

Notice to Basil Class Action Group Members

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**
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, 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 or by calling 1800 285 179; or
 - (c) inspecting them on the Federal Court website, www.fedcourt.gov.au or by visiting a 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 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, 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 Action
- whether 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.

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