



Federal Court of Australia
District Registry: Victoria Registry
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: 12 August 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
 - (i) Nine Entertainment Co Pty Ltd (ACN 122 205 065)
 - (ii) Nine Digital Pty Ltd (ACN 077 753 461); and
 - (iii) 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 BY CONSENT THAT:

Notices

1. Pursuant to ss 33X and 33Y of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), leave is granted to the Applicant to distribute the Settlement Notice and Opt Out Notice (the **Notices**) approved by the Orders of Justice Horan dated 26 June 2024 (**June Orders**) in accordance with the procedure outlined in Orders 2, 3 and 4 below (copies of the Notices are attached as annexures to the June Orders).
2. The Notices to be amended to reflect that the date on or before which a Group Member may opt out of this proceeding or submit a completed objection form be **4 September 2024**, prior to the Notices being distributed in accordance with Orders 3 and 4.
3. 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 **14 August 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 **14 August 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 remain displayed and available 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 4 September 2024 (**Objection Deadline**) or until further order (whichever is earlier);

(c) by **14 August 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 Bwgc Colman Community School.

(d) by **14 August 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 and the June Orders, to be displayed (or continued to be displayed) and available on the Federal Court website at an address beginning <https://www.fedcourt.gov.au> up to and including the Objection Deadline.

4. The costs of distributing the Notices in accordance with Order 3 above shall be paid in the first instance by the Applicant but ultimately be costs in the cause.
5. 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

6. Orders 7 to 9 (inclusive) of the June Orders be vacated.
7. By **4.00pm** (AEST) on **5 September 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 **5 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 **11 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 remains listed for hearing before Justice Horan at **10.15 am** (AEST) on **16 September 2024 (Approval Hearing)**.

Opt out

11. Pursuant to s 33J of the FCA Act, the date fixed by Order 15 of the June Orders is extended so that **4 September 2024** is fixed as the date on or before which a group member may opt out of this proceeding.
12. Orders 16 and 17 of the June Orders be vacated.
13. 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 4 September 2024.
14. If, on or before **4 September 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

15. Pursuant to Order 18 of the June Orders, the date by which 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 be extended to **4 September 2024**.
16. 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.
17. The parties and the Affected Parties have liberty to apply.

Date orders authenticated: 12 August 2024



Sia Lagos
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 Registry

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)