

NOTICE TO GROUP MEMBERS – OPT OUT AND CLAIM REGISTRATION
CLASS ACTION – AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD ACN 008
150 543 (SAD76/2020)

This Notice is important. It relates to your right to:

- (a) **register** your claim as part of this class action;
- (b) **opt out** of this class action;
- (c) **do nothing**.

SECTION 1 – INFORMATION ABOUT THE CLASS ACTION

Why have you received this Notice?

1. A class action has been commenced in the Federal Court of Australia by the Applicants (Mr Furnell and Others) on behalf of certain persons who were employed by the Respondent, Shahin Enterprises Pty Ltd ACN 008 150 543 (**Shahin Enterprises**), between 14 May 2014 and 13 May 2020 (**Class Action**).
2. The Federal Court of Australia has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the class action. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in this notice that you don't understand then you should seek legal advice.

What is a Class Action?

3. A class action is also called a 'representative proceeding'. It is a case brought by the **Applicants** on their own behalf and on behalf of a class of people (**Group Members**) against another person or entity (the **respondent**) where the Applicants and the Group Members have similar claims against that respondent.
4. The Applicants in a class action do 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.
5. Group Members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding outcome can happen in one of two ways: a *judgment* following a trial, or a *settlement* at any time that is approved by the Court. If there is a judgment or a

settlement of a class action, Group Members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the same respondent in other legal proceedings. Group Members should note that:

- (a) in a *settlement* of a class action, where the settlement provides for compensation to Group Members, the settlement is likely to extinguish all rights to compensation which a Group Member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action. Any settlement of the Class Action may include releases that are commonly sought in relation to the settlements of class actions, which include releases of the respondent, its related entities, and their current and former directors, officers, employees, contractors and agents, in respect of:
 - (i) all claims made by Group Members against that respondent in the class action; and
 - (ii) any claims Group Members may have against that respondent and its related entities:
 - (A) which are raised in the Class Action;
 - (B) which were at any time the subject of the Class Action or any part of the Class Action; or
 - (C) which relate to the matters or issues the subject of the Class Action or any part of the Class Action,whether arising at common law, equity or under statute; and
- (b) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicant and Group Members. Group Members are bound by those findings, whether or not they are favourable to them (unless they are successfully appealed). Importantly, if there are other proceedings between a Group Member and the respondent, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are decided against the Applicants, Group Members will be unable to pursue claims they may have which are the same as the Applicants' claims, and will not be able to pursue other claims which are dependent upon common issues which have been decided against the Applicant.

6. If you consider you have claims against Shahin Enterprises which are based on your individual circumstances or are otherwise additional 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).

What is the Class Action about?

7. On 14 May 2020, the Class Action was filed by Adero Law on behalf of former employees of Shahin Enterprises, Aaron Furnell and Others.
8. The Applicants bring their claims on their own behalf and on behalf of other persons up to the date of filing of the claim who were:
 - (a) employed by Shahin Enterprises at any time within the period of 6 years ending on 14 May 2020, under the *Shahin Enterprises Pty Ltd Employee Collective Agreement – Customer Service Employee* (the **Customer Service CA**), the *Shahin Enterprises Pty Ltd Employee Collective Agreement -Full Time Employees* (**Full Time CA**) (which were in force until 30 June 2018) and/or the *Vehicle Manufacturing, Repair, Services and Retail Award* (the **Award**) (which was in force from 1 July 2018), as the case may be; and
 - (b) being persons in the positions and circumstances summarised in paragraph 10 below, (the **Group Members**). The period in which the Customer Service CA and the Full Time CA were in force is referred to as the “**Collective Agreement Period**” and the period in which the Award was in force is referred to as the “**Modern Award Period**”.
9. The Group Members may belong to one or more of five sub-Groups, as follows.
 - (a) **Group 1 Members (Certain Non-salaried Staff)**: These are current and former employees of Shahin Enterprises who allege that at any time between 14 May 2014 and 13 May 2020:
 - (i) were employed under the Customer Service CA and/or the Award in the positions of:
 - (A) console operator;
 - (B) driveway attendant; or
 - (C) roadhouse (food) attendant,

- (ii) were directed verbally from time to time, to:
 - (A) arrive at work, be available to perform work and perform work 10 minutes prior to the start of their scheduled shift (**Pre-Shift Work**);
 - (B) stay at work, be available to perform work and perform work after the completion of their scheduled shift (**Post-Shift Work**); and/or
 - (C) work through their shifts without taking a meal break by attending to customers during this period or being available during this period (either by being the only rostered employee and directed to attend any customers throughout their shift, or being directed from time to time while on a meal break to serve customers) to attend to customers without being given additional time for a meal break, despite their shifts scheduling such a break and a period of 30 minutes of their shifts being treated as an unpaid meal break (**Meal Break Work**);
 - (iii) were not paid their entitlements in the Collective Agreement Period arising from the Customer Service CA in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work;
 - (iv) were not paid their entitlements in the Modern Award Period arising from the Award in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work; and
 - (v) have not, as at the date of commencement of this proceeding, commenced proceedings against Shahin Enterprises in respect of the non-payment or underpayment of their full entitlements for the Pre-Shift Work, Post-Shift Work and/or Meal Break Work.
- (b) **Group 2 Members (Certain Non-Salaried Staff):** These are current and former employees of Shahin Enterprises who allege that at any time in the period to 30 June 2018:
- (i) were employed in the positions of:
 - (A) console operator;
 - (B) driveway attendant; or
 - (C) roadhouse (food) attendant,
- pursuant to the Customer Service CA,

- (ii) were directed from time to time, to perform work in excess of their ordinary hours (**Overtime**);
 - (iii) were not paid their entitlements arising from the Overtime in that they were paid for such Overtime at their base rate of pay and not at the applicable overtime penalty rate provided for in the Customer Service CA; and
 - (iv) have not, as at the date of commencement of this proceeding, commenced proceedings against Shahin Enterprises in respect of the underpayments of their entitlements relating to the Overtime.
- (c) **Group 3 Members (Certain Salaried Managers):** These are current and former employees of Shahin Enterprises who allege that at any time between 14 May 2014 and 13 May 2020:
- (i) were employed in salaried managerial positions under the Full Time CA and/or Award of:
 - (A) store manager;
 - (B) assistant store manager;
 - (C) store manager in training;
 - (D) food manager;
 - (E) assistant food manager; or
 - (F) food manager in training,
 - (ii) were directed verbally from time to time, to perform work in excess of 38 hours per week (**Overtime**);
 - (iii) were not paid their entitlements arising from the Overtime arising from the Full Time CA in the Collective Agreement Period and Award during the Modern Award Period; and
 - (iv) have not, as at the date of commencement of this proceeding, commenced proceedings against Shahin Enterprises in respect of the underpayments of their entitlements relating to the Overtime.
- (d) **Group 4 Members (Trainee Underpayment)** These are current and former employees of Shahin Enterprises who allege that at any time between 14 May 2014 and 30 June 2018 they:

- (i) were employed as 'trainees' in the positions of:
 - (A) console operator;
 - (B) driveway attendant; or
 - (C) roadhouse (food) attendant,pursuant to the Customer Service CA during the Collective Agreement Period,
 - (ii) were engaged as 'off-the-job' trainees during their employment in this period; and
 - (iii) performed work during this period and were paid a base rate of pay for such work which was lower than the comparable base rate of pay that would have applied had the Award applied to them and not the Customer Service CA.
- (e) **Group 5 Members (Unlawful Deductions from Certain Staff Wages):** These are people who allege that at any time between 14 May 2014 and 13 May 2020 they:
- (i) were employed pursuant to the Customer Service CA or Full Time CA during the Collective Agreement Period or the Award during the Modern Award Period,
 - (ii) had amounts deducted from their pay purportedly for the cost of:
 - (A) uniforms which they were directed by Shahin Enterprises to wear when working; and
 - (B) criminal history checks obtained by Shahin Enterprises prior to their commencing in their employment.

10. If you meet these criteria, you may be a Group Member.

11. 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:
 - (i) being directed to do work before the commencement of a shift, but not being paid for this time;
 - (ii) being directed to serve customers or being available to serve customers during meal breaks, but not being paid for this time;

- (iii) being directed to finish tasks and do work after the end of their shifts but not being paid for this time;
 - (iv) not being paid for overtime work at overtime rates of pay;
 - (v) not being paid for additional hours at overtime rates of pay; and
 - (vi) 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 Shahin Enterprises. As to these:
 - (i) 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.
 - (ii) The Applicants seek an order from the Court that any pecuniary penalty which Shahin Enterprises may be ordered to pay be paid to Group Members on whose behalf the Applicants are claiming.
12. The Class Action will only finally determine the individual claims of the five Applicants.
13. For the benefit of Group Members, the Applicants seek answers to common questions that may affect the liability of Shahin Enterprises to all Group Members, and also seek compensation and interest from Shahin Enterprises, and penalties to be paid to Group Members.
14. 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.
15. The allegations made by Mr Furnell and other Applicants against Shahin Enterprises are set out in the Applicants’ Further Amended Statement of Claim, a copy of which is available at: <https://www.aderolaw.com.au/class-actions/on-the-run/>.
16. The Respondent has filed a defence in the Class Action and denies the allegations against it. A copy of Shahin Enterprises’ Defence is available at the same link set out above at paragraph 15, together with the Applicants’ Reply to that Defence.
17. On 11 February 2021, the Court made orders referring the Class Action to a mediation to be conducted by 30 August 2021 (the **Mediation**). As part of this process, the Court also

made orders which require any Group Members who wishes to opt out of the Class Action to do so by 14 May 2021. The Court also approved the sending of this notice to Group Members, which gives Group Members an opportunity to register their details (if they have not already signed a retainer agreement with Adero law) so that their specific claims can be considered at the Mediation. Any settlement agreed will be subject to Court approval.

18. Mr Mathew, a former Shahin Enterprises employee during the Collective Agreement Period in 2015 and 2016, brought an underpayment claim against Shahin Enterprises in the South Australian Employment Tribunal (**SAET**). The SAET found that Mr Mathew was required to start work prior to his rostered shift time and was not paid for that work, and that he did not have uninterrupted meal breaks but was paid as if he had taken meal breaks. Further, the SAET found that voluntary overtime forms he was given and submitted were not genuine requests for overtime and so he should have been paid a higher rate of pay for his overtime. The Full Court of the Federal Court rejected Shahin Enterprises' appeal against the SAET's decision. Mr Mathew was awarded compensation plus interest for his underpayment as well as a penalty. The appeal judgment is *Shahin Enterprises Pty Ltd v Mathew* [2020] FCAFC 57 and can be downloaded from <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/57.html>.
19. Mr Mathew's case was not part of the Class Action and it was not a test case for the Class Action. His claim only dealt with his personal circumstances. However, Mr Mathew's case has some similarities to aspects of the Group 1 and Group 2 claims in the Class Action and you may wish to consider that case when deciding what option to exercise in the Class Action.

Will Group Members be liable for legal costs?

20. In the event that the Class Action is successful (that is, if money compensation is recovered), the Court will be asked to have the legal and/or funding costs incurred by the Applicants in pursuing the Class Action paid from the money recovered, fairly from all persons who have benefitted from the Class Action. The effect of any such order, if made, would be that all Group Members who benefit will contribute to the legal costs. This ensures that all Group Members are treated equally.
21. In the event that the Class Action is unsuccessful, Group Members have no liability to pay any legal and/or funding costs.

What do Group Members need to do?

22. You have three options:
- (a) Register (if you have not already signed a retainer with Adero Law) and provide details of your employment with Shahin Enterprises so that your individual claim can be taken into account by the parties in the Mediation and any other settlement discussions with a view to settling your claim without having to go to trial (subject to court approval of any settlement agreement);
 - (b) Opt out of the Class Action; or
 - (c) Do nothing.
23. There are different consequences depending on which option you choose. Each of these options is explained in greater detail in Section 2 below.
24. For Group Members who **register**, account can be taken of your individual claim at the Mediation.
25. For Group Members who **opt out** of the Class Action, you will no longer be a Group Member. If you want to bring your own claim, you will need to do that separately with your own legal representation should you choose and at your own cost. You will not receive any payment from any settlement or judgment in the Class Action if the Class Action succeeds.
26. For Group Members who **do nothing** (i.e. have not already signed a retainer with Adero Law, and now neither register to participate in the Class Action nor opt out of the proceeding) you will remain a Group Member in the Class Action subject to the matters in paragraph 43 below.
27. If you wish to **Opt out** of the Class Action, you **must** do so by **14 May 2021 (the Deadline)**;
28. If you wish to ensure that account can be taken of your **individual claim at the Mediation**, you should **register** by the Deadline.
29. Further information about each of the options set out above is contained in Section 2 below. **Please read the information about your options carefully.**
30. Shahin Enterprises has established a Claims Investigation Process to investigate underpayment claims.
- (a) You can participate in the Claims Investigation Process regardless of which of the three options set out above you choose in the Class Action.

- (b) The Court will not be involved in the Claims Investigation Process.
- (c) There is no charge to you for participating in the Claims Investigation Process and you will not be represented by Adero Law.
- (d) Shahin Enterprises will endeavour to determine your claim within two or three months of lodging your claim, with a right of review by an independent barrister engaged by Shahin Enterprises (at no charge to you) if you are dissatisfied with the outcome.

Where can I get more information?

- 31. For more information about the Class Action, you can visit the website of Adero Law at <https://www.aderolaw.com.au/class-actions/on-the-run/>.
- 32. You can contact Shahin Enterprises in relation to its Claims Investigation Process at payroll.enquiry@otr.com.au.

If you are unsure of what to do, you should seek independent legal advice.

SECTION 2 – YOUR OPTIONS

Option 1: Register for the Class Action (if you have not already signed a retainer with Adero Law)

33. You do not have to register to remain a Group Member.
34. However, first, registration is a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the Class Action (including after any settlement, or after any judgment following the trial of common issues).
35. Second, registering for the Class Action involves providing details about you and your claim to Adero Law. This allows Adero Law and Shahin Enterprises to consider and take into account your claim at the Mediation and in any other settlement discussions. Any settlement will still be subject to Court approval, but you will not need to do more to participate in any settlement sum negotiated on your behalf.
36. If you have already signed a retainer agreement with Adero Law, you do not need to register again and no further action is required other than providing Adero Law with information about your employment with Shahin Enterprises if you have not already done so. If necessary, Adero Law may contact you requesting further information.
37. If you have not already signed a retainer agreement with Adero Law, you can register for the Class Action by completing the Class Action 'Group Member Registration' form attached as Schedule B to this Notice (the **Registration Form**). You may complete the Registration Form online at web address <https://www.aderolaw.com.au/class-actions/on-the-run/> by the Deadline or in hard-copy form in the form of the Registration Form attached as Schedule B to this Notice and returning that hard copy form to Adero Law before the Deadline (**Registered Group Member**). As noted above, if you wish to ensure that your individual claim can be taken into account at the Mediation, you should register prior to 14 May 2021.
38. If you are considering becoming a Registered Group Member, you should read this Notice carefully and if you do not understand everything, you should get independent legal advice.
39. Please note that you are under no obligation to enter into a retainer with Adero Law if you choose to register.
40. If you want to register and ensure your individual claim is taken into account at the Mediation, you must provide (or take reasonable steps to provide) the information requested in the Registration Form by the Deadline. Registrations received after the Deadline may not be accepted, with the result that you will be treated as having not responded to this Notice

unless you have completed and submitted an Opt Out Notice in accordance with Option 2 below.

Option 2: Opt out

41. If you opt out of the Class Action, you will no longer be a Group Member (even if you have already signed a retainer with Adero Law). This means you will:
- (a) not be affected by any orders made in the Class Action;
 - (b) not be entitled to receive any distribution arising from any damages awarded or settlement sum paid in relation to any section of the Class Action;
 - (c) not be bound by any settlement or judgment in the Class Action; and
 - (d) be able to commence separate proceedings against Shahin Enterprises on your own behalf if you so wish. You will need to arrange your own legal representation and funding for your claim.
42. If you wish to opt out of the Class Action, you must complete the 'Opt Out Notice' attached at Schedule A below and submit it to the Court by the Deadline. As noted above, the Deadline is 14 May 2021.
43. The Opt Out Notice must be submitted to the South Australian Registry of the Federal Court of Australia by post or email at the following addresses:
- (a) sareg@fedcourt.gov.au, with the email subject line: 'Opt Out Notice SAD76/2020; or
 - (b) Federal Court of Australia Registry, GPO Box 1350, Adelaide SA 5001

Option 3: Do nothing

44. If you do not register for or opt out of the Class Action (and you have not already signed a Retainer Agreement with Adero Law), you will be an **Unregistered Group Member**. You will remain a Group Member in the proceedings and await the outcome.
45. If the parties agree to settle the Class Action at the Mediation or before the trial of the common issues commences, your individual claims may not have been taken into account at the Mediation and in any settlement agreement that may be reached at the Mediation. The parties will then seek the Court's approval of any settlement agreement. In considering whether you can participate in any settlement sum, the Court may take into account at that time that you had not registered by the Deadline and provided details of your individual claim.

46. If you are permitted to receive any part of the settlement sum, you will have to register in any event in order to participate.
47. As a Group Member you will be bound by any settlement approved by the Court that affects you or by any judgment given in the Class Action after the trial of common issues.
48. If the parties do not agree to settle the class action at the Mediation or before the commencement of the trial on common issues, you will remain a Group Member and be bound by the Court's judgment in respect of them. You may have your claim considered at any further mediation or as part of any settlement that takes place at some later time.
49. Again, registration now is a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the Class Action (including after any settlement, or after any judgment following the trial of common issues) as well as allowing the parties to consider your claims and take them into account at the Mediation and any other settlement discussions.

SCHEDULE A

OPT OUT NOTICE

COMPLETE THIS FORM IF YOU WISH TO NOT PARTICIPATE IN THE CLASS ACTION

If you complete this form then you will not be affected by the Class Action. You can pursue your own claim separately if you wish to but you will not be able to receive payment from any settlement or favourable judgment in the Class Action.

Federal Court of Australia
District Registry: South Australia
Division: Fair Work

Aaron Furnell & ORS
Applicants

Shahin Enterprises Pty Ltd ACN 008 150 543
Respondent

To: sareg@fedcourt.gov.au
Subject Line: Opt Out Notice SAD76/2020

OR

Federal Court of Australia Registry
GPO Box 1350
Adelaide SA, 5001

The person named below as a Group Member in this class action gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth) that the Group Member is opting out of the class action.

<i>Name of Group Member (print):</i>	
<i>Postal address of Group Member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	

If you are signing as the solicitor or representative of the Group Member:

<i>Name of person completing this form (print):</i>	
<i>Authority of person completing this form (e.g. power of attorney, lawyer):</i>	
<i>Postal address of person completing this form:</i>	
<i>Telephone of person completing this form:</i>	
<i>Email of person completing this form:</i>	

Date:

Signature:

Print name:

SCHEDULE B

GROUP MEMBER REGISTRATION FORM

COMPLETE THIS FORM IF YOU WISH TO REGISTER TO PARTICIPATE IN THE CLASS ACTION (AND HAVE NOT ALREADY SIGNED A RETAINER WITH ADERO LAW)

If you do not complete this form you will remain a Group Member but you may not be able to have your individual claim considered in any mediation, which may adversely affect your entitlement to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) agreed at the Mediation

Federal Court of Australia

District Registry: South Australia

Division: Fair Work

Aaron Furnell & ORS

Applicants

Shahin Enterprises Pty Ltd ACN 008 150 543

Respondent

To: Adero Law

ontherun@aderolaw.com.au

OR

Adero Law

5 Torrens Street, Braddon ACT 2612

The Group Member named below *registers* to participate in the class action and to be bound by, and share in the benefit of any judgment or settlement of the class action.

1. FORM COMPLETION		
The person completing this form is	<input type="checkbox"/> An eligible group member – skip to 2. <input type="checkbox"/> Someone else, completing on behalf of an eligible group member – please complete below.	
<i>Personal details of person completing this form</i>		
Title		
First name/s		
Last name		
Email address		
2. GROUP MEMBER DETAILS		
<i>Personal details of individual</i>		
Title		
First name/s		
Last name		
Email address		
Phone number		
Alternative phone number		
Street address		
Suburb/town		
State		
Postcode / ZIP		
Country		
3. GROUP		
<i>Which of the following Groups do you believe applies to you? More than one may apply to you.</i>		
Group 1	Console operator, driveway attendant or roadhouse (food) attendant who claims to have been verbally directed to do unpaid Pre-Shift Work, Post-Shift Work, or to do or be available to do Meal Break Work	<input type="checkbox"/> Yes <input type="checkbox"/> No
Group 2	Non-salaried console operator, driveway attendant or roadhouse (food) attendant who claims to have been required to work in excess of ordinary hours (i.e. overtime) but not paid at the correct rate	<input type="checkbox"/> Yes <input type="checkbox"/> No
Group 3	Salaried manager who claims to have been verbally directed to do more than 38 hours per week, but not to have been paid overtime rates.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Group 4	Trainee console operator, driveway attendant or roadhouse (food) who claims not to have been paid at the correct rate because their training was undertaken “off the job”	<input type="checkbox"/> Yes <input type="checkbox"/> No
Group 5	Uniform costs and/or Criminal history check costs were deducted from your wages in a claimed breach of the Fair Work Act.	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. DOCUMENTARY EVIDENCE

You are required to take reasonable steps to provide the following information. Please attach further sheets of paper if you need more space. Please also attach any supporting documents you want the parties to the class action to take into account.

However, failure to do so will not invalidate your registration.

<i>Date your employment commenced with the Respondent, Shahin Enterprises?</i>	
<i>List of positions held and stores worked at during the course of your employment with the Respondent, Shahin Enterprises?</i>	
<i>Date your employment with the Respondent, Shahin Enterprises, ended (if applicable)?</i>	
I have attached documentary evidence in support of the information herein	<input type="checkbox"/> Yes <input type="checkbox"/> No

5. EXECUTION

Dated	
Signed by, or on behalf of and with the authority of, the Group Member (as specified above)	
Print name	

Please return this form to:

ontherun@aderolaw.com.au **OR**

5 Torrens Street, Braddon ACT 2612

You should keep a copy for your records