

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 February 3, 2022?

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 February 3, 2022.

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 February 3, 2022. 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 February 3, 2022 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 \$125,000. This amount is comprised of \$82,5000 for legal fees, \$10,725 for HST applicable to legal fees and \$38,807.79 for disbursements inclusive of HST, less a discount of \$7,032.79.

Full details of the settlement are available in the formal settlement agreement found at: <https://www.monkhouselaw.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 Class Counsel by May 1, 2022. 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:

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

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 **May 1, 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