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Toronto

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**NICHOLE STEPHANIE RENDON, KRISTOPHER ARCHER and
LAUREN BETH MACCALLUM**

Plaintiffs

and

**2505243 ONTARIO LIMITED c.o.b. BYPETERANDPAUL.COM, 2592511
ONTARIO INC. c.o.b. DAVID DUNCAN HOUSE, 1423792 ONTARIO
LIMITED c.o.b. PARAMOUNT, 1327018 ONTARIO LIMITED c.o.b.
BELLAGIO, PETER & PAUL'S MANOR LTD., 1794377 ONTARIO LTD.
c.o.b. VUE, 2502373 ONTARIO LTD. c.o.b. CLUBHOUSE
EVENTSPACE, 1895299 ONTARIO LIMITED c.o.b. UNIVERSAL EVENT
SPACE, 2618420 ONTARIO LTD. c.o.b. THE KORTRIGHT
EVENTSPACE, 2618420 ONTARIO LTD. c.o.b. BLACK CREEK
PIONEER VILLAGE EVENTSPACE, PETER & PAUL'S BASKETS AND
GIFTS INC., 1986912 ONTARIO INC. c.o.b. as PETER & PAUL'S
HOSPITALITY GROUP, PRINCES GATES GP INC. and
PRINCES GATES HOTEL LIMITED PARTNERSHIP**

Defendants

PROCEEDING UNDER the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a

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lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

TO: **2505243 ONTARIO LIMITED c.o.b. BYPETERANDPAUL.COM**
6260 Hwy 7, Unit #1
Vaughan ON L4H 4G3
Tel: 905-326-2000
global@bypnp.com

AND TO: **2592511 ONTARIO INC. c.o.b. DAVID DUNCAN HOUSE**
125 Moatfield Drive
North York ON M3B 3L6
Tel: 416-391-1424
duncanhouse@bypnp.com

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AND TO: **1423792 ONTARIO LIMITED c.o.b. PARAMOUNT**
222 Rowntree Dairy Rd
Woodbridge ON L4L 9T2
Tel: 905-326-3000
paramount@bypnp.com

AND TO: **1327018 ONTARIO LIMITED c.o.b. BELLAGIO**
8540 Jane St
Concord, ON L4K 5A9
Tel: 905-760-9321
bellagio@bypnp.com

AND TO: **PETER & PAUL'S MANOR LTD.**
16750 Weston Rd
King, ON L7B 0C7
Tel: 416-410-6680 / 905-939-2800
themanor@bypnp.com

AND TO: **1794377 ONTARIO LTD. c.o.b. VUE**
195 Galaxy Blvd.
Etobicoke ON M9W 6R7
Tel: 416-213-9788
dave.b@thevue.ca

AND TO: **2502373 ONTARIO LTD. c.o.b. CLUBHOUSE EVENTSPACE**
195 Galaxy Blvd
Etobicoke ON M9W 6R7
Tel: 416-213-8012
dave.b@thevue.ca

AND TO: **1895299 ONTARIO LIMITED c.o.b. UNIVERSAL EVENT SPACE**
6250 Hwy 7
Vaughan ON L4H 4G3
Tel: 905-326-8100
universal@bypnp.com

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AND TO: **2618420 ONTARIO LTD. c.o.b. THE KORTRIGHT EVENTSPACE**
9550 Pine Valley Drive
Woodbridge ON L4L 1A6
Tel: 905-326-3025
kortright@bypnp.com

AND TO: **2618420 ONTARIO LTD. c.o.b. BLACK CREEK PIONEER VILLAGE
EVENTSPACE**
1000 Murray Ross Parkway
Toronto ON M3J 2P3
Tel: 905-326-0650
blackcreek@bypnp.com

AND TO: **PETER & PAUL'S BASKETS AND GIFTS INC.**
Vaughan Valley Centre
6260 Hwy 7 Unit #1
Vaughan ON L4H 4G3
Tel: 905-326-4438

AND TO: **1986912 ONTARIO INC. c.o.b. as PETER & PAUL'S HOSPITALITY
GROUP**
6260 Hwy 7, Unit #1
Vaughan ON L4H 4G3
Tel: 905-326-2000
global@bypnp.com

AND TO: **PRINCES GATES GP INC.**
111 Princes' Blvd.
Toronto ON M6K 3C3
Tel: 647-943-9300

AND TO: **PRINCES GATES HOTEL LIMITED PARTNERSHIP**
115 Princes' Blvd.
Toronto ON M6K 3C3
Tel: 416-649-8765

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CLAIM

1. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:
 - (a) An order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the Class defined below;
 - (b) A declaration that some or all of the Defendants are a common, single, and/or successor employer, and thus all liable to the Class Members;
 - (c) In the alternative, a declaration that Part XIX, Building Services Providers, of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the “ESA”) applies, such that some or all of the Defendants are deemed to be employers of the Class;
 - (d) A declaration that some or all of the Defendants terminated the employment of all Class Members in or around July 2020, and that the class Members are thus entitled to notice of termination or pay in lieu of such notice, including payment for all outstanding pay, vacation pay, benefits and severance pursuant to ss. 54, 57, 58, 60, 61, 62, 63, 64, and 66 of the *ESA*;
 - (e) A declaration that the mass termination provisions under s. 58 of the *ESA* apply, and the Defendant employers were therefore required to give notice in accordance with these provisions upon terminating Class members’ employment in or around July 2020;

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- (f) A declaration that the Defendants intentionally breached the *ESA* in refusing to provide mandatory minimum statutory payments to Class members;
- (g) A declaration that all Class Members who filed claims under s. 96 of the *ESA* to the Ministry of Labour be granted leave to participate as members of the Class despite s. 97 of the *ESA*;
- (h) Further or in the alternative, a declaration that some or all of the Defendants wrongfully dismissed all Class Members in or around July 2020, and that the class Members are thus entitled to common law reasonable notice or pay in lieu of such notice;
- (i) Damages in the amount of \$2,500,000.00, or in an amount to be determined at or before trial, in severance and/or notice payments, as well as outstanding wages, vacation pay, holiday pay, and benefits, if applicable;
- (j) A Declaration that the Defendants had and owed common law duties to the Class Members, breached same, and were negligent;
- (k) A Declaration that the Defendants had and owed fiduciary duties to the Class Members and breached same;
- (l) A Declaration that, as a result of the actions, conduct and omissions as set out herein, the Defendants breached their contractual duty of good faith to Class Members, breached the duty of care owed to Class Members, and breached the fiduciary duties owed to the Class Members, including by:

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- (i) failing to comply with their contractual obligations towards Class Members;
 - (ii) failing to comply with the *ESA*;
 - (iii) failing to pay severance and/or termination pay to Class Members;
and,
 - (iv) Attempting to avoid their statutory and contractual obligations by alleging that other parties bore responsibility for such severance and/or termination payments.
- (m) A Declaration that the Defendants have been unjustly enriched, to the deprivation of Class Members by the value of unpaid termination and/or severance pay owed to Class Members, and an order requiring the Defendants to disgorge to Class Members all amounts withheld by it in respect of such unpaid termination and/or severance pay, in respect of which it has been unjustly enriched;
- (n) Punitive damages in the amount of \$500,000.00;
- (o) An order, pursuant to s. 24 of the *Class Proceedings Act*, 1992, SO 1992, c 6 directing an aggregate assessment of damages;
- (p) Prejudgment interest in accordance with s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

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- (q) Postjudgment interest in accordance with s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (r) Costs pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 and the *Courts of Justice Act*, RSO 1990, c C. 43;
- (s) Costs of administration of a plan of distribution of the recovery in this action pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6 plus applicable taxes; and,
- (t) Such further and other Relief as may be requested by the Plaintiff or as required, or as this Honourable Court may deem just.

A. The Parties

(i) *The Plaintiff Kristopher Archer*

2. The Plaintiff, Kristopher Archer (“Mr. Archer”) resides in Toronto. Mr. Archer was hired by the Defendant 2505243 Ontario Limited, carrying on business as ByPeterandPaul.com (“ByPeterandPaul.com”) to work as a server at the Petros 82 Restaurant (“Petros 82”), beginning on or around August 9, 2019.

3. Petros 82 was one of the three restaurants located within a Toronto hotel facility called Hotel X. Petros 82 operated under a series of leasing and commercial agreements between Hotel X and ByPeterAndPaul.com.

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4. On or around March 15, 2020, Hotel X temporarily closed due to the COVID-19 pandemic. Along with his co-workers, Mr. Archer was temporarily laid off from his employment with the Defendants, pending the re-opening of Hotel X.

5. Over the ensuing months, Mr. Archer maintained his employment status with ByPeterAndPaul.com, although he remained on a temporary layoff.

6. On July 25, 2020 Mr. Archer received notice that his employment with the Defendants would be terminated on August 21, 2020, on a without cause basis, and due to the ongoing legal dispute and leasing issues between Hotel X and ByPeterandPaul.com.

(ii) The Plaintiff Lauren McCallum

7. The Plaintiff, Lauren McCallum (“Ms. MacCallum”) resides in Toronto. Ms. MacCallum was hired by ByPeterandPaul.com to work as a lead server at Maxx’s Kitchen within Hotel X on or around September 1, 2018.

8. Like Petros 82, Maxx’s Kitchen was one of the three restaurants located at Hotel X. It also operated under a series of agreements between Hotel X and ByPeterAndPaul.com.

9. On or around March 15, 2020, Hotel X temporarily closed due to the COVID-19 pandemic. Along with her co-workers, Ms. MacCallum was temporarily laid off from her employment with the Defendants, pending the re-opening of Hotel X.

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10. Over the ensuing months, Ms. MacCallum maintained her employment status with ByPeterAndPaul.com, although she remained on a temporary layoff.

11. On or around July 28, 2020 Ms. MacCallum received notice that her employment with the Defendants would be terminated on August 21, 2020, on a without cause basis, and due to the ongoing legal dispute and leasing issues between Hotel X and ByPeterandPaul.com.

(iii) The Plaintiff Nichole Rendon

12. The Plaintiff, Nichole Rendon (“Ms. Rendon”) resides in Toronto. Ms. Rendon was hired by ByPeterandPaul.com to work as a morning bartender at Maxx’s Kitchen within Hotel X Toronto on or around November 10, 2019.

13. On or around March 15, 2020, Hotel X temporarily closed due to the COVID-19 pandemic. Along with her co-workers, Ms. Rendon was temporarily laid off from her employment with the Defendants, pending the re-opening of Hotel X.

14. Over the ensuing months, Ms. Rendon maintained her employment status with ByPeterAndPaul.com, although she remained on a temporary layoff.

15. On or around July 28, 2020 Ms. Rendon received notice that her employment with the Defendants would be terminated on August 21, 2020, on a without cause basis, and due to the ongoing legal dispute and leasing issues between Hotel X and ByPeterandPaul.com.

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16. The Plaintiffs plead, and the fact is, that despite their employment having been terminated in July 2020, they have not received any termination pay to date.

17. The Plaintiffs similarly plead, and the fact is, the Defendants terminated the employment of all other class members on or around the same date, and likewise did not provide any termination and/or severance pay to their fellow class members.

(iv) The Defendants Peter and Paul's Hospitality Group

18. The following Defendants are referred to collectively throughout this Claim as "Peter and Paul's Hospitality Group".

(a) The Defendant, 2505243 ONTARIO LIMITED c.o.b. BYPETERANDPAUL.COM (previously identified as "ByPeterandPaul.com"), is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

(b) The Defendant, 2592511 ONTARIO INC. c.o.b. DAVID DUNCAN HOUSE, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

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- (c) The Defendant, 1423792 ONTARIO LIMITED c.o.b. PARAMOUNT, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (d) The Defendant, 1327018 ONTARIO LIMITED c.o.b. BELLAGIO, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (e) The Defendant, PETER & PAUL'S MANOR LTD., is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (f) The Defendant, 1794377 ONTARIO LTD. c.o.b. VUE, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control

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and direction, as “Peter and Paul’s Hospitality Group” which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (g) The Defendant, 2502373 ONTARIO LTD. c.o.b. CLUBHOUSE EVENTSPACE, is a corporation incorporated pursuant to Ontario’s *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as “Peter and Paul’s Hospitality Group” which provides food, beverage, and hospitality services in the Greater Toronto Area.
- (h) The Defendant, 1895299 ONTARIO LIMITED c.o.b. UNIVERSAL EVENT SPACE, is a corporation incorporated pursuant to Ontario’s *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as “Peter and Paul’s Hospitality Group” which provides food, beverage, and hospitality services in the Greater Toronto Area.
- (i) The Defendant, 2618420 ONTARIO LTD. c.o.b. THE KORTRIGHT EVENTSPACE, is a corporation incorporated pursuant to Ontario’s *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as “Peter and Paul’s Hospitality Group” which provides food, beverage, and hospitality services in the Greater Toronto Area.

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- (j) The Defendant, 2618420 ONTARIO LTD. c.o.b. BLACK CREEK PIONEER VILLAGE EVENTSPACE, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (k) The Defendant, PETER & PAUL'S BASKETS AND GIFTS INC., is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

- (l) The Defendant, 1986912 ONTARIO INC. c.o.b. as PETER & PAUL'S HOSPITALITY GROUP, is a corporation incorporated pursuant to Ontario's *Business Corporations Act*, R.S.O. 1990, c. B. 16. It is part of a group of companies operating, under common control and direction, as "Peter and Paul's Hospitality Group" which provides food, beverage, and hospitality services in the Greater Toronto Area.

(v) *The Defendants Hotel X*

19. The following Defendants are all referred to collectively throughout this Claim as "Hotel X":

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- (a) The Defendant, PRINCES GATES GP INC. is a corporation incorporated pursuant to British Columbia's *Business Corporations Act*, SBC 2002, c 57. It is the General Partner of the Defendant, PRINCES GATES HOTEL LIMITED PARTNERSHIP.
- (b) The Defendant, PRINCES GATES HOTEL LIMITED PARTNERSHIP, is an Ontario Limited Partnership in the business of operating Hotel X Toronto at 111 Princes' Boulevard in the Exhibition Place grounds in Toronto ("Hotel X").

B. The Class

20. The Plaintiffs bring this Action pursuant to the *Class Proceedings Act*, 1992, on their own behalf and on behalf of the following class of persons (together, the "Class" or "Class Members"):

Any person who worked at the Hotel X facility providing food and/or beverage service through an employment contract with any of the companies within the Peter and Paul's Hospitality Group, including but not limited to ByPeterAndPaul.com; and whose employment was terminated without notice or severance payments in or around July 2020.

C. The Plaintiffs' Employment with the Defendants

(i) *The Defendants constitute a single, common or successor employer*

21. The Plaintiffs plead that some or all of the Defendants which constitute Peter and Paul's Hospitality Group (those Defendants listed at paragraph 18, above) are a single employer or related employer that operated under the common control or direction of

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Peter Eliopoulos and others or, further or in the alternative, they are a single employer or related employer because of the interlocking directorships, ownership interests, and leadership roles of Mr. Eliopoulos and others.

22. The Defendants that constitute Peter and Paul's Hospitality Group hold themselves out to be, and are in fact, a single integrated enterprise providing food, beverage, and hospitality services in the Greater Toronto Area.

23. Without limiting the generality of the forgoing, the Defendants that constitute Peter and Paul's Hospitality Group publish press and advertising materials which suggest they are a single integrated business operation. They also maintain a website in common, www.bypeterandpauls.com, which describes the Defendants as a single "business". The Defendants also provide financial support to each other in the nature of a related group of companies or integrated business operation.

24. The Defendants PRINCES GATES GP INC. and PRINCES GATES HOTEL LIMITED PARTNERSHIP also exercised a significant degree of control over food, beverage and hospitality operations at Hotel X at all material times.

25. Without limiting the generality of the forgoing, the Defendants PRINCES GATES GP INC. and PRINCES GATES HOTEL LIMITED PARTNERSHIP mandated minimum standards for all employees of ByPeterAndPaul.com, including standards related to service and staffing, with respect to food, beverage, and hospitality operations at Hotel X from time to time. Employees of ByPeterAndPaul.com were also required to abide by Hotel X's dress code policies, including Hotel X name tags, and were required to abide

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by various other Hotel X policies and codes of conduct. In addition, the Plaintiffs were hired and trained by Hotel X staff, were under the direction and control of Hotel X management and worked exclusively at Hotel X's premises.

26. The Defendants PRINCES GATES GP INC. and PRINCES GATES HOTEL LIMITED PARTNERSHIP also occasionally directed that certain food, beverage, and hospitality employees be deployed to particular areas of Hotel X, and exercised effective powers of hiring, firing, and discipline with respect to the Class.

27. The Plaintiffs plead, and the fact is, that they were functionally integrated into the operations of Hotel X in the nature of employees at all material times.

28. Further or in the alternative, the Plaintiffs plead that Hotel X replaced Peter and Paul's Hospitality Group as the Class Members' successor employer when it assumed responsibility for food and beverage service at Hotel X's premises.

29. Accordingly, the Plaintiffs plead that some or all of the Defendants carried on associated or related activities or businesses such that they constitute a common, single or successor employer for the purposes of the *ESA* and/or the common law. Accordingly, some or all of the Defendants are jointly and severally liable to the Plaintiffs for the damages as set out in the prayer for relief in paragraph 1, above.

(ii) In the alternative, the Building Services provisions of the ESA apply

30. Further or in the alternative, the Plaintiffs plead that some or all of the Defendants that constitute Peter and Paul's Hospitality Group (those Defendants listed at paragraph

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18, above) employed the Plaintiffs for the purposes of providing “building services” as defined under the *ESA*.

31. At some point in or around the summer of 2020, Hotel X began offering food, beverage, and hospitality services that had previously been provided via the employees under contract with ByPeterAndPaul.com. Hotel X provided these services either directly, and/or through the use of a third-party catering company called Harlo Entertainment. The food, beverage and hospitality services were provided to Hotel X and were for the primary purposes of serving the guests or attendees of the hotel or for encouraging guests and/or attendees to visit the hotel.

32. The Plaintiffs plead that as a result of the forgoing, PART XIX of the *ESA* applies. Accordingly, even if the Defendants PRINCES GATES GP INC. and PRINCES GATES HOTEL LIMITED PARTNERSHIP did not employ the Plaintiffs prior to the date of termination, they are deemed to be the Plaintiffs’ employer by operation of the PART XIX of the *ESA*.

D. Factual Basis of the Claim

33. Beginning in the summer of 2019, ByPeterAndPaul.com began operating several restaurants within the newly constructed Hotel X facility.

34. These restaurants included Petros82, an upscale Greek restaurant; Maxx’s, an all-day dining restaurant, and the Peregrine SkyBar, a speciality cocktail bar with views of Lake Ontario and the cityscape of Toronto.

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35. The Peter and Paul's Hospitality Group was also engaged by Hotel X as the sole provider of all event catering and room service at the Hotel X facilities.

36. The agreements between Peter and Paul's Hospitality Group and the Hotel X conglomerate were pursuant to various leasing agreements, amending agreements, and a Food and Beverage Services Agreement. Further particulars of the relationship between Peter and Paul's Hospitality Group and Hotel X are within the knowledge of the Defendants.

37. Throughout the summer and fall of 2019, the Defendants hired Class Members to work in their Hotel X restaurants, to work as servers, bartenders, kitchen staff, and other restaurant positions.

38. As part of their remuneration, Class Members were entitled to an hourly wage. Once they reached a certain length of service, Class Members also become entitled to group insurance benefits, including health and dental benefits.

Employees are temporarily laid off

39. On or around March 16, 2020, Hotel X closed temporarily due to the COVID-19 pandemic.

40. As a result of Hotel X's closure, all restaurants, event and catering services within the Hotel X facility were also temporarily closed.

41. All Class Members (approximately two hundred or more employees) were temporarily laid off, pending the re-opening of Hotel X.

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42. Peter Eliopoulos, the owner and director of Peter and Paul's Hospitality Group, wrote Class Members a formal letter, dated March 15, 2020. In this letter, Mr. Eliopoulos indicated that employees would be temporarily laid off until April 4, 2020.

43. As April 4, 2020 approached, it became increasingly clear that restaurants and food services within Hotel X could not reopen. As a result, the Defendants extended the temporary layoff period for all Class Members.

44. Over the next several months, Class Members communicated from time to time with co-workers and management, who continued to inform them that the temporary layoff would be extended until an indeterminate date.

Harlo Entertainment takes over food and beverage services

45. Sometime in or around July 2020, it was publicly announced that Hotel X would reopen to host players from the National Hockey League (the "NHL"), as well as their management and staff, as part of an exclusive "bubble" to protect players and staff from the spread of COVID-19.

46. However, rather than re-opening its existing restaurants, catering and event spaces, Hotel X terminated its agreements with the Peter and Paul's Hospitality Group.

47. Hotel X instead contracted with a separate company, Harlo Entertainment, to provide food and beverage services at the hotel.

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The Defendants terminate Class Members' employment

48. In or around the end of July 2020 and/or the beginning of August 2020, Peter and Paul's Hospitality Group informed Class Members that their employment with the Defendants would be terminated as of August 21, 2020, as a result of their legal dispute with Hotel X.

49. Peter and Paul's Hospitality Group further informed Class members that it was not obligated to provide any notice or severance pay, because such obligations had transferred to Hotel X by virtue of s. 75, "Building Services Providers", of the *ESA*.

50. Peter and Paul's Hospitality Group encouraged Class Members to reach out to Hotel X and inquire about working with any of their new restaurant groups.

51. Accordingly, Peter and Paul's Hospitality Group did not offer to, nor did it in fact, pay any termination and/or severance payments to Class Members.

52. Similarly, Hotel X refused to provide Class Members with any termination and/or severance payments, alleging that they were not the employer, and therefore not responsible to make such payments. Hotel X maintained that such responsibilities belonged to the Peter and Paul's Hospitality Group.

53. The Plaintiffs plead, and the fact is, that Class Members did not receive any termination or severance pay from any of the Defendants.

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E. Causes of Action

54. The Defendants, alone or together, owe and owed the Plaintiffs and Class Members statutory duties under *ESA* and contractual and other duties at common law.

55. The Defendants have breached those duties causing the Plaintiffs and Class Members to suffer damages for which the Defendants are liable.

(i) Breach of Employment Standards Legislation and Breach of Contract

56. The *ESA* forms either an express or implied term of the contracts of employment of the Plaintiffs and other Class Members.

57. As the employer of the Plaintiff and the Class, the Defendants had a legal duty to provide the Plaintiffs and Class Members with their minimum statutory entitlements upon the termination of their employment.

58. Further or in the alternative, Class Members were wrongfully dismissed and therefore entitled to common law reasonable notice of the termination of their employment, or pay in lieu thereof.

(ii) Breach of Duty of Good Faith

59. As employees, the Plaintiff and Class Members could expect that the Defendants would abide by a duty to act in good faith and to honour, and not frustrate, its statutory and contractual obligations.

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60. The Defendants breached its duty of good faith by, *inter alia*:

- (a) failing to accept responsibility for paying Class Members their minimum statutory and/or contractual entitlements on termination;
- (b) failing to pay Class Members their minimum statutory and/or contractual entitlements on termination.

(iii) Negligence

61. The Defendants owed a duty of care to Class Members to take reasonable steps to ensure that they received all minimum statutory entitlements under the *ESA*. It breached its duty to Class Members by, *inter alia*:

- (a) failing to advise Class Members of their entitlements under the *ESA*; and,
- (b) failing to pay Class Members termination and/or severance pay under the *ESA*.

62. Damages were suffered by Class Members as a result of the Defendants' negligence as set out above. Those damages include but are not limited to the loss of termination and/or severance pay under the *ESA*.

(iv) Unjust enrichment

63. The Defendants have been unjustly enriched as a result of retaining money that is rightfully owed to the Plaintiffs and other Class Members in the form of termination and/or severance pay.

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64. The Plaintiff and Class Members have suffered a corresponding deprivation in the form of loss of termination and/or severance pay.

65. There is no juristic reason for this unjust enrichment. The Defendants' failure to pay the Plaintiffs and other Class Members severance and/or termination pay is unlawful.

F. Aggravated, Punitive and Exemplary Damages

66. The Plaintiffs plead that the Defendants' conduct as pleaded above is unlawful, high-handed and carried out in bad faith.

67. The Defendants' conduct constitutes a disregard for the minimum statutory employment rights and interests of Class Members.

68. The Defendants' conduct in failing to pay Class Members termination and/or severance pay warrants awards of aggravated, exemplary and punitive damages.

G. Place of Trial

69. The Plaintiffs propose that this Action be tried in the City of Toronto.

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March 16, 2022

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Lawyers for the Plaintiffs

NICHOLE STEPHANIE RENDON et al.
Plaintiffs

-and-

2505243 ONTARIO LIMITED c.o.b. BYPETERANDPAUL.COM et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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