

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV 2018-409-361

BETWEEN **BRENDAN MILES ROSS and COLLEEN ANNE ROSS**
 Plaintiffs

AND **SOUTHERN RESPONSE EARTHQUAKE SERVICES**
 LIMITED
 Defendant

**NOTICE OF INTERLOCUTORY APPLICATION BY THE PLAINTIFFS
FOR LEAVE TO DISCONTINUE PROCEEDING**

Dated: 13 October 2021

Judicial Officer: Duty Judge
Next Event: First call directions conference to be allocated
Next Event Date: After 13 October 2021

HIGH COURT
13 OCT 2021
CHRISTCHURCH

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**NOTICE OF INTERLOCUTORY APPLICATION BY THE PLAINTIFFS
FOR LEAVE TO DISCONTINUE PROCEEDING**

To the Registrar of the High Court at Christchurch

And to the Defendant

This document notifies you that:

1. The Plaintiffs, Brendan Miles Ross and Colleen Anne Ross, will on
(via telephone conference) Monday 18 October 2021 at 2:30 ~~am~~/pm, apply to the High Court at Christchurch for leave to discontinue this proceeding.

2. The grounds on which leave is sought are that:

- (a) This is a representative proceeding, brought by the plaintiffs on behalf of a class of persons identified at [138] of the Court of Appeal's judgment issued on 16 September 2019 (CA Judgment).¹
- (b) In the CA judgment, the Court of Appeal ordered that "*The plaintiffs may discontinue this proceeding only with the leave of the Court*".²
- (c) The parties have now reached an agreement to discontinue the proceeding (the Agreement) subject to the Court granting leave.
- (d) The terms of the Agreement provide that:

¹ *Ross v Southern Response Earthquake Services Limited* (2019) 25 PRNZ 33 (CA).

² At [136].

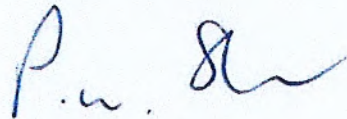
- (i) All class members will have the right to apply for compensation from the Defendant under the Defendant's Settlement Package scheme;
 - (ii) That right will be exercisable for at least 18 months and is enforceable by class members;
 - (iii) The Defendant will make a single lump sum payment towards the Plaintiffs' legal fees and litigation funding costs; and
 - (iv) After receiving payment from the Defendant, Claims Funding Australia (CFA), the litigation funder providing funding to the Plaintiffs, will not seek to recover any sums (whether for legal fees, funding commission or otherwise) from class members.
- (e) Leave to discontinue should be granted because:
- (i) The Agreement provides for compensation to be made available to all class members under the Defendant's Settlement Package, subject only to the Defendant's eligibility criteria;
 - (ii) The Plaintiffs consider that the sums offered under the Defendant's Settlement Package are likely to provide fair and reasonable compensation for most class members' claims, especially when compared against the likely risks and returns of continued litigation;
 - (iii) However, each class member will be able to make that assessment for themselves, as they will be free to accept the Package offer or reject it;

- (iv) Class members who do not accept the Defendant's Settlement Package will remain free to pursue claims against the Defendant if they wish;
- (v) Under the Agreement:
 - 1. CFA will not seek to recover any sums from any class members, including Funded Class Members (those who signed a funding agreement with CFA);
 - 2. The Defendant will instead make a single lump sum payment towards the Plaintiffs' legal fees and litigation funding costs; and
 - 3. That payment is effectively "on top of" any compensation paid to class members, as opposed to "out of" such compensation;
- (vi) The Agreement avoids the costs of the proceeding being imposed on a subset of class members, namely the Funded Class Members, and thus avoids the "free rider problem";
- (vii) The outcome is that *prima facie*, every eligible class member who applies to Southern Response for compensation under the Settlement Package will receive and retain his/her full entitlement under that package, with all class members being treated equally whether they were Funded Class Members or not;
- (viii) Accordingly, the terms of the Agreement are fair and reasonable and are in the interests of the class members as a whole; and

(ix) Discontinuance of the proceeding would not be unfair, unreasonable or adverse to the interests of class members as a whole.

3. This application is made in reliance on *Ross v Southern Response Earthquake Services* (2019) 25 PRNZ 33 (CA); *Southern Response Earthquake Services v Ross* [2020] NZSC 126; *Babsday v Pitcher Partners* (2020) 148 ACSR 551 (FCA); *Tate v Westpac Banking Corp (No 2)* [2020] FCA 1374; *Evans v Davantage Group (No 3)* [2021] FCA 70; and the Affidavit of Grant Ashley Cameron sworn on 13 October 2021 in support.

Dated: 13 October 2021



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Philip Skelton QC / Kelly Quinn / Carter Pearce
Counsel for the Plaintiffs