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**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**Case No. 42355/2015**

18 February 2020

BEFORE THE HONOURABLE ACTING DEPUTY JUDGE PRESIDENT POTTERILL

In the *ex parte* application of:

**JOHAN PIETER HENDRIK PRETORIUS**

**FIRST APPLICANT**

**MONTANA DAVID KWAPA**

**SECOND APPLICANT**

**TRANSPORT PENSION FUND**

**THIRD APPLICANT**

**TRANSNET SECOND DEFINED  
BENEFIT FUND**

**FOURTH APPLICANT**

**TRANSNET SOC LIMITED**

**FIFTH APPLICANT**



(In re: Application to approve a settlement agreement in respect of a certified class action)

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**DRAFT ORDER**

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**HAVING read the documents filed of record, heard counsel and having considered the matter:-**

**IT IS ORDERED THAT:**

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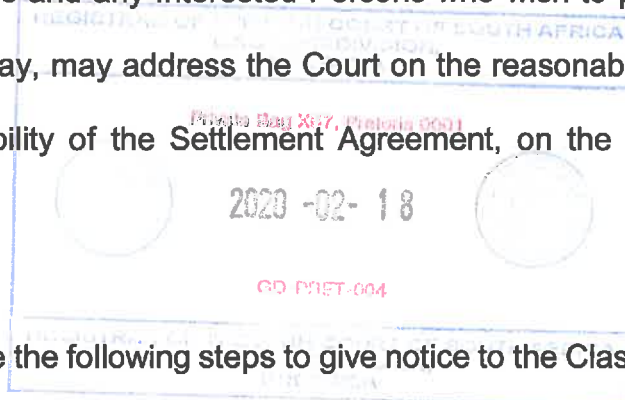
1. A *rule nisi* is issued calling on all persons who are members of the class certified by this Court on 31 July 2014 under case number 25095/2013 (the **Class**) and any person with an interest in the Settlement Agreement (the **"Interested Persons"**) to show cause why a final order should not be made on or after **14 April 2020** (the **Return Day**) in the following terms:

1.1. The Settlement Agreement (including the annexures thereto) concluded between the Applicants on or about 11 December 2019 and marked annexure **"A"** is made an order of court.

1.2. It is declared that the Settlement Agreement is binding on all members of the Class and parties to the Agreement.

1.3. The action instituted on behalf of the Class under case number 42355/15 is settled and concluded among the parties and the members of the Class on the terms of the Settlement Agreement.

2. Any member of the Class and any Interested Persons who wish to participate in the hearing on the Return Day, may address the Court on the reasonableness, fairness, adequacy and sustainability of the Settlement Agreement, on the basis set out in paragraph 5 below.



3. The Applicants must take the following steps to give notice to the Class and Interested Persons of the steps that must be taken by any member of the Class or an Interested Person who wishes to participate in the hearing on the Return Day:

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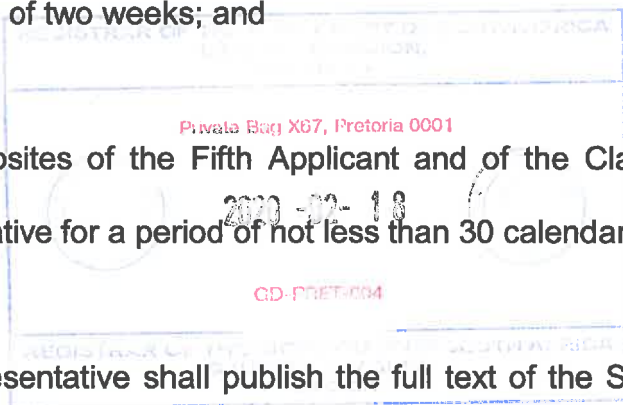
3.1. The Applicants must within two weeks of the date of this order publish a notice substantially in accordance with the notice attached as Schedule 2 to the Settlement Agreement (**the Class Notice**) in the following manner:

3.1.1. by placing it on a prominent notice board at the offices of Geysers & Coetzee Attorneys (**Class Legal Representative**) for a period of not less than 30 calendar days;

3.1.2. by the Third Applicant and the Fourth Applicant issuing a member communication to their respective members using the database of email and postal addresses maintained by the administrator of the Third Applicant and the Fourth Applicant for the purpose of communicating with the members of the Third Applicant and the Fourth Applicant, including the Class;

3.1.3. in the newspapers listed in Schedule 3 of the Settlement Agreement and published in each such newspaper once per week for a period of two weeks; and

3.1.4. on the websites of the Fifth Applicant and of the Class Legal Representative for a period of not less than 30 calendar days.



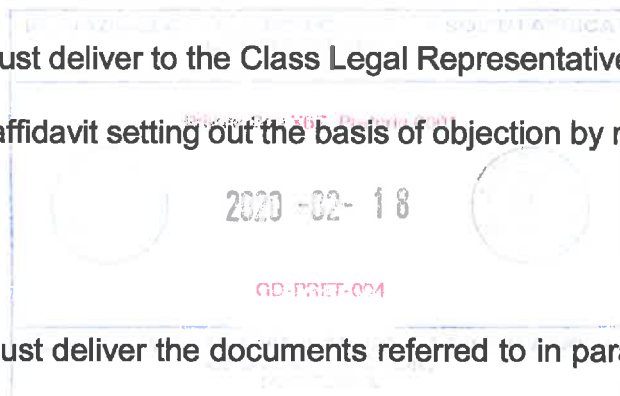
3.2. The Class Legal Representative shall publish the full text of the Settlement Agreement and copies of the papers that have been filed at the Court by the Applicants, as well as the Court Order, on the Class Legal Representative's

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website within 3 (three) court days of this order. Copies will be made available at [www.geysercoetzee.co.za](http://www.geysercoetzee.co.za).

4. With the exception of the publication to be undertaken by the Class Legal Representative as contemplated in paragraphs 3.1.1, 3.1.4 and 3.2, the costs in relation to the publication of the Class Notice shall be borne by the Third to Fifth Applicants on terms agreed among themselves.
5. Any member of the Class and any Interested Person who wishes to object to the Settlement Agreement or any part of it must take the following steps to do so:
  - 5.1. Deliver a notice of appearance, based on the form attached and marked "B", to the Class Legal Representative, and have it filed at the above Court, by no later than **31 March 2020**. A member of the Class or an Interested Person who files a notice of appearance and affidavit is referred to, in the remainder of this order, as an "**Objecting Party**".

- 5.2. An Objecting Party must deliver to the Class Legal Representative, and file at Court, an answering affidavit setting out the basis of objection by no later than **7 April 2020**.



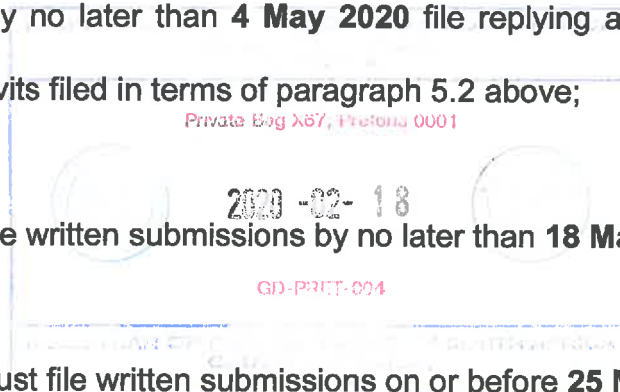
- 5.3. An Objecting Party must deliver the documents referred to in paragraphs 5.1 and 5.2 above to the Class Legal Representative by hand or by fax or by email, and the details are:

**GEYSER & COETZEE ATTORNEYS**  
Attorneys for the First and Second Applicants  
9 Baobab Nook  
Zwartkop x 4

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Centurion  
Ref: WW Coetzee  
Tel: 012 663 5247  
Fax: 012 663 5719  
Email: wynanda@geysercoetzee.co.za

- 5.4 Every document delivered to the Class Legal Representative by an Objecting Party must be served by the Class Legal Representative on the attorneys for the other Applicants forthwith, provided that service in terms of this order may be effected at the e-mail addresses of the attorneys listed in the notice of motion and the e-mail addresses in the notices of intention to participate.
6. If no notices of appearance and answering affidavits are served and filed within the time periods stipulated in paragraph 5 above, the matter shall be set down for hearing on an unopposed basis on the Return Day.
7. If notice(s) of appearance and answering affidavit(s) are filed in accordance with paragraph 5 above, then:
- 7.1. The Return Day shall be postponed from 14 April 2020 to 17 June 2020 or such other or further date(s) as the Court may direct;
- 7.2. The Applicants may by no later than **4 May 2020** file replying affidavits in response to any affidavits filed in terms of paragraph 5.2 above;
- 7.3. The Applicants must file written submissions by no later than **18 May 2020**;
- 7.4. Any Objecting Party must file written submissions on or before **25 May 2020**;



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7.5. The Applicants shall file any written submissions in response to the Objecting Parties by no later than **2 June 2020**;

7.6. Should the Court direct that the Return Day be a day or days other than or further than 17 June 2020 as contemplated in paragraph 7.1 above, the Applicants must provide notice to the Objecting Parties of such other or further return day(s) and must publish a notice on the websites of the Fifth Applicant and of the Class Legal Representative so as to provide sufficient notice to the members of the Class and other Interested Persons of such other or further return day(s);

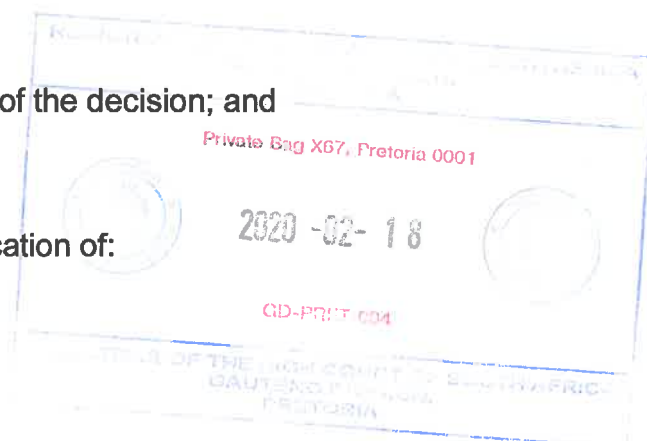
7.7. The Court will, by no later than 5 (five) court days before the Return Day, give directions as to the making of oral submissions at the hearing by the Objecting Parties, if any setting out whether oral submissions will be permitted, which of the Objecting Parties will be permitted to make oral submissions and if so the duration of such submissions; and

7.8. Service on any Objecting Party will be effected by e-mail to the e-mail address specified in such Party's notice of appearance.

8. The Court shall, when giving its final decision in this matter, simultaneously issue:

8.1. An approved summary of the decision; and

8.2. Directions for the publication of:



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- 8.2.1. the Court's decision;
- 8.2.2. the Settlement Agreement, if approved; and
- 8.2.3. any other matter which the Court deems necessary.

9. Upon issue of the *rule nisi* order, a copy of the application and the *rule nisi* order shall be served on:

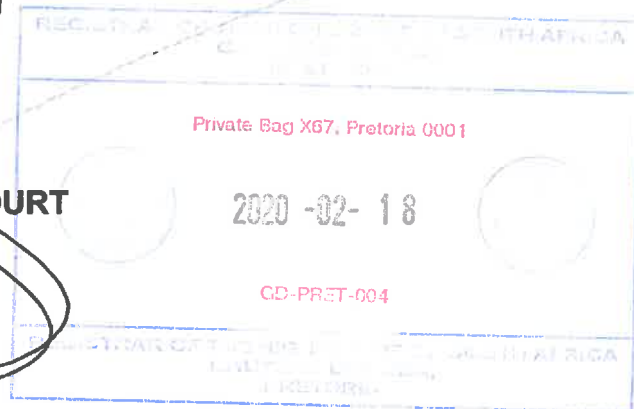
9.1. The Minister of Public Enterprises at 80 Hamilton Street, Arcadia, Pretoria 0007;

9.2. The Minister of Finance at 40 Church Square, Old Reserve Bank Building, 2<sup>nd</sup> Floor 2, Pretoria and 120 Plein Street, Floor 3, Room 367, Cape Town; and

9.3. The Business Rescue Practitioners for South African Airways SOC Limited, at Airways Park, 1 Jones Road, OR Tambo International Airport, Kempton Park, Gauteng, 1627;

**BY ORDER OF THE COURT**

**REGISTRAR**



Handwritten signature and date: *At 18/2/20*