

**Form A-2**

File No. 0019-24-R

LABOUR RELATIONS ACT, 1995

**RESPONSE TO APPLICATION FOR CERTIFICATION**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

**Between:**

Canadian Union of Postal Workers

**Applicant,**

- and -

SkipTheDishes Restaurant Services Inc.

**Responding Party.**

**The responding party states in response to the application:**

1. (a) Correct name of the responding party:

**SkipTheDishes Restaurant Services Inc. ("SkipTheDishes")**

- (b) Address, telephone number, facsimile number and e-mail address of the responding party:

**410-242 Hargrave Street  
Winnipeg, Manitoba  
R3C 0T8**

**Falilat Ibrahim  
Counsel  
Tel: 204-688-3612  
Fax: 204-809-5870  
E-mail: falilat.ibrahim@justeattakeaway.com**

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party (Please Note: this individual **must** be regularly available by phone during the five (5) days leading up to the date set for the vote. Your contact person should be an individual with the authority to enter into agreements on your behalf.):

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**Jordan Kirkness  
Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7 Canada  
Telephone: 416-216-1890  
Fax: 416-216-3930**

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**Brian Wood  
Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7 Canada  
Telephone: 416-216-1912  
Fax: 416-216-3930**

(d) E-mail address of representative and assistant (if any):

**Counsel: jordan.kirkness@nortonrosefulbright.com  
richard.charney@nortonrosefulbright.com  
josh.hoffman@nortonrosefulbright.com  
brian.wood@nortonrosefulbright.com**

**Assistant: kim.kolatschek@nortonrosefulbright.com  
sheila.tracey@nortonrosefulbright.com  
sasha.hattin@nortonrosefulbright.com  
coco.sun@nortonrosefulbright.com**

**[Periods of time referred to in this response, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.]**

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2. General nature of the responding party's business:

**SkipTheDishes is a technology company. It provides a platform that connects customers, vendors, independent couriers and consumers for the purpose of coordinating online ordering and/or delivery of food and beverages.**

3. [ ] The responding party agrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification.

**OR**

[ X ] The responding party disagrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification and says that there are **0** individuals in that bargaining unit.

4. [ ] The responding party agrees with the description of the bargaining unit included in the application for certification.

**OR**

[ X ] The responding party disagrees with the description of the bargaining unit included in the application for certification and proposes the following bargaining unit description (*include the municipality or other geographic area affected*):

**There are no employees or dependent contractors in the proposed bargaining unit.**

and says that there are   **0**   individuals in this bargaining unit.

**In the alternative, the Responding Party proposes the following bargaining unit description:**

**All employees performing food and alcohol delivery services, including direct employees and/or dependent contractors for SkipTheDishes Restaurant Services Inc. who reside in the City of Hamilton, Ontario, save and except any managers, positions above the rank of manager, office staff, marketing and/or sales staff, technical and/or information technology staff, human resources staff, reception and/or administrative staff, accounting**

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**staff and any individual exercising managerial functions or employed in a confidential capacity in matters relating to labour relations.**

5. If the responding party disagrees with the description of the bargaining unit included in the application, does the responding party also assert that the description of that unit could not be appropriate?

Yes

No

If the answer is yes, please provide full particulars in support of your position:

**The proposed bargaining unit description could not be appropriate.**

**All individuals engaged by SkipTheDishes to perform food and alcohol delivery services ("Couriers") are independent contractors. There are no employees or dependent contractors within the proposed bargaining unit.**

**In the alternative, if the Board decides that Couriers are employees or dependent contractors, the bargaining unit is not readily ascertainable from the proposed description since the Couriers are not bound by a municipal boundary. For example, it is unclear whether this would include only drivers who reside in the City of Hamilton, those who deliver within the City of Hamilton or those who reside outside the City of Hamilton. Thus, if Couriers are employees or dependent contractors, the geographic scope of the bargaining unit must be clarified.**

6. Is the responding party giving notice under section 8.1 of the Act?

Yes

No

If the answer is yes, does the responding party agree that ballots cast in the representation vote should be counted?

Yes

No

7. If the bargaining unit applied for includes guards, is the responding party objecting under section 14(2) of the Act?

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- Yes
- No

**N/A**

If the answer is yes, please provide full particulars of the basis of your objection:

**N/A**

Is the responding party objecting under section 14(3) of the Act?

- Yes
- No

**N/A**

If the answer is yes, please provide full particulars of the basis of your objection:

**N/A**

- 8. The name, address, telephone number and facsimile number of any trade union that claims to represent any employee(s) who may be affected by this application that was not identified by the applicant in paragraph 7 of the application.

**N/A**

- 9. The date on which the trade union named in paragraph 8 was certified or voluntarily recognized:

**N/A**

- 10. Is or was the responding party bound by a collective agreement covering any of the employees in the applicant's proposed bargaining unit?

- Yes
- No

If the answer is yes, state below the date on which it was signed, the effective date and the expiry date, and forward a copy of the agreement to the Board.

- 11. Other relevant statements (attach additional pages if necessary):

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For reasons set out in our covering letter, SkipTheDishes respectfully requests that the Board receive this Response to Application for Certification at this time.

All individuals referenced in the Applicant's proposed bargaining unit are independent contractors. There are no employees or dependent contractors performing food and alcohol delivery services for SkipTheDishes. Nevertheless, without prejudice to SkipTheDishes' position that the individuals who would otherwise fall within the proposed bargaining unit description are independent contractors, SkipTheDishes has provided a list of these individuals in Schedule A. SkipTheDishes specifically reserves its right to argue that these individuals are not employees or dependent contractors.

**Vote Arrangements** (Please read Information Bulletin No. 3 - Vote Arrangements before completing this portion of the form.)

12. Should a vote take place on the fifth day after the date on which this application for certification was filed with the Board?

Yes  
 No

If the answer is no, please explain fully and state the date(s) on which you believe the vote should take place and the reasons why:

**The Application was not delivered in accordance with the Board's *Rules of Procedure* and should be dismissed on this basis.**

**In the alternative, if the Board determines that the Application was properly delivered, SkipTheDishes respectfully requests that the Board exercise its discretion to accept the Responding Party's Response to Application for Certification on today's date, and delay the vote until April 16, 2024.**

13. Do you agree with the hours of vote proposed in the applicant's Form A-1 at paragraph 11?

Yes  
 No

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If the answer is no, please explain fully and state your suggested hours (specifying start and finish times and a.m. or p.m.), and the reasons for them:

14. Do you agree with the location of the poll(s) proposed in the applicant's Form A-1 at paragraph 12?

Yes  
 No

If the answer is no, please explain fully and state your suggested location of the poll(s), and the reasons for them:

15. Please state the name of the Scrutineer you have selected to represent you at each poll:

**Poll #1: Falilat Ibrahim**

**Poll #2** (only if multiple locations are necessary):

16. Please state the name of the agent you have selected to represent you at the counting of the ballots: **Falilat Ibrahim**

**DATED April 11, 2024**



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**Signature for the  
Responding Party**

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**CERTIFICATE OF DELIVERY**

1. I certify that a completed copy of the Response to the Application for Certification was delivered to [  ] the applicant and [  ] any affected trade union named in paragraph 7 of the application as follows. In addition, I certify that a copy of the completed Application, Response and related materials was delivered to [  ] any affected trade union named in paragraph 8 of the Response.

Mr. Cole Eisen  
Mr. Ryan D. White

ceisen@cavalluzzo.com  
rdwhite@cavalluzzo.com  
fdasilva@cavalluzzo.com  
vgomez@cavalluzzo.com

\_\_\_\_\_  
Name of Organization and name  
and title of person to whom  
documents were delivered

\_\_\_\_\_  
Address or facsimile number to  
which documents were delivered

**[Complete either section 2 or section 3 below.]**

2. The documents were delivered by [  ] email transmission or [  ]

hand delivery on April 11, 2024 at \_\_\_\_\_ a.m./p.m.  
(Date)

NAME: Sasha Hattin

TITLE: Legal Assistant

SIGNATURE: \_\_\_\_\_



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### IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca) or by calling 416-326-7500 or toll-free at 1-877-339-3335.

#### FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

#### CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

#### ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

#### COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the *Tribunal Adjudicative Records Act, 2019* requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The *Freedom of Information and Protection of Privacy Act* may also address the treatment of personal information. More information is available on the Board's website [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca). If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

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### **E-FILING AND E-MAIL**

The Rules of Procedure and Filing Guide set out the permitted methods of filing. **In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing.** Note that the e-filing system is not encrypted. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

### **HEARINGS AND DECISIONS**

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and [www.canlii.org](http://www.canlii.org). Some summaries and decisions may be found on the Board's website.