 of the terms and conditions schedule and paragraph 8 of the execution schedule. All of the choice of law clauses provide that the SPA is to be governed by and construed in accordance with the laws of the State or Province where a Club is domiciled.

91. With respect to the claim of common/joint employer, the choice of law clauses do not apply because the common employer claim does not arise out of the SPA nor can it be construed under the SPA – the claim arises from the Clubs' breach of applicable wage legislation, caused by the WHL's complete control over the fees, allowances, expense reimbursement, and wages that Clubs are required to pay the Players.

92. Under the common law of Alberta, the WHL is in substance an employer of the players. Facts in support of the WHL being a common employer include:

(a) With respect to the former SPA where the Players received fees described as "allowance", the WHL, through a committee, passed one or more bylaws or regulations establishing the bi-weekly fees all Clubs were required to pay the Players. The fees were well below minimum wage legislation;

(b) Article 2, Section 2.1 of the former SPA terms and conditions schedule requires all Clubs to pay a fee to Players in accordance with the regulations of the WHL;

(c) With respect to the SPA for players who no longer receive fees and instead receive reimbursement of expenses, the WHL, through a committee, passed one

or more bylaws or regulations which replaced fees with an expense reimbursement program of $250 monthly that all Clubs are required to pay the Players. The reimbursement program resulted in Players receiving no wages or wages well below minimum wage legislation;

(d) The WHL has complete control over the Clubs with respect to whether the Clubs can pay the Players and, if so, the amounts;

(e) The WHL caused the Clubs to breach applicable wage legislation by setting the fees the Clubs could pay the Players under the former SPA below minimum wage and by setting the amounts the Clubs can currently pay the Players at $250 monthly;

(f) Through its complete control over the terms the Club and Players can include in the SPA, and the requirement that the WHL review and approve every SPA, the WHL governs every aspect of player compensation;

(g) The WHL generally exercises management and control or direction over every aspect of the Player/Club relationship;

(h) All aspects of the Player's work are subject to the direction and control of the WHL through the SPA, bylaws, articles, rules, manuals, guidelines and regulations which must be implemented and adhered to by all Clubs;

(i) The WHL funds and guarantees the Players' scholarships;

(j) The WHL has the right under the SPA and its bylaws, articles, rules, manual, guidelines and regulations to discipline Players;

(k) The WHL and its member franchises (the Clubs) have a commonality of purpose and control over the players, whereby both the Club and the WHL exert control over the players;

(l) The WHL and the Clubs share control over the players directly or indirectly because the WHL controls the Clubs;

(m) The WHL has the greater ability than the Clubs to implement policy or systemic changes to ensure compliance with applicable wage legislation; and,

(n) The players are exposed to a systemic wrong or conduct causing loss of wages caused by the joint control exercised by the WHL and Clubs as a joint/single employer.

93. In the alternative, in the event that the law of the states of Washington and Oregon, and the federal law under the *FLSA*, govern the test of common employer for the Clubs located in the states, then the plaintiffs state that the law of the states and the federal law are the same as the common law of Alberta.

94. In the further alternative, the law of common/joint employer for the states and the Federal law is summarized in the United States Department of Labor Wages and Hour Division 2016 Fact Sheet Interpretation No. 2016-1 and *FLSA* regulation 29 CFR 791.2. A common or joint employer for the purpose of state minimum wage legislation and the *FLSA* exists:

(a) Where employers share control over the employees directly or indirectly because one of the employers controls, is controlled by, or is under the common control of, the other employer;

(b) Where an organization has the ability to implement policy or systemic changes to ensure compliance with wage laws; and,

(c) Where the employees are exposed to a systemic wrong or some conduct or policy causing a loss of wages caused by the control exercised by the joint employer.

95. The plaintiffs state that the state and *FLSA* test described in paragraph 75 is met based on facts (a)-(n) pleaded above.

96. In the alternative, in the event that the law of British Columbia governs the associated employer or common employer test for Players who played on Clubs in the province, then the plaintiffs state that the common law of British Columbia is the same as the common law of Alberta and the test is met based on facts (a)-(n) pleaded above.

97. In the alternative, in the event that the law of Saskatchewan governs the common employer test for Players who played on Clubs in the province, then the plaintiffs state that the common law of Saskatchewan is the same as the common law of Alberta.

98. In the further alternative, the law of Saskatchewan on the common employer test is set out in the common law of Saskatchewan and in section 2-1(g) of the *Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, defining an employer as any person who employs one or more employees and includes every person who either:

(a) has control or direction of one or more employees; or

(b) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees.

99. The plaintiffs state that the test in section 2-1(g) is met based on facts (a)-(n) pleaded above.

100. In the alternative, in the event that the law of Manitoba governs the common employer test for players who played on Clubs in the province, then the plaintiffs state that the common law of Manitoba is the same as the common law of Alberta.

101. In the further alternative, the law of Manitoba on the common employer test is set out in the common law of Manitoba and section 1(1) of the Manitoba *Employment Standards Code*, C.C.S.M. c. E110:

> "employer" means a person that employs an employee in any employment or business, and includes (a) a person that has control or direction of or is directly or indirectly responsible for, the employment of an employee or the payment of wages to an employee,(b) a former employer,(c) a receiver of the business,(d) two or more employers declared to be a single employer under section 134.

102. The plaintiffs state that the test in Manitoba is met based on facts (a)-(n) pleaded above.

Officers and directors' liability

103. The plaintiffs pleads on their own behalf, and on behalf of all Class Members who were employed in BC, Alberta, Saskatchewan, and Manitoba, 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 plaintiffs and the Class Members by the Clubs.

104. 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 plaintiffs intend to add the officers and directors as parties to this proceeding.

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

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

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

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

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

Conspiracy

106. The plaintiffs state that the law governing the tort of conspiracy for all defendants is the common law of the province of Alberta because the WHL is headquartered in Alberta, which is the situs of the tort. In the alternative, the plaintiffs state that the law of conspiracy for the state of Washington and the state of Oregon is the same as the law of Alberta. The plaintiffs state that the law of conspiracy for the provinces of British Columbia, Saskatchewan and Manitoba is the same as the law of Alberta.

107. The plaintiffs claim that the defendants unduly, unlawfully, and lacking *bona fides*, conspired and agreed together, the one with the other, to act in concert to breach applicable employment standards legislation. The overt acts in furtherance of the conspiracy include: setting the Player wages for all Clubs at a uniform, industry-wide fixed rate well below minimum wage legislation and, after 2013, by refusing to pay the players any wages; demanding or requiring that all Players sign an SPA which provides for fixed wages well below minimum wage legislation or no wages; and, misclassifying the status of the players in the SPA as amateur athletes so players would not realize that wages were owing. The defendants knew or recklessly disregarded the fact that the relationship between the Club and Class Members was one of employer/employee, and as such the SPA contravened employment standards legislation, yet required the SPA be signed so as to avoid paying the plaintiffs and Class Members minimum wages, vacation pay, holiday pay or overtime pay.

108. The Clubs, CHL and the WHL have access to legal opinions, judicial decisions, employment tribunal directives and decisions, and Canada Revenue Agency bulletins on the criteria for determining whether the Player/Club relationship is one of independent contractor, student athlete, or employment. The defendants are well aware that the fees or allowances

formally paid to the Players under the SPA 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 Clubs make employee payroll deductions and remit them in their capacity as employer to government agencies.

109. The WHL and CHL controls the terms of the SPA by requiring that the Clubs use only the SPA and by making each and every SPA conditional on approval by the WHL. The amount of fees received by the Players is set by the CHL and WHL and pursuant to the CHL's and WHL's bylaws and the Regulation; hence the CHL and WHL have unlawfully set the wages below the minimum legislated standards.

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

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

112. The conspiracy was unlawful because the defendants knowingly violated applicable employment standards legislation and caused the plaintiffs and Players to enter into an unlawful SPA whereby Players would receive no wages or receive wages below minimum wage, in contravention of the Applicable Employment Standards Legislation and because the defendants deliberately attempted to circumvent the legislation by inaccurately characterizing the status of

Players and their remuneration as described above. The defendants knew that such conduct would more likely than not cause harm to the plaintiffs and the Class Members.

113. Representatives of each Club, the WHL and the CHL convened at WHL Board of Governors or Director meetings in Alberta, where the defendants jointly agreed, one with the other, to pass a WHL regulation to restrict player wages to a fixed bi-weekly amount well below minimum wage and later, in or around June 2014, passed a regulation or decided to change the terms and conditions of the SPA to classify the players as participants in a development training program, and to characterize the remuneration paid to players as a reimbursement for expenses. The defendants also jointly decided against wages and instead decided to increase funding to optional scholarship programs. These decisions formed part of a concerted effort to avoid or evade Applicable Employment Standards Legislation and, in particular, the payment of wages. The WHL and CHL share certain senior officers and directors.

114. WHL bylaw 3.2 requires all Clubs to comply fully with the WHL's regulations and policies. WHL bylaw 8.2(c) allows the WHL to suspend or terminate any Club which commits any conduct which "materially and adversely affects the reputation, well-being or operation of the League or its Members". WHL bylaw 8.6 states that, upon termination of any Club, title to all of that Club's SPAs vests in the WHL.

115. The acts in furtherance of the conspiracy caused injury and loss to the plaintiffs 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.

116. As a result of the conspiracy, which was committed by all defendants together, all of the defendants are jointly and severally liable for all monies owing to the plaintiffs and the Class

Members under the Applicable Employment Standards Legislation regardless of which team employed the Class Member.

117. To the extent the law of the states of Washington and Oregon differ from the law of conspiracy of Alberta, then the plaintiffs state that Clubs in the states of Washington and Oregon conspired together, the one with the other, and with the WHL clubs located in Canada, and with the WHL and the CHL, with a common purpose to do an unlawful act, namely to breach applicable employment standards legislation of the states or the *FLSA*; the overt acts done in pursuance of the common purpose are pleaded under the overt acts section of the conspiracy plea. The players sustained actual legal damage through the loss of their wages and overtime pay. In conducting the overt acts in support of the conspiracy, the defendants acted intentionally in furtherance of a common purpose, namely to deprive the players of wages and overtime pay.

Negligence (as against the defendant Clubs located in the Provinces, the WHL, and the CHL)

118. In the alternative to the tort of conspiracy, the plaintiffs plead that the WHL, CHL and the Clubs were negligent.

119. The WHL and CHL oversee and direct the terms and conditions of the SPA and the nature and degree of compensation paid to the Players. Therefore, the WHL and CHL owed the Players a duty of care to carefully monitor the terms and conditions of the SPA for compliance with the Applicable Employment Standards Legislation.

120. The circumstances of the WHL and CHL, being in the business of hockey and through the SPA and their bylaws directing all aspects of the Players' duties, functions, obligations and responsibilities when playing for the Club, are such that the WHL and CHL were under an obligation to be mindful that Players were properly classified as employees and compensated in accordance with Applicable Employment Standards Legislation.

121. There is a sufficient degree of proximity to establish a duty of care because:

(a) It was reasonable for the Players to expect that the SPA complied with the law;

(b) It was reasonable for the Players to expect that the WHL and CHL had implemented a lawful system of compensation;

(c) It was reasonable for the Players to assume that the WHL and CHL would have taken all reasonable steps to correctly characterize the nature of the business relationship, given the degree of control exercised by the Clubs, WHL and CHL who dictate the terms and conditions of the SPA and given the degree of control exercised by the Clubs, WHL and CHL over the Players during the course of the SPA;

(d) The Players are vulnerable to the defendants to ensure that the Players are properly classified in the SPA and paid in compliance with Applicable Employment Standards Legislation, given that the Players have no way of taking such measures themselves and no way of protecting themselves if the defendants do not take such measures;

(e) The Clubs must follow the policies, practices, bylaws and procedures of the WHL and CHL; and,

(f) It was reasonably foreseeable that the defendants' misclassification of the Players and failure to pay wages in compliance with Applicable Employment Standards Legislation would result in damages to the Players.

122. The particulars of the WHL and CHL's negligence and breach of their duty of care are as follows:

(a) They failed to ensure that the Players were properly classified as employees;

(b) They failed to ensure that the work performed by the Players was properly monitored and accurately recorded;

(c) They failed to ensure that the Players were appropriately compensated with minimum wage, back pay, holiday pay, vacation pay and overtime pay pursuant to Applicable Employment Standards Legislation;

(d) They failed to implement a policy, practice or procedure whereby the Players would receive wages when they knew or ought to have known that the Players were employees;

(e) They failed to implement a policy, practice or procedure whereby the Players would receive wages when they knew or ought to have known that according to *McCrimmon Holdings* the Players were employees;

(f) They failed to obtain legal advice or to follow legal advice with respect to the application of *McCrimmon Holdings* and with respect to the likelihood that the Players were employees as a matter of law;

(g) They failed to appreciate that the Players remained employees as a matter of law despite the fact that the language of the SPA was periodically changed;

(h) They knew or ought to have known that the Clubs are required by law to pay wages yet they implemented a practice, policy or procedure whereby they forced the Clubs to withhold wages;

(i) They required all Players to sign the SPA when they knew or ought to have known that the SPA misclassified the Players as non-employees;

(j) They could have obtained a ruling or direction from employment standards officers but failed to do so;

(k) They misclassified the Players as pleaded in the section entitled, "SYSTEMIC MISCONDUCT/AVOIDING OR DISREGARDING PAYMENT OF STATUTORY WAGES".

123. The Clubs entered into the SPA which sets out the Players' duties, functions, obligations and responsibilities. Therefore, the Clubs owed the Players a duty of care to carefully monitor the terms and conditions of the SPA for compliance with the Applicable Employment Standards Legislation.

124. The circumstances of the Clubs, being in the business of hockey and directing all aspects of the Players' duties, functions, obligations and responsibilities when playing for the Club, are such that the Clubs were under an obligation to be mindful that Players were properly classified as employees and compensated in accordance with Applicable Employment Standards Legislation.

125. There is a sufficient degree of proximity to establish a duty of care because:

(a) It was reasonable for the Players to expect that the SPA complied with the law;

(b) It was reasonable for the Players to expect that the Clubs had implemented a lawful system of compensation;

(c) It was reasonable for the Players to assume that the Clubs would have taken all reasonable steps to correctly characterize the nature of the business relationship, given the degree of control exercised by the Clubs, WHL and CHL in dictating the terms and conditions of the SPA and given the degree of control exercised by the Clubs, WHL and CHL over the Players during the course of the SPA;

(d) The Players are vulnerable to the Clubs to ensure that the Players are properly classified in the SPA and paid in compliance with Applicable Employment

Standards Legislation, given that the Players have no way of taking such measures themselves and no way of protecting themselves if the Clubs do not take such measures; and

(e) It was reasonably foreseeable that the Clubs' misclassification of the Players and failure to pay wages in compliance with Applicable Employment Standards Legislation would result in damages to the Players.

126. The particulars of the Clubs' negligence and their breach of their duty of care are as follows:

(a) They failed to ensure that the work performed by the Players was properly monitored and accurately recorded;

(b) They failed to ensure that the Players were appropriately compensated with minimum wage, back pay, holiday pay, vacation pay and overtime pay pursuant to Applicable Employment Standards Legislation;

(c) They failed to ensure that the Players were properly classified as employees,

(d) They failed to appreciate that the Clubs are employers of the Players;

(e) They failed to pay the Players in compliance with the Applicable Employment Standards Legislation when they knew or ought to have known that the Players were employees;

(f) They failed to pay the Players in compliance with the Applicable Employment Standards Legislation when they knew or ought to have known that according to *McCrimmon Holdings* the Players were employees;

(g) They failed to obtain legal advice or to follow legal advice with respect to the application of *McCrimmon Holdings* and with respect to the likelihood that the Players were employees as a matter of law;

(h) They failed to appreciate that the Players remained employees as a matter of law despite the fact that the language of the SPA was periodically changed;

(i) They required all Players to sign the SPA when they knew or ought to have known that the SPA misclassified the Players as non-employees;

(j) They relied on the WHL and the CHL for advice about the classification of the Players when each Club should have obtained independent advise;

(k) They could have obtained a ruling or direction from employment standards officers but failed to do so;

(l) They misclassified the Players as pleaded in the section entitled, "SYSTEMIC MISCONDUCT/AVOIDING OR DISREGARDING PAYMENT OF STATUTORY WAGES".

127. As a result of the negligence of the WHL, CHL and Clubs, the Players suffered damages because they were not paid in accordance with Applicable Employment Standards Legislation.

128. The plaintiffs plead that the common law of Alberta governs the tort of negligence for the WHL, the CHL, and the provinces of British Columbia, Saskatchewan and Manitoba. Alternatively the law of negligence of British Columbia, Saskatchewan and Manitoba is the same as the law of negligence of Alberta.

Unjust enrichment (as against the defendant Clubs located in the Provinces, the WHL, and the CHL)

129. The defendants were unjustly enriched.

130. The defendants were enriched by failing to pay the Players wages in a manner that complied with Applicable Employment Standards Legislation.

131. The Players were deprived of the wages to which they were entitled pursuant to Applicable Employment Standards Legislation.

132. There is no juristic reason for the Players being deprived of the wages to which they are entitled pursuant to Applicable Employment Standards Legislation.

133. The plaintiffs plead that the common law of the province of Alberta governs the restitutionary claim of unjust enrichment or, in the alternative, the law of unjust enrichment of the provinces of British Columbia, Saskatchewan and Manitoba is the same as the law of unjust enrichment of Alberta.

Waiver of tort (as against the defendant Clubs located in the Provinces, the WHL, and the CHL)

134. The CHL, WHL and the Clubs in the WHL, control the terms and conditions of the SPA by requiring that the Clubs use only the SPA. They also require that the Clubs continue to insist that Players sign the SPA and provide employment related services for remuneration that is below legislated employment standards and the Clubs have agreed to do so.

135. The WHL has access to legal opinions and is well aware that the SPA probably violate the Applicable Employments Standards Legislation and is well aware of jurisprudence where Courts have construed the relationship between the Players and the Clubs as an employer/employee relationship.

136. Nevertheless, the WHL requires that the Clubs continue to insist that Players sign the SPA and provide employment related services for below legislated employment standards. The Clubs agree to do so.

137. The defendants 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' breach of contract, conspiracy, negligence and related use of the unlawful SPA, as well as the defendants' policy or practice of avoiding or disregarding the payment of wages and applicable payroll contributions, constitute unlawful acts by which the defendants have been unjustly enriched. The defendants are therefore liable to the plaintiffs and Class Members in waiver of tort.

138. As a result, the plaintiffs seek an order requiring the defendants to disgorge all profits received as a result of the services performed by the Class Members.

139. The plaintiffs plead that the law of Alberta governs the cause of action or remedy of waiver of tort or, in the alternative, the law of waiver of tort of British Columbia, Saskatchewan and Manitoba is the same as the law of waiver of tort of Alberta.

Remedies

140. The plaintiffs and each Class Member have suffered damages and loss as a result of the Clubs' breach of contract and all defendants' conspiracy, negligence and unjust enrichment, as particularized above.

141. The plaintiffs plead that they and the Class are entitled to recover back wages, holiday pay, vacation pay, and overtime pay pursuant to the Applicable Employment Standards Legislation, together with interest.

142. The plaintiffs seek on their 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.

Punitive damages

143. The plaintiffs seek on their own behalf, and on behalf of members of the Class, punitive damages for the defendants' conduct in violating the Applicable Employment Standards Legislation while they were aware that certain terms of the SPAs were probably void. The defendants were lax, passive, ignorant with respect to the plaintiffs 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 plaintiffs and Class Members.

144. The plaintiffs plead that only a punitive damages award will prevent the defendants from continuing their unlawful conduct as particularized herein.

145. The plaintiffs seek on behalf of the Washington Class, damages in the amount of double the amount of all wages outstanding to the Washington Class pursuant to the *Minimum Wage Act*, Wash. Rev. C. tit. 49 §49.52.070.

146. The plaintiffs seek on behalf of the Oregon Class, in addition to damages claimed above, additional damages in the amount of 30 days wages pursuant to *Oregon Wage Claim Act*, OR. Rev. Stat. § 653.055.

JURISDICTION

147. Alberta has subject matter and territorial jurisdiction over all defendants because the WHL is a defendant in this proceeding who is domiciled in Alberta, where it oversees and regulates all Clubs and approves all SPAs, and because the Clubs are all members or franchises of the WHL.

148. To the extent that the WHL SPAs include in paragraph 13.2 a choice of law clause and a provision whereby courts where a Club is located have exclusive jurisdiction to determine

litigation arising from the SPA, the plaintiffs state that 13.2 is inapplicable or should be disregarded on grounds that:

(a) The Execution Schedule (which is a separate agreement that sets out the fees and expense reimbursement provisions) contains its own governing law clause in clause 8 which mirrors paragraph 13.2 but without the exclusive jurisdiction language of 13.2;

(b) The SPAs are contracts of adhesion because the Players have no opportunity to negotiate the language of the Execution Schedule or the Terms and Conditions Schedule. It is a "take it or leave it" contract;

(c) Therefore, the schedules must be construed narrowly as against the draftor, and any ambiguities are to be construed in favour of the Players;

(d) On a narrow construction of the Execution Schedule, the SPA does not include an exclusive jurisdiction clause for disputes over fees and wages. Alternatively, the Execution Schedule and its interplay with the Terms and Conditions Schedule is ambiguous because it is not clear whether 13.2 applies to the Execution Schedule;

(e) the definition of "Agreement" adds to the ambiguity because it is defined as the "WHL Standard Player Agreement", but the definition for WHL Standard Player Agreement is ambiguous as it does not include the Execution Schedule or define what documents form the complete Standard Player Agreement;

(f) The litigation does not arise "out of" the "Agreement" (a term which itself is not adequately defined). The litigation arises out of the breach of the applicable employment standards legislation;

(g) In the alternative, this is an appropriate case for the Court to disregard the jurisdiction clause in paragraph 13.2 because of: the multiple jurisdictions in which the WHL and the Clubs operate; the fact that the vast majority of the Players are Canadians from Western Canada; that the WHL oversees and regulates the Clubs and all players have a direct action against the WHL; that the goals of the *Class Proceedings Act* would be defeated; and, the WHL is not subject to the jurisdiction clause yet the WHL is an integral part of the Players' claims against all the Clubs in all jurisdictions**.**

VENUE

149. The plaintiffs propose that this action be tried in the City of Calgary in the Province of Alberta, as a multi-jurisdictional proceeding under the *CPA*.

RELEVANT LEGISLATION

150. The plaintiffs plead and rely upon the provisions of *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, *Saskatchewan Employment Act*, S.S. 2014, c. S-15.1, Or. Rev. Stat. tit. 51 §653, Wash. Rev. C. tit. 49, §49.46, as amended, the *Court of Queen's Bench Act*, RSA 2000, c. C-31, the *CPA*, as amended, *Fair Labor Standards Act of 1938*, 29 U.S.C. §201, as amended; and their respective regulations.

REMEDY SOUGHT

151. The plaintiffs claim on their own behalf and on behalf of the Class, against all of the defendants for:

(a) An Order pursuant to the *CPA* certifying this action as a class proceeding and appointing the plaintiffs as the representative plaintiffs of the Class;

(b) A Declaration that the Players are, or were, employees of the Clubs;

(c) A Declaration that there exists a contract of employment between each Player and his Club;

(d) A Declaration with respect to the Clubs located in the Provinces that it is an implied or express term of all contracts of employment between a Player and his Club that the Players are or were to be paid wages, back pay, vacation pay, holiday pay and overtime pay in accordance with Applicable Employment Standards Legislation, and that the Clubs were to make employment payroll contributions as required by law;

(e) A Declaration that the Clubs located in the Provinces breached the contracts of employment by failing to pay the Players wages, back pay, vacation pay, holiday pay and overtime pay in accordance with Applicable Employment Standards Legislation and by failing to make employment payroll contributions as required by law;

(f) A Declaration that the terms and conditions of the SPA which contravene provisions of the Applicable Employment Standards Legislation which prohibit contracting out of employment standards are unenforceable and void;

(g) A Declaration that the Clubs located in the Provinces breached the contractual duties of honesty, good faith and fair dealing;

(h) A Declaration that the Clubs, WHL and CHL engaged in a policy or practice of avoiding or disregarding compliance with the Applicable Employment Standards Legislation;

(i) A Declaration that the defendants conspired together and with each other to violate applicable employment standards legislation and to compel the Players to enter into the SPA knowing that the SPA constituted an unlawful agreement in violation of Applicable Employment Standards Legislation, therefore the defendants are jointly and severally liable for all damages;

(j) In the alternative to the conspiracy plea, a Declaration that the Clubs located in the Provinces, the WHL, and the CHL were negligent;

(k) A Declaration that Players who had played on teams located in the Provinces may elect to recover damages jointly and severally from all such defendants, the WHL, and the CHL, based on the cause of action or remedy of waiver of tort;

(l) A Declaration that the defendant~~s~~ Clubs located in the Provinces were unjustly enriched to the deprivation of the Players without juristic reason;

(m) An Order disgorging the profits that the defendants generated as a result of benefitting from their unlawful conduct;

(n) 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;

(o) An Interim and Final Mandatory Order for specific performance directing that the Clubs, WHL and CHL comply with Applicable Employment Standards Legislation, in particular to:

i. Ensure that the Players are properly classified as employees;

ii. Advise Players of their entitlement to compensation as employees in accordance with the Applicable Employment Standards Legislation;

iii. Ensure that the Players' hours of work are monitored and accurately recorded;

iv. Ensure that the Players are appropriately compensated at a rate equal to or above the minimum requirements for employees pursuant to the Applicable Employment Standards Legislation;

v. Ensure that the Clubs make employer payroll contributions required by law including the Canada Pension Plan, R.S.C., 1985, c. C-8, the *Employment Insurance Act*, S.C. 1996, c. 23, and the laws of Oregon and Washington;

(p) An Order directing the defendants to preserve and disclose to the plaintiffs all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;

(q) Damages for outstanding wages including back pay, vacation pay, holiday pay, overtime pay and applicable employer payroll contributions required by law in the amount of $40 million in U.S. currency and $30 million in Canadian currency;

(r) Punitive damages in the amount of $15 million;

(s) Damages in the amount double the amount of all outstanding wages owed to the Washington Class;

(t) Additional damages in the amount of 30 days wages for every member of the Oregon Class;

(u) 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;

(v) Pre-judgment and post-judgment interest;

(w) 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 s. 33(6) of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution, plus applicable taxes; and

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

NOTICE TO THE DEFENDANT(S)
You only have a short time to do something to defend yourself against this claim:
20 days if you are served in Alberta
1 month if you are served outside Alberta but in Canada
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

WARNING
If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.