



## ANNEXURE A

### RED CENTRENATS CLASS ACTION

*Bouchere v Car Festivals Pty Ltd & Ors (NSD 1446 of 2019, Federal Court of Australia)*

## NOTICE OF PROPOSED SETTLEMENT

### SUMMARY

This notice contains important information about the class action filed by Lynelle Bouchere in the Federal Court of Australia against Car Festivals Pty Ltd, Northern Territory Major Events Company Pty Ltd and Summernats Pty Ltd (the Respondents) relating to an incident that occurred on 3 September 2017 at the Red CentreNATS event held at the Inland Dragway Alice Springs where individuals suffered injuries following a burnout competition.

### PROPOSED SETTLEMENT

The class action seeks compensation for those people who were injured. The applicant and respondents have agreed to settle the proceedings for an amount of \$3.2 million. The settlement is subject to approval by the Court. If the Court approves the settlement, eligible group members will be entitled to receive a settlement payment from the approved settlement sum after deduction of legal fees and administration costs.

**Please read this notice carefully. If you are a group member, your legal rights will be affected by the proposed settlement.**

### WHAT GROUP MEMBERS NEED TO DO

You can do one of three things in response to this notice:

#### 1. Opt out of the class action

You can exclude yourself from the class action by option out. That means you will not be bound by the settlement agreement (if approved) and will not receive any benefits flowing from it.



## **2. Object to the settlement**

You can raise an objection to the settlement of the class action. That means you will remain in the class action but oppose the settlement. The Court will take into account your objection, but you will be bound by the terms of the settlement (if approved).

## **3. Do nothing (which means you will remain in the class action)**

You can do nothing if you would like to remain in the class action. That means you will be bound by the terms of the settlement agreement (if approved). This will be the default option unless you choose option 1 and opt out.

**The deadline to opt out or object to the settlement is 4:00pm on 2 September 2022.**

If there is anything in this notice that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this Notice should NOT be directed to the Court.

## **1. ABOUT THE CLASS ACTION**

A class action is a legal proceeding brought by someone on behalf of a group of people with similar claims (called a “class”).

A class action was commenced by Lynelle Bouchere in the Federal Court of Australia against the Respondents relating to the incident at the Red CentreNATS event held at the Inland Dragway Alice Springs on 3 September 2017. During a burnout competition at Red CentreNATS, a number of individuals were injured when flames were emitted from a vehicle towards spectators. The class action seeks compensation for those people who were injured.

The applicant contends that the Respondents:

- (a) contravened consumer guarantees as provided by Australian Consumer Law (ACL);
- (b) contravened a due care and skill guarantee of the ACL; and/or
- (c) breached their duty of care to the applicant and the group members, and

as a result, the applicant and group members suffered injury and loss.

The Respondents deny these allegations.



The key Court documents filed in the class action can be found here:

<https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>.

## **2. THE SETTLEMENT**

The applicant and the Respondents have agreed to resolve the class action out of Court. This means they will not ask the Court to decide who should win the case. This is called a “settlement”.

As part of the settlement, the applicant and the respondents have agreed to the following without any admission as to liability by the Respondents:

- (a) the Respondents will pay \$3.2 million inclusive of legal costs, expenses, disbursements, interest and any funding commission approved by the Court;
- (b) the applicant and class members will release the respondents from any class action or individual claim arising from the burnout competition at Red CentreNATS on 3 September 2017; and
- (c) the class action will be discontinued.

Under the terms of the settlement, the \$3.2 million settlement sum includes:

- (a) reimbursement of the applicant’s reasonable legal costs incurred in the proceeding, estimated at approximately \$1 million; and
- (b) the costs of administering the settlement amount to the group members.

The effect of this is that the Court-approved funding commission and legal costs will be shared on a pro-rata basis by all eligible group members.

### **A. What settlement payment will you be entitled to?**

The amount of the settlement payment to be paid to each individual group member cannot be determined at this stage as it will depend on a number of factors, including the amount of legal fees ultimately approved by the Court to be paid from the settlement sum, and how many group members register to take part in the proposed settlement. Group member eligibility will be assessed in accordance with the court-approved scheme for determining group member entitlements (settlement scheme). If approved by the Court, the amount paid in respect of each group member will be determined by the settlement scheme.



### **B. Payment to litigation funder**

The applicant in the class action is not funded by a litigation funder. In the costs agreements disclosed by Greg Walsh to each of the applicant and group members who have entered into a costs agreement with Greg Walsh, there was specific reference to Litfund being a funder in respect of disbursements, payable by the applicant and group members in the course of the class action. However, Greg Walsh has paid all disbursements himself and no monies by way of any interest are repayable to Litfund. The disbursements paid by Greg Walsh on behalf of the applicant and group members have been disclosed to each of the applicant and group members and will be disclosed to the Court.

### **C. Will Group Members be liable for legal costs?**

The applicant intends to apply to the Court for an order with the effect that the costs that the applicant has incurred (and will incur) in conducting the class for the benefit of all group members will be paid out of the overall settlement sum. This will include the costs of administering the settlement scheme.

The applicant estimates that the total costs that will be incurred in conducting the class action, from the beginning of the proceeding up to the end of distribution of the settlement sum to all eligible group members, will be approximately \$1 million. This figure includes costs already incurred and estimated future costs relating to the settlement approval and management of the settlement scheme, and may be subject to review by an independent costs expert.

The Court will be asked to approve the payment of legal costs from the overall settlement sum. Group members are responsible by way of legal costs in respect of out of pocket costs. Group members do not need to pay any out of pocket costs to register for a settlement payment.

## **3. APPLICATION FOR COURT APPROVAL**

The Court still needs to approve the settlement. The Court will need to decide if the settlement is fair and reasonable and in the interests of all class members. The applicant and the respondents think it is.

In deciding whether the settlement is fair and reasonable and in the interests of all class members, the Court will consider information provided by any class members who do not agree with the settlement and who provide an "objection notice".



The Court will hold a hearing (like a trial) in order to decide whether to approve the settlement. It will be at 10:15 am on 9 September 2022 at the Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 2000. You can request a link to watch the hearing by emailing the Court at least 48 hours before the hearing at [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au) with the subject line: *Request to Observe Hearing NSD1446/2019*.

If the proposed settlement is not approved by the Court, the class action will continue and there will be no distribution of monies to group members unless the plaintiffs are successful in the proceeding, or a further settlement is reached.

#### **4. YOUR OPTIONS**

You have three options:

##### **1. Opt out of the class action**

If you “opt out”, you will no longer be a class member. This means you will not be bound by any orders in the class action or the settlement (if approved). If you “opt out”:

- (a) You will not get the benefit of any payment under the settlement agreement; and
- (b) You will not be bound by the restriction in the settlement agreement not to commence or participate in any further class actions or claims against the respondents in relation to the burnout competition at Red CentreNATS on 3 September 2017.

If you would like to opt out, you will need to fill out the form at Schedule One and send it to the Court no later than 4:00pm on 2 September 2022 either:

- (a) By email to: [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au) with the subject line: *Opt Out Notice NSD1446/2019*; or
- (b) By post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South NSW 1235.

##### **2. Object to the settlement of the class action**

If you do not wish to “opt out” but you oppose the settlement reached by the parties, you can object to the settlement. If the Court approves the settlement, despite your objection, you will be bound by the settlement.



If you would like to object to the settlement, you will need to fill in the form at Schedule Two and no later than 4:00 pm on 2 September 2022:

(a) Send it to the Court:

- (i) By email to: [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au) with the subject line: *Opt Out Notice NSD1446/2019*; or
- (ii) By post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South NSW 1235; or

(b) Send it to Greg Walsh & Co by email: [gaw@gregwalshco.com.au](mailto:gaw@gregwalshco.com.au) with the subject line: *Objection Notice NSD1446/2019*.

If you object to the settlement being approved, you or your lawyer may also present your position to the Court at the hearing on 9 September 2022 where the Court will consider whether to approve the settlement.

**3. Do nothing (which, by default, means you will remain in the class action)**

If you wish to remain a class member and participate in the settlement, you do not need to do anything. If the settlement is approved by the Court, you will be bound by the settlement agreement. The key terms of the settlement are set out above under the heading “settlement details”.

If the settlement is not approved by the Court, the class action will continue and you will remain a class member.



**Schedule One**

**OPT OUT NOTICE**

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

Federal Court of Australia

District Registry: New South Wales

Division: General

**Lynelle Bouchere**

Applicant

**Car Festivals Pty Ltd (ACN 603 505 728) and others**

Respondents

To: [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au)

Subject Line: Opt Out Notice NSD1446/2019

OR

Federal Court of Australia Registry

Locked Bag A6000

Sydney South, NSW 1235

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 representative of the group member:**

<i>Name of person completing this form (print):</i>	
<i>Authority of person completing this form</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 TWO**

**NOTICE OF OBJECTION**

**ONLY COMPLETE THIS FORM IF YOU WISH TO OBJECT TO THE SETTLEMENT OF THE CLASS ACTION**

Federal Court of Australia

District Registry: New South Wales

Division: General

**Lynelle Bouchere**

Applicant

**Car Festivals Pty Ltd (ACN 603 505 728) and others**

Respondents

To: [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au)

Subject Line: Objection Notice NSD1446/2019

OR

Federal Court of Australia Registry

Locked Bag A6000

Sydney South, NSW 1235

The person named below as a group member in this class action **OBJECTS** to the proposed settlement of the proceeding:

<i>Name of group member (print):</i>	
<i>Postal address of group member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	



**Reasons for objection** [set out below any submissions, attaching additional pages if necessary and affidavit evidence]

**Date:**

.....

**Signature:**

.....

**Print name:**

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