

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIONNA HORNER

Plaintiff/Moving Party

-and-

PRIMARY RESPONSE INC. and GARDA CANADA SECURITY CORPORATION

Defendants/Responding Parties

Proceeding under the Class Proceedings Act, 1992

**MOTION RECORD OF THE DEFENDANT, PRIMARY RESPONSE INC.
(CERTIFICATION)
(Returnable March 11 and 12, 2020)**

August 15, 2019

BAKER & MCKENZIE LLP

Barristers and Solicitors
181 Bay Street, Suite 2100
Brookfield Place
Toronto, ON M5J 2T3

George Avraam (LSO #41616S)

Tel: 416-865-6935

Email: george.avraam@bakermckenzie.com

Jennifer R. Bernardo (LSO #68668C)

Tel: 416-865-6971

Email: jennifer.bernardo@bakermckenzie.com

Fax: 416-863-6275

Lawyers for the Defendant, Primary Response
Inc.

TO: GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Charles Sinclair (LSO #43178A)
Tel: 416-979-4234
Email: csinclair@goldblattpartners.com

Christine Davies (LSO #57309F)
Tel: 416-979-4055
Email: cdavies@goldblattpartners.com

Joshua Mandryk (LSO #68823D)
Tel: 416-979-6970
Email: jmandryk@goldblattpartners.com

Fax: 416-591-7333

Lawyers for the Plaintiff

AND TO: NORTON ROSE FULBRIGHT CANADA LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800
Toronto, ON M5J 2Z4

Ted Brook (LSO #68672U)
Tel: 416-203-4457
Email: ted.brook@nortonrosefulbright.com

Randy Sutton (LSO #50369C)
Tel: 416-216-4046
Email: randy.sutton@nortonrosefulbright.com

Lawyers for the Defendant, Garda Security
Corporation

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KIONNA HORNER

Plaintiff/Moving Party

-and-

PRIMARY RESPONSE INC. and GARDA CANADA SECURITY CORPORATION

Defendants/Responding Parties

Proceeding under the Class Proceedings Act, 1992

INDEX TO THE MOTION RECORD OF PRIMARY RESPONSE INC.

<u>Tab</u>	<u>Document Description</u>	<u>Page(s)</u>
1	Affidavit of Sherri Lynn MacDonald, affirmed July 18, 2019	1-38
A	Exhibit "A": Emails between S. MacDonald and M. Cranswick, dated March 31, 2016	15-17
B	Exhibit "B": Emails between M. Cranswick, S. MacDonald and D. Corner, dated March 31, 2016	18-20
C	Exhibit "C": Hours of Work and Averaging Hours Application, filed March 31, 2016	21-22
D	Exhibit "D": Approval: Excess Weekly Hours of Work, effective April 12, 2016	23-28
E	Exhibit "E": Hours of Work and Averaging Hours Application, filed June 20, 2017	29-33
F	Exhibit "F": Letter from the Director of Employment Standards regarding Application for Averaging Hours of Work for Overtime Pay Purposes, dated June 20, 2017	34-35
G	Exhibit "G": Letter from the Director of Employment Standards, regarding Notice of Refusal of Application for Averaging Hours of Work for Overtime Pay Purposes, dated December 14, 2017	36-38

Court File No.: CV-18-00603648

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KIONNA HORNER

Plaintiff/Moving Party

-and-

PRIMARY RESPONSE INC. and GARDA CANADA SECURITY CORPORATION

Defendants/Responding Parties

**AFFIDAVIT OF SHERRI LYNN MACDONALD
(AFFIRMED JULY 18, 2019)**

I, **SHERRI LYNN MACDONALD**, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the former President and former sole shareholder of Primary Response Inc. Thus, I know the following matters unless I indicate that statements are based on information provided by others, in which case I believe this information to be true.

Establishment and Development of Primary Response Inc.

2. I have always been entrepreneurial and, for much of my life, I have been self-employed. For a brief period in the 1990's, I worked for Chubb Security and would liaise with clients' service departments and the applicable police services to resolve false alarms. After leaving Chubb, I briefly worked as a dispatcher for Toronto Police Services. In this position, I often

received phone calls from alarm companies and monitoring centres, and I noticed how many police resources were used to respond to these calls.

3. These experiences showed me that there was a need for a private company that would efficiently respond to these calls instead of the police. At the time, the City of Toronto and other municipalities were taking steps to reduce the number of home alarm calls that police officers had to respond to, which facilitated the creation of private alarm response companies.

4. On or about May 6, 1996, I established Primary as an alarm response services company, with Jack Kerzner as my majority partner. In around 2010, I bought Mr. Kerzner's shareholding and became Primary's sole shareholder.

5. For most of 1996, I worked on designing Primary's business model and soliciting clients. Primary's initial clients were alarm companies or monitoring centres. In 1997, Primary began actively providing alarm response services to these clients. Over time, our alarm response clients started requesting security guard services. By 1998, Primary began offering security services and, because we had strong relationships with our alarm response clients, our security services business line grew almost entirely from referrals. By 1999 or 2000, we began phasing out our alarm response services and focusing on security services and, by 2000 or 2001, Primary grew rapidly.

6. My involvement in Primary has evolved. During the first years after I established Primary, I was heavily involved in all aspects of the business, including sales and client management, human resources, and operations.

7. Over time, I realized that I should focus on Primary's sales, customer service, and business development functions, and should have only an oversight role over Primary's employees and day-to-day operations. For that reason, I hired additional employees to help manage and develop specific aspects of the business.

8. In or about January 1997, I hired Dianne Corner as an Operations Manager to develop Primary's alarm response services and mobile guard services, consisting of security guards and supervisors who would move between client sites that did not require a regular, on-site security presence. By that time, I had already hired about 30 employees.

9. When I met Ms. Corner, she was working for Intercon Security, a large firm that provided, among other things, alarm response services, security guard services, and executive protective services. The research that I conducted as I was establishing Primary indicated that Intercon was the best security firm in Ontario and I was particularly interested in Intercon's protective services team and its alarm response services business.

10. I wanted to model Primary on Intercon's alarm response services business but, while I had a strong business model and financing, I had no experience in the security industry. Also, I was shocked by the hurdles and criticism that I faced as a woman in the industry. At the time, Ms. Corner assisted with Intercon's protective services team and worked as the Director of Operations for Intercon's alarm response services business. It was clear to me that Ms. Corner would be a perfect fit for Primary, since she had the operational knowledge and industry reputation that I lacked. After hiring Ms. Corner, Primary subsequently retained Alan Bell, who also worked for Intercon, as a temporary consultant to assist with Primary's training, policies, and processes.

11. Over time, Ms. Corner's role with Primary grew to encompass additional portfolios and responsibilities. In about 2003 or 2004, Ms. Corner assumed the role of Primary's General Manager. In this position, Ms. Corner assisted with sales and business development, oversaw training, and had greater day-to-day responsibility for Primary's client service and operations functions. By 2015, Ms. Corner assumed the role of Primary's Vice-President. In this position, Ms. Corner was responsible for managing Primary's human resources, client service, and operations functions. She focused on strategic decision-making in these areas and delegated day-to-day responsibilities to other employees.

12. Ms. Corner was also responsible for overseeing employees who worked in the departments under her supervision. For example, as Primary's Vice-President, Ms. Corner directly supervised Meredith Cranswick, who became Primary's General Manager in or about 2015. In turn, Ms. Cranswick was responsible for managing the employees within Primary's Human Resources Department and Operations Department. Following the departure of Primary's Human Resources Manager, Yvonne MacDonald, in or about 2016, Ms. Cranswick also became responsible for communicating with the Ministry of Labour and maintaining Primary's excess hours of work and overtime averaging permits.

Structure of Primary Response Inc.

13. As noted, when I established Primary in 1996, it offered alarm response services and gradually began to offer security guard services.

14. As Primary grew, I began to explore other opportunities for meeting existing client needs and expanding our client base. Because of this expansion, by 2016, Primary had several different accounts or postings and employee schedules:

- (a) **Key Holders:** Key holders were casual or part-time security guards who generally worked up to 8-hour shifts during regular business hours. Employees who worked as key holders did not have a specific account or site to report to regularly, although they often worked at buildings managed by the Toronto Community Housing Corporation. Instead, key holders worked at client locations where contractors were present and carrying out repairs in the building. Key holders were responsible for accompanying contractors into private units and supervising the contractors' activities while in the unit. Key holders generally worked no more than 44 hours per week.
- (b) **Fire Pickets:** Fire pickets were postings that involved a casual or part-time security guard working at a client site temporarily while the client's fire detection and alarm systems were repaired or tested. Often, fire pickets were required at TCHC sites. During these shifts, which could last from 4 hours to 12 hours, a guard would work alone and would be responsible for warning building residents of a fire while the building's systems were down. After completing a shift, a guard on a fire picket would be relieved by another guard, who would also complete a 4-hour to 12-hour shift. Fire pickets could last from one day to one or more months. Generally, employees who worked on fire pickets worked no more than 44 hours per week.
- (c) **Solo Accounts:** Solo accounts were situations when a security guard reported to a regular client site and would work alone during the shift. For several smaller commercial, industrial or residential client sites, guards generally worked up to 8-hour shifts during regular business hours and would not be relieved by another

guard at the end of the shift. On other sites, clients expected Primary to provide security services 24 hours a day, 7 days a week, and Primary would assign guards to work up to 12-hour shifts. Because these guards worked alone, they reported to mobile supervisors. Depending on their assigned client site, employees on solo accounts could work up to 44 hours per week or more than 44 hours per week on a condensed work week. In 2016 and 2017, less than 12% of Primary's accounts involved guards working on a condensed work week.

- (d) **Multi-Guard Accounts:** Multi-guard accounts were situations when multiple security guards worked together for up to 12-hour shifts, so that Primary could provide security services 24 hours a day, 7 days a week. Generally, Primary would try to assign a supervisor to work on each shift. But if a supervisor was unavailable for a particular shift, two or more non-supervisor guards would report to mobile supervisors. Depending on their assigned client site, employees on multi-guard accounts could work up to 44 hours per week or more than 44 hours per week on a condensed work week.

- (e) **Directed Accounts:** Directed accounts were large clients, including colleges and cities, to whom Primary would assign multiple security guards and on-site supervisors. Additionally, while employees assigned to other types of accounts or postings would generally "clock in" and "clock out" through Primary's Dispatch Centre, each directed account had its own on-site dispatch office. Primary assigned several types of staff to directed accounts, including security guards, patrol guards, concierge guards, parking guards, mobile supervisors, walking supervisors, and/or site or client supervisors. Employees assigned to directed

accounts generally worked a condensed work week, although some positions, such as parking guards, generally worked 4-hour to 8-hour shifts during regular business hours.

- (f) **Mobile Team:** Primary's mobile security guards and supervisors provided security services to clients who did not require a physical security presence, such as building patrols or parking patrols. Additionally, Primary's mobile team was responsible for providing relief and support to on-site guards and supervisors, such as covering meal breaks for employees assigned to solo accounts, supervising employees on solo accounts, supervising employees on multi-guard accounts that did not have an on-site supervisor, and providing replacement radios, uniforms or other equipment. Mobile guards and supervisors generally worked a condensed work week.

15. I have had a chance to review the affidavits provided by the Plaintiff, Kionna Horner. Based on those affidavits, it appears to me that Ms. Horner and Adrian Wasylyk worked on directed accounts during their entire period of employment with Primary. It also appears to me that Timothy Yorke worked on a solo account and two multi-guard accounts. While Mr. Yorke indicates that he "worked a few shifts" as a mobile security guard, it does not appear that any of the affiants regularly worked as key holders, on fire pickets, or as members of Primary's mobile team. Additionally, while the Plaintiff's Notice of Motion refers to a period beginning on February 27, 2011, it does not appear that any of the affiants worked for Primary before January 2016.

Primary Response Inc.'s Relationship with its Employees

16. As described below, I stopped being actively involved in Primary on January 15, 2018, when I sold my shareholding to a subsidiary of Garda Security Canada Corporation. That said, I have first-hand knowledge of the relationship between Primary's management, including myself, and its employees before that date.

17. Since establishing Primary in 1996, my management team and I have consistently treated our employees fairly, honestly, and respectfully. Although employees may not have always agreed with Primary's management decisions, we have never, and would never, seek to harm or mislead our employees. On the contrary, Primary has often implemented policies to respond to employee requests and provide employees with a professional and efficient working environment.

18. For example, when I established Primary in 1996, employees repeatedly requested that we convert to a condensed work week so that they could have regularly scheduled three-day weekends. Given my relative inexperience with this type of arrangement, Primary's managers contacted the Ministry of Labour often to ensure that a condensed work week was legally permissible. Ultimately, Primary determined that a "2-3" schedule, where employees had 2 days of work followed by 3 days off from work, would be both legally compliant and responsive to employee demands. Over the course of the next two decades, we renewed our overtime averaging permit and employees consistently asked us to assign them to accounts that operated on a condensed work week.

19. In March 2016, I realized that our overtime averaging permit would be expiring in August. By that time, my sister, Yvonne MacDonald, had left her position at Primary. Thus, on

March 31, 2016, I asked Ms. Cranswick to complete and submit a renewal application for our overtime averaging agreement. Because Ms. Cranswick had not completed this type of application in the past, I provided her with a link to an internal folder, with precedents from prior years. On March 31, 2016, Ms. Cranswick informed me that she completed the renewal application and filed it online. Copies of my email correspondence with Ms. Cranswick, dated March 31, 2016, are attached as **Exhibit "A"** and **Exhibit "B"** to my Affidavit.

20. Unfortunately, Ms. Cranswick mistakenly filed a renewal application for Primary's excess hours of work permit, which was valid until November 26, 2016. The Ministry of Labour processed the application and, on April 12, 2016, granted Primary a new excess hours of work permit that was valid until April 12, 2019. A copy of the renewal application filed by Ms. Cranswick, dated March 31, 2016, is attached as **Exhibit "C"** to my Affidavit. A copy of Primary's excess hours of work permit, effective on April 12, 2016, is attached as **Exhibit "D"** to my Affidavit.

21. At the time, I did not know that Ms. Cranswick had filed the incorrect renewal application or that our overtime averaging permit had accidentally expired without being renewed. I am informed by Ms. Cranswick that, because she was not normally responsible for the permits from the Ministry of Labour, she did not understand the difference between an excess hours of work application and an overtime averaging application, and believed that she had completed the renewal properly. Neither I, Ms. Cranswick nor any other members of Primary's management team intended to submit the incorrect application to the Ministry of Labour. We did not intend to allow our overtime averaging permit to expire.

22. After receiving Ms. Horner's Claim and discussing the matter with Ms. Corner, I learned that, in June 2017, the Ministry of Labour informed a Primary representative that Primary's overtime averaging permit had expired in August 2016. The Employment Standards Officer raised the issue while discussing an individual employee complaint. I was unaware of these events at the time, but I now understand that Ms. Cranswick immediately filed for a new permit. A copy of Primary's overtime averaging permit application, filed on June 20, 2017, is attached as **Exhibit "E"** to my Affidavit. A copy of a letter from the Ministry of Labour confirming receipt of the application, dated June 20, 2017, is attached as **Exhibit "F"** to my Affidavit.

23. I understand from Ms. Corner that, while that application was pending, Primary's Human Resources team assessed its scheduling practices to determine how it could bring its practices into compliance if the Ministry of Labour refused our application. Upon reviewing the Ministry of Labour's website, they learned that continued overtime averaging might be allowed while the new application was pending.

24. I also understand from Ms. Corner that the Ministry of Labour rejected Primary's overtime averaging application in December 2017. Primary's operations manager and scheduling manager immediately began trying to transition all employees on a condensed work week schedule to a regular, non-condensed schedule. They did not fully complete this transition by January 15, 2018 and, as described below, I was no longer actively involved in Primary after January 15, 2018, when I sold my shareholding to a subsidiary of Garda Canada Security Corporation. A copy of the letter from the Ministry of Labour, rejecting Primary's application, is attached as **Exhibit "G"** to my Affidavit.

25. A second example of Primary's attempts to provide a good working environment for its employees was the suggestion that employees arrive a few minutes before their shift. While not a strict requirement, the purpose of this practice was to ensure that employees were prepared to relieve their colleagues as soon as their shift began. In this way, employees who were being relieved would be free to leave work on time and would have greater certainty over their schedules. Additionally, if employees did not arrive a few minutes early for their shifts, employees who were being relieved, or their supervisors, could contact Primary's Dispatch Centre and ensure that appropriate coverage was available to meet client needs. By encouraging this type of behaviour, Primary's management team hoped to nurture a professional and courteous environment for all of its employees.

26. Although Primary's managers and supervisors suggested to employees that they should arrive a few minutes early for their shift, this was not a mandatory practice. To my knowledge, Primary never disciplined any employees for failing to arrive early for their shift. Instead, employees would receive a phone call from the Dispatch Centre to confirm that they would be arriving on time for their shift and Primary would only discipline employees if they were late for their scheduled shift.

27. Finally, Primary encouraged employees' personal and professional development by making training opportunities available. Along with legally mandated training on topics such as occupational health and safety, workplace harassment and violence, accessibility, and first aid, Primary also paid for employees to take supplemental training on topics such as diversity and inclusion, addressing mental health concerns and crisis intervention, de-escalation techniques, and the proper use of force. By completing these training programs, which were voluntary, employees could become eligible for assignments to high-demand postings such as certain

directed accounts. Additionally, because employees obtained training certificates for completing these voluntary programs, these skills could prove to be a useful asset when applying for positions with other employers.

Sale of Primary Response Inc.

28. Beginning in 2006 or 2007, I regularly received calls or correspondence from companies that were interested in buying Primary. In August or September 2016, I began seriously considering the idea and contracted CCC Investment Bankers to broker Primary on our behalf. CCC received several positive responses from potential buyers and, within a few months, we had a short list of 3 or 4 potential buyers. While Garda was not on the short list, its representatives contacted CCC and asked for a separate meeting.

29. During this meeting, Garda persuaded us that it would be the ideal buyer. We met with Garda's representatives to emphasize our priorities in the sale. First, we emphasized that we wanted Garda to treat our existing employees well. Garda indicated that our employees would be treated well and that our management team would continue to receive the same benefits that they had received from us. Secondly, we emphasized the value of the Primary brand and the importance of our client relationships. Garda could not promise that it would maintain the name "Primary Response" but assured us that it would maintain our customer service model and would use Primary as its flagship brand for central Canada. While we would no longer be part of the company, Ms. Corner and I were excited to hear that opportunities in Ontario and central Canada would continue to grow.

30. By January 15, 2018, the sale of my shareholding in Primary was complete. Because the transaction was a share purchase, the employment relationship between Primary and its

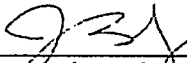
employees was unaffected by the sale. However, I understood that, because most of Garda's employees are unionized, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union would ultimately represent many of Primary's employees. For that reason, during our negotiations with Garda, I examined the applicable collective bargaining agreement carefully to ensure that our employees would be treated fairly.

31. In the weeks following the sale, I remained available to answer questions about transitional matters. I have not been actively involved in the management or operations of Primary since January 15, 2018. I understand from Ms. Corner that she continued to attend Primary's office until February 15, 2018 and remained available to assist with transitional matters, but did not deal directly with clients or employees during that time.

32. As of the date of this Affidavit, I no longer have any involvement in Primary's business activities.

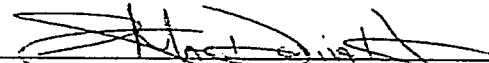
33. I make this Affidavit to explain why the Action filed by Kionna Horner should not be certified as a class proceeding, and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario, this 18th day of July 2019.



Commissioner for Taking Affidavits
(or as may be)

J BERNARD (LSUC # 686680)



Sherri Lynn MacDonald

KIONNA HORNER
Plaintiff

-and-

**PRIMARY RESPONSE INC. and
GARDA CANADA SECURITY CORPORATION**
Defendants

Court File No.: CV-18-00603648

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT
TORONTO, ONTARIO**

**AFFIDAVIT OF SHERRI LYNN MACDONALD
(affirmed July 18, 2019)**

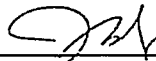
BAKER & MCKENZIE LLP
Barristers and Solicitors
Brookfield Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

George Avraam (LSO #41616S)
Email: george.avraam@bakermckenzie.com
Tel.: (416) 865-6935
Fax: (416) 863-6275

Jennifer R. Bernardo (LSO #68668C)
Email: jennifer.bernardo@bakermckenzie.com
Tel.: (416) 865-6971
Fax: (416) 863-6275

Lawyers for the Defendant, Primary Response Inc.

**This is Exhibit "A" referred to in
the Affidavit of Sherri Lynn MacDonald
sworn/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Bernardo, Jennifer

From: Meredith Cranswick
Sent: Thursday, March 31, 2016 12:36 PM
To: Sherri MacDonald
Subject: Re: MOL averaging agreement expires in August

Hi Sherri

I believe it is easier to submit online as you receive immediate confirmation of receipt and are given an Identification number allowing you to track the application throughout the approval process. It doesn't say how early you can apply just mentions application should be submitted at least 30 days before current approval expires.

Meredith Cranswick | General Manager

PRIMARY RESPONSE INC.

60 Modern Road, Scarborough, ON M1R 3B6

(416) 658-4536 Ext. 102 | (888) 643-0333

From: sherri.macdonald@primaryresponse.ca
Sent: March 31, 2016 12:29 PM
To: meredith.cranswick@primaryresponse.ca
Subject: Re: MOL averaging agreement expires in August

Doesn't matter to me Mer. I've never done it so whatever is easiest. It's okay to file early - right?

Sherri Macdonald

Sent from my iPhone

On Mar 31, 2016, at 11:54 AM, Meredith Cranswick <meredith.cranswick@primaryresponse.ca> wrote:

Hi Sherri

Are you ok with me completing this application online or do you prefer the application be submitted by fax or mail?

Thank you

Meredith Cranswick | General Manager

PRIMARY RESPONSE INC.

60 Modern Road, Scarborough, ON M1R 3B6

(416) 658-4536 Ext. 102 | (888) 643-0333

Please consider the environment - do you really need to print this email?



Confidentiality Notice: This email, and attachments, transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

From: Sherri MacDonald
Sent: March 31, 2016 12:38 AM
To: Meredith Cranswick <meredith.cranswick@primaryresponse.ca>; Dianne Corner <dianne.corner@primaryresponse.ca>
Cc: Eric Lizotte <eric.lizotte@primaryresponse.ca>
Subject: MOL averaging agreement expires in August

FYI – a reminder that our MOL averaging agreement expires in August. Please re-apply ASAP so we don't have any surprises.

[M:\Ministry of Labour Averaging Agreements](#)

Thanks & please let me know when we have updated flings so I can add to our RFP files.

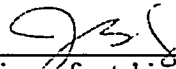
Sherri MacDonald | President
PRIMARY RESPONSE INC.
60 Modern Road, Scarborough, ON M1R 3B6
T: 416-658-4536, Ext. 117 | 705-737-3204, Ext. 117 | 519-748-9598, Ext. 117 | 1-888-643-0333, Ext. 117
www.primaryresponse.ca

Please consider the environment - do you really need to print this email?



Confidentiality Notice: This email, and attachments, transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

**This is Exhibit "B" referred to in
the Affidavit of Sherri Lynn MacDonald
~~sworn~~/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Bernardo, Jennifer

From: Meredith Cranswick
Sent: Thursday, March 31, 2016 4:03 PM
To: Sherri MacDonald; Dianne Corner
Cc: Eric Lizotte
Subject: RE: MOL averaging agreement expires in August

Hi Sherri

This has been completed and the application had been saved in the Ministry of Labour Averaging Agreement Folder.

Thank you

Meredith Cranswick | General Manager

PRIMARY RESPONSE INC.

60 Modern Road, Scarborough, ON M1R 3B6
(416) 658-4536 Ext. 102 | (888) 643-0333

Please consider the environment - do you really need to print this email?



Confidentiality Notice: This email, and attachments, transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

From: Sherri MacDonald
Sent: March 31, 2016 12:38 AM
To: Meredith Cranswick <meredith.cranswick@primaryresponse.ca>; Dianne Corner <dianne.corner@primaryresponse.ca>
Cc: Eric Lizotte <eric.lizotte@primaryresponse.ca>
Subject: MOL averaging agreement expires in August

FYI – a reminder that our MOL averaging agreement expires in August. Please re-apply ASAP so we don't have any surprises.

[M:\Ministry of Labour Averaging Agreements](#)

Thanks & please let me know when we have updated flings so I can add to our RFP files.

Sherri MacDonald | President

PRIMARY RESPONSE INC.

60 Modern Road, Scarborough, ON M1R 3B6
T: 416-658-4536, Ext. 117 | 705-737-3204, Ext. 117 | 519-748-9598, Ext. 117 | 1-888-643-0333, Ext. 117
www.primaryresponse.ca

Please consider the environment - do you really need to print this email?



Confidentiality Notice: This email, and attachments, transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message.

**This is Exhibit "C" referred to in
the Affidavit of Sherri Lynn MacDonald
sworn/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Hours of Work and Averaging Hours

Application Summary

Employer Information

Business Name: Primary Response Inc.
 Legal Name: Primary Response Inc.
 Renewal Indicator: Yes
 Business Number:

Employer Contact Information

First Name: Meredith
 Last Name: Cranswick
 Position: General Manager
 Telephone Number: (416) 658-4536 Extension: 102
 Fax Number: (416) 658-3707
 E-mail Address: meredith.cranswick@primaryresponse.ca
 Preferred method of receiving correspondence: E-mail
 Preferred language of communication: English

Main Business Address Information

60 MODERN ROAD
 SCARBOROUGH, ONTARIO
 CANADA
 M1R 3B6

Application Type

EXCESS WEEKLY HOURS OF WORK

Occupational Titles

Occupation	Number of Excess Weekly Hours	Duration	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)	Written Agreement(s)	Number of Employees	Union (If applicable)
Security Guards	55	3 yrs			Yes	1400	
Mobile Guards and Supervisors	55	3 yrs			Yes	200	
Security Dispatch/Communications Guards	55	3 yrs			Yes	50	

Reason for Application

Q1. The vast majority of Guards work on a 2/3 rotation equaling 84 hours in each two week period. This - for many years has been the preference of our Employee base.

Q2. No - the rotation in place is very common to our Industry and largely in place at the preference of - our Guards.

Q3. No

Has the Employer been convicted of an offence under the ESA?

No

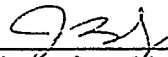
Does the Employer have any unpaid monetary orders under the ESA for which the time to apply for a review has expired?

No

Confirmation ID: 60050117

Submission Date: 2016/03/31

**This is Exhibit "D" referred to in
the Affidavit of Sherri Lynn MacDonald
sworn/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Ministry of Labour
Employment Practices Branch

400 University Ave.
9th Floor
Toronto, Ontario
M7A 1T7
Telephone: (416) 326-2450
Fax: (416) 326-7061

Ministère du Travail
Direction des pratiques d'emploi

400, avenue University
9e étage
Toronto, Ontario
M7A 1T7
Téléphone: (416) 326-2450
Télécopieur: (416) 326-7061



12/04/2016

Primary Response Inc.
60 MODERN RD
SCARBOROUGH ON M1R 3B6

RE: Approval For Excess Weekly Hours of Work ID#: 60050117

Following a review of your application, the attached approval for Excess Weekly Hours of Work has been issued. The employer is required to have the written agreement of employees (or their union) before employees work excess hours in accordance with the approval. A copy of the approval must be posted in at least one conspicuous place in every workplace such that it is likely to come to the attention of the employees it applies to.

Non-unionized employers must provide employees with a copy of the Information Sheet, *Information for Employees About Hours of Work and Overtime Pay*, available on the Ministry of Labour website www.labour.gov.on.ca before the agreement to work excess hours is made.

An approval may be revoked by the Director at any time upon providing an employer with such notice as the Director considers reasonable in the circumstances. In determining whether to revoke an approval, the Director may consider any relevant factors including contraventions of the *Employment Standards Act, 2000 (ESA)* and the health and safety of employees.

Employees are entitled to daily, between shifts, and weekly/bi-weekly rest periods in accordance with the *ESA*. These rest periods, and all other requirements in the *ESA* and the *Occupational Health and Safety Act*, continue to apply even if an employer has an approval for Excess Weekly Hours of Work. For more information, refer to the Ministry's website www.labour.gov.on.ca.

Please note the listing of a specific occupation in an approval should not be taken as necessarily indicating that the Ministry is of the view that an employee in the occupation is covered by the hours of work limits and/or overtime pay requirements set out in the *ESA*. Employees in certain industries and job categories are exempt from such limits and requirements. For more information on industry and job specific exemptions please refer to *Your Guide to the Employment Standards Act*, Chapter "Industries and Jobs with *ESA* exemptions and/or Special Rules" available on the Ministry's website.

If you have any questions regarding the approval, please contact our office at (416) 326-2450.

Sincerely,

Director of Employment Standards

Attachment



APPLICATION IDENTIFICATION NUMBER: 60050117

APPROVAL: EXCESS WEEKLY HOURS OF WORK**Under Section 17.1 of the *Employment Standards Act, 2000***

Issued to: Primary Response Inc.
60 MODERN RD
SCARBOROUGH ON M1R 3B6

This approval permits employees to work more than 48 hours in a work week up to the specified weekly maximum set out below. This approval only applies to an employee who has agreed (or if unionized, the employee's union has agreed) in writing to work excess hours in accordance with s.17(3)(a) of the Act. Where an employee has revoked an agreement to work excess hours in accordance with subsection 17(6), this approval no longer applies with respect to that employee.

The maximum number of hours an employee may work is the **lesser of**: (i) the number of hours listed in the chart below and (ii) the number of hours the employee (or union) has agreed to in writing.

OCCUPATION	WEEKLY MAXIMUM
Security Guards	55 HOURS
Mobile Guards and Supervisors	55 HOURS
Security Dispatch/Communications Guards	55 HOURS
APPROVAL VALID THROUGH: APRIL 12, 2019	

A copy of this approval must be posted in at least one conspicuous place in every workplace of the employer where employees in respect of whom the approval applies work so that it is likely to come to the attention of the employees it applies to. The employer must keep the approval posted until it expires or is revoked, and must then remove it.

IMPORTANT INFORMATION FOR EMPLOYERS

This approval was issued based on information the employer provided. Where an employer has indicated that a special rule or exemption under the Act or its regulations regarding hours of work applies, the issuance of an approval is not a binding ruling on the application of the Act or its regulations. Such a ruling can only be made by an employment standards officer following a full investigation, by the Ontario Labour Relations Board or, ultimately the courts.

This approval does not relieve an employer from the requirement to comply with any other applicable provincial legislation that governs an employee's hours of work.

IMPORTANT INFORMATION FOR EMPLOYEES

An employer must provide a non-unionized employee with a copy of the Ministry of Labour's Information Sheet, "Information for Employees About Hours of Work and Overtime Pay", before the employee enters into a written agreement to work in excess of 48 hours in a work week.

The Information Sheet includes important information about employees' rights and employers' obligations for hours of work, rest periods and overtime.

An employer is prohibited from penalizing an employee in any way for exercising rights under the Act. These rights include:

- Refusing to enter into an agreement to work excess hours
- Cancelling his/her agreement to work excess weekly hours by providing two weeks written notice

For answers to questions about the Act including how to obtain the Information Sheet, please contact the Employment Standards Information Centre at 416-326-7160 in Toronto or toll-free at 1-800-531-5551. Information about the Act, the Information Sheet, and Fact Sheets are also available

on the Ministry's website: www.labour.gov.on.ca.

Application Served: 2016-03-31

Approval Comes into Effect: 2016-04-12

Director of Employment Standards

LE NOMBRE D'IDENTIFICATION D'APPLICATION : 60050117

**APPROBATION : DÉPASSEMENT DES PLAFOND D'HEURES DE TRAVAIL PAR
SEMAINE****En vertu de l'article 17.1 de la Loi de 2000 sur les normes d'emploi**

Délivrée à l'attention de: Primary Response Inc.
60 MODERN RD
SCARBOROUGH ON M1R 3B6

La présente approbation autorise les employés à travailler plus de 48 heures par semaine jusqu'à un maximum hebdomadaire précisé ci-dessous. L'approbation ne s'applique qu'à l'employé qui a consenti (ou s'il est syndiqué, si son syndicat a consenti), par écrit, au dépassement des plafonds des heures de travail conformément à l'alinéa 17 (3) a) de la Loi. Si un employé a révoqué son consentement à travailler au-delà du plafond établi conformément au paragraphe 17 (6), la présente approbation ne s'applique plus à cet employé.

Le nombre maximal d'heures de travail que peut effectuer un employé ne doit pas dépasser le moindre des nombres suivants : (i) le nombre d'heures indiqué dans le tableau ci-dessous et (ii) le nombre d'heures auquel l'employé (ou le syndicat) a consenti par écrit.

PROFESSION	Maximum hebdomadaire
Security Guards	55 HEURES
Mobile Guards and Supervisors	55 HEURES
Security Dispatch/Communications Guards	55 HEURES
L'APPROBATION VALIDE PASSE : AVRIL 12, 2019	

Une copie de l'approbation doit être affichée à au moins un endroit bien en vue de chacun des lieux de travail de l'employeur où les employés concernés travaillent afin qu'ils puissent en prendre connaissance. L'employeur doit laisser l'approbation affichée jusqu'à son expiration ou sa révocation, puis l'enlever.

RENSEIGNEMENTS IMPORTANTS À L'ATTENTION DES EMPLOYEURS

La présente approbation est délivrée en fonction des renseignements fournis par l'employeur. Si un employeur a invoqué l'application d'une règle spéciale ou d'une exemption en vertu de la Loi ou de ses règlements concernant les heures de travail, la délivrance d'une approbation ne constitue pas une décision exécutoire au sujet de l'application de la Loi ou de ses règlements. Ce genre de décision ne peut être rendue que par un agent des normes d'emploi après une enquête complète, par la Commission des relations de travail de l'Ontario ou, en dernier recours, par les tribunaux.

La présente approbation ne libère pas l'employeur de l'obligation de se conformer aux autres lois provinciales applicables qui régissent les heures de travail de l'employé.

RENSEIGNEMENTS IMPORTANTS À L'ATTENTION DES EMPLOYÉS

L'employeur doit remettre à l'employé non syndiqué une copie de la feuille de renseignements du ministère du Travail intitulée « Heures de travail et heures supplémentaires », avant qu'il n'accepte, par écrit, de travailler plus de 48 heures par semaine.

Le feuille de renseignements contient des renseignements importants au sujet des droits des employés et des obligations des employeurs concernant les heures de travail, les périodes de repos et les heures supplémentaires.

L'employeur n'a pas le droit de pénaliser un employé pour avoir exercé les droits que lui confère la Loi, comme par exemple:

- Refuser de signer une entente de dépassement des plafonds d'heures de travail
- Annuler son accord de dépasser les plafonds d'heures de travail par semaine sur présentation d'un

préavis écrit de deux semaines.

Pour des renseignements sur la Loi et sur la façon d'obtenir les feuilles de renseignements, veuillez appeler le Centre d'information sur les normes d'emploi, au 416 326-7160, à Toronto, ou sans frais, au 1 800 531-5551. Des renseignements sur la Loi et les feuilles de renseignements sont également consultables sur le site Web du ministère, à www.labour.gov.on.ca.

Date de signification de la demande: 2016-03-31

Date de l'approbation: 2016-04-12

Directeur des normes d'emploi

**This is Exhibit "E" referred to in
the Affidavit of Sherri Lynn MacDonald
sworn/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

**Hours of Work and Averaging
Hours Application**
General Information

Incomplete or inaccurate information may delay the processing of your application. If the application is faxed after 5:00 p.m. or on a day on which the Director's office is closed, the service of the application shall be deemed to be effected on the next day on which the Director's office is not closed.

The employer must have the written agreement of employees (or their union) to work excess hours or to have their hours of work averaged. In the event that this application is approved, the employer must still comply with the daily and weekly rest periods (section 18), eating periods (section 20) and overtime pay (section 22) provisions in the *Employment Standards Act, 2000* (ESA).

The information collected under the authority of the ESA to assist in the processing of applications for excess hours and overtime averaging. Collection, use and disclosure of information in this form is regulated by the *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31* (as amended). If you have any questions regarding Freedom of Information (FOI) matters, you may contact the Ministry of Labour FOI Coordinator at 416 326-7786.

Submit this form to: The Director, Employment Standards 400 University Avenue, 9th Floor Toronto, ON M7A 1T7 Fax: 1 866 588-9998 or 416 212-7900	ID (Ministry Use) 60055521
---	-----------------------------------

You must complete all areas marked by an asterisk (*) in order for us to process your application. If you do not complete these areas your application form may be returned to you (in which case the application will not be considered to have been served).

1. Employee Information

Employer Business/Trade Name* PRIMARY RESPONSE INC	
Legal Name* PRIMARY RESPONSE INC.	
Business Type (e.g. Corporation, Limited Partnership, Partnership, Sole Partnership, Limited Liability Partnership)*	Business Registration Number 894027531
Corporation Number (if applicable)	Corporation Jurisdiction, if applicable (e.g. Ontario, Canada, other)

Renewals

Check here if you were issued an approval effective March 1, 2005 or later and are seeking renewal.

2. Employee Contact Information

Last Name* CRANSWICK		First Name* MEREDITH	
Position GENERAL MANAGER			
Telephone Number* 416 658-4536 ext. 102	Fax Number 416 658-3707	Email Address (if available) meredith.cranswick@primaryresponse.ca	
Preferred method of receiving correspondence* <input type="checkbox"/> Mail <input checked="" type="checkbox"/> E-mail		Preferred language of communication* <input checked="" type="checkbox"/> English <input type="checkbox"/> French	
Employer Main Business Address			
Street Number 60	Suffix (e.g. A)	Street Name MODERN	Type RD
Direction	Unit Number	City/Town* SCARBOROUGH	
Rural Route	PO Box	Postal Station	
Province/State* ONTARIO		Country* CANADA	Postal Code/Zip Code* M1R 3B6

3. Additional Locations Where Work Will Be Performed

31

If work will be performed at the main business address only, do not complete this section. Go to Section 4. If there are additional work locations where this application applies, please enter required information. Attach additional pages as necessary.

Name of Business*

Street Number	Suffix (e.g. A)	Street Name	Type	Direction	Unit Number
Rural Route	PO Box	Postal Station	City/Town*		
Province*			Postal Code*		

4. Application Type (Please select the following application types)*

<input type="checkbox"/> Excess Weekly Hours of Work Complete sections 5, 7 (if applicable), 8, 10 and 11.	<input checked="" type="checkbox"/> Averaging Hours of Work for Overtime Pay Purposes Complete sections 6, 7 (if applicable), 9, 10 and 11
---	---

5. Employee Information for Excess Weekly Hours Application

Attach additional pages as necessary.

Occupation*

Number of Excess Weekly Hours*	Number of Employees*	
Requested Duration:* <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 3 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

Occupation*

Number of Excess Weekly Hours*	Number of Employees*	
Requested Duration:* <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 3 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

Occupation*

Number of Excess Weekly Hours*	Number of Employees*	
Requested Duration:* <input type="checkbox"/> 1 year <input type="checkbox"/> 2 years <input type="checkbox"/> 3 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

6. Employee Information for Averaging Application

Attach additional pages as necessary.

Occupation*

SECURITY GUARDS

Number of Weeks to Average Over *	Number of Employees*	
2	1500	
Requested Duration:* <input type="checkbox"/> 1 year <input checked="" type="checkbox"/> 2 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

Occupation*

MOBILE SECURITY GUARDS & SUPERVISORS

Number of Weeks to Average Over *	Number of Employees*	
2	65	
Requested Duration:* <input type="checkbox"/> 1 year <input checked="" type="checkbox"/> 2 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

Occupation*

COMMUNICATIONS OPERATIVES/DISPATCHERS

Number of Weeks to Average Over *	Number of Employees*	
2	30	
Requested Duration:* <input type="checkbox"/> 1 year <input checked="" type="checkbox"/> 2 years <input type="checkbox"/> Check here if duration is less than one year and enter start and end date.	Start Date (yyyy/mm/dd)	End Date (yyyy/mm/dd)

Are written agreement(s) in place, or will they be put in place, in accordance with the ESA, for employee(s) to work the requested number of hours?*

Yes No

Are employees in this occupation unionized? *

Yes No If yes, Union Name and Local

7. List Union Contact Details

If you provided Union Name and Local in section 5 and/or 6, please enter required information. Attach additional pages as necessary.

Union Name and Local	Union Contact Full Name	Telephone Number	Extension

8. Reasons for Excess Weekly Hours Application

Complete for Excess Weekly Hours Application. Maximum 500 characters per answer. *

1. Why do you require the specific number of hours requested?

2. Will you be taking any measures to avoid or reduce excess weekly hours of work? If not, why not?

3. Are there any health and safety issues raised by increasing the hours of work of employees? If so, how will you address these issues?

9. Reasons for Averaging Application

Complete for Excess Weekly Hours Application. Maximum 500 characters per answer. *

1. Why do you require the specific averaging period requested?

Full-time employees are normally scheduled to work seven 12 hour shifts in a 2 week period and their hours of work may be averaged over the 2 week period

2. Does the averaging period requested benefit the employees in the occupations listed?

Yes the scheduling system provides flexible scheduling, more continuous time away from work and improved work/life balance.

10. In The Last Three Years

Has the employer ever pled guilty to or been convicted of an offence under the ESA? If yes, please indicate the most recent conviction date, if known. (Do not include orders made by employment standards officers or orders made or affirmed by the Ontario Labour Relations Board.)*

Yes No

Date (yyyy/mm/dd)

Does the Employer have any unpaid monetary orders under the ESA for which the time to apply for a review has expired? If yes, please indicate the most recent monetary order date, if known. *

Yes No

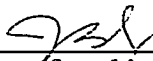
Date (yyyy/mm/dd)

11. Declaration

Please note that it is an offence to provide false or misleading information under the ESA. I, the undersigned declare that, to the best of my knowledge, this information and any additional information submitted in support of the employer's application is complete and accurate.

Name (Please Print)*	Signature*	Date (yyyy/mm/dd)*
Meredith Cranswick	online	2017/06/20

**This is Exhibit "F" referred to in
the Affidavit of Sherri Lynn MacDonald
~~sworn~~/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Ministry of Labour

Ministère du Travail

**Employment Practices
Branch**

**Direction des pratiques
d'emploi**



400 University Ave.
9th Floor
Toronto, Ontario
M7A 1T7

400, avenue University
9^e étage
Toronto (Ontario)
M7A 1T7

Telephone: (416) 326-2450
Fax: (416) 212-7900

Téléphone: (416) 326-2450
Télécopieur: (416) 212-7900

2017/06/20

PRIMARY RESPONSE INC.
60 MODERN ROAD
SCARBOROUGH, ONTARIO, M1R 3B6
CANADA

RE: Application for Averaging Hours of Work for Overtime Pay Purposes, ID# 60055521

Dear Meredith Cranswick:

We are in receipt of your Application for **Averaging Hours of Work for Overtime Pay Purposes**. The application was served on the Director of Employment Standards on **2017/06/20**. Once the application has been reviewed, an approval or notice of refusal will be issued.

If 30 days have elapsed since date of service of the application and the employer has not been notified that the application has been refused, the employer may:

- in the case of an Application to **Average Hours of Work for Overtime Pay Purposes**, average hours of work over a period of two work weeks if a number of conditions prescribed in the *Employment Standards Act, 2000* are met.

The employer in all cases must have the written agreement of employees (or their union) before employees work excess hours or have their hours of work averaged for overtime pay purposes.

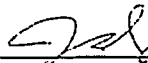
For more information please visit *Your Guide to the Employment Standards Act, 2000*, available at Ontario.ca/ESAGuide or try our Hours of Work and Overtime Tool available at Ontario.ca/hoursofwork.

If you have any questions, please contact our office at 416-326-2450.

Sincerely,

Director of Employment Standards

**This is Exhibit "G" referred to in
the Affidavit of Sherri Lynn MacDonald
-sworn/affirmed before me on July 18, 2019**



**Commissioner for taking affidavits
J. Bernardo (LSO #68668C)**

Ministry of Labour
Employment Practices Branch

400 University Ave.
9th Floor
Toronto, Ontario
M7A 1T7
Telephone: (416) 326-2450
Fax: (416) 326-7081

Ministère du Travail
Direction des pratiques d'emploi

400, avenue University
9e étage
Toronto, Ontario
M7A 1T7
Téléphone: (416) 326-2450
Télécopieur: (416) 326-7081



December 14, 2017

Primary Response Inc.
60 MODERN RD
SCARBOROUGH ON M1R 3B6

ATTN: Meredith Cranswick

RE: Notice of Refusal of Application for Averaging Hours of Work for Overtime Pay Purposes ID#: 60055521

Dear Meredith Cranswick,

Please be advised that the application from PRIMARY RESPONSE INC. for averaging of hours of work for purposes of determining overtime pay entitlements dated 2017/06/20 has been refused.

In determining whether to issue an approval, the Director may consider any factors he or she considers relevant.

[Generally, averaging hours of work for overtime pay purposes must offer a clear benefit to employees. During the review of your application, an acceptable benefit to employees was not identified. As such, your application is refused.]

Because you do not have an approval and you no longer have an approval application pending, you are not allowed to average employees' hours of work for the purpose of determining their entitlement to overtime pay.

This notice of refusal does not prevent you from making a future application for an approval for hours of work averaging. However, if a subsequent application is submitted, employees' hours of work cannot be averaged for overtime pay purposes until an approval is issued, i.e., you will not be able to take advantage of the pending approval rules in subsection 22(2.1) of the ESA.

If you have any questions regarding this Notice of Refusal, please contact Sou Tajik-Cader, the Hours of Work Lead at (905) 301-4977.

Sincerely,

Director of Employment Standards

Attachment

Ministry of Labour
Ministère du Travail



Reference ID: 60055521

**NOTICE OF REFUSAL:
APPLICATION TO AVERAGE HOURS OF WORK FOR OVERTIME PAY
PURPOSES**

Under Section 22.1(17) of the *Employment Standards Act, 2000 (ESA)*

To: PRIMARY RESPONSE INC.
60 MODERN RD
SCARBOROUGH ON M1R 3B6

The employer's application dated 2017/06/20 to average hours of work of employees for the purpose of determining entitlement to overtime pay has been refused. This notice was issued on 2017/12/14.

The employer must not average an employee's hours of work for the purpose of determining entitlement to overtime pay whether or not an employee has agreed (or if unionized, the employee's union has agreed) in writing to averaging hours in accordance with s.22(2)(a) and (3) of the *ESA*.

In general, the *ESA* provides that an employee is entitled to overtime pay of at least 1½ times their regular rate of pay after working 44 hours in a work week.

Director of Employment Standards

For answers to questions about the Act, please contact the Employment Standards Information Centre at 416-326-7160 in Toronto or toll-free at 1-800-531-5551. Information about the Act, and Fact sheets are also available on the Ministry's website: www.gov.on.ca/lab/main.htm.

KIONNA HORNER
Plaintiff

-and-

PRIMARY RESPONSE INC. and
GARDA CANADA-SECURITY CORPORATION
Defendants

Count File No.: CV-18-00603648

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

MOTION RECORD OF THE DEFENDANT,
PRIMARY RESPONSE INC.
(CERTIFICATION)

BAKER & MCKENZIE LLP
Barristers and Solicitors
Brookfield Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

George Avraam (LSO #41616S)
Email: george.avraam@bakermckenzie.com
Tel.: (416) 865-6935

Jennifer R. Bernardo (LSO #68668C)
Email: jennifer.bernardo@bakermckenzie.com
Tel.: (416) 865-6971

Fax: (416) 863-6275

Lawyers for the Defendant, Primary Response Inc.