

**OPT OUT NOTICE**  
**FEDERAL COURT OF AUSTRALIA**

**Wellard Class Action**

*Ewok Pty Ltd as trustee for the E & E Magee Superannuation Fund v Wellard Limited*  
(VID 175/2020)

**1. Why is this notice important?**

A class action has been commenced in the Federal Court of Australia by Ewok Pty Ltd as trustee for the E & E Magee Superannuation Fund (**Applicant**) against Wellard Limited (**Wellard**).

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been sent this notice as you have been identified as a Group Member in this class action.

This notice provides you with the opportunity to opt out of this class action if you do not want to remain a Group Member. If you want to remain a Group Member, you do not need to do anything in response to this notice. If you want to opt out, you must do so by **21 December 2022** in the manner described in this notice.

**You should read this notice carefully.** If there is anything in it that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

**2. What is a class action?**

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 class of people (the group members) against another person (the respondent) where the applicant and the group members have similar claims against the respondent.

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.

Group members are “bound” by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action, group members will not be able pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings.

Group members should note that:

- (a) in a judgment following trial, the Court will decide various factual and legal issues in respect of the claims made by the applicant and group members. Unless those

decisions are successfully appealed they bind the applicant, group members and the respondent. Importantly, if there are other proceedings between a group member and the respondent, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.

- (b) in a settlement of a class action, where the settlement provides for compensation to group members it is likely to extinguish all rights to compensation which a group member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against a respondent which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see below).

### **3. What is the Wellard Class Action about?**

This class action against Wellard is brought by the Applicant on behalf of itself and group members.

In summary, the Applicant alleges that the prospectus that Wellard published pursuant to its Initial Public Offering on 20 November 2015 contained misleading statements or material omissions. Additionally, the Applicant alleges that Wellard engaged in misleading or deceptive conduct and/or breached its continuous disclosure obligations to keep the Australian Securities Exchange (**ASX**) informed of all information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Wellard shares in the period between 8 December 2015 and 31 August 2016. In particular, it is alleged that, Wellard made misleading representations as to its forecast financial performance for FY2016.

The Applicant alleges that it and group members suffered loss and damage by reason of Wellard's conduct.

Wellard denies the allegations, or that any loss was suffered, and is defending the class action.

### **4. What is 'Opt Out'?**

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. An explanation of how group members are able to opt out is set out below.

### **5. Are you a Group Member?**

You are a Group Member if you:

- (a) acquired an interest in Wellard (either through ordinary shares or equity swap confirmations) during the period between 8 December 2015 and 31 August 2016; and

- (b) have suffered loss or damage by reason of the conduct of Wellard as pleaded in the statement of claim in this class action; and
- (c) have, as at 9 March 2020, entered into a litigation funding agreement with ICP Funding Pty Ltd.

If you are unsure whether or not you are a Group Member, you should contact Quinn Emanuel Urquhart & Sullivan (**QE**), the solicitors for the Applicant, on the number or email below, or seek your own legal advice without delay.

#### **6. Will you be liable for legal costs if you remain a Group Member?**

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. Only the Applicant is responsible for the legal costs associated with bringing the Wellard Class Action. ICP Funding Pty Ltd (the **Funder**) is funding the class action, which means that it is paying the Applicant's legal costs, including the Applicant's costs of bringing the claim on behalf of all Group Members.

You do not have to pay money in order to participate in this case. If the Wellard Class Action fails, you will not have to pay anything.

All Group Members have entered into a litigation funding agreement with the Funder. The funding agreements contain provisions which provide that, in the event the Applicant and the Group Members obtain a favourable judgment or settlement, a portion of the judgment sum or settlement amount will be paid to the Funder to compensate it for the services it has provided. The Court may also make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicant in running the class action but which are not able to be recovered from Wellard.

#### **7. What will happen if you choose to remain a group member?**

Unless you opt out, you will be bound by any settlement or judgment of the class action. If the 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 Group Members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the respondent in other legal proceedings.

#### **8. What group members need to do**

You may do one of two things in response to this notice – do nothing and remain a Group Member, or opt out of the Wellard Class Action.

##### **(a) Option 1: Remain a Group Member of the Wellard Class Action**

**If you wish to remain** a group member there is **nothing you need to do** at the present time. The Applicant will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and the Group Members.

##### **(b) Option 2: Opt out of the Wellard Class Action**

If you do not wish to remain a Group Member, you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action.

Please note that the time limits applicable to the claims that are the subject of the Wellard Class Action have now expired. If you opt out, you may therefore be barred from bringing your own claim against Wellard, or participating in any other claim that may be brought against Wellard, in relation to the same issues. If you wish to bring your own claim against Wellard, you should seek your own legal advice about your claim **prior** to opting out.

**If you wish to opt out of the class action, you need to complete an “Opt Out Notice” shown at the Annexure to this notice, and send it to QE at the address on the form.**

**IMPORTANT: the Notice must reach QE by no later than 21 December 2022 otherwise it will not be effective.**

You should submit the Opt Out Notice if:

- (i) you qualify as a Group Member and you wish to opt out of the class action; or
- (ii) you believe that you have been incorrectly identified as a Group Member, because you do not meet the criteria set out in the section headed “Are you a Group Member?” above.

Each Group Member seeking 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).

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

Copies of relevant documents, including the application, the statement of claim, and the defence, may be obtained by:

- (a) contacting QE for a copy by email ([sydneyreception@quinnemanuel.com](mailto:sydneyreception@quinnemanuel.com)) or by telephone ((02) 9146 3500); or
- (b) contacting a District Registry of the Federal Court (contact details are available [www.fedcourt.gov.au](http://www.fedcourt.gov.au)) and paying the appropriate inspection fee.

Please consider the above matters carefully.

If there is anything of which you are unsure, you should contact QE on (02) 9146 3500 or email ([sydneyreception@quinnemanuel.com](mailto:sydneyreception@quinnemanuel.com)) or seek your own legal advice. You should not delay in making your decision.

**Annexure**

Form 21  
Rule 9.34

**OPT OUT NOTICE**

No. VID 175 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Ewok Pty Ltd as trustee for the E & E Magee Superannuation Fund**

Applicant

**Wellard Limited**

Respondent

To: Quinn Emanuel Urquhart & Sullivan  
Level 15, 111 Elizabeth Street  
Sydney NSW 2000

The person(s) named below as a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the class action.

Name of Group Member	
Postal address of Group Member	
Telephone contact	
Email address	
ACN/ABN (if a company)	

If you are signing as a solicitor or representative of the Group Member:

Person completing this form	
Authority of person completing this form	
Telephone contact	
Email address	

Date .....

Signed by ..... (signature)  
..... (print name)  
..... (insert capacity, eg group member / lawyer  
for the group member)