



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID180/2018

**DAVARIA PTY LIMITED (ACN 165 206 404)** and another named in the schedule  
Applicant

**7-ELEVEN STORES PTY LTD (ACN 005 299 427)** and another named in the schedule  
Respondent

## ORDER

**JUDGE:** JUSTICE O'CALLAGHAN

**DATE OF ORDER:** 15 September 2021

**WHERE MADE:** Melbourne

### THE COURT NOTES THAT:

A. Subject to Court approval, this proceeding and proceeding VID182/2018 have settled on the terms set out in the Class Action Settlement Deed dated 4 August 2021 (**Class Action Settlement Deed**) between:

- 1 the Applicants in this proceeding (Davaria Pty Ltd and Kaizenworld Pty Ltd), on their own behalf and on behalf of the Group Members in this proceeding, and the Applicants in proceeding VID182/2018 (Mr Pareshkumar Davaria, Ms Khushbu Pareshkumar Davaria, Mr Jatinder Pal Singh, and Ms Suman Meet Kaur) on their own behalf and on behalf of the Group Members in that proceeding;
  - 2 **Levitt Robinson** (solicitors for the Applicants);
  - 3 Galactic Seven Eleven Litigation Holdings LLC (the **Funder**); and
  - 4 **7-Eleven** Stores Pty Ltd (the First Respondent),
- collectively, the **Settlement**.

### THE COURT ORDERS THAT:

#### Approval Hearing

1. The Applicants' application pursuant to section 33V of the *Federal Court of Australia Act 1976* (Cth) (the **Act**) seeking this Court's approval of the Settlement of this



proceeding and proceeding VID182/2018 (**Approval Application**) be adjourned until 10:15 am on 16 November 2021 (**Approval Hearing**).

### **Notice to Group Members**

2. Pursuant to sections 33X and 33Y of the Act, the Applicants have leave to distribute a notice of proposed settlement which adopts the text at **Annexure A (Settlement Notice)**, in the manner set out in paragraphs [3]-[4] below.
3. By 21 September 2021, for the purposes of sections 33X and 33Y of the Act, the Applicants shall:
  - (a) cause a copy of:
    - (i) the Settlement Notice;
    - (ii) the Approval Application;
    - (iii) the Class Action Settlement Deed (accessible to group members who have not opted out of this proceeding or proceeding VID182/2018 (**Group Members**) by entering a passcode provided by Levitt Robinson upon request and on the condition that the group member agrees to keep the content of the Class Action Settlement Deed confidential and to advise any external lawyer instructed by that group member of the confidentiality obligation);
    - (iv) the **Settlement Scheme** substantially in the form of that at pages 150-179 of BRI-44, exhibited to the confidential affidavit of Brett Richard Imlay sworn on 23 August 2021 (accessible to Group Members by entering a passcode provided by Levitt Robinson upon request and on the condition that the group member agrees to keep the content of the Settlement Scheme confidential and to advise any external lawyer instructed by that group member of the confidentiality obligation);
    - (v) the Third Further Amended Originating Application in VID180/2018;



- (vi) the Third Further Amended Statement of Claim in VID180/2018 (**VID180 3FASOC**);
- (vii) 7-Eleven's Defence to the VID180 3FASOC;
- (viii) the Applicants' Reply to 7-Eleven's Defence to the VID180 3FASOC; and
- (ix) the Third Further Amended Originating Application in VID182/2018;
- (x) the Second Further Amended Statement of Claim in VID182/2018 (**VID182 2FASOC**);
- (xi) 7-Eleven's Defence to the VID182 2FASOC;
- (xii) the Applicants' Reply to 7-Eleven's Defence to the VID182 2FASOC;
- (xiii) a blank form in Word for the making of objections to the Settlement (in the form of the notice of objection marked **Z** annexed to the Settlement Notice at **Annexure A**)

to be displayed on the Levitt Robinson website at the link <https://www.levittrobinson.com/7-eleven-class-action>;

- (b) cause a copy of the Settlement Notice together with a blank objection form to be issued by email or by post (where an active email address is not available or a bounce back message to a previously sent email has been received) to Group Members to the extent such details are available to the Applicants;
- (c) arrange for an advertising campaign on the Facebook website (to run until the Approval Hearing), which comprises:
  - (i) the logo of Levitt Robinson,
  - (ii) together with text within the image providing "Class Action Settlement Notice",

and with further text below the image providing:



- (iii) “The 7-Eleven Class Actions have settled. Read more in the Settlement Notice, which can be accessed at the following link”,
- (iv) after which a link is inserted to the website <http://levittrobinson.com/7-eleven-class-action/>,

to reach an estimated audience of not less than 10,000 people targeted at persons who are located in Australia and match with at least one of the following interests:

- (v) 7-Eleven;
- (vi) Franchising;
- (vii) Franchisee;
- (viii) Franchise Manager;
- (ix) Convenience Store;
- (x) Convenience Food; and
- (xi) Class Action.

4. For the purpose of 3(a)(iii) and 3(a)(iv) above:

- (a) Levitt Robinson is to cause a cover page to be inserted at the front of each of the Class Action Settlement Deed and Settlement Scheme prior to display on its website, that contains the following wording:

*“By continuing to read this document you confirm that:*

- (a) *you are a Group Member in proceedings VID180 of 2018 or VID182 of 2018 (7-Eleven Class Action proceedings) or represent such a group member as its authorised agent or in a professional capacity;*



- (b) *you undertake to the parties to the Class Action Settlement Deed to keep the content of the Class Action Settlement Deed and Settlement Scheme confidential;*
  - (c) *you must not share the Class Action Settlement Deed and Settlement Scheme documents or disclose their content with anyone else save for the purpose of obtaining or giving legal or financial advice and that if you do not keep these documents confidential then you may be liable for damages suffered by any party to the Class Action Settlement Deed; and*
  - (d) *you will inform any external lawyer instructed by you of the confidentiality obligation described in paragraph (b) above.”*
- (b) access is to be granted to the Class Action Settlement Deed and Settlement Scheme via the Levitt Robinson website by acknowledgment of the following form of wording that Levitt Robinson will cause to appear on its website at the point of entry of the passcode:
- “By entering the confidential Passcode you confirm that:*
- (a) *you are a Group Member in proceedings VID180 of 2018 or VID182 of 2018 (7-Eleven Class Action proceedings) or represent such a group member as its authorised agent or in a professional capacity;*
  - (b) *you undertake to the parties to the Class Action Settlement Deed to keep the content of the Class Action Settlement Deed and Settlement Scheme confidential;*
  - (c) *you will not share these documents or disclose their content with anyone else save for the purpose of obtaining or giving legal or financial advice and that if you do not then you may be liable for damages suffered by any party to the Class Action Settlement Deed; and*
  - (d) *you will inform any external lawyer instructed by you of the confidentiality obligation described in paragraph (b) above.”*



5. By 21 September 2021, the District Registrar of the Victorian Registry of the Federal Court of Australia shall cause a copy of these orders, together with its Annexures, to be displayed on the Federal Court website at <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions/documents#vid180of2018> and be available for inspection at the District Registry of the Federal Court in Melbourne, Sydney, Canberra, Brisbane and Perth.

### **Appointment of Contradictor**

6. Mr Jonathon Redwood SC is appointed as **Contradictor** to represent Group Members' interests and to assist the Court to perform its judicial function in relation to the Approval Application in relation to the question whether the Settlement is fair and reasonable, including the fairness and reasonableness of:
  - (a) the proposed distribution of the Net Settlement Sum between Eligible VID180 Group Members and Eligible VID182 Group Members (as these terms are defined in the Settlement Notice);
  - (b) the proposed distribution of the Net Settlement Sum to Eligible VID180 Group Members and the different relative weightings to be applied; and
  - (c) the proposed distribution of the Net Settlement Sum to Eligible VID182 Group Members and the different relative weightings to be applied.
7. The Contradictor has power to adduce evidence, make submissions, and seek information and documents in respect of the Approval Application. The Contradictor may seek such documents and information from the solicitors for the Applicants as he considers appropriate which, subject to appropriate confidentiality arrangements, shall be provided as soon as practicable. If there is any dispute regarding the provision of such material the Contradictor and the Applicants have liberty to apply to the chambers of Justice O'Callaghan on 24 hours' notice.
8. Subject to further order, the Contradictor's reasonable costs are to be paid, in the first instance, by the Applicants within 30 days of the presentation of an invoice.



### Costs referee

9. Pursuant to section 54A of the Act, Ms Elizabeth Harris, Legal Costs Consultant, is appointed as a referee (**Referee**) to inquire into and report in writing on the questions set out below, and on any further questions that may later be ordered.
  - (a) Are the costs charged or sought to be charged by the solicitors for the Applicants in relation to the conduct of the proceedings reasonable (**Proceeding Costs**)?
  - (b) Are the costs sought by the Administrator in relation to the approval of the Settlement and the administration of the Settlement reasonable (**Administration Costs**)?
  - (c) If not, by what amount should those costs be disallowed?
  
10. The Referee shall perform the Reference having regard to the following guidelines:
  - (a) the Referee is to ensure that the reviews of the Proceeding Costs and Administration Costs are conducted in a manner which is proportionate to the amount claimed. The Referee is directed to contact the chambers of Justice O’Callaghan if any question arises as to whether or not it is necessary for her to undertake particular work;
  - (b) the Referee is to consider and implement the Reference without undue formality or delay so as to enable a just, efficient and cost-effective resolution of the Reference. This may include enquiries by telephone and without intervention of lawyers any person the Referee believes may have relevant information;
  - (c) the Referee may ask whatever questions of the solicitors for the Applicant and the Administrator of the Settlement as the Referee considers necessary, and, subject to any objection they may raise with the Court, the solicitors for the Applicant and the Administrator of the Settlement are directed to answer those questions in a speedy and cost-effective manner; and
  - (d) the Referee is to make such directions as the Referee considers appropriate to facilitate the just, efficient and cost-effective resolution of the Reference



including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provision of submissions.

11. The Referee shall submit the report to the Court in accordance with FCR 28.66, addressed to the chambers of Justice O’Callaghan on or before 4:00 pm on 3 November 2021.
12. The Referee shall provide a copy of the report to the solicitors for the parties.
13. The costs of and incidental to the appointment of the Referee and the Referee’s reasonable costs shall be paid by the solicitors for the Applicants in the first instance and, subject to further order, shall be costs in the proceeding.

#### **Settlement approval timetable**

14. By 1 October 2021, the Applicants file and serve any non-confidential lay affidavit material in support of the Approval Application.
15. By 8 October 2021, the Applicants have leave to file any affidavit or exhibit or part thereof, in respect of which confidentiality orders are to be sought, in a sealed envelope marked “Confidential Affidavit – Not to be Opened Except by Direction of a Judge or the Court”, and be excused from any requirement to serve any such affidavit or exhibit on any party.
16. By 8 October 2021, the Applicants file and serve any outline of submissions in relation to the Approval Application.
17. By 15 October 2021, the Funder file and serve any affidavit material and any outline of submissions in relation to the Approval Application.
18. By 22 October 2021, 7-Eleven:
  - (a) file and serve any non-confidential affidavit material and any outline of submissions in relation to the Approval Application; and





- (b) have leave to file any affidavit or exhibit or part thereof, in respect of which confidentiality orders are to be sought, in a sealed envelope marked “Confidential Affidavit - Not to be Opened Except by Direction of a Judge or the Court”, and be excused from any requirement to serve any such affidavit or exhibit on any party.
- 19. By 29 October 2021, the Contradictor:
  - (a) file and serve any non-confidential affidavit material and any outline of submissions in relation to the Approval Application; and
  - (b) have leave to file any affidavit or exhibit or part thereof, in respect of which confidentiality orders are to be sought, in a sealed envelope marked “Confidential Affidavit - Not to be Opened Except by Direction of a Judge or the Court”, and be excused from any requirement to serve any such affidavit or exhibit on any party.
- 20. By 12 November 2021, the Applicants, the Funder and 7-Eleven file and serve any affidavit material and any outline of submissions in response to the evidence and submissions filed by the Contradictor.
- 21. Any person who wishes to oppose the making of orders in accordance with the Approval Application must do so by:
  - (a) sending a completed objection form (in the form of the notice of objection marked **Z** annexed to the Settlement Notice at **Annexure A**) so that it is received by the Victorian District Registry of the Federal Court of Australia, either via email to [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) or by post to the Registry, Federal Court of Australia, 305 William Street, Melbourne Victoria 3000, by 19 October 2021; or
  - (b) appearing at the Approval Hearing.
- 22. If, before the Approval Hearing, the solicitors for any party receive a notice purporting to be an objection form referable to this proceeding or proceeding VID182/2018, the



solicitors must email the notice to [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) (copying the solicitors for the Applicants, 7-Eleven, the Funder and the Contradictor) 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.

23. The parties, the Funder and the Contradictor have leave to inspect the Court file and to copy any objection forms filed with the Court.

**Other matters**

24. Any obligation of service in these orders is an obligation to serve the parties, the Funder and the Contradictor.
25. The Applicants to distribute sealed copies of this order to the Funder and the Contradictor within one (1) business day of receiving notification from the Court that the orders have been sealed.
26. The parties, the Funder and the Contradictor have liberty to apply.

Date that entry is stamped: 15 September 2021

  
Registrar

This order has been amended pursuant to r 39.05 of the *Federal Court Rules 2011*.



**ANNEXURE A**  
**FEDERAL COURT OF AUSTRALIA**  
**SETTLEMENT NOTICE**

**VID180/2018**

**Davaria Pty Ltd and Kaizenworld Pty Ltd v 7-Eleven Stores Pty Ltd and Anor**

**VID182/2018**

**Pareshkumar Davaria and Ors v 7-Eleven Stores Pty Ltd**

**Why is this notice important?**

1. The Federal Court of Australia has ordered that this notice be published. Any questions you have concerning the matters contained in this notice should not be directed to the Court. You should contact Levitt Robinson at [711@levittrobinson.com](mailto:711@levittrobinson.com). If there is anything in the notice that you do not understand, you should seek your own legal advice.
2. Davaria Pty Ltd (**Davaria**) and Kaizenworld Pty Ltd (**Kaizenworld**) (**VID180 Applicants**) are the applicants in class action proceedings in the Federal Court of Australia against 7-Eleven Stores Pty Ltd (**7-Eleven**) and 7-Eleven Inc. (**VID180 Class Action**). 7-Eleven Inc. was not served and has not participated in the VID180 Class Action.
3. Pareshkumar Davaria, Khushbu Davaria, Jatinder Pal Singh and Suman Meet Kaur (**VID182 Applicants**) are the applicants in related class action proceedings on behalf of directors and guarantors of the corporate applicants in the VID180 Class Action, commenced against 7-Eleven on the same date and has been conducted at the same time (**VID182 Class Action**).
4. The Class Actions were brought by the VID180 Applicants and VID182 Applicants (together referred to as **the Applicants**) on their own behalf and on behalf of all persons who are "Group Members" in each proceeding.
5. The VID180 Class Action and the VID182 Class Action (**Class Actions**) have been funded by Galactic Seven Eleven Litigation Holdings LLC (the **Funder**).



6. This Notice contains important information about the proposed settlement of the Class Actions (**Settlement**).
7. Paragraphs [17] to [26] below explain what the Class Actions are about.
8. Paragraphs [27] to [33] below explain the terms of the Settlement with 7-Eleven.
9. Paragraphs [34] to [61] below explain how the Settlement monies will be distributed and to whom.
10. Paragraphs [63] to [66] below explain how you can object to the Settlement.
11. Paragraphs [76] to [78] below explain how you can get information about the Settlement and the Class Actions.
12. As explained in paragraph [37] below, the Court will set a “Registration Date” by which you must lodge your claim on the settlement sum. **If you do not make a claim on the Settlement Sum by the Registration Date, you will be bound by the outcome of the Class Actions and get nothing.**
13. You should read this Notice very carefully if:
  - (a) you (or your company) were or became a 7-Eleven Franchisee (**Franchisee**) at any time between 20 February 2012 and 19 February 2018 and you (or your Franchisee company) did not opt out of the VID180 Class Action (**VID180 Group Member**); or
  - (b) you were or became:
    - (i) a nominated director identified in a franchise agreement (**Franchise Agreement**) with 7-Eleven at any time between 20 February 2012 and 19 February 2018; or
    - (ii) an individual person (not a corporation) who provided indemnities, guarantees, mortgages or other securities (**Guarantor**) in respect of a Franchisee’s obligations under a Franchise Agreement or ANZ Bank loan contract entered into by a Franchisee during the period 20 February 2012 and 19 February 2018; and



(iii) you did not opt out of the VID182 Class Action,

**(VID182 Group Member).**

14. If you and your company have opted out of both Class Actions, you may disregard this notice.
15. An opt out process for each of the Class Actions took place in 2020. Before the opt out process in the VID180 Class Action, there were approximately 995 stores and approximately 813 group members (not including the VID180 Applicants). After the opt out process in the VID180 Class Action, approximately 808 stores (not including three operated by the VID180 Applicants) and approximately 676 VID180 Group Members (not including the VID180 Applicants' two companies) remain.
16. Before the opt out process in the VID182 Class Action, there were approximately 1,492 group members (not including the VID182 Applicants). After the opt out process in the VID182 Class Action, approximately 1,234 VID182 Group Members (not including the VID182 Applicants) remain.

### **The claims in the Class Actions**

17. In the VID180 Class Action, the VID180 Applicants claim damages, compensation and orders for an account of rebates. These claims are premised upon alleged:
  - (a) misleading or deceptive conduct, statutory unconscionable conduct and contravention of industry codes, in relation to the acquisition and sale of franchises;
  - (b) breach of contract, in relation to the prices of goods supplied to franchisees; and
  - (c) an equitable obligation to account, in respect of rebates from merchandise suppliers.
18. In summary, in the VID180 Class Action, Davaria alleges that 7-Eleven:
  - (a) misled Davaria and VID180 Group Members before they entered into franchise agreements with 7-Eleven (**Franchise Agreements**), about:
    - (i) the business opportunity afforded by operating a 7-Eleven store;



- (ii) the profitability of the stores;
  - (iii) the accuracy of the labour costs in documents and records supplied to prospective franchisees;
  - (iv) the average wages that a Franchisee would have to pay to operate their store in compliance with employment awards;
  - (v) the need for Franchisees or their principal or family members to work for nothing or at rates below employment award rates for an unreasonable and/or unsociable number of hours per week;
  - (vi) the choice available to Franchisees of suppliers and merchandise from which they could choose product lines to offer at their stores;
- (b) breached its contract (that is, the Franchise Agreement) with VID180 Group Members, including by only letting VID180 Group Members purchase stock from C-Store in circumstances where 7-Eleven had negotiated with C-Store prices higher than either:
- (i) the prices for which VID180 Group Members would have been able to buy stock in similar quantities from alternative suppliers; or
  - (ii) the lowest prices reasonably obtainable by 7-Eleven had it used its best endeavours;
- (c) failed (and was obliged) to account to Franchisees for rebates received by 7-Eleven from merchandise vendors, which rebates could only be allocated to certain marketing and other costs, and otherwise were to be applied to reduce the cost of goods purchased by Franchisees (**Rebates Claim**); and
- (d) engaged in unconscionable conduct, including by enticing VID180 Group Members to enter into Franchise Agreements even though 7-Eleven knew that stores could only be profitable if Franchisees:
- (i) underpaid staff; and/or



- (ii) worked (or their principal or family members worked) for nothing or at rates below employment award rates for an unreasonable and/or unsociable number of hours per week.
- 19. In the VID180 Class Action, Kaizenworld also alleges the same things that are listed in paragraph [18] above and, in addition, that 7-Eleven:
  - (a) promoted to Franchisees, prospective Franchisees and the ANZ Bank an inaccurate formula for valuing the goodwill of 7-Eleven stores, being a multiple of 2.1 to 2.7 times the Franchisee's annual gross income; and
  - (b) represented to Franchisees that they could sell the goodwill in their stores to an incoming purchaser (who would acquire a 10-year franchise term) on the same multiple.
- 20. In the VID180 Class Action, the VID180 Applicants claim:
  - (a) damages or compensation on account of:
    - (i) loss of monies expended in acquiring their 7-Eleven store franchise;
    - (ii) loss of monies incurred in operating their 7-Eleven store franchise on account of paying prices higher than they should have for merchandise that was sold from their stores; and
  - (b) an entitlement to an account of rebates collected by 7-Eleven from merchandise suppliers who sold merchandise to Franchisees which was then sold from 7-Eleven stores.
- 21. In the VID182 Class Action, the VID182 Applicants:
  - (a) make similar claims to those made by their respective Franchisee companies as listed at paragraphs [18(a)], [18(d)] and [19];
  - (b) claim damages for misleading or deceptive conduct and statutory unconscionable conduct, in relation to:
    - (i) the excessive hours they spent operating their stores; and



- (ii) the additional monies that they might have earned instead of spending their time operating their stores; and
  - (c) also seek orders for indemnity in respect of their obligations as guarantors of loans, and of their Franchisee company's obligations under their Franchise Agreements.
22. 7-Eleven has denied the allegations referred to in paragraphs [17] to [21] above.
  23. The claims made against 7-Eleven are set out more fully in the VID180 Class Action Third Further Amended Statement of Claim and the VID182 Class Action Second Further Amended Statement of Claim, copies of which can be obtained from Levitt Robinson at <https://www.levittrobinson.com/7-eleven-class-action>.
  24. Copies of 7-Eleven's Defences to the VID180 Class Action Third Further Amended Statement of Claim and the VID182 Class Action Second Further Amended Statement of Claim can also be obtained from Levitt Robinson at <https://www.levittrobinson.com/7-eleven-class-action>.
  25. 7-Eleven has provided the Applicants' solicitors Levitt Robinson with copies of deeds of release and covenants not to sue executed by some VID180 and VID182 Group Members, pursuant to which those group members have already released 7-Eleven from claims or liabilities. In those deeds, the releases are described, for example, as a release from any present or future, actual or contingent, claim, cause of action, complaint, liability, demand, cost or expense that any person (whether or not a party to the Class Actions) has or might have, whether or not the facts, matters or circumstances giving rise to that claim, cause of action, complaint, liability, demand, cost or expense are known to that person or to any other person (**Releases**).
  26. A VID180 Group Member or a VID182 Group Member who has entered into a Release with 7-Eleven will not be entitled to any compensation from the Settlement unless that Release is determined by an independent Senior Counsel appointed under the Settlement Scheme to be either wholly or partly ineffective, or not to release 7-Eleven from some or all of the claims (**Ineffective Release**). If the Settlement Scheme's independent Senior Counsel makes that determination:





- (a) it will enable such a VID180 Group Member or VID182 Group Member to have their claim assessed under the Settlement Scheme; but
- (b) it **will not** bind 7-Eleven and will be **without prejudice** to 7-Eleven's ability to contend, outside of the Settlement Scheme, that 7-Eleven was effectively released.

### **The Settlement with 7-Eleven**

- 27. The Class Actions were listed for hearing before the Honourable Justice Middleton in the Federal Court of Australia in Melbourne for a ten-week trial commencing 9 August 2021. The Court ordered that the parties attend a mediation by 28 June 2021.
- 28. The mediation took place over four days on 24 and 25 June 2021 in Canberra and also on 29 June 2021 and 23 July 2021 via audio-visual link. The Honourable Susan Crennan AC QC, a former Justice of the High Court of Australia, was the mediator for all of the four days.
- 29. On 4 August 2021, the Applicants and 7-Eleven agreed to settle the Class Actions for **\$98,000,000** (ninety-eight million dollars) (**Settlement Sum**) and signed a Deed of Settlement and Release (the **Settlement**), subject to the Court approving settlement.
- 30. Under the terms of the Settlement, payment of the Settlement Sum:
  - (a) is all-inclusive of legal costs and disbursements and the Funder's commission;
  - (b) is made without any admission of liability by 7-Eleven;
  - (c) involves the Applicants on their behalf and on behalf of all Group Members releasing and forever discharging 7-Eleven from the Applicants' and the Group Members' Claims ("**Claim**" is defined in the Settlement as any claim or cause of action in the Class Actions or any claim or cause of action arising out of, or in relation to, the subject matter of the Class Actions); and
  - (d) involves the Applicants, on their own behalf and on behalf of all Group Members, promising not to bring or pursue or otherwise aid, abet, counsel, fund or procure the bringing of any Claim against 7-Eleven.



31. In addition, subject to the Court approving the Settlement, Davaria and Kaizenworld agreed to a buy back of their 7-Eleven stores by 7-Eleven in return for:
- (a) a payment of **\$978,000 plus stock** to Davaria for the early surrender of its Campbelltown non-fuel store and its Northmead fuel store; and
  - (b) a payment of **\$460,000 plus stock** to Kaizenworld for the early surrender of its South Melbourne non-fuel store.
32. The Settlement also provides that:
- (a) the Class Actions be dismissed with all existing costs orders in favour of the Applicants as against 7-Eleven, or in favour of 7-Eleven as against the Applicants, being vacated;
  - (b) the Applicants and 7-Eleven provide mutual releases;
  - (c) 7-Eleven denies liability and makes no admission as to liability;
  - (d) 7-Eleven will bear its own costs of the Class Actions;
  - (e) each of the VID180 and VID182 Applicants will seek **\$40,000** per Applicant (**\$240,000** in total) as a reimbursement for the significant time expended by them in the course of the Class Actions (including attendance at the mediation);
  - (f) the Applicants' legal costs and disbursements for the Class Actions of **\$19,108,466**, the approval of the Settlement estimated at **\$487,470** and the administration of the Settlement estimated at **\$1,100,000**, will be paid out of the Settlement Sum, subject to Court approval;
  - (g) Mr Stewart Alan Levitt of Levitt Robinson will act as Administrator of the settlement;
  - (h) the Funder will seek a Common Fund Order of 25% of the Settlement Sum to be paid as the Funder's commission (that is, **\$24,500,000**), which 7-Eleven and the Applicants will not oppose;



- (i) security for costs in the sum of \$6,945,625 which had been paid by the Funder into an interest-bearing account operated by the Court, will be returned to the Funder with all accrued interest;
- (j) the parties agree not to disparage one another;
- (k) the Funder agrees not to fund or otherwise aid, abet, counsel, pursue or procure, either directly or through a related party, any Claim against 7-Eleven; and
- (l) if 40 or more Group Members in the Class Actions are permitted to opt out or otherwise cease to be Group Members (for example, if a Franchisee company is deregistered) between 4 August 2021 and the Court's approval of the settlement, 7-Eleven has the option to terminate the Settlement.

33. If the Court approves the payments listed above in paragraphs [32(e)], [32(f)], and [32(h)], after all deductions the Applicants and group members will share in approximately **\$52,564,064 (Net Settlement Sum)**.

### **Distribution of the Net Settlement Sum**

34. The Net Settlement Sum will be divided amongst Group Members of the VID180 Class Action and the VID182 Class Action.

35. It is proposed that sixty (60%) per cent (**\$31,538,438**) of the Net Settlement Sum will be distributed to eligible VID180 Group Members and forty (40%) per cent (**\$21,025,626**) to eligible VID182 Group Members.

36. The division of 60% and 40% as between the VID180 Class Action and the VID182 Class Action is proposed having regard to:

- (a) the wider scope of the claims made in the VID180 Class Action; and
- (b) an evaluation that the claims made in the VID180 Class Action are more certain in relation to the losses likely to have been suffered by VID180 Group Members.

### **Who is an Eligible VID180 Group Member?**

37. An **Eligible VID180 Group Member** is a VID180 Group Member that:

- (a) has not opted out of the VID180 Class Action;



- (b) registers, or has already registered, for the Settlement Scheme by a date that will in due course be notified to all VID180 Group Members (**Registration Date**); and
- (c) has not entered into a Release, or has entered into a Release that is determined to be an Ineffective Release; and
- (d) for corporations, is not deregistered as at the Registration Date.

***Who is an Eligible VID182 Group Member?***

38. An **Eligible VID182 Group Member** is a VID182 Group Member who:
- (a) has not opted out of the VID182 Class Action;
  - (b) registers, or has already registered, for the Settlement Scheme by the Registration Date; and
  - (c) has not entered into a Release, or has entered into a Release that is determined to be an Ineffective Release.
39. The Registration Date will be a date approved by the Court, and will be approximately four months after the Approval Hearing referred to in paragraph [65] below.

***Distribution to Eligible VID180 Group Members***

40. As to the sixty per cent (**\$31,538,438**) of the Net Settlement Sum (**VID180 Settlement Sum**) to be distributed to Eligible VID180 Group Members, that is proposed to be distributed having regard to the claims that could have been made by those Group Members.
41. As to those claims:
- (a) twenty (20%) per cent of the VID180 Settlement Sum (**\$6,307,688**) (**VID180 Rebates Claims Settlement Sum**) will be distributed to all Eligible VID180 Group Members in relation to Rebates Claims;
  - (b) the other eighty (80%) per cent of the VID180 Settlement Sum (**\$25,230,751**) (**VID180 Loss Claims Settlement Sum**) will be distributed to all Eligible VID180 Group Members on account of VID180 Loss Claims.



42. A VID180 Loss Claim is a claim made in respect of monies lost in relation to the costs of acquiring a franchise.
43. Different relative weightings will be applied in the Settlement Scheme to VID180 Loss Claims, having regard to:
  - (a) the date when the Franchisee entered into their Franchise Agreement to acquire their franchise;
  - (b) the date when the Franchisee sold or disposed of the franchise (if they have sold or disposed of it).
44. These weightings are proposed under the Settlement Scheme because it is considered that the strength of VID180 Group Members' claims is affected by:
  - (a) the date when a Franchise Agreement was entered into; and
  - (b) when the Franchisee sold or disposed of the goodwill associated with those franchises (if they have been sold or disposed of).
45. A relative weighting of 3.0 (in respect of the VID180 Loss Claims Settlement Sum) will be applied to Eligible Group Members' VID180 Loss Claims in respect of a franchise relating to a Franchise Agreement that was entered into on or after 21 February 2012 and before 1 October 2015, and the franchise:
  - (a) was sold or disposed of after 1 October 2015; or
  - (b) is still retained by the Eligible Group Member.
46. A relative weighting factor of 1.0 (in respect of the VID180 Loss Claims Settlement Sum) will be applied to Eligible VID180 Group Members' VID180 Loss Claims in respect of a franchise relating to a Franchise Agreement that was entered into before 21 February 2012, and the franchise:
  - (a) was sold or disposed of after 1 October 2015; or
  - (b) is still retained by the Eligible Group Member.
47. A relative weighting of 1.0 (in respect of the VID180 Loss Claims Settlement Sum) will be applied to those Eligible VID180 Group Members' VID180 Loss Claims in respect of



a franchise relating to a Franchise Agreement that was entered into on or after 21 February 2012, and the franchise was sold or disposed of before 1 October 2015.

48. Put another way, the VID180 Loss Claims described in paragraph [45] will be treated as having 3 times the value of the VID180 Loss Claims described in each of paragraphs [46] and [47], when determining what distribution will be received from the VID180 Loss Claims Settlement Sum.
49. A relative weighting of zero (0) (in respect of the VID180 Loss Claims Settlement Sum) will be applied to those Eligible VID180 Group Members' VID180 Loss Claims in respect of a franchise relating to:
  - (a) a Franchise Agreement that was entered into before 21 February 2012, and the franchise was sold or disposed of before 1 October 2015; or
  - (b) a Franchise Agreement that was entered into after 1 October 2015.
50. Once all VID180 Loss Claims have been assessed with the above weightings applied to them, distributions will be made to VID180 Group Members on a pro rata basis from the VID180 Loss Claims Settlement Sum. This means that no funds will be distributed to Eligible VID180 Group Members until all claims have been assessed by the Administrator.
51. To summarise:
  - (a) Eligible VID180 Group Members having VID180 Loss Claims that fall within paragraphs [45], [46] and [47] above will be able to share in distribution of the VID180 Loss Claims Settlement Sum and the VID180 Rebates Claims Settlement Sum;
  - (b) the Loss Claims described in paragraph [45] will be treated as having 3 times the value of the Loss Claims described in each of paragraphs [46] and [47], when determining what distribution will be received by VID180 Eligible Group Members from the VID180 Loss Claims Settlement Sum;
  - (c) the Loss Claims described in paragraph [49] will be treated as having no value, and so Eligible VID180 Group Members having those VID180 Loss Claims will



only be able to share in the distribution of the VID180 Rebates Claims Settlement Sum; and

- (d) once all of the VID180 Loss Claims are assessed, distributions will be made to VID180 Group Members on a pro rata basis from the VID180 Loss Claims Settlement Sum.

***Distribution to Eligible VID182 Group Members***

52. As to the forty per cent of the Net Settlement Sum (**\$21,025,626**) to be distributed to Eligible VID182 Group Members (**VID182 Settlement Sum**), those monies will be distributed upon assessment under the Settlement Scheme of Eligible Group Members' claims (**VID182 Claims**) as to:

- (a) the hours they spent operating the relevant 7-Eleven store(s); and
- (b) what additional monies they might have been able to earn rather than devoting their time to operating the relevant 7-Eleven store(s).

53. As with VID180 Loss Claims, different relative weightings will be applied to VID182 Claims having regard to:

- (a) the date when Eligible VID182 Group Members who became directors or guarantors under a Franchise Agreement, or became guarantors under an ANZ loan contract; and
- (b) the date when the Franchisee sold or disposed of the franchise (if they have sold or disposed of it).

54. A relative weighting of 3.0 will be applied to the claims of Eligible VID182 Group Members who became directors or guarantors under a Franchise Agreement entered into on or after 21 February 2012 and before 1 October 2015, or who became guarantors under an ANZ loan contract on or after 21 February 2012 and before 1 October 2015, and where either:

- (a) the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of after 1 October 2015; or
- (b) the Franchisee still retains that franchise;



55. A relative weighting of 1.0 will be applied to the claims of Eligible VID182 Group Members who became directors or guarantors under a Franchise Agreement entered before 21 February 2012, or who became guarantors under an ANZ loan contract before 21 February 2012, and where either:
- (a) the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of after 1 October 2015; or
  - (b) the Franchisee still retains that franchise.
56. A relative weighting of 1.0 will be applied to the claims of Eligible VID182 Group Members who became directors or guarantors under a Franchise Agreement entered on or after 21 February 2012, or who became guarantors under an ANZ loan contract on or after 21 February 2012, and where the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of before 1 October 2015.
57. A relative weighting of zero (0) will be applied to the claims of Eligible VID182 Group Members:
- (a) who became directors or guarantors under a Franchise Agreement entered before 21 February 2012, or who became guarantors under an ANZ loan contract before 21 February 2012, and where the 7-Eleven store franchise the subject of that Franchise Agreement was disposed of before 1 October 2015; or
  - (b) who became directors or guarantors under a Franchise Agreement that was entered into after 1 October 2015 or who became guarantors under an ANZ loan contract after 1 October 2015.
58. Once all VID182 Claims have been assessed with the above weightings applied to them, distributions will be made to VID182 Group Members on a pro rata basis from the VID182 Settlement Sum. This means that no funds will be distributed to Eligible VID180 Group Members until all claims have been assessed by the Administrator.
59. There will be a **Review** process in which Eligible Group Members may seek a Review of the calculation of their VID180 Claim or VID182 Claim (as the case may be). If the Review does not result in an increase in the distribution of at least \$500, the costs of the review process will be deducted from the relevant Eligible Group Member's claim, or in certain cases, will need to be paid by the Eligible Group Member upfront.





60. The Settlement Scheme is presently a proposal subject to approval of the Court and further changes as necessary.

61. To summarise:

- (a) Eligible VID182 Group Members will be able to share in distribution of the VID182 Settlement Sum if their claims fall within paragraphs [54], [55] or [56];
- (b) VID182 Claims described in paragraph [54] will be treated as having 3 times the value of the VID182 Claims described in each of paragraphs [55] and [56];
- (c) the claims described in paragraph [57] will be treated as having no value, and so Eligible VID182 Group Members having claims will NOT be able to share in the distribution of the VID182 Settlement Sum; and

once all of the VID182 Claims are assessed, distributions will be made to VID182 Group Members on a pro rata basis from the VID182 Settlement Sum.

### **If you or your company have opted out**

62. If you have opted out of the Class Actions, you are not eligible to make a claim on the Settlement Sum. If your Franchisee company has opted out, but you have not (or vice versa), the entity or nominated director or Guarantor that has not opted out and who is an Eligible VID180 or Eligible VID182 Group Member may be able to make a claim on the Settlement Sum. If you are not sure, you should contact Levitt Robinson on 02 9286 3133 or [711@levittrobinson.com](mailto:711@levittrobinson.com) or seek your own legal advice.

### **Court approval**

63. The Settlement of the Class Actions must be approved by the Court.

64. If you are a VID180 Group Member or a VID182 Group Member, you have a right to object to the Settlement.

65. The application for Court approval of the Settlement (**Approval Application**) will take place at a hearing at the Federal Court of Australia, 305 William Street in Melbourne on **16 November 2021** at **10:15 am** and via audio-visual link (**Approval Hearing**).



66. In determining the Approval Application, the Court will consider whether the Settlement is fair and reasonable having regard to the interests of the VID180 and VID182 Group Members.

***Reasonableness of legal and administration costs***

67. If you have a concern in relation to the reasonableness of the estimated legal and administration costs listed in paragraph [32(f)], you should note the following:
- (a) it is a matter for the Court to determine what amount of costs is reasonable and should be deducted from the Settlement;
  - (b) the Court has appointed Ms Elizabeth Harris as an independent legal costs expert as a referee under s 54A of the *Federal Court of Australia Act 1976* (Cth) (**Referee**) to report to the Court on the following questions:
    - (i) Are the costs charged or sought to be charged by the solicitors for the Applicants in relation to the conduct of the proceedings reasonable?
    - (ii) Are the costs sought by the Administrator in relation to the approval of the Settlement and the administration of the Settlement reasonable?
    - (iii) If not, by what amount should those costs be disallowed?
  - (c) a copy of the Referee's report will be available on 4 November 2021 on the Federal Court website at <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions/documents#vid180of2018>; and
  - (d) questions as to reasonableness of costs will be considered by the Court whether or not you object, but if you disagree with the proposed deduction of the estimated legal and administration costs or with the amount found to be reasonable by the Referee, you may, if you wish, object and also make submissions to the Court.

***Appointment of Contradictor***

68. If you have a concern in relation to the fairness and reasonableness of the Settlement, you should note the following:



- (a) it is a matter for the Court to determine whether the Settlement is fair and reasonable;
- (b) the Court has appointed Mr Jonathon Redwood SC, a senior barrister, as **Contradictor** to represent Group Members' interests and to assist the Court to perform its judicial function in relation to the Approval Application in relation to the question whether the Settlement is fair and reasonable, including the fairness and reasonableness of:
  - (i) the proposed distribution of the Net Settlement Sum between Eligible VID180 Group Members and Eligible VID182 Group Members (described in paragraphs [35] and [36] above);
  - (ii) the proposed distribution of the Net Settlement Sum to Eligible VID180 Group Members and the different relative weightings to be applied (described in paragraphs [40] to [50] and summarised in paragraph [51] above);
  - (iii) the proposed distribution of the Net Settlement Sum to Eligible VID182 Group Members and the different relative weightings to be applied (described in paragraphs [52] to [58] and summarised in paragraph [61] above); and
- (c) questions as to reasonableness of the Settlement will be considered by the Court whether or not you object, but if you disagree with the Settlement, you may, if you wish, object and also make submissions to the Court.

### **What you must do**

- 69. If you are in favour of the Settlement, there is nothing you need to do at this time.
- 70. 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 "Z" by emailing [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) and copying [711@levittrobinson.com](mailto:711@levittrobinson.com) or by posting a copy to 305 William Street, Melbourne Victoria 3000, by **19 October 2021**.
- 71. Contact details of Levitt Robinson:



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

Phone: **(02) 9286 3133**

Email: [711@levittrobinson.com](mailto:711@levittrobinson.com)

72. If you file a Notice of Objection to Proposed Settlement, you or your legal representative may attend the Approval Hearing on **16 November 2021** at **10:15 am** and make further submissions to the Court in support of your objection.

### **If the Settlement is approved**

73. If the Settlement is approved by the Court, the parties will await the passing of the applicable appeal period. Assuming there is no appeal of the Court's approval of the Settlement, 7-Eleven will then pay the Settlement Sum into an interest-bearing controlled money account held on trust by Levitt Robinson's as the Administrator of the distributor of the Settlement Sum.
74. As explained in paragraph [37] above, the Court will also set a "Registration Date" by which you must lodge your claim on the Settlement Sum. If you do not make a claim on the Settlement Sum by the Registration Date, you will be bound by the outcome of the Class Actions (that is, the terms of the Settlement) and get nothing.
75. After the Registration Date, payments will first be made to the Funder, Levitt Robinson, the Applicants and an independent Senior Counsel appointed under the Settlement Scheme for the purpose described in paragraph [26] above, in accordance with the Court's orders. Then, the claims on the Settlement Sum will be assessed by the Administrator (and his team) and applied to the remainder of the Settlement Sum, to calculate the compensation payable to eligible Group Members.

### **If the Settlement is not approved**

76. 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 listing of the initial trial for hearing.
77. 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.



78. Contact details of Levitt Robinson:

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

Phone: **(02) 9286 3133**

Email: **[711@levittrobinson.com](mailto:711@levittrobinson.com)**

### **Relevant documents**

79. Copies of relevant documents, including:

- (a) the Third Further Amended Originating Application in the VID180 Class Action,
- (b) the Third Further Amended Statement of Claim in the VID180 Class Action, as well as 7-Eleven's Defence and the Applicants' Reply,
- (c) the Third Further Amended Originating Application in the VID182 Class Action,
- (d) the Second Further Amended Statement of Claim in the VID182 Class Action, as well as 7-Eleven's Defence and the Applicants' Reply,
- (e) the Deed of Settlement between the Applicants, 7-Eleven, Levitt Robinson and the Funder and the proposed Settlement Scheme,

may be obtained by:

- (f) downloading them from <https://www.levittrobinson.com/7-eleven-class-action> (and, on agreeing to keep the contents of the Deed of Settlement and the proposed Settlement Scheme confidential, Levitt Robinson will provide verified group members with a passcode);
- (g) emailing [711@levittrobinson.com](mailto:711@levittrobinson.com) and requesting copies;
- (h) contacting a District Registry of the Federal Court (contact details are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee; or
- (i) 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.



80. Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Levitt Robinson on 02 9286 3133 or [711@levittrobinson.com](mailto:711@levittrobinson.com) or seek your own legal advice. You should not delay in making your decision.



“Z”

**Notice of Objection to Proposed Settlement with 7-Eleven**

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Davaria Pty Limited** and another named in the schedule  
Applicants

No: VID180/2018

**7-Eleven Stores Pty Ltd** and another named in the schedule  
Respondents

**Pareshkumar Davaria** and others named in the schedule  
Applicants

No: VID182/2018

**7-Eleven Stores Pty Ltd**  
Respondent

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](mailto:vicreg@fedcourt.gov.au)

**Name of individual:**

---

**Name of franchisee company and trust (if applicable):**

---

**Store number(s) and location(s), fuel/non-fuel:**

---

**Contact email:**

---

**Contact number:**

---

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

---

---

---

**Date:**

---

**Signature:**

---

**Name of signatory:**

---



**Schedule**

No: VID180/2018

Federal Court of Australia  
District Registry: Victoria  
Division: General

Second Applicant      KAIZENWORLD PTY LTD (ACN 163 833 565)  
Second Respondent      7-ELEVEN INC (A TEXAS CORPORATION)