



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1100/2021

**SPOZAC PTY LTD (ACN 112 100 231) AS TRUSTEE FOR THE LDB FAMILY
TRUST T/AS NOT JUST CAKES**

Applicant

TYRO PAYMENTS LTD (ACN 103 575 042)

Respondent

ORDER

JUDGE: JUSTICE RARES

DATE OF ORDER: 22 July 2022

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Notice of opt out and registration

1. Pursuant to section 33X of the Act, notice be given to Group Members:

- a. of their right to opt out of the proceeding; and
- b. that upon any settlement (subject to Court approval) of this proceeding, the parties will seek an order which, if made, has the effect of providing that any Group Member who by the Class Deadline:
 - i. has not registered; or
 - ii. has not opted out in accordance with the Court's orders,

will remain a Group Member for all purposes of this proceeding but shall not, without leave of the Court, be permitted to seek any benefit pursuant to that settlement (subject to Court approval) of this proceeding that occurs before final judgment.

2. The form and content of the Notice (being Schedule A to this Order) (Notice) be approved for the purposes of section 33Y(2) of the Act.

Opt out



3. Pursuant to section 33J(1) of the Federal Court of Australia Act 1976 (Cth) (**Act**), 4pm (AEST) on 30 October 2022 be fixed as the date by which a Group Member (as defined in paragraph 1 of the Statement of Claim) may opt out of the proceeding (**Class Deadline**).
4. Pursuant to section 33J(2) of the Act, any Group Member who wishes to opt out of this proceeding must, before the Class Deadline, deliver an opt out notice in the form of Annexure 1 of the Notice to the New South Wales Registry of the Federal Court of Australia.
5. If on or before the Class Deadline, the solicitors for any party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors must file the notice in the New South Wales Registry of the Federal Court of Australia within 14 days of receipt with a notation specifying the date it was received, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.
6. The solicitors for any party be granted leave to inspect the Court file and to copy any opt out notices filed by Group Members.

Claim registration

7. A Group Member may, by the Class Deadline, register their claim by:
 - a. completing the online registration process through the ‘Tyro Class Action’ webpage at tyroclassaction.com.au; or
 - b. if they are unable to register online, contacting Bannister Law Class Actions through the contact details on its website (www.bannisterlaw.com.au),

(the **Registered Group Members**).
8. In order to register for the purpose of Order 7, each Group Member will be required to submit:
 - a. the Group Member’s name and address and/or email address;
 - b. if the Group Member is a company or business, the full name of the duly appointed officer or agent completing the registration form and the position they hold within the company or business (e.g., director or partner);
 - c. the Group Member’s Australian Business Number; and



- d. information (including documents, if available) supporting the Group Member's claim.
9. A Group Member will be deemed to be a Registered Group Member as defined for the purpose of Order 7 if, by the Class Deadline that Group Member has:
- a. retained Bannister Law Class Actions in writing to act for that Group Member in connection with this proceeding; or
 - b. engaged Court House Capital Management Ltd in writing to provide litigation funding services to that Group Member in connection with this proceeding.
10. The Respondent shall instruct a third-party mail house to distribute the Notice to the Group Members on or before 27 July 2022 according to the following procedure:
- a. by 3 August 2022, the Respondent shall cause the Notice to be sent by email to Group Members that have an email address recorded in its merchant records;
 - b. by 27 July 2022:
 - i. the Respondent shall prepare a list of the last known postal address for Group Members recorded in its merchant records and provide it to a third-party mail house (Mail House); and
 - ii. the Respondent shall provide to the Applicant's solicitors the total number of letters to be posted;
 - c. by 3 August 2022, the Respondent is to instruct the Mail House to cause the Notice to be sent by prepaid ordinary post to each Group Member at the postal address recorded for the Group Member in the Respondent's merchant records;
 - d. by 15 October 2022, the Respondent will cause the communication referred to in order 10(a) to be re-sent.
11. The costs of distributing the Notice in accordance with Order 10 shall be paid by the Respondent.

Claim registration information

12. By 4pm (AEST) on 7 November 2022, the Applicant must deliver to the solicitors of the Respondent a list of Registered Group Members, which list shall contain:



- a. a unique identification number for each Registered Group Member whose registration has been processed by Bannister Law Class Actions and Court House Capital Management Ltd by that date; and
 - b. the information listed at Order 8(a) to (d) for each Registered Group Member.
13. By 4pm (AEST) on 5 December 2022, the Applicant must deliver to the solicitors of the Respondent a further list of Registered Group Members, which shall contain additions and amendments to the information provided in accordance with Order 12.

Mediation

14. The mediation adjourned on 21 June 2022 be reconvened by 28 February 2023.

Other

15. The Notice approved pursuant to Order 2 above may be amended before it is emailed, posted, displayed or published in order to correct any website or email address or telephone number or other non-substantive error.
16. The proceedings be listed for a further case management hearing on 3 March 2023.
17. Costs be reserved.
18. Liberty to apply.

AND THE COURT NOTES THAT:

19. In the event that the proceedings settle (subject to Court approval) then the parties intend to apply to the Court for an order, which, if made, has the effect of providing that any Group Member who by the Class Deadline does not opt out and who is not a Registered Group Member will remain a Group Member for all purposes of this proceeding, but shall not, without leave of the Court, be permitted to seek any benefit pursuant to any settlement (subject to Court approval) of this proceeding.

Date that entry is stamped: 22 July 2022

Sia Lagos
Registrar



Schedule A

CLAIM REGISTRATION AND OPT OUT NOTICE
FEDERAL COURT OF AUSTRALIA

This is an important notice approved by the Federal Court of Australia and issued to you because you are likely to be a Group Member in the Tyro Class Action. Please read it carefully, as it may affect your legal rights.

As explained below, you may do one of three things in response to this notice:

- 1 **Register and remain a Group Member** and have your claim considered as part of any settlement and receive a share of settlement monies resulting from any settlement (subject to the Court's approval);
- 2 **Do nothing and remain a Group Member** and be bound by any judgment or settlement in the proceeding. However, if you do not register and there is a settlement before final judgment, the parties will seek an order which, if made, will have the effect of precluding you from seeking any benefit from that settlement without leave of the Court; or
- 3 **Opt out and cease to be a Group Member** and lose your right to try to get any monetary compensation out of the Tyro Class Action. You will keep your right to try to get some monetary compensation in an action you start yourself against Tyro or through participation in Tyro's existing Remediation Program.

The potential consequences of each course are outlined below. However, you should also consider obtaining independent legal advice.

Tyro Class Action (NSD 1100/2021)

1. Why is this notice important?

A class action (the **Tyro Class Action**) has been commenced in the Federal Court of Australia by Spozac Pty Limited as Trustee for the LDB Family Trust t/as Not Just Cakes (ACN 112 100 231) (**Applicant**) against Tyro Payments Ltd (ACN 103 575 042) (**Tyro**).

The Tyro Class Action relates to an outage to Tyro's EFTPOS facility in January 2021 (the **Outage**). The Applicant alleges that Tyro:

- (a) engaged in misleading or deceptive conduct and made false or misleading representations in contravention of the *Australian Consumer Law (ACL)* by making representations through its website and communications with prospective customers as to the reliability and availability of its EFTPOS facility and technical support services;
- (b) breached a number of consumer guarantees contained in the ACL with respect to its EFTPOS terminals and the services it supplied to customers; and



- (c) breached the provisions of its agreement for the provision of its services to its customers.

The Tyro Class Action seeks compensation for customers of Tyro who were affected by the Outage.

Tyro denies liability in the proceedings.

The solicitors acting for the Applicant are **Bannister Law Class Actions**.

The Tyro Class Action is currently being funded by CHC Investment Fund Pty Ltd as the trustee for the CHC Investment Fund Unit Trust ACN 643 822 799 (**CHC**).

The Federal Court 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 action. You have been identified as a potential Group Member.

You should read this notice carefully. Group Members who intend to remain in the Tyro Class Action and who have not yet signed up must register their claim before 4pm (Sydney time) on 30 October 2022. While registration is not mandatory, failure to do so could have significant consequences. This is because the parties intend to seek an order that Group Members who do not register by the deadline will not be entitled to participate in any agreed settlement without leave of the Court.

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

2. What is a class action?

A class action is an action that is brought by one person (the **Applicant**) on his or her own behalf and on behalf of Group Members against another person (the **Respondent**). Class actions are commenced in circumstances where the Applicant and the Group Members have similar claims against the Respondent.

Group Members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways:

- (a) in a *judgment* following trial, in which the Court will decide various factual and legal issues in respect of the claims made by the Applicant and persons who then remain as Group Members. Unless those decisions are successfully appealed, they bind the Applicant, Group Members and the Respondent. Importantly, if there are other proceedings between a person, who was a Group Member when the judgment was given, and the Respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action; or
- (b) in a *settlement* of a class action. Where the settlement provides for compensation to Group Members it may extinguish *all* rights to compensation which a person who then remains as 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.



If there is a judgment or a settlement of the Tyro Class Action and you are then a Group Member, you will not be able to pursue the same claims and may not be able to pursue similar or related claims against Tyro in other legal proceedings. If you consider that you have claims against Tyro which are based on your individual circumstances or otherwise additional to the claims described in the Tyro Class Action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline to register your interest to participate in any settlement or to opt out (see Section 5 below).

3. Are you a Group Member?

You are a Group Member if:

- You have signed Tyro service agreements with Tyro;
- You were a customer of Tyro as at 5 January 2021;
- You have suffered loss or damage due to the Outage; and
- You were not and are not a director, officer or close associate of Tyro, or a judge or a judicial registrar of the Federal Court of Australia.

If you are unsure whether or not you are a Group Member, you should email Bannister Law Class Actions at tyroclassaction@bl.com.au or call their office line ((02) 8231 6529) or seek your own legal advice without delay.

4. What is the Tyro Remediation Program?

Since 19 March 2021, Tyro has invited customers who were impacted by the Outage to enter into a settlement agreement and obtain compensation directly from Tyro.

It is likely that you have already received communications from Tyro inviting you to participate in the Remediation Program.

Tyro's position is that any Group Member who has entered into a settlement agreement with Tyro under its Remediation Program or enters into a settlement agreement is not or will not be entitled to compensation in the Tyro Class Action or otherwise. Group Members who have already entered into a settlement agreement with Tyro may wish to obtain their own legal advice in relation to their rights.

5. What are your options?

If you are a Group Member and you have not already registered your claim, you have 3 options:

- (a) Register for the Tyro Class Action and remain a Group Member. If you fail to submit your registration in time you will be treated as having not responded to this notice;
 - (b) Do nothing and remain a Group Member. If you do not take any steps by the opt out and registration deadline, you will remain a Group Member and your rights against Tyro may be determined without your participation. However, if a settlement is agreed, the parties intend to apply for an order which would prevent Group Members **who do not register by the deadline from participating in that settlement**; or
 - (c) Opt out and cease to be a Group Member.
- There may be different consequences depending on which option you choose.



OPTION 1 – REGISTER YOUR CLAIM AND REMAIN A GROUP MEMBER

Register: If you wish to remain a Group Member and actively participate in the proceeding or any potential settlement, you must register by 4pm (Sydney time) on 30 October 2022.

The Federal Court of Australia ordered the parties to the Tyro Class Action to attend a mediation on 21 June 2022. The mediation has been adjourned to 28 February 2023.

If you wish to have your claim for any loss suffered as a result of the Outage considered as part of any settlement and receive a share of settlement monies (if any) resulting from any settlement, you must apply to register by completing and submitting the online Tyro Group Member Registration Form available on the Tyro Class Action website accessible at: tyroclassaction.com.au.

You will have the ability to provide information to support your potential claim in the Registration Form. Bannister Law Class Actions can assist you in collating and providing information to support your claim.

While registration is not mandatory, failure to do so could have significant consequences because the parties intend to seek an order from the Court that Group Members who do not register by the deadline will not be entitled to participate in any settlement that may be agreed to. If the Court considers that it is appropriate to make such an order, you will not receive any payment from the settlement and you will be prohibited from bringing any further claim against Tyro in relation to the Outage.

If you wish to register, your registration must be completed and received by **4pm (Sydney time) on 30 October 2022**. Registrations received after this time will not be accepted and you will be treated as having not responded to this notice.

OPTION 2 – DO NOTHING AND REMAIN A GROUP MEMBER

If you do nothing (meaning, you do not register (Option 1, above)) before **4pm (Sydney time) on 30 October 2022**, you will remain a Group Member in the Tyro Class Action and be bound by any orders made in it, including any judgment or approved settlement in the proceeding.

While registration is not mandatory, **failure to do so could have significant consequences because the parties intend to seek an order from the Court that Group Members who do not register by the deadline will not be entitled to participate in any settlement that may be agreed**. If such an order is made, you will not receive any payment from the settlement and you will be prohibited from bringing any further claim against Tyro in relation to the Outage.

If the Court declines to make the order or if no settlement is agreed, you will not lose your rights to participate.

OPTION 3 – OPT OUT AND CEASE TO BE A GROUP MEMBER

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf. However, Group Members can cease to be Group Members by “opting out” of the class action.

By opting out of the Tyro Class Action, you will:



- cease to be a Group Member and will not be affected by, or entitled to the benefit of, any judgment or orders made in the Tyro Class Action;
- not be entitled to receive any compensation for any damages award or settlement secured by the Applicant in the Tyro Class Action;
- be able to participate in Tyro's Remediation Program described at Section 4 above; and
- be able to bring your own separate claim against Tyro provided that you issue court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against Tyro, prior to opting out, you should seek your own legal advice about your claim and the applicable time limit.

If you do not wish to remain a Group Member you must complete an "Opt Out Notice" in the form shown at Annexure 1 to this notice and return it to the New South Wales Registry of the Federal Court of Australia **by no later than 4pm (Sydney time) on 30 October 2022**.

Each Group Member seeking to opt out should complete a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (for example, director or partner).

IMPORTANT: The opt out notice must reach the Court by no later than 4pm (Sydney time) on 30 October 2022, otherwise it will not be effective. Opt out notices received after this time will not be accepted and you will be treated as having not responded to this notice and you will remain a Group Member.

6. Is a Group Member liable for costs and charges?

Group Members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. The costs of running the class action are being borne in the first instance by CHC and Bannister Law Class Actions.

If the class action is successful (that is, if money compensation is recovered through a judgment or settlement), the Court will be asked to distribute the legal costs incurred by Bannister Law Class Actions and CHC, and the funding costs which Group Members have agreed to pay CHC, from the money recovered equally among 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 and funding costs.

If the class action is unsuccessful, Group Members will have no liability to pay any legal and funding costs.

If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Bannister Law Class Actions or other lawyers to do that work for you. This additional work may involve further fees payable by you.

7. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the application, statement of claim and the defence may be obtained by:

- (a) downloading them from: **www.tyroclassaction.com.au**



- (b) sending an email to tyroclassaction@bl.com.au or calling the Bannister Law Class Actions Office line 02 8231 6529 requesting a copy; or
- (c) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee.



ANNEXURE 1 - OPT OUT NOTICE

Form 21

Rule 9.34

Opt out notice

Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD 1100/2021

**SPOZAC PTY LIMITED (ACN 112 100 231) AS TRUSTEE FOR THE LDB FAMILY TRUST
T/AS NOT JUST CAKES**

Applicant

TYRO PAYMENTS LTD (ACN 103 575 042)

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
184 Phillip Street
Queens Square
Sydney NSW 2000

..... (*print name*), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that (*print name*) is opting out of the representative proceeding.

Date:

..... (*signature*)

..... (*print name*)

Group Member / Lawyer for the Group Member