



## Annexure A

### NOTICE TO GROUP MEMBERS – OPT OUT AND CLAIM REGISTRATION DRAKES CLASS ACTION – *Schoneweiss v The Fourth Force Pty Ltd & Anor*

**This Notice is important. It relates to your right to:**

- (a) **register** your claim as part of this class action;
- (b) **opt out** of this class action;
- (c) **do nothing**

#### **SECTION 1 – INFORMATION ABOUT THE CLASS ACTION**

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##### **Why have you received this Notice?**

1. A Class Action has been commenced in the Federal Court of Australia by the Applicant (Mr Craig Schoneweiss) on behalf of certain persons who were employed by the Respondents:
  - (a) The Fourth Force Pty Ltd; and
  - (b) Dramet Pty Ltd(together **Drakes**).
2. The Class Action covers those persons who were employed in the position of a salaried manager in a Drakes or IGA branded supermarket operated by the Respondents in South Australia and Queensland between 27 October 2014 and 26 October 2020.  
  
(the **Drakes Class Action**).
3. The Federal Court of Australia has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the class action. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in this notice that you don't understand then you should seek legal advice.



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### What is a Class Action?

4. A class action is also called a ‘representative proceeding’. It is a case brought by one party (**Applicant(s)**) on their own behalf and on behalf of a class of people (**Group Members**) against another person or entity (**Respondent(s)**) where the Applicant and the Group Members have similar claims against the Respondents.
5. 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.
6. Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding outcome can happen in one of two ways: a *judgment* following a trial, or a *settlement* at any time that is approved by the Court. If there is a judgment or a settlement of a class action, Group Members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the Respondents in other legal proceedings. Group Members should note that:
  - (a) in a *settlement* of a class action, where the settlement provides for compensation to Group Members, the settlement is likely to extinguish all rights to compensation which a Group Member might have against the Respondents which arise in any way out of the events or transactions which are the subject-matter of the class action. Any settlement in the Drakes Class Action may include releases that are commonly sought in relation to the settlements of Class Action, which include releases of the Respondents, their related entities, and their current and former directors, officers, employees, contractors and agents, in respect of:
    - (i) all claims made by Group Members against Drakes in the class action; and
    - (ii) any claims Group Members may have against Drakes and their related entities:
      - (A) which are raised in the Drakes Class Action;
      - (B) which were at any time the subject of the Drakes Class Action or any part of the class action; or



(C) which relate to the matters or issues the subject of the Drakes Class Action or any part of the class action,

whether arising at common law, equity or under statute; and

(b) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicant and Group Members. Group Members are bound by those findings, whether or not they are favourable to them (unless they are successfully appealed). Importantly, if there are other proceedings between a Group Member and Drakes, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are decided against the Applicant, Group Members will be unable to pursue claims they have which are the same as the Applicant's claims, and will not be able to pursue other claims which are dependent upon common issues which have been decided against the Applicant.

7. If you consider you have claims against Drakes which are based on your individual circumstances or are otherwise additional 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).

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### What is the Drakes Class Action?

8. Adero Law filed the Drakes Class Action against Drakes on behalf of former employee, Mr Craig Schoneweiss.
9. Mr Schoneweiss brings the claim on their own behalf and on behalf of all other persons who were:
  - (a) employed by Drakes at any time between 27 October 2014 and 26 October 2020 (the **Relevant Period**).
  - (b) in a position in a supermarket in the 'general retail industry' within the meaning of that phrase in the General Retail Industry Award 2010 (the **Award**);
  - (c) with a title which was or included the word 'manager';



- (d) which was undertaken on a ‘full time’ or ‘part time’ basis as those terms are defined in the Award; and
  - (e) who worked in any ‘pay period’ in the Relevant Period a rostered hour:
    - (i) which was on a Monday to Friday on what was for the purposes of the Award an evening;
    - (ii) outside the spread of hours from time to time prescribed in the Award for undertaking ordinary hours; or
    - (iii) on a Saturday, Sunday or Public Holiday.
10. If you meet these criteria, you may be a Group Member.
11. As part of the Drakes Class Action, Mr Schoneweiss seeks orders from the Court, for the benefit of himself and Group Members, awarding compensation and imposing penalties upon Drakes for the alleged underpayments.
12. The allegations made by Mr Schoneweiss against Drakes are set out in the Applicant’s Statement of Claim, copies of which are available at: <https://www.aderolaw.com.au/class-actions/Drakes/>.
13. Drakes are defending the claims brought by Mr Schoneweiss and has filed a defence in the proceeding. A copy of Drakes’ defence is available at the link set out above at paragraph 12.
14. On 18 March 2021, the Court made orders referring the Drakes Class Action to a mediation to be conducted by 28 July 2021 (the **Mediation**). As part of this process, the Court also made orders which require any Group Member who wishes to opt out of the Class Action to do so by 25 May 2021 (the **Deadline**). The Court also approved the sending of this notice to Group Members, which gives Group Members an opportunity to register their details (if they have not already signed a retainer agreement with Adero Law) so that their specific claims can be considered at the Mediation. Any settlement agreed will be subject to Court approval.



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**Will Group Members be liable for legal costs?**

15. In the event that the Drakes Class Action is successful (that is, if money compensation is recovered), the Court will be asked to distribute the legal costs incurred by the Applicant in pursuing that class action from the money recovered, fairly among all persons who have benefitted from the class action. The effect of any such order, if made, would be that all Group Members who benefit will contribute to the legal costs. This ensures that all Group Members are treated equally.
16. In the event that the class action is unsuccessful, Group Members have no liability to pay any legal and/or funding costs.
17. You may seek to resolve any individual claim of underpayment directly (and informally) with Drakes at no cost to you. You may do so without affecting your ability to participate in the Drakes Class Action. Any deeds of release offered by Drakes in exchange for resolving your underpayment directly with Drakes may limit your ability to obtain payment if the Drakes Class Action is successful.

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**What do Group Members need to do?**

18. You have three options:
  - (a) Register (if you have not already signed a retainer with Adero Law) and provide details of your employment with Drakes so that your individual claim can be taken into account by the parties in the Mediation and any other settlement discussions with a view to settling your claim without having to go to trial (subject to court approval of any settlement agreement);
  - (a) Opt out of the Drakes Class Action or;
  - (b) Do nothing.
19. There are different consequences depending on which option you choose. Each of these options is explained in greater detail in Section 2 below.
20. For Group Members who **register**, account can be taken of your individual claim at the Mediation.



21. For Group Members who **opt out** of the Class Action, you will no longer be a Group Member. If you want to bring your own claim, you will need to do that separately with your own legal representation should you choose and at your own cost. You will not receive any payment from any settlement or judgment in the Class Action if the Class Action succeeds.
22. For Group Members who **do nothing** (i.e. have not already signed a retainer with Adero Law, and now neither register to participate in the Class Action nor opt out of the proceeding) you will remain a Group Member in the Class Action subject to the matters in paragraph 39 to 44 below.
23. If you wish to **Opt out** of the Class Action, you **must** do so by the Deadline, being **25 May 2021**;
24. If you wish to ensure that account can be taken of your individual claim at the Mediation, you should **register** by the Deadline.
25. Further information about each of the options set out above is contained in Section 2 below. **Please read the information about your options carefully.**

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#### **Where can I get more information?**

26. For more information about the Drakes Class Action, you can visit the website of Adero Law at <https://www.aderolaw.com.au/class-actions/Drakes/>.
27. If you are unsure of what to do, you should seek independent legal advice.



## **SECTION 2 – YOUR OPTIONS**

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### **Option 1: Register for the Drakes Class Action (if you have not already signed a retainer with Adero Law)**

28. You do not have to register to remain a Group Member.
29. However, first, registration is a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the Class Action (including after any settlement, or after any judgment following the trial of common issues).
30. Second, registering for the Class Action involves providing details about you and your claim to Adero Law. This allows Adero Law and Drakes to consider and take into account your claim at the Mediation and in any other settlement discussions. Any settlement will still be subject to Court approval, but you will not need to do more to participate in any settlement sum negotiated on your behalf.
31. If you have already signed a retainer agreement with Adero Law, you do not need to register again and no further action is required other than providing Adero with information about your employment with Drakes if you have not already done so. If necessary, Adero Law may contact you requesting further information.
32. If you have not already signed a retainer agreement with Adero Law, you can register for the Drakes Class Action by completing the Drakes Class Action ‘Group Member Registration’ form online at web address <https://www.aderolaw.com.au/class-actions/Drakes/> (**Registration Form**) by the Deadline. As noted above, if you wish to ensure that your individual claim can be taken into account at the Mediation, you should register prior to 25 May 2021.
33. If you are considering becoming a **Registered Group Member**, you should read this Notice carefully and if you do not understand everything, you should get independent legal advice.
34. Please note that you are under no obligation to enter into a retainer agreement with Adero Law if you choose to register.



35. If you want to register and ensure your individual claim is taken into account at the Mediation, you must provide (or take reasonable steps to provide) the information requested in the Registration Form by the Deadline. Registrations received after the Deadline may not be accepted, with the result that you will be treated as having not responded to this Notice unless you have completed and submitted an Opt Out Notice in accordance with Option 2 below.

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**Option 2: Opt out**

36. If you opt out of the Drakes Class Action, you will no longer be a Group Member. This means you will:

- (a) not be affected by any orders made in the Drakes Class Action;
- (b) not be entitled to receive any distribution arising from any damages awarded or settlement sum paid in relation to any section of the Drakes Class Action;
- (c) not be bound by any settlement or judgment in the Drakes Class Action; and
- (d) be able to commence separate proceedings against Drakes on your own behalf if you so wish. You will need to arrange your own legal representation and funding for your claim.

37. If you wish to opt out of the Drakes Class Action, you must complete the 'Opt Out Notice' attached at Schedule A below and submit it to the Court by the Registration and Opt Out Deadline. As noted above, the Deadline is 25 May 2021.

38. The Opt Out Notice must be submitted to the South Australian District Registry of the Federal Court of Australia by post or email at the following addresses:

- (a) [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au), with the email subject line: 'Opt Out Notice SAD156/2020; or
- (b) Federal Court of Australia Registry, GPO Box 1350, Adelaide, SA, 5001.



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**Option 3: Do nothing**

39. If you do not register for, or opt out of, the Drakes Class Action by the Deadline (and you have not already signed a Retainer Agreement with Adero Law), you will be an **Unregistered Group Member**. You will remain a Group Member in the proceedings and await the outcome.
40. If the parties agree to settle the Class Action at the Mediation or before the trial of the common issues commences, your individual claims may not have been taken into account at the Mediation and in any settlement agreement that may be reached at the Mediation. The parties will then seek the Court's approval of any settlement agreement. In considering whether you can participate in any settlement sum, the Court may take into account at that time that you had not registered by the Deadline and provided details of your individual claim.
41. If you are permitted to receive any part of the settlement sum, you will have to register in any event in order to participate.
42. As a Group Member you will be bound by any settlement approved by the Court that affects you or by any judgment given in the Class Action after the trial of common issues.
43. If the parties do not agree to settle the class action at the Mediation or before the commencement of the trial on common issues, you will remain a Group Member and be bound by the Court's judgment in respect of them. You may have your claim considered at any further mediation or as part of any settlement that takes place at some later time.
44. Again, registration now is a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the Class Action (including after any settlement, or after any judgment following the trial of common issues) as well as allowing the parties to consider your claims and take them into account at the Mediation and any other settlement discussions.