



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID213/2017

**PETER ANTHONY BASIL**

Applicant

**BELLAMY'S AUSTRALIA LIMITED (ACN 124 272 108)**

Respondent

## **ORDER**

**JUDGE:** JUSTICE BEACH

**DATE OF ORDER:** 8 December 2017

**WHERE MADE:** Melbourne

### **THE COURT ORDERS THAT:**

#### **Discovery**

1. On or before 29 January 2018, the Respondent provide copies of relevant documents (or parts thereof) contained within the Respondent's Board Packs, Board Minutes and Management Accounts provided to the Board and created in the period 1 October 2015 to 1 February 2017.
2. On or before 12 February 2018, the Respondent provide to the Applicant short summaries identifying:
  - (a) the extent of potentially relevant documentary material, how it is stored, and in what form; and
  - (b) Bellamy's relevant senior management roles and personnel during the period 1 October 2015 to 1 February 2017.
3. On or before 16 March 2018, the Applicant give standard discovery in accordance with rule 20.14 of the Federal Court Rules (**FCR**) together with a list of documents verified in accordance with rule 20.17 of the FCR.

#### **Opt Out and Notice to Group Members**

4. Pursuant to s 33J(1) of the Federal Court of Australia Act 1976 (Cth) (**FCAA**), 4.00 pm on 29 January 2018 be fixed as the time and date before which a group member may opt out of this proceeding (**Opt-out Deadline**).



5. Pursuant to s 33Y(2)(a) of the FCAA, the form and content of the notice (**Notice**) attached as Annexure A be approved for the purposes of notice that must be given to group members under s 33X(1)(a) of the FCAA; and
6. The Notice be given to group members on or before 8 January 2018 by the Applicant causing a copy of the Notice:
  - (a) by 8 January 2018, to be sent by email to each group member who has signed a funding agreement with ICP Capital Pty Ltd (**ICP Capital**) and Investor Claim Partner Pty Ltd (**ICP**); and
  - (b) by 8 January 2018, to be sent by pre-paid post to the last known address of each group member who has signed a funding agreement with ICP and ICP Capital, and for whom the Applicant's solicitors or ICP and ICP Capital do not hold a current email address, but do hold a current postal address; and
  - (c) by 8 January 2018, to be displayed on, or otherwise made available for download from, the website of the Applicant's solicitors (<https://www.mauriceblackburn.com.au/bellamys/>) and ICP (<https://www.icp.net.au/icp-claims/bellamy/>), (together with a copy of the Amended Originating Application, Amended Statement of Claim, Defence and the reasons for judgment of the Court delivered on 18 August 2017 ([2017] FCA 947) and these Orders) and to remain continuously so displayed up to and including the Opt-out Deadline.
7. Pursuant to section 33ZF of the Act, any Group Member who wishes to opt out of this proceeding must, before the Opt-Out Deadline, deliver an opt-out form to the Victorian Registry of the Federal Court of Australia.
8. If, on or before the Opt-Out Deadline, the Applicant's solicitors receive a notice purporting to be an opt out form referable to this proceeding, the solicitors must file the notice in the Victorian District registry of the Federal Court within 3 days after receipt, and the notice shall be treated as an opt-out notice received by the Court at the time it was received by the solicitors.
9. The Applicant's solicitors and the Respondent's solicitors have leave to inspect the Court file and copy any noticed filed pursuant to Order 7 above; and
10. The costs of distributing the Notice in accordance with Order 6 above shall be paid in the first instance by the Applicant, but ultimately be costs in the cause.



### Claim Registration

11. Pursuant to section 33ZF of the Act, and subject to order 7 above, a Group Member is deemed to have registered to participate in any distribution of any amount agreed in a settlement of this proceeding.
12. Group Members are required to provide, or take reasonable steps to provide, to the extent they have not already done so, to ICP as soon as practicable, but in any event by 29 January 2018, the following information of the kind set out below:
  - (a) the Group Member's name and address and/or email address;
  - (b) any relevant and available Holder Identification Number (HIN) or Security Reference Number (SRN);
  - (c) the number of Bellamy's securities held by each Group Member as at close of trade on 13 April 2016;
  - (d) for each acquisition, all transactional information (date of acquisition, quantity of securities acquired, price per security) regarding Bellamy's securities acquired from 14 April 2016 to the date of submission; and
  - (e) for each sale, all transactional information (date of sale, quantity of securities sold, price per security) regarding Bellamy's securities sold from 14 April 2016 to the date of submission.
13. By 4:00pm AEDT on 1 March 2018, the Applicant must:
  - (a) Deliver to the solicitors for the Respondent, on a de-identified basis, a list of Group Members which list shall contain:
    - (i) a unique identification number for each Group Member;
    - (ii) the information referred to in Order 12(c) – (e) for each Group Member; and
    - (iii) any amendments to the information as notified to Maurice Blackburn by that date.
  - (b) File, in a sealed envelope marked "*Confidential List of Group Members – Not to be Opened without leave of the Court or a Judge*", a list of Group Members which list shall contain:
    - (i) a unique identification number for each Group Member;
    - (ii) the information referred to in Order 12(c) – (e) for each Group Member; and
    - (iii) any amendments to the information as notified to Maurice Blackburn by that date.
14. The list of Group Members provided in accordance with Order 13(a) and (b), and any information contained therein, is to be kept confidential to:
  - (a) The Respondent's legal advisors and any insurer;



- (b) Those officers and employees of the Respondent who have the conduct of this proceeding on behalf of the Respondent; and
- (c) Experts retained by the Respondent in the proceedings.

**Interlocutory Application in proceedings VID 163/2017 filed on 5 October 2017 (Common Fund Order)**

15. On or before 26 February 2018, the Applicant, if he wishes to be heard in relation to the Common Fund Order, file and serve on the Applicant in proceeding VID 163/2017 and the Respondent, and on each Group Member who has given notice in accordance with Order 14 in proceeding VID 163/2017 made on 8 December 2017:

- (a) any evidence on which he proposes to rely; and
- (b) written submissions,

in relation to the Common Fund Order.

**Directions / Case Management**

16. The matter be listed for a case management hearing at 10.15am on 29 March 2018.

Date that entry is stamped: 8 December 2017

*Wahid Soden*  
Registrar



**Annexure A**  
**Notice to Basil Class Action Group Members**

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**OPT OUT NOTICE**

**FEDERAL COURT OF AUSTRALIA**

**BELLAMY'S AUSTRALIA LIMITED CLASS ACTION**

*Peter Anthony Basil v Bellamy's Australia Limited (VID 213 of 2017)*

**SECTION 1**

**Why is this notice important?**

1. A class action has been commenced in the Federal Court of Australia by Peter Anthony Basil (**Applicant**) against Bellamy's Australia Limited (ACN 124 272 108) (**Bellamy's**) (the **Basil Class Action**).
2. The action arises out of a claim that Bellamy's contravened the continuous disclosure requirements of the *Corporations Act 2001* (Cth), or otherwise made statements that were misleading or deceptive, thereby causing loss to persons who acquired an interest in ordinary shares in Bellamy's during the period 14 April 2016 to 12 December 2016 (but before the trading halt on 12 December 2016) (the **Claim Period**).
3. The Federal Court has ordered that this notice be published for the information of persons who are members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a Basil Class Action Group Member.
4. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the court. Questions should be directed to Maurice Blackburn on 1800 285 179 or [BellamyClassAction@mauriceblackburn.com.au](mailto:BellamyClassAction@mauriceblackburn.com.au)**
5. If there is anything in this notice that you do not understand, you should seek legal advice.

**What is a class action?**

6. A class action is an action that is brought by one person (**the Applicant**) on his or her own behalf and on behalf of a group of people (**group members**) against another person (the **Respondent**) where the Applicant and the group members have similar claims against the Respondent.
7. The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action.
8. An explanation of how Basil Class Action group members are able to opt out is found below in Section 2 headed "Your Options".



### What is the Basil Class Action?

9. The Basil Class Action was filed on 7 March 2017 and alleges that:
  - (a) Bellamy's engaged in misleading and/or deceptive conduct, and breached its obligations of continuous disclosure, in contravention of sections 1041H(1) and 674(2) of the Corporations Act 2001 (Cth) (Act) and the ASX Listing Rules during the Claim Period; and consequently
  - (b) Persons who purchased Bellamy's shares within the Claim Period suffered compensable loss.
10. The detailed allegations are set out in the Applicant's Amended Statement of Claim, which is available on the website referred to in paragraph 27 below.
11. Bellamy's denies the allegations and is defending the class action.
12. The Applicant is represented by Maurice Blackburn Pty Ltd, Lawyers, and the action is being funded by ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd (collectively, **ICP**).

### Are you a Basil Class Action Group Member?

13. The Basil Class Action is a 'closed' class action in that it only includes persons who signed a litigation funding agreement (**Funding Agreement**) with ICP on or before 13 September 2017. These persons are **Basil Class Action Group Members**.
14. You have been sent this Notice because have been identified as a Basil Class Action Group Member.
15. You are a Basil Class Action Group Member if you meet the following criteria:
  - (a) you acquired shares in Bellamy's during the Claim Period;
  - (b) you have suffered loss and damage by reason of the conduct alleged against Bellamy's in the Amended Statement of Claim;
  - (c) you signed a Funding Agreement with ICP on or before 13 September 2017; and
  - (d) you did not sign a Funding Agreement with IMF Bentham Limited or a retainer with Slater & Gordon Limited on or before 13 September 2017 in respect of another class action that has been filed against Bellamy's (the **McKay Class Action**).
16. If you fit the above description, you should read this notice carefully as it will affect your rights.
17. If you are unsure whether or not you are a Basil Class Action Group Member, you should contact Maurice Blackburn by email to [BellamyClassAction@mauriceblackburn.com.au](mailto:bellamyclassaction@mauriceblackburn.com.au), or telephone on 1800 285 179, or seek your own legal advice, without delay.



### **Will Basil Class Action Group Members be liable for legal costs?**

18. The Applicant and Basil Class Action Group Members have each entered into a Funding Agreement with ICP. The Funding Agreement provides that ICP will pay the Applicant's legal costs of the action, indemnify the Applicant in respect of any adverse costs orders which may be made against him in the proceeding, and to provide any security for costs that the Court may order.
19. The Applicant and Basil Class Action Group Members have retained Maurice Blackburn to act as their lawyers pursuant to a Conditional Costs Agreement (**Costs Agreement**).
20. Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant is responsible for the costs. The Applicant's liability for legal costs and out of pocket expenses (**disbursements**) will be funded by ICP and only recovered by ICP in the event of a successful outcome in the Basil Class Action. In the event of such an outcome, the Applicant will seek an order that those legal costs and disbursements be paid out of the *total* amount recovered for *all* Basil Class Action Group Members.
21. If group members are to be compensated by settlement or a judgment, the Federal Court will consider the opinion of an independent expert in legal costs and will make a costs order for an amount that Court determines is reasonable.
22. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (an **adverse costs order**).
23. In a class action, it is only the Applicant who faces the risk of an adverse costs order if the action fails. As a Basil Class Action Group Member, an adverse costs order will not be made against you.
24. You will not become liable for any legal costs simply by remaining as a Basil Class Action Group Member for the determination of the common questions.
25. Basil Class Action Group Members will **not** be required to pay any of fees to ICP unless and until there is a successful outcome in the class action, whereupon any amounts payable as set out in the Funding Agreement will be deducted from the amount to which each Basil Class Action Group Member is otherwise entitled (but under no circumstances will they exceed that amount).
26. No class member will be 'out-of-pocket' simply by remaining as a Basil Class Action Group Member.

### **Where can you obtain copies of relevant documents?**

27. Copies of relevant documents, including the Amended Originating Application, Amended Statement of Claim, and a judgment of the Federal Court in the Basil Class Action, may be obtained by:
  - (a) downloading them from <https://www.mauriceblackburn.com.au/bellamys/>;
  - (b) inspecting them between 9.00 am and 5.00 pm at one of the offices of Maurice Blackburn, contact details for which are available from [www.mauriceblackburn.com.au](http://www.mauriceblackburn.com.au) or by calling (02) 9261 1488; or



- (c) inspecting them on the Federal Court website, [www.fedcourt.gov.au](http://www.fedcourt.gov.au) or by visiting District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin; the addresses for these registries are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) or by calling the Victoria District Registry on (03) 8600 3333.
28. Please consider the above matters, and the further information in Section 2 below, carefully.
29. If there is anything of which you are unsure, you should contact Maurice Blackburn by email to [BellamyClassAction@mauriceblackburn.com.au](mailto:BellamyClassAction@mauriceblackburn.com.au), or by telephone on 1800 285 179, or seek your own legal advice.





## SECTION 2

### YOUR OPTIONS

#### Option A- Remain a Basil Class Action Group Member

30. If you wish to remain a Basil Class Action Group Member there is **nothing** you need to do at the present time. You should, however, contact ICP as soon as practicable and no later than 29 January 2018 in order to ensure that ICP have certain information concerning your dealings in Bellamy's shares.
31. If you remain a Basil Class Action Group Member you will be bound by the outcome of the Basil Class Action. If the Basil Class Action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Basil Class Action Group Members. In some cases you may have to satisfy certain conditions before your entitlement arises.
32. If the Basil Class Action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other action.
33. If an in-principle settlement agreement is reached between Bellamy's and the Applicant, the terms of that settlement agreement may include releases that are commonly sought in relation to the settlement of class actions. These include releases of Bellamy's and its related entities (including officers and former officers) in respect of:
  - (a) all claims made by Basil Class Action Group Members against Bellamy's in the proceeding; and
  - (b) any claims Basil Class Action Group Members may have against Bellamy's and/or its related entities:
    - i. which are raised in the Basil Class Action;
    - ii. which were at any time the subject of the Basil Class Action or any part of the Basil Class Action; or
    - iii. which relate to the matters or issues the subject of the Basil Class Action; or any part of the Basil Class Actionwhether arising at common law, equity or under statute.
34. If you remain a Basil Class Action Group Member, you will be bound by any such settlement and releases (subject to the settlement being approved by the Court).
35. A separate class action, the McKay Class Action, has been commenced in the Federal Court of Australia by McKay Super Solutions Pty Limited (ACN 110 853 024) (as trustee for the McKay Super Solutions Fund) against the Bellamy's (VID 163 of 2017). That separate class action is substantially the same as the Basil Class Action to which this opt-out notice relates. The applicant in the McKay Class Action, McKay Super Solutions Pty Limited (ACN 110 853 024) (as trustee for the McKay Super Solutions Fund), is represented by solicitors Slater and Gordon, and that action is being funded by IMF Bentham Limited.



### Option B - Opt out of the Basil Class Action

36. If you do not wish to remain a Basil Class Action Group Member **you must opt out** of the class action by completing the “Opt Out Notice” form annexed to this Notice at Schedule A.
37. If you opt out of the Basil Class Action, you will:
  - (a) not be affected by any orders made in the Basil Class Action;
  - (b) not be permitted to receive any distribution from any damages award or settlement outcome arising from the Basil Class Action;
  - (c) remain a group member of the McKay Class Action unless you separately opt out of that class action. Please refer to the notice distributed in the McKay Class Action for information about registration and opt out in that action; or
  - (d) be able to commence your own proceedings against Bellamy’s if you also opt out of the McKay Class Action, provided that you issue Court action within the time limit applicable to your claim.
38. If you wish to bring your own claim against Bellamy’s, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.
39. Before opting out of the Basil Class Action you should consider your obligations in the Funding Agreement that you have with ICP, some of which may remain after opting out. For example, the obligation to pay ICP its entitlements may remain if you are paid compensation by Bellamy's even if that payment occurs after opting out of the Basil Class Action.
40. You should submit the Opt Out Notice if:
  - (a) you qualify as a Basil Class Action Group Member and you wish to opt out of the class action; or
  - (b) you believe that you have been incorrectly identified as a Basil Class Action Group Member, because you do not meet the criteria set out in the section headed “Are you a Basil Class Action Group Member” above.
41. Each Basil Class Action Group Member that wishes to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).
42. Opt Out Notices must be submitted to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) before **4:00pm AEDT on 29 January 2018**. Opt Out Notices received after this time will not be accepted and you will remain as Basil Class Action Group Member.



**Schedule A**

Form 21  
Rule 9.34

**Opt out Notice**

**DO NOT COMPLETE THIS FORM IF YOU WANT TO PARTICIPATE IN THE BASIL CLASS ACTION**

VID 213 of 2017

Federal Court of Australia  
District Registry: Victoria  
Division: General

**PETER ANTHONY BASIL**

Applicant

**BELLAMY'S AUSTRALIA LIMITED (ACN 124 272 108)**

Respondent

To: The Registrar  
Federal Court of Australia  
Victoria District Registry  
305 William Street, Melbourne, Victoria

I, ..... (*print name*), a group member in this representative proceeding, give notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the representative proceeding

Date:

.....  
Signed by (*print name*)  
Group Member / Lawyer for the Group Member

Your Opt Out Notice will be effective if completed and submitted by 29 January 2018.

Please also complete the second page of this notice.



<p><b>Question 1</b></p> <p>Name of shareholder opting out (person or entity)</p>	
<p><b>Question 2</b></p> <p>HIN (Holder Identification Number) or SRN (Security Reference Number) as applicable</p>	<p>The number I have provided is a HIN / SRN (please circle the applicable option)</p>
<p><b>Question 3</b></p> <p>If the shareholder is a company or business, your name and your position within the company or business (eg director or partner).</p>	