



Proposed Class Action Information Notice

Dear Sir or Madam

SAD76/2020 - Aaron Furnell & Ors v Shahin Enterprises Pty Ltd ACN 008 150 543

1. Why are you receiving this communication?

- 1.1 You were an employee of Shahin Enterprises (the **Respondent**) and your legal rights may be affected by Action No. SAD 76 of 2020 which Mr Aaron Furnell and four other Applicants (the **Applicants**) have commenced in representative capacities in the Federal Court of Australia (the **Class Action**).
- 1.2 In the Class Action, the Applicants allege that at various times over periods of up to six years, the Respondent failed to make payment of the wages to which its employees were entitled, and that it made deductions from the wages of employees which were not permitted to be made under the *Fair Work Act 2009* (Cth).
- 1.3 The Federal Court of Australia has directed that the parties jointly write to you to provide you with information in relation to The Class Action.

2. What The Class Action is about

- 2.1 On 14 May 2020, The Class Action was filed on behalf of Mr Aaron Furnell, a former Driveway Attendant, and four other Applicants who are former employees of the Respondent, employed at On The Run sites.
- 2.2 The Applicants bring their claims on their own behalf and on behalf of other persons who were:
 - (a) employed by the Respondent at any time within the period of 6 years ending on 14 May 2020,
 - (b) in the positions and circumstances summarised in paragraph 2.3 below,(the **Group Members**).
- 2.3 The Applicants wish the Court to resolve common questions relating to five sub-categories of the Group Members. The common questions are:

Group 1 Members (Certain Non-salaried Staff)

- (a) Whether the Respondent was required by law to pay certain non-salaried staff for time they spent working, or being available to work:
 - (1) in the 10 minutes prior to the commencement of their shift (if they were directed to arrive at work early);
 - (2) during their allotted meal breaks (if they were directed to serve customers during their meal breaks or to be available to serve customers during their meal breaks); and/or



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(3) after the conclusion of their shifts (if they were directed that they were unable to leave work at the conclusion of their shifts until their allocated duties were performed).

(b) Whether there was a common or general practice of Store Managers and Area Managers directing such Group Members to work such hours without payment.

Group 2 Members (Certain Non-Salaried Staff)

(c) Whether the Respondent was required by law to pay certain non-salaried staff for time they worked in addition to their ordinary hours at a higher overtime rate of pay.

(d) Whether there was a common or general practice of Store Managers and Area Managers directing such Group Members to work such additional hours without being paid at an overtime rate.

Group 3 Members (Certain Salaried Managers)

(e) Whether the Respondent was required by law to pay certain salaried staff in 'managerial' positions amounts in excess of their usual salary for additional hours worked in excess of their ordinary hours, including:

- (1) at the end of their shifts;
- (2) by working through their scheduled breaks;
- (3) by performing additional shifts,

if they were directed to perform that work.

(f) Whether there was a common or general practice of Store Managers and Area Managers directing such Group Members to work such additional hours but not pay them for such additional hours.

Group 4 Members (Certain Trainees)

(g) Whether the Respondent was required by law to pay certain trainees at a rate of pay provided for in the relevant modern award which was higher than that provided for under their collective agreement.

Group 5 Members (Unlawful Deductions from Certain Staff Wages)

(h) Whether it was unlawful for the Respondent to make deductions from staff wages for uniforms supplied to employees and obtaining pre-employment National Police Certificates.

(i) Whether such Group Members, from whose pay such deductions were made, should be compensated for this.

Further details of the description of Group Members are set out in the Applicants' Statement of Claim as amended, which is available at the link in paragraph 9.1 below.



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2.4 The Applicants seek orders from the Court:

- (a) to recover compensation for amounts they claim not to have been paid or which should not have been deducted from their wages due to one or more of the following claims:
 - (1) being directed to do work before the commencement of a shift, but not being paid for this time;
 - (2) being directed to serve customers or being available to serve customers during meal breaks, but not being paid for this time;
 - (3) being directed to finish tasks and do work after the end of their shifts but not being paid for this time;
 - (4) not being paid for overtime work at overtime rates of pay;
 - (5) not being paid for additional hours at overtime rates of pay; and
 - (6) deductions being made from wages for uniform and police check costs;
- (b) for payment of interest up to judgment on the above amounts; and
- (c) to impose "pecuniary penalties" (similar to a fine) on the Respondent.

2.5 The pecuniary penalties are a penalty which the employer can be ordered to pay in relation to a contravention under the *Fair Work Act 2009* (Cth) (**Act**). Pecuniary penalties can only be ordered by the Court, and only if the Court makes a finding that there has been a contravention of the Act.

2.6 The Applicants seek an order from the Court that any pecuniary penalty which the Respondent is ordered to pay be paid to Group Members of the Group on whose behalf they are claiming.

2.7 The Class Action will only finally determine the individual claims of the five Applicants.

2.8 Once the alleged common questions are determined, Group Members who also bring a claim will be required to prove their own claims, however they will not have to prove any of the legal or factual common issues to the extent they are determined in favour of the Applicants by the Court in The Class Action.

3. Participation in The Class Action

- 3.1 This matter is currently being conducted by Adero Law on a no-win/no-fee basis. A copy of the Adero Law retainer can be obtained from that law firm.
- 3.2 You do not need to retain Adero Law to be a member of the class action, as at this point the class action is being run as an 'open class'. This means that anyone who falls within any one or more of the five Group Member definitions is automatically part of the class action, even if they have not signed a retainer with Adero Law.
- 3.3 At an appropriate time, the Court will make orders that you be notified of an opportunity to 'opt out' of the The Class Action. This means that you will be able to choose whether or not to continue in the class action.



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3.4 If a settlement agreement of The Class Action is reached between the Applicants and the Respondent for the benefit of the Group Members, any such settlement requires approval of the Federal Court of Australia in accordance with section 33V of the *Federal Court of Australia Act 1976*.

4. Corrections of Adero Law Statements

4.1 Adero Law has stated publicly that:

- (a) *"the exploitation of workers has become a business model"*;
- (b) the Respondent *"has had every opportunity to implement fair business practices and has failed to do so"*;
- (c) *"the Peregrine Corporation, the parent company of OTR, has been involved in several claims at the South Australian Employment Tribunal" (SAET)*;
- (d) *"numerous individual cases run on behalf of On The Run workers have been heard in the SAET"*.

4.2 In relation to these matters:

- (a) the comment by Adero Law regarding the exploitation of workers was not made in respect of the Respondent;
- (b) the Respondent vigorously denies that its business practices are anything other than fair and proper;
- (c) Peregrine Corporation has not been involved in any proceedings in the SAET and is not the parent entity of the Respondent;
- (d) the Respondent has not been a party to numerous individual cases in the SAET. In fact, despite employing thousands of employees, there have previously only ever been four claims against it by former employees in which it has been alleged that they have not been paid correctly.

4.3 Adero Law's website states that the amount of "lost wages" claimed in the Class Action is in the order of \$50 to \$70 million. In fact, the amount of the claims made in the Class Action is not specifically pleaded or subject of evidence at this stage of the proceedings. If the Class Action is successful, which is not guaranteed, the amount of each Group Member's claim will be determined based on their own individual circumstances.

5. The role of the Respondent Claims Investigation and Resolution Process

You may have already seen an email from the Respondent stating that it has an established process for investigating any payment related issues. The Respondent has publicly stated a commitment to fully rectifying payment related issues, with interest. Information about the Respondent's Claims Investigation and Resolution Process can be obtained from the Respondent.



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6. Participating in the The Class Action and the Respondent's Claims Investigation Process and Resolution Process

- 6.1 The Respondent Claims Investigation Process may assist individuals to resolve some underpayment claims. You can participate in this process without entering into a retainer with Adero Law. Any resolution does not require the approval of the Federal Court of Australia.
- 6.2 You can participate in both the Respondent Claims Investigation Process and The Class Action. Adero Law and the Applicants are supportive of Group Members participating in the Respondent Claims Investigation Process, should they choose to do so.
- 6.3 In the Respondent's Claims Investigation Process:
- (a) The Court will not be involved as the process is separate from The Class Action the Court.
 - (b) You will not be represented by Adero Law on a no win / no fee basis.
 - (c) There is no charge to you for participating.
 - (d) The Respondent will endeavour to determine your claim within two to three months of lodging your claim, with a right of review by an independent barrister engaged by the Respondent (at no charge to you) if you are dissatisfied with the outcome.

7. Recent changes and clarifications as to who is a Group Member and which Group Members the Applicants are representing

- 7.1 When The Class Action was commenced, Group 4 Members included people who were employed under the Respondent's full time collective agreement. The Applicants have amended the claim so that it covers only people who were employed under the part time collective agreement. This means that if you were employed as a trainee under the full time customer service collective agreement, you will no longer be able to participate in the Group 4 Claim.
- 7.2 The Class Action has also been amended so that some of the Applicants have changed the way that they are bringing their claims on behalf of the Group Members.
- (a) In the Group 1 Claim, Mr Furnell was initially bringing the claim on behalf of people who were employed under the relevant modern award as well as the part time collective agreement – he is now no longer bringing the claim on behalf of people employed under the modern award.
 - (b) In the Group 5 Claim, all of the applicants are bringing the claim on behalf of Group Members. It should be understood that Mr Furnell, Mr Palmer and Mr Williamson are bringing the claim only on behalf of people who were employed under the collective agreement, while Paul Young and Shannon Mahoney are bringing the claim on behalf of people who were employed under the collective agreement and the modern award.



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8. Case Management Status

- 8.1 On 3 July 2020, the Court made various directions for the further conduct of the matter. The Applicants seek to make certain amendments to the Originating Application. The Respondent has not yet been directed to file a defence. The orders made by the Court can be accessed at https://www.comcourts.gov.au/file/FEDERAL/P/SAD76/2020/order_list.
- 8.2 The proceedings are next before the Court on 28 August 2020.

9. Further Information

- 9.1 If you would like more information about the The Class Action, you can see the papers the Applicants have filed with the Court explaining their claim (called the "Originating Application" and a "Statement of Claim" as amended) on the website of the Federal Court of Australia at <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.
- 9.2 You can contact Adero Law at onthesun@aderolaw.com.au.
- 9.3 You can contact the Respondent, Shahin Enterprises, in relation to the Respondent Claims Investigation Process at Payroll.Enquiry@otr.com.au.

10. Next Steps

There are no steps you need to take at this time in response to this communication.

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