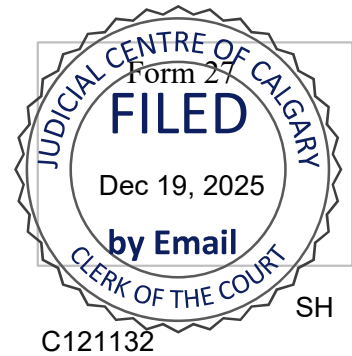


COURT FILE NUMBER 2501-08613
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS SILVER SAGE BEEF AKA SILVER SAGE BEEF INC. and DINER DELUXE AKA 2384152 ALBERTA LTD.
DEFENDANT CITY OF CALGARY



Brought under the Class Proceedings Act, SA 2003, c C-16.5

DOCUMENT **NOTICE OF APPLICATION FOR CERTIFICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **NAPOLI SHKOLNIK CANADA**
Adam Bordignon
Suite 400, 1000 – 7 Avenue S.W.
Calgary, Alberta T2P 5L5
Telephone: 888-531-0675
abordignon@napolilaw.ca

FREEMAN LITIGATION
Mark Freeman
500-5940 Macleod Tr. SW
Calgary, Alberta T2H 2G4
Telephone: 587-952-5021
Email: mfreeman@freemanlitigation.com

To do so, you must be in Court when the application is heard as shown below:

Date: **TO BE DETERMINED**
Time: **10:00 AM**
Where: **Calgary Courts Centre, 601 5 St SW, Calgary, AB T2P 5P7**
Before Whom: **The Honourable Justice J. Ashcroft**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Certifying this the within proceeding as a class action proceeding pursuant to the *Class Proceedings Act*, R.S.A. 2003 C-16.5.

2. Defining the class as follows:

All corporations and corporate property owners, that owned a business or businesses, either wholly or partially, within the Class Boundary, during the time-frame of June 3, 2023 to the time of trial (the “**Class**” or “**Class Members**”); and,

All individuals and individuals who owned property, that owned a business or businesses, either wholly or partially, within the Class Boundary, during the time-frame of June 3, 2023 to the time of trial (the “**Class**” or “**Class Members**”)

“**Class Boundary**” is defined as the physical area within the boundaries of 32 Avenue to the north, and in the south on the line of 35th Avenue to 19th Street, then along 36 Avenue diverting to 37th Avenue at 15th Street, between Crowchild Trail and 14 Street, in the Southwest of the City of Calgary, Province of Alberta.

or any such other class definition as this Honourable Court deems appropriate.

3. Stating the nature of the claim is as follows:

- a) On or about May 1, 2023, the Defendant began construction activities within the Class Boundary during the Class Period involving the burial of the existing overhead utility lines, among other things (the “**Construction**”);
- b) The stated length of the Construction was less than 12 months;
- c) The length of time for the Construction far exceeded 2 years;
- d) The Construction deterred customers, or physically interrupted or prevented them, from access to or patronizing the Class Members businesses, over the Class Period, causing significant, foreseeable and avoidable losses (hereinafter referred to as “the **Injury**”);
- e) The Construction was delayed and extended, and the Injury was caused, by the Defendant’s negligence;
- f) The Construction constitutes a Nuisance in the law as unreasonable interference with the use of Class Members land or leased premises;
- g) Further, the Injury violates section 532 of the *Municipal Government Act*, which allows for compensation to be paid therefor;
- h) Further, the Injury violates the *Alberta Bill of Rights* of Class Members for interference with the property rights.

4. Defining the following issues as common issues for trial:
 - a) Did the Construction interfere with the Class Members businesses such that customers were prevented or deterred from patronizing them.
 - b) Did the Construction cause Class Members to lose business.
 - c) Did the Construction violate Class Members property rights as protected by the *Alberta Bill of Rights*?
 - d) It was a Policy decision made by the Defendant to undertake the Construction. Was the direction, control or management of the Construction an operational decision for which the Defendant can be liable in negligence;
 - e) Was the Defendant negligent in the direction, control or management of the Construction;
 - f) Did the Construction cause a legal Nuisance to the Class Members, in common law or statute.
 - g) Did the Construction contravene section 532 of the Municipal Government Act? If so, is the Defendant liable for damages to Class Members for this breach?
 - h) Are Class Members entitled to Declaratory relief for the Defendant's violation of the *Alberta Bill of Rights*?
 - i) Are Class Members entitled to damages for losses as a result of the Defendant's actions?

and any other common issues disclosed by the Statement of Claim.

5. Appointing Silver Sage Beef Inc. and 2384152 Alberta Ltd. as Representative Plaintiffs for the Class Members.
6. Appointing Mark C. Freeman and Adam Bordignon, as Class Counsel.
7. Approving the Notice of Certification to the Class Members in the content attached as "Schedule A", or in such form and content as approved by the Court.
8. Directing that the Notice of Certification be disseminated as follows:
 - a) By posting a Notice of Certification on Class Counsel's website;
 - b) By forwarding the Notice of Certification to any Class Member who requests it;
 - c) By publishing the Notice of Certification in the Calgary Sun, Calgary Herald;
 - d) By a News Release to news sources about the Claim and directing Class Members to Class Counsel's website;

- e) Mail drop to all businesses in the Class Boundary; and
 - f) By such other notice as counsel may request, and the Court directs.
9. Directing that the expense of the Notice of Certification in paragraphs 7 and 8 shall be borne by the Defendant, subject to review and readjustment by agreement or order at the termination of this proceeding.
 10. Directing that Class Members may opt out of this Class provided by delivering a signed Out Form as set out in “Schedule B” (the “**Opt Out Form**”) by a date to be determined (the “**Opt Out Deadline**”) to Class Counsel by e-mail, mail, or facsimile and must be received, or post marked, if delivered by mail, by the Opt Out Deadline.
 11. No Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.
 12. Class Counsel may make non-material changes to the Notice of Certification and the Opt Out Form as are necessary and desirable with the consent of the Defendant.
 13. Approving the Litigation Plan in the form attached as “Schedule C”, or such form as approved by the Court.
 14. The Notice of Certification shall commence on the date of the certification order and conclude four months later, unless otherwise ordered by the Court.
 15. Costs of this Motion, payable forthwith in any event of the cause.
 16. Such further orders as this Honourable Court considers appropriate.
 17. Such further and other relief as this Honourable Court finds reasonable and just.

Grounds for making this application:

18. The pleadings herein disclose a cause of action against the Defendant;
19. There is an identifiable class or classes of two or more persons;
20. The claims of the Class Members raise common issues respecting the within litigation;
21. A class action is the preferable procedure for resolution of the common issues;
22. The Plaintiffs are appropriate to be appointed as Representative Plaintiffs, and:
 - a) will fairly and adequately represent the interests of the Class;
 - b) have produced a plan that sets out a workable method of advancing the action; and
 - c) do not have, on the common issues, an interest that is in conflict with the interest of

other Class Members;

Material or evidence to be relied on:

23. The Affidavit of Kent Zentner, sworn the 18th day of December, 2025, filed;
24. The Affidavit of Vince Wong sworn the 19th day of December, 2025, filed;
25. The pleadings and proceedings herein;
26. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

27. *Alberta Rules of Court.*

Applicable Acts and regulations:

28. *The Class Proceedings Act*, S.A. 2003 c. C-16.5;
29. *Municipal Government Act*, RSA 2000, c. M-26;
30. *Alberta Bill of Rights*, and
31. Such further and Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

32. None

How the application is proposed to be heard or considered:

33. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

“SCHEDULE A”
Notice of Certification to the Class Members

1. Did you own a business in Marda Loop, in the City of Calgary, within the boundary of 32 Avenue to the north, and in the south on the line of 35th Avenue to 19th Street, then along 36 Avenue diverting to 37th Avenue at 15th Street, between Crowchild Trail and 14 Street, in the Southwest of the City of Calgary, Province of Alberta (**Class Boundary**) between May 1, 2023, to [DATE] (the “**Affected Period**”)? **YES/NO**
2. Did the number of customers that attended your business change during the timeframe stated in paragraph 1, above? **YES/NO**
3. Did you or your business experience financial losses over that timeframe? **YES/NO**

If you answered **YES** to the questions above, a class action has been approved by the Alberta Courts that may affect your rights. Please read this carefully.

A COURT AUTHORIZED THIS NOTICE. YOU ARE NOT BEING SUED.

On [DATE] the Court of King’s Bench of Alberta certified a class action lawsuit on behalf of businesses which:

- owned or operated, either wholly or partially, a business or businesses within the Class Boundary, and
- whose business operations were fully or partially restricted during the timeframe beginning May 1, 2023, and [DATE], and
- who suffered damages and losses as a result.

the “**Class**” or “**Class Members**”.

If you meet this definition, you have a choice whether or not to stay in the Class Action. If you know a person who meets this definition but who has not seen this Notice, please share this Notice with them.

The substantive issues are still before the Court. However, your rights are affected by this lawsuit, and you have a choice to make now. This Notice is to help you make this choice.

To stay in the Class Action and the lawsuit, you do not have to do anything. If money or benefits are obtained through the Class Action, you will be notified about how to receive compensation. You will be legally bound by all orders and judgments, favorable or not, and you will not be able to sue the City of Calgary on your own about the same legal claims in this lawsuit.

If you do not want to stay in the lawsuit, you must submit an Opt Out Form, or send a letter that says you want to be removed from the Class Action by [DATE]. You can find a copy of the Opt Out Form here <https://www.napolilaw.ca/marda-loop-district-class-action/>

If you send a letter, the letter must say that you want to be removed from the Class Action and include your name, address, telephone number and signature. You must send your Opt Out Form or letter by email, facsimile, or mail to Napoli Shkolnik Canada at the address below by [DATE] and it must be received or post-marked, if delivered by mail by [DATE]. If you are removed (opt out) of this lawsuit and money or benefits are later awarded, you will not share in those. But you keep any right to sue the City of Calgary on your own about the same legal claims in this lawsuit subject to any applicable limitation period.

The Court has appointed Class Counsel to represent the Class members. You don't have to pay Class Counsel to participate in the lawsuit. If money or benefits for the Class are obtained through the class action, Class Counsel may ask for lawyers' fees and costs, which would be deducted from any money obtained or would be paid separately by the City of Calgary. The Court has to approve Class Counsel's request to be paid and will only approve an amount that is fair and reasonable.

For more information about this lawsuit and your rights:

Visit: <https://www.napolilaw.ca/>

Email:

Call toll-free: 888.531-0675

Write to: Napoli Shkolnik Canada
Plaza 1000, Ste. 400, 1000 – 7 Ave. SW
Calgary, Alberta. T2P 5L5

**TO BE REMOVED FROM THE LAWSUIT YOU MUST ASK TO BE REMOVED
("OPT OUT") BY [DATE]**

BASIC INFORMATION

What is a Class Action Lawsuit?

A class action lawsuit is a legal action where a group of people collectively brings a claim to court. This type of lawsuit is distinct from individual cases, as it represents the interests and seeks compensation for a class of people who have been affected by similar acts of negligence or harmful practices. Class action suits provide a more comprehensive approach to addressing widespread issues, allowing for a collective voice in legal proceedings. These lawsuits can be instrumental in achieving justice for a larger group and can potentially set precedents for future legal and protective standards.

What is certification?

The court must first assess whether the claim should be advanced in the form of a class action. The court will consider whether the claim shows an appropriate cause of action, an identifiable class

of persons, and issues that are shared in common. The court will also determine whether a class action is a preferable procedure, and whether there is an appropriate representative plaintiff. If the class action is certified by the court, the representative plaintiff or plaintiffs will advance the case on behalf of all class members.

Am I a class member?

When a class action is certified, a definition of the class is provided. Under Alberta law, if you are an individual class member meeting the class description, then you do not need to sign up to be part of the class action – you are automatically included.

If you owned or operated a business in Marda Loop from 2023 to the present and wish to register with us as a member of the group, please fill out the intake form on the above website.

Do I have to pay to be part of the class action?

No. If successful, the lawyers will be paid a portion of the settlement or judgment, but only if the Court approves.

**“SCHEDULE B”
OPT OUT FORM**

Email to:

Write to: Napoli Shkolnik Canada, Plaza 1000, Ste. 400, 1000 – 7th Ave. SW
Calgary, Alberta. T2P 5L5

Fax to:

**THIS IS NOT A CLAIM FORM. COMPLETING THIS FORM WILL EXCLUDE YOU FROM
RECEIVING ANY COMPENSATION ARISING OUT OF ANY SETTLEMENT OR
JUDGEMENT IN THE CLASS PROCEEDING NOTED BELOW:**

COURT OF KING’S BENCH OF ALBERTA COURT NO.: 2501-08613

PROPOSED CLASS ACTION PROCEEDING BETWEEN

SILVER SAGE BEEF AKA SILVER SAGE BEEF INC. and DINER DELUXE AKA 2384152
ALBERTA LTD.

And

CITY OF CALGARY

I understand that by opting out of this class proceeding I am confirming that I do NOT wish to participate in this class proceeding. I do NOT wish to receive any benefit that may be obtained from this lawsuit.

I understand that I must [mail email, fax] this Opt Out Form before [DATE] or else it will NOT be valid.

I understand that any individual claim I may have must be commenced within an applicable limitation period or else it will be legally barred. I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Name of Class Member

Signature of Class Member

Telephone Number

Date

Name of Witness

Signature of Witness

Telephone Number

Date

SCHEDULE C

LITIGATION PLAN

If certification is granted, the Plaintiffs propose the following Litigation Plan:

A. NOTIFICATION OF CERTIFICATION AND OPT OUT PROCEDURE

The Plaintiffs will request that the Court settle the form and content for notification of the certification of this action (the “**Notification of Certification**”), the timing and manner of providing Notice of Certification, and set out an opt-out date being [4] months following the issuance of the certification order.

1. The Plaintiffs propose that the Notice of Certification be disseminated as follows:
 - a. By posting a notice on Class Counsel’s website;
 - b. By forwarding the Notice of Certification to any Class Member who requests it;
 - c. By publishing the Notice of Certification in the Calgary Herald and Calgary Sun;
 - d. By a News Release to news outlets to direct Class Members to Class Counsel’s website; and
 - e. By mail drop to all businesses within the Class Boundary;
 - f. By such other notice as counsel may request, and the Court directs.
2. The costs of the Notice of Certification set out in paragraph 4 above are to be borne by the Defendants.
3. The Plaintiffs will ask that the Court approve the Opt Out Form to be used by Class Members wishing to opt out of the class action, which will require the Class Members to provide sufficient information to establish their membership in the class.
4. Class Counsel will organize and receive Opt Out Forms, or other written documentation, from any Class Member opting out of the class action. Only written Opt Out Forms delivered to Class Counsel will be accepted and must be delivered within the Opt Out Deadline.
5. Within [60] days after the expiration of the Opt Out Deadline, Class Counsel will deliver to the Court and the parties an affidavit listing the names of all persons who have opted out of the class action.

B. LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES

Pleadings and Production

- a. The Defendants shall serve a Statement of Defence to the Statement of Claim within [60] days from the date of certification order.
- b. The Plaintiffs shall have [30] days from service of the Statement of Defence to serve a Reply, if any.
- c. Within [90] days from the certification order, the parties shall agree upon a timetable for production of documents and examinations, to be approved by the Court.
- d. The Plaintiffs shall apply for such further direction as may be required.

Case Management Conference (“CMC”)

- C. The Plaintiffs propose that a CMC of this action be fixed for hearing within [90] days of the certification order to address the following issues:
 - a. Content of documentary productions and deadline;
 - g. Deadline for examinations for discovery;
 - h. Deadline for motions arising from examinations for discovery;
 - i. Deadline for re-attendances at examinations for discovery, if any;
 - j. Deadline for requests to admit; and
 - k. Deadline for exchange of expert reports.
- D. Set dates for further CMC as necessary.

Common Issues Trial

- E. The common issues trial will determine the Common Issues at a time and place fixed by the Court, in the City of Calgary, or otherwise with the order of the Court.
- F. **LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS**

Notice of resolution of Common Issues

- G. A CMC will be held within [30] days of the issuance of judgment for the Plaintiffs on any of the common issues to settle the form and content for notification of the resolution of the Common Issues and the claims and individual issues processes, as applicable (“**Notice of Resolution**”), the timing and manner of providing the Notice of Resolution

(“**Resolution Notice Plan**”) and requiring Class Members to file claims (“**Claims Forms**”) by a fixed date with Class Counsel.

H. The Plaintiffs suggest a similar method of notice be ordered as per paragraph 1.

Valuation of Damages

I. Assuming that one or more of the Common Issues a) to g) are resolved in favour of the Plaintiffs, the Plaintiffs will propose the following methods for assessing and distributing damages for the Class Members as follows:

- a. damages of individual claimants to be determined in individual assessments in a manner to be determined by the Court.

Resolution of the Individual Issues

J. Within [90] days of the issuance of the judgment on the common issues, the parties will convene for argument to determine the appropriate process to determine the individual issues.

K. At that hearing, both parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues. Potential methods include claims processes, references, mini-trials, mediations, arbitrations, or other means approved by the Court. At this time, the Plaintiffs intend to propose a method of resolving outstanding individual issues as set out below.

- a. The Court will be asked to specify procedures and deadlines by which Class Members shall identify themselves as claimants wishing to make claims for compensation.
- b. The Plaintiffs will ask the Court to settle the form and content of the Notice of Resolution and to set a date by which Class Members will be required to file a claim with Class Counsel.
- c. The Plaintiffs will ask the Court to order that the Notice of Resolution be distributed in accordance with the Resolution Notice Plan set out above, except it shall not be mailed to Class Members who validly opted out of the class action.
- d. The Plaintiffs anticipates that given the nature of the damages suffered by Class Members, adjudication of the claims could be resolved through an efficient process which could involve the following steps, and which would be subject to the Court’s discretion:

- i. Claims Forms would be referred to a referee approved by the Court (the “Referee”). The claim form shall include supporting documentation and accounting evidence, as applicable.
- ii. The Referee shall deliver a copy of the claim form and any supporting documentation to the Defendant.
- iii. The Defendant shall have thirty days following receipt of the claim form and documentation, or such other time period as may be set by the Court, in which to file with the Referee a written opposition to all or part of the claim, including responding documentation and/or expert evidence. The written opposition shall state the reasons for the opposition and shall be deemed to constitute their response. The Defendant shall attach all supporting documentation and expert evidence, as applicable.
- iv. On request by either of the parties, the Referee shall determine what if any additional production is required by either party, what examination may be conducted, and whether participation by any other parties is necessary in the process.
- v. The Referee shall communicate his/her decisions in writing to the claimant and to the Defendant.
- vi. The assessment of damages may be in writing or by means of oral hearing, depending on the nature and complexity of the claim and the severity of the alleged damages, in accordance with the Court’s determination. The availability and manner of appeal procedures will be determined by the Court.
- vii. It may be possible to categorize and value claims in accordance with a grid according to the nature of the business and severity of the damages, as agreed to by the parties or as ordered by the Court.

L. MISCELLANEOUS REQUIREMENTS OF THE LITIGATION PLAN

- a. Class Counsel will develop a confidential web-based registration system which will permit potential Class Members to contact Class Counsel and provide information necessary to assist in the advancement of the action.

Review of the Plan

- b. This Litigation Plan may be reconsidered and revised under the continuing case-management authority of the Court after the determination of the Common Issues or upon application by the parties.

Claims Administration

- c. The Plaintiffs propose that Class Counsel provide the claims administration for any settlement achieved.
- d. If a settlement is achieved and a settlement fund is provided, Class Counsel will administer payments out of the fund to claimants based on the procedures set out above, with approval and/or modification by the Court.

Class Action website

- M.** From time to time, Class Counsel will provide updates, post frequently asked questions and answers, and post other documentation relating to the class action on its website.