



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 21-Feb-2020  
Délivré par voie électronique  
Toronto

**ANNA BOURQUE**

Plaintiff

and

**INSIGHT PRODUCTIONS LTD.; INSIGHT – A RUSSELL PETERS  
CHRISTMAS LTD.; INSIGHT – BATTLE OF THE BLADES 2 BOOT  
CAMP LTD.; INSIGHT – BATTLE OF THE BLADES 2 SPIRIT OF  
GIVING LTD.; INSIGHT – BATTLE OF THE BLADES 3 GAME ON LTD.;  
INSIGHT – BATTLE OF THE BLADES 3 LTD.; INSIGHT – BATTLE OF  
THE BLADES 4 GAME ON LTD.; INSIGHT – BATTLE OF THE BLADES  
4 LTD.; INSIGHT BATTLE OF THE BLADES 5 GAME ON LTD.;  
INSIGHT BATTLE OF THE BLADES 5 LTD.; INSIGHT – BIG BROTHER  
CANADA LTD.; INSIGHT – BIG BROTHER CANADA 2 LTD.; INSIGHT  
BIG BROTHER CANADA 3 LTD.; INSIGHT BIG BROTHER CANADA 4  
LTD.; INSIGHT BIG BROTHER CANADA 5 LTD.; INSIGHT BIG  
BROTHER CANADA 6 LTD.; INSIGHT BIG BROTHER 7 CANADA  
LTD.; INSIGHT BIG BROTHER CANADA 8 LTD.; INSIGHT – CANADA  
SINGS LTD.; INSIGHT – CANADA SINGS 2 LTD.; INSIGHT – CGT  
LTD.; INSIGHT – DOC PRODUCTIONS LTD.; INSIGHT – FALCON  
BEACH 1 LTD.; INSIGHT – ICONS AND RISING STARS LTD.; INSIGHT  
– KITCHEN 2 LTD.; INSIGHT – KITCHEN 3 LTD.; INSIGHT – KITCHEN  
4 LTD.; INSIGHT – MARATHON LTD.; INSIGHT – NEVER EVER LTD.;  
INSIGHT – NEVER EVER 2 LTD.; INSIGHT – TOP CHEF CANADA  
LTD.; INSIGHT ABS LTD.; INSIGHT AMERICA EH LTD.; INSIGHT BICJ  
2 LTD.; INSIGHT CANADA DAY 2017 LTD.; INSIGHT CSA 19 LTD.;  
INSIGHT CSA 20 LTD.; INSIGHT CSA 2018 LTD.; INSIGHT CWOFF 18  
LTD.; INSIGHT CWOFF 19 LTD.; INSIGHT DESTINATION DETOUR  
HOLDINGS LTD.; INSIGHT DESTINATION DETOUR LTD.; INSIGHT  
DREAM VACATION LTD.; INSIGHT GP SERIES LTD.; INSIGHT  
GREENPEACE DOC LTD.; INSIGHT HIP LTD.; INSIGHT HITMEN LTD.;  
INSIGHT HMD CHRISTMAS LTD.; INSIGHT JOHNNY REID  
CHRISTMAS LTD.; INSIGHT JOKE OR CHOKE LTD.; INSIGHT JUNOS  
19 LTD.; INSIGHT JUNOS 20 LTD.; INSIGHT JUNOS 2016 LTD.;  
INSIGHT JUNOS 2017 LTD.; INSIGHT JUNOS 2018 LTD.; INSIGHT  
JUNOS HOLIDAY 2017 LTD.; INSIGHT KITCHEN 5 LTD.; INSIGHT  
KITCHEN 5A LTD.; INSIGHT KITCHEN 6 LTD.; INSIGHT KITCHEN 7  
LTD.; INSIGHT KITCHEN 8 LTD.; INSIGHT LAUNCH LTD.; INSIGHT  
LAUNCH 2 LTD.; INSIGHT LIGHTFOOT LTD.; INSIGHT LIMELIGHT**

**LTD.; INSIGHT NYE 18 LTD.; INSIGHT NYE 19 LTD.; INSIGHT NYE 150 LTD.; INSIGHT NYE 2017 LTD.; INSIGHT PRODUCTION COMPANY LTD.; INSIGHT SCTV 2018 SPECIAL LTD.; INSIGHT THE SCHEME TEAM LTD.; INSIGHT-BATTLE OF THE BLADES 2 LTD.; INSIGHT-BATTLE OF THE BLADES LTD.; INSIGHT-COMEDY GOLD LTD.; INSIGHT-FALCON BEACH 2 LTD.; INSIGHT-FALCON BEACH LTD.; INSIGHT-HATCHING MATCHING AND DISPATCHING LTD.; INSIGHT-NAKED LTD.; INSIGHT-SABBATICAL LTD.; INSIGHT-VANCOUVER PRODUCTION 2009 LTD.; ENDURANCE ENTERTAINMENT 5 LTD.; CHASE ENTERTAINMENT 6 LTD.**

Defendants

## **STATEMENT OF CLAIM**

### **PROCEEDING UNDER the *Class Proceedings Act, 1992***

#### **TO THE DEFENDANTS**

**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 \$750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding

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dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for 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.

Date February 21, 2020 Issued by "Issued Electronically"  
Local Registrar

Address of Superior Court of Justice  
court office: 330 University Avenue  
Toronto, ON M5G 1R7

**TO: INSIGHT PRODUCTIONS LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – A RUSSELL PETERS CHRISTMAS LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BATTLE OF THE BLADES 2 BOOT CAMP LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BATTLE OF THE BLADES 2 SPIRIT OF GIVING LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BATTLE OF THE BLADES 3 GAME ON LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

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**AND TO: INSIGHT – BATTLE OF THE BLADES 3 LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BATTLE OF THE BLADES 4 GAME ON LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BATTLE OF THE BLADES 4 LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT BATTLE OF THE BLADES 5 GAME ON LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT BATTLE OF THE BLADES 5 LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BIG BROTHER CANADA LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – BIG BROTHER CANADA 2 LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

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**AND TO: INSIGHT BIG BROTHER CANADA 3 LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT BIG BROTHER CANADA 4 LTD.**  
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**AND TO: INSIGHT BIG BROTHER CANADA 5 LTD.**  
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**AND TO: INSIGHT BIG BROTHER CANADA 6 LTD.**  
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**AND TO: INSIGHT BIG BROTHER CANADA 7 LTD.**  
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**AND TO: INSIGHT BIG BROTHER CANADA 8 LTD.**  
135 Liberty Street  
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Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – CANADA SINGS LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

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**AND TO: INSIGHT – CANADA SINGS 2 LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – CGT LTD.**  
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**AND TO: INSIGHT – DOC PRODUCTIONS LTD.**  
135 Liberty Street  
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Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – FALCON BEACH 1 LTD.**  
135 Liberty Street  
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Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT – ICONS AND RISING STARS LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT – KITCHEN 2 LTD.**  
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**AND TO: INSIGHT – KITCHEN 3 LTD.**  
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**AND TO: INSIGHT – KITCHEN 4 LTD.**

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**AND TO: INSIGHT – MARATHON LTD.**

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**AND TO: INSIGHT – NEVER EVER LTD.**

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**AND TO: INSIGHT – NEVER EVER 2 LTD.**

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**AND TO: INSIGHT ABS LTD.**

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**AND TO: INSIGHT AMERICA EH LTD.**

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**AND TO: INSIGHT BICJ 2 LTD.**  
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**AND TO: INSIGHT CANADA DAY 2017 LTD.**  
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**AND TO: INSIGHT CSA 19 LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT CSA 20 LTD.**  
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**AND TO: INSIGHT CSA 2018 LTD.**  
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Toronto, Ontario  
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**AND TO: INSIGHT CWOFF 18 LTD.**  
135 Liberty Street  
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Toronto, Ontario  
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**AND TO: INSIGHT CWOFF 19 LTD.**  
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Toronto, Ontario  
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**AND TO: INSIGHT DESTINATION DETOUR HOLDINGS LTD.**  
135 Liberty Street  
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Toronto, Ontario  
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**AND TO: INSIGHT DESTINATION DETOUR LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT DREAM VACATION LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT GP SERIES LTD.**  
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**AND TO: INSIGHT GREENPEACE DOC LTD.**  
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**AND TO: INSIGHT HIP LTD.**  
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**AND TO: INSIGHT JOKE OR CHOKE LTD.**  
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**AND TO: INSIGHT JUNOS 19 LTD.**  
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**AND TO: INSIGHT JUNOS 20 LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT JUNOS 2016 LTD.**  
135 Liberty Street  
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Toronto, Ontario  
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**AND TO: INSIGHT JUNOS 2017 LTD.**  
135 Liberty Street  
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Toronto, Ontario  
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**AND TO: INSIGHT JUNOS 2018 LTD.**  
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**AND TO: INSIGHT JUNOS HOLIDAY 2017 LTD.**  
135 Liberty Street  
Suite 401  
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**AND TO: INSIGHT KITCHEN 5 LTD.**  
135 Liberty Street  
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**AND TO: INSIGHT KITCHEN 5A LTD.**  
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**AND TO: INSIGHT KITCHEN 6 LTD.**  
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**AND TO: INSIGHT NYE 2017 LTD.**

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**AND TO: INSIGHT PRODUCTION COMPANY LTD.**

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**AND TO: INSIGHT SCTV 2018 SPECIAL LTD.**

135 Liberty Street  
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**AND TO: INSIGHT THE SCHEME TEAM LTD.**

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**AND TO: INSIGHT-BATTLE OF THE BLADES 2 LTD.**

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**AND TO: INSIGHT-BATTLE OF THE BLADES LTD.**

135 Liberty Street  
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Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT-COMEDY GOLD LTD.**

135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

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**AND TO: INSIGHT-FALCON BEACH 2 LTD.**  
135 Liberty Street  
Suite 401  
Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT-FALCON BEACH LTD.**  
135 Liberty Street  
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Toronto, Ontario  
M6K 1A7

**AND TO: INSIGHT-HATCHING MATCHING AND DISPATCHING LTD.**  
135 Liberty Street  
Suite 401  
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M6K 1A7

**AND TO: INSIGHT-NAKED LTD.**  
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**AND TO: INSIGHT-SABBATICAL LTD.**  
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135 Liberty Street  
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## CLAIM

1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class Members, as defined below;
- (b) \$35,000,000 in general damages for the Class, or such other sum as this Honourable Court deems just;
- (c) a declaration that the provisions of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("*ESA*"), as applicable, are express or implied terms of the contracts of employment of the Class Members;
- (d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;
- (e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members' contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to the Class Members by:
  - (i) failing to ensure that Class Members were properly classified as employees;
  - (ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the "*Minimum Wage*");
  - (iii) failing to compensate Class Members at a rate equal to or above the *Minimum Wage*;

- (iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the "Overtime Threshold") and Special Rules and Exemptions for Film and Television (the "Regulations");
- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold ("Overtime Pay");
- (vi) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* ("Vacation Pay");
- (viii) failing to compensate Class Members for Vacation Pay;
- (ix) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the "Public Holiday and Premium Pay");
- (x) failing to compensate Class Members for Public Holiday and Premium Pay;
- (xi) failing to monitor and record or otherwise track the Class Members' hours of work; and,
- (xii) failing to compensate the Class Members for all hours worked.

- (f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:
  - (i) ensure that Class Members are properly classified as employees;
  - (ii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;
  - (iii) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
  - (iv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.
- (g) a declaration that the provisions of any applicable independent contractor agreement which may purport to exclude certain Class Members from the provisions of the *ESA* including from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;
- (h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (i) 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 are/were employees of the Defendants and not independent contractors;

- (j) a declaration that the Defendants are liable, and must reimburse the Class Members, for any *Canada Pension Plan* ("CPP") or *Employment Insurance Act* ("EI") contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating Class Members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;
- (l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*Class Proceedings Act*") directing an aggregate assessment of damages;
- (m) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;
- (n) punitive, aggravated and exemplary damages in the amount of \$10,000,000;

- (o) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (p) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (q) the costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (r) the costs of administering the plan of distribution of the recovery in this Action; and,
- (s) such further and other relief as this Honourable Court may deem just.

## THE PARTIES

2. The Plaintiff, Anna Bourque, resides in Toronto. The Plaintiff worked as a Story Editor and was retained as such by the Defendants ("Insight") from August 27, 2018 to January 21, 2019. The Plaintiff performed story editing work for Insight's American Beauty Star, Season 2 production at Insight's 30 Jefferson street office.

3. Insight Productions Ltd. is incorporated pursuant to the laws of Ontario. Its head office is located in Toronto.

4. The Defendants, together referred to as "Insight", carry on business in common in respect of the hiring, supervision and control of the Class Members. Specifically, for each production Insight produces, it incorporates a separate corporation. The Defendants hold themselves out to the public and to their staff as a single entity known as "Insight" or "Insight Productions".

5. Particulars of the names of each of the separate corporations utilized by Insight to carry out its operations are more particularly within Insight's knowledge.

6. The production activities of Insight and of its workers are provincially regulated and are therefore governed by the *ESA*.

## THE CLASS

7. The Plaintiff brings this Action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of the following class of persons (together, the "Class" or "Class Members"):

All non-managerial and non-unionized persons who, since 2001, worked or continue to work for the Insight Defendants in Ontario in pre-production, and/or production, and/or post-production job classifications.

## EMPLOYMENT RELATIONSHIP

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Insight creates an employment relationship with Insight. Particulars of such relationship include, *inter alia*:

- (a) Class Members must adhere to a production schedule determined by Insight;
- (b) Class Members are told by Insight when and where they may perform their work duties;

- (c) Class Members are required to attend meetings, including but not limited to, development meetings, production meetings, and post-production meetings, which are held at locations and times determined by Insight;
- (d) Class Members are required to provide exclusive services to Insight while engaged by Insight;
- (e) Class Members must obey directions from Producers, Executive Producers, Series Producers, Production Managers and Post Production Managers;
- (f) Insight maintains complete creative and editorial control over the content produced by Class Members;
- (g) Class Members must use Insight's tools at its offices in Toronto, including, but not limited to, desktop computers, monitors, editing software, editing hardware, and headphones; and,
- (h) Class Members are assigned designated workspaces and edit suites at Insight's Toronto offices.

9. The Defendants largely engaged the Class Members as employees but a number of Class Members contracted with the Defendants as "independent contractors" or "corporate loan-outs". The Plaintiff pleads, and the fact is, that all Class Members, howsoever classified by the Defendants, were at all material times employees of the Defendants.

10. The Defendants had no overtime policy in place to monitor, record, or compensate overtime hours.

## **ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT**

11. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contracts of employment of the Class Members.

12. At all material times, the Class Members were not and are not exempt from the *ESA* and, further or in the alternative, are not and were not exempt from Part VIII to Part XII of the *ESA*.

13. As a result, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated:

- (a) At a rate equal to, or greater than, the Minimum Wage;
- (b) With Overtime Pay for hours worked in excess of the Overtime Threshold;
- (c) With Vacation Pay on all amounts paid, and unpaid; and,
- (d) With Public Holiday and Premium Pay.

## **CONTRACTUAL DUTIES OWED TO CLASS MEMBERS**

14. As vulnerable employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at or above the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Insight is/was in a position of power and direct control over the Class

Members and the Class Members were and are in a vulnerable position vis-à-vis the Defendants.

15. The Defendants owe and owed contractual duties to the Class Members, including a contractual duty of good faith, all of which required, and continue to require, the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay;
- (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

## **DUTY OF CARE**

16. Insight owed and owes the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Insight retaining the Class Members to perform production work on Insight's behalf.

17. Insight owed and owes the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to perform work on Insight productions.

18. The Defendants' duty of care requires and required the Defendants to:
- (a) ensure that Class Members are properly classified as employees;
  - (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
  - (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
  - (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

#### **RESPONSIBILITIES OF CLASS MEMBERS AND TREATMENT BY INSIGHT**

19. From August 27, 2018 to January 21, 2019, the Plaintiff worked for Insight as a Story Editor.

20. The Plaintiff's duties and responsibilities as a Story Editor included:
- (a) Attending Insight's 30 Jefferson street office in Toronto five days per week in order to:
    - (i) attend scheduled post-production meetings with Executive Producers and editors in respect of assigned episodes of American Beauty Star, Season 2;
    - (ii) review production notes received from Executive Producers, Herrick Entertainment, and A+E Networks in respect of assigned episodes of American Beauty Star, Season 2;

- (iii) screen and organize show footage received from Herrick Entertainment for assigned episodes of American Beauty Star, Season 2;
- (iv) supervise and direct the editing of assigned episodes of American Beauty Star, Season 2 in conjunction with editors;
- (v) implement changes to "rough cuts" and "fine cuts" of assigned episodes of American Beauty Star, Season 2, in conjunction with editors based on production notes received from Insight's Executive Producers, Herrick Entertainment, and/or A+E Networks; and,
- (vi) attend any other meetings or perform any other duties as directed by Insight.

21. The Plaintiff was expected to report to Insight's Jefferson street office to meet Insight's pre-determined post-production schedule for American Beauty Star, Season 2.

22. The Plaintiff's relationship with Insight and its production schedules is consistent with the relationships of all Class Members with Insight.

23. At all material times, the Plaintiff and the other Class Members were explicitly directed as to how, where and when they could perform their duties for Insight.

24. The Defendants required or permitted the Plaintiff to work between approximately 60 and 70 hours per week.

25. The Plaintiff relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that the Plaintiff was entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay.

26. The Plaintiff did not become aware she was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the Defendants had continually misrepresented her actual eligibility and entitlement to such pay.

27. At all material times, some of the Class Members were explicitly and incorrectly informed they were not employees of Insight.

28. During the course of her work with Insight, the Plaintiff was expressly told that she was not entitled to Overtime Pay because the Plaintiff herself had chosen to have an independent contractor/loan-out relationship rather than an employment relationship.

29. During the course of her work with Insight, the Plaintiff repeatedly inquired about her expected hours of work and her entitlement to Overtime Pay, and was informed that she was not entitled to amounts in addition to her regular rate of pay.

30. The Defendants required the Plaintiff and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay, contrary to their contractual terms.

31. Class Members who were required by the Defendants to submit timesheets were provided with timesheets that had been pre-completed by the Defendants which indicated a certain number of hours worked (e.g. 40 hours per week), regardless of the actual number of hours worked by Class Members on a particular day or during a particular week.

32. Class Members who were misclassified as independent contractors and/or corporate loan-outs were required to submit invoices every two weeks, based on the Defendants' requests that Class Members do so.

33. The Defendants failed to compensate the Plaintiff and the other Class Members for Vacation Pay, contrary to their contractual terms.

34. The Defendants failed to compensate the Plaintiff and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

### **SYSTEMIC CLASSIFICATION AS "INDEPENDENT CONTRACTORS"**

35. The Defendants systemically classified several Class Members as "independent contractors".

36. Insight further required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay, under the misrepresentation from Insight that Class Members were independent contractors.

37. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

38. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. Particulars of such pressure include the fact that Insight Executive Producers would insist upon Class Members meeting the deadlines set by Insight's pre-determined production schedules, regardless of the number of hours of work required in a day or week in order to meet those deadlines.

### **SYSTEMIC BREACH OF THE *ESA***

39. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by:

- (a) failing to ensure that all Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;
- (e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated for Overtime Pay;
- (f) failing to compensate Class Members for Vacation Pay; and,
- (g) failing to compensate Class Members for Public Holiday and Premium Pay.

40. Insight's misclassification of some Class Members as purported independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

41. To the extent that any contracts purport to designate the Class Members as independent contractors or individual corporations and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay or any other minimum requirement of the *ESA*, such contracts and or provisions are void and unenforceable.

#### **SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH**

42. The Defendants have systemically breached and continue to systemically breach the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying many Class Members as independent contractors;
- (b) misrepresenting to many Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and,
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

43. There was no legitimate basis for the Defendants' arbitrary designation of some Class Members as independent contractors and ineligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, which was contrary to the employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

44. Such breaches have been and are ongoing and continuous in respect of the Class Members since at least approximately 2001.

### **SYSTEMIC NEGLIGENCE**

45. Insight owed the Plaintiff and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to perform work on its productions. Insight systemically breached that duty by:

- (a) improperly and arbitrarily misclassifying certain Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and,
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

46. As a result of Insight's negligence in mischaracterizing the relationship between Insight and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors, all of which were reasonably foreseeable to Insight.

### **UNJUST ENRICHMENT**

47. The Defendants have been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

48. The Class Members have suffered a corresponding deprivation, in the form of the Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

49. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

50. The Defendants' unjust enrichment has been continuous and ongoing since at least approximately 2001.

51. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that

some of the Class Members are/were employees of the Defendants and not independent contractors.

52. Furthermore, the Defendants' arbitrary and incorrect misclassification of certain Class Members as independent contractors and exclusion from Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, coupled with the Defendants' requirement that the Class Members work hours in excess the Overtime Threshold, was high handed and callous. The Defendants were in a position of power over vulnerable employees and owed them a duty of good faith, which the Defendants flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of punitive damages.

53. Moreover, the Defendants' arbitrary and incorrect misclassification of the Class members as independent contractors caused the Class Members to erroneously pay the employer component of CPP and/or EI contributions on their income. Such employer contributions ought to have been made by Insight on their behalves, instead the Class Members paid those contributions directly. The Defendants' misclassification thereby caused compensable damages to the Class Members for which sufficient reimbursement should be awarded.

54. The Plaintiff pleads and relies on upon the following statutes and regulations:

- (a) the *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) the *Employment Standards Act, 2000*, S.O. 2000, c. 41, O. Reg. 285/01;  
and,
- (c) the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

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55. The Plaintiff proposes that this action be tried in Toronto.

February 21, 2020

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Defendant

Court File No.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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**STATEMENT OF CLAIM**  
**(PROPOSED CLASS PROCEEDINGS)**

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