



Federal Court of Australia

District Registry: South Australia

Division: Fair Work

No: SAD76/2020

**AARON FURNELL** and others named in the schedule  
Applicant

**SHAHIN ENTERPRISES PTY LTD ACN 008 150 543**  
Respondent

### ORDER

**JUDGE:** JUSTICE CHARLESWORTH

**DATE OF ORDER:** 26 August 2022

**WHERE MADE:** Adelaide (in Chambers)

#### THE COURT NOTES THAT:

1. Subject to approval of the Court, and on the basis that the applicants hereby unreservedly withdraw any allegations of serious contraventions of the *Fair Work Act 2009* (Cth), including those made in paragraphs 31A to 31R, 48A to 48I and 75A to 75O of the Second Further Amended Statement of Claim and without any admission of liability on the part of the respondent (which denies liability), the applicants and the respondent have agreed that the proceedings will be settled on the terms set out in a confidential “**Deed of Settlement**” (**Proposed Settlement**), and in the event the Proposed Settlement is approved by the Court, the proceedings will be dismissed following administration of the Proposed Settlement.
2. The applicants will file an application for approval of the Proposed Settlement of the proceedings pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) (**Approval Application**), supported by a confidential affidavit annexing the Deed of Settlement in accordance with paragraph **Error! Reference source not found.** of these Orders.

#### THE COURT ORDERS BY CONSENT THAT:

**Registration to participate in the Proposed Settlement**



1. Pursuant to s 33ZF of the FCA Act and further to the Orders dated 11 February 2021 (**11 February Orders**), any group member who has not opted out of the proceedings, and who registered by the deadline in the 11 February Orders is a **“Previously Registered Group Member”**.
2. Pursuant to s 33ZF of the FCA Act, any group member who has not opted out of these proceedings, and is not a Previously Registered Group Member, but who registers to participate in the Proposed Settlement in accordance with Order 0 of these Orders is an **“Additional Registered Group Member”**.
3. Any group member who wishes to register as an Additional Registered Group Member to participate in the Proposed Settlement must, by no later than 24 October 2022 (**Final Registration Deadline**), register by:
  - 3.1 completing a Group Member Registration Form in the form set out at Schedule 1 of the Notice to Group Members (being Annexure A to these Orders), either online at [www.aderolaw.com.au/class-actions/on-the-run](http://www.aderolaw.com.au/class-actions/on-the-run) or by emailing or posting a hard copy to Adero Law at the address shown on the Group Member Registration Form; and
  - 3.2 providing, by completing the Group Member Registration Form, the following information necessary for distribution of the Proposed Settlement:
    - (a) the Additional Registered Group Member’s full name, date of birth, postal address, email address and phone number;
    - (b) the Additional Registered Group Member’s Employee identification number(s) during their employment with the respondent (as set out in the payslips issued to them by the respondent);
    - (c) the Additional Registered Group Member’s Tax File Number;
    - (d) a Bank State Branch (BSB), Account Number and Account Name for an Australian Bank Account, into which any share of a settlement sum distributed to the Additional Registered Group Member in accordance with the Settlement Distribution Scheme shall be paid; and
    - (e) proof of identity (such as passport number or driver’s licence number) and a copy of the relevant document.
4. Pursuant to s 33ZF of the FCA Act, all Previously Registered Group Members and Additional Registered Group Members are **“Registered Group Members”** for the



purposes of the proceedings and will be a participant in the Proposed Settlement in the event that it receives approval by the Court.

5. Pursuant to s 33ZF of the FCA Act, any group member who:

5.1 as at the date of these orders:

(a) has not opted out of these proceedings in accordance with the 11 February Orders;

(b) is not a Previously Registered Group Member; and

5.2 after the Final Registration Deadline, is not a Registered Group Member, is an “**Unregistered Group Member**” for the purposes of the proceedings and will remain a group member for all purposes but will not, subject to further order of the Court, be permitted to participate in the Proposed Settlement in the event that it receives approval by the Court.

#### **Notice to Group Members and Distribution of Notice**

6. Pursuant to s 33X of the FCA Act, Previously Registered Group Members and Unregistered Group Members be given notice of:

6.1 the Proposed Settlement;

6.2 that, if they are an Unregistered Group Member, they may register to participate in the Proposed Settlement and become an Additional Registered Group Member;

6.3 the fact that they may oppose the Proposed Settlement and/or any aspect of the distribution of the settlement sum in accordance with these Orders; and

6.4 in respect of Unregistered Group Members, that if they do nothing, they will be bound by the Proposed Settlement if it receives approval by the Court but will not share in the distribution of the Proposed Settlement.

7. Pursuant to ss 33X and 33Y(2) of the FCA Act, the form and content of the notice at **Annexure A** to these Orders, which includes the Group Member Registration Form and Notice of Objection to Proposed Settlement Form, (**Notice to Group Members**) is approved.

8. The Notice to Group Members may be amended by the parties before the Notice to Group Members is posted, emailed or published in order to correct any postal, website, email address or telephone number or any typesetting, typographical or other non-substantive errors.



9. Pursuant to s 33Y(3) of the FCA Act, the Notice to Group Members is to be given to Group Members according to the following procedure.

*Online publication*

9.1 From 31 August 2022 until up to and including the final determination of the Approval Application:

- (a) the applicants are, by their solicitors Adero Law, to publish the Notice to Group Members on their website at the address <https://www.aderolaw.com.au/class-actions/on-the-run/> and on their Facebook page at the address <https://www.facebook.com/aderolawfirm/>, and
- (b) the respondent is to publish a copy of the Notice to Group Members on its website at the address <https://www.otr.com.au/pages/payroll-enquiries/>.

9.2 Adero Law shall cause a copy of:

- (a) the Further Amended Statement of Claim dated 17 March 2022;
- (b) the Amended Defence dated 7 April 2022;
- (c) the Reply dated 30 October 2020;
- (d) the Notice of Cross-claim and Statement of Cross-claim dated 8 April 2022;
- (e) these Orders; and
- (f) the Microsoft Teams link and accompanying details to enable observation at the Approval Application hearing at 10:00am (ACDT) on 13 December 2022

to be displayed on, or otherwise made available for download from, their website at the address <https://www.aderolaw.com.au/class-actions/on-the-run/> and to remain continuously displayed or available up to and including the final determination of the Approval Application.

*Previously Registered Group Members*

9.3 In the case of Previously Registered Group Members, Adero Law will cause the Notice to Group Members and Registered Group Member Cover Letter in the form at **Annexure B** to these orders to be sent on or before 31 August 2022 to those Group Members at the email addresses previously provided to Adero



Law, or by ordinary post in the event that they have not specified an email address.

*All Group Members*

- 9.4 The respondent will cause the Notice to Group Members and Group Member Cover Letter in the form at **Annexure C** to these Orders to be sent to each former employee of the respondent who was employed at any time after the date that is 6 years prior to the commencement of the proceedings who fall within the definition of a Group 5 Member in accordance with the procedures and requirements set out in the protocol at **Annexure D** to these Orders (**Distribution Protocol**).
- 9.5 Should the respondent become aware of any actual or potential non compliance with the Protocol, the respondent's solicitors are to notify the applicants' solicitors within five business days of becoming so aware. The applicants and the respondent are directed to advise the Court of any such non-compliance via email to Justice Charlesworth's Associate.
- 9.6 The cost of the third-party mailing service engaged to undertake the distribution of the Notice to Group Members and Group Member Cover Letter in accordance with the Distribution Protocol is payable by the applicants to the third-party mailing service provider (or to the respondent if the parties so agree) forthwith.
10. By 14 October 2022:
  - 10.1 Adero Law is to file and serve an affidavit deposing to its compliance with Orders 9.1 and 9.3; and
  - 10.2 the respondent is to file and serve an affidavit deposing to its compliance with order 9.4.

**Approval Application**

*Timetable for parties*

11. By 4.00 pm (ACDT) on 24 October 2022, the applicants shall file and serve the Approval Application.
12. By 4.00 pm (ACDT) on 31 October 2022 the applicants shall file and serve any evidence upon which they intend to rely in support of the Approval Application. The evidence shall include material including:



- 12.1 whether the Proposed Settlement is fair and reasonable in the interest of class members and as between class members;
- 12.2 the proposed scheme for the distribution of the settlement among class members;
- 12.3 the applicants' costs and disbursements in conducting the proceedings;
- 12.4 a cost review report prepared by an independent cost referee.
- 13. By 4.00 pm (ACDT) on 14 November 2022, the respondent shall file and serve any evidence upon which it wishes to rely.
- 14. By 4.00pm (ACDT) on 21 November 2022, the applicants shall file and serve their outline of submissions in support of the Approval Application.
- 15. By 4.00 pm (ACDT) on 5 December 2022, the respondent shall file and serve any outline of submissions on which it wishes to rely.

*Objections to the Proposed Settlement*

- 16. By 4.00 pm (ACDT) on 24 October 2022 (**Objection Deadline**), any group member who wishes to oppose the Proposed Settlement shall file and serve a completed Notice of Objection to Proposed Settlement (**Notice of Objection**) in the form of Schedule 2 to the Notice to Group Members by sending it to the Court, the applicants and SEPL:
  - 16.1 by email or by post to the South Australia District Registry of the Federal Court at [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au) or Federal Court of Australia (SA Registry), 3 Angas Street, ADELAIDE SA 5000; and
  - 16.2 by email or by post to the applicants at [rory.markham@aderolaw.com.au](mailto:rory.markham@aderolaw.com.au) or Adero Law, 3 Hobart Place, CANBERRA ACT 2601; and
  - 16.3 by email or by post to the respondent at [tgriffith@piperalderman.com.au](mailto:tgriffith@piperalderman.com.au) or Piper Alderman, Level 16, 70 Franklin Street, ADELAIDE SA 5000.
- 17. If on or before the Objection Deadline the solicitors for any party receive a notice purporting to be a Notice of Objection which has not also been sent to the South Australia District Registry of the Federal Court, the solicitors must file the notice in the South Australia District Registry of the Federal Court within two business days after receipt, with a notation as to the date of receipt. Any such notice shall be treated as a Notice of Objection received by the Court at the time it was received by the solicitors.



18. Adero Law and the respondent's solicitors be granted leave to inspect the Court file and uplift for the purpose of copying any Notices of Objection.

*Approval Application Hearing*

19. Any application filed by the applicants in accordance with paragraph 2 of the Notes to these orders is, by this order, set down for hearing at 10:00am (ACDT) on 13 December 2022, with half a day set aside.

*Interim regime for Confidential Material*

20. Leave is granted to the parties to file any affidavit, annexure, or submissions in respect of which confidentiality orders are to be sought on the Approval Application (**Confidential Documents**) by email to the Associate to Justice Charlesworth marked in the subject line with the word "confidential" and the parties be excused from any requirement to electronically file or serve any Confidential Documents on any party in that form. To the extent that any Confidential Documents are not entirely confidential, the party shall file and serve a redacted copy of the documents redacting only those parts which are claimed to be confidential.
21. Pursuant to s 37AI of the FCA Act, any Confidential Documents filed with the Associate to Justice Charlesworth in accordance with paragraph 19 of these orders is suppressed until further order, except as provided for by paragraph 23 below.
22. An unredacted copy of the applicants' evidence in support of the Approval Application may be provided to any group member who has signed and returned to Adero Law a completed Request for Inspection Form in the form of Schedule 3 to the Notice to Group Members by no later than 4.00 pm on 21 October 2022.
23. On receipt of a signed Request for Inspection Form, Adero Law will cause an unredacted copy of the documents to be securely transmitted to the relevant group member within one business day.
24. Adero Law will keep a register of signed Request for Inspection Forms and will provide a copy of the register to the respondent within three business days of the respondent requesting the production of such a register.
25. The application for interim confidentiality orders will be determined as part of the determination of the Approval Application, and if settlement approval is granted, the parties can make an application for any continuing confidentiality order they seek.



**Procedural matters**

26. Liberty to apply.

Date that entry is stamped: 26 August 2022

*Sia Lagos*  
Registrar





## ANNEXURE A

### NOTICE TO GROUP MEMBERS – NOTICE OF PROPOSED SETTLEMENT

**Furnell & Ors v Shahin Enterprises Pty Ltd ACN 008 150 543 (SAD76/2020)**

**You should read this Notice carefully as it concerns your legal rights.** This Notice is provided pursuant to orders made by the Federal Court of Australia on 26 August 2022. It contains important information about the proposed settlement of these proceedings and your rights to register your claim for consideration in the proposed settlement or object to the settlement. This notice is not legal advice. You should seek independent legal advice if you are unsure what to do, noting the time limits to register to participate or object to the proposed settlement.

#### This notice is divided into four sections:

- **Section 1 – Summary of your options** **Page [10]**
- **Section 2 – Information about your options** **Page [11]**
- **Section 3 – Information about the class action** **Page [14]**
- **Section 4 – Information about the proposed settlement** **Page [21]**

### SECTION 1 – SUMMARY OF YOUR OPTIONS

Step 1 - If you:	Step 2 - Then:	Your Options:
<b><u>Have</u> previously registered to participate in the Class Action and have not opted out</b>	<b>You are a Registered Group Member</b>	<ol style="list-style-type: none"> <li><b>1. Do nothing (and participate in the Settlement if it is approved)</b></li> <li><b>2. Object (and participate in the Settlement if it is nonetheless approved)</b></li> <li><b>3. Make an application to the Court for an extension of the deadline by which you may opt out of the proceedings</b></li> </ol>
<b><u>Have not</u> previously registered to participate in the Class Action and have not opted out</b>	<b>You are an Unregistered Group Member</b>	<ol style="list-style-type: none"> <li><b>1. Register (and participate in the Settlement if it is approved)</b></li> <li><b>2. Do nothing (and be ineligible for any payment even if the Settlement is approved)</b></li> </ol>



		<p><b>3. Object (and, if registered, participate in the Settlement if it is approved, notwithstanding your objection)</b></p> <p><b>4. Make an application for an extension of the deadline by which you may opt out of the proceedings</b></p>
<b>Have</b> filed an opt out notice with the Court	You have opted out of the Class Action, and you may disregard the remainder of this notice.	Not Applicable

## SECTION 2 – INFORMATION ABOUT YOUR OPTIONS

### Your options if you are a Registered Group Member

1. If you have previously registered for the Class Action, you are a Registered Group Member and you have two options.

#### **Option A: Do nothing (and participate in the proposed settlement)**

2. If you wish to remain a Registered Group Member and participate in the Proposed Settlement, you do not need to do anything in response to this notice. **If the proposed settlement is approved by the Court, you may be eligible to receive a payment. You will be bound by the settlement and may need to provide certain information to the administrator.**

#### **Option B: Object by 24 October 2022**

3. You may object to the Proposed Settlement by completing the Notice of Objection to Proposed Settlement Form attached as Schedule 2 to this Notice and submitting it to the Court and representatives of the parties at the emails or postal addresses on the form **by no later than 4.00pm (ACDT) on 24 October 2022**. If you choose to do this, you may still do Option A.
4. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the applicants and SEPL, in determining whether or not the Proposed Settlement should be approved. The Court may grant you the opportunity to opt out of the class action, in which case you will not be bound by the settlement, you will not receive any settlement payments, and you will need to pursue an individual claim by yourself. If, after considering any objections, the Court does not approve the Proposed Settlement then the Class Action will



continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues, including directions relating to your individual claim.

**Option C: Apply to Extend the Deadline to Opt Out**

5. You may make an application under s 33J(3) of the FCA Act for an order fixing another date to extend the period during which you may opt out of the proceeding.

**Your options if you are an Unregistered Group Member**

6. If you have not previously registered to participate in the Class Action and you have not opted out of the Class Action, you are an Unregistered Group Member. You have four options.

**Option A: Register to participate in the proposed settlement by 24 October 2022**

7. You may register your claim by completing and submitting the Group Member Registration Form either online at [www.aderolaw.com.au/class-actions/on-the-run](http://www.aderolaw.com.au/class-actions/on-the-run) or completing the hard copy form attached as Schedule 1 to this Notice and returning it to Adero Law at the email or postal address on the form **by no later than 4.00pm (ACDT) on 24 October 2022.**
8. **If you register, you may be eligible to receive a payment from the proposed settlement.** The precise amount of the payment is presently unknown and will be determined using a model as part of the Settlement Distribution Scheme. There is no cost associated with registering your claim.

**Option B: Do nothing**

9. If you do nothing and the proposed settlement is approved by the Court, you will remain a Group Member for all purposes and be bound by the settlement but:
  - 9.1 **you will not, unless the Court determines otherwise, be entitled to receive a payment from the proposed settlement; and**
  - 9.2 **any rights you have to make a claim against SEPL or its related entities as set out at paragraph 41 of this Notice will be extinguished.**

**Option C: Object to the Proposed Settlement by 4.00pm (ACDT) on 24 October 2022.**

10. You may object to the Proposed Settlement by completing the **Notice of Objection to Proposed Settlement Form** attached as **Schedule 2** to this Notice and submitting it to the Court and representatives of the parties at the emails or postal addresses on



the form **by no later than 4.00pm (ACDT) on 24 October 2022**. If you choose to do this, you may still do Option A or B.

11. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the applicants and SEPL, in determining whether or not the Proposed Settlement should be approved. The Court may grant you the opportunity to opt out of the class action, in which case you will not be bound by the settlement, you will not receive any settlement payments, and you will need to pursue an individual claim by yourself. If, after considering any objections, the Court does not approve the Proposed Settlement, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues, including directions relating to your individual claim.

#### **Option D Apply to Extend the Deadline to Opt Out**

12. You may make an application under s 33J(3) of the FCA Act for an order fixing another date to extend the period during which you may opt out of the proceeding.

### **SECTION 3 – INFORMATION ABOUT THE CLASS ACTION**

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

13. On 14 May 2020, a class action was filed 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 (**SEPL**), between 14 May 2014 and 13 May 2020 (**Class Action**).
14. On 26 August 2022, the Federal Court of Australia (**Court**) approved the form and content of this Notice and ordered that it be distributed to persons who might be members of the class on whose behalf the action is brought and may be affected by the Class Action.
15. The applicants and SEPL have agreed to settle the Class Action and will be seeking Court approval of the proposed settlement. You are receiving this Notice because you may be affected by the proposed settlement of the Class Action.
16. 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 do not understand, then you should contact Adero Law or seek independent legal advice.

17. You should have previously received a Court-approved notice (previous notice) in about February or March 2021 in relation to the 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:
  - 17.1 opt out of the class action if you did not wish to participate in the Class Action;
  - 17.2 register for the Class Action so that your individual claim could be considered at the mediation that was to occur between the parties; or
  - 17.3 do nothing.
18. A copy of the previous notice is available at <https://www.aderolaw.com.au/class-actions/on-the-run/>.
19. This notice is directed only to those persons who, in response to the previous notice:
  - 19.1 **registered** to have their individual claim considered at mediation; or
  - 19.2 **did nothing** (that is, they did not register and did not lodge an opt out notice with the Court before the deadline of 14 May 2021).
20. The deadline for opting out of the Class Action has now passed. Any persons who lodged an opt out notice with the Federal Court before the deadline are no longer part of the Class Action and are not affected by this Notice.

#### **What is happening in the Class Action?**

21. The parties attended mediation and agreed to settle the Class Action. The Court will be asked to approve the proposed settlement and the proposed settlement distribution scheme to make payments to eligible group members.
22. **If the settlement is approved, then group members who have previously registered for the class action or who register by the deadline after receiving this Notice may be eligible to receive a payment from the settlement without going to trial.**
23. Group members have a right to lodge an objection to the proposed settlement, regardless of whether they have previously registered to have their claim considered at mediation or whether they register to participate in the settlement as set out in this Notice.



24. If the settlement is **not** approved by the Court, then group members will not receive any payment from the settlement and the class action will continue to trial and after the initial trial of the common issues, group members will need to pursue their individual claims.

**What is a class action?**

25. A class action is also called a “representative proceeding”. It is a case brought by one party (**applicants**) on their own behalf and on behalf of a class of people, who are referred to as group members, against another person or entity (**respondent**) where the applicants and the group members have similar claims against that respondent.
26. The applicants in a class action do 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 in this Class Action could opt out was contained in the previous notice and, as noted above, the deadline for opting out of this Class Action has now passed. The Court has the power to extend the deadline for opting out, either of its own initiative or on the application of an affected person.

**What is the Class Action about?**

27. On 14 May 2020, the Class Action was filed by Adero Law on behalf of the applicants and the group members, who are other former employees of SEPL.
28. The “**Group Members**” are persons who were employed by SEPL:
- 28.1 at any time within the period of 6 years ending on 14 May 2020; and
- 28.2 under the:
- (a) Shahin Enterprises Pty Ltd Employee Collective Agreement – Customer Service Employee (**Customer Service CA**) (which was in force until 30 June 2018); and/or
  - (b) Shahin Enterprises Pty Ltd Employee Collective Agreement – Full Time Employees (**Full Time CA**) (which was in force until 30 June 2018); and/or
  - (c) Vehicle Manufacturing, Repair, Services and Retail Award (**Award**) (which was in force from 1 July 2018); and
- 28.3 in the positions and circumstances summarised in paragraph 29 below,



The period in which the Customer Service CA and the Full Time CA were in force is referred to as the “**Collective Agreement Period**” and the period in which the Award was in force is referred to as the “**Modern Award Period**”.

29. The Group Members may belong to one or more of five sub-Groups.

29.1 **Group 1 Members (Certain Non-salaried Staff)**: current and former employees of SEPL who allege that at any time between 14 May 2014 and 13 May 2020 they:

- (a) were employed under the Customer Service CA and/or the Award in the positions of:
  - (1) console operator;
  - (2) driveway attendant; or
  - (3) roadhouse (food) attendant,
- (b) were directed verbally from time to time, to:
  - (1) arrive at work 10 minutes prior to the start of their scheduled shift (**Pre-Shift Work**);
  - (2) stay at work, be available to perform work and perform work after the completion of their scheduled shift (**Post-Shift Work**); and/or
  - (3) work through their shifts without taking a meal break by attending to customers during this period or being available during this period (either by being the only rostered employee and directed to attend any customers throughout their shift, or being directed from time to time while on a meal break to serve customers) to attend to customers without being given additional time for a meal break, despite their shifts scheduling such a break and a period of 30 minutes of their shifts being treated as an unpaid meal break (**Meal Break Work**);
- (c) were not paid their entitlements in the Collective Agreement Period arising from the Customer Service CA in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work;
- (d) were not paid their entitlements in the Modern Award Period arising from the Award in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work; and



- (e) have not, as at the date of commencement of this proceeding, commenced proceedings against SEPL in respect of the non-payment or underpayment of their full entitlements for the Pre-Shift Work, Post-Shift Work and/or Meal Break Work.

**29.2 Group 2 Members (Certain Non-Salaried Staff):** current and former employees of SEPL who allege that at any time in the Collective Agreement Period they:

- (a) were employed in the positions of:
  - (1) console operator;
  - (2) driveway attendant; or
  - (3) roadhouse (food) attendant,pursuant to the Customer Service CA,
- (b) were asked or directed verbally from time to time, to perform work in excess of their ordinary hours (**Overtime**);
- (c) were not paid their entitlements arising from the Overtime in that they were paid for such Overtime at their base rate of pay and not at the applicable overtime penalty rate provided for in the Customer Service CA; and
- (d) have not, as at the date of commencement of this proceeding, commenced proceedings against SEPL in respect of the underpayments of their entitlements relating to the Overtime.

**29.3 Group 3 Members (Certain Salaried Managers):** current and former employees of SEPL who allege that at any time between 14 May 2014 and 13 May 2020 they:

- (a) were employed in salaried managerial positions under the Full Time CA and/or Award of:
  - (1) store manager;
  - (2) assistant store manager;
  - (3) store manager in training;
  - (4) food manager;
  - (5) assistant food manager; or
  - (6) food manager in training,





- (b) were directed verbally from time to time, to perform work in excess of 38 hours per week (**Overtime**);
- (c) were not paid their entitlements arising from the Overtime arising from the Full Time CA in the Collective Agreement Period and Award during the Modern Award Period; and
- (d) have not, as at the date of commencement of this proceeding, commenced proceedings against SEPL in respect of the underpayments of their entitlements relating to the Overtime.

**29.4 Group 4 Members (Trainee Underpayment):** current and former employees of SEPL who allege that at any time during the Collective Agreement Period they:

- (a) were employed as ‘trainees’ in the positions of:
  - (1) console operator;
  - (2) driveway attendant; or
  - (3) roadhouse (food) attendant,pursuant to the Customer Service CA,
- (b) were engaged as ‘off-the-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.

**29.5 Group 5 Members (Deductions from Certain Staff Wages):** current and former employees of SEPL who allege that at any time between 14 May 2014 and 13 May 2020 they:

- (a) were employed pursuant to the Customer Service CA or Full Time CA during the Collective Agreement Period or the Award during the Modern Award Period,
- (b) had amounts deducted from their pay purportedly for the cost of:
  - (1) uniforms which they were directed by SEPL to wear when working; and



- (2) criminal history checks obtained by SEPL prior to their commencing in their employment.
30. **If you meet the above criteria and have not already opted out of the Class Action, you are a Group Member.**
31. The applicants sought orders from the Court including:
- 31.1 to recover compensation for amounts they claim not to have been paid or which should not have been deducted from their wages due to one or more of the above claims;
- 31.2 for payment of interest up to judgment on the above amounts; and
- 31.3 to impose “pecuniary penalties” (similar to a fine) on SEPL.
32. In about October 2021, you should have received a notice about the proposed discontinuance of the claim brought on behalf of Group 4 Members. Ultimately, this claim was not discontinued but was changed.
33. The allegations made by the applicants and which were the subject of the mediation of the Class Action are set out in the applicants’ Second Further Amended Statement of Claim, a copy of which is available at <https://www.aderolaw.com.au/class-actions/on-the-run>.
34. SEPL denies the allegations against it and has defended the claims brought by the applicants. The Amended Defence filed by SEPL in the Class Action is available at the same link set out above at paragraph 33.
35. SEPL has also joined two former Area Managers who gave witness statements for the applicants as cross-respondents to the proceedings on the basis that if SEPL is found to have engaged in unlawful conduct, those Area Managers should be liable for that conduct because they engaged in conduct outside of their authority.

## **SECTION 4 – INFORMATION ABOUT THE PROPOSED SETTLEMENT**

### **What does the Proposed Settlement involve?**

36. The parties participated in mediation on 25 May 2022 and 24 June 2022 with a retired Supreme Court Judge as mediator.
37. At mediation, the parties agreed an in-principle settlement of the Class Action, which means that the parties agreed to resolve the Class Action out of Court without going to trial.



38. SEPL will pay \$5.8 million (**Settlement Sum**), in full and final settlement of the claims of the applicants and all Group Members and inclusive of all costs, including legal and administration costs, expenses, disbursements, interest, tax and penalties. The parties have also agreed that the amount of the applicants' legal costs will be capped at a maximum sum of \$1.5 million (plus GST), which will be paid out of the Settlement Sum.
39. The Settlement Sum is paid by SEPL without any admission of liability or wrongdoing and on a commercial basis to resolve the proceedings without the parties incurring further legal fees. As part of the settlement, the applicants are withdrawing all allegations of serious contraventions of the Fair Work Act 2009 (Cth).
40. **If the proposed settlement is approved by the Court, the Class Action will be dismissed, and eligible Registered Group Members may receive a payment from the Settlement Sum.**
41. If the Court approves the proposed settlement, the applicants and all Group Members (whether Registered or Unregistered) will release and discharge SEPL and its related entities from all claims that are made, or could be made, as against SEPL by all Group Members arising from or under, in connection with or in relation to:
  - 41.1 the Class Action proceedings;
  - 41.2 the *Fair Work Act 2009* (Cth), the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth), the *Training Skills and Development Act 2008* (SA);
  - 41.3 the Customer Service CA, the Full Time CA or the Award; or
  - 41.4 any alleged denial of any monetary or non-monetary entitlement in respect of their employment (but not personal injury claims or other claims that cannot be released as a matter of law but for approval of the proposed settlement).
42. **As a Group Member, you will be bound by the proposed settlement if it is approved by the Court regardless of whether you have registered for the Class Action** and you will not be permitted to make any claims as set out in paragraph 41 above, nor provide information or otherwise assist any other person or entity in respect of any such claims.



### **What is a Settlement Distribution Scheme?**

43. The Settlement Distribution Scheme outlines the process by which the Settlement Sum is proposed to be paid to eligible Registered Group Members and must also be approved by the Court.
44. If the Court approves the proposed settlement, the parties will seek to have Adero Law appointed as the Administrator of the Settlement Distribution Scheme. The role of the Administrator is to supervise and manage the payment of the Settlement Sum to Group Members in accordance with the Settlement Distribution Scheme.
45. Adero Law, as Administrator, will create a database of information that will be used for the purposes of the determining the value of entitlements payable to Registered Group Members (**Settlement Payment**). If you register to participate in the settlement, you will be required to provide some information to the Administrator. That information will be used to determine the Settlement Payment payable to each eligible Registered Group Member using a calculation model that has regard to the factors listed below (**Model**). The Model is based on what Adero Law regards as a reasonable and just application of provisions of the Customer Service CA, Full Time CA and the Award.
46. The Settlement Payment that will be payable to each Registered Group Member will depend on a number of factors, including:
  - 46.1 which group claim(s) the Group Member alleges are applicable to them;
  - 46.2 information relevant to those claims provided by the Group Member to Adero Law when registering for the Proposed Settlement;
  - 46.3 the Group Member's period of employment, shift records and pay history; and
  - 46.4 any proportional discount that might be applied such that each Registered Group Member receives a fair and equitable share of the Settlement Sum.
47. The proposed settlement means that Group Members will not need to bring individual claims against SEPL but will instead have their claims assessed by the Administrator and, if their claims are accepted, they will receive a Settlement Payment from the Settlement Sum without needing to go to Court.
48. By registering to participate in the Proposal Settlement, Group Members who have already registered for the Class Action or who register by the deadline given in this Notice are deemed to agree the value of the Settlement Payments calculated using



the Model and that the value so calculated represents full and final payment for any and all entitlements payable to Group Members in respect of any claims as set out at paragraph 41 above.

49. Where the Model calculates that there is no Settlement Payment payable to a Registered Group Member and the Group Member is not eligible to receive any distribution (that is, the value of the Settlement Payment is calculated as being equal to or less than zero), the Group Member will be notified by the Administrator and will not be entitled to any Settlement Payment. There will be no appeal from the Administrator's decision.
50. If you have previously entered into a deed or other agreement that has by its terms released SEPL from any requirement to pay compensation in relation to the claims in the Proceedings, you may be excluded from receiving any benefit under the Proposed Settlement and you will receive a separate notice from Adero Law about that. You may wish to seek independent legal advice on this issue.

**Are Group Members liable for legal or other costs?**

51. If the Court approves the Proposed Settlement, the Settlement Sum will be in full and final satisfaction of all costs. The legal costs incurred by the applicants in pursuing the Class Action will be paid from the Settlement Sum prior to the distribution of any Settlement Payments to Group Members. This ensures that all Group Members who benefit will contribute to the legal costs and are treated equally.
52. The applicants and SEPL have agreed that these costs are capped at a maximum of \$1.5 million plus GST. The costs of administering the settlement under the Settlement Distribution Scheme will be included in the cap of \$1.5 million plus GST.
53. You will not otherwise be required to pay any legal costs for the Class Action, regardless of whether you receive a Settlement Payment, unless you seek independent legal advice.

**What is the settlement approval process?**

54. The Court still needs to approve the Proposed Settlement. The Proposed Settlement does not come into effect unless it is approved by the Court.
55. The Court will determine whether it is fair and reasonable and in the interests of all Group Members. The Court will also determine whether the amount allocated for payment to Adero Law on account of legal costs is also reasonable.



56. You may file a Notice of Objection to the Proposed Settlement and/or any aspect of the proposed distribution of the Settlement Sum to eligible Group Members. If you wish to file a Notice of Objection to the Proposed Settlement, you must do so by no later than 4.00pm (ACDT) on 24 October 2022. The Court will take any objections into account in deciding whether or not to approve the Proposed Settlement.
57. The Court will hold a hearing in order to decide whether to approve the Proposed Settlement, at **10.00am (ACDT) on 13 December 2022**.
58. 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. Lawyers for the applicants and SEPL will be at the hearing. You can attend the hearing if you want to, but you are not required to attend the hearing.
59. If you choose to send a Notice of Objection before 4.00pm (ACDT) on 24 October 2022, you can ask to address the Judge at the hearing about why you think the Proposed Settlement should not be approved. If you did not send a Notice of Objection before 4.00pm (ACDT) on 24 October 2022, you can still seek permission to address the Judge about the Proposed Settlement. To seek leave to address the Court at the Proposed Settlement you should email [associate.charlesworthj@fedcourt.gov.au](mailto:associate.charlesworthj@fedcourt.gov.au) with the subject line "Leave sought to appear at the Proposed Settlement Hearing SAD76/2020". The Associate to Justice Charlesworth will facilitate your attendance.
60. If the Proposed Settlement is not approved by the Court, the Class Action will continue.

#### **How can I access confidential documents?**

61. Group members may obtain a copy of certain documents which are to be kept strictly confidential including:
  - 61.1 the Deed of Settlement and Settlement Distribution Scheme;
  - 61.2 certain evidence and documents filed by the applicants in support of the proposed settlement.
62. If you wish to obtain a copy of these documents, you must complete and return the Request for Inspection Form at Schedule 3 of this Notice to Group Members by no later than 3.00pm (ACDT) on 21 October 2022.



63. You must also provide an undertaking to keep the contents of the documents confidential and only disclose the documents for the purpose of seeking legal or taxation advice, or to exercise any objection to the settlement in these Proceedings. This is referred to as a “**Confidentiality Undertaking**”.
64. A Confidentiality Undertaking is an undertaking to the Court that you will keep the contents of the documents provided to you for inspection confidential. **Any unauthorised disclosure of the contents of these documents is a contempt of Court, which is punishable either as a civil matter or a criminal offence.** The Confidentiality Undertaking is part of the Request for Inspection Form at Schedule 3.

**Where can I get more information?**

65. If you have any questions or queries, you may contact the applicants’ solicitors, Adero Law, at [ontherun@aderolaw.com.au](mailto:ontherun@aderolaw.com.au) with the subject line: Proposed Settlement SAD76/2020.
66. If you are unsure of what to do, you should seek independent legal advice.



## SCHEDULE 1 – GROUP MEMBER REGISTRATION FORM

**Furnell & Ors v Shahin Enterprises Pty Ltd ACN 008 150 543 (SAD76/2020)**

**Please return this form to:**

**By post:** Adero Law, 3 Hobart Place, CANBERRA ACT 2601

**OR**

**By email:** [ontherun@aderolaw.com.au](mailto:ontherun@aderolaw.com.au) with subject line: Registration Form SAD76/2020

**YOU MAY ALSO COMPLETE THIS FORM ONLINE**

**at** [www.aderolaw.com.au/class-actions/on-the-run](http://www.aderolaw.com.au/class-actions/on-the-run)

The person named below gives notice that the person wishes to **REGISTER** for the Proposed Settlement of this proceeding.

### **Details of Group Member**

Name of Group Member	
Date of Birth	
Telephone	
Email Address	
Postal Address	
SEPL Employee ID(s) (from payslips)	

### **Details required for any distribution from the settlement**

Tax File Number	
Bank Account Details	BSB: Account Number: Account Name:
Proof of Identity (e.g. Driver's Licence Number or Passport Number) <i>Please provide a scanned copy of identity document</i>	





Signed	
Name of Person Signing	
Date	



## SCHEDULE 2 – OBJECTION TO PROPOSED SETTLEMENT

**Furnell & Ors v Shahin Enterprises Pty Ltd ACN 008 150 543 (SAD76/2020)**

**Please return this form to:**

**By post:** Federal Court of Australia (SA Registry), 3 Angas Street, ADELAIDE SA 5000

**and**

Adero Law, 3 Hobart Place, CANBERRA ACT 2601

**and**

Piper Alderman, Level 16, 70 Franklin Street, ADELAIDE SA 5000

**OR**

**By email:** [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au) with subject line: Notice of Objection SAD76/2020

**and**

[rory.markham@aderolaw.com.au](mailto:rory.markham@aderolaw.com.au) with subject line: Notice of Objection SAD76/2020

**and**

[tgriffith@piperalderman.com.au](mailto:tgriffith@piperalderman.com.au) with subject line: Notice of Objection SAD76/2020

The person named below gives notice that the person **OBJECTS** to the proposed settlement of this proceeding.

### **Details of Objector**

Name of Individual	
Telephone	
Email Address	
Postal Address	



### Ground(s) of Objection

I am a Group Member in the above proceedings and I object to the Proposed Settlement of  
because [*set out below any submissions, attaching additional pages if necessary*]:

Signed	
Name of Person Signing	
Date	



### SCHEDULE 3 – REQUEST FOR INSPECTION FORM

**Furnell & Ors v Shahin Enterprises Pty Ltd ACN 008 150 543 (SAD76/2020)**

Name of Individual	
Email Address	

**Please sign below and send the completed Request for Inspection Form to:**

**By post:** Adero Law, 3 Hobart Place, CANBERRA ACT 2601

**OR**

**By email:** [ontherun@aderolaw.com.au](mailto:ontherun@aderolaw.com.au) with subject: Inspection Request SAD76/2020

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

- a) any solicitor of Adero Law acting in the Class Action; or
- b) an Australian Legal Practitioner, for the purposes of seeking and receiving independent legal advice; or
- c) an accountant or financial adviser, for the purposes of seeking taxation 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 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 \_\_\_\_\_

Witness \_\_\_\_\_

Date \_\_\_\_\_

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

Witness Date \_\_\_\_\_



## **ANNEXURE B**

### **REGISTERED GROUP MEMBER COVER LETTER**

Dear Registered Group Member

**CLASS ACTION – AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD  
ACN 008 150 543 (SAD76/2020)**

You are receiving this correspondence because you have previously registered for the Class Action.

The notice enclosed with this correspondence has been approved by the Federal Court of Australia. It provides you with important information about:

1. the proposed settlement of the class action; and
2. your right to object to the proposed settlement of the class action and/or any aspect of the proposed distribution of the settlement proceeds before the deadline of 4.00pm (ACDT) on 24 October 2022.

It is therefore very important that you read the enclosed Notice carefully.

If you have any questions, please visit the Class Action website at <https://www.aderolaw.com.au/class-actions/on-the-run> or contact Adero Law directly at [ontherun@aderolaw.com.au](mailto:ontherun@aderolaw.com.au).

Alternatively, you may wish to seek independent legal advice regarding the matters set out in this Notice.



## ANNEXURE C

### GROUP MEMBER COVER LETTER

Dear Group Member

**CLASS ACTION – AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD  
ACN 008 150 543 (SAD76/2020)**

You are receiving this correspondence because, based on the information available, you may have been employed by Shahin Enterprises Pty Ltd at any stage from 14 May 2014 onwards and may be a Group Member in the Class Action.

The notice enclosed with this correspondence has been approved by the Federal Court of Australia. It provides you with important information about:

1. the proposed settlement of the class action;
2. your right to object to the proposed settlement of the class action and/or any aspect of the proposed distribution of the settlement proceeds before the deadline of 4.00pm (ACDT) on 24 October 2022; and
3. what you need to do to register to participate in the proposed settlement of the class action before the deadline of 24 October 2022.

It is therefore very important that you read the enclosed Notice carefully.

If you have any questions, please visit the Class Action website at

<https://www.aderolaw.com.au/class-actions/on-the-run> or contact Adero Law directly at [ontherun@aderolaw.com.au](mailto:ontherun@aderolaw.com.au).

Alternatively, you may wish to seek independent legal advice regarding the matters set out in this Notice



## **ANNEXURE D**

### **Distribution Protocol for Notice to Group Members**

#### **1. Scope and definitions**

Terms defined in the Orders of Justice Charlesworth dated 26 August 2022 (**Orders**) to which this Protocol is Annexure D have the same meaning in this Protocol except where otherwise stated.

#### **2. Communication**

##### **2.1. Email**

- (a) The Notice to Group Members will be sent by the respondent by email by no later than 31 August 2022 to Group 5 Members for whom the respondent holds an email address (with the exception of the 183 Email Recipients for whom there were email delivery failures as described at paragraph [13] of the Affidavit of Thomas Alexander Griffith sworn 14 May 2021 and the 37 Email Recipients for whom there were email delivery failures as described at paragraph [16] of the Affidavit of Thomas Alexander Griffith sworn 25 November 2021).
  - (i) The subject line of the email shall read: “IMPORTANT: Class Action against Shahin Enterprises Pty Ltd”.
  - (ii) The body of the email shall read as set out in the Group Member Cover Letter.
  - (iii) The Notice to Group Members will be sent as a PDF attachment to the email.
- (b) If the respondent receives notification that an email was, or may not have been, delivered after two (2) business days, then by no later than 5 September 2022, it will:
  - (i) provide Piper Alderman and the Mailing Service with an email delivery failure report identifying the email failures or potential failures; and
  - (ii) instruct or cause Piper Alderman to instruct the Mailing Service to send the Notice to Group Members by ordinary prepaid post in accordance with section 2.2 below to all Group 5 Members identified in the delivery failure report for whom the respondent holds a postal address.

##### **2.2. Post**

- (a) The Notice to Group Members will be sent by the Mailing Service by prepaid ordinary post by no later than 26 September 2022 to Group 5 Members for whom:
  - (i) the respondent holds a postal address; and
  - (ii) either:
    - (A) the respondent does not have an email address recorded on their system;
    - or



(B) the Group Member is one of the Email Recipients described at paragraph [13] of the Affidavit of Thomas Alexander Griffith sworn 14 May 2021 or paragraph [16] of the Affidavit of Thomas Alexander Griffith sworn 25 November 2021.

- (b) Where the Mailing Service receives notification that an email sent in accordance with section 2.1 above was or may not have been delivered, the Notice to Group Members will be sent by the Mailing Service by prepaid ordinary post to the postal address held by the respondent for those Group Members by no later than 26 September 2022.
- (c) The Notice to Group Members will be attached to the Group Member Cover Letter.

### **3. Record of communications**

- (a) By no later than 30 September 2022, the respondent and the Mailing Service are to provide to Piper Alderman a document which lists all Group 5 Members to whom the Notice to Group Members has been sent in accordance with sections 2.1 and/or 2.2 above, as the case may be, and which identifies in relation to each potential Group Member:
  - (i) the method(s) by which the Notice to Group Members was sent;
  - (ii) the date(s) on which the Notice to Group Members was sent;
  - (iii) whether and which distribution attempts failed; and
  - (iv) the form of the evidence by which the failed distribution attempt was identified, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar).
- (b) To the extent that they would not already do so in the ordinary course of their businesses, the respondent and the Mailing Service, as the case may be, are to retain records for the duration of this proceeding of all communications sent to and received from Group 5 Members in the course of executing this Protocol, including:
  - (i) the emails sent in accordance with section 2.1 above;
  - (ii) postal records or receipts or similar of the Notices to Group Members sent by prepaid ordinary post in accordance with section 2.2 above; and
  - (iii) evidence of any failed distribution attempts of the kind referred to in section 3(a)(iv) above.





#### **4. General Compliance with this Protocol**

- (a) In the event that the respondent or the Mailing Service become aware that they are unable to comply with, or have failed to comply with, any requirements under this Protocol, they are to notify Piper Alderman in writing within two (2) business days of so becoming aware.
- (b) Notice of any matter which is required to be given to Piper Alderman under this Protocol is to be given to Tom Griffith by email to [tgriffith@piperalderman.com.au](mailto:tgriffith@piperalderman.com.au).



## Schedule

No: SAD76/2020

Federal Court of Australia

District Registry: South Australia

Division: Fair Work

Second Applicant	PAUL YOUNG
Third Applicant	SHANNAN MAHONEY
Fourth Applicant	CHRISTOPHER PALMER
Fifth Applicant	LAURENCE LACON WILLIAMSON

### **CROSS CLAIM**

Cross-Claimant	SHAHIN ENTERPRISES PTY LTD ACN 008 150 543
Cross-Claimant	SHAHIN ENTERPRISES PTY LTD
Cross Respondent	LAURA MADELINE D'CRUZ
Cross Respondent	MARK DYLAN GARWOOD