

## NOTICE TO GROUP MEMBERS – DISCONTINUANCE OF GROUP 4 TRAINEESHIP CLAIMS

**AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD ACN 008 150 543**

**(SAD76/2020)**

You should read this notice carefully because your legal rights may be affected by the discontinuance of one group of claims. If approved, the proposed discontinuance **will not** result in the whole of the class action being discontinued.

**This Notice is important. It relates to your right to object to the proposed discontinuance of the traineeship claims.**

**If you wish to object, you should send a copy of the attached Notice of Objection to the Court by 4 pm on 18 November 2021 to let the Court know that you oppose the discontinuance of the traineeship claims.**

**This notice is not legal advice. You should seek independent legal advice if you are unsure what to do, noting the time limit to file a notice of objection.**

### **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 Applicants (Mr Furnell and Others) on behalf of certain persons who were employed by the Respondent, Shahin Enterprises Pty Ltd ACN 008 150 543 (**Shahin Enterprises**), between 14 May 2014 and 13 May 2020 (**OTR Class Action**).
2. 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 independent legal advice.
3. From 19 February 2021, a notice in the OTR Class Action was provided to members of the class to allow them to opt out of the proceedings (**Opt Out Notice**). This present notice is separate to the Opt Out Notice and only concerns the claims relating to **trainees** previously or currently employed by Shahin Enterprises.
4. The Opt Out Notice has information on:

- a. What a Class Action is; and
- b. What the OTR Class Action is about.

You can find a copy of the Opt Out Notice at <https://www.aderolaw.com.au/class-actions/on-the-run/>

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### What is the OTR Class Action About?

5. On 14 May 2020, the Class Action was filed by Adero Law on behalf of Aaron Furnell and other former employees of Shahin Enterprises. Aaron Furnell and the other former employees who represent group members are called Applicants.
6. The Applicants bring their claims on their own behalf and on behalf of other persons up to the date of filing of the claim who were:
  - a. employed by Shahin Enterprises at any time within the period of 6 years ending on 14 May 2020, under the *Shahin Enterprises Pty Ltd Employee Collective Agreement – Customer Service Employee* (the **Customer Service CA**), the *Shahin Enterprises Pty Ltd Employee Collective Agreement -Full Time Employees* (**Full Time CA**) (which were in force until 30 June 2018) and/or the *Vehicle Manufacturing, Repair, Services and Retail Award* (the **Award**) (which was in force from 1 July 2018), as the case may be;
  - b. being persons positions and circumstances summarised in paragraph 10 of the Opt Out Notice,
 (the **Group Members**).
7. The Group Members may belong to one or more of five sub-Groups. This Notice only concerns Group Members who have Group 4 Claims, as described below.

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### Group 4 Claims: Trainee Underpayments

8. Only Group 4 Members are affected by the proposed discontinuance.
9. **Group 4 Members** are current and former employees of Shahin Enterprises who allege that at any time between 14 May 2014 and 30 June 2018 they:
  - a. were employed as ‘trainees’ in the positions of:
    - i. console operator;
    - ii. driveway attendant; or
    - iii. roadhouse (food) attendant,
 pursuant to the Customer Service CA during the Collective Agreement Period,
  - b. were engaged as “Off Job” trainees during their employment in this period; and
  - c. performed work during this period and were paid a base rate of pay for such work which was lower than the comparable base rate of pay that would have applied had the Award applied to them and not the Customer Service CA
 (the **Group 4 Claims**).
10. If you meet these criteria, you are a Group 4 Member.

11. The First, Fourth and Fifth Applicants sought orders from the Court in the OTR Class Action on behalf of themselves and the Group 4 Members to recover:
  - a. compensation for the difference between the pay they received and the rate of pay that Shahin Enterprises was required to pay under Schedule E of the Award;
  - b. to recover compensation for amounts they claim not to have been paid and for payment of interest up to judgment on the above amounts; and
  - c. to impose “pecuniary penalties” (similar to a fine) on Shahin Enterprises which are penalties which the employer can be ordered to pay in relation to a contravention under the *Fair Work Act 2009* (Cth) (**Act**). Pecuniary penalties can only be ordered by the Court, and only if the Court makes a finding that there has been a contravention of the Act. The Applicants seek an order from the Court that any pecuniary penalty which Shahin Enterprises may be ordered to pay be paid to Group Members on whose behalf the Applicants are claiming.
12. The allegations made by the First, Fourth and Fifth Applicants on behalf of themselves and other Group 4 Members against Shahin Enterprises are set out in the Applicants’ Further Amended Statement of Claim, a copy of which is available at: <https://www.aderolaw.com.au/class-actions/on-the-run/>.
13. The Respondent has filed a defence in the Class Action and denies the allegations against it. A copy of Shahin Enterprises’ Defence is available at the same link set out above at paragraph 12, together with the Applicants’ Reply to that Defence.

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#### **Proposed Discontinuance of the Group 4 Claims**

14. The Group 4 Claims were based on the First, Fourth and Fifth Applicants, and the Group 4 Members they represent, having completed “Off Job” traineeships and being paid less than they were entitled to under the Award.
15. Since the Applicants filed their Further Amended Statement of Claim on 27 August 2020, they have since compiled and provided the Respondent with statements of evidence they would seek to rely on in Court (the **Applicants’ Statements of Evidence**).
16. In the preparation of the Applicants’ Statements of Evidence, it became apparent that there was not sufficient commonality to support the Group 4 Claims as pleaded in the Further Amended Statement of Claim because although the First Applicant alleges that he did not receive any training, the Fourth and Fifth Applicants:
  - a. completed “On Job” training; and
  - b. this “On Job” training was:
    - i. sometimes conducted during the Fourth and Fifth Applicants’ rostered hours and was paid; or
    - ii. sometimes conducted outside the Fourth and Fifth Applicants’ rostered hours and was unpaid.

17. This led the Applicants to decide that the Group 4 Members could not definitively plead that they had been underpaid on the basis of being solely engaged as “Off Job” trainees or on the basis that they had received no training at all.
  18. Because the evidence of the Applicants’ and Group 4 Members’ experiences in respect of their traineeships varied, the Applicants formed a view that:
    - a. the Group 4 Claims could not be run as a class action because the facts relating to the Group 4 Members were not common to the group; and
    - b. the cost of running each Group 4 Member’s claim individually would be greater than any compensation they might recover.
  19. That view does not affect the Group 1, 2, 3 and 5 Claims, and if you have one or more of those claims in addition to Group 4 Claims, the proposed discontinuance will not affect that.
  20. As a result, the Applicants have sought leave to discontinue the Group 4 Claims.
  21. Further information about options in relation to the proposed discontinuance is contained in Section 2 below. **Please read the information about your options carefully.**
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### **Application for Discontinuance**

22. The Applicants cannot discontinue the Group 4 Claims without leave of the Court pursuant to section 33V of the *Federal Court of Australia Act 1976* (Cth).
  23. The Applicants have filed an Interlocutory Application seeking leave to discontinue the Group 4 Claims.
  24. This Notice has been provided to you as part of the process seeking such leave. The following paragraphs outline how the Court will decide whether the discontinuance should be approved.
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### **The hearing to decide whether the discontinuance should be approved**

25. The Court will hold a hearing to decide whether the discontinuance is unfair or unreasonable in all the circumstances.
26. The hearing will be at 2.15 pm on 29 November 2021.
27. The hearing will be conducted in a courtroom in the Roma Mitchell Commonwealth Law Court Building at 3 Angas Street Adelaide, but with liberty to the parties outside South Australia to appear by video link or Microsoft Teams link.
28. Lawyers for the Applicants and the Respondent will be at the hearing.
29. You can attend the hearing if you want to, but you are not required to attend the hearing.
30. If you choose to send a Notice of Objection to the Court, you can ask to address the Judge at the hearing about why you think the discontinuance application for the Group 4 Claims should not be approved.
31. If you did not send a Notice of Objection to the Court by 4 pm on 18 November 2021, you can still seek permission to address the judge about the discontinuance of the Group 4 Claims. It will then be up to the Judge to decide whether you can speak.

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**Am I liable for any costs and charges?**

32. You are not, and will not be, liable for any “out of pocket” legal costs as a result of the proposed discontinuance, whether or not it is approved.
33. But whether or not the discontinuance of the Group 4 Claims is approved, if the OTR Class Action:
- a. proceeds to judgment, the Applicants’ case is successful, and the Applicants are awarded damages; or
  - b. the matter is settled;
- the cost of Adero Law Pty Ltd t/as Adero Law’s legal fees may be paid in part or in full prior to the distribution of any sum you are entitled to. In either event, the Court will be required to approve the way in which funds are calculated and distributed.
34. If the Applicants are unsuccessful, you will not be liable for any costs or charges.

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**Where can I get more information?**

35. If you are unsure of what to do, you should seek independent legal advice.

## **SECTION 2 – YOUR OPTIONS**

Group Members have two options, depending on whether they wish to object to the discontinuance application or to do nothing. These options are set out below.

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### **Option 1: Object**

36. If you do not wish to object to the application for leave to discontinue, **do nothing**.
37. If you wish to object to the application for leave to discontinue, you must complete the **Notice of Objection** attached at Schedule A below and submit it to the Court by the Objection Deadline. The Objection Deadline is 4 pm on 18 November 2021.
38. If you file a Notice of Objection, your status as an:
  - a. Unregistered Group Member; or
  - b. Registered Group Member;will not be affected.
39. The Notice of Objection must be submitted to the South Australian 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: 'Objection Notice SAD76/2020';  
or
  - (b) Federal Court of Australia Registry, GPO Box 1350, Adelaide SA 5001

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### **Option 2: Do nothing**

40. If you do not submit a Notice of Objection (and you have not already signed a Retainer Agreement with Adero Law), your entitlement to participate in the OTR Class Action will remain unchanged.

**SCHEDULE A**

**NOTICE OF OBJECTION**

**COMPLETE THIS FORM IF YOU WISH TO OBJECT TO THE DISCONTINUANCE OF THE  
TRAINEESHIP CLAIMS IN THE CLASS ACTION**

Federal Court of Australia  
District Registry: South Australia  
Division: Fair Work

**Aaron Furnell & ORS**  
Applicants

**Shahin Enterprises Pty Ltd ACN 008 150 543**  
Respondent

To: [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au)  
Subject Line: Discontinuance of Traineeship Claim Notice SAD76/2020

OR

Federal Court of Australia Registry  
GPO Box 1350  
Adelaide SA, 5001

**Name of individual:** \_\_\_\_\_  
**Contact email:** \_\_\_\_\_  
**Contact number:** \_\_\_\_\_

I am a Group Member the above Proceedings and I object to the proposed discontinuance of the claims relating to traineeships in the above Proceedings because [*set out reasons for objection or attach additional pages*]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_  
**Signature:** \_\_\_\_\_  
**Name of signatory:** \_\_\_\_\_