

IMPORTANT NOTICE REGARDING FONTERRA CLASS ACTION

- ISSUED BY ORDER OF THE SUPREME COURT OF VICTORIA-

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

WHY HAVE YOU RECEIVED THIS NOTICE?

1. The Supreme Court of Victoria has ordered that you receive this Notice because according to Fonterra's records you may be a Group Member in this class action. The class action has been brought on behalf of dairy farmers in Victoria, New South Wales, Tasmania and South Australia who supplied milk to the Fonterra companies during the 2015-2016 milk supply season and as at 5 May 2016 continued to supply milk (**Group Members**). Suppliers under the Wagga Wagga specific handbook are excluded and are not Group Members.
2. If you believe you may be a Group Member because you meet the above description, you should read this Notice carefully as it will affect your rights. If there is anything in this Notice that you do not understand, you should seek legal advice.

INFORMATION ABOUT THIS CLASS ACTION

3. The class action has been brought by Lynden and Geoffrey Iddles, who are dairy farmers from Strathmerton in Victoria.
4. The claim is brought 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 bring the class action on their own behalf and on behalf of all Group Members. The Group Members in the Fonterra class action are **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 located in Victoria, New South Wales, Tasmania or South Australia, pursuant to Fonterra's Milk Supply Handbook and/or an Exclusive Milk Supply Agreement**. Farmers who supplied milk to Fonterra pursuant to Fonterra's "Milk Supply Handbook Wagga Wagga", who stopped supplying raw milk to Fonterra prior to 5 May 2016, or who did not start supplying raw milk to Fonterra until after 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. It also claims that Fonterra engaged in misleading or deceptive conduct, and unconscionable conduct, in relation to both its milk price announcements and in implementing the Step Down during the 2015/16 milk supply season. The class action claims compensation for the Iddles and for any farmers who are Group Members who suffered loss arising from the alleged conduct.

7. Fonterra denies the allegations made against it in the class action and is defending the class action.
8. Information about how the class action is being funded is on pages 4-5 of this notice.
9. You can obtain further information about the Court proceeding (and get copies of relevant documents) by visiting the Supreme Court website (<https://www.supremecourt.vic.gov.au/court-decisions/case-list/fonterra-group-proceeding-class-action>).

YOUR THREE OPTIONS

10. If you are a group member, you have three options in relation to this proceeding, which are explained below.
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OPTION A – “Opt Out” and cease to be a Group Member

11. If you fit the definition of a Group Member but do **not** want your rights to be determined by this class action **you must opt out** by **4 pm on Friday, 1 October 2021**.
 12. Group members who opt out will:
 - no longer be Group Members in the class action;
 - not be bound by the outcome of the class action and will **not receive any money** from the class action if it succeeds or settles;
 - be able to commence their own court proceedings against Fonterra if they wish, provided they commence those proceedings within the time limits applicable to their claims.
 13. There is a copy of the Opt-Out Form for you to complete in Schedule A at the end of this Notice.
 14. If you wish to opt out, **you must complete an Opt-Out Form** and return it to the Commercial Court Registry of the Supreme Court of Victoria by emailing it to commercialcourt@supcourt.vic.gov.au or alternatively by mailing it to: Commercial Court Registry, Supreme Court of Victoria, Ground Floor, 450 Little Bourke Street, Melbourne VIC 3000, in either case **before 4 pm on Friday, 1 October 2021**.
 15. If you are unsure how opting out will affect your rights, you should seek legal advice before opting out.
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OPTION B – Do Nothing

16. Group Members who do not opt out by 1 October 2021 will remain in the class action and their rights will be determined by the outcome of the class action – whether it is settled or decided by the Court.
17. **You do not have to do anything at all, at this time, to remain in the class action.** In the future, the court may notify you that you are required to take a step to register your interest in the proceeding, for example, if there is a settlement or proposed settlement of the proceeding or a final decision by the Court. You have the option to register now, if you wish (Option C).

OPTION C – Register as a Group Member at www.fonterraclassaction.com.au

18. Group Members have the option of registering their details with Adley Burstyner, the lawyers who are acting for the Iddles. If they choose to register, Group Members will provide their name and contact details by completing the online registration form at: www.fonterraclassaction.com.au.
19. By registering:
 - you will be placed on Adley Burstyner’s database of Group Members;
 - you will receive information and updates about the class action from Adley Burstyner;
 - it will be possible for your specific claim to be considered if there are settlement negotiations; and
 - you may be invited to enter into a funding agreement with the litigation funder and Adley Burstyner, in a similar form to that which the Iddles have signed, as described below.
20. Registration does not mean that you enter into a contract for Adley Burstyner to represent you.
21. Your contact details were not provided to Adley Burstyner as part of the process of sending this notice.
22. If you have already registered with Adley Burstyner you do not need to register again.
23. Group Members do not have to register now, but at some point in the future it is likely that you will have to register your interest to receive money in any settlement that may be reached, or if the class action goes to trial and the Court decides in favour of the Group Members. If a settlement is proposed or if the Court finally decides the case, all Group Members (whether or not they have registered) will be notified.

INFORMATION ABOUT HOW THE CLASS ACTION IS BEING FUNDED

No ‘out of pocket’ costs for Group Members in this class action

24. Group Members are not, and will not be, liable for any legal costs out of their own pocket by remaining in this class action.
25. If the class action is unsuccessful, Group Members will not pay any costs.
26. If the class action is successful (that is, if any money compensation is recovered from Fonterra), any legal costs that are payable will be deducted from, and will not exceed, the amount of monetary compensation recovered for the Group Members.
27. The only exception to this is if, following determination of the issues in the class action which are common to all Group Members, you choose to participate in a hearing regarding questions concerning your individual claim. You will be told about this well in advance and will be able to choose whether to participate in the hearing of your individual claim, at which time information about legal costs will be provided to you. If you decide not to participate, you will not have any liability for legal costs out of your own pocket.

How the class action is currently being paid for

28. The class action is being paid for pursuant to a funding agreement between the Iddles, their solicitors Adley Burstyner, and a commercial litigation funder, LLS Fund Services Pty Ltd (**Funder**). Under the funding agreement:
 - The Funder has agreed to pay 70% of Adley Burstyner’s legal fees and 100% of other costs of the class action until it is completed, and 100% of any costs awarded against the Iddles in favour of Fonterra; and
 - Adley Burstyner has agreed for 30% of its fees to be charged on a “no win, no fee basis”. Adley Burstyner will only be entitled to the remaining 30% if the class action results in compensation for any of the Group Members. In that event, the firm will be entitled to seek an additional 25% on the fees which have not been paid by the Funder.
29. A copy of the funding agreement (with some redactions for confidentiality reasons) is available at the Supreme Court website (<https://www.supremecourt.vic.gov.au/court-decisions/case-list/fonterra-group-proceeding-class-action>) as well as at the Adley Burstyner website www.fonterraaction.com.au together with a funding information summary statement.

What happens if the class action is unsuccessful?

30. If the class action is ***unsuccessful*** then:
 - Group members are not liable for any costs;
 - the Funder bears all the cost of the class action, including any costs owed to Fonterra, without being repaid; and

- Adley Burstyner does not receive payment for 30% of its fees.

What happens if the class action is successful?

31. If the action is **successful**, and compensation is paid by Fonterra pursuant to a settlement or judgment, the following may be deducted from the money recovered from Fonterra for the Iddles and Group Members.
- the Funder will be reimbursed all the costs it has paid;
 - the Funder will receive a commission calculated as a percentage of the compensation to be paid under the settlement or successful judgment. Commission rates in recent class actions have often been in the range of 20% to 30% of the total amount of compensation payable to the claim group;
 - Adley Burstyner will be paid the remaining 30% of its fees plus a 25% uplift on that amount. For example, if Adley Burstyner is owed \$10,000, it will seek Court approval to receive \$12,500, which would include the 25% uplift fee; and
 - if the legal costs paid by Fonterra to the Iddles as part of a settlement or judgment does not fully satisfy all of the legal costs they have paid, the Iddles will seek an order for the unpaid costs to be reimbursed.

The Court will supervise these deductions to ensure that they are fair and reasonable.

32. The Iddles and Group Members would then share the amount of compensation paid by Fonterra after the above deductions have been made. The Court would supervise the amount to be paid to the Iddles and each Group Member.

MORE INFORMATION

33. If you would like more information about the Fonterra class action or the funding arrangements you can visit the Adley Burstyner website at www.fonterraaction.com.au or telephone the firm on 03 5225 5237 or email them on info@adleyburstyner.com.au.
34. Information and court documents are also available on the Supreme Court website <http://www.supremecourt.vic.gov.au/court-decisions/case-list/fonterra-group-proceeding-class-action>. The documents available include the Amended Statement of Claim, Fonterra's Defence, the plaintiffs' Reply and summary statements of the case and funding information.
35. You may also seek legal advice from other lawyers.
36. The Supreme Court should **not** be contacted for legal advice.

This notice is published pursuant to Orders made by the Supreme Court on 28 May 2021.

End of notice

Schedule A

NOTICE OF OPTING OUT BY A GROUP MEMBER

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

No. S ECI 2020 02588

BETWEEN:

GEOFFREY and LYNDEN IDDLES

Plaintiffs

- and -

FONTERRA AUSTRALIA PTY LTD (ABN 52 005 483 665) & Ors

Defendants

To: Manager, Commercial Court Registry and Deputy Registrar
Supreme Court of Victoria
Commercial Court Registry
450 Little Bourke Street
Melbourne VIC 3000
commercialcourt@supcourt.vic.gov.au

The group member identified below gives notice under section 33J(2) of the *Supreme Court Act 1986* that they are opting out of this proceeding.

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 needed)	
Telephone:	
Email:	
Postal address:	
Date:	

If you would like to opt out of this proceeding, please return this form to the Commercial Court Registry of the Supreme Court of Victoria by email or by post, at the addresses on this form, **by 4.00pm (Melbourne time) on 1 October 2021.**