

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

S ECI 2020 02588

BETWEEN

LYNDEN AND GEOFFREY IDDLES

Plaintiffs

and

FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665)  
(& Ors according to the Schedule)

Defendants

**ORDER**

**JUDGE:** The Honourable Justice Nichols

**DATE MADE:** 15 November 2022

**ORIGINATING PROCESS:** Writ filed 17 June 2020

**HOW OBTAINED:** At the case management conference of 4  
November 2022

**ATTENDANCE:** Mr L W L Armstrong KC with Mr M W Guo and  
Ms P Kelly of counsel for the plaintiffs

Mr R Heath KC with Mr T Barry of counsel for the  
defendants

**OTHER MATTERS:** Not applicable

**THE COURT ORDERS THAT:**

**Notice of Proposed Settlement**

1 Pursuant to ss 33X and 33Y of the *Supreme Court Act 1986* (Vic) (**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;
- c. the notice for publication in newspapers in the form of Annexure C to these  
orders.



2 Pursuant to ss 33X and 33Y of the Act, the Notice Documents be given to Group Members as follows:

- a. by **4.00pm on 2 December 2022** 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. as to Group Members who are not RGMs (**Other Group Members** or **OGMs**):
  - i. by **4.00pm on 17 November 2022** the defendants shall provide a mailing house or litigation support provider (to be nominated by the plaintiffs by **4.00 pm on 10 November 2022**) 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;
  - ii. by **4.00pm on 17 November 2022** the plaintiffs' solicitors shall instruct the mailing house or litigation support provider to provide the Notice Documents, by **4.00pm on 2 December 2022**, to **OGMs**:
    1. by email from the email address [info@fonterraclassaction.com.au](mailto:info@fonterraclassaction.com.au), where an email address is available for an OGM; and
    2. by prepaid ordinary post at the address recorded for an OGM;provided further that if a party prior to 27 January 2023 becomes aware of updated telephone number, email or postal address details for an OGM, the party (if not the plaintiffs) shall, within 14 days, provide the updated details to the mailing house or litigation support provider and notify the plaintiffs and the plaintiffs shall, unless satisfied that the OGM nevertheless received the Notice Documents, take reasonable steps to cause the Notice Documents to be re-sent to the OGM at the updated address;
  - iii. by **4.00pm on 17 November 2022** 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 (ii) above, it shall within two (2) business days of receiving the delivery failure notification 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;

- c. by **4.00pm on 2 December 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.
  - d. by **4.00pm on 2 December 2022**, the solicitors for the Plaintiffs cause the Notice Documents to be published on their website; and
  - e. by **4.00pm on 2 December 2022**, the solicitors for the Plaintiffs provide a copy of the Notice Documents to the Commercial Court Registry of the Supreme Court of Victoria by email to [commercialcourt@supcourt.vic.gov.au](mailto:commercialcourt@supcourt.vic.gov.au) for posting on the Court's website.
- 3 The Plaintiffs' solicitors shall cause to be published on their website, at the same time that the Notice Documents are published on that website pursuant to Order 2(d), a copy of the Settlement Agreement dated 4 November 2022 between the parties with only the following parts of the Settlement Agreement redacted:
- a. the numbers in the "Farm" and "Owner" columns in Schedule 1; and
  - b. the defendants' bank account details in clause 6.3 (the account name, BSB number and account number).

### **Objections to proposed settlement**

- 4 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 [commercialcourt@supcourt.vic.gov.au](mailto:commercialcourt@supcourt.vic.gov.au); or
  - b. by post to the postal address:

Fonterra Class Action  
Commercial Court Registry  
Supreme Court of Victoria  
210 William Street  
Melbourne Victoria 3000



along 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 27 January 2023**.

- 5 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.

#### **Further materials**

- 6 By **4.00pm on 9 December 2022**, the Plaintiffs file and serve:
- a. an affidavit deposing to compliance with Order 2-3 above; and
  - b. any further evidence and written submissions in chief upon which they propose to rely at the hearing of the application for paragraphs 16-28 of the plaintiffs' summons filed 4 November 2022 (**Settlement Approval Hearing**).
- 7 The Funder has leave to intervene in the hearing of the plaintiffs' summons filed 4 November 2022 at the Settlement Approval Hearing, and shall file any affidavit material and outline of submissions by **4.00pm on 14 February 2023**.
- 8 Subject to any further order, the Plaintiffs, the Defendants and LLS Fund Services Pty Ltd (ABN 51 627 975 213) as trustee for Litigation Lending Fund 1 (**Funder**) have leave to file any affidavit or exhibits or part thereof, and any written submissions, in respect of which they seek confidentiality orders, by email to the Associate of Delany J marked in the subject line with the word "confidential" and subject to further order, is excused from any requirement to electronically file, or serve any such affidavit, exhibit or any part thereof or any written submissions on any party in that form, but shall instead electronically file and serve that affidavit, exhibit or submission in redacted form.
- 9 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, by **4.00pm on 17 February 2023**.
- 10 By **4.00pm on 21 February 2023**, the Plaintiffs and the Funder file and serve any evidence or submissions in respect of:
- a. group member objections;
  - b. costs;



- c. defendants' submissions; or
- d. other matters;

on which they propose to rely at the Settlement Approval Hearing.

#### **Vacation of trial listing and related orders**

- 11 Paragraph 1 of the orders made 15 June 2022 by the Honourable Justice Nichols, fixing the matter for an initial trial commencing 15 November 2022, be vacated.
- 12 The following orders also be vacated:
  - a. paragraphs 20, 21, 22, 23, 24 and 25 of the orders made 11 February 2022 by the Honourable Justice Nichols;
  - b. paragraphs 4(g), 4(h), 4(i), 7, 8 and 9 of the orders made 15 June 2022 by the Honourable Justice Nichols; and
  - c. paragraphs 1(d), 1(e), 1(f), 1(g), 2(b), 2(c), 3(a), and 3(b) of the orders made 9 September 2022 by the Honourable Justice Nichols.

#### **Adjournment**

- 13 The hearing of the plaintiffs' application for the further orders set out in paragraphs 16-28 of the plaintiffs' summons filed 4 November 2022 be adjourned to 28 February 2023 (being the Settlement Approval Hearing).

#### **Amendment to summons**

- 14 Paragraph 18(a) of the plaintiffs' summons dated 4 November 2022 is amended to substitute the words "Reimbursement of Project Costs" for the words " the Plaintiffs' Legal Costs and Disbursements".

**DATE AUTHENTICATED: 15 November 2022**

  
  
**The Honourable Justice Nichols**

**SCHEDULE OF PARTIES**

**LYNDEN IDDLES**

and

**GEOFFREY IDDLES**

and

**FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665)**

and

**FONTERRA MILK AUSTRALIA PTY LTD (ACN 114 326 448)**

and

**FONTERRA BRANDS (AUSTRALIA) PTY LTD (ACN 095 181 669)**

First plaintiff

Second plaintiff

First defendant

Second defendant

Third defendant



## ANNEXURE A.

### FONTERRA CLASS ACTION

*(Iddles v Fonterra Australia Pty Ltd,  
Supreme Court of Victoria proceeding S ECI 2020 02588)*

### IMPORTANT NOTICE – PROPOSED SETTLEMENT

#### WHY HAVE YOU RECEIVED THIS NOTICE?

1. The Supreme Court of Victoria has ordered that you be sent this Notice, because according to Fonterra's records you may be a Group Member in this class action.
2. You should read this notice carefully, because if you are a Group Member then the proposed settlement will affect your legal rights. If there is anything in this Notice that you do not understand, you should seek legal advice.

#### WHAT IS THE FONTERRA CLASS ACTION ABOUT?

3. The class action has been brought by Lynden and Geoffrey Iddles, who are dairy farmers from Strathmerton in Victoria.
4. The claim is against three companies in the Fonterra Group, being Fonterra Australia Pty Ltd ACN 006 483 665, Fonterra Milk Australia Pty Ltd ACN 114 326 448 and Fonterra Brands (Australia) Pty Ltd ACN 095 181 669 (together called **Fonterra**).
5. The Iddles brought the class action on their own behalf and on behalf of all persons (including companies) who supplied raw milk to Fonterra during the 2015/16 milk supply season (1 July 2015 to 30 June 2016), from farms in Victoria, New South Wales, Tasmania or South Australia, pursuant to Fonterra's Milk Supply Handbook and/or an Exclusive Milk Supply Agreement. These persons and companies are called the **Group Members** in the class action.

(Note, Farmers who supplied milk to Fonterra in the 2015-16 Season but under Fonterra's "Milk Supply Handbook Wagga Wagga", or were not supplying or had ~~not~~ committed to supply raw milk to Fonterra as at 5 May 2016, are not Group Members.)



6. The class action claims that when Fonterra reduced the farmgate milk price in May 2016 (the **Step Down**), it breached its contracts with Group Members. The class action also claims that Fonterra engaged in misleading or deceptive conduct and unconscionable conduct, in relation to its milk price announcements during the 2015/16 milk supply season and in implementing the Step Down. The class action claims compensation for any farmers who are Group Members and who suffered loss arising from the alleged conduct.
7. Fonterra denies the allegations made against it and is defending the class action.

### **PROPOSED SETTLEMENT**

8. The Iddles and Fonterra have agreed on terms for a settlement of the class action. The settlement cannot take effect unless the Supreme Court concludes that it is fair and reasonable in all the circumstances.
9. There will be a hearing in the Supreme Court in Melbourne at 10:15am on 28 February 2023 for the Court to decide whether to approve the proposed settlement. The hearing will be open to the public. It will also be livestreamed on the Court's website at <https://www.supremecourt.vic.gov.au/daily-hearing-list/live-streams>.
10. If you fit the definition of a 'Group Member' above then you need to read this notice and decide whether you support **or** oppose the settlement.

### **WHAT ARE THE SETTLEMENT TERMS?**

11. Under the proposed settlement, Fonterra will pay \$25,000,000 (**Settlement Sum**) without admission of liability and in full settlement of all the Group Members' claims against it. Those funds will be used to pay monies to Group Members who are shown to have suffered loss as a result of the Step Down, after **deductions** for legal and other costs, as explained below.
12. Also, where a Group Member owes a balance under a Fonterra Australia Support Loan (**FASL**), that balance will also be deducted from any compensation paid to that Group Member.
13. The procedure for distributing the Settlement Sum will be set out in detail in a Settlement Distribution Scheme or **SDS**. A copy of the proposed SDS is available on the website of





the law firm running the class action for the Iddles, Adley Burstyner, at [www.fonterraaction.com.au](http://www.fonterraaction.com.au).

## THE DEDUCTIONS EXPLAINED

14. The Plaintiffs will ask the Court to order that the **legal costs** incurred in running the class action be paid from the Settlement Sum. The Plaintiffs currently expect that the costs will be approximately \$4.95m.
15. The Plaintiffs and their litigation funder, LLS Fund Services Pty Ltd (**LLS**), will ask the Court to order that approximately \$1.05m in 'adverse costs insurance' premiums and fees be deducted from the Settlement Sum.
16. The Plaintiffs would not have been willing or able to run the class action without financial support from a litigation funder, LLS. The Plaintiffs and LLS will ask the Court for an order that 27.5% of the Settlement Sum (\$6.875m) be paid as remuneration (**commission**) to LLS, reflecting the risks it took in supporting the litigation. This deduction will be sought on a 'common fund' basis, so that all Group Members pay a share regardless of whether they signed the funding agreement.
17. The Plaintiffs solicitors will ask the Court to approve their costs of administering the SDS which are yet to be determined.
18. The Plaintiffs will ask the Court to approve payment for the time, inconvenience and stress that they incurred in bringing the action on behalf of the whole class (\$30,000).
19. If the Court approves the deductions from the Settlement Sum they will be deducted, in the same proportion, from the compensation payable to each claimant.
20. If the deductions are approved in full then the compensation available for distribution among the affected Group Members will be around \$13 million.

## WHAT YOU NEED TO DO

21. If you believe you are a group member then you have two (2) options:

(a) ***Option A – lodge your claim***

- If you think you are eligible to make a claim under the class action then you should complete the online **Claim Form** at [solicitors to insert link]. Your claim will then be checked to confirm whether you are in fact eligible for compensation according to the Court-approved formula.



- If you want to claim compensation, then you must complete the online Claim Form **before 27 January 2023**.

(b) ***Option B – do nothing and lose your rights***

- If you do nothing then you will remain a Group Member and be bound by the settlement but **not** entitled to share in the compensation. You will not be able to bring the same kinds of claims in other proceedings against the Fonterra companies.

### **CAN YOU OBJECT TO THE SETTLEMENT?**

22. If you fit the definition of a Group Member and you want to argue that the Court should not approve the settlement then you have the right to do that.
23. If you do decide to object, you need to download the **Objection Form** from the Adley Burstyner website at [\[solicitors to insert link\]](#), insert your details and send it to the Supreme Court (at the address shown on the form) **before 27 January 2023**.
24. You may attend the Court hearing on 28 February 2023, but you will not have an automatic right to make oral submissions, so it is important that your Objection Form clearly explains your objection.
25. Please note, if you want to object you should **also** fill out the ‘Option A’ Claim Form. That way, if the Court overrules your objection, your claim for compensation (if any) will be given effect.

### **MORE INFORMATION**

26. You can obtain relevant documents about the Fonterra Class Action by visiting the Class Action website at [www.fonterraclassaction.com.au](http://www.fonterraclassaction.com.au) or you can telephone Adley Burstyner on 03 5225 5237 or email them on [info@adleyburstyner.com.au](mailto:info@adleyburstyner.com.au).
27. The court documents and funding information are also available on the Supreme Court website <https://www.supremecourt.vic.gov.au/areas/group-proceedings/fonterra>.
28. You may also seek legal advice from other lawyers.
29. The Supreme Court should **not** be contacted for legal advice.



ANNEXURE B.

OBJECTION FORM

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

No. S ECI 2020 02588

BETWEEN:

LYNDEN and GEOFFREY IDDLES

Plaintiffs

and

FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665) & Ors

Defendants

To: Manager, Commercial Court Registry and Deputy Registrar  
Supreme Court of Victoria  
Commercial Court Registry  
210 William Street  
Melbourne VIC 3000  
[commercialcourt@supcourt.vic.gov.au](mailto:commercialcourt@supcourt.vic.gov.au)

The person identified as a group member below wishes to **object** to the proposed settlement of this class action

Name of group member	.....
Is the group member an individual or a company, partnership or some other structure (write which)	.....
Signed	.....
Name of person signing this notice	.....
Role of person within company, partnership or other structure (if applicable)	.....
Telephone:	.....
Email:	.....
Postal address:	..... .....



Date:		
<p>Reasons for objection (attach any evidence you rely on and separate pages for reasons if more space is required):</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>		
<p>Do you wish to seek the Court’s permission to make oral submissions at the hearing of the plaintiffs’ application for approval of the proposed settlement on 28 February 2023?</p> <p>If so, please identify the lawyer who will appear on your behalf, or that you will represent yourself. There is no automatic right to make submissions.</p> <p>This form should clearly set out the basis for your objection. If you indicate that you are seeking permission to make submissions the Court will inform you before the hearing date, whether or not you will be permitted to make submissions.</p>	<p>Yes</p>	<p>No</p> <p>.....</p> <p>.....</p> <p>.....</p>



## ANNEXURE C.

**PROPOSED SETTLEMENT OF FONTERRA CLASS ACTION REGARDING  
5 MAY 2016 FMP STEP DOWN**

Opportunity for dairy farmers to object or lodge claims

Many May 2016 suppliers of Fonterra are now eligible to:

- A. claim a share of a fund of \$25 million (less deductions for legal and funding costs which are to be approved by the Court), which has already been established and agreed to by Fonterra without admission of liability and is now being supervised by the Supreme Court of Victoria; and / or
- B. object to the Court approving the settlement.

The settlement remains subject to approval by the Supreme Court of Victoria, which will consider on 28 February 2023 whether it is “fair and reasonable”.

Farmers can find out more information, including as to the eligibility requirements, process for lodging claims and process for objecting, by going to the [solicitors to insert link]. Related information is also available at [www.fonterraaction.com.au](http://www.fonterraaction.com.au).

**THE DEADLINE FOR LODGING A CLAIM AND / OR AN OBJECTION IS  
27 JANUARY 2023.**

Farmers who are group members will not be eligible to receive any payment unless they lodge a claim by **27 January 2023**.

Group members who do not lodge a claim may lose their right to bring any other claim against Fonterra regarding the 5 May 2016 Step Down.

