



FEDERAL COURT OF AUSTRALIA

FURTHER SETTLEMENT NOTICE

VID180/2018

Davaria Pty Ltd and Kaizenworld Pty Ltd v 7-Eleven Stores Pty Ltd and Ors

VID182/2018

Pareshkumar Davaria and Ors v 7-Eleven Stores Pty Ltd & Anor

Why is this notice important?

1. The Federal Court of Australia has ordered that this notice be published. Any questions you have concerning the matters contained in this notice should not be directed to the Court. You should contact Levitt Robinson at 711@levittrobinson.com or seek your own legal advice if there is anything in this notice that you do not understand.
2. On 4 August 2021, the Applicants and 7-Eleven Stores Pty Ltd (**7-Eleven**) executed a deed of settlement in relation to two class actions against 7-Eleven (the **Class Actions**) that provides that 7-Eleven will pay \$98 million (**Settlement Sum**) inclusive of legal fees, disbursements, interest and funding commission in settlement of the Class Actions (**Proposed Settlement**).
3. On 19 September 2021, a Settlement Notice was distributed which contained important information about the Proposed Settlement (**First Notice**). The First Notice can be downloaded from <https://www.levittrobinson.com/7-eleven-class-action>.
4. This Further Settlement Notice provides updated and further information about the Proposed Settlement and must be read in conjunction with the First Notice.
5. The Proposed Settlement is subject to Court approval. Approval applications have been filed by the Applicants in the Class Actions (**Approval Applications**).
6. Galactic Seven Eleven Litigation Holdings LLC (the **Funder**) provided funding to the Applicants for the Class Actions. The Funder has filed applications for a "Common Fund Order" seeking a funding commission of 25% of the Settlement Sum (being, \$24.5 million), to be paid to the Funder before any distribution of the balance of the



Settlement Sum to group members (**CFO Applications**). Please refer to paragraphs 11 to 20 below for further detail.

7. The Approval Applications and the CFO Applications can be downloaded from <https://www.levittrobinson.com/7-eleven-class-action>.
8. The hearing of the Approval Applications and CFO Applications was previously scheduled to occur on 16 November 2021, but will now be heard at the Federal Court of Australia, at 305 William Street in Melbourne or Level 17 Law Courts Building 184 Phillip St Queens Square in Sydney and via audio-visual link on **28 to 30 March 2022 at 10:15 am (Approval Hearing)**.
9. If you and your company have opted out of the Class Actions, you may disregard this notice.
10. If you are a VID180 Group Member or a VID182 Group Member (as defined in the First Notice), you have a right to object to the Proposed Settlement and/or the payment out of the Proposed Settlement of \$24.5 million to the Funder.

Common Fund Order vs Funding Equalisation Order

Common Fund Order

11. A **Common Fund Order** is an order of the Court that provides for the Funder to receive a percentage of the Settlement Sum that the Court considers to be fair and reasonable, which is deducted from the Settlement Sum before distribution to group members.
12. As noted above, the Funder has made the CFO Applications, seeking a funding commission of 25% of the Settlement Sum (\$24.5 million) to be paid to the Funder before any distribution of the balance of the Settlement Sum to group members.
13. The Contradictor has been appointed to represent the interests of group members on the Approval Applications and the CFO Applications. The Contradictor is opposing the CFO Applications because he contends that the Court does not have the power to make a CFO and that a CFO in the amount sought is not fair and reasonable.
14. In dealing with the CFO Applications, the Court may:
 - (a) make a Common Fund Order with a funding commission of 25% of the Settlement Sum;



- (b) make a Common Fund Order, but with funding of commission lower than 25% of the Settlement Sum or some other funding payment; or
- (c) decline to make a Common Fund Order.

Funding Equalisation Order

15. If the Court does not make a Common Fund Order, the Funder may assert its contractual rights under the funding agreements executed by some group members, and if so, the Applicants will seek a **Funding Equalisation Order**.
16. A Funding Equalisation Order is an order of the Court that requires the “unfunded group members” (being, those who have not signed a funding agreement with the Funder) to contribute equally to the commission that “funded group members” (being, those who have signed a funding agreement with the Funder) have agreed to pay the Funder under their funding agreements. This means that all group members, both funded and unfunded, will contribute equally to the commission that funded group members have agreed to pay to the Funder.
17. Approximately 37% of the stores of all group members (not including stores formerly operated by deregistered companies or stores operated or formerly operated by group members who have signed releases with 7-Eleven) are stores of funded group members.
18. Approximately 40% of the stores of all VID180 group members which have non-zero weighted claims (not including stores formerly operated by deregistered companies or stores operated or formerly operated by group members who have signed releases with 7-Eleven) are stores of funded group members.
19. Under the funding agreements signed by funded group members, the Funder is entitled to 35% of each funded group member’s compensation entitlement under the Settlement Scheme (as described at [60]-[61] of the First Notice).
20. If a Funding Equalisation Order were to be made, the Funder could be entitled to a payment of approximately \$12 to \$16 million from the Settlement Sum, compared to the \$24.5 million sought by the Funder under a Common Fund Order. This figure may increase or decrease, depending on the number of group members who lodge claims under the Proposed Scheme and the value of the claims of the funded group members.



Benefits obtained by the Applicants

21. The Applicants will receive the following benefits in connection with the Proposed Settlement additional to any compensation they and group members are to receive under the Settlement Scheme:
- (a) The Applicants will receive a payment from 7-Eleven for the early surrender of their franchises, and the franchising arrangement between 7-Eleven and each of the Applicants will come to an end;
 - (b) The Applicants have received monies from the Funder for their time and inconvenience during the course of these proceedings. The Applicants may receive further monies in that regard, by order of the Court (see [32(d)] of the First Settlement Notice); and
 - (c) Each of the Applicants have reached agreement with ANZ to settle their individual claims with the ANZ Bank (previously a respondent to the Class Actions), and have also negotiated reductions in their personal debts with the ANZ Bank. The Applicants were not able to and did not negotiate as representatives of group members with the ANZ Bank. Those negotiations were personal to the Applicants and intended to effect the exit of the Applicants from their banking relationship with ANZ. For that reason, the Applicants' settlements with ANZ are confidential and do not involve any claims that other group members may have against ANZ.
22. Copies of the Deeds of Settlement entered into by the Applicants with ANZ and Heads of Agreement entered into by the Applicants with Galactic regarding their ANZ loans, and the Deeds of Settlement entered into between the Applicants and 7-Eleven regarding the termination of their franchise agreements, may be obtained by downloading them from <https://www.levittrobinson.com/7-eleven-class-action> (and, on agreeing to keep the contents of the Deeds of Settlement and the Heads of Agreement confidential, Levitt Robinson will provide verified group members with a passcode).

Update to number of Group Members

23. The numbers provided at [15]-[16] of the First Notice have been updated below and broken down into sub-categories of group members with varying allocated entitlements under the Proposed Settlement. The allocations (expressed as percentage weightings of their VID180 Loss Claims, VID180 Rebates Claims and VID182 Claims) are explained further below.



VID180 Class Action

24. At [15] of the First Notice it is stated that after the opt out process which took place in 2020 in the VID180 Class Action (as defined in the First Notice), approximately 808 stores (not including the three stores operated by the VID180 Applicants (as defined in the First Notice)) and approximately 676 VID180 Group Members (not including the VID180 Applicants and as defined in the First Notice) remain. That number is now estimated to be 809 stores, or 812 stores including the VID180 Applicants. Of those 812 stores:
- (a) approximately 164 are stores that were operated by companies that are now deregistered, which means those companies do not exist and cannot make a claim unless reinstated, leaving 647 stores; and
 - (b) approximately 157 of the remaining stores are stores that are or were operated by companies that have executed releases with 7-Eleven, which means that those companies will likely have no entitlement under the Proposed Settlement unless the Independent Counsel (as defined in the First Notice) determines that the individual group member's release is ineffective (this process is summarised at [25]-[26] of the First Notice).
25. This leaves an estimated 490 stores that may be the subject of claims by VID180 Group Members in the Proposed Settlement (unless some of the companies are reinstated or some of the releases are determined ineffective, in which case the number of remaining stores will be more than 490). Out of those stores, under the Proposed Settlement:
- (a) the VID180 Loss Claims of franchisee operators who entered into a Franchise Agreement on or after 21 February 2012 and before 1 October 2015 (being claims in relation to approximately 145 stores) would have a weighting of 100% (as set out at [45] of the First Notice);
 - (b) the VID180 Loss Claims of franchisee operators who:
 - (i) entered into a Franchise Agreement before 21 February 2012 and sold or disposed of the franchise after 1 October 2015; or
 - (ii) entered into a Franchise Agreement before 21 February 2012 and still operate the franchise; or



- (iii) entered into a Franchise Agreement after 21 February 2012 and sold or disposed of the franchise before 1 October 2015,
being claims in relation to approximately 178 stores, would have a weighting of 33.3% (as set out at [46]-[47] of the First Notice);
- (c) the VID180 Loss Claims of franchisee operators who:
 - (i) entered into a Franchise Agreement before 21 February 2012 and sold or disposed of the franchise before 1 October 2015; or
 - (ii) entered into a Franchise Agreement after 1 October 2015,
being claims in relation to approximately 167 stores, would have a weighting of zero (0) (as set out at [49] of the First Notice); and
- (d) the VID180 Group Members of all 490 stores are eligible to share in the distribution of the VID180 Rebates Claims (as set out at [41(a)] of the First Notice).

VID182 Class Action

- 26. At [16] of the First Notice it is stated that after the opt out process which took place in 2020 in the VID182 Class Action (as defined in the First Notice), there were approximately 1,234 VID182 Group Members (not including the VID182 Applicants and as defined in the First Notice). That number is now estimated to be 1,228. Of those 1,228 VID182 Group Members, there are 1,583 “VID182 Claims”, as some VID182 Group Members are connected with more than one store and therefore have more than one claim.
- 27. Of those 1,583 VID182 Claims, there are approximately 246 that have executed releases with 7-Eleven, which means that those group members will likely have no entitlement under the Proposed Settlement unless the Independent Counsel determines that the individual group member’s release is ineffective (as summarised at [25]-[26] of the First Notice).
- 28. That leaves 1,337 VID182 Claims (unless some of the releases are ineffective, in which case the number of remaining VID182 Claims will be more than 1,337). Of those VID182 Claims, under the Proposed Settlement:
 - (a) the VID182 Claims of directors or guarantors:



- (i) under a Franchise Agreement entered into on or after 21 February 2012 and before 1 October 2015; or
- (ii) who became guarantors under an ANZ loan contract on or after 21 February 2012 and before 1 October 2015;

and where either:

- (A) the 7-Eleven store franchise the subject of the Franchise Agreement was disposed of after 1 October 2015; or
- (B) the Franchisee still retains the franchise,

being, approximately 347 claims, would have a weighting of 100% (as set out at [54] of the First Notice);

(b) the VID182 Claims of:

- (i) Directors or guarantors under a Franchise Agreement entered before 21 February 2012, or who became guarantors under an ANZ loan contract before 21 February 2012, and where either:

- (A) the 7-Eleven store franchise the subject of the Franchise Agreement was disposed of after 1 October 2015; or
- (B) the Franchisee still retains that Franchise;

or,

- (ii) Directors or guarantors under a Franchise Agreement entered on or after 21 February 2012, or who became guarantors under an ANZ loan contract on or after 21 February 2021, and where the 7-Eleven store franchise the subject of the Franchise Agreement was disposed of before 1 October 2015,

being, approximately 446 claims, would have a weighting of 33.3% (as set out at [55]-[56] of the First Notice); and

(c) the VID182 Claims of:

- (i) Directors or guarantors under a Franchise Agreement entered before 21 February 2012, or who become guarantors under an ANZ loan contract before 21 February 2012, and where the 7-Eleven store franchise the subject of the Franchise Agreement was disposed of before 1 October 2015; or



- (ii) Directors or guarantors under a Franchise Agreement that was entered into after 1 October 2015 or who became guarantors under an ANZ loan contract after 1 October 2015,

being approximately 544 claims, would have a weighting of zero (0) (as set out at [57] of the First Notice).

Update as to costs in relation to Approval Applications and Administration of the Settlement Scheme

29. At [32(f)] of the First Notice, the Applicants' legal costs and disbursements sought to be deducted from the Settlement Sum included an estimated \$487,470 in relation to approval of the Settlement.
30. As at 1 December 2021, the costs incurred by the Applicants in relation to the Approval Applications were in excess of \$900,000 plus GST. The entirety of the costs that the Applicants will incur in association with the Approval Applications is now anticipated to exceed \$1.25 million plus GST.
31. At [32(f)] of the First Notice, the Applicants' legal costs and disbursements sought to be deducted from the Settlement Sum included an estimated \$1.1 million in relation to the administration of the Settlement Scheme. That estimate is now \$1,310,746.
32. The reasonableness of the costs that the Applicants have and will incur in relation to the Settlement Applications will be the subject of a report by the Referee appointed by the Court (see [67(b)(ii)] of the First Notice).

Why are you getting this notice

33. You have a right to object to the Proposed Settlement and/or the payment of a CFO of \$24.5 million to the Funder. The approval of the Proposed Settlement is not conditional on the Court awarding a CFO of \$24.5 million to the Funder. Objecting to a CFO of \$24.5 million will not otherwise delay any distribution to you of the Proposed Settlement if it is otherwise approved by the Court.
34. If you wish to object to the Proposed Settlement and/or the payment of a CFO to the Funder, you must file a written NOTICE OF OBJECTION TO PROPOSED SETTLEMENT with the Federal Court in the form attached to this Notice and marked "Z" by emailing vicreg@fedcourt.gov.au and copying 711@levittrobinson.com or by posting a copy to 305 William Street, Melbourne Victoria 3000, by **15 March 2022**.



35. If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on **28 to 30 March 2022** at **10:15 am** and make further submissions to the Court in support of your objection.
36. Please consider the above matters carefully. If you have any questions about the Notice you can contact the Contradictor, Jonathon Redwood SC at Jonathon.Redwood@banco.net.au, Levitt Robinson on 02 9286 3133 or 711@levittrobinson.com, or seek your own legal advice.
37. Group members may request the submissions of the parties and the Contradictor in relation to the Proposed Settlement and the Funder's application for a Common Fund Order by email to 711@levittrobinson.com.



“Z” – Notice of Objection to Proposed Settlement with 7-Eleven

Federal Court of Australia
District Registry: Victoria
Division: General

Davaria Pty Limited and another named in the schedule
Applicants

No: VID180/2018

7-Eleven Stores Pty Ltd and others named in the schedule
Respondents

Pareshkumar Davaria and others named in the schedule
Applicants

No: VID182/2018

7-Eleven Stores Pty Ltd and another named in the schedule
Respondents

TO: The Registrar, Federal Court of Australia, Victorian Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne Victoria 3000
vicreg@fedcourt.gov.au

Due 15 March 2022

Name of individual:

**Name of franchisee company
and trust (if applicable):**

**Store number(s) and location(s),
fuel/non-fuel:**

Contact email:

Contact number:

I am a Group Member in one of the above Proceedings and I object to (*tick box*):

- (a) the proposed settlement of these Proceedings; or
- (b) the funding commission of \$24.5 million to be paid to the funder; or
- (c) both (a) and (b) above,

because [*set out reasons for objection or attach additional pages*]:

Date:

Signature:

Name of signatory:
