

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 24 July 2024 (AEST)**.
- 1.7 If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on **16 September at 10.15 am (AEST)** 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 24 July 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 **16 September 2024 at 10.15am (AEST)** 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 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 24 July 2024**.
- 8.3 If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on **16 September 2024 at 10.15am (AEST)** 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 24 July 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 eardon@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:
