

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/07/2019 11:12:58 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID758/2019
File Title:	WETDAL PTY LTD AS TRUSTEE FOR THE BLUECO TWO SUPERANNUATION FUND & ANOR v ESTIA HEALTH LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 16/07/2019 3:53:33 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Originating application starting a representative proceeding  
under Part IVA of the *Federal Court of Australia Act 1976***

No. VID of 2019

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Wetdal Pty Ltd (ACN 145 536 661) as trustee for the BlueCo Two Superannuation Fund & Anor (in accordance with the attached Schedule)**

Applicants

**Estia Health Limited (ACN 160 986 201)**

Respondent

**To the Respondent**

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
305 William Street  
Melbourne VIC 3000

Date: 15 July 2019

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of	Wetdal Pty Ltd as trustee for the BlueCo Two Superannuation Fund & Anor, Applicants
Prepared by	Timothy Finney
Law firm	Phi Finney McDonald
Tel	(03) 9134 7100 Fax N/A
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Address for service	Phi Finney McDonald, Level 4, 325 Flinders Lane, Melbourne VIC 3000



Terms defined in the Statement of Claim carry the same meaning when used in this Originating Application.

### **Details of claim**

On the grounds stated in the accompanying Statement of Claim, the Applicants claim for themselves and the Group Members:

1. A declaration pursuant to s 21, alternatively s 33ZF, of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that the Respondent has contravened s 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) by failing to notify the Australian Securities Exchange (**ASX**) of some or all of:
  - (a) the RAD Information;
  - (b) the New Operating Structure Information;
  - (c) the FY16 Guidance Information;
  - (d) the Growth Strategy Information;
  - (e) the Strategic Review Information; and
  - (f) the FY17 Guidance Information;as soon as it was aware, for the purposes of ASX Listing Rules 3.1 and 19.12, of that information.
2. A declaration that for the purposes of s 1317HA(1) of the *Corporations Act*, the Applicants and Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of s 674(2) of the *Corporations Act*.
3. An order pursuant to s 1317HA(1) and/or s 1325 of the *Corporations Act* that the Respondent compensate the Applicants and Group Members for the loss or damage suffered by them as a result of the Respondent's contravention or contraventions of s 674(2) of the *Corporations Act*.
4. A declaration pursuant to s 21, alternatively s 33ZF, of the *FCA Act* that in making, maintaining and failing to qualify some or all of:
  - (a) the August 2015 Representations (being the August 2015 RAD Representation, Express FY16 Guidance Representation, August 2015 Basis Representation, Implied Guidance Representations and Growth Strategy Representation);
  - (b) the December 2015 Representations (being the Express Increased FY16 Guidance Representation, the December 2015 Basis Representation and the Modified Growth Strategy Representation);
  - (c) the February 2016 RAD Representation; and/or



(d) the August 2016 Representations (being the Express FY17 Guidance Representation and the August 2016 Basis Representation),

the Respondent engaged in conduct in contravention of:

(e) s 1041H of the *Corporations Act*;

(f) s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

(g) s 18 of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**).

5. A declaration that for the purposes of s 1041I of the *Corporations Act*, s 12GF and/or s 12GM of the *ASIC Act*, and/or s 236 of the *Australian Consumer Law*, the Applicants and Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of s 1041H of the *Corporations Act*, s 12DA(1) of the *ASIC Act* and/or s 18 of the *Australian Consumer Law*.

6. An order that the Respondent pay to the Applicants and Group Members damages for loss and damage suffered by the conduct of the Respondent's contravention of:

(a) s 1041H of the *Corporations Act*, pursuant to s 1041I of the *Corporations Act*;

(b) s 12DA of the *ASIC Act*, pursuant to s 12GF and/or s 12GM of the *ASIC Act*; and/or

(c) s 18 of the *Australian Consumer Law*.

7. Interest pursuant to s 51A of the *FCA Act*.

8. Costs.

9. Such further or other relief as the Court may deem appropriate.

### **Questions common to claims of Group Members**

The questions of law or fact common to the claims of the Applicants and Group Members are:

1. Whether, during all or part of the Relevant Period, the RAD Information, defined in paragraph 97 of the Statement of Claim was:

(a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and

(b) not generally available,

and, if so, during which part or parts.

2. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the RAD Information and if so, at what time if any during the Relevant Period.



3. Whether, during all or part of the period from the date referred to in paragraph 98 of the Statement of Claim and the end of the Relevant Period, the New Operating Structure Information was:
  - (a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and
  - (b) not generally available,and, if so, during which part or parts.
4. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the New Operating Structure Information and if so, at what time if any during any period referred to in Question 3 above, to which the answer to Question 3 is “Yes”.
5. Whether, during the period between the dates referred to in paragraph 99 of the Statement of Claim and the end of the Relevant Period, the FY16 Guidance Information was:
  - (a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and
  - (b) not generally available,and, if so, during which part or parts.
6. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the FY16 Guidance Information and if so, at what time if any during any period referred to in Question 5 above to which the answer to Question 5 is “Yes”.
7. Whether, during the period between 7 December 2015 and 6 October 2016, the Growth Strategy Information was:
  - (a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and
  - (b) not generally available,and, if so, during which part or parts.
8. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the Growth Strategy Information and if so, at what time if any during any period referred to in Question 7 to which the answer to Question 7 is “Yes”.
9. Whether, during the period between 29 August 2016 and the end of the Relevant Period, the Strategic Review Information was:
  - (a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and



- (b) not generally available,  
and, if so, during which part or parts,
10. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the Strategic Review Information and if so, at what time if any during any period referred to in Question 9 to which the answer to Question 9 is “Yes”.
11. Whether, during the period between 29 August 2016 and the end of the Relevant Period, the FY17 Guidance Information, defined in paragraph 102 of the Statement of Claim was:
- (a) information that a reasonable person would expect to have a material effect on the price or value of Estia Shares or Estia Equity Swaps; and
- (b) not generally available,  
and, if so, during which part or parts.
12. Whether Estia was aware within the meaning of ASX Listing Rule 19.12 of the FY17 Guidance Information and if so, at what time if any during any period referred to in Question 11 to which the answer to Question 11 is “Yes”.
13. Whether Estia contravened s 674(2) of the *Corporations Act* by failing to notify the ASX of:
- (a) the RAD Information;
- (b) the New Operating Structure Information;
- (c) the FY16 Guidance Information;
- (d) the Growth Strategy Information;
- (e) the Strategic Review Information; and/or
- (f) the FY17 Guidance Information,  
as soon as it was aware of that information within the meaning of ASX Listing Rule 19.12.
14. Whether Estia made any or all of:
- (a) the August 2015 Representations (being the August 2015 RAD Representation, Express FY16 Guidance Representation, August 2015 Basis Representation, Implied Guidance Representations and Growth Strategy Representation);
- (b) the December 2015 Representations (being the Express Increased FY16 Guidance Representation, the December 2015 Basis Representation and the Modified Growth Strategy Representation);
- (c) the February 2016 RAD Representation; and/or



- (d) the August 2016 Representations (being the Express FY17 Guidance Representation and the August 2016 Basis Representation),

and, if so, on and from what date or dates.

15. Whether making, maintaining and failing to qualify:

- (e) the August 2015 Representations (being the August 2015 RAD Representation, Express FY16 Guidance Representation, August 2015 Basis Representation, Implied Guidance Representations and Growth Strategy Representation);
- (f) the December 2015 Representations (being the Express Increased FY16 Guidance Representation, the December 2015 Basis Representation and the Modified Growth Strategy Representation);
- (g) the February 2016 RAD Representation; and/or
- (h) the August 2016 Representations (being the Express FY17 Guidance Representation and the August 2016 Basis Representation),

Estia engaged in conduct which was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA of the *ASIC Act*, s 1041H of the *Corporations Act* or s 18 of the *Australian Consumer Law*.

16. Whether any, and if so, what conduct of Estia caused the price of Estia Shares or Estia Equity Swaps to be higher during the Relevant Period than it would have been had Estia not engaged in that conduct and, if so, to what extent or by what amount.
17. If the conduct of Estia had the effect referred to in Question 16, whether compensation is recoverable by the Applicants and Group Members.
18. The correct measure of the compensation for which Estia may be liable to the Applicants and Group Members.

### **Representative action**

The Applicants bring this application as representative parties under Part IVA of the *FCA Act*.

The Group Members to whom this proceeding relates are persons who are defined in paragraph 1 of the Statement of Claim.

The Group Members to whom this proceeding relates are all persons who:

- (a) at some time during the period from 12 August 2015 to 9.52AM on 6 October 2016 inclusive (**Relevant Period**):



- (i) acquired an interest in ordinary fully-paid shares in Estia Health Ltd (**Estia Shares**); or
  - (ii) acquired long exposure to Estia Shares by entering into equity swap confirmations in respect of Estia Shares (**Estia Equity Swaps**); and
- (b) have suffered loss or damage by or resulting from the conduct of the Respondent (**Estia**) pleaded in the Statement of Claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of the Statement of Claim, any of the following:
- (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Estia;
  - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Estia;
  - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Estia;
  - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Estia; or
  - (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia,



**Applicants' address**

The Applicants' address for service is:

Phi Finney McDonald  
Level 4, 325 Flinders Lane  
Melbourne VIC 3000

Email:

tim.finney@phifinney-mcdonald.com

The Applicants' address is:

c/- Phi Finney McDonald  
Level 4, 325 Flinders Lane  
Melbourne VIC 3000

**Service on the Respondent**

It is intended to serve this application on the Respondent.

Date: 15 July 2019

A handwritten signature in black ink, appearing to read 'Tim Finney'.

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Signed by Timothy Michael Luke Finney  
Lawyer for the Applicants

**Schedule**

No. VID of 2019

Federal Court of Australia

District Registry: Melbourne

Division: General

**Wetdal Pty Ltd (ACN 145 536 661) as trustee for the BlueCo Two Superannuation Fund**

First Applicant

**Ronald John Renton**

Second Applicant

**Estia Health Limited (ACN 160 986 201)**

Respondent