



## ANNEXURE B

### NOTICE TO GROUP MEMBERS

#### PROPOSED SETTLEMENT OF THE DRAKES CLASS ACTION

Schoneweiss v The Fourth Force Pty Ltd & Another, SAD 156/2020

#### PLEASE READ THIS NOTICE CAREFULLY, IT CONTAINS IMPORTANT INFORMATION WHICH AFFECTS YOUR LEGAL RIGHTS

This notice is provided pursuant to the orders made by the Federal Court of Australia on 8 April 2022. It contains information about the proposed settlement of the “**Drakes Class Action**” brought on behalf of persons who from time to time were employed by either the *Fourth Force Pty Ltd* (ACN 084 438 773) or the *Dramet Pty Ltd* (ACN 109 544 425).

#### Why are you receiving this Notice?

1. On 8 April 2022 the Federal Court of Australia (**Court**) approved the form and content of this notice and ordered that it be distributed to group members in the class action commenced by Mr Craig Schoneweiss (**Drakes Class Action**), on behalf of certain persons who were employed by either the *Fourth Force Pty Ltd* (ACN 084 438 773) or the *Dramet Pty Ltd* (ACN 109 544 425) (collectively referred to as the **Respondents**) in their respective supermarkets. The purpose of this notice is to inform you, as a group member, of the proposed settlement of the **Drakes Class Action** and to explain your rights.
2. This notice is directed only to those persons identified as a group member in the **Drakes Class Action** and who either:
  - 2.1. previously registered to have their individual claim considered at mediation; or
  - 2.2. did not register and did not opt out of the **Drakes Class Action** by lodging an opt out notice with the Federal Court before the deadline of 2 September 2021.
3. You should have previously received court-approved notices in relation to the **Drakes Class Action** which set out some of the background to the class action, and which advised you of your rights as a potential group member to opt out of the class action if you did not wish to participate in it, to register for the class action so that your individual claims could be considered at mediation, or to do nothing.
4. The deadline for opting out has now passed. Any persons who lodged an opt out notice with the Federal Court before the deadline are no longer part of the **Drakes Class Action** and are not affected by this notice.



5. Paragraphs [41], [46] and [47] of this notice refer to the steps you may choose to take. We request you to read this notice carefully so that you may be aware of which of these steps are available to you and depending on whether you are a registered or an unregistered group member in the Drakes Class Action, make an informed choice.
6. If you have already registered to participate in the Drakes Class Action and have your individual claim considered at mediation, you are regarded as a **Registered Group Member**. If you have not previously registered or opted out of the Drakes Class Action, you are regarded as an **Unregistered Group Member**.
7. If there is anything in this notice that you do not understand, you should contact the solicitors for the Applicant in the Drakes Class Action, Adero Law by emailing [Drakes@aderolaw.com.au](mailto:Drakes@aderolaw.com.au) or you may seek independent legal advice.

***What is a class action?***

8. 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.
9. The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf to identify a specific Group Member. However, Group Members can cease to be Group Members by opting out of the class action before the court-appointed deadline. An explanation of how Group Members could opt out was contained in the previous notices to Group Members and, as noted above, the deadline for opting out has now passed.

***What is the Drakes Class action?***

10. On or around 22 December 2014 Mr Schoneweiss was employed at the ‘Drakes’ supermarket owned and operated by the Fourth Force Pty Ltd (ACN 084 438 773) in the position of Grocery Manager.
11. On or around 5 October 2015, Mr Schoneweiss was then employed as a Store Assistant Manager at the Drakes supermarket owned and operated by Dramet Pty Ltd (ACN 109 544 425). On or about 24 August 2018, Mr Schoneweiss resigned from this employment.



12. Mr Schoneweiss alleges that his annual salary did not properly compensate him for all the hours worked in accordance with the *General Retail Industry Award 2010 (Award)*.
13. The Drakes Class Action is a class action filed by Adero Law on behalf of a certain group of employees of either the Fourth Force Pty Ltd (ACN 084 438 773) or Dramet Pty Ltd (ACN 109 544 425) employed at their respective supermarkets. As part of the Drakes Class Action, Mr Schoneweiss sought orders from the court for the benefit of the Applicant himself and a group of certain employees, awarding compensation and imposing penalties upon the Respondents.
14. On 26 October 2020, the Drakes Class Action was initiated via an Originating Application and Statement of Claim filed on behalf of Mr Schoneweiss.
15. Both Respondents to the Drakes Class Action deny the allegations and have defended the claim brought by Mr Schoneweiss.
16. Copies of court documents are available at <https://www.aderolaw.com.au/class-action/drakes/>

***Group Member Definitions:***

17. The Drakes Class Action does not involve all types of employment at the Respondent's supermarkets. Accordingly, you are only a Group Member if you:
  - 17.1 were employed in a manager position with a job title that included the word 'Manager';
  - 17.2 were employed in a position in a supermarket in the "General Retail Industry" within the meaning of that phrase in the Award;
  - 17.3 were employed on a "full time" basis as that term as defined in the Award;
  - 17.4 were paid by way of an annualised salary that did not properly compensate you for the hours worked;
  - 17.5 were employed by either the Fourth Force Pty Ltd (ACN 084 438 773) or Dramet Pty Ltd (ACN 109 544 425) in their supermarkets at any time between 26 October 2014 and 26 October 2020; and
  - 17.6 did not opt out of the Drakes Class Action on or before 2 September 2021.
18. If you meet the above criteria and were registered for the mediation, you are a Registered Group member. If you meet the above criteria but you did not register for the mediation, you are an Unregistered Group Member.



19. Registered Group Members do not include individuals that have entered a Deed of Release in the Relevant Period of the Drakes Class Action that has by its terms released the Respondent from any requirement to pay any compensation under the Award. If you believe you have entered such a Deed of Release, you will receive a separate notice from Adero Law advising you in relation to the same. This may mean that you will be excluded from receiving any benefit under the proposed settlement even if you are a Registered Group Member and you are encouraged to obtain independent legal advice on this issue should you wish to do so.

### ***The Proposed Settlement***

20. The Court directed the parties to attend a mediation. The mediation was conducted on 8 November 2021. Ultimately, the parties agreed an in-principle settlement of the Drakes Class Action (**Proposed Settlement**) under which the Respondents agreed to pay:
  - 20.1. an amount of \$1,455,000.00 in full and final settlement of the claims of the Applicant and the Registered Group Members as calculated in accordance with a Calculation Model defined and explained further below at [32]; and
  - 20.2. an amount of \$400,000 in lieu of penalties, and the sum of \$190,000 in lieu of interest, distributed equally between all group members; and
  - 20.3. an amount of \$220 as a contribution towards the legal cost of each additional registered group member who may register pursuant to this notice; and
  - 20.4. an amount to be subsequently calculated in accordance with the principles set out in the Deed for the benefit of the claim of each additional registered group member who registered pursuant to this notice.(together, the **Settlement Proceeds**).
21. The Settlement Proceeds is without admission of liability by the Respondents and does not reflect any amount payable by way of the legal costs of Adero Law in advancing the Drakes Class Action. Such costs will be determined and payable from the Settlement Proceeds subject to a costs review (further explained below at [39]).
22. The Settlement Proceeds are to be distributed to eligible Registered Group Members and Unregistered Group Members who register subsequently to receiving this notice (**Additional Registered Group Members**) in accordance with a **Settlement Distribution Scheme** (defined and explained below at [30]) which is also subject to



approval by the Court, which will establish how Registered Group Members and Additional Registered Group Members entitlements are to be calculated, and the process to distribute the Settlement Proceeds as efficiently as possible.

23. If the Court approves the Proposed Settlement, there will be:
  - 23.1. \$1,455,000.00 of the Settlement Proceeds (excluding interest and payment in lieu of penalties) available for distribution to eligible Registered Group Members;
  - 23.2. an amount calculated pursuant to the Calculation Model (as defined below in [32])for unregistered group members; and
  - 23.3. for all group members an amount of \$400,000 in lieu of penalties and an amount of \$190,000 in lieu of interest, which shall be distributed equally across all group members.
24. The distribution of Settlement Proceeds to eligible Additional Registered Group Members will be calculated on the same basis as the distribution for eligible Registered Group Members.
25. It is not possible to determine the total amount paid by the Respondents under the Proposed Settlement because such an amount will depend on how many additional group members register, and have their claims assessed, in addition to the Settlement Proceeds. This will be dependent on factors including the:
  - 25.1. number of hours recorded in the time and attendance data for Additional Registered Group Members; and
  - 25.2. amount paid by way of annualised salary to Additional Registered Group Members.
26. If the Proposed Settlement is approved, all group members (whether a Registered Group Member, Additional Registered Group Member or Unregistered Group Member) will have to release the Respondents from any claim arising out of or in connection with:
  - 26.1. the Drakes Class Action; and
  - 26.2. employee entitlements for the relevant periods, whether arising at common law, in equity, under the Award, the Fair Work Act 2009 (Cth) or any other statutory instrument.



27. In other words, all group members (whether a Registered Group Member, Additional Registered Group Member or Unregistered Group Member) will be bound by the Proposed Settlement, and will not be permitted to make any subsequent claim against Drakes in relation to alleged unpaid employee entitlements for the relevant periods.
28. You will only be entitled to receive a distribution from the proposed settlement if you: are a Registered Group Member; or you are an Unregistered Group Member and you complete and submit a paper or online Registration Form by 6 May 2022 and the Calculation Model (as at [32]) indicates that you have been underpaid.
29. If the Proposed Settlement is not approved by the Court, the Drakes Class Action will continue and there will be no distribution of Settlement Proceeds to Group Members unless the Applicant is successful in the proceedings, or a further settlement is reached.

#### ***Settlement Distribution Scheme***

30. The process by which the Settlement Proceeds is proposed to be distributed will be outlined in the Settlement Distribution Scheme (**Scheme**).
31. The Scheme will detail:
  - 31.1. the criteria for determining whether Registered Group Members and Additional Group Members are eligible to receive a distribution of the Settlement Proceeds; and
  - 31.2. how each eligible Registered Group Member's and Additional Registered Group Member's entitlement to a share of the Settlement Proceeds will be calculated.
32. Importantly, group members' entitlements will be calculated using an agreed entitlement calculation model that has regard to the factors described above (**Calculation Model**). The Calculation Model is based on what Adero Law regards as a reasonable and just application of provisions of the Award. Some of the provisions can be applied in different ways. The Applicant and the Respondents have agreed the Calculation Model to reflect what Adero Law considers to be a just and reasonable application of the Award, with a discount built into the Calculation Model. The discount included in the Calculation Model addresses a range of risk factors, including the risks associated with the application of different interpretations of the Award, risks associated with litigation (including the costs of litigation).



33. The portion of the Settlement Proceeds that will be distributed to each Registered Group Member and Additional Registered Group Member under the Proposed Settlement will depend upon a number of factors such as the:
- 33.1. Period of employment;
  - 33.2. Position title of the employee;
  - 33.3. Award level of the employee;
  - 33.4. Age of the employee;
  - 33.5. Number of hours recorded in the employee's time and attendance records;
  - 33.6. Days and times on which those hours were worked;
  - 33.7. Rostered hours recorded in the employee's time and attendance records;
  - 33.8. Pay history records in respect of that employee;
  - 33.9. Leave taken by that employee;
  - 33.10. Time off in lieu taken by that employee;
  - 33.11. Whether the employee worked during periods where he or she was paid above the Award;
  - 33.12. Any proportional share of interest made in the Settlement Proceeds; and
  - 33.13. Any proportional share of payments made in lieu of penalties.
34. The Calculation Model will be used to determine entitlements for Registered Group Members and Additional Registered Group Members alike and will be required to be approved by the Court. By registering to participate in the Drakes Class Action and the Proposed Settlement, Registered Group Members and Additional Registered Group Members are deemed to agree to the value of the entitlements calculated using the Calculation Model and that the value so calculated represents full and final compensation for any and all entitlements payable to Group Members in respect of issues raised in the Drakes Class Action or as applicable under the Award.
35. The Scheme and the agreed Calculation Model described above must also be approved by the Court.
36. If the Court approves the Proposed Settlement, Adero Law (as the Administrator of the Scheme) will be appointed to supervise and manage the distribution of the Settlement Proceeds to Registered Group Members and Additional Registered Group Members in accordance with the Scheme, under directions of the Court. As the Settlement Proceeds relate to employee entitlements, the Settlement Proceeds will be



processed and paid by the First and/or the Second Respondent to the Drakes Class Action (as the case may be).

### ***The Settlement Approval Process***

37. The Proposed Settlement does not come into effect unless it is approved by the Court. Before approving the Proposed Settlement, the Court must be satisfied that the Proposed Settlement is fair, reasonable and equally in the interests of all Group Members.
38. You may file a Notice of Objection to the Proposed Settlement and/or any aspect of the proposed distribution of the Settlement Proceeds to eligible group members. The Court will take any objections into account in deciding whether or not to approve the Proposed Settlement.

### ***Are Group Members Liable for Legal Costs?***

39. If the Proposed Settlement is approved by the Court, the costs owed by group members to Adero Law on account of legal costs will be reviewed and paid from the Settlement Proceeds. There is no general entitlement for group members to recover legal costs from the Respondents.
40. The Applicant will seek an order requesting group members who benefited from the Class Action pay a proportionate share of the legal costs.

### ***Access to Documents for Inspection***

41. All group members have a right to inspect a copy of the following documents:
  - 41.1. the Deed of Settlement and Release dated 7 March 2022;
  - 41.2. the Settlement Distribution Scheme dated 7 March 2022;
  - 41.3. the retainer agreement entered into with the lead applicant of the Drakes Class Action;
  - 41.4. Any evidence or document filed by the Applicant in support of the Proposed Settlement including but not limited to
    - a) the Applicant's submissions;
    - b) a 'Costs Review Report' prepared by Ms Cate Dealehr from the Australian Legal Costing Group which will indicate those costs which Adero Law has incurred during the course of the Drakes Class Action which are fair and reasonable costs;
    - c) the Amended Interlocutory Application dated 8 April 2022; and



d) the Affidavit of Rory Michael Markham dated 8 March 2022.

42. If you make an inspection request prior to 24 May 2022, please be aware that the documents and evidence specified in paragraph [41.4] will only be made available from 25 May 2022. If you have filed an inspection request before that date, these will be sent to you by email on 25 May 2022.
43. You may choose to undertake the inspection provided for in paragraph [41] by completing and returning the form at Schedule 3 of this Notice to Adero Law which requires that you provide an undertaking to keep the documents provided to you confidential (**Confidential Undertaking**), and only access the documents for the purposes of seeking legal advice, or to exercise any objection to the settlement in these Proceedings.
44. A Confidentiality Undertaking is an undertaking to the Court that you will keep the documents provided to you for inspection confidential. However, these can be disclosed to a legal practitioner for the purpose of seeking legal advice, and to an accountant for the purposes of seeking taxation advice. Any unauthorised disclosure of these documents is a contempt of Court, and punishable as such either as a civil matter, or as a criminal offence.
45. Subject to any order of the Court, Adero Law will seek up to \$690,000 (inclusive of GST) as its reasonable professional costs and disbursements.
46. Subject to any order of the Court, Adero Law will charge administration costs, in addition to its professional costs for the purpose of distributing the settlement entitlements to eligible group members:
  - 46.1. in the amount of \$420 per hour, per eligible group member (exclusive of GST);  
and
  - 46.2. shall cap the costs of administration to \$147,000 (exclusive of GST) for the benefit of each eligible group member;

***What do Registered and Unregistered Group Members need to do?***

47. If you have previously registered for the Drakes Class Action, you are a Registered Group Member and accordingly your options are listed below.
48. If you have not opted out of the Drakes Class Action and have not previously registered to participate in the class action, you are then an Unregistered Group Member and accordingly your options are listed below.



49. **REGISTERED Group Members**

49.1. **Option A** - do nothing, in which case your claim will be assessed according to the agreed model, and you may be eligible to receive a distribution from the Settlement Proceeds.

49.2. **Option B** - object to the proposed settlement by completing the form attached as Schedule 2 to this notice. You may exercise this option to make submissions as to why the Court should, or should not, approve the Proposed Settlement, or any aspect of it. If you wish to exercise that right, you must complete the Notice of Objection to Proposed Settlement form that is attached to this Notice as Schedule 2 and submit it to the address on the form by no later than 7 June 2022.

50. **UNREGISTERED Group Members**

50.1. **Option A** - do nothing, in which case, if the Proposed Settlement is approved by the Court, you will not be entitled to receive a distribution from the Proposed Settlement, and any rights you have to make a claim against the Respondents in respect of the matters which are the subject of the Drakes Class Action will be extinguished.

Unregistered Group Members who do nothing (i.e. do not register before the applicable deadline) will remain a Group Member for all purposes but will not, unless the Court determines otherwise, be entitled to receive a distribution from the Settlement Proceeds.

50.2 **Option B** - register to participate in the proposed settlement by 5 May 2022 in which case you may be eligible to receive a distribution from the Proposed Settlement.

You can do so by completing and submitting the Registration Form attached as Schedule 1 to this Notice and return it to Adero Law at the address on the Registration Form or by filling the online registration form at <https://www.aderolaw.com.au/class-actions/drakes-settlement>

There is no cost associated with registering your claim.

50.3 **Option C** - object to the proposed settlement, by completing the form attached as Schedule 2 to this notice (if you choose to do this, you may still exercise Option A or B).



If you wish to exercise this right, you must complete the Notice of Objection to Proposed Settlement form attached to this Notice as **Schedule 2** and submit it to the address on the form by no later than 7 June 2022.

51. There are different consequences depending on which of the above steps you choose.
52. Please note, if you are a Registered Group Member or you become an Additional Registered Group Member, you will not be eligible to receive a distribution if you:
  - 52.1. have previously settled and released both the Respondents from claims arising out of or in connection with your employee entitlements, the subject matter of the Drakes Class Action;
  - 52.2. do not have any time and attendance data of purported hours worked by you; or
  - 52.3. were paid above the entitlement owed to you under the Award based on the Calculation Model.

***Further Information***

53. If you have any questions or queries, you may contact the Applicants' solicitors (Adero Law at <https://www.aderolaw.com.au/class-action/drakes/> or at [drakes@aderolaw.com.au](mailto:drakes@aderolaw.com.au))



**SCHEDULE 1**

**HARD COPY REGISTRATION FORM**

<p><b>DRAKES CLASS ACTION</b></p> <p><i>Schoneweiss v The Fourth Force Pty Ltd &amp; Another, SAD 156/2020</i></p>
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**Online**            You may also complete this Registration Form online at [www.aderolaw.com.au/class-actions/drakes-registration](http://www.aderolaw.com.au/class-actions/drakes-registration)

**By Post:**            Adero House  
  
                              3 Hobart Place  
  
                              CANBERRA ACT 2601

**By email:**          [drakes@aderolaw.com.au](mailto:drakes@aderolaw.com.au)

The person below gives notice that the person wishes to REGISTER for the proposed settlement of this proceeding.

**A.DETAILS OF GROUP MEMBER**

Name of group member	
Telephone	
Email	
Postal address	

**B.DETAILS REQUIRED FOR ANY DISTRIBUTION FROM THE SETTLEMENT SUM**

Tax File Number	
Nominated Bank Account	



Proof of Identity (Driver's Licence Number or Passport Number, including scanned copy)	
Signed	
Name of the person signing	
Date	



**SCHEDULE 2**

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

<p><b>DRAKES CLASS ACTION</b></p> <p><i>Schoneweiss v The Fourth Force Pty Ltd &amp; Another, SAD 156/2020</i></p>
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**By Post:** Roma Mitchell Commonwealth Law Court Building, 3 Angas Street

Adelaide, SA, 5000

**By Email:** sareg@fedcourt.gov.au

The person below gives notice that the person or entity **OBJECTS** to the proposed settlement of this proceeding

**A DETAILS OF OBJECTOR**

Name of Group Member	
Telephone	
Email	
Postal Address	



**B GROUND(S) OF OBJECTION**

My submissions in support of my objection to the proposed settlement are as follows [set out below any submissions attaching additional pages if necessary and any affidavit evidence]



**SCHEDULE 3**

**REQUEST FOR INSPECTION FORM**

54. **Name**

55. **Email Address for delivery of requested documents**

Please sign below and email this Request for Inspection Form to [drakes@aderolaw.com.au](mailto:drakes@aderolaw.com.au). Alternatively, you can send this Request for Inspection Form to our office by post at the following address: c/o Adero Law, 3 Hobart Place, City, ACT 2601.

I, \_\_\_\_\_ [print full name] undertake to keep confidential, and not publish, disclose, or discuss the documents provided to me by Adero Law in connection with the proposed settlement of the Drakes Class Action, to any person or entity other than:

- (a) any solicitor of Adero Law acting in the Drakes class action; or
- (b) an Australian Legal Practitioner, for the purposes of seeking and receiving independent legal advice; or
- (c) an accountant, for the purposes of seeking financial advice.

I will not use the documents provided to me by Adero Law for any other purpose other than for considering my rights in the Drakes class action. I understand that this undertaking shall not apply in circumstances where I disclose the contents of the documents provided to me:

- (a) after I have received written consent of Adero Law; or
- (b) as required by law, or as ordered by the Court.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_

Witness Name \_\_\_\_\_

Date \_\_\_\_\_