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23 June 2023

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Dear Associate,

RE Iddles v Fonterra Australia Pty Ltd and Ors – S ECI 2020 02588

Fonterra Class Action Settlement Administration

Administrator's Interim Report of 23 June 2023

A. Introduction

1. Order 3 made 14 April 2023 by the Honourable Justice Delany in proceeding S ECI 2020 02588 in the Supreme Court of Victoria approved the Fonterra Class Action Settlement and its settlement distribution scheme (**SDS**), and appointed David Burstyner and Administrator of them (the **Approval Orders**).
2. Clause 14.2 of the SDS requires that upon conclusion of that administration the Administrator reports to the Court.
3. Although the Administration is not at its conclusion, this voluntary *interim* report appraises the Court of the current progress of some of the matters which are required to be reported on upon completion and which are ongoing in the administration. A final report will still be provided.

B. Claims lodged

4. Prior to the 21 April 2023 deadline in the Approval Orders.
 - (a) 559 claims to participate in the SDS were received; and
 - (b) a first draft of the Claim Confirmation Notice (**CCN**) was prepared.

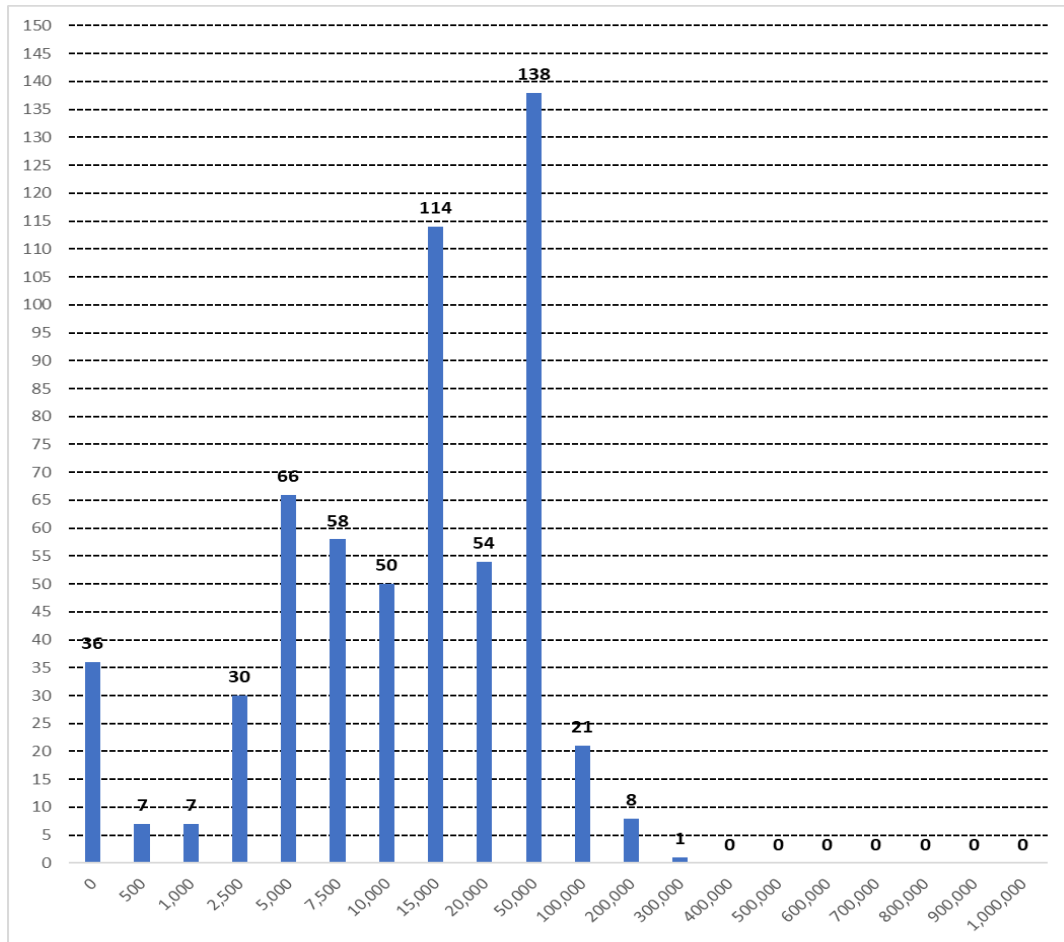
C. Assessing claims and preparing Claim Confirmation Notices after 14 April 2023

5. Once the claimants were known, their eligibility and claim calculations were considered.
6. After considering the greater cost of an alternate accounting firm, Vincents accountants was engaged, in particular one of its directors Mr Mariano Rossetto, to perform much of the claim calculation work, based on cost efficiency and capability reasons having regard to the substantive accounting and model building nature of the exercise required. Also, Mr Rossetto had been engaged by the plaintiffs for quantification work for the mediation in this matter. In that capacity Mr Rossetto had worked with the Fonterra data which the SDS requires use of for calculating counterfactuals.
7. Because the Fonterra data being used comprises production volumes, not revenues, the claim calculation required significant work by Mr Rossetto, with ongoing engagement with the Administrator about the processes being followed and concepts applied, in both connecting the Fonterra data records with the (then) separate list of claimants, and then generating, using objective counterfactual milk price data, counterfactual revenues. That work was labour intensive, requiring the cross checking and proper correlation of group member registrations to the Fonterra data.
8. Additionally, in performing the work it became apparent that in many instances the supplier numbers provided by claimants when they originally submitted their claims were incorrect or incomplete, in particular not including the characters which allow identification of sharefarming arrangements and the corresponding percentage interests in farms with multiple stakeholders (as explained in the following paragraph).
9. The milk revenue of some farms was, at the relevant time, paid by Fonterra to multiple parties, for example the farm owners, and farm operators or workers (often called sharefarmers). Each is treated as a different supplier, in the context of their former relationship with Fonterra as dealt with under the SDS. Sometimes sharefarmers and owners were in the same family, but sometimes not. At any rate, while each farm had its own farm number, each supplier had their own number which comprised the farm number plus a few extra digits.
10. The claim form sought to collect the supplier number but many claimants provided farm numbers only.
11. As a result, a manual one for one checking process was required to ensure data and claim calculations were appropriately allocated to the correct claimant and extensive data cleaning was required.
12. Also, there was a need to clarify some irregularities in the bank account details collected.
13. The work in the proceeding paragraphs involved communications with between 250 and 300 claimants, some multiple times, by phone and by email, to properly determine the

sharefarmer arrangements, and the percentage of farm production to use in respect of such claims for the corresponding counterfactual.

D. Finalising and sending Claim Confirmation Notices

14. CCNs comprise four pages sent as an attachment to emails. The CCNs contain personalised information and figures, unique to each claimant.
15. When determining the best means for dispatching the notices by email, cost indications were obtained from Vincents and from the litigation support provider Law in Order (who had previously proven reliable with respect to Opt Out Notices, and Settlement Notices in this matter). The CCNs were more intricate than the Opt Out and Settlement Notices because the attachment contained personalised fields.
16. Based on experience, it was considered unsatisfactory to use a conventional mailing house for an exercise of this type.
17. Ultimately Vincents was engaged to conduct the email dispatch of the CCNs because:
 - (a) its cost was in the range of the estimate of Law in Order;
 - (b) Vincents had experience with comparable class action settlement mailouts; and
 - (c) the “one stop shop” dynamic would reduce opportunities for mistakes occurring in communications between different organisations.
18. Ultimately, on 29 May 2023, 575 CCNs were dispatched. Work is proceeding in relation to the CCNs of around a dozen farmers, whose notices have not been sent, as they had a portion of their milk price fixed and further data is still being gathered and analysed to apply the SDS methodology to them as closely as it can be. This requires individual engagement with each relevant claimant.
19. Vincents has advised that the majority of estimated distribution amounts will be between \$20,000 and \$50,000. On 29 May 2023 Mr Rossetto provided the following distribution graph, as an *indication* of the spread based on 562 claims:



20. This indicates estimated distribution along the following lines:

- (a) 31 claimants expected to receive \$0.
- (b) 7 claimants expected to receive between \$0 and \$500.
- (c) 1 claimant expected to receive between \$500 and \$1,000.
- (d) 17 claimants expected to receive between \$1,000 and \$2,500.
- (e) 56 claimants expected to receive between \$2,500 and \$5,000.
- (f) 53 claimants expected to receive between \$5,000 and \$7,500.
- (g) 37 claimants expected to receive between \$7,500 and \$10,000;
- (h) 78 claimants expected to receive between \$10,000 and \$15,000;
- (i) 80 claimants expected to receive between \$15,000 and \$20,000;
- (j) 140 claimants expected to receive between \$20,000 and \$50,000;
- (k) 45 claimants expected to receive between \$50,000 and \$100,000;
- (l) 16 claimants expected to receive between \$100,000 and \$200,000; and
- (m) 1 claimant expected to receive between \$300,000 and \$400,000.

21. Two claimants have sought to submit claims on behalf of others (including on behalf of an estate and on behalf of parents) for whom further inquiries are being made as to whether the claimants hold appropriate authority to make claims on behalf of others.
22. Three farmers submitted claims but were not issued CCNs as there was no income estimates from Fonterra available as those farmers had not committed to supply milk for May and June 2016. These farmers were contacted separately and informed that their claims were not accepted as they did not constitute group members. With the exception of the putative objector (**MNC**), none of these farmers have disputed the assessment that they do not constitute group members.
23. **MNC** (who sought to lodge an objection at the settlement approval hearing) has continued to assert that he had committed to supply Fonterra in May and June and ought to be included as a group member. Following telephone conversations with **MNC** about what documentation or evidence he could supply in support of his position, emails were sent to **MNC** on 15 and 21 March 2023 asking him to provide such evidence by 4 April 2023, including any income estimates he received from Fonterra for the 2015/16 season and any other documents which would demonstrate counterfactual revenue. On 2 June 2023 **MNC** sent an email enclosing milk statements for the years preceding the 2015/16 season and stated that he was attempting to obtain milk production estimates from his bank.

E. Responses to Claim Confirmation Notices

24. There have been at least 141 responses by claimants to the CCNs, by email, and a small number additionally by telephone, and one by post. The responses vary but include clarifying or changing bank account details (the vast majority of responses), asking questions about the calculations, asking about when payment of the estimated distributions will be made, asking for payments to be delayed to the forthcoming tax year, or asking for personal circumstances to be accounted for or the use of different counterfactual production data.
25. Answers to the claimants are mostly being allocated between an administrative function at Vincents, or the Adley Burstyner team where legal judgment or explanation is considered necessary (being either David Burstyner or Daniel Fullerton). Mr Fullerton handles the lion's share of that claimant engagement, subject to some direction and decision by David Burstyner about the matters raised. It is helpful to the Administrator to know the nature of these communications, and to engage directly with some claimants to get a sense of the relevant matters. Understanding that it can be difficult for group members in any class action to understand why payouts are what they are, Daniel Fullerton and David Burstyner are endeavouring to provide explanations and, up to a point, allow farmers a chance to be heard about their grievances, so that dairy farmers understand the process.

26. The sentiment of the communications from claimants, while not universal, generally amounts to an expression of gratitude for the recovery and outcome, even if at times more money would have been preferred. There has been a very small number of very critical attitudes, perhaps a handful or so, expressed in the phone calls and emails.
27. Also, approximately 8 farmers made contact after the claim expiry date seeking to lodge a claim or inquiring as to why they did not receive a CCN. Most were informed that no claim had been lodged for them so they were ineligible for a payout. Some expressed dissatisfaction. Most were informed, sympathetically but firmly, by email or phone, that it is necessary in a process such as this for there to be a cut-off date, and when the process commenced by notice in December 2022 and there had been several extensions ultimately to 21 April 2023, no further claims could be accepted because to do so would create extra and circular work in redoing calculations, which comes at a cost to the dairy farmers whose claims were on time (and also dilutes the payments to those dairy farmers).
28. Responses to the CCNs continue to be received and worked through. This includes:
- (a) addressing two or so apparent Dispute Notices, which might be withdrawn but otherwise will need to follow the process in the SDS; and
 - (b) considering an issue which came to the Administrator's attention in the responses to the CCN, and is subject to ongoing investigation, and which might indicate that the Fonterra data being used (which had been considered to be estimates from the period February to April 2016) did not account for forecasts known to Fonterra in 2015, and thereby shortchanges some dairy farmers because the counterfactual data which the SDS requires to be used understates their counterfactual production. The Administrator's consideration includes assessing whether anything can and ought to be done about that circumstance, having regard to the various practical dynamics of administering a fixed sum fund in a cost effective way.
29. Subject to these issues and any related developments, the Administrator intends to distribute funds to dairy farmers in the forthcoming financial year, hopefully early in it.

F. Interest on settlement funds

30. The settlement funds are currently in the custody of escrow agent Perpetual. On 27 April 2023 and 30 May 2023 the Administrator emailed Vanessa Milosev of Perpetual to ask for the amount of interest accumulated on the settlement funds. On 6 June 2023 Ms Milosev advised by email that as at the end of May 2023 interest in the amount of \$330,934.59 had accrued on the settlement funds.

G. Potential that counterfactual data understates production for subset of claimants

31. An issue has been identified in communications with claimants which suggests that there may be a small proportion of claimants for whom the SDS does not work fairly because the data being used for the counterfactual understates their milk production.
32. For example, in at least one case, this results in the payout calculation appearing at this stage to mean that the claimant is not entitled to a payout because the extent to which their production was greater than the counterfactual being used (in accordance with the SDS), means that their actual revenue is greater than in the potentially misleading counterfactual, and therefore no loss results.
33. Data is being gathered on claimants who have made contact claiming to be affected by this circumstance, with a view to understanding the magnitude of this dynamic and on that basis considering if anything can and ought be done to, for example, use actual production figures rather than counterfactual figures, where the actuals are higher.
34. From the knowledge gained conducting the case the Administrator did not expect greater actual production than forecast, believing from the lay and expert evidence that many dairy farmers had dried off their cows or reduced production when the 5 May 2016 price decrease was announced. While that may generally remain true, the Administrator has recently been contacted by farmers who assert that their production was higher than in Fonterra's estimate, for a variety of asserted reasons (some advising that Fonterra's estimate being used fails to account for other Fonterra estimates).

H. Distribution

35. Having regard to the balance of this report, no distribution under the SDS has been made yet, including because 30 days from the CCN has not yet lapsed (as required by clause 8.2 of the SDS) and because consideration of claimant responses to the CCN's is underway.
36. The Administrator will continue to progress as quickly as circumstances permit to distribution to claimants

Yours faithfully,



David Burstyner

ADLEY BURSTYNER