



Court File No. CV-24-00000869-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE BRAID ) WEDNESDAY, THE 19<sup>TH</sup>  
 ) DAY OF JUNE, 2024

B E T W E E N:

**GULED WARSAME and SHELLI SAREEN on their own behalf and on  
behalf of all members of UNITE HERE Local 75**

Plaintiffs

and

**DAVID SANDERS, ASHLEY HAYES, RAFUNZEL KORNGUT AND ALLAN PACE  
on his own behalf and on behalf of all members of THE TORONTO HOSPITALITY  
EMPLOYEES UNION – CSN (THEU-CSN)**

Defendants

**CONSENT ORDER**

**(Plaintiffs’ Motion for Interlocutory Relief)**

**THIS MOTION**, made by the Plaintiffs for orders relating to the return of personal property and for ancillary relief, was heard this day, at 85 Frederick Street, Kitchener, ON., N2H 0A7.

**ON READING** the statement of claim, the Motion Record, Supplementary Motion Records, Factum, Book of Abbreviated Authorities and Compendium of the Plaintiffs, the Responding Motion Record, Factum, Book of Authorities and Compendium of the Defendants, and on hearing the submissions of the lawyer(s) for the parties.

**AND UPON** being advised by counsel that the Parties have consented to the relief set out herein:

1. **THIS COURT ORDERS** that the Plaintiff, Guled Warsame, may bring this proceeding on behalf of all members of UNITE HERE Local 75 (“Local 75”)
2. **THIS COURT ORDERS** that the Plaintiff, Shelli Sareen, may bring this proceeding on behalf of all members of Local 75.
3. **THIS COURT ORDERS** that the Defendant, Allan Pace, be named as a representative of all members of the Toronto Hospitality Employees Union (“THEU-CSN”).
4. **THIS COURT ORDERS** that the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants, to permanently delete and destroy any and all copies of the “Legacy Documents” defined in paragraph 5, below, which has been saved and/or stored on any computer, laptop, hard drive, cellular phone, or any other electronic device within their power, possession or control.
5. **THIS COURT ORDERS** that, for the purposes of this Order, the “Legacy Documents” shall be deemed to be business records belonging to Guled Warsame, Shelli Sareen, or Local 75 which were created on or before January 7, 2018, and that were on a personal device in the possession of the Defendants as of that date, as identified by the Defendants making all best efforts to identify each such document, including, if any such records exist, Local 75 member lists, contact information, grievance files, collective bargaining documents, employee seniority lists, and any email containing such documents.

6. **THIS COURT ORDERS** that the process set out in paragraph 4, above, shall proceed as follows:

- (a) the Defendants shall use reasonable best efforts to speak with representatives of ellwood Evidence Inc. to advise them of the devices used to store Legacy Documents, software used to access Legacy Documents, and operating systems used to access Legacy Documents;
- (b) the Defendants shall provide a copy of all Legacy Documents to their lawyers who shall preserve the copies using reasonable commercial best efforts, until such time as this action is finally resolved and any appeal period has expired at which time the Legacy Documents shall be permanently deleted, and the lawyers for the Defendants shall not disclose the copies to any party, including the Defendants, without an order of the court;
- (c) when a Legacy Document is identified on a Defendant's storage device, all available metadata and file location information will be copied together with the Legacy Document from the Defendant's storage device to an external device to be held by the Defendants' lawyers in a manner deemed acceptable to ellwood Evidence Inc., and each Defendant will have a separate folder for the copied documents to segregate the files by Defendant;
- (d) the Defendants shall delete Legacy Documents in the presence of representatives from ellwood Evidence Inc. following the latter's instructions and using secure deletion tools ellwood Evidence Inc. deems appropriate;

- (e) ellwood Evidence Inc. shall use the least intrusive means available to confirm to its satisfaction that the Legacy Documents have been deleted and may not handle any of the Defendants' personal devices without their permission;
- (f) ellwood Evidence Inc. shall provide a short written report to the lawyers for the Plaintiffs and Defendants confirming whether they are satisfied that deletion of the Legacy Documents has occurred or, if not, that they are dissatisfied (providing reasons therefor); and,
- (g) the Plaintiffs shall be solely responsible for retaining and paying all costs associated with ellwood Evidence Inc., and shall ensure that ellwood Evidence Inc. undertakes not to disclose to the Plaintiffs, or any other party including Plaintiffs' counsel, any information other than the information specifically set out at paragraph 6.(f) and shall be strictly liable for damages to the Defendants in the event that such disclosure is made in breach of this undertaking.

7. **THIS COURT ORDERS** that each of the Defendants shall, within 30 days of deleting the Legacy Documents, in accordance with the process set out in this Order, provide a statutory declaration confirming that all Legacy Documents identified during a diligent search of their personal devices have been deleted.

8. **THIS COURT ORDERS** that the parties may, by agreement, agree to terms concerning the disclosure or production of any of the Legacy Documents (or information concerning the Legacy Documents such as metadata) for the purposes of dealing with any issue in dispute in the Action or, failing such agreement, the parties may seek further orders from the Court concerning

disclosure or production of any of the Legacy Documents (or information concerning the Legacy Documents such as metadata);

9. **THIS COURT ORDERS** that the Action shall proceed pursuant to the following Timetable:

- (a) the Defendants shall serve their Statement of Defence by July 2, 2024;
- (b) the Defendants shall serve any Third Party Claim by July 12, 2024; and,
- (c) the Plaintiffs and Defendants shall enter into a Discovery Plan by August 31, 2024, subject to receiving input from any defendant to any Third Party Claim.

10. **THIS COURT ORDERS** that none of the Parties to this Order are precluded from bringing a motion to set aside or vary this Order, or to seek such further and other Orders as they deem necessary.

11. **THIS COURT ORDERS** that costs of the motion shall be reserved to the trial judge.

Date of issuance June 19, 2024

*(to be completed by registrar)*



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*(Signature of judge, officer or registrar)*