

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

No. S EC



Case: S ECI 2020 02588

Filed on: 04/11/2022 07:51 AM

BETWEEN:

GEOFFREY and LYNDEN IDDLES

Plaintiffs

and

**FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665) and
ors according to the attached Schedule**

Defendants

SUMMONS

Date of document: 4 November 2022
Filed on behalf of: The Plaintiff
Prepared by:
Adley Burstyner
124 Westbury Close
Balaclava VIC 3183

Solicitor's Code: CR113740
Tel: 0411 072 743
Ref: 22002399
Attention: David Burstyner
Email: dburstyner@adleyburstyner.com.au

TO THE DEFENDANTS

You are summoned to attend before the Court on the hearing of an application by the Plaintiffs for the following orders:

(FIRST RETURN)

Notice of Proposed Settlement

1. Pursuant to ss 33X and 33Y of the Act, the following Notices (together, the **Notice Documents**) be approved by the Court:
 - a. the Notice of Proposed Settlement in the form of Annexure A to these orders;
 - b. the Notice of Objection in the form of Annexure B to these orders.

2. Pursuant to ss 33X and 33Y of the Act, the Notice Documents be given to Group Members as follows:
 - a. the plaintiffs' solicitors shall send a copy of the Notice Documents by email to the registered email address of each Group Member who has registered with or engaged Adley Burstyner and provided an email address (**Registered Group Members** or **RGMs**);

- b. the defendants shall provide a mailing house or litigation support provider (to be nominated by the plaintiffs) the name, email address, postal address and telephone number known to the defendants, of each person who according to the defendants' records is or may be a group member in the proceeding, such list to be in Excel format
- c. the plaintiffs' solicitors shall instruct the mailing house or litigation support provider to provide the Notice Documents to potential Group Members who are not RGMs (**Other Group Members** or **OGMs**):
 - i. by email from the email address info@fonterraclassaction.com.au, where an email address is available for an OGM; and
 - ii. by prepaid ordinary post at the address recorded for a an OGM;

where 'OGM' mean the persons on the list provided by the defendants further to order 2.b, if possible as updated in the process of giving the Opt Out notice;

- d. the plaintiffs' solicitors shall instruct the mailing house or litigation support provider that if it receives notice of a delivery failure (or equivalent) in relation to any email or mail sent pursuant to (c) above, it shall attempt to contact the OGM by telephone to request updated contact details, and send the Notice Documents to any updated email address or postal address provided by the OGM, within two (2) business days of receiving the delivery failure notification;
- e. by **** November 2022**, the plaintiffs cause the quarter page publications of the notice in Annexure C to these orders in the hard copy editions of the Shepparton News, the Country News, the Warrnambool Standard, and the Colac Herald, to the extent possible for editions published before 30 November 2022.
- f. by **** November 2022**, the solicitors for the Plaintiffs cause the Notice Documents to be published on their website; and
- g. by **** November 2022**, the solicitors for the Plaintiffs provide a copy of the Notice Documents to the Class Actions Co-ordinator of the Supreme Court of Victoria for posting on the Court's website.

Objections to proposed settlement

3. Any Group Member who wishes to object to the proposed settlement must complete a Notice of Objection and send it to the Court either:
 - a. by email to the registry of the Supreme Court of Victoria at the email address cldgroupproceedings@supcourt.vic.gov.au; or
 - b. by post to the postal address:

Fonterra Class Action
Principal Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000along with any written submissions or evidence on which they rely, such that the said Notice and submissions are received by the Court no later than 4:00pm on **** December 2022**.
4. Leave is granted to solicitors for the parties to inspect the Court file for, and make copies of, any Notices of Objection and any evidence or submissions filed in support in relation to the proposed settlement.

Legal costs referee

5. Pursuant to rule 50.01 of the *Supreme Court (General Civil Procedure) Rules 2015*, [Person Y] is appointed as a special referee (**Legal Costs Referee**) to report in writing to the Court (**Report**) [his or her] opinion on the following questions:
 - a. the lump sum amount of reasonable legal costs that the Court should approve as fair and reasonable and allow to be deducted from the settlement sum; and
 - b. an estimate as to the costs that would reasonably be incurred during the Settlement Administration process.
6. The Reference will commence forthwith and:
 - a. the Referee is to consider and implement the Reference without undue formality or delay to enable a just, efficient and cost-effective resolution of the Reference. This may include enquiries by telephone and direct communication, without intervention of lawyers, with any person who the Referee believes may have relevant information. The Referee may seek submissions from the solicitors for each of the parties and shall take such submissions into account;
 - b. to facilitate the just, efficient and cost-effective resolution of the Reference the Referee is to make such directions as the Referee considers appropriate as to the

conduct of the Reference, including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provision of any submissions;

- c. the Plaintiffs' solicitors shall forthwith and without delay deliver to the Referee a copy of this order and immediately make available all information and records which the Referee believes are relevant to the reference; and
- d. the Referee and parties shall have liberty to seek directions with respect to any matter arising in the Reference upon 24 hours' notice, or such other notice ordered by the Court.

7. By 4:00 pm on [] the Costs Referee shall:
 - a. in accordance with r 50.03 submit the Report to the Court, addressed to the chambers of [presiding Judge]; and
 - b. provide a copy of the Report to the solicitors for the plaintiffs.
8. The costs of and incidental to the appointment of the Costs Referee and the Costs Referee's reasonable costs shall be paid by the Plaintiffs in the first instance, but otherwise, subject to further order, shall be costs in the proceeding and shall be paid from the Settlement Sum.
9. Unless the Court otherwise orders, the Costs Referee's fees shall be not more than [\$] inclusive of GST.

Further materials

10. By 4:00pm on **** November 2022**, the Plaintiffs file and serve:
 - a. an affidavit deposing to compliance with Orders 1-2 above; and
 - b. any further evidence and written submissions upon which they propose to rely at the hearing of the application for Orders 15-22 below (**Settlement Approval Hearing**).
11. Subject to any further order, the Plaintiff, the Defendant and the Funder have leave to file any affidavit or annexure or part thereof, and any written submissions, in respect of which they seek confidentiality orders, by email to the Associate of [Judge] marked in the subject line with the word "confidential" and is excused from any requirement to electronically file, or serve any such affidavit or annexure or any part thereof or any written submissions on any party in that form, but shall instead electronically file and serve that affidavit or annexure or written submissions in redacted form.

12. LLS Fund Services Pty Ltd (ABN 51 627 975 213) as trustee for Litigation Lending Fund 1's (**Funder**) have leave to intervene in this Summons, and shall file any affidavit material and outline of submissions 14 days before the Settlement Approval Hearing.
13. The Funder may file any material in respect of which confidentiality orders are sought by it in accordance with the procedure referred to in Order 11 above.
14. If the Defendants seek to make any submission or lead evidence at the Settlement Approval Hearing, the Defendants shall file and serve (including on the Funder) a written outline of submissions, and any evidence, not less than seven (7) days prior to the said hearing.

Adjournment

15. The hearing of the application for the further orders set out below be adjourned to **[**]** (being the Settlement Approval Hearing).

(SECOND RETURN)

Confidentiality

16. Pursuant to the inherent power of the Court and rule 28A.06 of the *Supreme Court (General Civil Procedure) Rules 2015*, and subject to any further order, for the duration of 5 years from the date of this order, in order to prevent a real and substantial risk of prejudice to the proper administration of justice:
 - a. the evidence filed by the Plaintiffs in accordance with paragraph 11 in this summons is not to be disclosed to any person or entity except to the parties, their legal representatives and the Funder, and
 - b. any person or entity to whom such disclosure is made pursuant to (a) hereof may not disclose that material or any part thereof to any other person or entity without prior leave of the Court.

Settlement approval orders

17. Pursuant to s 33V of the Act, the settlement of the proceeding upon the terms set out in:
 - a. the Settlement Deed being Annexure DB-1 of the Affidavit of David Burstyner affirmed ****** November 2022 (**Settlement Deed**); and
 - b. the Settlement Distribution Scheme (**SDS**) being Annexure DB-[] of the Affidavit of David Burstyner affirmed ****** November 2022;(together the **Fonterra Class Action Settlement**) is approved by the Court.

18. Pursuant to ss 33V and 33ZF of the Act, the following amounts are approved for the purposes of the SDS (utilising defined terms from it):
- a. the amount of \$[] to be paid to the Funder as the “**Plaintiffs’ Legal Costs and Disbursements**”;
 - b. the amount of \$6,875,000 to be paid to the Funder as the “**Funding Commission**”;
 - c. the amount of \$[] to be paid to the plaintiffs’ solicitors as “**Unpaid Plaintiffs’ Legal costs and Disbursements**” ;
 - d. the amount of \$[] to be paid to the plaintiffs’ solicitors as “**Unpaid Plaintiffs’ Costs of Settlement Approval**”;
 - e. an amount up to \$[] to be paid to the SDS Administrator for “**Administration Costs**”; and
 - f. the amount of \$30,000 as the “**Plaintiffs’ Reimbursement Payment**”.

Authority and binding effect

19. Pursuant to ss 33V and/or 33ZF of the Act, the Court authorises the Plaintiffs *nunc pro tunc* to enter into and give effect to the Settlement Deed, for and on behalf of the group members.
20. Pursuant to s 33ZB, further or alternatively s 33ZF of the Act, the persons bound by the Fonterra Class Action Settlement are:
- a. the Plaintiffs;
 - b. the group members (which for the avoidance of doubt excludes persons who were group members but opted out of the proceeding);
 - c. the Defendants;
 - d. the Plaintiffs’ solicitors (Adley Burstyner and David Burstyner); and
 - e. the Funder.
21. For the avoidance of doubt, any group member who does not, before [**], lodge a claim to participate in the SDS shall:
- a. remain a group member for all purposes of this proceeding; and
 - b. be bound by the releases given in the Settlement Deed; but
 - c. not be entitled to any distribution pursuant to the SDS or the Fonterra Class Action Settlement.

SDS Administrator

22. Pursuant to s 33ZF of the Act, David Burstyner be appointed as the SDS Administrator of the SDS.
23. The SDS Administrator has liberty to apply in respect of any matter arising in or in relation to the administration of the Scheme upon at least three (3) clear business days' notice to each other party and the Court.

Costs

24. All *inter partes* costs orders in the proceeding as between the Plaintiffs and the Defendants be vacated.

Administration and dismissal

25. Upon the SDS Administrator being satisfied that the implementation of the SDS has been completed the SDS Administrator shall notify the Court accordingly, by written notice addressed to the Associate to [*presiding Judge*];
26. All amounts of security for costs provided by or on behalf of the Plaintiffs be released.
27. The proceeding be dismissed with no order as to costs from the date that the SDS Administrator provides the notification pursuant to Order 25 above.

Other matters

28. Such further or other orders as the Court may deem appropriate.

The application will be heard by Justice Nichols Supreme Court, 210 William Street, Melbourne, on a date to be fixed or so soon afterwards as the business of the Court allows.

FILED 4 November 2022.

This summons was filed by Adley Burstyner, solicitor for the Plaintiffs.

SCHEDULE OF PARTIES

Geoffrey and Lynden Iddles

Plaintiffs

-and-

Fonterra Australia Pty Ltd ACN 006 483 665

First Defendant

Fonterra Milk Australia Pty Ltd ACN 114 326 448

Second Defendant

Fonterra Brands (Australia) Pty Ltd ACN 095 181 669

Third Defendant