

FEDERAL COURT OF AUSTRALIA

OPT OUT NOTICE

VID698/2021

Andrea Kyle-Sailor (“Applicant”) v Alex Heinke & Ors (“Palm Island – Channel 9 Class Action”)

A. Why is this notice important?

- 1 A class action has been commenced in the Federal Court of Australia in Melbourne by the Applicant against Alex Heinke, Nine Entertainment Co Pty Limited, Nine Digital Pty Limited and Nine Network Australia Pty Ltd (**Channel 9**)
- 2 If you received or were entitled to receive compensation from the settlement scheme approved by the Federal Court in *Wotton v State of Queensland (No 10)* [2018] FCA 915 (**Wotton Class Action Settlement**), you should read this notice carefully.
- 3 This Notice contains important information about:
 - (a) What a class action is.
 - (b) Whether you are a group member in this class action.
 - (c) What the class action against Channel 9 is about.
 - (d) Whether you will be responsible for paying for the class action, and how it is funded.
 - (e) Your right to “opt out” of the class action, what opt out is, and how you can opt out of this class action.
- 4 You should have also received another notice called a Settlement Notice. The Settlement Notice contains information about a proposed Settlement between the Applicant and Channel 9 on behalf of all group members (see Section C below). If you have not received a Settlement Notice, please contact Levitt Robinson Solicitors on 02 9286 3133 or email earдон@levittrobinson.com.
- 5 The Federal Court has ordered that this notice be published for the information of persons who are members of the class on whose behalf the action is brought and who may be affected by the action. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in the notice that you do not understand, you should seek legal advice or contact Levitt Robinson on 02 9286 3133 or at earдон@levittrobinson.com (see further at paragraphs 6 and 43 below).

B. What is a class action?

- 6 A class action is a legal proceeding that is brought by one person (**Applicant**) on their own behalf and on behalf of a class or group of people (**group members**) against other persons (**Respondents**) where the Applicant and the group members have similar claims against the Respondents.

- 7 Group members in a class action are not individually responsible for any legal costs associated with bringing the class action if the class action is unsuccessful. You may only be required to pay legal costs if the class action is successful. Any legal costs you may be required to pay will not exceed the amount of you may receive by being a part of the class action.
- 8 Group members are "bound" by the outcome in the class action, unless they have **opted out** of the proceeding. This means that if you **do not** opt out:
- (a) You may be able to share in any compensation or other benefit arising from a settlement; and
 - (b) If the class action proceeds to a trial and is successful, then you may be able to share in any Court-awarded damages;
 - (c) You will be bound by the dismissal of the case if the class action fails; and
 - (d) You will not be able to sue about the matters that are the subject of the class action in separate legal proceedings.
- 9 A result that is binding on group members can happen in two ways—either by a judgment following a trial, or by a settlement at any time.
- 10 In a judgment following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and group members. Unless those decisions are successfully appealed, they bind the Applicant, group members and Channel 9.
- 11 Importantly, if there are other legal proceedings between a group member and Channel 9, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- 12 In a settlement of a class action, if the settlement provides for compensation to group members then the settlement terms may also extinguish all rights to compensation which a group member might have against Channel 9 which arises in any way out of the events or transactions which are the subject-matter of the class action.
- 13 If you think that you have claims against Channel 9 which are based on your individual circumstances, or that you have claims in addition to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

C. Are you a group member?

- 14 Group members in the class action are those who received or were entitled to receive compensation from the Wotton Class Action Settlement.
- 15 If you are unsure whether or not you are a group member, you should contact Levitt Robinson Solicitors on 02 9286 3133 or email earдон@levittrobinson.com or seek your own legal advice without delay.

D. What is this class action about?

- 16 A summary of allegations made in the class action by the Applicant appears in the following four paragraphs.
- 17 The Applicant alleged that Channel 9 contravened section 18C of the *Racial Discrimination Act 1975* (Cth), by broadcasting videos and publishing a story in May 2020 (**Channel 9 Publications**) that suggested the following things about people (**Group Members**) who received compensation from the Wotton Class Action Settlement:
- (a) that the compensation process was being rorted by them, or a significant number of them, and, as a consequence, many of the actual recipients were not proper or lawful recipients of compensation;
 - (b) that they, or a significant number of them, were rioters whose unlawful conduct (including being involved in violent conduct and burning down of the police station with officers inside at Palm Island on 26 November 2004) meant that they were not proper or lawful recipients of the compensation;
 - (c) that they, or a significant number of them, spent or were spending the compensation monies recklessly, wastefully, foolishly, irresponsibly, frivolously and/or lavishly;
 - (d) that the payment of compensation at the taxpayers' expense to them, or a significant number of them, was unjustified and/or unwarranted;
 - (e) that they, or a significant number of them, were wasting taxpayers' money;
 - (f) that they, or a significant number of them received compensation payments from fraudulent or false claims made by them and/or were unworthy recipients of the monies being paid to them.
- 18 The Applicant also alleged that:
- (a) both she and Group Members suffered (from case to case) some or all of offence, insult, humiliation, and/or intimidation, as well as shame and embarrassment; and
 - (b) some Group Members were publicly vilified or insulted after and because of the Channel 9 Publications.
- 19 The Applicant also sought an apology to the Group Members and that a correction be published.
- 20 Channel 9 denied all allegations made against it in the Palm Island – Channel 9 Class Action.
- 21 The claims that were made against Channel 9 are set out more fully in the Amended Concise Statement, a copy of which can be obtained from Levitt Robinson on request.
- 22 A copy of Channel 9's Amended Concise Statement in Defence of the Palm Island - Channel 9 Class Action, and the Applicant's Concise Reply, can also be obtained from Levitt Robinson on request.

E. Will you be liable for legal costs if you remain a group member?

- 23 If the proposed Settlement is approved, the legal costs will be paid from the agreed Settlement Sum.
- 24 If the proposed Settlement is not approved and the Palm Island - Channel 9 Class Action continues and is unsuccessful, you will **NOT** be liable for legal costs by remaining as group member, except as set out in the next paragraph.
- 25 If the proposed Settlement is not approved and the Palm Island - Channel 9 Class Action continues, you may become liable for legal costs by remaining as a group member for the determination of the common questions. However, the amount of these legal costs will **NOT** exceed the amount of compensation you receive by being a part of the class action.

F. How is the class action being funded?

- 26 The class action against Channel 9 is an Opt-Out, “No-Win, No-Fee” class action, and is fully funded by a third-party litigation funder, BLM (Australia) LLC (**the Funder**).
- 27 The Funder pays all legal costs upfront and indemnifies group members for costs orders (in the event Channel 9 wins). If the Palm Island - Channel 9 Class Action continues and Channel 9 wins, you will **NOT** be liable to pay for any legal costs.
- 28 Costs in court proceedings are usually paid by the losing party. If the class action is successful, a court order for costs against Channel 9 may offset a large part of the costs outlaid by the Funder. However, the Funder is entitled under the funding agreements signed with some group members (**Funding Agreements**) to recover any difference from the settlement or judgment compensation money.
- 29 If the claim is successful, the Funder is also entitled to the commission that “funded group members” (those who have signed a Funding Agreement) have agreed to pay the Funder under their Funding Agreements. Group members who have signed Funding Agreements and who receive any monetary compensation from any settlement or judgment have agreed to pay **28% of that monetary compensation** to the Funder.

G. Common Fund Order OR Funding Equalisation Order?

- 30 The Court may order that group members who benefit from a class action but who have not signed a Funding Agreement with the Funder should contribute equally with group members who have signed a Funding Agreement. There are two ways that the Court may order for this to happen. One is known as a Common Fund Order and the other is known as a Funding Equalisation Order. These are explained in the Settlement Notice.

H. What is 'Opt Out'?

31 This is an Opt Out class action. This means that all persons who received or were entitled to receive compensation from Wotton Class Action are Group Members in the Palm Island-Channel 9 Class Action.

32 However, you have an opportunity to opt out of the Palm Island-Channel 9 Class Action should you choose to.

33 The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found just below, in Section I.

I. How can you opt out of the Palm Island-Channel 9 class action and what will happen if you do?

34 If you opt out of the class action:

- (a) You **WILL NOT** receive any compensation from the proposed Settlement with Channel 9.
- (b) You **WILL NOT** be bound by, or entitled to share in any benefit of, any order, judgment or other settlement in the Palm Island-Channel 9 Class Action; and
- (c) You **WILL** be able to bring your own claim against Channel 9, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Channel 9, you should seek your own legal advice about your claim and the legal costs involved and the applicable time limit prior to opting out.

35 If you do not opt out, then:

- (a) You **WILL** be able to share in any compensation or other benefit arising from the proposed Settlement or any other settlement, subject to Court approval; and
- (b) If the proposed Settlement is not approved and the class action proceeds to a trial and is successful, then you **MAY** be able to share in any Court-awarded damages; and
- (c) You **WILL** be bound by the dismissal of the case if the class action fails; and
- (d) You **WILL NOT** be able to sue about the matters that are the subject of the class action in separate legal proceedings.

36 **If you wish to remain** a group member, **you must not** opt out of the class action.

37 **If you wish to opt out** of the class action you **must** do so by completing an “**Opt Out Notice**” in the form attached to this notice and marked “A”, then returning it to the Registrar of the Federal Court of Australia by email or at the address on the form. **IMPORTANT: if you want to opt out, the Notice must reach the Registrar by no later than 4 September 2024**, otherwise it will not be effective. The notice may be sent to 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 VIC 3000.

38 **You are free to make up your own mind** whether to submit an Opt-Out Notice or do nothing. You can also take advice about your options and the information contained in this Notice. Further information can be obtained by contacting Levitt Robinson, or any other lawyer of your choice.

J. What if you wish to remain a group member?

39 If you wish to remain a group member there is nothing you need to do now. The Applicant has filed an application with the Court for approval of the proposed Settlement with Channel 9.

40 If the Settlement is approved you will receive a further notice about that.

41 If the Settlement is not approved and the Palm Island - Channel 9 Class Action continues and is unsuccessful, or is not as successful as you might have wished, you will not be able to sue Channel 9 on the same claim in any other proceedings.

K. Where can you obtain copies of relevant documents?

42 Copies of relevant documents, including the Amended Concise Statement filed by the Applicant, the Amended Concise Statement filed in Defence by Channel 9, and the Applicant's Concise Reply may be obtained by:

- (a) e-mailing eardon@levittrobinson.com and requesting copies;
- (b) contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
- (c) inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.

43 Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson Solicitors on 02 9286 3133 or eardon@levittrobinson.com or seek your own legal advice. **You should not delay in making your decision.**

“A”

Complete and return this form ONLY if you do NOT want to be a part of the class action

Form 21
Rule 9.34

Opt out notice

No. VID 698 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

ANDREA KYLE-SAILOR
Applicant

ALEX HEINKE and others
Respondents

To: The Registrar
Federal Court of Australia at Melbourne
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000
(Street and postal address) OR by Email: vicreg@fedcourt.gov.au

The person named below as a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the group member is opting out of the representative proceeding.

Name of group member:	
Telephone:	
Email:	

Date:

Signed: