

AMENDED THIS Jan 20/21 PURSUANT TO  
MODIFIÉ CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ( A )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED/FAIT LE \_\_\_\_\_

Court File No.: CV-20-00647858-00CP

Lynetta Aversa  
REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**JARED LE FEUVRE**

Plaintiff

- and -

**ENTERPRISE RENT-A-CAR CANADA COMPANY**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS 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.

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: September 17, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of 330 University Avenue  
court office Toronto, ON M5G 1R7

TO: Enterprise Rent-A-Car Canada Company  
70 Milner Avenue  
Scarborough, ON M1B 6B6

## CLAIM

### I. Definitions

1. In this Statement of Claim the capitalized terms have the following meanings:
  - (a) "**Applicable Provincial Employment Standards Legislation**" means the legislation applicable in a province with respect to the relationship between an employer and an employee, including the *Employment Standards Act*, R.S.B.C. 1996, c. 113; *Employment Standards Code*, R.S.A. 2000, c. E-9; *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1; *The Employment Standards Code*, C.C.S.M. c. E110; *Employment Standards Act, 2000*, S.O. 2000, c. 41; *Labour Standards Code*, R.S.N.S. 1989, c. 246; and the *Employment Standards Act*, R.S.P.E.I. 1988, c E-6.2, as well as any regulations enacted pursuant to these statutes;
  - (b) "**Class**" and "**Class Members**" means all persons who held or hold the position of Branch Rental Manager, Assistant Branch Rental Manager, Station Manager, or an equivalent position at Enterprise Rent-A-Car, National Car Rental, and Alamo Rent-A-Car branches operated by Enterprise Rent-A-Car Canada Company in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Prince Edward Island between January 1, 2010 and the present;
  - (c) "**CJA**" means the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (d) "**CPA**" means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
  - (e) "**Defendant**" means Enterprise Rent-A-Car Canada Company;
  - (f) "**Managerial Exemption**" refers to the provisions of the Applicable Provincial Employment Standards Legislation which exempt managerial employees from entitlement to Overtime Pay;

- (g) **"Non-Exempt Employee"** means an employee of the Defendant who is paid on an hourly basis and is classified by the Defendant as non-exempt from entitlement to Overtime Pay, including, *inter alia*, Senior Account Specialists, Management Trainees, and Management Assistants;
- (h) **"Overtime Pay"** means the premium overtime rate established in the Applicable Provincial Employment Standards Legislation payable for all hours worked above the Overtime Threshold;
- (i) **"Overtime Threshold"** means the threshold weekly number of hours after which an employee is entitled to Overtime Pay, as defined in the Applicable Provincial Employment Standards Legislation;

## II. The Claim

- 2. The plaintiff, Jared Le Feuvre (the "Plaintiff") claims:
  - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class;
  - (b) damages for the Class in an amount to be determined by the Court;
  - (c) a declaration that the provisions of the Applicable Provincial Employment Standards Legislation and their regulations, as applicable, are express or implied terms of the contracts of employment of the Class Members;
  - (d) a declaration that the Defendant violated the terms of the Applicable Provincial Employment Standards Legislation, breached the Class Members' contracts of employment and the duty of good faith owed to the Class Members, and/or breached the common law duty of care owed to Class Members by:
    - (i) failing to ensure that Class Members were properly classified as non-exempt from entitlement to Overtime Pay;

- (ii) failing to advise Class Members of their entitlement to Overtime Pay for hours worked in excess of the Overtime Threshold;
  - (iii) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold;
  - (iv) failing to provide Class Members Overtime Pay for all hours worked in excess of the Overtime Threshold;
  - (v) failing to ensure that Class Members' hours of work were monitored and accurately recorded;
- (e) an interlocutory and a final mandatory order directing the Defendant to comply with Applicable Provincial Employment Standards Legislation and/or the contracts of employment with the Class Members, in particular, to:
- (i) ensure that Class Members are properly classified as non-exempt from entitlement to Overtime Pay;
  - (ii) advise Class Members of their entitlement to Overtime Pay for hours worked in excess of the Overtime Threshold;
  - (iii) provide Class Members Overtime Pay for all hours worked in excess of the Overtime Threshold;
  - (iv) ensure that Class Members' hours of work are monitored and accurately recorded;
- (f) a declaration that the provisions of any applicable policy which may purport to exclude the Class Members from eligibility for Overtime Pay are void and unenforceable;
- (g) a declaration that the Defendant was unjustly enriched, to the deprivation of the Class Members, in that they received the value of the premium pay

owed to Class Members for the overtime hours worked by the Class Members, without a juristic reason, and an order requiring the Defendant to release to the Class Members all amounts withheld by it in respect of such unpaid overtime hours;

- (h) an order directing the Defendant to preserve and disclose to the Plaintiff all records, in any form, relating to the hours of work performed by the Class Members in excess of the Overtime Threshold;
- (i) an order pursuant to s. 23 of the *CPA* admitting into evidence statistical information, including statistical information concerning or relating to overtime hours of work performed by members of the Class;
- (j) an order pursuant to s. 24 of *CPA* directing an aggregate assessment of damages;
- (k) punitive and/or exemplary damages in an amount that this Honourable Court deems just;
- (l) an order directing a reference or giving other such directions as may be necessary to determine issues not determined at the trial of the common issues;
- (m) pre-judgment and post-judgement interest pursuant to the *CJA*;
- (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 plus applicable taxes; and
- (p) such further and other relief as this Honourable Court may deem just.

### **III. Parties**

3. The Plaintiff, Jared Le Feuvre (“Mr. Le Feuvre”), resides in Thunder Bay, Ontario. He was employed at Enterprise Rent-A-Car Canada Company (“the Defendant”) from March 2016 to December 11, 2020. From July 2017 to December 11, 2020, the Plaintiff was employed as either an Assistant Branch Rental Manager or a Branch Rental Manager. Mr. Le Feuvre worked at various Enterprise Rent-A-Car branches in northeastern Ontario, including at the branches located in Timmins, Thunder Bay, Sault Ste. Marie, and Sudbury.

4. The Defendant, Enterprise Rent-A-Car Canada Company, is a company incorporated pursuant to the laws of the province of Nova Scotia (the “Defendant”).

5. The Defendant is the Canadian arm of Enterprise Holdings, Inc., the world's largest car rental provider. Enterprise Holdings, Inc. operates in 100 countries and territories through over 10,000 branches. It owns and operates a fleet of more than 1.5 million vehicles.

6. The Defendant owns and operates a network of car rental branches across Canada under the Enterprise Rent-A-Car, National Car Rental, and Alamo Rent-A-Car brands. There are approximately 750 branches operating under these brands across Canada.

7. The Defendant is the legal employer of the Class Members.

8. The Defendant is a provincially regulated employer. Its employment relationships with the Class Members are governed by the Applicable Provincial Employment Standards Legislation and the contracts with the Class Members.

### **IV. The Class**

9. The Plaintiff brings this action pursuant to the *CPA* on his own behalf and on behalf of the following class of persons:

"All persons who held or hold the position of Branch Rental Manager, Assistant Branch Rental Manager, Station Manager, or an equivalent position to any of the

foregoing at Enterprise Rent-A-Car, National Car Rental, and Alamo Rent-A-Car branches operated by the Enterprise Rent-A-Car Canada Company in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Prince Edward Island between January 1, 2010 and the present."

10. The Class Members perform common functions across these provinces and across the three brands operated by the Defendant. The character of the Class Members' positions, and the functions that they perform, have remained common over the course of the class period.

11. The Defendant has established and maintains a common system of employment with respect to the Class Members. The Class Members are required to complete a common training program in order to qualify for their positions. They have substantially similar contracts of employment with the Defendant, and are bound, in common, to comply with corporation-wide personnel and other policies.

12. The Class Members have been misclassified in common as being managerial or supervisory employees. The Defendant's misclassification of the Class Members has had the result of excluding the Class Members, in common, from Overtime Pay.

**V. The Defendant's Misclassification of the Class Members' Positions**

13. The Class Members each held or currently hold the position of Branch Rental Manager, Station Manager, Assistant Branch Rental Manager, or an equivalent position at Enterprise Rent-A-Car, National Car Rental, and Alamo Rent-A-Car branches operated by the Defendant.

14. The Class Members are not paid on an hourly basis. The Class Members' positions are salaried pursuant to their contracts of employment with the Defendant. The Class Members are also paid commissions which are calculated as a percentage of the monthly profits earned by their branch.



15. As a matter of common policy and practice across the branch network, the Defendant has misclassified the Class Members' positions as being ineligible for Overtime Pay.

16. Under the Applicable Provincial Employment Standards Legislation, the Class Members' positions are in substance non-managerial and/or non-supervisory, and so are not subject to any Managerial Exemption. Class Members are given a very limited scope of authority and discretion, and the common functions performed by the Class Members are of a non-managerial and non-supervisory character.

17. On a regular and non-exceptional basis, Class Members perform non-supervisory and non-managerial tasks alongside the Non-Exempt Employees they purportedly supervise. The tasks performed by Class Members include:

- (a) cleaning vehicles (exterior and interior);
- (b) booking customer reservations and checking customers into vehicles;
- (c) calling customers to follow up on their service experience;
- (d) organizing the branch's fleet;
- (e) providing customer service and processing payments for customers via payment machines;
- (f) answering customer phone calls;
- (g) processing rental returns;
- (h) selling protection products (i.e. car insurance) or enticing customers to upgrade to more expensive car rentals;
- (i) picking up and dropping off customers;
- (j) diagnosing and driving vehicles to shops for servicing (flat tires, recalls or snow tire changes);

- (k) operating the front counter and explaining services and products to customers; and
- (l) cleaning/organizing the office and parking lot areas and ensuring that adequate cleaning supplies are available.

18. Class Members spend the vast majority of their working hours on these non-managerial and/or non-supervisory tasks.

**VI. Class Members Work Hours in Excess of the Overtime Thresholds**

19. As a matter of common policy and practice across the branch network, the Defendant requires and/or permits Class Members to work hours well in excess of the applicable Overtime Thresholds.

20. Regardless of branch location, size or individual preference, Class Members are typically and regularly scheduled to work at least 52 hours per week. Class Members are usually scheduled to work from branch opening to branch closing from Monday to Friday. Many Class Members are also scheduled to work on Saturdays, when most of the Defendant's branches open for approximately four hours and in some cases Sundays as well, either for branches which are open or in order to prepare the branch for the coming week.

21. It is common practice for most branches to operate on Saturdays with only one Class Member and another Non-Exempt Employee. Class Members regularly and routinely operate their designated branch alone on Saturdays.

22. In most branches, there is typically only one Branch Rental Manager or Station Manager assigned to a particular branch at any given time, and one Assistant Branch Rental Manager or equivalent. Larger branches may have two or more Assistant Branch Rental Managers or equivalent. Depending on the size and location of the branch, there may be 2-3 Non-Exempt Employees working at any given time.

23. In practice, Class Members are expected to work the number of hours that are required for each branch to operate, regardless of how many overtime hours this necessitates.

24. The number and nature of the responsibilities given to the Class Members makes it generally impossible for them to complete all of their duties within the hours of their scheduled shifts. Accordingly, Class Members usually arrive earlier than official branch opening times to prepare the branch for a day of business, and stay later than the official branch closing times in order to complete closing tasks and prepare for the next day.

25. The Defendant's high turn-over rate respecting Non-Exempt Employees results in most branches being severely understaffed and operated by Class Members with little support. Class Members are expected to take on the job duties of Non-Exempt Employees who call in sick or fail to report for their scheduled shifts, or who resign from their employment on account of the difficult working conditions, which are regular occurrences.

26. The Area Managers, who are each responsible for several branches and to whom the Class Members report, regularly and strictly monitor the hours worked by Non-Exempt Employees and the personnel costs incurred by each branch. Area Managers direct Class Members to minimize personnel costs by cutting the scheduled hours worked by Non-Exempt Employees and preventing Non-Exempt Employees from working overtime hours. Area Managers often reprimand Class Members for not preventing Non-Exempt Employees from working hours above the Overtime Threshold. Class Members are advised that their commissions will be jeopardized if they fail to carry out Area Managers' instructions to minimize personnel costs.

27. The cost-cutting pressures imposed on Class Members by Area Managers have the consequence of shifting the burden of completing the work necessary to operate branches, including the overtime hours, onto the Class Members.

28. On account of the foregoing, Class Members regularly work between 55-80 hours per week.

29. Despite its statutory, contractual, and/or common law duties to record the overtime hours worked by eligible employees, the Defendant has failed to maintain procedures through which the overtime hours worked by Class Members are recorded.

**VII. Misclassification and Denial of Overtime Pay to the Plaintiff**

30. During his employment as an Assistant Branch Manager and Branch Rental Manager with the Defendant, Mr. Le Feuvre was misclassified as subject to the Managerial Exemption and was denied Overtime Pay.

31. Contrary to his classification as a managerial employee, Mr. Le Feuvre exercised very limited authority and discretion. Managerial decisions, such as the hiring and termination of branch staff, were made by Area Managers. These Area Managers were also responsible for strategic decision-making, such as reducing or increasing rental rates in response to decreased or increased customer demand. Mr. Le Feuvre had no discretion with respect to strategic decisions of this nature.

32. Furthermore, Mr. Le Feuvre had no authority to make substantial expenditures. Even for branch-critical expenditures, such as the hiring of a tradesperson to fix serious plumbing issues in the branch office, Mr. Le Feuvre was required to submit the request through a centralized corporate purchasing program.

33. The vast majority of Mr. Le Feuvre's work consisted of non-managerial and non-supervisory tasks. Nearly every day, Mr. Le Feuvre cleaned cars that had been returned to the branch, checked the mileage of these cars, and completed rental contracts with customers. On a regular and non-exceptional basis, Mr. Le Feuvre was required to fill in for Non-Exempt Employees who failed to appear for their shifts, called in sick, or were otherwise unavailable for work.

34. Mr. Le Feuvre regularly worked hours well above the Overtime Threshold. In order to complete all of the tasks necessary for the operation of his branches, Mr. Le Feuvre typically worked 50-60 hours per week. In the summer of 2020, Mr. Le Feuvre was required to work approximately 70 hours per week, every week, without a single day off.

**VIII. Systemic Breach of Statutory and Contractual Duties**

35. The Applicable Provincial Employment Standards Legislation provides that employers are to compensate employees with Overtime Pay for all hours worked in excess of the Overtime Threshold, unless an exemption, such as a Managerial Exemption, properly applies.

36. As an employer regulated by the Applicable Provincial Employment Standards Legislation, the Defendant is required to compensate all employees not subject to any exemption with Overtime Pay for all hours worked in excess of the applicable Overtime Threshold.

37. Further, the Applicable Provincial Employment Standards Legislation requires employers to accurately record the hours worked by non-exempt employees so as to ensure that employees can be properly compensated for all hours worked.

38. The minimum standards set out in the Applicable Provincial Employment Standards Legislation are incorporated into the contracts of employment between the Defendant and the Class Members as implied terms.

39. The Defendant and the Class Members are unequal contracting parties. The Defendant is in a position of power over the Class Members and directly controls the conditions of their employment. As such, Class Members are in a vulnerable position *vis-a-vis* the Defendant. The Class Members have relied on the Defendant to advise them properly regarding their eligibility for Overtime Pay and to fulfill its statutory and contractual responsibilities, in good faith, with respect to Overtime Pay.

40. As described above, the Defendant has systemically misclassified the Class Members as exempt from Overtime Pay. The Managerial Exemptions in the Applicable Provincial Employment Standards Legislation do not apply to the Class Members.

41. The Defendant has systemically breached the statutory and/or contractual duties it owes to the Class Members, including the duty of good faith, by:

- (a) misclassifying the Class Members as subject to Managerial Exemptions;

- (b) misrepresenting to the Class Members that they are subject to Managerial Exemptions;
- (c) failing to advise Class Members of their entitlement to Overtime Pay for all hours worked in excess of the applicable Overtime Threshold;
- (d) failing to ensure that Class Members' hours of work are monitored and accurately recorded;
- (e) requiring and/or permitting the Class Members to work hours in excess of the applicable Overtime Threshold; and
- (f) failing to compensate Class Members with Overtime Pay for all hours worked in excess of the applicable Overtime Threshold.

42. To the extent that any contracts of employment or corporate policies purport to classify the Class members as subject to a Managerial Exemption and exclude the Class Members from eligibility for Overtime Pay, such contracts and corporate policies are void and unenforceable.

**IX. Systemic Breach of the Common Law Duty of Care Owed to Class Members**

43. The Defendant owes the Class Members a common law duty of care based upon the special relationship that developed between them as a consequence of the Defendant's retaining the Class Members as employees.

44. The Defendant's common law duty of care requires the Defendant to:

- (a) ensure that Class Members are properly classified as non-managerial and/or non-supervisory employees;
- (b) ensure that Class Members are advised of their eligibility for Overtime Pay;
- (c) ensure that the hours worked by Class Members are accurately recorded; and

- (d) ensure that Class Members are appropriately compensated with Overtime Pay for all hours worked in excess of the applicable Overtime Threshold.

45. By the acts and omissions listed at paragraph 41, *supra*, the Defendant has systemically breached the common law duty of care owed to Class Members.

**X. Unjust Enrichment**

46. The Defendant has been unjustly enriched by its retention of funds that it was legally obligated to pay to the Class Members.

47. The Class Members have suffered a corresponding deprivation in their being denied payment of the Overtime Pay to which they are entitled under the Applicable Provincial Employment Standards Legislation.

48. There is no juristic reason for the benefit to the Defendant and corresponding deprivation of the Class Members. The Defendant's retention of Overtime Pay owed to the Class Members is a violation of the Applicable Provincial Employment Standards Legislation and/or its contracts of employment with the Class Members, as well as of its common law duty of care.

49. The Defendant has been unjustly enriched since at least January 1, 2010.

**XI. Damages**

50. As a result of the Defendant's breaches of its statutory and contractual duties, negligence, and/or unjust enrichment, the Class Members have been denied appropriate compensation for the hours they worked in excess of the Overtime Threshold. The Defendant is liable to the Class Members for Overtime Pay owing to the Class Members.

51. The Class Members are entitled to damages corresponding with the unpaid Overtime Pay owed by the Defendant to the Class Members.

52. The Defendant has misclassified the Class Members as being exempt from the overtime provisions of the Applicable Provincial Employment Standards Legislation, but has required and/or permitted the Class Members to work substantial numbers of hours

above the Overtime Threshold. Further, the Defendant has misrepresented the legality of this classification to the Class Members.

53. This conduct is high handed and callous. The Defendant is in a position of power over the Class Members, and owes them duty of good faith. The Defendant flagrantly breached this duty so as to increase its own profits at the expense of the Class Members. Such conduct warrants an award of punitive and/or exemplary damages.

**XII. Real and Substantial Connection with Ontario**

54. This action has a real and substantial connection with Ontario because, among other things,

- (a) the Plaintiff is resident in Ontario;
- (b) the Defendant carries on business in Ontario; and
- (c) Class Members resident in Ontario have suffered losses due to the Defendant's misclassification of their positions.

**XIII. Relevant Legislation**

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

- (a) *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
- (b) *Employment Standards Act*, R.S.B.C. 1996, c. 113.
- (c) *Employment Standards Regulation*, B.C. Reg. 396/95.
- (d) *Employment Standards Code*, R.S.A. 2000, c. E-9.
- (e) *Employment Standards Regulation*, Alta. Reg. 14/1997.
- (f) *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1.
- (g) *The Employment Standards Regulations*, being Chapter S-15.1 Reg. 5.
- (h) *The Employment Standards Code*, C.C.S.M. c. E110.



- (i) *Employment Standards Act, 2000*, S.O. 2000, c. 41.
- (j) *Exemptions, Special Rules and Establishment of Minimum Wage*, O. Reg. 285/01.
- (k) *Labour Standards Code*, R.S.N.S. 1989, c. 246.
- (l) *General Labour Standards Code Regulations, made under subsection 4(2) and Section 7 of the Labour Standards Code*, R.S.N.S. 1989, c. 246.
- (m) *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2.

**XIV. Place of Trial**

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

September 17, 2020

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED  
STATEMENT OF CLAIM**

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