

SETTLEMENT AGREEMENT

Made as of November, 2021.

Between

KELLI HARDING

Plaintiff

and

**1513563 ONTARIO LIMITED OPERATING AS ENCORE FOOD WITH ELEGANCE,
APPLAUSE CATERING INC., OPERATING AS APPLAUSE
CATERING, AE HOSPITALITY LTD., OPERATING AS AE HOSPITALITY, 2354398
ONTARIO LIMITED CARY SILBER, DAVID SILBER AND RYAN SILBER**

Defendants

Proceedings under the *Class Proceedings Act, 1992*

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RECITALS

- A. **WHEREAS**, on September 9, 2019, the Plaintiff commenced a proposed class action seeking to represent certain current and former supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants, seeking, among other things, damages for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions;
- B. **AND WHEREAS** the Plaintiff brought a motion to certify the Action, which was scheduled for September 13-15, 2021 before the Honourable Mr. Justice Glustein;
- C. **AND WHEREAS** the Defendants intended to oppose the certification of the Action as a class proceeding;
- D. **AND WHEREAS** the Defendants deny all the allegations made, or which could have been made, against them in the Action, have not conceded or admitted any liability, deny fault, liability and that any damages are payable and maintain that they have good and valid defences to the claims asserted in the Action and that the Defendants would have pursued affirmative defences and other defences had this action not been settled;
- E. **AND WHEREAS** the Plaintiff and the Defendants, through counsel, have engaged in arm's length settlement discussions and negotiations, including two days of mediation before the Honourable Warren Winkler on June 10, 2021 and July 8, 2021, respectively;
- F. **AND WHEREAS**, as a result of the above settlement discussions and negotiations, the Parties entered into a Memorandum of Understanding to resolve the Action, executed on July 26, 2021, conditional on the execution of a comprehensive, formal settlement agreement and the approval of the Court;
- G. **AND WHEREAS** the Parties are entering into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted against the Defendants by the Plaintiff and the Class in the Action, and to avoid further expense and inconvenience of burdensome and protracted litigation;

H. **AND WHEREAS** this Settlement Agreement embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class the Plaintiff represents, subject to approval of the Court;

I. **AND WHEREAS** the Plaintiff, with the benefit of Class Counsel, on her own behalf and on behalf of the Class, has reviewed and fully understands the terms of this Settlement Agreement and, based on an analysis of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, has concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the Class;

J. **AND WHEREAS** the Defendants similarly have concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of continuing with the litigation, including any potential appeals and any other present or future litigation arising out of the facts that gave rise to this Action, and to resolve finally and completely the pending claims advanced or that could have been advanced against them in this Action;

K. **AND WHEREAS** the Plaintiff and Class Counsel confirm that neither this Settlement Agreement, nor any statement made in the negotiation thereof, shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants;

L. **AND WHEREAS** the Plaintiff asserts that she is a suitable representative for the Class and will seek to be appointed as the representative plaintiff for the certified Class in this Action;

M. **AND WHEREAS** the Parties intend to, agree, and hereby do finally resolve this Action and all claims that were or could have been asserted in it, subject to the approval of the Court, without any admission of liability or wrongdoing whatsoever by the Defendants;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of court and dismissed with prejudice without costs, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

(1) **Action** means *Kelli Harding v. 1513563 Ontario Limited, operating as Encore Food With Elegance, Applause Catering Inc., operating as Applause Catering, AE Hospitality Ltd., operating as AE Hospitality, 2354398 Ontario Limited, Cary Silber, David Silber and Ryan Silber* commenced in the Court at Toronto, Court File No: CV-19-00672034-00CP.

(2) **Administration Costs** means all reasonable fees, disbursements, expenses, costs, taxes and any other amounts associated with, but excluding Class Counsel Fees: (i) establishing and operating the Escrow Account; (ii) disseminating notices to the Class; (iii) the distribution of the Settlement Amount to the Class in accordance with the Distribution Plan; (iv) if necessary, the costs incurred in disseminating notice to the Class that the Agreement has been terminated; and (v) any other steps taken in respect of the administration of this Settlement Agreement, as agreed upon by the Parties and approved by the Court, up to the date of the termination of the Settlement Agreement.

(3) **Certification and Settlement Approval Hearing** means the hearing for the certification of the Action as a class proceeding and the Court's approval of the Settlement.

(4) **Certification and Settlement Approval Order** means the order of the Court to be requested by the Plaintiff, with the consent of the Defendants, granting the following relief: (i) certifying the Action as a class proceeding for settlement purposes only; and (ii) approving the Settlement Agreement.

(5) **Certification Order** means the anticipated order of the Court certifying the Action as a class proceeding for settlement purposes only, as provided for as part of the Certification and Settlement Approval Order.

(6) **Class or Class Member** means:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012 to the date of certification of this Action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

(7) ***Class Counsel*** means Monkhouse Law.

(8) ***Class Counsel Fees*** means the reasonable fees, disbursements and interest and any applicable taxes or charges thereon of Class Counsel in respect of the prosecution of the Action, as approved by the Court.

(9) ***Class Period*** means October 1, 2012 to the date the Certification Order is granted by the Court.

(10) ***Common Issue*** means:

Did any Class Members provide services for AE Hospitality during the Class Period for which they were not properly compensated, including under the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Insurance Act* S.C. 1996, c. 23 or the *Canada Pension Plan*, R.S.C., 1985, c. C-8.

(11) ***Corporate Defendants*** means 1513563 Ontario Limited, operating as Encore Food With Elegance, Applause Catering Inc., operating as Applause Catering, AE Hospitality Ltd., operating as AE Hospitality, 2354398 Ontario Limited.

(12) ***Court*** means the Ontario Superior Court of Justice.

(13) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(14) ***Defence Counsel*** means Fasken Martineau DuMoulin LLP.

(15) ***Defendants*** means 1513563 Ontario Limited, operating as Encore Food With Elegance, Applause Catering Inc., operating as Applause Catering, AE Hospitality Ltd., operating as AE Hospitality, 2354398 Ontario Limited, Cary Silber, David Silber and Ryan Silber.

(16) ***Distribution Plan*** means the plan for distributing the Net Settlement Funds and accrued interest, net of any court-approved deductions, in whole or in part, to the Class as established by the Parties and approved by the Court.

(17) ***Effective Date*** means the date when the Certification and Settlement Approval Order becomes a Final Order.

(18) ***Escrow Account*** means an interest-bearing escrow account at a Canadian Schedule I bank under the control of the Defendants for the benefit of the Class.

(19) ***First Order*** means the proposed order of the Court approving the Notice of Settlement Approval Hearing.

(20) ***Final or Final Order*** means the later of a final judgment entered by the Court approving this Settlement Agreement, the time to appeal such judgment having expired without any appeal being taken and, if an appeal is filed, the approval of this Settlement Agreement upon a final disposition of all appeals.

(21) ***Net Settlement Funds*** means the Settlement Amount minus Class Counsel Fees, any approved Honorarium and Administration Costs.

(22) ***Notice of Settlement Approval Hearing*** means the form or forms of notice, as agreed by the Parties, and approved by the Court, which inform(s) the Class Members of: (i) the date and location of the Certification and Settlement Approval Hearing; (ii) the principal elements of the Settlement Agreement; (iii) the process by which Class Members may object to the Settlement; and (iv) Class Counsel Fees requested by Class Counsel.

(23) ***Notice of Certification and Settlement Approval*** means the form or forms of notice, as agreed by the Parties, and approved by the Court, which inform(s) the Class Members of: (i) the certification of the Action as a class proceeding for settlement purposes only; (ii) their right to opt-out of the Action; and (iii) the approval of the Settlement Agreement.

(24) ***Opt-Out Deadline*** means 60 days from the date on which the Notice of Certification and Settlement Approval is sent to the Class, or as otherwise ordered by the Court.

(25) ***Opt-Out Form*** means the form attached as **Schedule “A”** that must be completed and submitted by the Opt-Out Deadline by Class Members who opt-out of the Action;

(26) ***Party and Parties*** means the Defendants, the Plaintiff, and, where necessary, the Class.

(27) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency

thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(28) ***Plaintiff*** means Kelli Harding.

(29) ***Proceedings*** means any actions or proceedings, other than the Action, solely advancing Released Claims commenced by a Class Member either before or after the Effective Date.

(30) ***Released Claims*** means any and all manner of claims, demands, administrative proceedings and complaints including, but not limited to, before the Ministry of Labour and the Canada Revenue Agency, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Costs), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued and liquidated or unliquidated, regardless of the legal theory, in law, under statute or in equity, that any of the Releasers ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action, including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of, in relation to or in connection with the misclassification and employment of the Class Members by the Defendants including but not limited to any past or future claims for wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions, Employment Insurance contributions, whether arising under contract, statute or at common law.

(31) ***Releasees*** means, jointly and severally, individually and collectively, the Defendants and all of their past, present and future officers, directors, employees, agents, mandataries, attorneys, insurers, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, subrogees, heirs, executors, administrators and assigns of each of the foregoing.

(32) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members on behalf of themselves and any Person claiming by or through them or through them as a predecessor, successor, agent, attorney, heir, administrator, insurer, devisee, subrogee, assignee or representative of any kind.

(33) **Settlement** means the settlement provided for in this Settlement Agreement.

(34) **Settlement Agreement** means this agreement, including the recitals and schedules.

(35) **Settlement Amount** means the sum of two hundred and fifty thousand (250,000) Canadian dollars, inclusive of all expenses relating to the Action and the Settlement, including, but not limited to, interest, costs, fees, Class Counsel Fees, disbursements and taxes and Administration Costs.

SECTION 2– BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to fulfill this Settlement Agreement and to secure Court approval and implementation of the Settlement, including the final dismissal of the Action with prejudice and without costs.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement, they will cooperate in entering into such further documentation and agreements as required to effect the agreed-upon Settlement, and in applying to the Court for directions.

(3) With the exception of the materials contemplated in Section 5.1 regarding Class Counsel Fees, the Plaintiff will provide all materials to be filed with or provided to the Court to the Defendants in advance for review and comment.

2.2 Court Approval Required

(1) With the exception of those Sections expressly stated to survive the termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until: (i) the Action is certified as a class proceeding, as provided for in the Certification and Settlement Approval Order; and (ii) this Settlement Agreement is approved by the Court, as provided for in the Final Order.

2.3 Action in Abeyance

(1) Until the Parties have obtained the Final Order or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel, the Plaintiff and the Class agree to hold in abeyance all other steps in the Action, other than the settlement approval motions contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

SECTION 3 – CERTIFICATION OF ACTION

3.1 Action to be Certified on Consent

(1) The Parties agree that, for the purposes of this Settlement only, this Action shall be certified as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, on consent.

(2) For the purposes of the Certification Order, the Parties agree that the Class shall be defined as in Section 1(6).

(3) For the purposes of the Certification Order, the Parties Agree that the Action will be certified on the basis of the Common Issue.

(4) Class Members may opt-out of the Action by completing the Opt-Out Form attached as **Schedule “A”** and submitting the form to Class Counsel via email by the Opt-Out Deadline. A Class Member who provides Class Counsel with substantially the same information as found in the opt-out form by the Opt-Out Deadline shall also be deemed to have opted-out of the Action.

(5) Class Counsel shall provide the Defendants with a list of Class Members who opted out of the Action by the Opt-Out Deadline, along with copies of the Opt-Out Forms submitted by these Class Members, within seven (7) days of the expiry of the Opt-Out Deadline.

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) Subject to 9, within thirty (30) days of the Effective Date, the Defendants shall deposit the Settlement Amount into the Escrow Account.

(2) The Defendants shall provide written confirmation to Class Counsel that the Settlement Amount has been deposited into the Escrow Account in accordance with Section 4.1(1).

(3) The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, all expenses relating to the Action and the Settlement, interest, costs, fees, Class Counsel Fees, disbursements, taxes and Administration Costs. The Settlement Amount shall be provided in full satisfaction of the Released Claims against the Releasees. The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount for any reason, pursuant to or in furtherance of this Settlement Agreement or the Action.

(4) With seven (7) days of the Settlement Amount being deposited into the Escrow Account in accordance with Section 4.1(1), the Defendants shall transfer any Class Counsel Fees and honorarium payment, as approved by the Court, to Class Counsel, provided that Class Counsel provides to the Defendants, in writing, the necessary wire transfer information a reasonable amount of time in advance.

(5) The Defendants shall maintain the Escrow Account as provided for in this Settlement Agreement. While in control of the Escrow Account, the Defendants shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Settlement Agreement and Distribution Plan, or in accordance with an order of the Court obtained after notice to the Parties.

4.2 No Reversion

(1) Unless the Agreement is terminated as provided herein or otherwise ordered by the Court, the Defendants shall not be entitled to the repayment of any portion of the Settlement Amount.

4.3 Administration Costs

(1) The Defendants shall be responsible for: (a) disseminating Notice of Settlement Approval Hearing; (b) disseminating Notice of Certification and Settlement Approval; (c) distributing the Net Settlement Amount to the Class in accordance with the Distribution Plan; (d) if necessary, the costs incurred in disseminating notice to the Class that the Settlement Agreement has been terminated; and (e) any other steps needed to be taken in respect of the administration of this Settlement Agreement, as agreed upon by the Parties and approved by the Court, up to the date of the termination of the Settlement Agreement.

(2) Prior to the distribution of Net Settlement Funds to the Class in accordance with the Distribution Plan, the Defendants shall be reimbursed from the Settlement Fund for all

Administration Costs and any applicable taxes, provided that such Administration Costs are reasonably incurred and approved by the Court.

(3) Any disputes concerning Administration Costs shall be dealt with by a motion on notice to the Parties or by application to the Court, as necessary.

SECTION 5– CLASS COUNSEL FEES, HONORARIUM AND TAXES AND INTEREST

5.1 Class Counsel Fees Approval

(1) At the Certification and Settlement Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees. Class Counsel Fees shall be reimbursed and paid out of the Settlement Amount after the Settlement becomes Final.

(2) The Defendants acknowledge that they are not a party to the motion concerning the approval of Class Counsel Fees. The Defendants will have no involvement in the approval process to determine the amount of Class Counsel Fees and will not make submissions to the Court concerning Class Counsel Fees.

(3) Any order in respect of Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement.

5.2 Honorarium

(1) At the Certification and Settlement Approval Hearing, Class Counsel shall request Court approval for an honorarium payment in favour of the Plaintiff in the amount of \$5,000, which shall be paid out of the Settlement Amount after the Settlement becomes Final.

(2) The Defendants shall take no position regarding the honorarium payment referred to in Section 5.2(1).

5.3 Taxes and Interest

(1) Except as provided hereinafter, all interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of the Class and shall become and remain part of the Settlement Amount held in the Escrow Account.

(2) All taxes payable on any interest which accrues on or otherwise in relation to the Settlement Amount in the Escrow Account shall be the responsibility of the Defendants. The Defendants shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Escrow Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Escrow Account.

(3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the interest earned on the Settlement Amount in the Escrow Account or otherwise shall be paid to the Defendants who shall be responsible for the payment of all taxes on such interest.

SECTION 6– NOTICE

6.1 Notices Required

(1) The Plaintiff and the Class shall be given the following notices: (i) Notice of Settlement Approval Hearing; (ii) Notice of Certification and Settlement Approval; (iii) if necessary, notice if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect; and (iv) such further notice as may be directed by the Court.

6.2 Form and Distribution of Notices

(1) The Notice of Settlement Approval Hearing and Notice of Certification and Settlement Approval referred to in Sections 6.1(1)(i) and (ii) shall be in a form attached as **Schedules “B”** and **“C”**, respectively, or as ordered by the Court. Any other notices referred to in Sections 6.1(1) shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices referred to in Section 6.1(1) shall be disseminated in accordance with the Notice Plan attached as **Schedule “D”**, or as ordered by the Court.

SECTION 7 – SETTLEMENT APPROVAL

7.1 Motions Seeking Approval of the Notice of Settlement Approval Hearing and Notice of Certification and Settlement Approval

(1) As soon as practicable after the Date of Execution the Plaintiff shall bring a motion to the Court for an order approving the Notice of Settlement Approval Hearing.

(2) As soon as practicable after the order referred to in Section 7.1(1) is made and the Notice of Settlement Approval Hearing is disseminated, and no later than February 3, 2022, the Plaintiff shall bring a motion to the Court for an order granting the following relief: (i) certifying this Action as a class proceeding for settlement purposes in accordance with Section 3, and (ii) approving the terms of this Settlement Agreement, the Distribution Plan, Class Counsel Fees and Honorarium and setting out any other orders and relief necessary to carry out the administration of this Settlement Agreement.

(3) The orders referred to in Sections 7.1(1) and 7.1(2) shall be in the form attached as **Schedules “E” and “F”**, or in the form ordered by the Court. The order referred to in Section 7.1(2) shall contain a term providing that no action may be taken against the Defendants, the Plaintiff, Defence Counsel, Class Counsel without leave of the Court with respect to any issues arising from or in relation to the Settlement.

(4) In conjunction with the Plaintiff’s motion referred to in Section 7.1(2), Class Counsel shall seek an order from the Court approving the Distribution Plan in the form attached as **Schedule “G”**.

7.2 Pre-Motion Confidentiality

(1) Until the motion referred to in Section 7.1(1) is filed with the Court, the Parties and their counsel shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of the other Party, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

(2) After the motion referred to in Section 7.1(1) is filed with the Court, the Parties and their counsel shall be permitted to publicly disclose the Settlement Agreement. For greater certainty, nothing in this Settlement Agreement precludes Class Counsel from publishing the Settlement

Agreement on its website, or from otherwise communicating with Class Members regarding the Settlement Agreement, after the motion referred to in Section 7.1(1) has been filed with the Court.

7.3 No Press Release

(1) The Parties agree that, other than in connection with any court-approved notice arising from this Settlement Agreement, they will not issue any press release, whether joint or individual, concerning this Settlement Agreement or anything related thereto. The Parties further agree that they will not seek to obtain media coverage in relation to the Settlement Agreement.

(2) The Parties specifically agree that the Parties will not make any public statements, comment, or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them from reporting to their clients, or complying with any court order, or from making any disclosure or comment otherwise required by the Settlement Agreement, or from making any necessary disclosure or comment for the purpose of any applicable legislation or professional obligation.

(3) If comment is solicited by the press or others, the Parties, Class Counsel and Defence Counsel agree and undertake to describe the Settlement and the terms of this Settlement Agreement factually and only as fair, reasonable and in the best interests of the Class and in compliance with Section 10.4(1) below.

SECTION 8– RELEASES AND DISMISSALS

8.1 Release of Releasees

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiff and Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally, and

forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

(3) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, or assign, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against the Releasees in respect of any Released Claims or any matter related thereto.

(4) As of the Effective Date, the Releasors and Class Members shall not now or hereafter institute, continue, maintain or assign, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against any Person who might claim in any manner or form contribution and indemnity from the Defendants at common law, in equity or under the provisions of any statutes or regulation, including the *Negligence Act*, R.S.O. 1990, c. N.1 and any successor legislation thereto, and/or the *Rules of Civil Procedure*, RRO 1990, Reg 194, in respect of any Released Claims or any matter related thereto.

(5) As of the date of this Settlement Agreement, Class Counsel do not and will not represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action as against the Releasees.

8.2 Dismissal of the Proceedings

(1) Upon the Effective Date, the Action shall be declared settled out of court and shall be dismissed with prejudice and without costs.

(2) Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation of his or her Proceedings against the Releasees.

8.3 Material Term

(1) For the avoidance of doubt and without limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to Section 9.1(4)), the releases and reservations of rights contemplated in this Section 8 shall be considered a material term of the

Settlement Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right to terminate pursuant to Section 9.1 of this Settlement Agreement.

SECTION 9- TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

(1) The Defendants shall, in their sole discretion, have the option to terminate this Settlement Agreement in the event that:

- (a) the Court refuses to grant an order dismissing the Action with prejudice and on a without costs basis;
- (b) the Court declines to approve this Settlement Agreement or any material part thereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a Certification and Settlement Approval Order that is materially inconsistent with the terms of the Settlement Agreement;
- (e) the Certification and Settlement Approval Order does not become Final;
- (f) the Certification and Settlement Approval Order is reversed on appeal and the reversal becomes a final order; or
- (g) the Court declines to approve the releases, covenants (including the covenant not to sue), dismissals, granting of consent, and reservation of rights contemplated in Section 8, or approves them in materially modified form.

(2) If the Settlement Amount is not paid in accordance with Section 4.1(1), the Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate this Settlement Agreement or to move before the Courts to enforce the terms of this Settlement Agreement.

(3) If the Defendants elect to terminate the Settlement Agreement pursuant to Section 9.1(1), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Section 9.1(2), a written notice of termination shall be provided by the terminating Party to the

other Party forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies.

(4) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees or the Distribution Plan shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

9.2 Steps Required on Termination

(1) If this Settlement Agreement is terminated, either the Defendants or the Plaintiff shall, within thirty (30) days after termination, apply to the Court, on notice to the other Party, for an order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provision in those sections listed in Section 9.4(2);
- (b) setting aside and declaring null and void and of no force or effect, *nun pro tunc*, all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement; and
- (c) authorizing the payment of the Escrow Amount, plus all accrued interest thereon, to the Defendants.

(2) Subject to Section 9.4(2), the Plaintiff shall consent to the orders sought in any motion made by the Defendants under Section 9.29.2(1).

9.3 Notice of Termination

(1) If the Settlement Agreement is terminated, a notice of the termination will be given to the Class. The Defendants will cause the notice of termination, in a form approved by the Court, to be disseminated as the Court directs.

9.4 Effect of Termination

(1) Subject to Section 9.4(2), in the event that this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) this Settlement Agreement shall have no further force or effect and the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided herein;
- (b) no motion to approve this Settlement Agreement which has not been decided shall proceed;
- (c) the Parties will cooperate in seeking to have all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement to be set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (d) this Settlement Agreement shall not be introduced into evidence or otherwise referred to in any litigation against the Defendants.

(2) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, and notwithstanding Sections 9.2(1), the provisions of Sections 2.1(3), 4.3(1), 4.3(3), 5.3(2), 5.3(3), 6.1(1)(iii)-(iv), 6.26.2(1), 6.2(2), 7.3(1), 7.3(2), 7.3(3), 9.2(1), 9.2(2), 9.3(1), 9.4(1), 9.5(1), 10.1(1), 10.2(1), 10.3(1), 11.2(1), 11.3(1), 11.4(1), 11.4(2), 11.5(1), 11.6(1), 11.8(1), 11.9(1), 11.10(1), 11.11(1), 11.12(1), 11.14(1), 11.15(1) and the definitions and Schedules applicable thereto (but only for the limited purpose of the interpretation of those sections) shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

9.5 Disputes Relating to Termination

- (1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Party.

SECTION 10– EFFECT OF SETTLEMENT

10.1 No Admission of Liability

- (1) Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this

Settlement Agreement, shall not be deemed, construed or interpreted as to be an admission of any violation of any statute or law, or any wrongdoing or liability by the Releasees, or of the truth of any claims or allegations contained in the Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability with respect to any of the allegations made, or which could have been made, against the Defendants in the Action.

10.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance or other related proceeding, as otherwise required by law, or with the written consent of all Parties.

10.3 No Further Litigation

(1) Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Releasees which relates to or arises from the Released Claims. Moreover, Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Action or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

10.4 Non-Disparagement

(1) The Parties, Class Counsel and Defence Counsel agree not engage in any form of conduct, or make any statements or representations, that are untruthful or disparage or otherwise harm the reputation, goodwill or interests of the other Party, Class Counsel or Defence Counsel. This includes, but is not limited to, statements or representations to the press or other media.

10.5 Representations and Warranties

(1) For the purpose of this Settlement only, the Defendants represent and warrant that they are currently treating Class Members as employees, except where class members operate through a personal services corporation. The Defendants represent and warrant that they shall continue to treat all Class Members not operating through personal services corporations as employees.

SECTION 11– MISCELLANEOUS

11.1 Motions for Directions

(1) Class Counsel or Defence Counsel may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Plan at any time.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

11.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Governing Law

- (1) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) The Parties agree that the Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Certification and Settlement Approval Order.

11.5 Severability

- (1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.6 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.7 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

11.8 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, Class Counsel, the Defendants, the Releasors, the Releasees and all of their

successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

11.9 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.12 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.13 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

11.14 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.15 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication, or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Alexandra Monkhouse
MONKHOUSE LAW
220 Bay Street, Suite 900
Toronto, Ontario M5J 2W4
Tel: 416-907-9249
Fax: 888-501-7235
alexandra@monkouselaw.com

For the Defendants:

Paul J. Martin
FASKEN MARTINEAU DUMOULIN LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Tel: (416) 865-4439
Fax: (416) 364-7813

Email: pmartin@fasken.com

11.16 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

KELLI HARDING on her own behalf and on behalf of the Class that she represents, by her counsel

KELLI HARDING



Name of Authorized Signatory:

Alexandra Monkhouse

Signature of Authorized Signatory:




Monkhouse Law
Counsel for the Plaintiff and the Class

AE HOSPITALITY LIMITED

Name of Authorized Signatory:

Cary Silber

Signature of Authorized Signatory:

DocuSigned by:

B2B1A56D70CD47B

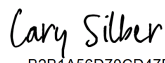
President and Director

1513563 ONTARIO LIMITED OPERATING AS ENCORE FOOD WITH ELEGANCE

Name of Authorized Signatory:

Cary Silber

Signature of Authorized Signatory:

DocuSigned by:

B2B1A56D70CD47B

President and Director

APPLAUSE CATERING INC.

Name of Authorized Signatory:

David Silber

Signature of Authorized Signatory:

DocuSigned by:
David Silber
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President and Director

2354398 ONTARIO LIMITED

Name of Authorized Signatory:

Ryan Silber

Signature of Authorized Signatory:

DocuSigned by:
Ryan Silber
06289C2F6222481...

Director

CARY SILBER

Signature:

DocuSigned by:
Cary Silber
B2B1A56D70CD47B...

DAVID SILBER

Signature:

DocuSigned by:
David Silber
EB0D3E361A294D5...

RYAN SILBER

Signature:

DocuSigned by:
Ryan Silber
06289C2F6222481...

SCHEDULE “A” – OPT-OUT FORM

SCHEDULE "A"

NOTICE OF OPTING OUT

TO: Monkhouse Law
220 Bay Street, Suite 900
Toronto, Ontario
M5J 2W4
AEHospitalityClassAction@monkhouselaw.com
Fax: 888-501-7235

ATTN: Monkhouse Law – AE Hospitality Class Action

This is NOT a claim form. If you submit this form, you will not receive any money or benefits from the AE Hospitality Class Action settlement. You may wish to consult Monkhouse Law or obtain independent legal advice at your own cost prior to opting out.

To opt out, this form must be properly completed and received at the above-noted address or post marked no later than [DATE, 2022].

Please sign your initials in each of the applicable square after reading:

☐

I have read and understood the Court-Approved Notice of Certification and Settlement Approval and believe that I am a member of the class in this lawsuit.

☐

I wish to opt out (be excluded) of this class proceeding. I understand that by opting out, I cannot receive any possible benefits, financial or otherwise, that members of the class may receive through this class action.

☐

I understand that any claims I may have against AE Hospitality, Encore Food with Elegance, Applause Catering, 2354398 Ontario Limited (collectively, the “**Corporate Defendants**”), Cary Silber, David Silber and/or Ryan Silber (collectively with the Corporate Defendants, the “**Defendants**”) for any unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions in connection with services rendered to one or more the Corporate Defendants between October 1, 2012 and [Date of Certification] must be commenced within a specific time period or they might be legally barred.

☐

I understand that the time period will resume running against me if I opt out of the class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant time periods and for taking all necessary legal steps to protect any claim I may have.

☐

I confirm that by signing this form, and by answering “yes” in the box below, I am forever waiving my right to any money or benefits received through this settlement.

☐

I decline payments and benefits from the settlement.

☐

I intend to bring an individual civil action against AE Hospitality, Encore Food with Elegance, Applause Catering alleging any or all of the claims included in the class action lawsuit.

I certify under oath that the Defendant has not put pressure on me to opt out of this Class Action.

Dated: _____

Witness Signature

Signature

Witness Name

Print Name

Street Address

City, Province, Postal Code

Mailing Address (if different from above)

City, Province, Postal Code

Telephone

Email

☐ Copy of Government Issued ID enclosed

This Notice must be delivered, or post marked by [Opt-out Date] enclosed with a copy of Government Issued Identification to be effective.

REPRESENTATIVE IDENTIFICATION (IF APPLICABLE)

Please also complete this portion if you are completing this form on behalf of a Class Member as their representative

Representative Name (Last, First): _____

Relationship to Class Member: _____

Email address: _____

Phone: _____

Street Address: _____

City, Province, Postal Code: _____

Mailing Address (if different from above): _____

City, Province, Postal Code: _____

If Class Member is Deceased or Disabled:

Name of Estate Administrator or Guardian of Property: _____

Signature of Estate Administrator or Guardian of Property: _____

If the class member is deceased or disabled, you must enclose a copy of the document appointing you as guardian of property or estate administrator.

Monkhouse Law will collect, use and/or disclose this form and any enclosures, data, information, reports, material, or other documentation of any nature which are disclosed, revealed or transmitted to them with this form solely for the purpose of disclosing the objection or submission to the Ontario Superior Court and to AE Hospitality, Encore Food with Elegance, Applause Catering pursuant to the terms of the Parties' Settlement Agreement. The use and disclosure of any personal information received by Monkhouse Law, AE Hospitality, Encore Food with Elegance, and Applause Catering is subject to all applicable laws that may require the retention or disclosure of the personal information disclosed, including the *Personal Information Protection and Electronic Documents Act*.

SCHEDULE “B” – NOTICE OF SETTLEMENT APPROVAL HEARING

NOTICE OF SETTLEMENT APPROVAL HEARING (SHORT FORM)

To Whom It May Concern:

RE: AE Hospitality Class Action - READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

You are receiving this notice because you have been identified as a potential class member in the AE Hospitality Class Action, described below.

1. What is this lawsuit about?

A proposed representative plaintiff, Kelli Harding (the “**Plaintiff**”), commenced a proposed class proceeding against AE Hospitality, Encore Food with Elegance, Applause Catering and 2354398 Ontario Limited (collectively, the “**Corporate Defendants**”), Cary Silber, David Silber and Ryan Silber (collectively with the Corporate Defendants, the “**Defendants**”).

In this proposed class action, the Plaintiff is seeking compensatory damages on behalf of supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants between October 1, 2012 and the date this action is certified as a class proceeding for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions, as well as for punitive damages. The Defendants have denied all of these allegations. Monkhouse Law represents the proposed class (“**Class Counsel**”).

The parties to this proposed class proceeding have reached a settlement (the “**Proposed Settlement**”). The Proposed Settlement is a compromise of disputed claims against the Defendants without any admission of liability by the Defendants. The Proposed Settlement is subject to Court approval. The Proposed Settlement, if approved, will conclude the class proceeding. The purpose of this document is to provide notice to putative class members that a motion will be heard on **February 3, 2022 at 10 AM** by Zoom to certify this action as a class proceeding and to approve the Proposed Settlement and Class Counsel’s fees. Zoom log-in details will be available from Class Counsel one week before the motion.

2. Am I a proposed class member?

You are a proposed class member and are entitled to participate in the proceeding if you fall within the following definition:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012 to the date of certification of this Action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

3. What proposed settlement has been reached?

Under the Proposed Settlement, the defendants shall pay an all-inclusive amount of \$250,000 (the “**Gross Settlement Funds**”) in exchange for, among other things, a full and final release of the claims against the Defendants. Class Counsel shall seek Court approval of \$125,000 in respect of Class Counsel’s fees, HST and disbursements to be paid from the Gross Settlement Funds.

Class Counsel shall seek an Honorarium of \$5,000 for the representative plaintiff.

The Gross Settlement Funds shall be reduced by Class Counsel’s fees, HST, disbursements, settlement administration costs and/or an Honorarium that may be approved by the Court. The remaining amount of approximately \$120,000.00 shall be available to be distributed in accordance with the Distribution Plan in the Proposed Settlement, including a distribution to Eligible Class Members.

4. Can I opt-out of the class action or object to the Proposed Settlement?

If you are a Class Member, you can object to the Proposed Settlement if you don’t think it is fair, reasonable, or in the best interests of the class members. You can give reasons why you think the Court should not approve it. For more information about objecting to the Proposed Settlement, see: <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>

In addition, if this action is certified as a class proceeding and the Proposed Settlement is approved, you will have the right to opt-out of the class action.

5. Additional Information

If you wish to learn more about the proposed class action, the Proposed Settlement, or the steps you can take, please visit the following web page:

<https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>

If you would like more information, you may also contact the lawyers who represent Ms. Harding. To reach the lawyers at Monkhouse Law, please call 416-907-9249 or email AEHospitalityClassAction@monkouselaw.com.

Sincerely,

AE Hospitality

[Insert Logo and/or Signatures as Needed]

NOTICE OF SETTLEMENT APPROVAL HEARING (LONG FORM)

THIS NOTICE IS TO ALL INDIVIDUALS WHO WORKED FOR ONE OR MORE OF AE HOSPITALITY LTD. 1513563 ONTARIO LTD., OPERATING AS ENCORE FOOD WITH ELEGANCE, APPLAUSE CATERING INC. AND 2354398 ONTARIO LTD. (COLLECTIVELY, THE “CORPORATE DEFENDANTS”) AS SUPERVISORS, SERVERS, BARTENDERS AND/OR CHEFS BETWEEN OCTOBER 1, 2012 AND THE DATE THIS ACTION IS CERTIFIED AS A CLASS PROCEEDING

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

A proposed representative plaintiff, Kelli Harding (the “**Plaintiff**”), commenced a proposed class proceeding against the Corporate Defendants, Cary Silber, David Silber and Ryan Silber (collectively, the “**Defendants**”).

In this proposed class action, the Plaintiff is seeking damages on behalf of all supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants between October 1, 2012 and the date this action is certified as a class proceeding for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions. The Defendants have denied all of these allegations. Monkhouse Law represents the proposed class (“**Class Counsel**”).

The parties to this proposed class proceeding have reached a settlement (the “**Proposed Settlement**”). The Proposed Settlement is a compromise of disputed claims against the defendants without any admission of liability by the defendants. You may be entitled to compensation under the Proposed Settlement if you fall within the following definition:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012 to the date of certification of this action as class proceeding who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question (the “**Class Members**”).

The Proposed Settlement is subject to Court approval. The Proposed Settlement, if approved, will conclude the class proceeding. The purpose of this document is to provide notice to putative Class Members that a motion will be heard on **February 3, 2022 at 10 AM** by Zoom to certify this action as a class proceeding and to approve the Proposed Settlement and Class Counsel’s fees. Zoom log-in details will be available from Class Counsel one week before the motion.

Additional information regarding the Proposed Settlement and the options available to you can be found below.

The Ontario Superior Court of Justice has authorized distribution of this Notice.

WHAT THIS NOTICE CONTAINS:

A. BASIC INFORMATION

1. Why did I get this notice?
2. What is a class action?
3. What is this class action about?
4. Has there been a trial?
5. Why is there a proposed settlement?

B. WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

6. Who is included in the proposed settlement?
7. What if I am not sure whether I am included in the proposed settlement?

C. PROPOSED SETTLEMENT

8. What does the proposed settlement provide?
9. What am I giving up in the proposed settlement?
10. May I remove myself from the proposed settlement?

D. HOW TO RECEIVE A PAYMENT?

11. How will I receive a payment?
12. How will payments be calculated?
13. What if I disagree with the decision?

E. THE LAWYERS REPRESENTING YOU

14. Who is Class Counsel?
15. Do I have to pay Class Counsel anything?

F. OBJECTING TO THE PROPOSED SETTLEMENT

16. How do I tell the Court if I support the proposed settlement?
17. How do I tell the Court if I do not like the proposed settlement?

G. THE APPROVAL HEARING

18. When/where will the Court decide whether to approve the proposed settlement?
19. What if I do nothing?

H. GETTING MORE INFORMATION

20. How do I get more information?

A. BASIC INFORMATION

1. Why did I get this notice?

The Ontario Superior Court of Justice authorized this notice to let you know about the Proposed Settlement. Based on AE Hospitality's records, we believe you may be a member of the putative class.

This notice explains the lawsuit, the Proposed Settlement, and your legal rights.

2. What is a class action?

In a class action, one or more people called the "representative plaintiff(s)" sue on behalf of people who have similar claims, called the "class" or "class members".

In a class action, the court can resolve all or some of the class members' claims at the same time. People who meet the definition of a "class member" are automatically included in the claim unless they choose to "opt out". Opting out is explained in more detail below.

3. What is this class action about?

The Plaintiff commenced this proposed class action against the Defendants on behalf of all supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants between October 1, 2012 and the date this action is certified as a class proceeding. Among other things, the Plaintiff alleges that the Defendants misclassified the above workers as independent contractors when, at law, they were employees and were therefore entitled to receive certain employment benefit payments, such as overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions. The Plaintiff is seeking compensatory damages for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions, as well as for punitive damages.

The Defendants have denied all allegations made against them in this proceeding.

4. Has there been a trial?

This case has not yet gone to trial. A judge has not made any decision regarding the certification of this proposed class action or the merits of this lawsuit. The parties reached the Proposed Settlement before the "certification motion" was heard and decided by the court.

5. Why is there a proposed settlement?

The Plaintiff and the Defendants have agreed to the Proposed Settlement. The Proposed Settlement is a compromise of disputed claims against the defendants without any admission of liability by the defendants.

By entering the Proposed Settlement, the parties are seeking to avoid the costs and uncertainty of a trial and the potential delays in obtaining judgment. It also means that the class members will not need to testify in court.

The Plaintiff and Class Counsel are of the view that the Proposed Settlement is in the best interests of all Class Members.

B. WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

6. Who is included in the proposed settlement?

You are a Class Member and may be entitled to compensation under the Proposed Settlement if you fall within the following definition:

All supervisors, servers, bartenders, and chefs who worked for one or multiple companies of the Group since October 1, 2012 to the date of certification of this action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

Estates of Putative Class Members may be eligible. A claim must be filed under the Proposed Settlement by the Executor or Administrator of the Estate of the Putative Class Member.

If the Proposed Settlement is approved, all Putative Class Members, except those who validly opt out of the settlement, will be bound by the Proposed Settlement, and will automatically release any claims they may have against the Defendants relating to any conduct alleged, or which could have been alleged, in this action.

7. What if I am not sure whether I am included in the proposed settlement?

If you are not sure whether you are included in the Proposed Settlement, you may wish to reach out to Class Counsel: call 416-907-9249 or visit <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.

C. PROPOSED SETTLEMENT

8. What does the Proposed Settlement provide?

If approved, the Proposed Settlement provides that Putative Class Members are eligible for compensation.

- To receive payment, Class Members **must** fill out a claims form that details, to the best of their abilities, the dates which they worked for one or more of the Corporate Defendants, proof of working for the Corporate Defendants, and their contact

- information.
- The Defendants will receive these claims forms and will review their records to corroborate the information contained therein.
 - The Defendants will send a notification letter to each Putative Class Member and explain what they have concluded regarding the Putative Class Member's work history.
 - If a Putative Class Member disagrees with the Defendants' assessment, they can file an appeal with a designated referee.
 - Once all appeals are resolved, the Defendants will calculate the estimated amount each Putative Class Member is entitled to receive under the settlement using a pre-determined formula.

The Proposed Settlement is for a for a global, all-inclusive amount of \$250,000 inclusive of legal fees, disbursements, taxes, settlement administration costs and/or an honorarium for the representative plaintiff. The amount of approximately \$120,000 will be distributed to each Class Member according to a pre-determined formula based upon the dates each Eligible Class Member worked for the Defendants, the position worked, and the assumptions as outlined in the “**Distribution Plan**” appended to the “**Settlement Agreement**” which can be viewed in full at: <https://www.monkhouselaw.com/ae-hospitality-catering-misclassification/>.

Class Counsel will ask for an honorarium of \$5,000 for the Plaintiff in this action.

9. What am I giving up in the proposed settlement?

Once the Proposed Settlement becomes final, you will have given up your right to sue the Defendants in connection with the claims outlined in Section 8 of the Settlement Agreement. In other words, you will be "releasing" the Defendants from liability in connection with any conduct alleged, or which could have been alleged, in this action, including anything in respect of pay for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions from October 1, 2012 to the date this action is certified as a class proceeding.

Section 8 of the Settlement Agreement contains a specific description of the released claims, so please read it carefully. If you have any questions about what this means, you may contact Class Counsel or you may engage your own lawyer. If you decide to retain your own lawyer, you are responsible for paying your lawyer's legal fees.

10. May I remove myself from the proposed settlement?

Yes. If the Proposed Settlement is approved, a notice will be sent describing the process for removing yourself from the class action. This is called "Opting Out".

If you do not wish to be a part of the class action you must Opt-Out before a date that will be set by the Court. If you opt out, you will not be bound by any order made in this class action and you will not be eligible for compensation under the Proposed Settlement. You may hire and pay for your own lawyer and may be able to commence your own lawsuit. If you want to

commence your own lawsuit, you must Opt-Out. If you Opt-Out, you must abide by all applicable limitation periods. We strongly recommend you consult a lawyer before deciding to opt out.

Further information on how to Opt-Out - and the deadline by which you must do so - will be available if the Proposed Settlement is approved.

D. HOW TO RECEIVE A PAYMENT IF THE PROPOSED SETTLEMENT IS APPROVED

11. How will I receive a payment?

To be eligible to receive a payment under the Proposed Settlement, all Putative Class Members will be required to complete and submit a Claim Form. The Defendants will assess all claims using a pre-determined formula agreed upon by the parties and approved by the court. Putative Class Members deemed eligible for compensation under the Proposed Settlement will not need to testify in court. Once the claim is verified, Putative Class Members will receive compensation as soon as reasonably possible.

Before anyone can file a Claim Form or have their eligibility to receive payment under the Proposed Settlement assessed, the Ontario Superior Court of Justice must decide whether to grant final approval of the Proposed Settlement (see the “**Approval Hearing**”, below).

If the Proposed Settlement is approved, you will receive additional information about the claims process, including the Claim Form, in a further notice.

12. How will payments be calculated?

The Defendants, in consultation with Class Counsel will review your Claim Form and determine if you qualify for a payment. If you do, the Defendants, in consultation with Class Counsel, will determine the amount of your payment based on the pre-set formula described in the Settlement Agreement and approved by the court.

Importantly, the settlement is for a non-reversionary fixed amount, meaning that the Defendants do not "save" money by denying claims.

The amount each Putative Class Member will receive will depend on several factors. They are:

- (1) The number of Putative Class Members that apply for payment;
- (2) When you worked for the Corporate Defendants; and
- (3) whether you worked as Wait Staff or as a Chef.

The Defendants will review their records to determine when each Putative Class Member worked for the Corporate Defendants, as well as each Putative Class Member's position with the Defendants. That calculation will be used to determine what share of the settlement amount the Putative Class Member will receive. The total payment will also

be dependent on the number of Putative Class Members who apply for compensation under the Proposed Settlement and the total costs incurred in administering the settlement.

A complete copy of the Settlement Agreement can be found at <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>. The Settlement Agreement explains fully how much is being paid and how it is being distributed.

13. What if I disagree with the decision?

If you disagree with how the Defendants' determined your entitlement under the Proposed Settlement, you can appeal their assessment. All appeals will be decided by a neutral referee.

E. THE LAWYERS REPRESENTING YOU
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15. Who is Class Counsel?

Monkhouse Law represents the Plaintiff, and, if this action is certified for settlement purposes, the Class Members. If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense.

16. Do I have to pay Class Counsel anything?

No.

Class Counsel is asking for the approval of fees, HST and disbursements in the amount of \$125,000. This amount will be paid directly by the Defendants from the total amounts set aside to settle the class action. Class Counsel will not be paid unless the Ontario Superior Court of Justice declares that the proposed legal fees are fair and reasonable.

You will not need to pay any legal fees out of your own pocket for services from Class Counsel relating to the Class Action. If a Class Member retains other lawyers or a personal representative, that Class Member is responsible for paying their own lawyer or representative's fees, disbursements, and taxes.

F. PARTICIPATING IN THE PROPOSED SETTLEMENT HEARING
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You may participate in the hearing to voice your support for the proposed settlement, you may object to the proposed settlement if you disagree with all or part of it, and you may also voice support or disapproval of the proposed legal fees payments. The Court will consider your views.

Participation in the hearing is optional. You may choose to wait for the outcome of the hearing.

17. How do I tell the Court if I support the proposed settlement?

To express your support for the Proposed Settlement, the proposed legal fees, or both,

you may write a letter that includes the following:

- Your full name, current mailing address, email address and telephone number;
- A statement saying that you support the Proposed Settlement, legal fees, or both;
- The reasons you support the Proposed Settlement, legal fees, or both, along with any supporting materials; and,
- Your signature or that of your legal agent acting with your instructions.

You may mail or email your letter to:

AE Hospitality Class Action
c/o Monkhouse Law, 220 Bay Street, Suite 900,
Toronto, Ontario, M5J 2W4
Email: AEHospitalityClassAction@monkouselaw.com

18. How do I tell the Court if I do not like the proposed settlement or legal fees?

To object to the proposed settlement, you may either:

- (a) **Make a written objection:** Write a letter or email that includes the following information:
 - Your full name, current mailing address, email address and telephone number;
 - A statement saying that you object to the Proposed Settlement or the legal fees or both;
 - The reasons you object to the Proposed Settlement, legal fees, or both, along with any supporting materials; and
 - Your signature or that of your legal agent acting with your instructions.
- (b) **Make an oral objection at the approval hearing:** You must fill out an Objection Form and indicate that you intend to appear at the hearing to object. The approval hearing before the Court is scheduled to be heard in Toronto, Ontario **on February 3, 2022.**

All objecting letters or emails, including any Objection Forms, must be sent on or before **January 3, 2022** at 5:00 pm to:

AE Hospitality Class Action
c/o Monkhouse Law, 220 Bay Street, Suite 900,
Toronto, Ontario, M5J 2W4
Email: AEHospitalityClassAction@monkouselaw.com

G. THE APPROVAL HEARING

19. When/where will the Court decide whether to approve the Proposed Settlement and/or the legal fees?

The Ontario Superior Court of Justice will hold the Approval Hearing via Zoom on **February 3, 2022**. Zoom log-in details will be available from Class Counsel one week before the motion.

This is a public hearing, and you may attend if you wish. As a Class Member, you may also ask to speak, but you do not have to.

The hearing date could be moved to a different date or time without additional notice. If you plan to attend the hearing, we recommend you check Class Counsel website at <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/> or call 416-907-9249.

At the hearing, the Court will consider whether the Proposed Settlement is fair, reasonable, and in the best interests of the Class. If there are objections, the Court will listen to the people who submitted an Objection Form and asked to speak at the hearing.

After the hearing, the Court will decide whether to approve the Proposed Settlement. We cannot guarantee when the Court will release its decision.

The Court will, at the same, consider whether the proposed legal fees and honorarium for the Plaintiff are fair and reasonable.

20. What if I do nothing?

If you do nothing, you are deemed to have accepted the Proposed Settlement. The approval hearing will proceed, and the Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. You will have no further opportunity to make objections to the Court with respect to the Proposed Settlement.

H. GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the proposed settlement. For full details, a copy of the Settlement Agreement is available at: <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>

If you have any questions, you may send them to:

AE Hospitality Class Action

Monkhouse Law
220 Bay Street, Suite 900
Toronto, Ontario M5T 2W4

or email: AEHospitalityClassAction@monkhouselaw.com

or call 416-907-9249

SCHEDULE “C” – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL
(SHORT FORM)**

To Whom It May Concern:

RE: AE Hospitality Class Action – NOTICE OF CERTIFICATION AND SETTLEMENT

You are receiving this notice because you have been identified as a potential class member in the AE Hospitality Class Action, described below. **READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS**

1. What is this lawsuit about?

A representative plaintiff, Kelli Harding (the “**Plaintiff**”), commenced a proposed class proceeding against AE Hospitality, Encore Food with Elegance, Applause Catering and 2354398 Ontario Limited (collectively, the “**Corporate Defendants**”), Cary Silber, David Silber and Ryan Silber (collectively with the Corporate Defendants, the “**Defendants**”). This action was certified as a class proceeding on [●].

In this class action, the Plaintiff is seeking compensatory damages on behalf of supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants between October 1, 2012 and the date this action is certified as a class proceeding for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions, as well as for punitive damages. The Defendants have denied all of these allegations. Monkhouse Law represents the proposed class (“**Class Counsel**”).

2. Why is this notice being given?

The parties to this class action have reached a settlement (the “**Settlement**”) to resolve all claims in connection with any conduct alleged, or which could have been alleged, in this action. The Settlement is a compromise of disputed claims against the Defendants without any admission of liability by the Defendants. The Settlement was approved by the Honourable Mr. Justice Glustein on [●].

The purpose of this document is to provide notice of the approval of the Settlement and Class Counsel’s fees, and to advise you how to make a claim for compensation pursuant to the Settlement.

3. Am I a member of the Class

You are a proposed class member and are entitled to participate in the proceeding if you fall within the following definition:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012 to the date of certification of this Action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

4. What settlement has been reached and how can I claim compensation?

Under the Settlement, the Defendants shall pay an all inclusive amount of \$250,000 (the “**Gross Settlement Funds**”) in exchange for, among other things, a full and final release of the claims against the Defendants. The Gross Settlement Funds shall be reduced by Class Counsel’s fees, HST, disbursements, settlement administration costs and/or an Honorarium. The remaining amount shall be available to be distributed in accordance with the Distribution Plan in the Settlement, including a distribution to eligible class members.

In order to be eligible to receive a payment under the Settlement, you must complete a Claims Form and return it to the Defendants by [insert date]. Claims Forms can be submitted to the Defendants either by email or mail at the following:

[To be added]

For a copy of the Claims Form and information on how to complete and submit it, or for more general information, please visit the following web page:

<https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>

5. How much will Class Counsel be paid?

You will not have to pay any of the fees and expenses of Class Counsel. The Court has approved a contingency fee agreement and has fixed Class Counsel fees and disbursements in the amount of \$[●]. This amount is comprised of \$[●] for legal fees, \$[●] for HST applicable to legal fees and \$[●] for disbursements inclusive of HST.

6. Can I remove myself from the Class?

As a class member, you also have the right to opt out of the class action. By opting out, you reserve the right to make your own claim against the Defendants, including for any allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions. The decision to opt out should not be taken lightly, as it means that you would have to start your own claim at your own expense if you wanted to pursue an individual claim against the Defendants. You may want to seek independent legal advice before choosing to take this step.

For more information on opting out, please visit the webpage listed in section 4, above.

7. Where can I get more information?

You may also contact the lawyers representing the Class Members and the representative

plaintiff by calling 416-907-9249 or by emailing at
AEHospitalityClassAction@monkhouselaw.com .

Sincerely,

[AE Hospitality]

[Insert Logo and/or Signatures as Needed]

The Ontario Superior Court of Justice has authorized distribution of this Notice.

LEGAL NOTICE

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL (LONG FORM)

Were you a supervisor, server, bartender (collectively, “Wait Staff”) or chef for AE Hospitality, Encore Food with Elegance, Applause Catering or 2354398 Ontario Limited (collectively, the “Corporate Defendants”) between October 1, 2012 and [Date of Certification]?

The Court has approved a settlement reached on behalf of current and former supervisors, servers, bartenders, and chefs. Please read this notice carefully.

Notice of Class Action Settlement

The Ontario Superior Court of Justice has recently certified and approved a settlement (the “**Settlement**”) in a class action against the Corporate Defendants, Cary Silber, David Silber and Ryan Silber (collectively with the Corporate Defendants, the “**Defendants**”).

You are receiving this notice because you may be entitled to a payment under the Settlement. The Settlement is a compromise of disputed claims against the Defendants without any admission of liability by the Defendants, and will resolve all claims in connection with any conduct alleged, or which could have been alleged, in this action. **Please read this notice carefully for details.** This notice also describes how to opt-out of the class action, should you wish to do so.

The Ontario Superior Court of Justice authorized the distribution of this notice. This is not a solicitation from a lawyer.

What Is the Class Action about?

A representative plaintiff, Kelli Harding (the “**Plaintiff**”), commenced this proposed class action against the Defendants on behalf of all supervisors, servers, bartenders and chefs who worked in Ontario for one or more of the Corporate Defendants between October 1, 2012 and [Date of Certification].

Among other things, the Plaintiff alleges that the Defendants misclassified the above workers as independent contractors when, at law, they were employees and were therefore entitled to receive certain employment benefit payments, such as overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions.

The Plaintiff is seeking compensatory damages for allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions, as well as for punitive damages. This action was certified as a class proceeding on [●]. Monkhouse Law represents the class (“**Class**

Counsel”).

The Defendants have denied all of the allegations made against them in this proceeding.

Am I Eligible?

You are a Class Member and are entitled to participate in the proceeding if you fall within the following definition:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012, to the date of certification of this Action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

Estates of Class Members may also be eligible for compensation under the Settlement.

All Class Members (except those who validly "opt out" of this class action, as described below) will be bound by the terms of the Settlement and will be covered by the releases in the Settlement. As a result, they will automatically release, and will not be able to pursue, any claims they may have against the Defendants relating to any conduct alleged, or which could have been alleged, in this class action.

What Does the Settlement Provide?

The Settlement provides that:

- To receive payment, Class Members **must** fill out a claims form that details, to the best of their abilities, the dates which they worked for one or more of the Corporate Defendants, proof of working for the Corporate Defendants (in the form of a contract, T4/T4A, invoice, schedule, emails, etc.), and their current contact information.
- The Defendants will receive these claims forms and will review their records to corroborate the information contained therein.
- The Defendants will send a notification letter to each Class Member and explain what they have concluded regarding the Putative Class Member's work history, and the value of their claim.
- If a Class Member disagrees with the Defendants' assessment, they can file an appeal with a designated referee.
- Once all appeals are resolved, the Defendants will calculate the estimated amount each Putative Class Member is entitled to receive under the settlement using a pre-determined formula.

The Court has approved a global, all-inclusive settlement payment amount of \$250,000 (the “**Gross Settlement Funds**”) in exchange for, among other things, a full and final release of the claims against the Defendants. The Gross Settlement Funds shall be reduced by Class Counsel’s fees, HST, disbursements, settlement administration costs and/or an Honorarium. The remaining amount shall be available to be distributed in accordance with the Distribution Plan in the Settlement Agreement, including a distribution to eligible class members, as described in greater detail below.

You will not have to pay any of the fees and expenses of Class Counsel. The Court has approved a contingency fee agreement and has fixed Class Counsel fees and disbursements in the amount of \$[●]. This amount is comprised of \$[●] for legal fees, \$[●] for HST applicable to legal fees and \$[●] for disbursements inclusive of HST.

Full details of the settlement are available in the formal settlement agreement found at: <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.

How Much Money Will I Get?

The amount each class member will receive will depend on several factors. These factors include:

- (1) The number of class members that apply for payment;
- (2) Whether you performed work for the Corporate Defendants before or after September 9, 2017; and
- (3) Whether you worked as a chef or as a Wait Staff.

The Defendants will review their records to confirm the number of hours each class member worked for the Corporate Defendants, as well as each class member’s hourly rate of pay. These figures will be applied to a pre-determined formula to calculate what share of the settlement amount each class member will receive.

Settlement funds will generally be distributed as follows in relation to work performed for AE Hospitality from September 9, 2017 to the date AE Hospitality ceased operations:

- (1) Every Wait Staff and Chef will be assigned a value of 4% of assumed earnings for vacation pay;
- (2) Every Wait Staff and Chef will be assigned a value of 4% of assumed earnings for holiday pay; and
- (3) Every Chef will be assigned \$3,250 per year, and if required pro-rated, as compensation for overtime worked.

Settlement funds will generally be distributed as follows in relation to work performed from October 1, 2012 to September 9, 2017:

- (1) Every Wait Staff and Chef will be assigned a value of 2% of assumed

- earnings for vacation pay;
- (2) Every Wait Staff and Chef will be assigned a value of 2% of assumed earnings for holiday pay; and
- (3) Every Chef will be assigned a value of \$1,625 per year, and if required pro-rated, as compensation for overtime worked.

All the above figures are **estimates only**; the total payment you receive will be dependent on the number of class members who apply for compensation under the Settlement Agreement and the total costs incurred in administering the settlement.

The assumed earnings listed above vary for each year and are as follows:

Year	Assumed Earnings
2012	\$5,021
2013	\$5,072
2014	\$5,021
2015	\$4,794
2016	\$4,836
2017	\$5,094
2018	\$5,527
2019	\$3,416

Importantly, the entirety of the settlement is for a fixed amount, meaning that the Defendants and Class Counsel do not “save” money by denying claims.

If you want to see the formulae being applied in detail, you will have to read the formal Settlement Agreement found at <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.

Please note that tax withholdings will **not** be made on these amounts. Class members who receive any monies paid pursuant to contracts for services continue to be responsible for making any necessary remittances to the Canada Revenue Agency.

How Do I Get This Money?

To be eligible to receive a payment under the Settlement, you must complete a Claims Form and return it to the Defendants by [insert date]. If you do not submit a complete and valid Claims Form by this deadline, you may be ineligible to receive a payment under the Settlement. Claims Forms filed on behalf of the estate of a class member must be submitted by the executor or administrator of the estate. Claims Forms must be submitted to the Defendants either by email or mail at the following:

[To be added]

A copy of the Claims Form is attached to this notice. Copies are also available at

<https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.

If you choose to opt out of the class action, as described below, you will not be eligible for any compensation under the Settlement.

What If I Do Not Want to Be Bound by the Settlement?

As a class member, you also have the right to opt out of the class action. By opting out, you reserve the right to make your own claim against the Defendants, including for any allegedly unpaid wages, overtime pay, vacation pay, public holiday pay, Canada Pension Plan contributions and Employment Insurance contributions. The decision to opt out should not be taken lightly, as it means that you would have to start your own claim at your own expense if you wanted to pursue an individual claim against the Defendants. You must also abide by any applicable limitation periods. We strongly recommend you consult a lawyer before making the decision to opt out.

If you wish to opt-out of this class action, you must submit a complete and valid Opt-Out Form to Class Counsel by email, mail or fax no later than **February 28, 2022** at the following:

AE Hospitality Class Action
c/o Monkhouse Law, 220 Bay Street, Suite 900,
Toronto, Ontario, M5J 2W4
Email: AEHospitalityClassAction@monkouselaw.com
Fax: 888-501-7235

An Opt-Out Form will only be valid if it contains the following:

1. The full name of this proceeding (*Kelli Harding v. 1513563 Ontario Limited, operating as Encore Food With Elegance, Applause Catering Inc., operating as Applause Catering, AE Hospitality Ltd., operating as AE Hospitality, 2354398 Ontario Limited, Cary Silber, David Silber and Ryan Silber*, or similar identifying words);
2. Your full name, current mailing address, email address and telephone number;
3. Your signature or the signature of a legal agent acting with your instruction; and
4. A brief statement: (i) that you understand that you will be excluded from the class action and any benefits under the Settlement; and (ii) setting out the reason(s) for your decision to opt-out of the class action;
5. A copy of your government issued ID.

If you opt out of this class action, you will not be entitled to any compensation under the class action settlement.

A copy of the Opt-Out Form is available at <https://www.monkouselaw.com/ae->

[hospitality-catering-misclassification/](#).

Want More Information?

Visit, call, or email Class Counsel at:

Website: www.monkouselaw.com

Email: AEHospitalityClassAction@monkouselaw.com

Telephone: 416-907-9249

SCHEDULE “D” – NOTICE PLAN

NOTICE PLAN

Definitions

1. All capitalized terms in this Notice Plan have the meanings ascribed to them in the Settlement Agreement and Distribution Plan or as defined below.

Identification of Class Members

2. The Defendants, with input from Class Counsel, shall complete an extensive review of their records and shall make reasonable efforts to compile a list of last known contact information for each Class Member, including last known mailing addresses, phone numbers, and email addresses (the “**Class Member List**”).
3. The Defendants will provide Class Counsel with all the email contacts of the Class Members within five (5) days of the First Order being granted by the Court.
4. The Defendants shall advise Class Counsel of any updates or changes to the Class Member List in a timely manner.

Communications with Class Members

5. All of the Defendants’ and Class Counsel’s communications with Class Members will be sent to the Class Members’ most recent email address as set out in the Class Member List.
6. Any emails from the Defendants to the Class will be sent from an email address associated with AE Hospitality and the Notification Letters and Payment Notification Letters will be sent on AE Hospitality’s letterhead.

Notice of Settlement Approval Hearing

7. Within ten (10) days of the First Order being granted by the Court, Class Counsel shall send the short-form Notice of Settlement Approval Hearing, attached as **Schedule “B”** to the First Order (the “**Short-Form Notice of Settlement Approval Hearing**”), to each

Class Member by email to the individual's last known email address, as set out in the Class Member List.

8. Within five (5) days of the First Order having been issued by the Court, Class Counsel shall post a copy of the Short-Form Notice of Settlement Approval Hearing and a copy of the long-form Notice of Settlement Approval Hearing, attached as **Schedule "C"** to the First Order (the "**Long-Form Notice of Settlement Approval Hearing**"), on Class Counsel's website, at <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.
9. Class Counsel will send the Short-Form Notice of Settlement Approval Hearing to all Class Members who contacted Class Counsel about the proceeding using the contact information provided by the Class Member.
10. Within five (5) days of the last of the Short-Form Notice of Settlement Approval Hearing having been disseminated in accordance with paragraph 7 of this Notice Plan, Class Counsel shall provide the Defendants with an affidavit confirming dissemination of the Short-Form Notice of Settlement Approval Hearing in accordance with paragraph 7 of this Notice Plan ("**First Class Counsel's Affidavit**").
11. With five (5) days of sending the First Class Counsel's Affidavit in accordance with paragraph 10 of this Notice Plan, Class Counsel shall file with the Court the First Class Counsel's Affidavit along with any other necessary affidavit(s) or materials confirming the dissemination of the Notice of Settlement Approval Hearing in accordance with the Notice Plan and the First Order.

Notice of Certification and Settlement Approval

12. Within ten (10) days of the Certification and Settlement Approval Order being granted by the Court, the Defendants shall send the short-form Notice of Certification and Settlement Approval, attached as **Schedule “C”** to the Certification and Settlement Approval Order (the “**Short-Form Notice of Certification and Settlement Approval**”), to each Class Member by email to the individual’s last known email address, as set out in the Class Member List.
13. Within five (5) days of the Certification and Settlement Approval Order having been issued by the Court, Class Counsel shall post a copy of the Short-Form Notice of Certification and Settlement Approval and a copy of the long-form Notice of Certification and Settlement Approval, attached as **Schedule “D”** to the Certification and Settlement Approval Order (the “**Long-Form Notice of Certification and Settlement Approval**”), on Class Counsel’s website, at <https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>.
14. Class Counsel will send the Short-Form Notice of Certification and Settlement Approval to all Class Members who contacted Class Counsel about the proceeding using the contact information provided by the Class Member.
15. Within five (5) days of the last of the Short-Form Notice of Certification and Settlement Approval having been disseminated in accordance with paragraph 12 of this Notice Plan, the Defendants shall provide Class Counsel with an affidavit confirming dissemination of the Short-Form Notice of Certification and Settlement Approval in accordance with paragraph 12 of this Notice Plan (“**Defendants’ Affidavit**”).

16. With five (5) days of receiving the Defendants' Affidavit in accordance with paragraph 15 of this Notice Plan, Class Counsel shall file with the Court the Defendants' Affidavit along with any other necessary affidavit(s) or materials confirming the dissemination of the Notice of Certification and Settlement Approval in accordance with this Notice Plan and the Certification and Settlement Approval Order.

Opt-Out Process

17. As set out in the Settlement Agreement, Class Members may opt out of the Class Action by delivering to Class Counsel a completed Opt-Out Form in the form attached as **Schedule "A"** of the Settlement Agreement.
18. Class Members are to deliver the completed Opt-Out Forms to Class Counsel by mail, fax, or email at the following address, by no later than 5:00 p.m. on the Opt-Out Deadline:

AE Hospitality Class Action
Monkhouse Law
220 Bay Street, Suite 900
Toronto, ON M5J 2W4
Tel: 416-907-9249 ext. 232
Fax: 888-501-7235
Email: AEHospitalityClassAction@monkhouselaw.com

19. The Opt-Out Deadline shall 60 days from the date on which the Notice of Certification and Settlement Approval is sent to the Class, or as otherwise ordered by the Court. No Class Members may opt-out after the Opt-Out Deadline.
20. Within seven (7) days after the Opt-Out Deadline, Class Counsel will report to the Defendants, by affidavit, the names and addresses of any Class Members who have opted out of the Action. Class Counsel shall also provide the Defendants with copies of the Opt-Out Forms submitted by these Class Members.

Costs of Providing Notice to the Class

21. The reasonable costs of providing notice to the Class in accordance with this Notice Plan shall be paid from the Settlement Fund as Administration Costs, except that Class Counsel shall pay any costs associated with paragraphs 7, 8, 9, 13 and 14 of this Notice Plan.

**SCHEDULE “E” – DRAFT ORDER FOR APPROVAL OF SETTLEMENT APPROVAL
HEARING**

ORDER APPROVING NOTICE OF SETTLEMENT and FEE APPROVAL HEARING

Court File No.: CV-19-00672034-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE GLUSTEIN)
)
) OF _____, THE _____ DAY
) OF _____, 2021

B E T W E E N:

KELLI HARDING

Plaintiff

- and -

1513563 ONTARIO LIMITED OPERATING AS ENCORE FOOD WITH ELEGANCE,
APPLAUSE CATERING INC., OPERATING AS APPLAUSE CATERING, AE HOSPITALITY
LTD., OPERATING AS AE HOSPITALITY, 2354398 ONTARIO LIMITED CARY SILBER,
DAVID SILBER AND RYAN SILBER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an Order certifying the within action as a class proceeding, fixing the date of a settlement approval motion, approving the short-form and long-form notices of settlement approval hearing (the “**Notice of Settlement Approval Hearing**”), and approving the form, content and method of dissemination of the Notice of Settlement and Fee Approval Hearing as set out in the Notice Plan in respect thereof, was heard this day in writing at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion record of the Plaintiff, including the settlement agreement dated [●], attached to this Order as **Schedule “A”** (the “**Settlement Agreement**”);

AND ON BEING ADVISED that the Plaintiff and the Defendants, 1513563 Ontario Limited, operating as Encore Food With Elegance, Applause Catering Inc., operating as Applause

Catering, AE Hospitality Ltd., operating as AE Hospitality, 2354398 Ontario Limited, Cary Silber, David Silber and Ryan Silber, consent to this Order;

1. **THIS COURT ORDERS** that the capitalized terms in this Order, unless otherwise defined in this Order, shall have the meanings set out in the Settlement Agreement. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

APPROVAL OF NOTICE OF SETTLEMENT APPROVAL HEARING

2. **THIS COURT ORDERS** that the short-form and long-form Notices of Settlement Approval Hearing are hereby approved in the form attached hereto as **Schedules “B” and “C”**, respectively.
3. **THIS COURT ORDERS AND DECLARES** that the Notices of Settlement Approval Hearing described in paragraph 2 above satisfy the requirements of section 17(6) of the *Class Proceedings Act, 1992*.
4. **THIS COURT ORDERS** that the Notice Plan setting out the plan for dissemination of the Notices of Settlement Approval Hearing is hereby approved in the form attached hereto as **Schedule “D”**.
5. **THIS COURT ORDERS** that the Notices of Settlement Approval Hearing shall be disseminated in accordance with the Notice Plan.
6. **THIS COURT ORDERS** that the Defendant shall provide to Class Counsel the following information: (a) the names; (b) the last known mailing addresses; (c) phone numbers; and (d) email addresses for all known Class Members within five (5) days of this Order.
7. **THIS COURT ORDERS AND DECLARES** that the Defendants are released from any and all obligations pursuant to any and all applicable privacy laws, including common law and statutes, and regulations in relation to the collection, use and disclosure of personal information required by this Order.
8. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Defendants or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives,

predecessors, successors, beneficiaries or assigns for any matters in any way relating to the implementation of this Order.

9. **THIS COURT ORDERS** that within ten (10) days of the last of the short-form Notices of Settlement Approval Hearing and long-form Notices of Settlement Approval Hearing having been disseminated or delivered in accordance with the Notice Plan, Class Counsel shall file with the Court an affidavit(s) confirming the delivery of the Notice of Settlement Approval Hearing in accordance with the Notice Plan.

Certification and Settlement Approval Hearing

10. **THIS COURT ORDERS** that the Certification and Settlement Approval Hearing shall take place on **February 3, 2022** at 10 a.m. via videoconference.
11. **THIS COURT ORDERS** that any class member who seeks to provide submissions on the Settlement Agreement shall do so by delivering their written submissions by mail or courier to Class Counsel at the address identified in the Notices of Settlement Approval Hearing by no later than January 3, 2022 at 5:00 pm (the “**Objections Deadline**”).
12. **THIS COURT ORDERS** that written submissions from a Class Member must include the following:
 - a) the person’s full name, current mailing address, email address, and telephone number;
 - b) a brief statement of the nature and reason(s) for the objection; and
 - c) the person’s signature or that of their legal agent acting with the person’s instructions.
13. **THIS COURT ORDERS** that within ten (10) days after the Objection Deadline, Class Counsel shall provide the Court and the Defendants with the names of the Class Members who validly objected, and copies of any materials filed in connection with each of those objections.
14. **THIS COURT ORDERS** that there shall be no costs of this motion.

THE HONOURABLE MR. JUSTICE
BENJAMIN GLUSTEIN

**SCHEDULE “F” – DRAFT ORDER FOR CERTIFICATION AND SETTLEMENT
APPROVAL**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE GLUSTEIN

)
)
)

_____, THE _____
DAY OF _____, 2022

B E T W E E N:

KELLI HARDING

Plaintiff

- and -

1513563 ONTARIO LIMITED OPERATING AS ENCORE FOOD WITH ELEGANCE,
APPLAUSE CATERING INC., OPERATING AS APPLAUSE CATERING, AE HOSPITALITY
LTD., OPERATING AS AE HOSPITALITY, 2354398 ONTARIO LIMITED CARY SILBER,
DAVID SILBER AND RYAN SILBER

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION, SETTLEMENT APPROVAL, FEE APPROVAL, AND HONORARIUM
APPROVAL ORDER**

THIS MOTION, made by the Plaintiff on consent, for an order certifying this action as a class proceeding for the purpose of settlement, appointing Kelli Harding as the Representative Plaintiff, approving the Settlement Agreement, approving an honorarium for the Plaintiff, and approving Class Counsel's fees in this action pursuant to section 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the "*CPA*"), in accordance with the terms of the settlement agreement

between the Plaintiff and Defendants dated November 2021 (the “**Settlement Agreement**”) attached to this Order as **Schedule “A”**.

AND THIS MOTION, made by Class Counsel for approval of their fees and disbursements payable under a contingency fee agreement between the Plaintiff and Class Counsel dated July 28th, 2019, in accordance with section 32(2) of the *CPA*, were heard this day via videoconference call at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement, Proposed Distribution and Notice Plan, and supporting affidavits, and on hearing the submissions of counsel for the Plaintiff and the Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been [●] written objections to the Settlement Agreement;

AND ON BEING ADVISED that the Plaintiff and the Defendants consent to the certification of the within action for settlement purposes only;

AND ON BEING ADVISED that the parties consent to this Order (except paragraph _ regarding the approval of Class Counsel Fees, with respect to which the Defendant takes no position), without any admission of liability by the Defendant whatsoever;

AND ON BEING ADVISED that the UJA Federation of Greater Toronto and the Make-A-Wish Foundation have consented to accept any cy-pres award for the benefit of individuals seeking training and employment in the catering and hospitality industry;

1. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

CERTIFICATION OF ACTION

2. **THIS COURT ORDERS** this action is certified as a class proceeding pursuant to the *CPA*, for settlement purposes only.

3. **THIS COURT ORDERS** that the Class is defined as follows:

All supervisors, servers, bartenders, and chefs who worked for one or more of the Corporate Defendants since October 1, 2012 to the date of certification of this action who have not filed a complaint with the Ministry of Labour or signed a release relating to the matters in question.

4. **THIS COURT ORDERS** that Kelli Harding is appointed as the representative plaintiff on behalf of the Class.
5. **THIS COURT ORDERS** that Monkhouse Law LLP is appointed as counsel for the Class.
6. **THIS COURT DECLARES** that a cause of action in breach of contract has been certified against the Defendants.
7. **THIS COURT DECLARES** that that the following common issue has been certified pursuant to the *Class Proceedings Act*:

Did any Class Members provide services for AE Hospitality during the Class Period for which they were not properly compensated, including under the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Insurance Act* S.C. 1996, c. 23 or the *Canada Pension Plan*, R.S.C., 1985, c. C-8.

8. **THIS COURT ORDERS** that a Class Member may not opt out after [DATE, 2022], and must do so according to the manner stipulated in the Settlement Agreement.
9. **THIS COURT ORDERS** that any Class Member who has not opted-out of this Action in accordance with this Order will be bound by any determinations made by this Court in this Action.

SETTLEMENT APPROVAL

10. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable, and in the best interests of the Class and is hereby approved and shall be implemented in accordance with its terms.
11. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is approved pursuant to Section 29(3) of the CPA and shall be implemented in accordance with its terms;
12. **THIS COURT ORDERS** that the Defendant shall pay for the benefit of the Class the amount of two hundred and fifty thousand (250,000) CAD including, but not limited to, interest, costs, fees, Administration Costs, Class Counsel Fees, and taxes in full and final settlement of the Released Claims (the “**Settlement Amount**”);
13. **THIS COURT ORDERS** that within thirty (30) days of the Settlement Approval Order being made and becoming Final, the Defendant shall transfer the Settlement Amount into the Escrow Account;
14. **THIS COURT ORDERS AND DECLARES** that Class Counsel Fees are hereby fixed and approved in the amount of \$[●] for legal fees, \$[●] for HST applicable to legal fees and \$[●] for disbursements inclusive of HST, which are a first charge upon the Settlement Amount and shall be paid to Class Counsel from the Settlement Amount within seven (7) days of the Settlement Amount being deposited into the Escrow Account in accordance with Section 13 of this Order;
15. **THIS COURT ORDERS** the Plaintiff shall receive five thousand (5,000) CAD as an Honorarium from the Settlement Amount prior to the distribution of Net Settlement Funds to the Class;
16. **THIS COURT ORDERS** that the Defendants shall be responsible for administering the settlement and distributing Net Settlement Funds to the Class in accordance with the Settlement Agreement and Distribution Plan;
17. **THIS COURT ORDERS** that any surplus amounts remaining in the Escrow Account following the payment of Class Counsel Fees and Administration Costs and which are not

distributed to Class Members pursuant to the Distribution Plan shall be distributed cy-pres equally to the following charities for individuals seeking training and employment in the catering and hospitality industry: UJA Federation of Greater Toronto and the Make-A-Wish Foundation;

RELEASE OF CLAIMS

18. **THIS COURT ORDERS AND DECLARES** that, whether or not they submit a claim for compensation under the Settlement Agreement, the Releasors have agreed to forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever have, now have, or hereinafter can, shall or may have, even if the Releasors later hereafter discover facts in addition to, or different from, those which they know or believe to be true with respect to the Settlement Agreement;
19. **THIS COURT ORDERS AND DECLARES** that, without limiting the generality of Section 18 of this Order, each Class Member, whether or not they submit a claim under the Settlement Agreement, is forever barred and enjoined from continuing, commencing, instituting, or prosecuting any and all manner of from continuing, commencing, instituting, or prosecuting any and all manner of demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Costs), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued and liquidated or unliquidated, in law, under statute or in equity, against any of the Defendants or Releasees any claims that relate in any manner to or constitute any Released Claims.
20. **THIS COURT ORDERS AND DECLARES** that the Releasors have agreed not to make or continue any claim in any way or to threaten, commence, participate in, or continue in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

21. **THIS COURT ORDERS AND DECLARES** that the Releasors and Class Counsel have agreed not to now or hereafter institute, continue, maintain or assign, directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any suit, cause of action, claim or demand against the Releasees in respect of any Released Claim or any matter related thereto;.
22. **THIS COURT ORDERS AND DECLARES** that Class Counsel do not and will not represent plaintiffs in any other proceeding related to any matter raised or which could have been raised against the Releasees;
23. **THIS COURT ORDERS** that this Order, including the Settlement Agreement at Appendix “A”, is binding upon the Plaintiff and each Class Member, whether or not they submit a claim to participate in the distribution of the Settlement Fund, including those persons who are minors or are mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action;
24. **THIS COURT ORDERS AND DECLARES** that any other action or proceeding commenced in Ontario by a Class Member relating to the Released Claims shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
25. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against Class Counsel, Defence Counsel, the Defendants, or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of the Settlement Approval Order or the administration of the Settlement Agreement, except with leave of the Court;

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL AND SETTLEMENT ADMINISTRATION

26. **THIS COURT ORDERS** that the Defendants shall provide Notice of Certification and Settlement Approval pursuant to the Notice Plan attached hereto as **Schedule “B”**, and shall facilitate the claims administration process and Distribution Protocol, and report to the Court and the Parties in accordance with the terms of the Settlement Agreement;

27. **THIS COURT ORDERS** that the Long Form and Short Form Notice of Settlement Approval are hereby approved substantially in the form attached as **Schedule “C” and “D”** respectively;
28. **THIS COURT ORDERS** that the Claims Deadline is sixty (60) days from the date on which the Notice of Certification and Settlement Approval is sent to the Class, and any claim forms submitted after that date shall be invalid;
29. **THIS COURT ORDERS** that within ten (10) days of the last of the short-form Notices of Certification and Settlement Approval and long-form Notices of Certification and Settlement Approval having been disseminated or delivered in accordance with the Notice Plan, Class Counsel shall file with the Court an affidavit(s) confirming the delivery of the Notice of Certification and Settlement Approval in accordance with the Notice Plan.
30. **THIS COURT ORDERS** prior to the distribution of Net Settlement Funds to the Class in accordance with the Distribution Plan, the Defendants shall be reimbursed from the Settlement Fund for all Administration Costs and any applicable taxes, provided that such Administration Costs are reasonably incurred and approved by the Court., including:
- a. Disseminating Notice of Certification and Settlement Approval;
 - b. Distributing the Net Settlement Amount to the Class in accordance with the Distribution Plan; and
 - c. If necessary, the costs incurred in disseminating notice to the Class that the Settlement Agreement has been terminated; and (
 - d. Any other steps needed to be taken in respect of the administration of this Settlement Agreement, as mutually agreed upon by the Parties and approved by the Court, up to the date of the termination of the Settlement Agreement.
31. **THIS COURT ORDERS** that the Defendant, Defence Counsel and Class Counsel are released from all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of personal information or personal health information required by this Order.

DISMISSAL OF ACTION

32. **THIS COURT ORDERS** that this action is hereby dismissed without costs and with prejudice; and

33. **THIS COURT DECLARES** that, notwithstanding Paragraph 32 of this Order, this Court shall retain its supervisory jurisdiction over the administration of this Settlement.

KELLI HARDING
Plaintiff/Moving Party

-and- AE HOSPITALITY LTD., et al.
Defendants/Responding Parties

Court File No. CV-19-00627034-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION AND SETTLEMENT
APPROVAL ORDER**

MONKHOUSE LAW
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Toronto, Ontario M5J 2W4

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alexandra@monkouselaw.com

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Tel: (416) 907-9249

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Lawyers for the Plaintiff

SCHEDULE “G” – DISTRIBUTION PLAN

DISTRIBUTION PLAN

Definitions

1. All capitalized terms in this Distribution Plan have the meanings ascribed to them in the Settlement Agreement or are defined below.
2. For the purposes of this Distribution Plan:
 - a. “AE Hospitality” means AE Hospitality Ltd.;
 - b. “Appeals Deadline” means thirty (30) days from the date on which an Eligible Class Member is issued the Notification Letter;
 - c. “Appeal Form” means the form entitled “Appeal Form” appended to this Distribution Plan;
 - d. “Applause” means Applause Catering Inc.;
 - e. “Chefs” means Class Members who provided services as to AE Hospitality;
 - f. “Chef Funds” means the amount of Net Settlement Funds allocated to Eligible Chefs, calculated as 50% of the Net Settlement Fund plus interest;
 - g. “Chef Quotient” means the proportion of Net Settlement Funds to be allocated to Eligible Chefs;
 - h. “Claims Deadline” means 60 days from the date on which the Notice of Certification and Settlement Approval is sent to the Class or as ordered by the Court;
 - i. “Claims Form” means the form entitled “Claims Form” appended to this Distribution Plan;
 - j. “Eligible Chefs” means Eligible Class Members who provided services as chefs to AE Hospitality;

- k. “Eligible Class Member” means any Class Member who submits a valid Claims Form before the expiry of the Claims Deadline;
- l. “Eligible Wait Staff” means Eligible Class Members who provided services as Wait Staff;
- m. “Encore Food” means 1513563 Ontario Limited, operating as Encore Food With Elegance;
- n. “Individual Claim Amount” means the amount calculated for each Eligible Class Member who submits a valid Claims Form.
- o. “Notification Letter” means the form entitled “Notification Letter” appended to this Distribution Plan;
- p. “Notice of Re-Assessment” means the form entitled “Notice of Re-Assessment” appended to this Distribution Plan;
- q. “Payment Notification Letter” means the form entitled “Payment Notification Letter” appended to this Distribution Plan;
- r. “Pre-Limitations Work” means any work performed by Eligible Class Members for the Defendants for any time prior to September 9, 2017;
- s. “Referee” means the person agreed to by the Parties who will review any appeals launched by a Class Member in accordance with the procedure outlined in this Distribution Plan;
- t. “Wait Staff” means Class Members who provided services as supervisors, servers, and bartenders to AE Hospitality;
- u. “Wait Staff Funds” means the amount of Net Settlement Funds allocated to Eligible Wait Staff, calculated as 50% of the Net Settlement Funds plus interest; and

- v. “Wait Staff Quotient” means the proportion of Net Settlement Funds to be allocated to Eligible Wait Staff.

The Claims Form

- 3. In order to become an Eligible Class Member and receive a payment under the Settlement, Class Members are required to complete and return a Claims Form to the Defendants prior to the expiry of the Claims Deadline by email, fax or regular mail.
- 4. If an incomplete or improperly completed Claims Form is received by the Defendants during the Claims Deadline, the Defendants will make reasonable efforts to notify the Class Member that his or her Claims Form is incomplete or improperly completed and will allow the Class Member to submit a revised Claims Form at any time prior to the expiry of the Claims Deadline. Class Members who submit a revised and validly completed Claims Form prior to the expiry of the Claims Deadline shall be Eligible Class Members.

The Defendant’s Review

- 5. Within 60 days following the expiry of the Claims Deadline, the Defendants will review the Claims Form and any other information and documents received from each Eligible Class Member, along with any relevant contracts, payroll records and other documentation in the Defendants’ possession, and will make reasonable efforts to determine the following for each Eligible Class Member:
 - a. Whether the Eligible Class Member worked as either a Wait Staff or Chef;
 - b. Whether the Eligible Class Member engaged in any Pre-Limitations Work with AE Hospitality;
 - c. Between what dates the Eligible Class member worked with AE Hospitality after September 9, 2017; and

- d. Between what dates the Eligible Class Member worked with the AE Hospitality between October 1, 2012 and September 8, 2017.
6. After determining the years in which each Eligible Class Member worked for AE Hospitality, the Eligible Class Member's entitlements will be computed using the following assumed earnings:

Year	Assumed Earnings
2012	\$5,021
2013	\$5,072
2014	\$5,021
2015	\$4,794
2016	\$4,836
2017	\$5,094
2018	\$5,527
2019	\$3,416

7. For Eligible Chefs, the overtime entitlement will be computed using the following amounts:

Pre-Limitation period	\$1,625
September 9, 2017 to when AE Hospitality ceased operations	\$3,250

8. If an Eligible Class Member worked for only part of a year, the amounts referred to in Sections 6 and 7 above will be prorated for the time period during which work was performed for AE Hospitality.

Notice to Class Members of a Determination

9. Within 90 days of the Claims Deadline, the Defendants will send each Eligible Class Member an individualized Notification Letter setting out the Defendants' determination

regarding the Eligible Class Member's total earnings and estimated settlement benefit (subject to the payment of Administrative Costs) based on the Defendant's review, as outlined above.

10. The Defendants will send each Class Member's Notification Letter using the email address supplied by the Eligible Class Member on the Claims Form or supplied by the Class Member in some other satisfactory manner, as may be indicated by the Eligible Class Member in his or her Claims Form.
11. The Defendants will enclose with the Notification Letter an Appeals Form, which will outline how the Eligible Class Member can appeal the Defendants' conclusions as set out in the Notification Letter.

Appeals

12. Any Class Member dissatisfied with the contents of the Notification Letter may request a re-assessment of this determination by completing an Appeal Form and submitting it to the Defendants, along with any supporting documentation, by regular mail, fax or email prior to the expiry of the Appeals Deadline.
13. The Defendants shall have ten (10) days to review the Class Member's Appeal Form and supporting documentation and to determine whether they agree with the Class Member's objection, and:
 - a. if the Defendants agree with the Class Member's objection, the Defendants shall issue a Notice of Re-Assessment to the Class Member within ten (10) days of having received the Class Member's Appeal Form; or

- b. if the Defendants do not agree with the Class Member's objection, the Defendants shall refer the appeal to the Referee within ten (10) days of having received the Class Member's Appeal Form.
- 14. Any Class Member who commences an appeal must submit a cheque in the amount of \$100, made payable to the Referee, in trust, along with their Appeal Form in order to commence such appeal. In the event that the Defendants elect to re-assess the determination set out in the Class Member's Notification Letter in accordance with Section 12 above, the Defendants shall return this cheque to the Class Member along with the Notice of Re-Assessment.
- 15. If the appeal is referred to the Referee, the Defendants shall provide the Referee and Class Counsel with a copy of the Class Members' Appeal Form and supporting documentation, as well as any documents and records pertaining to the Class Member in the possession of the Defendants, within four (4) weeks of the filing of the appeal.
- 16. The affected Class Member shall have a further two (2) weeks in which to email any submissions they may wish to make in support of their appeal to the Referee.
- 17. The Defendants shall then have a further two (2) weeks in which to email any submissions they wish to make in support of their initial determination in the Notification Letter to the Referee.
- 18. Within two (2) weeks of the date on which the Defendants' submissions become due, the Referee shall issue a decision in the form of a fresh Notification Letter sent to the affected Class Member by email.
- 19. If the Class Member's appeal is successful in any way, the \$100 fee paid by the Class Member will be reimbursed by the Referee, who shall in turn be reimbursed for the overall

costs of the Class Member's appeal by the Defendants. If the Class Member is not successful, the Class Member will not be reimbursed the \$100 fee paid to the Referee, which shall be used first to address the Referee's fees, costs and expenses in accordance with Section 21 below and then any other Administration Costs.

20. If a Class Member does not appeal, they shall be deemed to have accepted the contents of the Notification Letter sent to them by the Defendants.

21. All of the Referee's fees, costs, and expenses shall be paid from Settlement Fund, save and except that portion of the Referee's fees, costs, and expenses paid by each Class Member who appeals unsuccessfully and any portion of the Referee fees costs, and expenses paid by the Defendants in connection with successful appeals in accordance with Section 19 above.

Calculation of Payment and Payment Notification

22. Once all appeals have been resolved and all Appeals Deadlines have expired, the Defendants will finalize the calculation of the amounts owing to each Eligible Class Member.

23. The Defendants' final calculations will follow the formulae and steps set out immediately below. All figures calculated by the Defendant will be rounded down to the nearest 1/100 (hundredths) of a decimal point.

Step 1. Allocation of Net Settlement Funds

24. The Net Settlement Fund will be allocated as follows, or as the Court may order:

- a. Wait Staff Funds: 50% of the Net Settlement Fund plus interest for Eligible Wait Staff; and
- b. Chef Funds: 50% of the Net Settlement Fund plus interest for Eligible Chefs.

Step 2 – Initial Assignment of Values for Contractor Agreements and Hours Worked

25. For Eligible Wait Staff, the Defendants will assign the following Wait Staff Individual Claim Amounts based on the Claims Forms submitted by these claimants and on the assumed earnings listed at paragraph 6 of this Distribution Plan:

- a. For work carried out for AE Hospitality between September 9, 2017 to when AE Hospitality ceased operations, 4% for Vacation Pay and 4% for Holiday Pay; and
- b. For work carried out for AE Hospitality prior to September 9, 2017, 2% for Vacation Pay and, 2% for Holiday Pay.

26. For Eligible Chefs, the Defendants will assign the following Chef Individual Claim Amounts based on the Claims Forms submitted by these claimants and on the assumed earnings listed at paragraphs 6 and 7 of this Distribution Plan:

- a. For work carried out for AE Hospitality between September 9, 2017 to when AE Hospitality ceased operations, 4% for Vacation Pay, 4% for Holiday Pay and \$3,250 per year, and if required pro-rated, as compensation for overtime worked;
- b. For work carried out for AE Hospitality prior to September 9, 2017, 2% for Vacation Pay, 2% for Holiday Pay and \$1,625 per year, and if required pro-rated, as compensation for overtime worked.

Step 3 – Calculation of Amounts to be Paid to Eligible Class Members

(i) Eligible Wait Staff

27. The Defendants will add up all of the Wait Staff Individual Claim Amounts calculated for each Eligible Wait Staff and then divide this total by the Wait Staff Funds to determine the Wait Staff Quotient.

28. For each Eligible Wait Staff, the final total amount received under the Settlement shall be calculated as follows, unless the total amount to be received under the Settlement, as calculated below, exceeds the Eligible Wait Staff's Individual Claim Amount, in which case the Eligible Wait Staff shall receive the Individual Claim Amount:

Wait Staff Individual Claim Amount / Wait Staff Quotient

(ii) Eligible Chefs

29. The Defendants will add up all of the Chef Individual Claim Amounts calculated for each of the Eligible Chefs and then divide this total by the Chefs Funds to determine the Chef Quotient.

30. For each Eligible Chef, the final total amount received under the Settlement shall be calculated as follows, unless the total amount to be received under the Settlement, as calculated below, exceeds the Eligible Chef's Individual Claim Amount, in which case the Eligible Chef shall receive the Individual Claim Amount:

Chef Individual Claim Amount / Chef Quotient

31. For greater certainty, it will be possible that Eligible Class Members may receive less than the amount calculated in their Individual Claim Amount or more than what was calculated in their Individual Claim Amount.

Step 4 – Payment Notification Letter

32. Within sixty (60) days after the appeals process is complete the Defendants will:

- a. Send each Eligible Class Member an individualized Payment Notification Letter;
and,
- b. A cheque or electronic money transfer, as requested by the Eligible Class Member in his or her Claims Form, totaling the amount to be paid.

Tax Matters

33. The amounts paid are on account of damages and the Defendants will not provide T4s.

No Appeal

34. Class Members cannot appeal or otherwise seek to have reviewed the final determinations and payments as outlined in the Payment Notification Letters.

Reports to Class Counsel and Class Counsel's Monitoring Role

35. Class Counsel will provide advice and assistance to the Defendants, through their counsel, regarding this Distribution Plan and claims administration process, as necessary.

36. The Defendants, through their counsel, will provide Class Counsel with ongoing reports of its progress in a form acceptable to Class Counsel. Without limiting the generality of this reporting obligation, and without purporting to replace other notices and information the Defendants have agreed to provide in the Settlement Agreement and this Distribution Plan, the reports will include reports concerning the following:

- a. Details concerning the Defendants' efforts to give the Notice of Certification and Settlement Approval, including the number of emails sent and the number of emails returned as undeliverable;
- b. The number of Class Members who have submitted a Claims Form to the Defendants and the number of Eligible Class Members;
- c. The number of appeals filed with the Referee;
- d. The Net Settlement Funds available, with bank or account statements being provided if requested; and
- e. The application by the Defendants of the formulae set out in this Distribution Plan.

37. For further clarity, the cost of preparing such reports shall be paid from the Settlement Fund as Administration Costs.

Undeliverable and Uncashed Cheques or Electronic Transfers

38. In the event that a cheque or electric transfer provided to an Eligible Class Member is returned as undeliverable due to a change of address, the Defendants will make reasonable efforts to locate the Class Member within twenty (20) days.

39. In the event that a cheque provided to any Class Member is uncashed after six (6) months, the cheque will be considered stale.

40. If, as a result of cheques being undeliverable or stale, any amounts remain of the Net Settlement Amount, those funds will be, subject to Court approval, donated in equal parts to the UJA Federation of Greater Toronto and the Make-A-Wish Foundation or other designated recipient as of the stale date or six (6) months after the Defendants' reasonable efforts to locate the Eligible Class Member.

41. The Parties agree that under no circumstances will the Defendants receive any portion of monies remaining of the Net Settlement Amount.

Final Report

42. Within sixteen (16) months of the Final Order, the Defendants will provide Class Counsel with a final report indicating the total number of claimants, the amounts paid to each Eligible Class Member, and the amount paid cy-pres, if any. Class Counsel will provide the Court with a copy of the final report within a reasonable amount of time after having received a copy of the final report from the Defendants.

AE HOSPITALITY CLASS ACTION - CLAIMS FORM

For Monkhouse Law's Use only	
Date Application Received (yyyy-mm-dd)	
PLEASE COMPLETE ALL OF THE FOLLOWING FIELDS:	
PART 1 – APPLICANT INFORMATION	
Please note, if you are eligible to receive compensation as part of this class action, this information will be used to issue a cheque in your name. Please ensure that the information properly reflects the information that your bank would have on file.	
1. Last Name	
2. First Name	
3. Permanent Home Address (include street address, city/town, and province/territory)	
4. Mailing Address (if different from above)	
5. Telephone Number	
6. Alternate Telephone Number	
7. Email address	
8. If any of this information is different than what AE Hospitality would have on record, please describe	
PART 2 – INFORMATION REGARDING CLAIM	
9. Approximate dates worked for AE Hospitality	

10. What was your position with AE Hospitality

- a) Wait staff (supervisor, server or bartender), between DATE to DATE;
- b) Chef, between DATE to DATE.

PART 3 – LEGAL

11. Indemnity

By signing this form, you acknowledge that, if you receive a payment under this settlement, you will be responsible for any taxes, EI premiums or CPP premium that might apply to that payment. AE Hospitality, Encore Food with Elegance, Applause Catering and 2354398 Ontario Limited, Cary Silber, David Silber and Ryan Silber (collectively, the “**Defendants**”) and Monkhouse Law will not be withholding or remitting any portion of the settlement funds that you may receive to the Canada Revenue Agency (“**CRA**”) on your behalf. You agree to indemnify and hold harmless, and release any claims you may have against, the Defendants and Monkhouse Law in respect of any claims, taxes, charges, penalties or obligations that may be applied by the CRA to any payment you may receive under this settlement.

12. Privacy Statement and Consent

The Defendants and Monkhouse Law will collect, use and/or disclose this form and any enclosures, data, information, reports, or other documents of any nature which are disclosed, revealed or transmitted to them with this form for the purpose of executing the terms of the Settlement Agreement. The collection, use and disclosure of any personal information received by the Defendants and Monkhouse Law is subject to applicable laws, including the *Personal Information and Protection and Electronic Documents Act*, S.C. 2000, c. 5.

In submitting this form, you consent to the collection, use and disclosure of the information contained herein for the purpose of executing the terms of the Settlement Agreement, including the claims process.

PART 4 – DECLARATION AND SIGNATURE

13. I DECLARE THAT:

- This application form was completed by me, a legal representative authorized to submit this form on my behalf or the legal representative of a deceased person.
- The information provided in this form is true, based on my personal records, experience, and recollection. If the information described above is inaccurate, false, or misleading, I may be required to repay the compensation that I receive.
- I have read and agree to the Indemnity provision set out in paragraph 11 above.
- I have read and agree to the Privacy Statement and Consent provision set out at paragraph 12 above.

Applicant’s Signature

Date

PART 5 – WHERE TO SEND YOUR CLAIM FORM

Please mail, email, or fax your completed form and any attached documents (if applicable) to the following address:

[TO BE ADDED]

Payment Notification Letter

[Date]

Dear [Insert Name],

AE Hospitality, Encore Food with Elegance, Applause Catering, 2354398 Ontario Limited, Cary Silber, David Silber and/or Ryan Silber (collectively, the “**Defendants**”) have completed their calculation of the amounts owed to you under the settlement using the formulas set out in the Court-approved Distribution Plan, attached as Schedule “G” to the Settlement Agreement. These formulas were previously explained in notices you should have received in connection with this settlement and can be accessed on Class Counsel’s website, listed below.

The total amount available for distribution to all class members was [insert Net Proceeds amount].

The amount allocated for payment to you is [insert amount].

Please find enclosed a cheque in this amount in your name. You should deposit or cash it without delay, as the cheque will go stale in approximately six months. If you do not cash it within six months, the amount will be paid out in equal shares to UJA Federation of Greater Toronto and the Make-A-Wish Foundation.

Please note: The amounts are paid as damages. The Defendants have not withheld any amount with respect to taxes, EI premiums or CPP premiums that might apply to this payment. If any amounts are owed to the Canada Revenue Agency (“CRA”) as a result of this payment, you are responsible for making those payments to the CRA.

If you require any further details as to how we calculated your individual amount owing to you, please contact:

AE Hospitality Class Action
[To be added]

For more information on the Class Action and the settlement, including the Court- approved formulas and claims process, please visit Class Counsel's website:

<https://www.monkouselaw.com/ae-hospitality-catering-misclassification/>

[Signature]

APPEAL FORM

AE HOSPITALITY CLASS ACTION

PART 1 – APPLICATION INFORMATION	
1. Last Name	
2. First Name	
3. Permanent Home Address of Applicant (include street address, city/town, province/territory, and postal code)	
4. Mailing Address of Applicant (if different from Permanent Home Address)	
5. Telephone Number of Applicant	
6. Alternate Telephone Number of Applicant	
7. Email Address of Applicant	
PART 2 – ESTATE INFORMATION	
<p><i>For persons administering the estate of a client, please complete this form on behalf of the estate.</i></p> <p><i>Check the box below and complete Part 2 with the information of the Deceased Person</i></p> <p><input type="checkbox"/> I am seeking a review on behalf of a deceased client and am an administrator or executor duly authorized to file this claim.</p> <p>Name of Legal Representative: _____</p> <p>Telephone number () _____ - _____</p>	
PART 3 – REQUEST FOR REVIEW OF DECISION REGARDING WORK COMPLETED OR ENTITLEMENT	
8. Date of Decision (dd/mm/yyyy)	
<i>Please attach a copy of the Decision Letter</i>	
<p>9. On a separate page, please set out the reasons you are seeking an appeal of the decision set out in your Payment Notification Letter (the “Decision”). In order to successfully appeal the Decision, you will need to explain to the Referee the basis on which you believe AE Hospitality, Encore Food with Elegance, Applause Catering and 2354398 Ontario Limited (collectively, the “Corporate Defendants”), Cary Silber, David Silber and Ryan Silber incorreccted determined your work history with the Corporate Defendants, including your position, your hour rate, the time period during which you provided services for the Corporate</p>	

Defendants and/or your annual earnings in connection with services rendered for the Corporate Defendants.

9. Privacy Statement and Consent

The information you provided is collected in accordance with the *Personal Information Protection and Electronic Documents Act*. Your personal information will be administered in accordance with the requirements of the *Personal Information Protection and Electronic Documents Act*.

I consent to the collection, use and disclosure of the information contained in this form for the purposes of administering the AE Hospitality Class Action, namely, to determine the amount of any payment, and for purposes as may be required by the Court.

_____/_____/_____
Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

PART 4 – DECLARATION AND SIGNATURE

10. I DECLARE THAT:

- This application form was completed by me, the applicant, or the legal representative of a deceased person.
- The information provided in this form is true, based on my personal records, experience and knowledge
- If the information described above or attached is false or misleading, I may be required to repay any compensation I that I receive.

_____/_____/_____
Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

INSTRUCTIONS AND FEE

This form should be submitted to:

AE Hospitality Class Action Referee
[ADDRESS]
Attention: [NAME]

Please also mail a cheque of \$100 payable to [INSERT] as the fee to appeal. This payment will be returned to you if, upon review of this Appeal Form and your supporting documentation: (i) the Defendants agree with your objection and issue a Notice of Re-Assessment revising your settlement entitlement in accordance with the information set out herein; or (ii) your appeal is referred to the Referee and the Referee decides the appeal in your favour.

If your appeal is referred to a referee, a file containing the documents relevant to the Decision will be emailed to the Referee. If you have any questions about the process, please contact AE Hospitality at the following:

AE Hospitality Class Action
INSERT ADDRESS and EMAIL

TITLE	1517-1 AE Hospitality Settlement Agreement
FILE NAME	AE Hospitality Se...s & Bookmarks.pdf
DOCUMENT ID	37ed6a7aca9bb72eccf696ad1649c9c9bbc9647a
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

11 / 29 / 2021

15:53:18 UTC

Sent for signature to Kelli Harding
(kelliharding34@gmail.com) from alexandra@monkhouselaw.com
IP: 192.0.195.112



VIEWED

11 / 29 / 2021

16:29:41 UTC

Viewed by Kelli Harding (kelliharding34@gmail.com)
IP: 72.137.45.177



SIGNED

11 / 29 / 2021

16:32:14 UTC

Signed by Kelli Harding (kelliharding34@gmail.com)
IP: 72.137.45.177



COMPLETED

11 / 29 / 2021

16:32:14 UTC

The document has been completed.