

## BASIL CLASS ACTION

Peter Anthony Basil v Bellamy's Australia Limited ACN 124 272 108  
Proceeding No. VID 213/2017

### NOTICE OF PROPOSED SETTLEMENT

This Notice has been sent in accordance with orders made by the Federal Court of Australia on 18 December 2019.

**This Notice is an important legal document and you should read it carefully as it concerns your legal rights.**

#### WHY YOU ARE RECEIVING THIS NOTICE

On 18 December 2019, the Federal Court of Australia (**Court**) ordered that this Notice be distributed to group members in the class action commenced by Peter Anthony Basil (**Applicant**) against Bellamy's Australia Limited (**Bellamy's**) in the Federal Court of Australia (the **Basil Class Action**). You have been identified as a potential group member in the Basil Class Action and should read this notice carefully.

The purpose of this Notice is to inform you that an in-principle settlement of the Basil Class Action has been reached, subject to Court approval, for the sum of \$19.7 million, inclusive of legal costs, interest and funding commission (the **Proposed Settlement**). The Proposed Settlement is without admission of liability by Bellamy's.

This Notice explains your rights in relation to the Proposed Settlement.

The Proposed Settlement requires Court approval. This must be granted before compensation can be distributed to eligible Group Members. The Court has been asked to approve the settlement at a hearing to be held at **9.30am on 13 March 2020**.

This Notice contains the following information:

**Section A:** Background to the Basil Class Action;

**Section B:** Definition of a Group Member;

**Section C:** Details of the Proposed Settlement;

**Section D:** Details of steps you are required to take;

**Section E:** Details of how you can obtain further information; and

For Registered Group Members, an accompanying Schedule of Claim Data.

Group Members should be aware of the following deadlines:

	<b>DEADLINE</b>	<b>MORE INFORMATION</b>
Correct the Schedule of Claim Data	7 February 2020	Section D of this Notice, paragraph 23 and 26
Oppose the settlement	26 February 2020	Section D of this Notice, paragraph 27 to 29

The Applicant (who brought the Basil Class Action on behalf of group members) is represented by solicitors Maurice Blackburn. The Basil Class Action has been funded by ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd (collectively, **ICP**).

**Any questions you have concerning the matters contained in this Notice should not be directed to the Federal Court.** If there is any matter in this Notice that you do not understand you should contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au)

## **A. BACKGROUND TO THE BASIL CLASS ACTION**

1. The Basil Class Action was commenced on 7 March 2017 in the Federal Court of Australia 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) (**Corporations Act**) and the ASX Listing Rules between 14 April 2016 to 12 December 2016 (inclusive but before the trading halt on 12 December 2016) (the **Claim Period**); and consequently
  - (b) persons who purchased Bellamy's shares within the Claim Period have suffered compensable loss.
2. The detailed allegations are set out in the Applicant's Second Further Amended Statement of Claim. A copy of the Second Further Amended Statement of Claim is available to download from Maurice Blackburn's website at: <https://www.mauriceblackburn.com.au/bellamys>
3. The trial of the proceeding had been scheduled to commence in August 2020.
4. Bellamy's defended the class action and the Proposed Settlement acknowledges that Bellamy's makes no admissions as to liability.

## **B. GROUP MEMBER DEFINITION**

5. You are a Group Member in the Basil Class Action if you:
  - (a) acquired shares in Bellamy's during the Claim Period;
  - (b) are alleged to have suffered loss and damage by reason of the conduct alleged against Bellamy's in the Second Further Amended Statement of Claim;
  - (c) signed a Funding Agreement with ICP on or before 13 September 2017;
  - (d) 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**); and

- (e) did not opt-out of the proceeding before 29 January 2018.
6. However, you are only entitled to participate in the Proposed Settlement if you are a Group Member and you validly registered your share trade data in Bellamy's by 24 April 2018 (**Registered Group Member**). This share trade data is set out in the Schedule of Claim Data accompanying this Notice.

#### *Rights of Unregistered Group Members*

7. If you did not register your claim on or before 24 April 2018, you may still be a Group Member but are not entitled to participate in the Proposed Settlement and you are not entitled to receive any compensation from it (**Unregistered Group Member**). Unregistered Group Members are also barred from making any claim against Bellamy's and its related entities in respect of the subject matter of the Proceeding. If you are an Unregistered Group Member, you will not receive a Schedule of Claim Data with this Notice.
8. If you are unsure as to whether or not you are a Registered Group Member in the Basil Class Action, please contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au).

### **C. PROPOSED SETTLEMENT**

#### *Application for settlement approval*

9. The Proposed Settlement must be approved by the Court under section 33V of the *Federal Court of Australia Act 1976* (Cth). Before approving the settlement, the Court must be satisfied that the Proposed Settlement is fair and reasonable and in the interests of all Group Members. The Court will also determine at this time whether the legal costs in the proceeding have been reasonably incurred.
10. The approval hearing will take place **at 9.30am on 13 March 2020** in the Victoria Registry of the Federal Court of Australia located at **Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne Victoria 3000**. You are entitled to attend the hearing if you wish to.
11. Under the Proposed Settlement:
- (a) Bellamy's will pay \$19.7 million (**Settlement Sum**) to settle the Basil Class Action inclusive of legal costs, expenses, disbursements, interest and funding commission;
  - (b) the Applicant intends to ask the Court to make orders that:
    - i. approximately \$4 million of the Settlement Sum be used to pay the legal costs incurred in conducting the proceeding;

- ii. approximately \$6 million be paid in funding fees to ICP in accordance with the funding agreements between Group Members and ICP; and
  - iii. the Applicant (Peter Basil) be paid an amount as reimbursement for the time and expense incurred in representing the class.
- 12. The costs of administering the settlement will be payable to the Settlement Administrator from the Settlement Sum. This amount is also subject to the approval of the Court.
- 13. The Proposed Settlement includes covenants and releases that are commonly agreed in class action settlements. If the Proposed Settlement is approved by the Court, all Group Members will be bound by the settlement and will not be permitted to make any further claims against Bellamy's or its related parties in relation to the circumstances or allegations advanced in the proceeding or any matters arising out of, relating to or in any way connected with or incidental to the subject of the proceeding, or any part of the proceeding.
- 14. If the Proposed Settlement is not approved by the Court, the Basil Class Action will continue and there will be no distribution of monies to Registered Group Members unless and until the Applicant is successful in the proceeding, or a further settlement is reached. The Proposed Settlement is without admission of liability by Bellamy's.
- 15. Bellamy's has also reached an in-principle agreement to settle the McKay Class Action which makes the same allegations as are made in the Basil Class Action, for the sum of \$30 million, inclusive of legal costs, expenses, disbursements, interest and funding commission. The difference in the settlement figures as between the two class actions is attributable to the McKay Class Action involving a higher number of registered group members than in the Basil Class Action. The approval hearing for the McKay Class Action proposed settlement will take place at the same time as the approval hearing for the Basil Class Action.

#### *Settlement Distribution Scheme*

- 16. The process by which the Settlement Sum is proposed to be distributed will be outlined in a "Settlement Distribution Scheme". The Settlement Distribution Scheme will include a confidential schedule containing a "Loss Assessment Formula" which details how each Registered Group Member's entitlement to a share of the Settlement Sum will be calculated. The Settlement Distribution Scheme and the Loss Assessment Formula must also be approved by the Court.
- 17. Group Members can obtain access to the proposed Settlement Distribution Scheme from 17 January 2020, by:
  - (a) contacting ICP at [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au) and requesting a copy; and
  - (b) signing and returning a confidentiality undertaking to obtain a copy of the confidential Loss Assessment Formula.

18. The amount of compensation to be paid to each Registered Group Member under the Proposed Settlement will depend on factors such as the number of shares purchased by that Registered Group Member, the date of purchase, whether any of those shares were sold, and the overall losses of all Registered Group Members who chose to participate in the Proposed Settlement.
19. If the Court approves the Proposed Settlement, a Settlement Administrator will be appointed in order to distribute the Settlement Sum to Registered Group Members and administer the settlement in accordance with the Settlement Distribution Scheme under the directions of the Court.
20. In applying for approval of the Proposed Settlement, the Applicant intends to ask the Court to make an order that Maurice Blackburn be appointed as Settlement Administrator. The decision as to who is appointed to administer the settlement is a decision for the Court.

#### *ICP's Funding Fees*

21. Throughout the course of the proceeding ICP provided litigation funding to the Applicant and Group Members on the terms set out in the funding agreement. Under this arrangement ICP:
  - (a) indemnified the Applicant against any adverse costs orders;
  - (b) obtained deeds of indemnity as security for such adverse costs orders; and
  - (c) paid legal costs incurred in prosecuting the proceeding, including the cost of solicitors, barristers and experts.
22. In accordance with the funding agreement that you entered into with ICP, and subject to Court approval, ICP are entitled to receive, out of the Settlement Sum, reimbursement of the costs they have paid or are liable to pay in respect of the Basil Class Action and a commission, as consideration for funding the Basil Class Action, being a percentage of the Settlement Sum.

#### **D. NEXT STEPS**

##### *Review the Schedule of Claim Data*

23. If you are a Registered Group Member you must review the Schedule of Claim Data that accompanies this Notice and:
  - (a) If the Schedule of Claim Data is accurate, there is nothing further you need to do at this stage. You will be deemed to have accepted the accuracy of the Schedule of Claim Data if you do not take any further steps by 4pm AEDT on 7 February 2020; or
  - (b) If the Schedule of Claim Data is not accurate, you must contact ICP no later than 4pm AEDT on 7 February 2020 and provide any relevant

documentation. Further information about this process is set out in the Schedule of Claim Data.

24. The Schedule of Claim Data includes a preliminary estimate of the amount of the Settlement Sum to be distributed to you in accordance with the proposed Settlement Distribution Scheme. This preliminary estimate has been provided to assist you to understand how the proposed Settlement Distribution Scheme will affect you personally.
25. The preliminary estimate is not final, and may be subject to change, depending on a number of factors, including the amounts the Court may approve to be deducted from the Settlement Sum, and whether any Registered Group Members seek to amend their trade data contained in a Schedule of Claim Data.
26. If you are a Registered Group Member and the Proposed Settlement is approved by the Court, you will receive further correspondence about your entitlement to receive compensation from the Settlement Sum. At that stage, you will be asked to provide your banking details via a secure online payment portal to enable the Settlement Administrator to pay you any compensation that you may be entitled to. Payment details will **not** be accepted before this time.

#### *You May Oppose the Settlement*

27. You are entitled to ask the Court not to approve the settlement. If you wish to take that step, you must:
  - (a) By **4:00pm AEDT on 26 February 2020** send a written notice to Maurice Blackburn at PO Box A266 Sydney South NSW 1235 or [BellamyClassAction@mauriceblackburn.com.au](mailto:BellamyClassAction@mauriceblackburn.com.au) stating that you wish to oppose the settlement and providing reasons why; and
  - (b) By **4.00 pm AEDT on 26 February 2020** file with the Court written submissions stating that you wish to oppose the settlement and providing reasons why and any evidence upon which you may wish to rely in support of your objection; and
  - (c) Attend (or send a representative to) the hearing at **9:30am on 13 March 2020**, when the Federal Court will consider whether to approve the settlement and you or your representative may make oral submissions in support of your objection. The hearing will take place at:

Federal Court of Australia (Victoria Registry)  
Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000
28. You or your representative will need to be in a position on 9:30am on 13 March 2020 to explain to the Court why you consider that the settlement should not be approved. You should also be in a position to inform the Court whether you are

willing to become the 'representative applicant' and take over the conduct of the Basil Class Action.

29. If you think you might wish to oppose the Proposed Settlement of the class action, you should obtain independent legal advice immediately.

#### **E. RELEVANT FURTHER INFORMATION**

30. Copies of relevant Court documents, including the Amended Originating Application, Second Further Amended Statement of Claim and the Defence to the Second Further Amended Statement of Claim can be obtained by downloading them from Maurice Blackburn's website at <https://www.mauriceblackburn.com.au/bellamys>
31. If you have any questions about the matters contained in this Notice please contact ICP on 1800 26 26 00 or by email to [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au).

# SCHEDULE OF CLAIM DATA

Peter Anthony Basil v Bellamy's Australia Limited ACN 124 272 108  
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This Schedule has been sent to you as a Registered Group Member, or as the authorised contact person for a Registered Group Member, in the Basil Class Action. You must read it carefully and take any necessary steps based on the individual circumstances of your claim.

This Schedule includes a:

- (a) **Schedule of Estimated Distribution** – This Schedule contains a preliminary estimate of the amount that may be distributed to you under the Proposed Settlement of the Basil Class Action. The estimated distribution is an indicative assessment only. If the Proposed Settlement is approved, it is likely the amount ultimately paid will differ.
- (b) **Schedule of Trade Data** – This Schedule details the holding/s that you have registered to participate in the Basil Class Action and trade data upon which your estimated distribution under the Proposed Settlement will be calculated.
- (c) **Review Request Procedure** – The Review Request Process outlines what steps you should take if you believe that the Schedule of Trade Data is not correct or you believe an error has been made in your Schedule of Estimate Distribution.

## WHAT DO I DO NEXT?

You **must** consider the information contained in the Schedule of Estimated Distribution and Schedule of Trade Data. Once you have reviewed this information you have two options:

### Option 1 – NO FURTHER STEPS REQUIRED

If the Schedule of Trade Data is a true and correct record of your claim there is **nothing further that you need to do at this stage**. In the event that the Proposed Settlement is approved by the Court, your compensation payment will be calculated using the data contained in the Schedule of Trade Data.

### Option 2 – CORRECTION REQUIRED

If the Schedule of Trade Data is not a true and correct record or you believe that an error has been made in calculating the distribution amount contained in the Schedule of Estimated Distribution you must, by **4pm AEDT on 7 February 2020** take steps in accordance with the Review Request Procedure. Any requests for Review received after this deadline will be rejected.



<b>Schedule of Estimated Distribution</b>
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This Schedule contains a preliminary estimate of the amount that will be distributed to you under the Proposed Settlement, if the settlement and the proposed Settlement Distribution Scheme are approved by the Court.

The estimated distribution is an indicative assessment only. If the Proposed Settlement is approved, it is likely the amount ultimately paid will differ, depending on a number of factors, including the amounts the Court may approve to be deducted from the Settlement Sum, and whether any group members seek to amend their trade data contained in a Schedule of Claim Data.

The estimated distribution has been calculated in accordance with the terms of the proposed Settlement Distribution Scheme. If you need further information about the Proposed Settlement, or wish to obtain a copy of the proposed Settlement Distribution Scheme, you can contact ICP using the details set out in paragraph 31 of the Notice of Proposed Settlement.

**Summary of Holding(s) and Estimated Distribution**

Holding ID	Registered Group Member	Holding Name	Estimated Distribution
[Holding1ID]	[Holding1Owner]	[Holding1Name]	[Holding1ED]
[Holding2ID]	[Holding2Owner]	[Holding2Name]	[Holding2ED]
[Holding3ID]	[Holding3Owner]	[Holding3Name]	[Holding3ED]
[Holding4ID]	[Holding4Owner]	[Holding4Name]	[Holding4ED]
<b>TOTAL</b>			=SUM(Holding1ED:Holding4ED)

## Schedule of Trade Data

This Schedule contains the holding/s that you have registered to participate in the Basil Class Action and trade data upon which your estimated distribution under the Proposed Settlement will be calculated. Please review the information contained within this Schedule carefully.

If you have multiple holdings of shares, a different Schedule of Trade Data has been included for each holding.

<b>Client ID</b>	[ClientID]
<b>Client Name</b>	[ClaimantName]
<b>Holding ID</b>	[Holding1ID]
<b>Holding Name</b>	[Holding1Name]

### TRADE DATA

<b>OPENING BALANCE</b> <b>Number of BAL shares held at the commencement of trading on the Australian Securities Exchange on 14 April 2016:</b> If you did not own BAL shares on 14 April 2016, the opening balance would be 0 (zero).		[OpeningBalance]	
Date	Transaction Type	Number of BAL shares	Unit Price
[TransactionDate]	[TransactionType]	[Quantity]	[Price]

## Review Request Procedure

If the Schedule of Trade Data is not a true and correct record or you believe that an error has been made in calculating the distribution amount contained in the Schedule of Estimated Distribution you must take steps in accordance with this Review Request Procedure by **4pm AEDT on 7 February 2020**.

Complete the Review Request Form below and attach any relevant documentation upon which you will rely for the purposes of the Review and a statement of reasons for seeking the Review. You must submit the Review Request Form to ICP by 4pm AEDT on 7 February 2020.

Maurice Blackburn will consider the Review request and any documents provided and:

- (a) where Maurice Blackburn is satisfied that the Review Request Form discloses an error, slip or omission or any other administrative, mathematical or clerical error, you will be issued with an Amended Schedule of Claim Data.
- (b) where Maurice Blackburn is not satisfied that the Review Request Form discloses an error, slip or omission or any other administrative, mathematical or clerical error, you will be notified of the outcome of the Review.

Maurice Blackburn may direct you to submit further documentation in support of the Review. If you receive a request for further information or documentation, you must provide the information or documents within 3 days of the date of any such written notice. If you do not provide the information or documents within 3 days, the request for Review shall be deemed never to have been made, and the accuracy of the Schedule of Claim Data shall be deemed to be accepted by you.

## Basil Class Action

### Review Request Form

Complete this form for each Registered Group Member for whom you intend to request a Review.

<b>Client ID</b>	
<b>Client Name</b>	
<b>Holding ID</b>	
<b>Holding Name</b>	

Reasons for seeking a Review: (tick all applicable boxes)

- Error or omission in the trade data  
(Mark all required changes on details of transactions in the Schedule of Trade Data and enclose it with this form)
- Other error, slip, or omission

Please describe your reasons for requesting a Review:

Supporting documentation enclosed: (tick all applicable boxes)

- Schedule of Trade Data
- Schedule of Estimated Distribution
- Statutory declaration
- Buy/Sell confirmations
- Contract notes
- Broker statements
- CHESSE statements
- Computershare print-outs
- Other (please specify)

This form must be completed by 4pm AEDT on 7 February 2020 and returned to ICP with supporting documentation:

**By email:** [BellamyClassAction@icp.net.au](mailto:BellamyClassAction@icp.net.au)

**CERTIFICATION**

I am the Registered Group Member or authorised representative of the Registered Group Member identified above and I declare the information provided in, attached to or otherwise provided in support of, this Review Request Form is true and correct.

SIGNED.....

NAME:.....

DATE.....