



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 12-Mar-2021
Délivré par voie électronique :
Toronto

MAXIM GRIGORYEV

Plaintiff

- and -

RUSSELL SECURITY SERVICES INC.

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDING ACT, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$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:

Issued by _____
Local registrar

Address of court office 330 University Ave.
Toronto ON M5G 1R7

TO: RUSSELL SECURITY SERVICES INC.
30 Arrow Road
Toronto, ON M9M 2L7

CLAIM

1. The Plaintiff, Maxim Grigoryev (the “Plaintiff”), claims:
 - (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class (as described below);
 - (b) \$5 million in general damages for the Class, or such other sum as this Honourable Court deems just;
 - (c) a Declaration that it is an implied or express term of all contracts of employment between the Class Members and the Defendant that the Class Members are or were to be paid wages and vacation pay in accordance with the *Employment Standards Act, 2000* (“ESA”);
 - (d) a Declaration that the Defendant breached the Class Members’ contracts of employment and the duty of good faith owed to the Class Members by:
 - (i) failing to monitor, record and maintain accurate records of all actual hours worked by the Class Members;
 - (ii) failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for, among other things, recording all hours worked by the Class Members and ensuring that the Class Members are compensated for all hours worked;
 - (iii) creating and/or permitting and/or suffering a working environment and circumstances in which the Class Members are: (i) required and/or permitted and/or suffered to work hours in excess of those scheduled in

order to carry out the duties assigned to them; (ii) dissuaded from reporting hours worked in excess of those scheduled; and (iii) dissuaded from claiming or obtaining compensation for their unpaid hours worked; and,

- (iv) requiring and/or permitting and/or suffering the Class Members to work hours in excess of those scheduled, but failing to appropriately compensate the Class Members as required for all hours worked;
- (e) a Declaration that the Defendant was unjustly enriched, to the deprivation of the Class Members, in that it received the value of the unpaid hours worked by the Class Members, without providing the appropriate compensation, with no lawful basis, and an order requiring the Defendant to disgorge to the Class all amounts withheld by it in respect of such unpaid hours;
- (f) a Declaration that the Defendant is negligent in the performance of the contracts of employment with the Class Members by, among other things:
 - (i) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
 - (ii) failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly controlled and applied, for recording all hours worked by the Class Members and ensuring that the Class Members are appropriately compensated for all hours worked;

- (iii) creating and/or permitting and/or suffering a working environment and circumstances in which the Class Members are: (i) required and/or permitted and/or suffered to work hours in excess of those scheduled, in order to carry out the duties assigned to them; (ii) dissuaded from reporting hours worked in excess of those scheduled; and (iii) dissuaded from claiming or obtaining compensation for their unpaid hours worked; and,
- (iv) requiring and/or permitting and/or suffering the Class Members to work hours in excess of those scheduled but failing to appropriately compensate the Class Members as required for all hours worked;
- (g) an Order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information concerning or relating to hours of work performed by members of the Class, and an order directing the Defendant to preserve and disclose to the Plaintiff all records, in any form, relating to hours worked by members of the Class;
- (h) an Order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- (i) 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;
- (j) pre-judgment and post-judgement interest pursuant to the *Courts of Justice Act*;

- (k) punitive, aggravated and exemplary damages in the amount of \$2 million, or such other amount as this Honourable Court deems just;
- (l) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (m) the costs of administering the plan of distribution of the recovery in this action in the sum of \$1 million or such other sum as this Honourable Court deems appropriate; and
- (n) such further and other relief as this Honourable Court may deem just.

The Defendant

2. The Defendant, Russell Security Services Inc. (“Russell Security”), provides private security services across Ontario with offices in Toronto and Barrie and satellite locations in Ottawa, North Bay, Whitby, Guelph and London.
3. Russell Security employs approximately 550 security guards in the Province of Ontario.

The Plaintiff and the Class

4. The Plaintiff lives in the City of Toronto and was employed by Russell Security as a security guard from on or around February 2019 to on or around June 2020. For the majority of his employment with Russell Security, the Plaintiff worked under a Collective Agreement between Russell Security and the United Food and Commercial Workers, Local 333 (the “Collective Agreement”) at various LCBO locations. This work is not covered by this claim. The Plaintiff worked an additional shift for Russell Security

at the Art Gallery of Ontario which was not subject to the terms and conditions of the Collective Agreement and is subject to this claim.

5. 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:

All security guards employed by Russell Security in the Province of Ontario, for the period from January 1, 2017 to the date of certification, excluding any shifts worked at sites that were subject to the terms of a Collective Agreement.

(together referred to as the “Class Members” or the “Class”).

6. The Class Members’ employment contracts are subject to the *ESA*, and the terms of the *ESA* are incorporated into the contracts of employment as a matter of fact and/or law.
7. The Class Members plead that as a matter of law, the Defendant owes them a duty of good faith that was and is incorporated into their contracts of employment.
8. At all material times, the policies and practices of Russell Security that affect the conditions of the Class Members’ employment were materially uniform and consistent across Russell Security’s operations.
9. At all material times, the duties performed by and associated with the Class Members’ job classification were materially uniform and consistent across Russell Security’s operations.
10. The Class Members are employed pursuant to standard written employment contracts.

11. The Human Resources policies and practices applicable to the Class Members are incorporated into a standard Security Guard Handbook Company Policy Manual (the “Handbook”) which is dated January 2017.

Off-The-Clock Pre-Shift Work

12. The Class Members are required to be at their jobsite, in full uniform and prepared for duty a minimum of fifteen minutes prior to the start of their shift; however, the Defendant does not compensate the Class Members for this work.
13. This requirement is explicitly set out in the Handbook, which states, *inter alia*, as follows:

5. SHIFT PROCEDURES

5.1 Reporting For Duty

All employees should report for duty 15 minutes prior to shift start, in full uniform, to allow for briefing and equipment transfer. It is important the guard is ready for action at the start time of their shift.

All employees must call on duty to either Russell Security or their allocated site command centre in accordance with the post orders.

The phone number to report on duty at RSSI is:
(705) 721-1480, extension 30 or 1-800-418-9537

14. During these minimum of 15 minutes, the Class Members are required to have a briefing conversation with their dispatcher, supervisor or the guard being relieved, and to prepare and/or review memo book entries. Class Members may also be required to review incident reports, security camera footage, or other materials as appropriate in the circumstances. Class Members arriving for their shift are also required during this time to sign for equipment such as keys, a communication device, or other items being used by the employee being relieved. If the Class Member is working alone at a site assignment,

the Class Member must also contact dispatch to call on duty 15 minutes prior to the start of their scheduled shift. The Handbook required Class Members to be at their post “ready for action” at the “start time of their shift.” The Class Members are at the Defendant’s jobsites during this minimum of 15 minutes under the Defendant’s directions performing pre-shift duties and/or holding themselves out to work, and are required by the *ESA* to be compensated for this time.

15. While they are required to complete a minimum of 15 minutes of work before their “official” shift, the Class Members are not compensated for such time. In effect, there is an “unofficial” shift start time that is a minimum of 15 minutes earlier than the “official” shift start time, during which work is required, permitted or suffered to be performed, for which Russell Security has a policy and practice of not providing any compensation.
16. Russell Security’s failure to compensate the Class Members for this work is a violation of section 11(1) of the *ESA* and section 1(1)(a) of *O. Reg. 285/01*, which stipulates that work shall be deemed to be performed for an employer where “permitted or suffered to be done by the employer” or “in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance”.

Breach of *ESA*

17. Russell Security has systemically breached the provisions of the *ESA*, which are incorporated into the contracts of employment of the Class Members, with respect to all Class Members by:

- (a) Failing to ensure that the Class Members' actual hours of work are monitored and accurately recorded; and,
- (b) Requiring and/or permitting and/or suffering the Class Members to work hours in excess of those scheduled or stipulated in their contracts of employment, but failing to compensate the Class Members as required for all hours worked.

Breach of Contract/Duty of Good Faith

- 18. Russell Security has breached the express or implied terms of its contracts of employment with the Class Members, as set out above, including that it compensate for all hours worked.
- 19. In the alternative, Russell Security has breached an implied term of the contracts of employment with the Class Members by failing to comply with its obligations under the *ESA* to record and pay for all hours worked.
- 20. The Class Members are in a position of vulnerability in relation to Russell Security. As a result and otherwise, Russell Security owed a duty to the Class Members to act in good faith, which includes a duty to honour its statutory and contractual obligations to them.
- 21. Russell Security has breached its duty of good faith by, among other things:
 - (a) Failing to ensure that the Class Members' hours of work are monitored and accurately recorded;

- (b) Requiring and/or permitting and/or suffering the Class Members to work hours in excess of those scheduled, but failing to compensate the Class Members as required for all hours worked;
- (c) Failing to advise the Class Members of their right to recover for such unpaid hours and, in particular, of the express or implied terms of their contracts under the *ESA*;
- (d) Retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;
- (e) Failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly control and applied, for, among other things:
 - (i) Recording all hours worked by the Class Members; and,
 - (ii) Ensuring that the Class Members are compensated for all hours worked.

Unjust Enrichment

22. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Plaintiff and the other members of the Class. The precise value of such unpaid hours of work is not known to the Plaintiff but is within, or should be within, the exclusive knowledge of the Defendant as the Defendant is required under the *ESA* to accurately record the hours worked by the Class Members.

23. The Plaintiff and the other members of the Class have suffered a deprivation, in the form of wages corresponding to the unpaid hours that they have worked.
24. There is no juristic reason why the Defendant should be permitted to retain the benefit of the unpaid hours worked by the Plaintiff and the other members of the class. The Handbook is unlawful and does not provide a juristic reason.

Negligence

25. Russell Security owed a duty of care to the Plaintiff and the other Class Members to ensure that they are properly compensated for all hours worked at the appropriate rates. Russell Security has breached this duty by, among other things:
 - (a) Failing to ensure that the Class Members' hours of work are monitored and accurately recorded;
 - (b) Requiring and/or permitting and/or suffering the Class Members to work hours in excess of those scheduled but failing to compensate the Class Members as required for all hours worked;
 - (c) Failing to advise the Class Members of their right to recover for such unpaid hours and, in particular, of the express or implied terms of their contracts under the *ESA*;
 - (d) Retaining for itself the benefit of amounts due to the Class Members in respect of such unpaid hours;

- (e) Failing to implement and maintain an effective, reasonable and accurate Class-wide system or procedure, which is centrally and uniformly control and applied, for, among other things:
 - (i) Recording all hours worked by the Class Members;
 - (ii) Ensuring that the Class Members are compensated at the appropriate rates for all hours worked;
- (f) Failing to maintain accurate records of all actual hours worked by the Class Members; and,
- (g) Such further particulars as known to the Defendant will be provided at discovery and prior to the trial herein.

Preferable Procedure

- 26. A class proceeding is preferable to a multitude of individual complaints to the Employment Standards Branch or individual claims in Small Claims Court.
- 27. A class proceeding will advance the three goals of the *Class Proceedings Act, 1992*, namely, judicial economy, access to justice, and behaviour modification.
- 28. A class proceeding will advance the goal of judicial economy by preventing the need for thousands of individual employment standards complaints, and potential appeals thereof.
- 29. A class proceeding will advance the goal of access to justice by providing a remedy for Class Members, who, as non-unionized employees, face well-documented systemic

barriers to enforcing their rights under the *ESA* and who have a reasonably held fear that they may suffer reprisal action if they filed *ESA* complaints.

30. Finally, a class proceeding will promote behaviour modification by addressing the systemic policies and practices of Russell Security.
31. Accordingly, a class proceeding is the preferable procedure for addressing the Plaintiff's claims.

Aggravated, Exemplary, and Punitive Damages

32. The Plaintiff pleads that the actions, conduct and omissions of Russell Security as aforesaid are unlawful, high-handed and carried out in bad faith. Moreover, they are carried out to enrich Russell Security and with a complete disregard for the rights and interests of the Class Members, who were and are to the knowledge of Russell Security vulnerable to the actions, decisions and power of Russell Security.
33. The actions, conduct and omissions as aforesaid warrant awards of aggravated, exemplary and punitive damages.

The Plaintiff proposes that this action be tried in Toronto.

March __, 2021

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MAXIM GRIGORYEV
Plaintiff and
RUSSELL SECURITY SERVICES INC.
Defendant

Court File No.: CV-21-

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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