

CV 15 527493
Court File No. 00CP.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIA KORDESTANI

Plaintiff

-and-

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants



Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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.

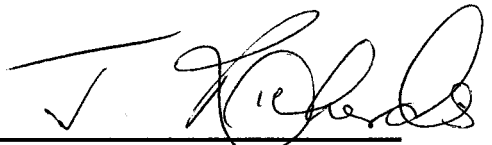
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

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 \$25,000 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 \$400.00 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 May *4th*, 2015

Issued by 
Local registrar

Address of court office 393 University Avenue,
10th Floor,
Toronto, ON

TO: JUST ENERGY CORP.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY GROUP INC.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY ONTARIO L.P.
2630-100 King St. West
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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 (defined below);
- (b) \$100 million 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* (“*ESA*”), as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below);
- (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”);

- (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”); and
 - (x) failing to compensate Class Members for Public Holiday and Premium Pay.
- (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 the Class Members 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 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;
- (j) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- (k) 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;
- (l) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (m) punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as this Honourable Court deems just;
- (n) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;

- (o) the costs of administering the plan of distribution of the recovery in this action;
and
- (p) such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, Kia Kordestani (“Kordestani”), resides in Ontario. He was a “Sales Agent” retained by one or more of the Defendants (“Just Energy”) from June 2012 until June 2013. Kordestani worked as a Sales Agent at the Ottawa sales office of Just Energy.

3. Just Energy is one of the largest independent energy retailers in North America, and serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy products to approximately 2 million homes and businesses. It annually generates revenues of hundreds of millions of dollars.

4. Within Ontario, Just Energy has 12 regional offices and approximately 130 Sales Agents at any given time. Sales Agents are employed by Just Energy to market Just Energy’s fixed price energy contracts and other energy products related to the supply of natural gas and electricity in Ontario. Sales Agents market Just Energy contracts at designated times and at designated locations to residential and commercial customers by traveling door-to-door to the residences of energy consumers and potential customers.

5. The Defendants carry on business in common in respect of the hiring, training, supervision and control of the Class Members. The Defendants are headquartered at the same address and represent to the public and to Sales Agents as a single entity.

6. The marketing activities of Just Energy, and the activities of the Sales Agents, are provincially regulated and therefore governed by the *ESA*.

THE CLASS

7. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following class of persons:

“Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.”

(the “Class” or “Class Members”)

EMPLOYMENT RELATIONSHIP

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Just Energy creates an employment relationship with Just Energy. In particular:

- (a) Just Energy trains all the Class Members in their marketing duties;
- (b) Class Member are told how they can market Just Energy contracts, in the form of sales scripts, booklets, manuals and sales presentations;
- (c) Class Members were told where and when they can market Just Energy contracts;
- (d) Class Members are taken to specific locations and areas in which they could market door-to-door contracts and require permission to change any location;
- (e) Class Members all must wear Just Energy clothing and represent as working for Just Energy;
- (f) Class Members must use the tools of Just Energy in the form of brochures, contracts, informational sheets and mandatory Just Energy branded clothing;
- (g) All prices and Sales Agent commissions are fixed by Just Energy;
- (h) Class Members do not complete contract renewals or the finalization and confirmation of any contract with potential customers, which is all done

directly by Just Energy through a Just Energy call centre after the Class Members' home marketing;

- (i) Just Energy maintains sole discretion whether to accept or reject any potential contract generated by the Class Members;
- (j) All potential contracts generated by Class Members must be reported to Just Energy on a daily basis;
- (k) Only Just Energy handles customer complaints about the Class Members;
- (l) Just Energy assumes responsibility for alleged misconduct of the Class Members while marketing of Just Energy contracts to the public;
- (m) As a result of the work demands and explicit working restrictions placed on Class Members by Just Energy, Class Members cannot work for any other business while also working for Just Energy;
- (n) Class Members cannot sub-contract or independently employ other individuals to market Just Energy contracts on the Class Members' behalf;
- (o) The contracts generated by the Class Members form a substantial amount of Just Energy's revenue; and
- (p) Class Members are paid directly by Just Energy.

ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT

9. 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.

10. Therefore, 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
- (d) with Public Holiday and Premium Pay.

CONTRACTUAL DUTIES OWED TO CLASS MEMBERS

11. As low skilled 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. Just Energy is/was in a position of power and direct control over the Class Members and the Class members were in a vulnerable position *vis-a-vis* the Defendants.

12. The Defendants owe contractual duties to the Class Members, including its 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 and Vacation 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

13. Just Energy owed the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Just Energy retaining the Class Members to perform marketing services on Just Energy's behalf.

14. Just Energy owed the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts.

15. The Defendants' duty of care 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 SALES AGENT AND TREATMENT BY JUST ENERGY

16. From June 2012 until June 2013, Kordestani worked for Just Energy as a Sales Agent out of a sales office located in Ottawa, Ontario.

17. Kordestani's duties and responsibilities as a Sales Agent included:

- (a) attending the Just Energy regional sales office between 9:00 a.m. and 9:30 a.m. to start work;
- (b) collecting blank contracts and promotional material at the regional sales office;

- (c) from approximately 9:30 a.m. to 12:00 p.m. each day, attend a meeting with other Sales Agents and the Just Energy Regional Director at the regional sales office to review sales statistics, sales scripts, sales tactics, sales role playing, marketing locations and sales targets for the day;
- (d) being assigned to a crew coordinator by the Regional Director and taken by the crew coordinator, by van, to a location with other Sales Agents to begin door-to-door marketing of Just Energy contracts;
- (e) between approximately 1:00 p.m. to 9:00 p.m., market Just Energy contracts door-to-door in a designated area using materials provided by Just Energy;
- (f) report all potential contracts to the regional sales office and Regional Director;
- (g) obey the direction of the Regional Director if directed to change marketing locations and report to the Regional Director on present locations; and
- (h) conclude the day at 9:00 p.m. by reporting to the assigned crew coordinator, who picked him up from his assigned location and dropped him back off at the regional sales office.

18. The Defendants required Kordestani to work between 60-72 hours per week without receiving the Minimum Wage, contrary to his contractual terms.

19. Kordestani relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that he was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, Kordestani relied on the Defendants to properly classify him regarding his status as an employee and his entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay and was misled by the Defendants that he was not an employee of the Defendants.

20. Kordestani did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the

Defendants had continually misrepresented to him his actual eligibility and entitlement to such pay.

21. Kordestani's duties are consistent with the duties of all Sales Agents in the Class and the operations of Just Energy and the controls imposed by Just Energy on the Sales Agents.

22. The Defendants required explicitly, and/or implicitly, that Kordestani and the other Class Members work exclusively for Just Energy.

23. At all material times, Kordestani and the other Class Members were explicitly directed how, where and when they could perform marketing duties for Just Energy.

24. The Defendants required that all Sales Agents attend at the regional sales office to begin work between 9:00 a.m. and 9:30 a.m. and perform marketing between 1:00 p.m. to 9:00 p.m., 5-6 days per week.

25. The Defendants required that Sales Agents travel to other cities during "Push Weeks" to market Just Energy contracts in new locations and that Sales Agents cover all costs related to travel, food and accommodation during those "Push Weeks".

26. As a Sales Agent, Kordestani and all other Class Members worked between 60-72 hours per week including weekends. The Defendants were aware of, and encouraged Kordestani, and all other Class Members, to work those hours in excess of the Overtime Threshold, which were necessary in order to comply with the enforced hours and structure of a Sales Agent workday. The Defendants required and/or permitted Kordestani, and the other Class Members, to work hours in excess of the Overtime Threshold and failed or refused to provide them with Overtime Pay.

27. At all material times, Kordestani and the other Class Members were explicitly and incorrectly informed they were not employees of Just Energy.

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

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

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

SYSTEMIC CLASSIFICATION AS “INDEPENDENT CONTRACTORS”

31. The Defendants systemically classified all Sales Agents as “independent contractors” and 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 Just Energy that Sales Agents were independent contractors.

32. 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.

33. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. If Class Members did not work the overtime as required to complete their employment responsibilities, such Class Members were terminated because the Defendants would “cancel” their “independent contractor” agreement.

SYSTEMIC BREACH OF THE *ESA*

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

- (a) failing to ensure that 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 Member for Public Holiday and Premium Pay.

35. Just Energy's misclassification of Sales Agents 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.

36. To the extent that any contracts purport to designate the Class Members as independent contractors 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

37. The Defendant systemically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying the 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.

38. There was no legitimate basis for the Defendants' arbitrary designation of the 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.

39. Such breaches are ongoing and continuous in respect of the Class Members since at least 2012.

SYSTEMIC NEGLIGENCE

40. Just Energy owed Kordestani and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts. Just Energy systemically breached that duty by:

- (a) improperly and arbitrarily misclassifying the 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.

41. As a result of Just Energy's negligence in mischaracterizing the relationship between Just Energy 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 Just Energy.

UNJUST ENRICHMENT

42. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

43. 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.

44. 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.

45. The Defendants' unjust enrichment has been continuous and ongoing since at least 2013.

DAMAGES

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

47. Furthermore, the Defendants' arbitrary and incorrect misclassification of the 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 low skilled and 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.

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

- (a) *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

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

May 4, 2015

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Lawyers for the Plaintiff

**KIA KORDESTANI
PLAINTIFF**

and

**JUST ENERGY GROUP INC., ET AL
DEFENDANTS**

Court File No:

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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