



No. S210614  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

ROMUEL ESCOBAR

PLAINTIFFS

AND

OCEAN PACIFIC LTD.

DEFENDANT

**Brought Under the *Class Proceedings Act***

**ORDER MADE AFTER APPLICATION**

	)		)
	)		)
	)		)
BEFORE	)	THE HONOURABLE Madam Justice Matthews	)
	)		)
	)		)
	)		)
	)		)

December 10, 2021

ON THE APPLICATION of the plaintiff, coming on for hearing by Microsoft Teams at Vancouver on June 17-18, 2021 and on hearing S.A. Quail and N. Veitch for the plaintiff and I.G. Nathanson, Q.C. and J.K. Lockhart for the defendant; AND ON JUDGMENT BEING RESERVED TO THIS DATE;

THIS COURT ORDERS that:

1. The within action is certified as a class proceeding as of the date of this order

2. The Class is defined as:

All regular hourly employees of the Defendant working at or from the Pan Pacific Hotel Vancouver as of February 20, 2020, excluding on-call or casual employees, who stopped receiving regular shifts from the Defendant on or after February 20, 2020, and never re-commenced receiving regular shifts whether or not they were issued formal notice of termination.

3. Romuel Escobar is appointed as representative plaintiff of the Class.

4. The nature of the claims asserted on behalf of the Class are breach of contract and breach of the duty of good faith and honest performance of a contract by the Defendant.

5. The Class seeks the following relief:

- a. a declaration that the defendant owes the Class members damages for wrongful and/or constructive dismissal;
- b. damages to the Class members for wrongful and/or constructive dismissal;
- c. a declaration that the defendant breached its duty of good faith and honest performance to the Class when it misled them about its intentions regarding their employment security;
- d. damages to the Class members for the breach of the duty of good faith and honest performance in the nature of compensation for mental distress caused by this breach.
- e. a declaration that damages owing to the Class members for wrongful and/or constructive dismissal, being payment in lieu of notice of termination, are increased due to the impact of COVID-19 on the hotel sector job market, such that Class members are entitled to an extended notice period to find replacement employment; and
- f. punitive damages;
- g. pre- and post-judgment interest pursuant to the *Court Order Interest Act*, RSC 1996 c 79;
- h. costs.

6. Paragraphs 27.d.ii and 34-36 of the amended Notice of Civil Claim are struck.

7. The plaintiff's application to amend the amended Notice of Civil Claim is allowed, excepting the following amendments:

- a. para. 27.c.i.2; and

- b. para. 27.h.
8. The common issues to be determined in this class proceeding are:
    1. Did the defendant fundamentally change a term of the Class members' contracts by cancelling their hours due to the impact of the COVID-19 pandemic?
    2. Are Class members' notice entitlements increased because of the lack of alternative employment available to them due to the impact of the COVID-19 pandemic on the hospitality sector and the labour market more generally?
    3. Did the defendant intentionally mislead Class members about their prospects for ongoing employment with it?
    4. If so, did that conduct amount to a breach of the defendant's duty of good faith and honest performance toward Class members?
    5. If so, are Class members entitled to damages compensating them for lost earnings during the period when the defendant dishonestly misled them into believing they would return to active employment with it (i.e., during which Class members could have sought new work)?
    6. Was the defendant's conduct high-handed, malicious, arbitrary, or reprehensible such that punitive damages are warranted?
    7. If so, and if the aggregate compensatory damages awarded to Class members does not achieve the objectives of retribution, deterrence and denunciation in respect of such conduct, what is the appropriate quantum of punitive damages in this case?
    8. If the answer to common issue 6 is yes, and for consideration once all other common issues have been decided, can an aggregate award pursuant to s. 29 of the *Class Proceedings Act* be made as regards punitive damages?
  9. The plaintiff shall follow the Litigation Plan attached as Appendix "A" to this Order.
  10. Notice of certification shall be given to the Class in form set out in Appendix "B" of this Order.
  11. The Opt-out Date is 30 days after the date notice of certification is given to the Class. The Opt-out form is attached as Appendix "C". No person may opt out of this proceeding after the Opt-out Date.
  12. No later than two weeks after the Opt-out Date, plaintiff's counsel will provide defendant's counsel with a complete list of all individuals who have opted out.
  13. Within 15 days of entry of this Order, the defendant will provide plaintiff's counsel with a Class list (in Excel format) of all Class members, updated to the date of this order, listing the following information for each Class member:
    - a. Full name;

b. Last known residential address, telephone number, and email address.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



---

Counsel for the Plaintiff  
Susanna Allevato Quail



For

---

Counsel for the Defendant  
Irwin Nathanson, Q.C.

By the Court

---

Registrar

## **APPENDIX “A”**

### **Litigation Plan**

#### **Notice**

1. Within 15 days of certification, the defendant will provide last known mail and email addresses of each Class member to the plaintiff.
2. Within 30 days of that receipt, the plaintiff will deliver a copy of the Notice of Certification in a form approved by the Court to each mail and email address provided.
3. The plaintiff has obtained agreement of UNITE HERE Local 40, a trade union that now represents most of the non-managerial employees of the defendant and thus a portion of the Class members, to also circulate Notice of Certification to its members at the Pan Pacific Hotel and to encourage its members to share the Notice of Certification with former hotel employees who are included in the Class.
4. If the plaintiff is unable to deliver the Notice of Certification to any Class member using contact information disclosed by the defendant nor with the assistance of UNITE HERE Local 40, the plaintiff will retain a skip tracing service to locate the class member. The costs of such service will initially be borne by plaintiff’s counsel and the defendant will reimburse these costs within seven business days after receiving copies of invoices confirming amounts spent.

#### **Pleadings**

5. Within 30 days of entry of this order, the plaintiff will file a further amended notice of civil claim, in accordance with the terms of the certification order.
6. The defendant will file a response to the further amended civil claim within 14 days after being served with the further amended notice of civil claim.

#### **Discovery**

7. Discovery and inspection of documents will be undertaken in accordance with the provisions of Rule 7-1 of the *Supreme Court Civil Rules*, within 60 days after the list of individuals opting out of the class is provided to the defendant.
8. Examinations for discovery will be undertaken in accordance with Rule 7-2 of the *Supreme Court Civil Rules*, and will be conducted within 90 days after the last date for exchange of the parties’ lists of documents.

## **Expert Reports**

9. Subject to the agreement of counsel or the direction of the court, the parties are to serve expert reports in accordance with Rule 11-6 of the *Supreme Court Civil Rules*.

## **Determination of Common Issues**

10. The plaintiff proposes the following in relation to the trial of the common issues:
  - a. Counsel will consider, following completion of discovery, whether any of the issues common to the class may be appropriately resolved by way of summary trial, and, if appropriate, will apply to the Court for summary trial on such issues.
  - b. Counsel will agree on a date for the hearing of any summary trial having regard to the availability of the case management judge, and a schedule for the exchange of materials, and failing agreement will seek direction from the case management judge. Any common issues that may not be appropriately resolved by summary trial will be set for trial.
  - c. Counsel will agree on trial dates, failing which trial dates will be determined by the case management judge having regard to the determination of the summary trial, if any. A case management conference will be held at least 28 days prior to the trial date. The parties will file a trial certificate within 28 days of trial.
11. Following judgment on all of the common issues, whether by summary judgement or trial, Class counsel will prepare a proposed notice to Class members communicating the outcome and any subsequent proceedings, subject to approval by the Court.

## **Determination of Individual Issues**

12. If the plaintiff is successful at the common issues trial, a process for determining individual issues will be established following the resolution of the common issues, to be determined based on the nature and scope of the remaining individual issues. The plaintiff anticipates that there will be individual issues for determination, for example determination of whether some members of the Class accepted the change in terms, or by their conduct elected to affirm the employment relationship, quantification of each class member's notice period entitlement, availability of mental distress damages and quantification of damages for any established breach of the duty of good faith and honest performance, if awarded.
13. A case management conference will be held within 30 days of judgement on the common issues for the purpose of establishing a process for determination of individual issues. Prior to and during this case management conference, the parties will attempt to come to agreement regarding an appropriate process for determination of individual issues.

14. Failing agreement, and unless the court orders a process on its own motion, the plaintiff will apply to the court for an order instantiating a process to resolve outstanding individual issues. The plaintiffs will make this application no later than 14 days after the case management conference.

#### **Aggregate Determination of Punitive Damages**

15. Once the quantum of individual compensatory damages is determined, following the resolution of individual issues, a further common issues trial may take place to address common issues 7 and 8.

APPENDIX “B”

NOTICE OF CERTIFICATION

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS – PLEASE READ IT CAREFULLY

DATE

BY MAIL/EMAIL

[INSERT NAME AND ADDRESS]

Dear \_\_\_\_\_:

**Re: Escobar v Ocean Pacific Hotels Ltd.**

---

A class action lawsuit has been certified in British Columbia against Ocean Pacific Hotels Ltd., claiming that Ocean Pacific wrongfully dismissed employees at the Pan Pacific Hotel by terminating them without cause and without providing them sufficient notice: *Romuel Escobar v Ocean Pacific Hotels Ltd.*, Supreme Court of British Columbia, Vancouver Registry No S-210614.

You are receiving this notice because Ocean Pacific’s records show that you may be included in the class. You may be included if you:

1. Are or were a regular hourly employee of the Pan Pacific Hotel as of February 20, 2020,  
  
AND
2. Stopped receiving regular shifts from the Pan Pacific Hotel on or after February 20, 2020, and never re-commenced receiving regular shifts.

**Summary**

The lawsuit makes the following claims against Ocean Pacific Hotels Ltd., which owns and operates the Pan Pacific Hotel Vancouver:

1. That Ocean Pacific changed a material term of the class members’ contracts when it stopped providing them with regular shifts due to the COVID-19 pandemic.
2. That Ocean Pacific owes class members increased pay in lieu of notice due to the limited availability of other employment in the context of the COVID-19 pandemic.
3. That Ocean Pacific intentionally mislead class members about the prospect that they would return to active employment with it, knowing full well that it planned to terminate all of their employment.



4. That Ocean Pacific owes damages for the lost earnings experienced by class members during the period when the Hotel misled them into believing they would return to work there.
5. That Ocean Pacific should pay additional, punitive damages for its actions.

Ocean Pacific denies the allegations against it. The claims have not been proven. At this point, the court has only approved this action to proceed as a class action and has not made any determinations about the merits of the claims.

You can view documents related to this lawsuit online at <https://aqrlaw.ca/class-action/>.

### **How can I be part of this Class Action?**

You do not need to do anything to participate in this action. Class members are automatically included in the class action unless they choose to exclude themselves from the class by opting out (discussed below).

### **How can I exclude myself from the Class Action (opt out)?**

To opt out of this class action, deliver a completed Opt-Out Form by email, mail, or fax to:

**Allevato, Quail and Roy**  
1943 East Hastings Street  
Vancouver, BC V5L 1T5  
Fax 604.424.8632  
[classaction@aqrlaw.ca](mailto:classaction@aqrlaw.ca)

The Opt-Out Form is enclosed and also available at [www.aqrlaw.ca/classaction](http://www.aqrlaw.ca/classaction).

Emailed Opt-Out Forms must be received by 5 pm PST on [opt-out date]. Mailed Opt-Out forms must postmarked by 5 pm PST on [opt-out date]. Forms received or postmarked after that time will not be accepted and will be invalid.

If you opt out of the class action, you should be aware that there are time limits within which you must take formal legal action to pursue your claim. By opting out of the class action, you will take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect or advance your claim.

### **What are the possible financial consequences?**

There is no cost to you to participate in the class action.

If the class action is successful at trial, the court will establish a further process to determine the amount of compensation each individual member of the class (including you) may be entitled to receive. In addition, after that process takes place, the court may award compensation to the class as a whole and you may receive a portion.

If the class action is unsuccessful at trial, class members will not be awarded any compensation. Class members will also not have any financial obligations in respect of the lawsuit.

Whether or not the class action is successful, all class members who do not opt out will be bound by the final judgment of the court.

**Where can I get more information?**

Please contact **Allevato Quail & Roy** at 604-424-8631 or [classaction@aqrlaw.ca](mailto:classaction@aqrlaw.ca) with any questions or for further information.

This notice has been approved by the BC Supreme Court.

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

ROMUEL ESCOBAR

PLAINTIFFS

AND

OCEAN PACIFIC LTD.

DEFENDANT

***Brought Under the Class Proceedings Act***

**OPT OUT FORM**

I, Name: \_\_\_\_\_

Address: \_\_\_\_\_

**DO NOT WISH TO PARTICIPATE** in this class action.

**I understand that this class action is brought on behalf of the following class:**

All regular hourly employees of the Defendant working at or from the Pan Pacific Hotel Vancouver as of February 20, 2020, excluding on-call or casual employees, who stopped receiving regular shifts from the Defendant on or after February 20, 2020, and never re-commenced receiving regular shifts, whether or not they were issued formal notice of termination.

I understand that if I opt out and complete this form I will not take part in the class action, I agree to be excluded from the class action, and I will not be bound by the result whether favourable or unfavourable.

**I also understand that a lawsuit must be commenced within a specified period or it will be legally barred. By opting out of the class action, I take full responsibility for obtaining legal**

**advice about any claim I may have against the Defendant for the matters at issue in this lawsuit and any limitation period concerning my possible claims.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

**MAIL OR DELIVER NO LATER THAN [DATE], 2022 TO:**

Allevato Quail Roy  
1943 East Hastings St  
Vancouver, BC V5L 1 T5  
Phone: 604-424-8631  
Fax: 604-424-8632  
Email: [classaction@aqrlaw.ca](mailto:classaction@aqrlaw.ca)