

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
MR. JUSTICE GRAY**

) **THURSDAY THE 17TH DAY**
) **OF NOVEMBER, 2016**

BETWEEN:

MICHAEL BOZSIK

Plaintiff/Moving Party

- and -

LIVINGSTON INTERNATIONAL INC.

Defendant/Respondent

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**ORDER
(CERTIFICATION)**

THIS MOTION, made by the Representative Plaintiff, for an Order certifying this action as a class proceeding was heard on September 26 and 27, 2016 at the Court House at 491 Steeles Avenue East in Milton, Ontario.

ON READING all materials filed and on hearing the submissions of counsel for all parties:

Certification & Class Definition

1. **THIS COURT ORDERS** that this proceeding is hereby certified as a Class Proceeding with respect to the causes of action as set out in the Statement of Claim.

2. **THIS COURT ORDERS** that the class consists of:

All current or former non-management employees of the Defendant in its offices across Canada, who are or were employed, at any time on or after August 15, 2007, in administrative, clerical, technical and supervisory job classifications or otherwise subject to the Defendant's overtime policy or policies (collectively referred to as the "**Class Members**" or the "**Class**").

Representative Plaintiff & Class Counsel

3. **THIS COURT ORDERS** that Michael Bozsik is appointed as the Representative Plaintiff on behalf of the Class and that Roy O'Connor LLP, Sotos LLP, and Goldblatt Partners LLP, collectively referred to as "**Class Counsel**" are hereby appointed as counsel for the Class.

Common Issues

4. **THIS COURT ORDERS** that the common issues shall be as appended as Schedule "A" attached hereto.

Notice of Certification & Opting Out

5. **THIS COURT ORDERS** that the form of notice of this certification order, the manner of giving notice and all other related matters shall be determined by further order of this Court.
6. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 90th day after the date the first notice of certification is published.

7. **THIS COURT ORDERS** that Class Counsel serve on the Defendants, within 30 days after the close of the opt-out period referred to in paragraph 6 above, an affidavit exhibiting the persons who have opted out of the class proceeding, if any.

Costs

8. **THIS COURT ORDERS** that, on consent, the costs of this motion are fixed in the all-inclusive amount of \$285,000.00 and shall be paid by the Defendant to the Plaintiff within thirty days of the date of this Order.

A handwritten signature in blue ink, appearing to read "D. K. Gray", is written over a horizontal line.

This Order bears interest at the rate of 2% per year.

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**SUPERIOR COURT OF JUSTICE
MILTON**

SCHEDULE "A"- COMMON ISSUES

Breach of Contract

1. What are the terms (express or implied or otherwise) of the Class Members' contracts of employment with the Livingston International Inc. (the "Defendant") respecting:
 - a. Regular and overtime hours of work?
 - b. Recording of the hours worked by Class Members?
 - c. Breaks?
 - d. Payment of hours worked by Class Members?
 - e. Lieu time as purported compensation for overtime hours worked?
2. Did the Defendant breach any of the contractual terms? If so, how?
 - a. Without limiting the generality of common issue 2, did the Defendant breach its contractual duty of good faith in the performance of its contracts of employment with the Class Members? If so, how?

The Defendant's Systemic Duties

3. Did the Defendant have a duty (in contract, tort or otherwise) to prevent Class Members from working, or a duty not to permit or not to encourage Class Members to work, overtime hours for which they were not properly compensated or for which the Defendant would not pay?
 - a. If "yes", did the Defendant breach that duty?
4. Did the Defendant have 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 "yes", did the Defendant breach that duty?
5. Did the Defendant have 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 3 and 4 were satisfied for all Class Members?

- a. If "yes", did the Defendant breach that duty?

Unjust Enrichment

6. Was the Defendant enriched by failing to pay Class Members appropriately for all their hours worked? If "yes",

- a. Did the Class suffer a corresponding deprivation?
- b. Was there no juristic reason for the enrichment?

7. If the Class Members are entitled to an award of monetary damages:

- a. Can damages be assessed on an aggregate basis for all or part of the Class? If "yes",

- i. 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 part on the basis of statistical evidence, including statistical evidence based on random sampling?

- ii. What is the quantum of aggregate damages owed to Class Members or any part thereof?

- iii. What is the appropriate method or procedure for distributing the aggregate damages award to Class Members?

- b. Is the Class entitled to an award of aggravated, exemplary or punitive damages based upon the Defendant's conduct? If "yes",

- i. Can these damages awards be determined on an aggregate basis?

- ii. What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?

MICHAEL BOZSIK
Plaintiff

-and-

LIVINGSTON INTERNATIONAL INC.
Defendant

Court File No.: 5270/14

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT MILTON

Proceeding under the Class Proceedings Act, 1992

CERTIFICATION ORDER

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