

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

*Andrew Westphal v. Elliott’s Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group*  
*King County Superior Court Civil Case No. 22-2-00876-8 SEA*

**— NOTICE OF SETTLEMENT —**

*A court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or not. Please read this notice carefully.*

**TO: All persons who, at any time between January 18, 2019, and December 31, 2019, resided in Washington State, were employed by Elliott’s Oyster House, LLC, and/or E3 CO, LP dba E3 Restaurant Group, and worked as a non-exempt, hourly restaurant worker at Elliott’s Oyster House in the State of Washington:**

- A former employee brought claims against Elliott’s Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group (collectively, the “Company” or “EOH”) alleging that EOH: (1) failed to provide compliant rest breaks under Washington law; and (2) failed to properly disclose its automatic fees and/or service charges to customers and pay its employees all tips, automatic fees, and/or service charges it collected from customers. The Company strongly denies these claims. The parties have reached a proposed Class Action Settlement.
- EOH strongly denies any fault, wrongdoing, or liability. If the Parties had not reached a Settlement, EOH would have continued to vigorously defend against Plaintiff’s claims, including seeking a denial of class certification and a full defense verdict at trial. EOH agreed to this Settlement to avoid the risk, burden, and expense of further litigation, and as a means of making its employees whole for even any arguable claims relating to the lawsuit.
- The Class Action Settlement includes a total maximum settlement payment by EOH of \$77,500.00.
- **If you were employed by EOH and worked as a non-exempt hourly restaurant worker at Elliott’s Oyster House in the State of Washington between January 18, 2019, and December 31, 2019, you do not have to do anything to be eligible to receive a share of the settlement payment.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	You will be eligible to get a payment for your share of the Class Action Settlement. (You may need to provide the Settlement Administrator any updated contact information to ensure you receive a payment). You will give up rights relating to the legal claims in this Case.
<b>ASK TO BE EXCLUDED</b>	Get no payment. This is the only option that allows you to ever be a part of any other lawsuit against EOH with respect to the legal claims in this Case.
<b>OBJECT</b>	Write to the Court if you do not like the settlement and explain why. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Class Action Settlement. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this Case still has to decide whether to finally approve the Settlement. If the Court approves the Settlement, payments will be made after any appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. Why did I get this Notice?

EOH's records show that you were employed by EOH and worked as a non-exempt hourly restaurant worker at Elliott's Oyster House in the State of Washington between January 18, 2019, and December 31, 2019. The Court has allowed this Notice to be sent to you to inform you about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Settlement Class Members who do not affirmatively request to be excluded from the Settlement.

This Notice explains the Case, the Class Action Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

### 2. What is the Case about?

The Plaintiff, former employee Andrew Westphal, claims that EOH violated Washington State wage and hour laws by: (1) failing to provide compliant rest breaks under Washington law; and (2) failing to properly disclose its automatic fees and/or service charges to customers and failing to pay its employees all tips, automatic fees, and/or service charges it collected from customers. The Company strongly denies these claims. EOH has denied the Plaintiff's claims.

The Honorable Michael K. Ryan, of the Superior Court for the State of Washington in and for King County, is overseeing this Class Action. The lawsuit is known as *Andrew Westphal v. Elliott's Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group*, King County Superior Court Civil Case No. 22-2-00876-8 SEA (the "Case").

### 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called a "Class Representative" sues on behalf of other people whom they believe have similar claims. The people together are a "Class" or "Class Members." The employee who sued, and who represents the Class, is called the Plaintiff (in this case, Andrew Westphal).

The person the Plaintiff sues (in this case EOH) is called the Defendant. In a class action, one court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

### 4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiff or EOH. Instead, both sides agreed to a Settlement. This allows the parties to avoid the cost of a trial, and the people affected will be entitled to compensation. The Class Representative and his attorneys think the Settlement is best for everyone in the Class.

## WHO IS IN THE SETTLEMENT

### 5. How do I know whether I am part of the Settlement?

As part of the Settlement of the Case, the King County Superior Court has decided that everyone who fits the following description is a Class Member:

*All individuals who resided in Washington State and who were employed by EOH as a non-exempt, hourly restaurant worker (including front of house and/or back of house positions) at an Elliott's Oyster House restaurant in Washington State at any time during the Settlement Class Period (January 18, 2019 through December 31, 2019).*

If it is approved, the Settlement will cover all Settlement Class Members who have not timely and affirmatively excluded themselves from the Case. To be a part of and receive any money pursuant to the Settlement, Settlement Class Members need do nothing (other than refrain from affirmatively opting out of the Settlement).

## THE TERMS OF THE SETTLEMENT

### 6. What claims are covered by the Settlement?

The Settlement will resolve all of the claims Settlement Class Members could have brought against EOH regarding: (1) an alleged failure to provide the rest breaks required by Washington law; and (2) an alleged failure to properly disclose automatic fees and/or service charges and/or to pay its employees all tips, automatic fees, and/or service charges to which they were entitled (collectively, the “Released Claims”). The Released Claims include any and all claims, whether known or unknown, that were brought or that could have been brought based on any facts alleged in the Case with respect to a failure to provide rest breaks and/or a failure to properly disclose automatic fees and/or pay its employees all tips and/or automatic fees to which they were entitled. The Released Claims specifically include, but are not limited to, any claims arising out of or relating to any alleged failure to properly disclose any “Service Charge[s]” (as that phrase is defined in RCW 49.46.160(2)(c)), any failure to properly pay or distribute any tips, automatic fees, or service charges, any alleged missed, interrupted, shortened, untimely, unpaid, and/or non-compliant rest breaks, and any attendant claims for unpaid wages, overtime payments, premium payments, interest, exemplary damages, and attorney’s fees and costs relating to any of the foregoing.

### 7. What are the basic terms of the Settlement?

Subject to Court approval, the essential terms of the Settlement are as follows:

EOH will pay a total of \$77,500 as part of the Settlement, apportioned as follows:

- **Class Fund:** EOH will pay \$37,250.00, which will be available for the payment of Settlement Awards to Settlement Class Members who do not timely opt out of this Settlement. The Class Fund is allocated as follows: (a) a Class Portion of one-third (.333) of the Class Fund, which shall be paid to all Settlement Class Members based on their pro rata number of hours worked during the Settlement Class Period; and (b) a Service Charge Portion of two-thirds (.667) of the Class Fund, which shall be paid only to the “front of house” Settlement Class Members (i.e., the Settlement Class Members who were employed in the position of server, bartender, server assistant, or any similar front of house position) based on their pro rata number of hours worked in a “front of house” position during the Settlement Class Period.
- **Service Award:** EOH will pay up to \$5,000.00 to Plaintiff and Class Representative Andrew Westphal as a service award in recognition of his efforts in prosecuting the Case.
- **Settlement Administration Expenses Award:** EOH will pay up to \$7,000 to the Settlement Administrator for the processing of the Settlement, including the expenses of providing notice of the Settlement to Settlement Class Members, handling the administration process, processing payments to Settlement Class Members, and handling tax reporting requirements.
- **Attorney’s Fees and Costs Award:** EOH will pay up to \$23,250.00 to Plaintiff’s attorney for the attorney’s fees award and up to \$5,000 for actual litigation costs they have incurred and will incur through final judgment in representing Plaintiff and the Settlement Class.

**Monetary Relief:** The amount available to the Settlement Class is intended to compensate Settlement Class Members for the wages and other compensation they allegedly lost and damages they are allegedly owed as a result of the practices alleged in the Case.

**Distribution of Settlement Fund:** Each Settlement Class Member who does not submit a valid and timely request for exclusion will automatically receive a settlement payment. Each Settlement Class Member who does not request exclusion shall receive a minimum settlement payment of \$20.00. The remaining monies from the \$37,250.00 class fund will be allocated to individual Settlement Class Members as follows: (i) Each Settlement Class Member’s hours worked during the Settlement Class Period will be divided by the sum total of all Settlement Class Members’ hours worked during the Settlement Class Period. This calculation will result in a percentage figure for each Settlement Class Member (the “Class Portion Percentage Figure”), which will then be multiplied by the Class Portion, with the resulting figure being paid to the Settlement Class Member; (ii) Each “front of house” Settlement Class Member’s hours worked in a “front of house” position during the Settlement Class Period will be divided by the sum total of all “front of house” Settlement Class Members’ hours worked during the Settlement Class Period. This calculation will result in a percentage figure for each “front of house” Settlement Class Member (the “Service Charge Portion Percentage Figure”), which will then be multiplied by the Service Charge Portion, with the resulting figure being paid to the “front of house” Settlement Class Member. The results of the

foregoing calculations for each Settlement Class Member, in addition to the Twenty Dollar (\$20.00) minimum settlement payment, shall be referred to as a Settlement Award (or collectively, the Settlement Awards). Checks will be mailed to Settlement Class Members by the Settlement Administrator. If any checks have not been negotiated within one hundred twenty (120) days after distribution, the funds from those checks will be sent in the corresponding Settlement Class Member's name to the Unclaimed Property Fund for the State of Washington pursuant to the Unclaimed Property Act (RCW 63.29 et seq). EOH will not receive funds from any uncashed checks.

**Tax Treatment of Settlement Awards:** Forty Percent (40%) of each Settlement Class Member's Settlement Award will be treated as wages and subject to normal tax withholding and shall be reported to the taxing authorities and the Settlement Class Member on an IRS Form W-2. Sixty Percent (60%) of each Settlement Class Member's Settlement Award will be treated as non-wages (a combination of penalties, enhancements, and prejudgment interest) on which there will be no tax withholding and for which an IRS Form 1099-MISC (marked "Other Income") shall be issued to the taxing authorities and the Settlement Class Member. In addition to the monies it is contributing to the Settlement Fund described above, EOH is also paying all required employer-paid taxes incurred as part of the Settlement. EOH's payment of these employer-paid taxes will not decrease the funds available to Settlement Class Members.

**Release of Claims:** Upon final approval by the Court, the Settlement Class and each Settlement Class Member who has not submitted a valid and timely written request to be excluded from the Settlement will irrevocably release all of the Released Claims against EOH relating to the period from January 18, 2019 to December 31, 2019. This Release specifically includes any claims arising out of or relating to: (1) any alleged failure to provide the rest breaks required by Washington law; (2) any alleged failure to properly disclose automatic fees and/or pay employees all tips and/or automatic fees to which they were entitled; and (3) any attendant claims for unpaid wages, overtime payments, premium payments, interest, exemplary damages, and attorney's fees and costs relating to any of the foregoing. This Release requires you to waive and precludes you from bringing any Released Claims against the named Defendants in the case, Elliott's Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group, as well as each of their past, current, or future predecessors, successors, and assigns, together with each of their respective parent companies, subsidiaries, related or affiliated companies, members, shareholders, owners, officers, directors, employees, agents, attorneys, and insurers, along with any other individual or entity who could be jointly or severally liable for any of the Released Claims.

**Dismissal of Action:** Upon final approval, the Court will enter a judgment of dismissal of the Case with prejudice, but shall retain jurisdiction to enforce the terms of the settlement.

## HOW YOU CAN GET PAYMENT

### 8. How can I get a payment?

**To get a payment, you need do nothing. As long as you do not submit a written request to be excluded from the Settlement, you will be a Settlement Class Member and will be entitled to payment.**

### 9. When would I get my payment?

The Court will hold a hearing on December 1, 2023 at 11:00 a.m. to decide whether to finally approve the settlement. If the King County Superior Court approves the settlement, the parties will then have to wait to see whether there is an appeal. This will take at least thirty (30) days and, if there is an appeal, can take up to a year of more to resolve. In the event of an appeal, information regarding the appeal's progress will be made available at [www.cptgroupcaseinfo.com/EOHSettlement](http://www.cptgroupcaseinfo.com/EOHSettlement). If there is no appeal, we expect payments will go out within approximately sixty (60) days of the Court's final approval of the Settlement. Please be patient.

## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in this case?

The Court has decided that lawyers from the Law Office of Tatiana Hernandez, P.C., and Ackermann & Tilajef, P.C. are qualified to represent you and all Settlement Class Members. These lawyers are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by our own lawyer, you may hire one at your own expense.

### 11. How will the lawyers be paid?

As indicated above, Class Counsel will seek payment of their attorney’s fees in the amount of \$23,250.00, and their litigation costs in an amount of up to \$5,000.00, each of which must be approved by the Court as part of the final approval of this Settlement. Class Counsel have been working on this case since approximately December 2021, and have not received any fees or reimbursements for the costs of the lawsuit.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

#### 12. How do I exclude myself from the Settlement?

If you fit the definition of a Settlement Class Member and want to exclude yourself from the Settlement, you must request exclusion in writing by September 30, 2023. You may be excluded as a member of the class by submitting a written request stating, “I request that I be excluded from the Class in the case of Andrew Westphal v. Elliott’s Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group.” The request must include your name, address, and signature. You must mail a copy of the letter to the Settlement Administrator at the following address postmarked no later than September 30, 2023:

Westphal v. Elliott's Oyster House  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
Phone: 1-888-342-1368  
Fax: 949-419-3446  
Email:westphalvEOH@cptgroup.com

If you exclude yourself from the Settlement (i.e., opt out), you will not receive any payment from the Settlement. You will also not be entitled to object to the Settlement. If you exclude yourself, you will not be bound by the terms of the Settlement, including the Release described in Sections 6 and 7, above. This means you will retain the right at your own expense to pursue (or not pursue) any claims you may have against EOH.

### OBJECTING TO THE SETTLEMENT

#### 13. If I don’t like the Settlement, how do I tell the Court?

If you are a Settlement Class Member, have not excluded yourself from the Settlement, and do not like the Settlement or the fee request, you can object. You must do so in writing and you must state the reasons why you think the Court should not approve the Settlement. If you object, be sure to include your name, address, and telephone number, the name of the Case (*Andrew Westphal v. Elliott’s Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group*, King County Superior Court Civil Case No. 22-2-00876-8 SEA), the reasons you object to the Settlement, and a signature. You must mail a copy of the objection to the following address **postmarked no later than September 30, 2023**:

Westphal v. Elliott's Oyster House  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
Phone: 1-888-342-1368  
Fax: 949-419-3446  
Email:westphalvEOH@cptgroup.com

### THE COURT’S FINAL APPROVAL HEARING

#### 14. When and where will the Court decide to approve the Settlement?

The Court will hold a Final Approval Hearing at 11:00 a.m. on December 1, 2023, at the King County Superior Court, Courtroom E-835, 516 Third Avenue, Seattle, Washington 98104.

If there are objections, the Court will consider them. Judge Michael K. Ryan will listen to people who have asked to speak at the hearing (*see* Section 16). After the hearing, the Court will decide whether to finally approve the Settlement, including Class Counsel’s request for attorney’s fees, costs, Settlement Administration Expenses, and Service Award for the named Plaintiff. We do not know how long that decision will take.

**15. Do I have to come to the hearing?**

No. Class Counsel will answer any questions Judge Michael K. Ryan may have, but you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

**16. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must send a letter saying it is your “Notice of Intention to Appear in *Andrew Westphal v. Elliott’s Oyster House, LLC, and E3 CO, LP dba E3 Restaurant Group*, King County Superior Court Civil Case No. 22-2-00876-8 SEA.” Be sure to include your name, address, phone number, and your signature. Your Notice of Intention to Appear must be **postmarked no later than September 30, 2023**, and be sent to the Court, Class Counsel, and Defense Counsel at the three addresses set forth below:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Hon. Michael K. Ryan King County Superior Court 516 3rd Ave, Room C-203 Seattle, WA 98104	Brian Denlinger Ackermann & Tilajef, P.C. 2602 North Proctor Street, Ste. 205 Tacoma, WA 98406	Peter H. Nohle Jackson Lewis P.C. 520 Pike Street, Suite 2300 Seattle, WA 98101

**IF YOU DO NOTHING**

**17. What happens if I do nothing at all?**

If you do nothing—that is, if you do not mail or deliver a timely written request to exclude yourself from the Settlement—you will be part of the Settlement Class and will be entitled to a share of the Settlement. You will also be bound by the terms of the Settlement, including the Release described in Sections 6 and 7, above.

**GETTING MORE INFORMATION**

**18. Are there more details about the Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting the website [www.cptgroupcaseinfo.com/EOHSettlement](http://www.cptgroupcaseinfo.com/EOHSettlement), which has a copy of the Settlement Agreement posted. Plaintiff’s motion for final approval of the settlement agreement, including Class Counsel’s request for attorney’s fees, costs, Settlement Administration Expenses, and a Service Award for the named Plaintiff will be available for you to review on December 1, 2023 at [www.cptgroupcaseinfo.com/EOHSettlement](http://www.cptgroupcaseinfo.com/EOHSettlement).