

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GENERAL COMMERCIAL LIST**

S ECI 2020 02588

BETWEEN

GEOFFREY and LYNDEN IDDLES

Plaintiffs

and

**FONTERRA AUSTRALIA PTY LTD (ABN 52 006 483 665)
& Ors according to the Schedule**

Defendants

GENERAL FORM OF ORDER

BEFORE: The Honourable Justice Nichols

DATE MADE: 28 May 2021

ORIGINATING PROCESS: Writ filed 17 June 2020

HOW OBTAINED: At case management conference

APPEARANCES: Mr Lachlan Armstrong QC for the plaintiffs
Mr Robert Heath QC, Mr Paul Liondas and Ms Lucy Dawson for the defendants

OTHER MATTERS: The Court will settle an amended notice to group members pursuant to sections 33X(1)(a) and 33Y of the *Supreme Court Act 1986* (the **Act**) regarding the Opt Out Deadline (**Class Notice**).

The Court will fix a date for a hearing, after 6 August 2021, regarding expert evidence in the proceeding.



THE COURT ORDERS THAT:

Notice to group members

1. The date by which a Group Member may opt out of this proceeding pursuant to s 33J(1) of the Act be fixed as **4.00 pm on 1 October 2021 (Opt Out Deadline)**.
2. The Class Notice (once it is finalised) may be amended by the solicitors for the plaintiffs before it is published in order to correct or update any postal, website or email address or telephone number.
3. Any group member who wishes to opt out of this proceeding must, before the Opt Out Deadline, deliver a Notice of Opting Out (**Opt Out**) in the form of Schedule A to the Class Notice (once it is finalised) to the Commercial Court Registry of the Supreme Court of Victoria.
4. If, on or before the Opt Out Deadline, the solicitors for any party receive a notice purporting to be an Opt Out, the solicitors are to deliver such notice to the Commercial Court Registry of the Supreme Court of Victoria within 14 days of receipt with a notation specifying the date it was received and the notice shall be treated as an Opt Out received by the Court at the time when it was received by the solicitors.
5. The solicitors for the parties have leave to inspect the Court file and to copy any Opt Out filed by Group Members.

Method of giving Class Notice

6. Pursuant to section 33Y and 33ZF of the Act, the Class Notice (once it is finalised) be given to group members after 1 August 2021, and before 21 August 2021, according to the following procedure:
 - a. the plaintiffs' solicitors shall send a copy of the Class Notice by email to the registered email address of each group member who has registered with or engaged Adley Burstynier and provided an email address;
 - b. the defendants shall provide a third party mailing house (to be nominated and engaged 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 (**Potential Class Members**), such list to be in Excel format;
- c. the plaintiffs' solicitors shall instruct the third-party mailing house to provide the Class Notice to Potential Class Members:
 - i. by email from the email address info@fonterraiclassaction.com.au, where an email address is available for a Potential Class Member; and
 - ii. by prepaid ordinary post at the address recorded for a Potential Class Member;
 - d. the plaintiffs' solicitors shall instruct the third-party mailing house that if the third-party mailing house receives notice of a delivery failure (or equivalent) in relation to any email or mail sent pursuant to (c) above, the mailing house shall attempt to contact the Potential Class Member by telephone to request updated contact details from the Potential Class Member, and send the Class Notice to any amended email address or postal address provided by the Potential Class Member, within two business days of receiving the delivery failure notification;
 - e. for the purposes of orders 6(a) and (c)(i) the covering email enclosing the Class Notice shall be in the terms set out in Annexure A to these orders; and
 - f. the plaintiffs' solicitors shall cause the Class Notice to be displayed on a page of the Adley Burstyner website until the Opt Out Deadline, without further commentary or explanation on that page;

(Class Notice Protocol).

- 7. The cost of the third-party mailing house engaged to undertake the distribution of the Class Notice under order 6(b) is to be paid in the first instance by the plaintiffs and shall be the plaintiffs' costs in the proceeding.
- 8. Should either party become aware of any actual or potential non-compliance with the Class Notice Protocol by them or the third-party mailing service, that party is to notify the other and the Associate of the Honourable Justice Nichols within five business days of becoming so aware.
- 9. Until the expiry of the Opt Out Deadline, the defendants' officers, servants and agents (other than its solicitors) shall not discuss the class action or group members' rights to



opt out with group members (but nothing in this order prevents the defendants from issuing press releases, information on their website or similar publications, or prevents their solicitors from communications with group members, or prevents the defendants from advising group members that, under court orders, the defendants (or their agents or personnel) are not permitted to discuss or communicate about the proceeding until the Opt Out Deadline).

Lay and Expert Evidence

10. By **4.00pm on 16 July 2021**, the plaintiffs must:
 - a. file and serve on the defendants a document which identifies:
 - i. by reference to paragraphs of the pleadings, the issues in relation to which the plaintiffs presently propose to adduce expert evidence;
 - ii. the qualifications of the expert or experts proposed to be called; and
 - iii. the substance of the proposed questions to the expert or experts; and
 - b. advise the defendants' solicitors whether the plaintiffs intend to call evidence from any, and if so, how many sample group members and on what issues.
11. By **4.00pm on 6 August 2021**, the defendants must file and serve on the plaintiffs:
 - a. a document which identifies:
 - i. by reference to paragraphs of the pleadings, the issues in relation to which the defendants presently propose to adduce expert evidence;
 - ii. the qualifications of the expert or experts proposed to be called; and
 - iii. the substance of the proposed questions to the expert or experts.
12. By **4.00pm on 29 October 2021**, the plaintiffs are to file and serve on the defendants their personal lay evidence upon which they will rely at the initial trial of the proceedings.
13. By **4.00pm on 29 October 2021**, the defendants are to file and serve on the plaintiffs any lay evidence upon which they will rely at the initial trial of the proceedings, apart from evidence in response to the plaintiffs' evidence.



14. By **4.00pm on 26 November 2021**, the plaintiffs are to file and serve on the defendants any remaining witness evidence upon which they will rely at the initial trial of the proceedings.

Other matters

15. Pursuant to the slip rule, in the schedule of parties attached to the orders made in this proceeding on 21 September 2020, 30 September 2020, 17 February 2021, 26 February 2021, and 28 April 2021, the typographical error in the name of the third defendant shall be corrected from “Fonerra [*sic*] Brands (Australia) Pty Ltd (ACN 095 181 669)” to “Fonterra Brands (Australia) Pty Ltd (ACN 095 181 669)” (with underlining omitted).
16. Reserve liberty to the parties to apply for further directions upon giving reasonable notice to all other parties.
17. Costs reserved.

DATE AUTHENTICATED: 15 June 2021



The Honourable Justice Nichols

Annexure A

Subject line:

Fonterra Class Action - IMPORTANT SUPREME COURT MESSAGE

Text of email:

Dear Dairy Farmer,

You are receiving this correspondence because you may be a group member in the Fonterra Class Action.

THE NOTICE ENCLOSED WITH THIS CORRESPONDENCE HAS BEEN APPROVED BY THE SUPREME COURT OF VICTORIA AND PROVIDES YOU WITH IMPORTANT INFORMATION CONCERNING YOUR RIGHTS AND PARTICIPATION IN THE FONTERRA CLASS ACTION.

It is therefore very important that you read the enclosed Notice carefully and make a decision before the deadline, being 1 October 2021.

If there is anything of which you are unsure, you should contact the lawyers running the class action, Adley Burstyner, on info@adleyburstyner.com.au or 03 5225 5237, or seek independent legal advice.



SCHEDULE OF PARTIES

Geoffrey Iddles



First Plaintiff

Lynden Iddles

Second Plaintiff

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