

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/12/2021 11:55:18 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	VID180/2018
File Title:	DAVARIA PTY LIMITED & ANOR v 7-ELEVEN STORES PTY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Hearing
Time and date for hearing:	28/03/2022, 10:15 AM
Place:	Please check Daily Court List for details



Dated: 20/12/2021 12:08:03 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 35
Rule 17.01(1)

Amended Interlocutory Application

No: VID180/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Davaria Pty Limited (ACN 165 206 404) and another named in the schedule

Applicants

7-Eleven Stores Pty Ltd (ACN 005 299 427) and others named in the schedule

Respondents

To the Respondents and the following **Affected Parties**:

Stewart Alan Levitt, trading as Levitt Robinson

~~Galactic Seven Eleven Litigation Holdings LLC~~

Group Members (as defined in the Third Further Amended Originating Application) **who have not opted out of the proceeding**

The Applicants apply for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing: 28 March 2022 at 10:15 am (estimate of 2-3 days)

Place: Federal Court of Australia, Victoria Registry

Date: 17 December 2021

Signed by an officer acting with the authority of the District Registrar

Filed on behalf of
Law firm
Tel
Email
Address for service

The Applicants
Levitt Robinson
02 9286 3133
711@levittrobinson.com
PO Box 850, Darlinghurst NSW 1300



Orders sought

The Court notes that:

1. Pursuant to section 33ZB of the *Federal Court of Australia Act 1976* (Cth) (the **FCA Act**), the persons affected and bound by these orders are:
 - (a) the Applicants;
 - (b) any group member in the proceeding that has not opted out of the proceeding (**Group Members**);
 - (c) Stewart Alan Levitt trading as **Levitt Robinson** (solicitors for the Applicants);
 - (d) **Galactic Seven Eleven Litigation Holdings LLC** (the litigation funder [and Third Respondent](#)); and
 - (e) **7-Eleven Stores Pty Ltd** (ACN 005 299 427, the First Respondent).
2. Subject to Court approval, this proceeding and proceeding VID182/2018 have settled on the terms set out in the **Class Action Settlement Deed** dated 4 August 2021 between:
 - (a) the Applicants in this proceeding (Davaria Pty Ltd and Kaizenworld Pty Ltd), on their own behalf and on behalf of the Group Members in this proceeding, and the Applicants in proceeding VID182/2018 (Mr Pareshkumar Davaria, Ms Khushbu Pareshkumar Davaria, Mr Jatinder Pal Singh, and Ms Suman Meet Kaur) on their own behalf and on behalf of the Group Members in that proceeding;
 - (b) Levitt Robinson;
 - (c) Galactic; and
 - (d) 7-Eleven;

collectively, the **Proposed Settlement**.

Part A – Interim Orders

The Applicants seek orders that:

1. Pursuant to sections 33X and 33Y of the FCA Act, the Applicants have leave to distribute a notice of proposed settlement which adopts the text to be exhibited to an affidavit of Brett Richard Imlay to be sworn (**Settlement Notice**), in the manner set out in paragraphs [2] and [3] below.
2. By 1 September 2021, for the purposes of sections 33X and 33Y of the Act, the Applicants shall:
 - (a) cause a copy of:
 - (i) the Settlement Notice;



- (ii) this application (the **Approval Application**);
- (iii) the Class Action Settlement Deed (accessible only to group members who have not opted out of this proceeding or proceeding VID182/2018 (**Group Members**) by entering a passcode provided by Levitt Robinson);
- (iv) the **Settlement Scheme** exhibited to an affidavit of Brett Richard Imlay to be sworn (accessible only to Group Members by entering a passcode provided by Levitt Robinson);
- (v) the Third Further Amended Originating Application in VID180/2018;
- (vi) the Third Further Amended Statement of Claim in VID180/2018 (**VID180 3FASOC**);
- (vii) 7-Eleven's Defence to the VID180 3FASOC;
- (viii) the Applicants' Reply to 7-Eleven's Defence to the VID180 3FASOC;
- (ix) the Third Further Amended Originating Application in VID182/2018;
- (x) the Second Further Amended Statement of Claim in VID182/2018 (**VID182 2FASOC**);
- (xi) 7-Eleven's Defence to the VID180 3FASOC;
- (xii) the Applicants' Reply to 7-Eleven's Defence to the VID182 2FASOC; and
- (xiii) a blank form in Word for the making of objections to the Proposed Settlement (in the form of the notice of objection marked **Z** annexed to the Settlement Notice at **Annexure A**)

to be displayed on the Levitt Robinson website at the link <https://www.levittrobinson.com/7-eleven-class-action>;

- (b) cause a copy of the Settlement Notice together with a blank objection form to be issued by email or by post (where an active email address is not available or a bounce back message to a previously sent email has been received) to Group Members to the extent such details are available to the Applicants;
- (c) arrange for an advertising campaign on the Facebook website (to run until the Approval Hearing), which comprises:
 - (i) the image of the 7-Eleven logo, in the form to be provided by 7-Eleven to Levitt Robinson, and
 - (ii) the logo of Levitt Robinson,
 - (iii) together with text within the image providing "Class Action Settlement Notice", and with further text below the image providing:



- (iv) “The 7-Eleven Class Actions have settled. Read more in the Settlement Notice, which can be accessed at the following link”,
- (v) after which a link is inserted to the website <http://levittrobinson.com/7-eleven-class-action/>,

to reach an estimated audience of not less than 10,000 people targeted at persons who are located in Australia and match with at least one of the following interests:

- (vi) 7-Eleven;
 - (vii) Franchising;
 - (viii) Franchisee;
 - (ix) Franchise Manager;
 - (x) Convenience Store;
 - (xi) Convenience Food; and
 - (xii) Class Action.
3. By 1 September 2021, the District Registrar of the Victorian Registry of the Federal Court of Australia shall cause a copy of these orders, together with its Annexures, to be displayed on the Federal Court website at an address beginning <https://www.fedcourt.gov.au> and be available for inspection at the District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane and Perth.
 4. By 8 September 2021, the Applicants file and serve any non-confidential affidavit material and outline of submissions in support of the Approval Application.
 5. By 15 September 2021, the Applicants have leave to file any affidavit or exhibit or part thereof, in respect of which confidentiality orders are to be sought, in a sealed envelope marked "Confidential Affidavit - Not to be Opened Except by Direction of a Judge or the Court", and be excused from any requirement to serve any such affidavit or exhibit on any party.
 6. By 22 September 2021, 7-Eleven and Galactic file and serve any affidavit material and any outline of submissions in relation to the Approval Application.
 7. Any person who wishes to oppose the making of orders in accordance with the Approval Application must do so by:
 - (a) sending a completed objection form (in the form of the notice of objection marked **Z** annexed to the Settlement Notice) so that it is received by the Victorian District Registry of the Federal Court of Australia, either via email to vicreg@fedcourt.gov.au or by post to the Registry, Federal Court of Australia, 305 William Street, Melbourne Victoria 3000, by 29 September 2021; or
 - (b) appearing at the Approval Hearing.



8. If, before the Approval Hearing, the solicitors for any party receive a notice purporting to be an objection form referable to this proceeding or proceeding VID182/2018, the solicitors must email the notice to vicreg@fedcourt.gov.au (copying the solicitors for 7-Eleven, ANZ and Galactic) within one (1) business day of receipt (and before the commencement of the Approval Hearing), and the notice shall be treated as though it was received by the Court at the time it was received by the solicitors.
9. The parties have leave to inspect the Court file and to copy any objection forms filed with the Court.
10. Any obligation of service in these orders is an obligation to serve the parties and Galactic.
11. The Applicants to distribute sealed copies of this order to Galactic within one (1) business day of receiving notification from the Court that the orders have been sealed.
12. The parties and Galactic have liberty to apply.

Part B – Settlement Approval

The Applicants seek orders that:

13. Pursuant to sections 33V and 33ZF of the FCA Act that the settlement of this proceeding as against 7-Eleven be approved on the terms set out in:
 - (a) the Class Action Settlement Deed dated 4 August 2021 between:
 - (i) the Applicants (Davaria Pty Ltd and Kaizenworld Pty Ltd), on their own behalf and on behalf of the Group Members, and the Applicants' directors/shareholders (Mr Pareshkumar Davaria, Ms Khushbu Pareshkumar Davaria, Mr Jatinder Pal Singh, and Ms Suman Meet Kaur) on their own behalf and on behalf of the Group Members in proceeding VID182/2018;
 - (ii) Levitt Robinson;
 - (iii) Galactic; and
 - (iv) 7-Eleven; and
 - (b) the Settlement Scheme.
14. Within 56 days of the Court ordering its approval of the Class Action Settlement Deed, 7-Eleven to pay the **Settlement Sum** of \$98,000,000 to a trust account nominated by Levitt Robinson.
15. Pursuant to section 33V and 33ZF of the FCA Act, each of the Applicants be paid \$40,000 out of the Settlement Sum.
16. Pursuant to section 33V and 33ZF of the FCA Act, the Applicants' legal costs and disbursements for the conduct of this proceeding and proceeding VID182/2018, and the administration of the Settlement Scheme in this proceeding and proceeding VID182/2018,



in the amount referred to in an affidavit to be sworn by Stewart Levitt (in the case of costs of the proceedings) and by Brett Imlay (in the case of the costs of the settlement approval and administration of the settlement), be paid out of the Settlement Sum.

17. Pursuant to section 33V and 33ZF of the FCA Act, and pursuant to the equitable jurisdiction of this Court, the Applicants be authorised to pay to Galactic, out of the Settlement Sum, a Common Fund Order of 25% of the Settlement Sum (being \$24,500,000), or such other amount as the Court deems fair and reasonable.

17A. Alternatively to the matters in paragraph 17 above, pursuant to sections 33V and (or alternatively) 33ZF of the FCA Act, each of the group members who apply for and receive any payment out of the Settlement Sum in accordance with the Settlement Scheme (**Settlement Scheme Payment**) be required to contribute to the Funder's Portion (as described below), to be determined as follows:

- (a) the total of the Settlement Scheme Payments to be paid to all group members who have signed litigation funding agreements (**Funded Group Members**) with Galactic in relation this proceeding (**LFAs**) shall be computed;
- (b) the sum of 35% of the sum in subparagraph (a) shall be computed (the **Funder's Portion**);
- (c) all group members who have not signed LFAs (**Unfunded Group Members**) and Funded Group Members shall be required to contribute an amount to the Funded Group Members so that an equal percentage of the Settlement Scheme Payment is paid by the Funded Group Members and Unfunded Group Members , with the calculation of that contribution made by the Administrator of the Settlement Scheme;
- (d) to the extent that any contribution by Unfunded Group Members increases Settlement Payments to Funded Group Members and so requires that Funded Group Members pay further monies to Galactic under the terms of the LFAs, and thereby increase the Funder's Portion (**Enhanced Funder's Portion**), the Unfunded Group Members shall each be required to contribute a further percentage of their Settlement Scheme Payments so that ultimately each of the Funded Group Members and Unfunded Group Members contribute equally to the Enhanced Funder's Portion, and a calculation of that contribution and equal percentage shall be made by the Administrator of the Settlement Scheme; and
- (e) the Applicants be authorised to pay to Galactic the Funder's Portion, or such other amount as the Court deems fair and reasonable, out of the Settlement Sum in discharge of Galactic's entitlements under of the LFAs.

18. Pursuant to section 33ZF of the FCA Act or otherwise, the Applicants be authorised *nunc pro tunc* on behalf of the Group Members bound by these orders to enter into and to give effect to the Class Action Settlement Deed and the obligations, rights, releases and transactions contemplated in it for and on behalf of those Group Members.

19. Stewart Alan Levitt be appointed as the Administrator of the Settlement Scheme.



20. On the date that is 7 days after the payment by 7-Eleven of the Settlement Sum into the trust account of Levitt Robinson, (being a date after the expiry of the applicable appeal period), the proceeding be dismissed.
21. The security for 7-Eleven's costs and any interest thereon held in the Federal Court's high-interest bearing account be paid to Levitt Robinson's trust account, to be returned to Galactic.
22. All existing undertakings (save for confidentiality undertakings provided in respect of the production of documents under subpoena) be discharged.
23. There be no order as to costs as between the Applicants and 7-Eleven.
24. All existing costs orders in favour of the Applicants as against 7-Eleven, or in favour of 7-Eleven as against the Applicants, be vacated.
25. Orders for the preservation of the confidentiality of the documents referred to in paragraph 5.
26. Liberty to apply.

Service on the Respondents

It is intended to serve this application on the First and Third Respondents and distribute this application to the Affected Parties.

Date: 17 December 2021

A handwritten signature in blue ink, appearing to read 'Stewart A Levitt'.

Signed by Stewart A Levitt
Lawyer for the Applicants
By his Special Counsel
Brett Richard Imlay



Schedule

No: VID180/2018

Federal Court of Australia
District Registry: Victoria
Division: General

Applicants:

Second Applicant: KAIZENWORLD PTY LTD (ACN 163 833 565)

Respondents:

Second Respondent: 7-ELEVEN INC

Third Respondent: GALACTIC SEVEN ELEVEN LITIGATION HOLDINGS LLC