



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID698/2021

ANDREA KYLE-SAILOR

Applicant

ALEX HEINKE and others named in the schedule

First Respondent

ORDER

JUDGE: JUSTICE HORAN

DATE OF ORDER: 26 June 2024

WHERE MADE: Melbourne

THE COURT NOTES THAT:

1. Subject to Court approval, this proceeding has settled on the terms set out in the **Settlement Deed** dated 22 November 2023, exhibited to the confidential affidavit of Stewart Alan Levitt sworn on 6 December 2023, as amended by the Deed of Amendment dated 26 June 2024, between:
 - (a) the Applicant in this proceeding, Andrea Kyle-Sailor on her own behalf and on behalf of the Group Members in this proceeding;
 - (b) Alex Heinke
Nine Entertainment Co Pty Ltd (ACN 122 205 065)
Nine Digital Pty Ltd (ACN 077 753 461); and
Nine Network Australia Pty Ltd (ACN 008 685 407)
(together **Respondents**).
 - (c) Stewart Alan Levitt trading as Levitt Robinson; and
 - (d) BLM (Australia) LLC (**Funder**);
(the persons named in (c) and (d) above, collectively, the **Affected Parties**)
(the **Proposed Settlement**).



THE COURT ORDERS THAT:

Notices

1. Pursuant to s 33X of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), all Group Members are to be given notice of the Proposed Settlement.
2. Pursuant to ss 33X and 33Y of the FCA Act, the form and content of the notices as set out at:
 - (a) Annexure A to these Orders (**Settlement Notice**);
 - (b) Annexure B to these Orders (**Opt Out Notice**);
 - (c) Annexure C to these Orders (**Cover Letter**),(collectively the “**Notices**”), are approved.
3. Pursuant to ss 33X and 33Y of the FCA Act, leave is granted to the Applicant to distribute the Settlement Notice and Opt Out Notice in accordance with the procedure outlined in Orders 4 and 5 below.
4. For the purposes of ss 33X and 33Y of the FCA Act, the Notices are to be given to Group Members according to the following procedure:
 - (a) by **3 July 2024**, the Applicant shall cause a copy of:
 - (i) the Notices to be sent by email or by ordinary mail (where a working email address is not available), to the extent such details are available to the Applicant, to each person who has entered into a funding agreement with the Funder for the purposes of this proceeding or has been identified by the Solicitors for the Applicant as a Group Member (even if they have not entered into a funding agreement with the Funder for the purposes of this proceeding); and
 - (ii) the Settlement Notice to be published to the Group Members by way of sponsored Facebook post on the Levitt Robinson Facebook page.
 - (b) by **3 July 2024**, the Applicant shall cause:
 - (i) a copy of the Settlement Notice;
 - (ii) a copy of the Opt Out Notice; and
 - (iii) a blank form in Word for the making of objections to the Proposed Settlement (in the form of the notice of objection which is at Schedule 1 to the Settlement Notice):
to be displayed on Levitt Robinson’s website at <http://levittrobinson.com/class-actions> under “Current Class Actions”



and then “Palm Island – Channel 9 Class Action” up to and including 24 July 2024 (**Objection Deadline**) or until further order (whichever is earlier);

- (c) by **3 July 2024**, the Applicant shall cause hard copies of the Settlement Notice and Opt Out Notice to be made available at the following public facilities on Palm Island:
- (i) the Palm Island Retail Store;
 - (ii) the Joyce Palmer Health Service; and
 - (iii) the Bwngcolman Community School.
- (d) by **3 July 2024**, the District Registrar of the Victorian Registry of the Federal Court of Australia shall cause a copy of the Settlement Notice and Opt Out Notice, together with copies of these Orders, to:
- (i) be displayed on the Federal Court website at an address beginning <https://www.fedcourt.gov.au>; and
 - (ii) remain continuously so displayed and available up to and including the Objection Deadline.

5. The costs of distributing the Notices in accordance with Order 4 above shall be paid in the first instance by the Applicant but ultimately be costs in the cause.
6. The Notices may be amended by the parties to this proceeding by agreement before being published in order to correct any non-substantive typographical error, or any postal, website or email address or telephone.

Approval Application timetable

7. By **4.00pm (AEST) on 26 August 2024**, the Applicant shall file and serve any further non-confidential affidavit material and outline of submissions in support of the orders set out in Part B of the Applicant’s Amended Interlocutory Application dated 29 February 2024 (**Approval Application**).
8. By **4.00pm (AEST) on 2 September 2024**, the Applicant has leave to file any affidavit or exhibit or part thereof, in respect of which confidentiality orders are to be sought.
9. By **4.00pm (AEST) on 9 September 2024**, the Respondents and the Funder file and serve any affidavit material and any outline of submissions in relation to the Approval Application.
10. The Approval Application is listed for hearing before Justice Horan at **10.15 am (AEST) on 16 September 2024 (Approval Hearing)**.



Confidentiality

11. Pursuant to s 37AI of the FCA Act, any affidavit, annexure, exhibit or submissions in respect of which a confidentiality order will be sought will be suppressed upon filing, until further order.
12. The parties are excused from any requirement to serve any document filed in accordance with Order 11.
13. To the extent that any affidavit, annexure, exhibit or submissions is only partly confidential, the parties shall file and serve a redacted copy of the document redacting only those parts that are claimed to be confidential.
14. The application for confidentiality orders in respect of any document filed in accordance with Order 11 will be determined as part of the determination of the Approval Application.

Opt Out

15. Pursuant to s 33J of the FCA Act, **24 July 2024** is fixed as the date on or before which a group member may opt out of this proceeding.
16. Any group member who wishes to opt out of this proceeding must do so by sending a completed opt out form (in the form of the opt out form at Annexure A to the Opt Out Notice) so that it is received by the Victorian District Registry of the Federal Court of Australia, either via email to vicreg@fedcourt.gov.au or by post to the Registry, Federal Court of Australia, 305 William Street, Melbourne, Victoria, 3000, by **24 July 2024**.
17. If, on or before **24 July 2024**, the solicitors for any party or Affected Party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors must email the notice to vicreg@fedcourt.gov.au (copying the solicitors for the other parties and Affected Parties) within one (1) business day of receipt, and the notice shall be treated as though it was received by the Court at the time it was received by the solicitors.

Objections to the Proposed Settlement

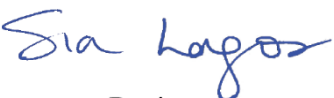
18. By 24 July 2024, or such further time as may be allowed by the Court, any person who wishes to oppose the making of orders in accordance with the Approval Application must do so by sending a completed objection form (in the form of the notice of objection at Schedule 1 to the Settlement Notice) so that it is received by the Victorian District Registry of the Federal Court of Australia, either via email to vicreg@fedcourt.gov.au or by post to the Registry, Federal Court of Australia, 305 William Street, Melbourne, Victoria, 3000.
19. Any person who has sent an objection form pursuant to Order 18 may, if that person wishes to do so, also appear at the Approval Hearing either in person or



via video-link. Any other person wishing to appear at the Approval Hearing may do so only with the leave of the Court.

20. If, before the Approval Hearing, the solicitors for any party or Affected Party receive a notice purporting to be an objection form referable to this proceeding, the solicitors must email the notice to vicreg@fedcourt.gov.au (copying the solicitors for the other parties and Affected Parties) within one (1) business day of receipt (and before the commencement of the Approval Hearing), and the notice shall be treated as though it was received by the Court at the time it was received by the solicitors.
21. The parties and Affected Parties have leave to inspect the Court file and to copy any objection forms filed with the Court.
22. Any obligation of service in these orders is an obligation to serve the parties and the Affected Parties.
23. The Applicant is to distribute sealed copies of this order to the Affected Parties within one (1) business day of receiving notification from the Court that the orders have been sealed.
24. The parties and the Affected Parties have liberty to apply.

Date orders authenticated: 26 June 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: VID698/2021

Federal Court of Australia

District Registry: Victoria

Division: General

Second Respondent	NINE ENTERTAINMENT CO. PTY LTD
Third Respondent	NINE DIGITAL PTY LIMITED (ACN 077 753 461)
Fourth Respondent	NINE NETWORK AUSTRALIA PTY LTD (ACN 008 685 407)



ANNEXURE A – SETTLEMENT NOTICE



FEDERAL COURT OF AUSTRALIA

SETTLEMENT NOTICE

VID698/2021

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

1 Why is this notice important?

- 1.1 On 22 November 2023, the Applicant, Nine Entertainment Co Pty Limited, Nine Digital Pty Limited and Nine Network Australia Pty Ltd (**Channel 9**), Stewart Levitt trading as Levitt Robinson Solicitors, and BLM (Australia) LLC (**Funder**) agreed to settle, without admission of liability, the Palm Island – Channel 9 Class Action for \$3,000,000 (**Settlement Sum**) and signed a Deed of Settlement (the **Settlement**).
- 1.2 If you are a group member in the Palm Island – Channel 9 Class Action, your legal rights will be affected by the proposed Settlement. This notice explains some things about the proposed Settlement to enable you to work out whether you agree or disagree with it.”
- 1.3 The Settlement has no effect unless it is approved by the Federal Court of Australia (**Court**).
- 1.4 This Notice contains important information about the Settlement and has been issued to you on the orders of the Court. Any questions you have concerning the matters contained in this notice should not be directed to the Court. You should contact Levitt Robinson at eardon@levittrobinson.com. If there is anything in the notice that you do not understand, you may also seek your own legal advice.
- 1.5 If you are in favour of the Settlement, there is nothing you need to do in response to this notice. Though, if the Settlement is approved, you should consider whether you wish to nominate yourself for consideration as part of the Higher Damages Group (see paragraphs 6.1–6.3 below).



- 1.6 If you wish to object to the Settlement, you must file a written NOTICE OF OBJECTION TO PROPOSED SETTLEMENT with the Federal Court in the form attached to this Notice and marked “**Schedule 1**” by emailing vicreg@fedcourt.gov.au and copying eardon@levittrobinson.com or by posting a copy to the Registrar of the Federal Court of Australia, 305 William Street, Melbourne Victoria 3000, by no later than **4 pm** on XXXXX 2024.
- 1.7 If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on **2024** at a.m. and make further submissions to the Court in support of your objection.
- 1.8 If you have not filed a Notice of Objection to Proposed Settlement by no later than **4 pm** on XXXXX 2024, you can still seek the Court’s leave to file your Notice late, or to appear to make submissions at the Approval Hearing.
- 1.9 Section [2] below explains what the Palm Island – Channel 9 Class Action is about.
- 1.10 You should also have received a copy of an Opt Out Notice. You should complete and return the Opt Out form only if you want to bring your own claim against Channel 9. If you Opt Out, you will **NOT** be entitled to any compensation from the Settlement. If you have not received a copy of an Opt Out Notice, you may request a copy by telephoning Levitt Robinson on (02) 9186-3133, or emailing eardon@levittrobinson.com.
- 1.11 Whether or not you wish to Opt Out, you should read this Notice very carefully.

2 The claims in the Class Action

- 2.1 The Palm Island - Channel 9 Class Action was brought on behalf of the persons who were eligible for compensation pursuant to the settlement scheme approved by the Federal Court in *Wotton v State of Queensland (No 10)* [2018] FCA 915 (**Wotton Class Action Settlement**).
- 2.2 A summary of allegations made in the Palm Island - Channel 9 Class Action by the Applicant appears in paragraphs 2.3 to 2.5 below.



- 2.3 The Applicant alleged that Channel 9 contravened section 18C of the *Racial Discrimination Act 1975* (Cth), by broadcasting videos and publishing a story in May 2020 (**Channel 9 Publications**) that suggested the following things about people (**Group Members**) who received compensation from the Wotton Class Action Settlement:
- 2.3.1 that the compensation process was being rorted by them, or a significant number of them, and, as a consequence, many of the actual recipients were not proper or lawful recipients of compensation;
- 2.3.2 that they, or a significant number of them, were rioters whose unlawful conduct (including being involved in violent conduct and burning down of the police station with officers inside at Palm Island on 26 November 2004) meant that they were not proper or lawful recipients of the compensation;
- 2.3.3 that they, or a significant number of them, spent or were spending the compensation monies recklessly, wastefully, foolishly, irresponsibly, frivolously and/or lavishly;
- 2.3.4 that the payment of compensation at the taxpayers' expense to them, or a significant number of them, was unjustified and/or unwarranted;
- 2.3.5 that they, or a significant number of them, were wasting taxpayers' money; and
- 2.3.6 that they, or a significant number of them received compensation payments from fraudulent or false claims made by them and/or were unworthy recipients of the monies being paid to them.
- 2.4 The Applicant also alleged that:
- 2.4.1 both she and Group Members suffered (from case to case) some or all of offence, insult, humiliation, and/or intimidation, as well as shame and embarrassment; and
- 2.4.2 some Group Members were publicly vilified or insulted after and because of the Channel 9 Publications.
- 2.5 The Applicant also sought an apology to the Group Members and that a correction be published.



- 2.6 Channel 9 denied all allegations made against it in the Palm Island – Channel 9 Class Action.
- 2.7 The claims that were made against Channel 9 are set out more fully in the Applicant's Amended Concise Statement, a copy of which can be obtained from Levitt Robinson on request.
- 2.8 A copy of Channel 9's Amended Concise Statement in Defence of the Palm Island - Channel 9 Class Action, and the Applicant's Amended Concise Reply, can also be obtained from Levitt Robinson on request.

3 The Settlement with Channel 9

- 3.1 On 22 November 2023, the Applicant, Stewart Levitt, the Funder and Channel 9 agreed to settle the Palm Island – Channel 9 Class Action for the Settlement Sum.
- 3.2 The terms of the Settlement:
 - 3.2.1 provide that the Applicant is to apply to the Court for approval of the Settlement and for approval of a scheme to distribute the Settlement Sum (**Settlement Scheme**);
 - 3.2.2 provide that payment of the Settlement Sum is all-inclusive of interest, costs and administration costs (as explained in paragraph 3.4 below, and see also paragraphs 4.3–4.6);
 - 3.2.3 provide that payment of the Settlement Sum is made without any admission of liability by Channel 9;
 - 3.2.4 involves the Applicant on her behalf and on behalf of all Group Members releasing and forever discharging the Respondents from the Applicant's and the Group Members' Claims (these claims are defined in the Settlement);
- 3.3 The Settlement Sum is \$3,000,000.
- 3.4 The Settlement Sum includes legal costs, interest and commission to be paid to the Funder, which means that the legal costs, administration costs, interest and commission which are approved by the Court will be deducted from the Settlement Sum before the remainder is distributed to Group Members under the Settlement Scheme. Clauses 4.1 to 4.3 address the Funder's commission.
- 3.5 The Settlement also provides that:



- 3.5.1 The Respondents will publish an apology and correction in the form attached to this Notice;
 - 3.5.2 the Class Action be discontinued with no order as to costs;
 - 3.5.3 the Respondents will bear their own costs of the Class Action;
 - 3.5.4 Stewart Levitt will act as Administrator of the Settlement; and
- 3.6 the parties to the Settlement agree not to disparage one another in relation to any matter in connection with the Palm Island – Channel 9 Class Action.

4 Payments to be deducted from the Settlement Sum

Payment to the Funder

- 4.1 Of the 437 Group Members who were not deceased at the date of the Channel 9 Publications (**Participating Group Members**), 401 signed a funding agreement with the Funder. Under the funding agreements the Funder is entitled to a commission of 28% of the compensation to be paid to those Group Members, calculated on the gross Settlement Sum (but not including an amount for the costs order which the Applicant obtained against Channel 9 in High Court proceedings related to the Class Action).
- 4.2 The Applicant will ask for a Funding Equalisation Order. If the Court were to make such an order, it would be for the purpose of ensuring that all Participating Group Members pay a fair share of the commission to be paid to the Funder. The share they have to pay will be deducted from their compensation.

Legal Costs

- 4.3 In addition to the commission to be paid to the Funder, the Applicant's solicitors, Levitt Robinson, have agreed, subject to Court approval, to accept \$670,000 for their legal costs and disbursements including the costs and disbursements in connection with the application to the Court to approve the Settlement (**Applicant's Costs**).
- 4.4 The proposed Administrator (Mr Stewart Levitt) will also incur costs in administering the Settlement and distributing the Settlement Sum (**Administration Costs**). He has agreed, subject to Court approval, to keep his costs to a maximum of \$100,000.
- 4.5 The Court will decide how much should be paid from the Settlement Sum for the legal costs and administration costs.



Payment to Applicant

- 4.6 In addition, subject to Court approval, the Applicant is to be paid \$10,000 for her time and trouble for agreeing to be the Applicant (**Applicant Payment**).

5 The Participating Group Members

- 5.1 While the Group Members are all 449 persons who received, or who were eligible to receive, compensation from the Wotton Class Action Settlement, only those Group Members who were alive at the time that the Channel 9 Publications were made—that is, the Participating Group Members—are eligible to participate in this Settlement. Of the 449 Group Members, 12 were deceased at the time of the Publications. That leaves 437 persons who are Participating Group Members

6 Distribution of the Net Settlement Sum

- 6.1 Participating Group Members will share in the balance of the Settlement Sum after deduction of the Court-approved Applicant's Costs and Administration Costs, and as affected by any Funding Equalisation Order (**Net Settlement Sum**). It is estimated that each participating Group Member will receive a Minimum Payment of \$2,000 to \$3,000. The Minimum Payment will be at least \$2,000.
- 6.2 Some Participating Group Members will receive a Higher Payment estimated to be about \$4,700 to \$5,200. Only Participating Group Members who satisfy the Administrator that they were vilified or insulted by a member or members of the public as a result of any of the Channel 9 Publications (**Higher Damages Group**) will receive the Higher Payment.
- 6.3 Any Participating Group Member wishing to nominate themselves for the Higher Damages Group will have to complete a registration form. The registration form will be distributed only after the Settlement receives Court approval.

7 Court approval

- 7.1 The Settlement has no effect unless it is approved by the Court.
- 7.2 If you are a Group Member, you have a right to object to the approval of the Settlement.



- 7.3 The application for Court approval of the Settlement and the Settlement Scheme will take place at a hearing at the Federal Court of Australia, 305 William Street in Melbourne on XXXXXX 2024 at am and via audio-visual link (**Approval Hearing**).
- 7.4 In determining the application for approval, the Court will consider whether the Settlement is fair and reasonable having regard to the interests of all Group Members.

8 What you must do

- 8.1 If you are in favour of the Settlement, there is nothing you need to do at this time.
- 8.2 If you wish to object to the Settlement, you must file a written NOTICE OF OBJECTION TO PROPOSED SETTLEMENT with the Federal Court in the form attached to this Notice and marked “**Schedule 1**” by emailing vicreg@fedcourt.gov.au and copying earдон@levittrobinson.com or by posting a copy to the Registrar of the Federal Court of Australia, 305 William Street, Melbourne Victoria 3000, by no later than **4 pm** on XXXXX 2024.
- 8.3 If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on 2024 at a.m. and make further submissions to the Court in support of your objection.
- 8.4 If you have not filed a Notice of Objection to Proposed Settlement by no later than **4 pm** on XXXXX 2024, you can still seek the Court's leave to file your Notice late, or to appear to make submissions at the Approval Hearing.
- 8.5 **You are free to make up your own mind** whether to object or do nothing. You can also take advice about your options and the information contained in this Notice. Further information can be obtained by contacting Levitt Robinson as set out below or any other lawyer of your choice.

9 If the Settlement is approved

- 9.1 If the Settlement is approved by the Court, the parties will await the passing of the applicable appeal periods (which is 49 days). Assuming there is no appeal of the Court's approval of the Settlement, Channel 9 will then pay the Settlement Sum into an interest-bearing controlled money account held on trust by the Administrator.



- 9.2 After the expiry of the applicable appeal periods, Participating Group Members will receive a Settlement Confirmation Notice.
- 9.3 Payments will first be made to the Funder to reimburse it for the Court approved legal costs that it has already paid, to Levitt Robinson for Court-approved unpaid legal costs. Then, the claims on the Settlement Sum will be assessed by the Administrator and he or she will calculate the compensation payable to Participating Group Members and disburse the Settlement Sum in accordance with clauses 4, 5 and 6.

10 If the Settlement is not approved

- 10.1 If the Settlement is not approved by the Court following the Approval Hearing, the parties may need to renegotiate the Settlement in accordance with the Court's directions or guidance, or seek directions for the continuation of the Proceedings.
- 10.1 If the Palm Island – Channel 9 Class Action continues there will be no distribution of monies to Participating Group Members unless and until the Applicant is successful in the proceedings, or a further settlement is reached (which would also be subject to Court approval).
- 10.2 If the Palm Island – Channel 9 Class Action continues and fails, there will be no distribution of monies to any Group Members.

11 Relevant documents

- 11.1 Copies of relevant documents, including:
- 11.1.1 the Applicant's Amended Concise Statement,
 - 11.1.2 Channel 9's Amended Concise Statement in Defence,
 - 11.1.3 the Applicant's Amended Concise Reply,
 - 11.1.4 the Deed of Settlement; and
 - 11.1.5 the proposed Settlement Scheme,
- may be obtained by:
- 11.1.6 emailing earдон@levittrobinson.com and requesting copies;
 - 11.1.7 in the case of the documents at 11.1.1–11.1.3 contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or



11.1.8 in the case of the documents at 11.1.1–11.1.3 inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions> to the extent such documents are available there.

11.2 Please consider the above carefully. If there is anything of which you are unsure, you should contact Levitt Robinson (whose contact details are set out below) or seek your own legal advice.

11.3 Contact details of Levitt Robinson:

Address: **Ground Floor, 162 Goulburn Street, Surry Hills NSW 2010**

Phone: **(02) 9286 3133**

Email: eardon@levittrobinson.com



“Schedule 1”

Notice of Objection to Proposed Settlement with Channel 9

No. VID 698 of 2021

Federal Court of Australia

District Registry: Victoria

Division: General

ANDREA KYLE-SAILOR

Applicant

ALEX HEINKE and others

Respondents

TO: The Registrar, Federal Court of Australia
Victorian Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne Victoria 3000
vicreg@fedcourt.gov.au

Name of group member:	
Email Address	
Telephone number:	

I am a Group Member in the above Proceedings and I object to the proposed settlement of these proceedings because *[set out reasons for objection below or attach additional pages]*:

Date: _____

Signature: _____

Name of signatory: _____



ANNEXURE B – OPT OUT NOTICE



FEDERAL COURT OF AUSTRALIA

OPT OUT NOTICE

VID698/2021

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

A. Why is this notice important?

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

B. What is a class action?

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



- 7 Group members in a class action are not individually responsible for any legal costs associated with bringing the class action if the class action is unsuccessful. You may only be required to pay legal costs if the class action is successful. Any legal costs you may be required to pay will not exceed the amount of you may receive by being a part of the class action.
 - 8 Group members are "bound" by the outcome in the class action, unless they have **opted out** of the proceeding. This means that if you **do not** opt out:
 - (a) You may be able to share in any compensation or other benefit arising from a settlement; and
 - (b) If the class action proceeds to a trial and is successful, then you may be able to share in any Court-awarded damages;
 - (c) You will be bound by the dismissal of the case if the class action fails; and
 - (d) You will not be able to sue about the matters that are the subject of the class action in separate legal proceedings.
 - 9 A result that is binding on group members can happen in two ways—either by a judgment following a trial, or by a settlement at any time.
 - 10 In a judgment following trial, the Court will decide various factual and legal issues in respect of the claims made by the Applicant and group members. Unless those decisions are successfully appealed, they bind the Applicant, group members and Channel 9.
 - 11 Importantly, if there are other legal proceedings between a group member and Channel 9, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - 12 In a settlement of a class action, if the settlement provides for compensation to group members then the settlement terms may also extinguish all rights to compensation which a group member might have against Channel 9 which arises in any way out of the events or transactions which are the subject-matter of the class action.
 - 13 If you think that you have claims against Channel 9 which are based on your individual circumstances, or that you have claims in addition to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out (see below).
- C. Are you a group member?**
- 14 Group members in the class action are those who received or were entitled to receive compensation from the Wotton Class Action Settlement.
 - 15 If you are unsure whether or not you are a group member, you should contact Levitt Robinson Solicitors on 02 9286 3133 or email earдон@levittrobinson.com or seek your own legal advice without delay.



D. What is this class action about?

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



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

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

F. How is the class action being funded?

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

G. Common Fund Order OR Funding Equalisation Order?

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



H. What is 'Opt Out'?

- 31 This is an Opt Out class action. This means that all persons who received or were entitled to receive compensation from Wotton Class Action are Group Members in the Palm Island-Channel 9 Class Action.
- 32 However, you have an opportunity to opt out of the Palm Island-Channel 9 Class Action should you choose to.
- 33 The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found just below, in Section I.

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

- 34 If you opt out of the class action:
- (a) You **WILL NOT** receive any compensation from the proposed Settlement with Channel 9.
 - (b) You **WILL NOT** be bound by, or entitled to share in any benefit of, any order, judgment or other settlement in the Palm Island-Channel 9 Class Action; and
 - (c) You **WILL** be able to bring your own claim against Channel 9, provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Channel 9, you should seek your own legal advice about your claim and the legal costs involved and the applicable time limit prior to opting out.
- 35 If you do not opt out, then:
- (a) You **WILL** be able to share in any compensation or other benefit arising from the proposed Settlement or any other settlement, subject to Court approval; and
 - (b) If the proposed Settlement is not approved and the class action proceeds to a trial and is successful, then you **MAY** be able to share in any Court-awarded damages; and
 - (c) You **WILL** be bound by the dismissal of the case if the class action fails; and
 - (d) You **WILL NOT** be able to sue about the matters that are the subject of the class action in separate legal proceedings.
- 36 If you wish to remain a group member, you must not opt out of the class action.
- 37 If you wish to opt out of the class action you must do so by completing an "Opt Out Notice" in the form attached to this notice and marked "A", then returning it to the Registrar of the Federal Court of Australia by email or at the address on the form. **IMPORTANT: if you want to opt out, the Notice must reach the Registrar by no later than XXXXXXXX 2024,** otherwise it will not be effective. The notice may be sent to the Victorian District Registry of the Federal Court of Australia, either via email to vicreg@fedcourt.gov.au or by post to the Registry, Federal Court of Australia, 305 William Street Melbourne VIC 3000.



- 38 **You are free to make up your own mind** whether to submit an Opt-Out Notice or do nothing. You can also take advice about your options and the information contained in this Notice. Further information can be obtained by contacting Levitt Robinson, or any other lawyer of your choice.
- J. What if you wish to remain a group member?**
- 39 If you wish to remain a group member there is nothing you need to do now. The Applicant has filed an application with the Court for approval of the proposed Settlement with Channel 9.
- 40 If the Settlement is approved you will receive a further notice about that.
- 41 If the Settlement is not approved and the Palm Island - Channel 9 Class Action continues and is unsuccessful, or is not as successful as you might have wished, you will not be able to sue Channel 9 on the same claim in any other proceedings.
- K. Where can you obtain copies of relevant documents?**
- 42 Copies of relevant documents, including the Amended Concise Statement filed by the Applicant, the Amended Concise Statement filed in Defence by Channel 9, and the Applicant's Concise Reply may be obtained by:
- (a) e-mailing eardon@levittrobinson.com and requesting copies;
 - (b) contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee; or
 - (c) inspecting them on the Federal Court website at <http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.
- 43 Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson Solicitors on 02 9286 3133 or eardon@levittrobinson.com or seek your own legal advice. **You should not delay in making your decision.**



“A”

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

Form 21
Rule 9.34

Opt out notice

No. VID 698 of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

ANDREA KYLE-SAILOR
Applicant

ALEX HEINKE and others
Respondents

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

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

Name of group member:	
Telephone:	
Email:	

Date:
Signed:



ANNEXURE C – COVER LETTER



XXXXXX

Dear Sir/Madam

**Proposed Settlement of Federal Court of Australia Proceedings VID 698 of 2021
Andrea Kyle-Sailor v Alex Heinke & Ors (Palm Island – Channel 9 Class Action)**

In accordance with orders of the Court made on XXXX, please find **enclosed:**

1. a Settlement Notice regarding the settlement of the Class Action; and
2. an Opt Out Notice, should you wish to take no further part in the Class Action.

If you have any questions about the Settlement Notice, Opt Out Notice, or the Class Action, you can contact Levitt Robinson on (02) 9286 3133 or at eardon@levittrobinson.com.au, or you may seek your own legal advice.

Yours Faithfully

Levitt Robinson Solicitors

Per: