



## ESTIA CLASS ACTION

*Wetdal Pty Ltd as trustee for the Blueco Two Superannuation Fund & Anor v Estia Health Limited*

### NOTICE OF PROPOSED SETTLEMENT

This Notice is provided pursuant to Orders made by the Federal Court of Australia on 26 February 2021.

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

1. You have received this Notice because you have been identified as a potential group member in the Federal Court of Australia proceeding *Wetdal Pty Ltd as trustee for the Blueco Two Superannuation Fund & Anor v Estia Health Limited (VID758/2019) (Estia class action)*.
2. In summary, this Notice is to inform you that a conditional settlement of AUD\$37.75 million (**Settlement Sum**), inclusive of legal fees, expenses, disbursements, any funding commission and interest, has been reached in the proceeding between the Applicants and the Respondent (Estia Health Limited (**Estia**)) to resolve the claims of all Group Members (**Proposed Settlement**). The Proposed Settlement is without admission of liability by Estia.
3. The Applicants (who bring the action on behalf of themselves and Group Members) are represented by solicitors Phi Finney McDonald (with assistance from William Roberts Lawyers), and the class action has been funded by Investor Claim Partner Pty Ltd and ICP Capital Pty Ltd (together, **ICP**) and LLS Fund Services Pty Ltd (**LLS**).
4. The Proposed Settlement requires Court approval to be effective and for monies to be distributed to eligible Group Members. The Court must assess whether any class action settlement is fair and reasonable in the interests of Group Members. The Court has been asked to approve the Proposed Settlement at a hearing to be held at 10.15am on 12 April 2021, Australian Eastern Standard Time (**AEST**) (**Settlement Approval Hearing**). You are entitled to attend the hearing if you wish to.
5. If you **do not** oppose the proposed settlement, no action is required. However, if you wish to oppose the proposed settlement, you must take the steps outlined in Part F of this Notice.
6. If there is anything in this Notice that you do not understand or if you have any questions, you should **not** contact the Federal Court and should instead seek independent legal advice or contact Phi Finney McDonald (for contact details see paragraph 32 of this Notice, below).



## A. BACKGROUND

7. The Estia class action was commenced on 15 July 2019 and alleges that:
  - a. Estia engaged in misleading and/or deceptive conduct in breach of section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth), section 1041H(1) of the *Corporations Act 2001* (Cth) and section 18 of the Australia Consumer Law, and breached its obligations of continuous disclosure, in contravention of section 674(2) of the *Corporations Act 2001* (Cth) and the ASX Listing Rules, between the period 12 August 2015 to 9:52am on 6 October 2016 (inclusive) (**Claim Period**);
  - b. the conduct of Estia caused its securities to trade on the ASX at artificially inflated prices; and
  - c. persons who acquired Estia shares within the Claim Period have suffered compensable loss.
8. The allegations are denied by Estia. Estia defended the class action and the Proposed Settlement acknowledges that Estia makes no admissions as to liability.
9. Full details of the allegations made by the Applicants and of Estia's defence against those allegations are set out in the Amended Statement of Claim and Defence. See Part H of this Notice, below, for details on how to access these documents.

## B. GROUP MEMBERS

10. You are receiving this Notice because you have been identified as a potential group member in the Estia class action.
11. A group member is defined in the Amended Statement of Claim as someone who:
  - a. acquired an interest in ordinary fully paid shares in Estia during the Claim Period; or
  - b. acquired long exposure to Estia shares by entering into equity swap confirmations in respect of Estia shares during the Claim Period; and
  - c. suffered loss or damage by or resulting from the conduct of Estia as alleged in the Amended Statement of Claim; and
  - d. is not a director, officer, close associate, related party, related body corporate or associated entity of Estia, or a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and
  - e. did not opt out of the proceeding in accordance with the orders of Justice Middleton dated 3 March 2020.

### (Group Member)



12. All Group Members will be bound by the terms of the Proposed Settlement, if approved by the Court. However, your rights in relation to the Estia class action depend on whether you are a Registered Group Member or an Unregistered Group Member:

- a. **Registered Group Members** are those Group Members who registered their claims in accordance with the orders of Justice Middleton dated 3 March 2020. Registered Group Members are to be bound by the settlement and are to be eligible to participate in the distribution and potentially receive monies from the Settlement Sum.
- b. **Unregistered Group Members** are those Group Members who have not registered as a group member in the Estia class action in accordance with paragraph 12a.

If you are an Unregistered Group Member, then unless the Court otherwise orders, you are still a Group Member (unless you opted out) but are not entitled to participate in the Proposed Settlement or receive compensation from it, but you will be bound by it and precluded from making any further claims against Estia or its related entities (including related bodies corporate and Estia's past or present directors and officers) which relate to the subject matter of the Estia class action (which includes the facts and circumstances giving rise to the allegations described in the Statement of Claim and the Amended Statement of Claim). If you are an Unregistered Group Member and you now wish to participate in the Proposed Settlement, please notify Phi Finney McDonald on (03) 9134 7100, or by email to [kate.vanrenen@phifinney-mcdonald.com](mailto:kate.vanrenen@phifinney-mcdonald.com) by no later than 4:00pm (AEDT) on 24 March 2021. You must also fill out a Notice of Objection to Proposed Settlement, and send it to Phi Finney McDonald by that date so that the Applicants and the Court have information about your claim. Your wish to register for the proposed settlement after the Class Deadline will be notified to the Court, which will decide as part of deciding whether to approve the settlement, whether you are entitled to participate in the settlement. See further Section G below.

13. If you are not sure whether you are a Registered Group Member, please contact ICP on [estiaclassaction@icp.net.au](mailto:estiaclassaction@icp.net.au) or 1800 26 26 00.
14. All group members (whether you are a Registered Group Member or an Unregistered Group Member) have the right to be heard at the Settlement Approval Hearing on whether the settlement should be approved. See Section G below.

#### **D. PROPOSED SETTLEMENT AND COURT APPROVAL**

15. Under the terms of the Proposed Settlement, Estia will pay, without admission of liability, a Settlement Sum of AUD\$37.75 million, inclusive of legal costs, expenses and disbursements, any funding commission and interest.
16. The Proposed Settlement includes covenants and releases that are commonly agreed in class action settlements. If the Proposed Settlement is approved by the Court as



fair and reasonable, all claims made by the Applicants and Group Members against Estia in the Estia class action will be finally resolved, regardless of whether you are a Registered or Unregistered Group Member (but this will not apply to any person who filed an opt-out notice in the Estia class action), and Group Members (whether Registered or Unregistered) will not be permitted to make any further claims against Estia or its related parties (including related bodies corporate and Estia's past or present directors and officers) which relate to the subject matter of the Estia class action (which includes the facts and circumstances giving rise to the allegations described in the Statement of Claim and the Amended Statement of Claim).

17. If the Proposed Settlement is not approved by the Court, the Estia class action will continue and there will be no distribution of compensation to group members unless and until the Applicants are successful in the proceeding, or a further settlement is reached.
18. At the Settlement Approval Hearing, the Applicants will seek orders from the Court to approve a proposed Settlement Distribution Scheme which will establish how Registered Group Members' entitlements are to be calculated, and the process to distribute the Settlement Sum as efficiently as possible. This is explained further in paragraphs 19 – 23 below.

#### **E. SETTLEMENT DISTRIBUTION SCHEME**

19. The process by which the Settlement Sum is proposed to be distributed will be outlined in the proposed Settlement Distribution Scheme. The proposed Settlement Distribution Scheme will include a confidential schedule containing a "Loss Assessment Formula" which details how each Registered Group Member's entitlement will be calculated. The proposed Settlement Distribution Scheme and the Loss Assessment Formula are subject to Court approval.
20. The Settlement Distribution Scheme proposes that after making deductions (see below) the settlement will be distributed between Registered Group Members. The amount of compensation to be paid to each Registered Group Member under the Settlement Distribution Scheme will depend on a number of factors, such as the number of shares purchased by that Registered Group Member, the date of purchase, whether any of those shares were sold, the overall losses of all Registered Group Members sharing in the Proposed Settlement, the total amount of the deductions from the Settlement Sum which are approved by the Court and any interest earned on the Settlement Sum prior to final distributions. If you are not a Registered Group Member see above what steps you can take.
21. Under the proposed Settlement Distribution Scheme, the following amounts (subject to Court approval) will be deducted from the Settlement Sum before it is distributed to Registered Group Members, shared on a pro rata basis by all Registered Group Members:
  - a. legal costs estimated at approximately \$5.2 million. The Applicants will seek Court approval of legal costs in an amount to be determined as fair and



reasonable by the Court, having regard to the opinion of an independent expert costs assessor. The Court may approve an amount for legal costs which is different to this estimate;

- b. other Project Costs paid by the Funders of approximately \$1.1 million, principally relating to client management services and the payment of premiums for adverse costs insurance and three deeds of indemnity provided by way of security for costs in the Estia class action;
  - c. funding commission rate of between 22% and 25% and a management services fee of 3% owed by Funded Group Members to the Funders in accordance with the funding agreements (approximately \$10 million) to be paid to the Funders (this is explained further at paragraphs 24 – 26 below);
  - d. payment to the Applicants estimated at approximately \$19,000 to reimburse them for time, trouble and expenses incurred in representing Group Members in the Estia class action; and
  - e. administration costs estimated at approximately \$220,000, being the costs of administering the Settlement Distribution Scheme.
22. If the Court approves the Proposed Settlement, Phi Finney McDonald (or such other Administrator that is appointed by the Court) will be appointed as the Administrators of the proposed Settlement Distribution Scheme, and trustees in relation to the Settlement Sum. Under Court supervision, Phi Finney McDonald (or such other Administrator that is appointed by the Court) will be obliged to act impartially and will no longer act as lawyers for the Applicants or Group Members.
23. Group Members can request a copy of the proposed Settlement Distribution Scheme including relevant confidential schedules, from any time after 5 March 2021, by:
- a. Contacting the Applicants' solicitors by email at [kate.vanrenen@phifinney-mcdonald.com](mailto:kate.vanrenen@phifinney-mcdonald.com); and
  - b. signing and returning a confidentiality undertaking which will be sent to you in response to your request for a copy of the Settlement Distribution Scheme

## **F. LITIGATION FUNDING**

24. The Funders provided litigation funding for the Applicants' prosecution of the Estia class action on behalf of Group Members. Many (but not all) Registered Group Members signed funding agreements with the Funders.
25. Under this arrangement, the Funders:
- a. indemnified the Applicants against any adverse costs orders; and



- b. paid legal costs and other “Project Costs” incurred in prosecuting the proceeding, including the cost of solicitors, barristers, and independent experts together with the upfront cost of securing adverse costs insurance and the deeds of indemnity provided as security for costs.
26. At the Settlement Approval Hearing, the Funders will seek to recover their contractually defined commission, subject to a funding equalisation order. Under a funding equalisation order, the amount equal to the amount of funding commission and the management services fee owed under the funding agreements to Funded Group Members, is deducted from the unfunded Registered Group Members’ recovery and redistributed amongst all Registered Group Members on a pro rata basis, so that all group members who participate in the settlement contribute to the costs of bringing the action.

#### **G. WHAT STEPS CAN GROUP MEMBERS NOW TAKE?**

27. If you wish to support the settlement, there is nothing you need to do. If you are a Registered Group Member you will be kept informed about further developments in the Court approval process. You are encouraged to refrain from contacting Phi Finney McDonald unnecessarily, in order to keep costs to a minimum.

28. If you wish to **oppose** the Proposed Settlement, or any aspect of it, then you **must**, by no later than 4:00pm (AEDT) on 24 March 2021, fill in the form entitled ‘Notice of Objection to Proposed Settlement’ attached to this Notice (which can be obtained in word format from Phi Finney McDonald upon request), duly execute it, and file it with the Court and serve it on Phi Finney McDonald by sending it by email to:

Associate.BeachJ @fedcourt.gov.au; and

kate.vanrenen@phifinneymcdonald.com

You **may** attend the approval hearing to explain the basis of your objection to the Judge if you wish to do so. If you do not attend, then the Court may give consideration to your objection and to the approval of the settlement in your absence. You may wish to seek independent legal advice in relation to opposing the settlement.

29. If you are an Unregistered Group Member and you now wish to participate in the settlement, please notify Phi Finney McDonald on (03) 9134 7100, or by email to kate.vanrenen@phifinneymcdonald.com by no later than 4:00pm (AEDT) on 24 March 2021. You must also fill out a Notice of Objection to Proposed Settlement, and send it to Phi Finney McDonald by that date so that the Applicants and the Court have information about your claim. Your wish to register for the proposed settlement after the Class Deadline will be notified to the Court, which will decide on the settlement approval whether you are entitled to participate in the settlement.

30. The Settlement Approval Hearing will take place at 10.15am on 12 April 2021 (AEST) 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. Due to the coronavirus, a hearing may not happen in a courtroom where people come along in person, and if you want to speak, you may be provided instead with a video link or telephone link. If



you want to speak to the Judge about the settlement at the hearing this can be arranged.

#### **H. FURTHER INFORMATION**

31. Copies of relevant documents, including this Notice, Statement of Claim, Amended Statement of Claim and the Defence may be obtained by:
  - a. requesting them by email to [kate.vanrenen@phifinneymcdonald.com](mailto:kate.vanrenen@phifinneymcdonald.com); or
  - b. inspecting them at <http://phifinneymcdonald.com/projects/>; or
32. If you need further information about the proposed settlement, please contact Phi Finney McDonald on (03) 9134 7100, or by email to [kate.vanrenen@phifinneymcdonald.com](mailto:kate.vanrenen@phifinneymcdonald.com).



## NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

No. VID758 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 and another named in the schedule of parties**

Applicants

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

Respondent

Complete this form if you wish to submit an objection to the Proposed Settlement.

If you do **NOT** wish to object to the proposed settlement, you do **NOT** need to return this form.

**Please note** that if you submit a Notice of Objection to Proposed Settlement, your name and your specific circumstances (including transaction details and grounds of objection) may be read out in Court and/or referred to in orders and/or judgments of the Federal Court.

Your Notice of Objection will be considered by the Court when it is determining whether or not to approve the Proposed Settlement.

If you wish to object to the Proposed Settlement, or any aspect of it, your Notice of Objection must be received by the Court by 4.00 pm (AEDT) on 24 March 2021 and any evidence/submissions in support received by 4.00 pm (AEDT) on 26 March 2021.

Any Notice of Objection received after this deadline will not be considered by the Court when it is determining whether or not to approve the Proposed Settlement.

To: The Federal Court of Australia, by email to Associate.BeachJ@fedcourt.gov.au  
cc: Phi Finney McDonald, by email to kate.vanrenen@phifinney-mcdonald.com

The person identified below gives notice pursuant to paragraph 11 of the orders of the Court made on 26 February 2021 that the person is a Group Member in the Estia class action and **OBJECTS** to the Proposed Settlement of this proceeding, for the reasons outlined.



**A. DETAILS OF OBJECTOR**

- I am a Registered Group Member (see paragraph 12(a) of the Notice of Proposed Settlement); or
- I am an Unregistered Group Member (see paragraph 12(b) of the Notice of Proposed Settlement)

|  |  |
|--|--|
| Name   |  |
| ACN/ABN [ <i>if company</i> ]                                    |  |
| Person completing this form                                      |  |
| Capacity [ <i>e.g., individual, partnership, trustee/agent</i> ] |  |
| Registered or Unregistered group member                          |  |
| Telephone  |  |
| Email  |  |
| Postal address   |  |

**B. RELEVANT TRANSACTIONAL INFORMATION**

If you are an Unregistered Group Member (see paragraph 12(a) of the Notice of Proposed Settlement), you are required to provide the following information. Further, you are required to provide documentary evidence from a third party (e.g. contract notes or transaction receipts) in support of each acquisition and disposal of Estia securities during the period 12 August 2015 to 6 October 2016 (inclusive).

If you are a Registered Group Member (see paragraph 12(b) of the Notice of Proposed Settlement), you are **not** required to provide the following information. Please proceed to Sections C, D and E below.

|  |  |
|--|--|
| HIN/SRN under which Estia securities were traded   |  |
| Number of Estia securities held as at close of trade on 11 August 2015   |  |
| Total number of Estia securities acquired by the objector during the period 12 August 2015 to 6 October 2016 (inclusive) |  |



|   |  |
|---|--|
| Total number of Estia securities disposed of by the objector during the period 12 August 2015 to 6 October 2016 (inclusive) |  |
|---|--|

**C. ATTENDANCE AT HEARING AT 10.15AM (AEST) ON 12 APRIL 2021**

- I do not intend to appear, but wish for my submissions to be considered in my absence
- I intend to appear before the Court at the hearing at 10:15AM (AEST) on 12 April 2021

[please tick one]

If you intend to appear, please complete the following:

- I will appear on my own behalf
- I will be represented by a lawyer:.....

[please tick one if you intend to appear]

**D. NOTICE OF OPT OUT AND REGISTRATION**

If you are a Registered Group Member, you are **not** required to provide the following information. Please proceed to Section E below.

If you are an Unregistered Group Member, did you receive a copy of the Notice of Opt Out and Registration provided to Group Members in accordance with the orders of Justice Middleton dated 3 March 2020?

- Yes, I received a copy of the Notice of Opt Out and Registration
- No, I did not receive a copy of the Notice of Opt Out and Registration

[please tick one]

If yes, you must state at Section E below the reasons why you elected not to register or opt out of the Estia class action.



**E. GROUND(S) OF OBJECTION**

Please state the reasons in support of your objections to the Proposed Settlement [*set out in the space below any submissions you wish to make, attach additional pages if necessary*]:



**E. EXECUTION OF NOTICE**

If you are completing the Notice of Objection on behalf of an individual shareholder you must sign and have your signature witnessed.

If you are completing the Notice of Objection on behalf of a company with a sole director or as the sole trustee, the sole director or sole trustee must sign and have their signatures witnessed.

If you are completing the Notice of Objection on behalf of a company or trust (with more than one director or trustee), two directors of the company, a director and a company secretary of the company, or two trustees must sign. A witness signature is not required.

By signing below, I confirm that the information I have provided in this form is true, complete and correct:

|                   |  |
|-------------------|--|
| Signed:           |  |
| Name              |  |
| Position          |  |
| Date              |  |
|                   |  |
| Witness Signature |  |
| Name of Witness   |  |

|                   |  |
|-------------------|--|
| Second signature: |  |
| Name              |  |
| Position          |  |
| Date              |  |
|                   |  |
| Witness Signature |  |
| Name of Witness   |  |