

ONTARIO
SUPERIOR COURT OF JUSTICE

Sept.17/20

AMENDED THIS _____ PURSUANT TO
MODIFIÉ **BETWEEN** CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (a)

THE ORDER OF _____
L'ORDONNANCE DU _____
DATED/FAIT LE _____

TOM RALLIS

Plaintiff

N. Mohammed Rahaman
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

– and –

APPROVAL TEAM INC., SERGEY BARANDICH, PATRICK JARDINE, and
ALEKSANDAR SAVIC

Defendant

Proceedings commenced under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for the costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Issued by _____
Local Registrar

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

TO: APPROVAL TEAM INC.
1900 Dundas Street East, Unit #7
Mississauga, Ontario L4X 1L9

I – RELIEF CLAIMED

1. The Plaintiff claims the following on his behalf, and on behalf of members of the Class:

- a) The sum of \$5,000,000 as general damages covering the damages to the class for damages suffered by their being incorrectly paid by the Defendants;
- b) An Order certifying this action as a class proceeding and appointing Tom Rallis as Representative Plaintiff of the Class;
- c) A declaration that Approval Team violated the terms of the ESA by:
 - i. Failing to advise the Class Members of their entitlement to vacation pay at a rate of four (4) or six (6) per cent of wages in accordance with the ESA (“**vacation pay**”);
 - ii. Failing to compensate the Class Members for vacation pay;
 - iii. Failing to advise the Class Members of their entitlement to public holiday pay and premium pay in accordance with the ESA (“**public holiday and premium pay**”);
 - iv. Failing to compensate the Class Members for public holiday and premium pay;
 - v. Failing to advise the salespersons Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the ESA (“**overtime threshold**”);
 - vi. Requiring and/or permitting the salespersons Class Members to work overtime hours and failing to compensate the salespersons Class Members for hours worked in excess of the overtime threshold (“**overtime pay**”);

- vii. Failing to ensure that the Class Members' hours of work were monitored and accurately recorded contrary to section 15.1 of the ESA;
 - viii. Failing to monitor and record or otherwise track the Class Members' hours of work; and,
 - ix. Failing to advise Class Members of their entitlement to compensation equal to or above the minimum wage as provided by the ESA ("**minimum wage**");
 - x. Failing to compensate Class Members at a rate equal to or above minimum wage;
 - xi. Failing to compensate the Class Members for all hours worked.
- d) A declaration that the Defendants are liable, and must reimburse the Class Members, for any Canada Pension Plan, RSC, 1985, c C-8 ("CPP") or Employment Insurance Act, SC 1996, c 23 ("EI") contributions which may have been paid or are owed resulting from a determination that the Class Members are/were insurable and pensionable employees of the Defendant.
- e) A declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members were incorrectly paid without proper remittances.
- f) A declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were incorrectly paid without proper remittances.
- g) Damages for unpaid overtime for salespersons Class Members;
- h) Damages for unpaid vacation pay;
- i) Damages for unpaid public holiday and premium pay;
- j) Damages for compensation below minimum wage;
- k) An Order pursuant to s 24 of the *Class Proceedings Act, 1992*, SO 1992, c6 ("**Class Proceedings Act**") directing an aggregate assessment of damages;

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

~~m) Punitive, Aggravated and/or Moral damages in the amount of \$1,000,000.~~

m) Prejudgment interest in accordance with s 128 of the *Courts of Justice Act*, RSO 1990, c C43, as amended;

n) Postjudgment interest in accordance with s 129 of the *Courts of Justice Act*, RSO 1990, c C43, as amended;

o) The costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;

p) The costs of administering the plan of distribution of the recovery in this action; and,

q) Such further and other relief as this Honourable Court may deem just.

II – BACKGROUND

The Parties & Class

(i) The Parties

2. The Plaintiff, Tom Rallis, is an individual residing in the City of Mississauga, in the Province of Ontario. Tom worked as a salesperson from in or around April 2018 to May 2018. He became a salesperson again in April 2019 until to in or around May 2019.

3. The Corporate Defendant, Approval Team, is a lawfully incorporated company based in Mississauga, Ontario. Approval Team is a used car dealership with five (5) locations across the Greater Toronto Area (“GTA”).

4. Sergey Barandich, Patrick Jardine, and Aleksandar Savic are and were at all material times the directors and operating minds of Approval Team, and are liable for

unpaid wages under section 81 of the ESA and section 131 of the Ontario *Business Corporations Act*, RSO 1990, c B16 (the “**OBCA**”).

(ii) The Class

5. This action is brought on behalf of a class of persons (the “**Class**” or “**Class Members**”), defined as:

All employees (in contract or in statute) salespersons and sales managers of APPROVAL TEAM INC. Approval Team Inc. who, since 2010 2018 to the date of notice to the class, worked or continue to work for APPROVAL TEAM INC. Approval Team Inc. as independent contractors.

6. Those class members who have damages are those who did not receive statutory benefits and/or did not have proper statutory remittances done on their behalf.

(iii) The Proposed Representative Plaintiff’s Employment with Approval Team

7. Tom worked for Approval Team from in or around April 2018 to in or around May 2019 (approximately 13 months total). Tom signed a written agreement in 2018 when he first started working for Approval Team. When he started with Approval Team he was a salesperson and had the title of “Senior Finance Manager”. As a salesperson Tom was offering financing solutions to Approval Team clients who wished to purchase new or used vehicles.

8. Tom was subsequently promoted to the position of “Sales Manager”. He held that position from May 2018 to April 2019. As a sales manager, Tom’s additional duties included training of salespersons, assisting in closing sales, assisting in vehicle selection and printing of documentation.

9. Tom’s remuneration as a salesperson was based solely on commissions representing a percentage of the value of his sales. As a sales manager Tom received a percentage of the total gross profit of each salesperson he managed.

10. Tom was paid by-weekly by cheque. If no sales were made, Approval Team provided Tom with a draw, typically in or around \$1,000.00, which would then be deducted from future commissions.

11. The amount of each cheque varied based on the value of Tom's sales during each pay period. However, Tom was unable to confirm his commissions due to Approval Team failing to provide pay stubs with each cheque.

12. In or around May 2019, Tom received his first pay stub from Approval Team, which showed CPP and EI deductions. Previously he understands that no other employees of Approval Team had any CPP or EI deductions added.

13. Tom never received any vacation pay or statutory holiday pay during the time he worked for the Defendants.

14. Throughout Tom's tenure with Approval Team, his Tom's duties and responsibilities while working both as a salesperson and as a sales manager included, but were not limited to, taking applications and securing financing for clients for auto loans, offering vehicle options to clients once financing was secured, and attending weekly sales meetings.

15. The sales ~~done~~ carried out by Tom were at the Defendants place of business.

16. The above duties and responsibilities were the standard procedure, and generally describes the experience for all Class Members and auto sales at Approval Team.

III – EMPLOYMENT RELATIONSHIP

17. Tom, as Proposed Representative Plaintiff, pleads that Class Members were employees of Approval Team but notwithstanding this were not given the benefits owed to employees under the *Employment Standards Act, 2000* or have government statutory remittances properly deducted.

18. At the end of his employment Tom was provided with pay stubs which confirms his employment with Approval Team.

19. Approval team had no overtime policy in place for salespersons in place to monitor, record, or compensate salespersons for overtime pay hours.

20. Approval team had no public holiday policy in place to monitor, record or compensate salespersons and sales managers for public holiday pay hours.

21. ~~Approval Team had no overtime or public holiday policy in place to monitor, record, or compensate overtime or public holiday pay hours.~~

Responsibilities of Class Members and Treatment by Approval Team

22. Approval Team is a used car dealership that offers auto loan services to Ontario residents. All of its operations are geared towards securing auto loans to customers that are within their monthly budget and regardless of their credit score.

23. The business is run using sales managers and salespersons hired as employees or independent contractors and online marketing to generate leads. Sales managers regularly supervise and manage salespersons and are compensated for that managerial work by getting a portion of their team's commissions.

24. Approval Team markets their company through Facebook and other social media platforms to gather potential clients (i.e., generate leads, the "**leads**").

25. Approval Team provides Class Members with one (1) to eight (8) leads per day that they are to contact, review their applications, and secure financing for. Once the financing is secured, Class Members provide the lead with vehicle options based on the approved amount.

Systemic Breach of the ESA

26. Approval Team has systemically breached the provisions of the ESA with respect to all Class Members by:

- a) Failing to ensure that the Class Members' hours of work were monitored and accurately recorded;

- b) Requiring the salespersons Class Members to work hours in excess of the overtime threshold, but failing to ensure that the salespersons Class Members were compensated for overtime pay;
- c) Alternatively, permitting the salespersons Class Members to work hours in excess of the overtime threshold, but failing to ensure that the salespersons Class Members were compensated for overtime pay;
- d) Failing to compensate the Class Members for vacation pay;
- e) Failing to compensate the Class Members for public holiday and premium pay; and,
- f) Failing to compensate the Class Members for minimum wage pay.

27. To the extent that any contract purports to designate the Class Members as independent contractors, such contract or provision is void and unenforceable.

28. Such breaches have been and are ongoing and continuous in respect of the Class Members since at least approximately January 1, 2018.

ESA and Class Members' Contracts of Employment

29. The employment standards under the ESA are implied minimum terms of the contracts of employment of the Class Members.

30. At all material times, the Class Members were not and are not exempt from the ESA.

31. As a result, the Class Members' contracts of employment implicitly provide for:

- a) Overtime pay for hours worked in excess of the overtime threshold for salespersons;
- b) Vacation pay on all amounts paid, and unpaid;
- c) Public holiday and premium pay; and,

d) Minimum wage pay.

32. As vulnerable workers under the direct control and supervision of Approval Team, the Class Members relied on Approval Team to advise them properly regarding their employee status and eligibility for overtime pay for salespersons, vacation pay, public holiday and premium pay, and minimum wage pay to fulfill their contractual and statutory employment responsibilities.

33. Additionally, the Class Members relied on Approval Team to keep track of and pay overtime pay for salespersons, vacation pay, public holiday and premium pay, ~~and~~ and minimum wage pay.

34. Approval Team is/was in a position of power and directly controlled the Class Members. The Class Members were and continue to be in a vulnerable position *vis-à-vis* the Defendants.

Systemic Overtime Required of ~~Workers~~ Salespersons

35. Approval Team systemically encouraged the salespersons Class Members to work long hours and systemically failed to compensate the salespersons Class Members with any premium for working extra hours.

36. The ~~workers~~ salespersons in question are not exempt from overtime and thus ought to be paid compensation equal to the overtime hours worked.

37. Salespersons paid commissions based on their sales, were encouraged and even required to work long hours, often in excess of the 44-hour threshold in Ontario.

38. The salespersons ~~Class Members~~ contracted into working eight (8) hours per day but often felt compelled to work longer hours.

39. Approval Team systemically forced the salespersons ~~Class Members~~ to work a minimum of ten (10) hour days, six (6) days a week in order to earn commissions.

40. Alternatively, Approval Team willfully allowed and encouraged the salespersons Class Members to work ten (10) hour days six (6) days a week in order to earn commissions.

41. Approval Team has a systemic policy of requiring salespersons to work additional hours to meet sales targets that could often only be achieved by working in excess of 44 hours per week.

42. Approval Team knew or ought to have known that salespersons Class Members were working overtime, as they would give incentives to the top salespersons Salespeople, either a monetary reward or tickets to various sporting events.

43. Per s. 22(1) of the ESA, an employer shall pay an employee overtime pay of at least one and one-half (1 and ½) his or her regular rate for each hour of work in excess of 44-hours in each work week. The regular rate is to be calculated by dividing the total earnings, including commission payments, and dividing by the number of hours worked.

IV – AGGREGATE DAMAGES

44. Tom pleads that the trial judge ought to make an award of aggregate damages in this case since the records kept by Approval Team of the time worked by salespersons and sales managers should allow for the damages of each Class Member to be calculated without the need to resort to individual assessments or mini-trials.

~~V – PUNITIVE, MORAL AND/OR AGGRAVATED DAMAGES~~

~~45. Tom pleads that this case is appropriate for Punitive, Moral and/or Aggravated damages. The non-exclusive reasons for these damages are set out below:~~

~~a) Approval Team failed in their statutory duties including but not limited to collecting government taxes and payroll taxes;~~

~~b) Approval Team failed to provide minimum employment standards relating to their employees, thus breaching the ESA and disadvantaging their employees;~~

- ~~c) Approval Team benefited from their employees being forced to work overtime which constitutes illegal wage theft from said employees contrary to the *ESA* for which there ought to be more of a punishment than to merely pay the money which was initially owed.~~
- ~~d) Approval Team acted in a callous manner by not resolving the issue once they learned of it but instead attempting to not pay back wages to those employees affected;~~
- ~~e) Approval Team has failed and continues to fail to provide the statutory benefits to employees including up to and at any final hearing of this matter;~~
- ~~46. The behavior, if applicable, of the Defendants in defending this action which is found to be overly zealous in the face of evidence showing their employees are owed their statutory benefits and remittances.~~
- ~~47. The principle of deterrence is needed in order to discourage other companies from short changing their workers as the Defendants have in this case.~~

VI – LOCATION

46. Tom pleads this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue:

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