

## 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 Burstynner, 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 [<https://www.adleyburstyner.com.au/claim-form>]. 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 [<https://www.adleyburstyner.com.au/settlement-documentation>], 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.