

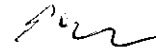
**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MORGAN

) MONDAY, THE 2ND DAY
) OF NOVEMBER, 2019
DECEMBER



BETWEEN:



WILL MORRIS

Plaintiff

- and -

SOLAR BROKERS CANADA CORP.,
JEAN CLAUDE AWWAD & JOSEPH BARKER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an order certifying this action pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, (“CPA”) was heard on November 25, 2019, at Toronto, Ontario.

ON READING the motion record and factum filed by the Plaintiff, and on hearing submissions of counsel:

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to s. 5 of the CPA as against Solar Brokers Canada Corp. (“Solar Brokers Canada”), Jean Claude Awwad and Joseph Barker (the “Defendants”).
2. **THIS COURT ORDERS** that the Class is defined as:

All non-managerial sales representatives who, since 2016, worked or continue to work for Solar Brokers Canada and who were classified as Independent Contractors.

3. **THIS COURT ORDERS** that the class is divided into two subclasses:
 - 1) all class members who, since 2016, worked or work for Solar Brokers Canada as lead generators; and
 - 2) all class members who, since 2016, worked or work for Solar Brokers Canada as appointment bookers.
4. **THIS COURT ORDERS** that Will Morris is appointed as the representative plaintiff for the Class and Monkhouse Law is hereby appointed as lawyers for the Class.
5. **THIS COURT ORDERS** that the following issues are certified as common issues:
 - 1) Whether the actual circumstances of the relationship between Solar Brokers Canada and the class members constitute an employee/employer relationship such that the class members were not 'independent contractors'.

If the answer to 1 is yes:

- 2) What are the terms (express or implied or otherwise) of the class members' contracts of employment with Solar Brokers Canada regarding:
 - (a) Regular and overtime hours of work;
 - (b) Recording of the hours worked by the class members;
 - (c) Breaks;
 - (d) Payment of hours worked by class members; and
 - (e) Lieu time as purported compensation for overtime hours worked.

- 3) Whether Solar Brokers Canada breached any of the contractual terms and if so, how. Without limiting generality of the forgoing, whether the class members are owed damages from the Defendants for:
 - (a) Unpaid overtime;
 - (b) Compensation below minimum wage;
 - (c) Vacation pay; and
 - (d) Public holiday pay and premium pay.

- 4) Whether Solar Brokers Canada has a duty (in contract, tort or otherwise) to prevent class members from working, or a duty to not permit or encourage class members to work, overtime hours for which they were not properly compensated or for which Solar would not pay.
 - (a) If such a duty exists, whether Solar Brokers Canada breached that duty.

- 5) Whether Solar Brokers Canada has a duty (in contract, tort or otherwise) to accurately record and maintain a record of all hours worked by class members to ensure that class members were appropriately compensated for same.
 - (a) If such a duty exists, whether Solar Brokers Canada breached that duty.

- 6) Whether Solar Brokers Canada has a duty (in contract, tort or otherwise) to implement and maintain an effective and reasonable system or procedure which ensured that the duties in Common Issues 2 and 3 were satisfied for all class members.
 - (a) If such a duty exists, whether Solar Brokers Canada breached that duty.

- 7) Whether Solar Brokers Canada is liable, and must reimburse the class members, for any Canada Pension Plan or Employment Insurance Act contributions which they may have paid or are owed resulting from a determination that the Class Members are/were employees of Solar Brokers Canada and not independent contractors.

- 8) Whether the individual defendants Jean Claude Awwad and Joseph Barker are personally liability for unpaid wages under sections 80 and 81 of the *Employment Standards Act, 2000* or section 131 of the *Ontario Business Corporations Act*.
- 9) If liability is established, are aggregate damages available?

If the answer to 9 is yes:

- 10) What is the most efficient method to assess those aggregate damages? Without limiting the generality of the foregoing, can aggregate damages be assessed in whole or in part on the basis of statistical evidence, including statistical evidence based on random sampling?
- 11) What is the quantum of aggregate damages owed to class members or any part thereof?
- 12) What is appropriate method or procedure for distributing the aggregate damages award to class members?

6. **THIS COURT ORDERS** that the consented to Notice of Certification from exhibit D to the affidavit of Mr. Morris attached hereto as Schedule A is approved.

7. **THIS COURT ORDERS** that the consented to methods of distribution of the Notice of Certification shall be as per the consent litigation plan from exhibit C to the affidavit of Mr. Morris at paragraph 9:

1) **Press Release**

Class Counsel will issue a press release regarding the certification order and containing the Notice within 15 days of the granting of the certification order.

2) **Print Media**

The Notice will be published at the Defendants' expense a total of four (4) times in both the Wednesday and Saturday national editions of the National Post and

Globe & Mail, commencing on a Wednesday within 21 days of the order granting certification, and again two weeks later.

3) **Internet**

The Notice and Certification Order, along with a summary of the terms of the Order, shall be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding.


The Defendants shall also prominently post the Notice and the Certification Order on any website it has established which is typically accessed by class members with a link to the Notice and Certification Order that can be easily identified and accessed from the main menu and home page of the website.

4) **Direct mail and email**

To the extent the Defendant and class members provide Class Counsel with email addresses of class members, Class Counsel will send the Notice via email to class members at the e-mail addresses provided.

The Defendants shall deliver the Notice by direct mail to the last known address for each class member.

8. **THIS COURT ORDERS** that at the request of the Plaintiff the court has agreed to accept cost submission from the plaintiff by December 6, 2019 and defendants by December 13, 2019 (or when possible after new counsel is appointed). Costs shall be fixed after the Court has received defendant's submissions through new counsel.



THE HONOURABLE JUSTICE MORGAN

Schedule "A"

NOTICE

To: ALL INDIVIDUALS WHO WORKED AS SALES REPRESENTATIVES FOR SOLAR BROKERS CANADA CORP.

NOTICE OF CERTIFICATION AS A CLASS ACTION

This Notice may affect your rights. Please read it carefully.

PURPOSE OF THIS NOTICE: A class proceeding has been certified by the Ontario Superior Court of Justice.

On **November 26, 2019**, *Morris v Solar Brokers Canada Corp., et al* was certified as a class proceeding, and Will Morris was appointed as the representative plaintiff on behalf of the Class (the “**Class Action**”).

Who this Notice is for: You are a member of the Class if you fit this description:

THE CLASS

All non-managerial sales representatives who, since 2016, worked or continue to work for Solar Brokers Canada Corp. and who were classified as Independent Contractors.

The class is divided into two subclasses:

- 1) all class members who, since 2016, worked or work for Solar Brokers Canada Corp. as lead generators; and
- 2) all class members who, since 2016, worked or work for Solar Brokers Canada Corp. as appointment bookers.

What the Action is About: The Class Action alleges, among other things, that all non-managerial sales representatives who, since 2016, worked or continue to work for Solar Brokers Canada Corp. and who were classified as Independent Contractors were employees under the applicable provincial standards and owed their entitlements as employees under the law, such as Vacation Pay, Public Holiday Pay, Overtime Pay, damages for pay under Minimum Wage etc.

A copy of the Statement of Claim and the Order certifying this action as a class proceeding can be reviewed at <https://www.monkouselaw.com/wp-content/uploads/2019/03/SOCSBC-Morris-W.pdf>

The Defendants: The Defendants are: Solar Brokers Canada Corp., Jean Claude Awwad, and Joseph Barker.

HOW THIS CLASS ACTION AFFECTS YOU:

If you are a Class member, and you wish to participate in the proceeding, then you do not need to do anything more at this stage. You are automatically included in the Class.

No Cost to You

There is no cost to you to participate in the class action. You will have no responsibility to pay any legal fees. Class Counsel will only be paid in the event that the action succeeds at trial or there is a settlement. Class Counsel have entered into a contingency fee agreement with the representative plaintiff. The agreement provides for a contingency fee of the amount recovered in the Class Action to be paid to Class Counsel, along with reimbursement of all disbursements and taxes. The court must first approve Class Counsel's legal fees before they will be paid.

You will be Bound by a Judgment or Settlement in the Action

Each Class member who does not opt out of the Class Action will be bound by the terms of any judgment or any settlement approved by the Court. Each Class member may be entitled to share in the amount of any judgment awarded or settlement reached in the Class Action.

HOW TO OPT OUT OF THE CLASS ACTION

If you DO NOT WANT TO PARTICIPATE in this proceeding, then you must say so in writing by delivering a letter to Class Counsel, including your full name and address on or before February 26, 2020 at 5:00 pm EST to the following address:

If you do not want to participate in the Action

Address for Sending Your Notice of Opt Out:

SBC Class Action
Monkhouse Law
220 Bay St. Suite 900
Toronto, Ontario, Canada
M5J 2W4

Fax: 888-501-7235

Opt Out Deadline:

If you decide to opt out, you will not be bound by the terms of any judgment or settlement. However, you also will not be eligible for any of the benefits of any settlement or judgment if the action is successful.

No Class member will be permitted to opt out after February 26, 2020.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should be addressed to Class Counsel.

The certification order and other information regarding the Class Action is available on the website:

<https://www.monkouselaw.com/solar-brokers-canada-misclassification-class-action/>

or may be obtained by calling: **416-907-9249**

Requests for information or questions for Class Counsel should be directed to:

SBC Class Action
Monkhouse Law
220 Bay St. Suite 900
Toronto, Ontario, Canada
M5J 2W4

e-mail: sbc.classaction@monkouselaw.com

INTERPRETATION

This notice is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails. The certification order can be viewed at the web addresses referenced above.

This notice was approved by the Ontario Superior Court of Justice
