

## ANNEXURE B

Notice to Group Members



### ESTIA SHAREHOLDER CLASS ACTION

#### FEDERAL COURT OF AUSTRALIA

*Wetdal Pty Ltd & Anor -v - Estia Health Ltd (VID758/2019)*

#### NOTICE TO GROUP MEMBERS

If you wish to participate in this class action you must comply with this Notice by Monday 27 April 2020. If you do not do so your rights may be lost. If you have not already registered, you have three options:

1. Register to have the opportunity to receive any compensation that may become available in this class action pursuant to any settlement (subject to Court approval) that occurs before the delivery of judgment following trial.
2. Do nothing and lose any rights to any compensation if this action settles before the delivery of final judgment (as described below).
3. Complete an 'opt out' form and lose a right to any compensation available in this action but keep your right to try and get compensation yourself.

**You have been provided a copy of this Notice pursuant to orders of the Federal Court even if you have previously registered for this class action.**

#### THIS CLASS ACTION

##### Why is this Notice important?

1. On 15 July 2019, a class action was commenced in the Federal Court of Australia by Wetdal Pty Ltd (ACN 145 536 661) as trustee for the BlueCo Two Superannuation Fund and Mr Ronald Renton (**Applicants**) on behalf of all persons who acquired shares in Estia Health Limited (ACN 160 986 201) (**Estia**) during the period 12 August 2015 and 9:52am on 6 October 2016 (inclusive) (**Estia Class Action**).
2. The Applicants are bringing the Estia Class Action with funding from Investor Claim Partner Pty Ltd and ICP Capital Pty Ltd (**ICP**). The Applicants' lawyers are Phi Finney McDonald (and William Roberts Lawyers have also been retained to provide assistance on parts of the case).
3. 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 who may be affected by the action. You have been identified as a potential group member based on information contained in Estia's share registry. **You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.
4. This Notice provides important information about:
  - (a) what you need to do if you wish to have the opportunity to share in any benefit that might result from settlement of the Estia Class Action before the delivery of judgment following trial;
  - (b) what you need to do to remove yourself from participating in the Estia Class Action (**opt out**); and

- (c) how your rights are affected if you do not register to participate in the Estia Class Action.



### What is a class action?

5. A class action is an action that is brought by one or more persons (**Applicant**) on his or her own behalf and on behalf of a class of people (**group members**) against another person (**Respondent**) where the Applicant and the group members have similar claims against the Respondent.
6. 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 found below in Option C.
7. 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: (i) either a judgment following a trial; or (ii) a settlement at any time. If there is a judgment or a settlement of a class action, group members will not be able to 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 (**final judgment**), 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 is likely 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 and may extinguish rights to compensation against its related entities, including its past and present officers, which arise in any way out of the events or transactions which are the subject-matter of the class action.
8. If you consider that you have claims against Estia which are based on 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).

### What is the Estia Class Action?

9. The Estia Class Action was commenced on 15 July 2019 and, in summary, alleges that Estia:
  - (a) misrepresented the proportion of incoming full-paying residents during the financial year ending 30 June 2015 (**FY15**) and for the half year ending 31 December 2015 (**HY16**) that it had derived Refundable Accommodation Deposits from, with such payments being relied upon by Estia to fund its medium term growth strategy, being a strategy to operate 10,000 resident beds by the financial year ending 30 June 2020, and thereby contravened section 1041H(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) and section 18 of the Australian Consumer Law (together, the **misleading conduct provisions**);
  - (b) contravened the misleading conduct provisions by providing and/or affirming guidance for the financial year ending 30 June 2016 (**FY16**) and for the financial year ending 30 June 2017 (**FY17**), which guidance lacked reasonable grounds;
  - (c) failed to inform the ASX of the following information:
    - i. that Estia had changed its operating structure to a new and untested system and management structure which was a departure from the established regional model, and was motivated by cost-cutting and reduced localised responsibility and accountability; and
    - ii. due to the untested operating structure, it was unable to reliably estimate its future financial performance in FY16 and FY17,

thereby contravening section 674(2) of the Corporations Act and ASX Listing Rule 3.1.

10. Estia denies the claims made against it in the class action, and is defending the class action.



11. The detailed allegations are set out in the Applicants' Amended Statement of Claim. A copy of the Amended Statement of Claim and Estia's Defence to it is available to be viewed on the website referred to at the bottom of this Notice.

### Are you a group member in the Estia Class Action?

12. The Estia Class Action includes all persons who acquired an interest in Estia shares (including by entering into equity swaps) during the period 12 August 2015 to 9.52am on 6 October 2016 (inclusive).
13. You have been sent this Notice because you have been identified as someone who is likely to be a group member in the Estia Class Action.
14. You are a group member if you meet the following criteria:
- (a) you acquired shares in Estia (either ordinary shares or long exposure by entering into equity swap confirmations) during the claim period from 12 August 2015 to 9.52am on 6 October 2016 inclusive;
  - (b) you are not a director or officer, a close associate, a related party, a related body corporate, or an associated entity of Estia (as defined by the *Corporations Act*) or a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and
  - (c) you have suffered loss and damage by reason of the conduct alleged against Estia in the Amended Statement of Claim.
15. If you are a group member because you meet the above description, you should read this Notice carefully as it will affect your rights.
16. If you are unsure whether or not you are a group member, you should contact Phi Finney McDonald on (03) 9134 7100 or email [classactions@phifinney-mcdonald.com](mailto:classactions@phifinney-mcdonald.com) or seek your own legal advice without delay.

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### YOUR OPTIONS

17. If you are a group member, you have three options at this stage, and must choose one of them before Monday 27 April 2020:
- (a) register;
  - (b) do nothing; or
  - (c) opt out.
18. There are different consequences depending on which option you choose:

#### OPTION A – Register

- (a) Group members who register (**Registered Group Members**) will be bound by, and share in any benefit pursuant to any in-principle settlement (subject to Court approval) of this proceeding agreed to by the parties prior to final judgment, and will also be bound by any final judgment.

To register you need to complete, or take reasonable steps to complete, and return a Group Member Registration Form in accordance with the steps outlined in Option A, or sign and return a Litigation Funding Agreement (**LFA**) to ICP – unless you have already done this, in which case you do not need to do anything further.

#### OPTION B – Do nothing

- (b) Group members who do not register (**Unregistered Group Members**) will remain a group member in the Estia Class Action and be bound by the outcome (whether by way of settlement or judgment) but will not, without leave of the Court be permitted to seek any benefit of the Estia Class Action pursuant to any in-principle settlement (subject to Court approval) of this proceeding agreed to by the parties

prior to final judgment. You will be an Unregistered Group Member if you **do nothing** in response to this Notice, unless you have already registered for the Estia Class Action.



### OPTION C – Opt out

- (c) Group members who **opt out** of the proceeding will not be bound by the outcome of the Estia Class Action (whether by way of settlement or judgment), and will be excluded from receiving any monetary compensation that results from the class action (including, but not limited to, any Court-approved settlement or judgment), but will be able to pursue their legal rights against Estia (if any) outside the class action. If you wish to opt out, you need to complete and return an Opt Out Form.

19. Further information about each option, and how to comply with them, is outlined below. Before making your decision you should read the whole of this Notice carefully.
20. If you object to the protocol described in this Notice, in that you object to making one of the three choices described above, you must send a written notice to Phi Finney McDonald by Monday 27 April 2020 setting out the challenge you will make and the reasons for that challenge. You may then be required to attend the Victorian District of the Federal Court at a later date to have your challenge heard.

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### FUNDING OF THIS CLASS ACTION

#### Will group members be liable for legal costs?

21. 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**).
22. In a class action, it is only the Applicant that faces the risk of an adverse costs order if the action fails. As a group member, an adverse costs order will not be made against you.
23. You will not become liable for any legal costs associated with bringing the class action simply by remaining as a group member. However:
- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Applicants' lawyers or other lawyers to do that work for you. A copy of the terms on which the Applicants' lawyers are acting in the class action may be obtained from the details shown below; and
  - (b) the Court has also said in its Practice Note that governs class actions (in the section dealing with settlements) that if application is made and if in all the circumstances it is fair, just, equitable and in accordance with principle, the court will make an appropriately framed order to prevent unjust enrichment and to equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action.

#### Litigation funding arrangements

24. The Applicants and some Estia Class Action group members have entered into a litigation funding agreement (**LFA**) with ICP (**Funded Group Members**). The Applicants and some Estia Class Action group members have also retained Phi Finney McDonald to act as their lawyers pursuant to a Conditional Legal Costs Agreement (the **CLCA**).
25. The LFA provides that ICP will pay the Applicants' legal costs and out of pocket expenses (disbursements) of the action, indemnify the Applicants in respect of any adverse costs orders which may be made against them in the proceeding, and to provide any security for costs that the Court may order. ICP will only recover those legal costs and disbursements in the event of a successful outcome in the proceeding. Under the LFA, Funded Group Members have funding, subject to the terms of the agreement, for work required to be done in relation to their individual claims (that is the kind of work described in 23(a) above).
26. The LFA provides that in return for funding the Funded Group Members, ICP is entitled to be paid a percentage commission (from any amount for which the claims are settled or judgment is given) being an amount of between 20.5% and 28% of recoveries, depending on the timing of resolution, and subject to



ensuring the Applicants and Funded Group Members receive at least 50% of the net recoveries or such other amount determined by the Court.

27. It is not necessary for group members who have not entered into an LFA and/or to do so in order to participate in the Estia Class Action however, if you are not a Funded Group Member, you may choose to enter an LFA if you wish to. Group Members who have not entered into an LFA are referred to below as **Unfunded Group Members**.

#### **Potential funding or class closure order**

28. In the event of a favourable settlement outcome or judgment and for the purposes of any distribution of a monetary sum in accordance with that outcome, the Applicants may apply to the Court for an order to equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action. In the past orders have been made of the following kinds
- (a) a **common fund order**, which is a kind of order that would require Unfunded Group Members who benefit from that outcome to pay to ICP an amount in respect of costs and commission which is the amount that would have been payable to ICP if those Unfunded Group Members had entered into an LFA with ICP, or some lesser amount which the Court considers reasonable in the circumstances;
  - (b) a **funding equalisation order**, which is a kind of order that calculates the dollar-value of the funding commission payable by Funded Group Members (being those Group Members who have executed an LFA) and pro rates that sum over the entire class of Funded and Unfunded Group Members, so that the commission payable by Funded Group Members to ICP under their LFAs is effectively paid (in equal shares) by all Group Members (including Unfunded Group Members).
29. Alternatively, the Applicants may, at a time before any settlement or judgment is reached, apply to the Court for a **class closure order**, converting the class action from an “open” class action (being a class action commenced on behalf of all persons who acquired an interest in Estia shares during the relevant period) to a “closed” class action (being a class action commenced on behalf of only those persons who acquired an interest in Estia shares during the relevant period *and* that have entered into an LFA with ICP).
30. In considering whether to take any of the above courses, the Applicants will consider, amongst other things, the following:
- (a) the number of Registered Group Members;
  - (b) the number of Registered Group Members who are Funded Group Members;
  - (c) the number of Registered Group Members who are not Funded Group Members; and
  - (d) the costs and risks associated with the Funded Group Members advancing claims on behalf of Registered Group Members who are not Funded Group Members.
31. However, before any common fund order, funding equalisation order or class closure order is made, affected Group Members will be given an opportunity to be heard on whether such an order should be made by the court.

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#### **WHERE TO GET FURTHER INFORMATION**

32. Copies of relevant documents, including the Originating Application, the Amended Statement of Claim and the Defence may be obtained by:
- (a) downloading them from <http://phifinney-mcdonald.com/projects/>;
  - (b) requesting them by email to [classactions@phifinney-mcdonald.com](mailto:classactions@phifinney-mcdonald.com); or
  - (c) inspecting them at the Federal Court 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](http://www.fedcourt.gov.au) or by calling the Victoria District Registry on (03) 8600 3333.

If there is anything of which you are unsure, you should contact Phi Finney McDonald on (03) 9134 7100 or email [classactions@phifinney-mcdonald.com](mailto:classactions@phifinney-mcdonald.com) or seek your own legal advice. You should not delay in making your decision.





## ANNEXURE – DETAILS ABOUT YOUR OPTIONS

The options are different depending on whether or not you have already entered into or returned a Litigation Funding Agreement (LFA) with ICP and completed and returned a “Group Member Registration Form”.

### **Options for Unregistered Group Members**

If you have **not** entered into and returned an LFA with ICP or completed and returned a Group Member Registration Form, you **must** select one of the following three options:

#### ***Option A – Register to participate the Estia Class Action***

If you wish to receive a share of any settlement monies resulting from a settlement agreement reached between the parties before final judgment you must:

- execute and return (in accordance with the instructions therein) the Litigation Funding Agreement (available via ICP’s website: <https://www.icp.net.au/icp-claims/estia/>) by the deadline specified below;

OR

- complete, or take reasonable steps to complete, and return (in accordance with the instructions therein) the Group Member Registration Form that is enclosed with this Notice by the deadline specified below.

In order to register, it is not necessary for you to execute an LFA (and your registration will be effective even if you do not sign an LFA). However, you may choose to enter an LFA if you wish to.

In executing the LFA or completing the Group Member Registration Form, it is important to note the following:

- Once the Group Member Registration Form is returned to ICP, you will become a Registered Group Member.
- Once the LFA is returned to ICP, you will become a Funded Registered Group Member.
- The information and documents you provide will be used by Phi Finney McDonald and all or some of it may be provided to Estia to enable the parties to have sufficient information about all the claims to settle the Estia Class Action.
- If a settlement agreement is reached at any stage of the Proceeding prior to any final judgment, Registered Group Members will be contacted at the address provided on the Group Member Registration Form and informed of the terms of the settlement (which will be subject to Court approval). Only Registered Group Members will be eligible for a share of any settlement monies.
- If a settlement agreement is not reached (and approved by the Court) prior to final judgment, then the Estia Class Action will continue and you will remain a group member (unless you opt out in accordance with the procedure set out in Option C below).
- If you are unable to access to the online registration website, please contact ICP on 1800 26 26 00.

Registrations must be completed, submitted and received before **4:00 pm AEST on Monday 27 April 2020** .

Registrations received after this time may not be accepted, with the result being that you will be treated as having not responded to this Notice (see Option B below).

Registered Group Members will be bound by the terms of any settlement agreement approved by the court, which is likely to extinguish *all* rights to compensation which a group member might have against the respondent and may extinguish rights to compensation against its related entities, including its past and present officers, which arise in any way out of the events or transactions which are the subject-matter of the class action.



### **Option B – Do not respond to this Notice**

If you do nothing, that is you do not:

- register by submitting the “Group Member Registration Form” or enter an LFA as per Option A above; or
- return an “Opt Out Notice” as per Option C below,

you will remain an Unregistered Group Member of the Estia Class Action but will not, without leave of the Court, be permitted to seek any benefit pursuant to any settlement of the Estia Class Action reached (and approved by the Court) prior to final judgment.

If there is a Court-approved settlement at any stage of the Proceeding prior to final judgment, you will not be entitled to share in the benefit of any order or settlement in favour of the Applicants. Further, you will be bound by the terms of any settlement agreement approved by the court, which is likely to extinguish *all* rights to compensation which a group member might have against the respondent and may extinguish rights to compensation against its related entities, including its past and present officers, which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you do nothing and there is no Court-approved settlement before final judgment, you will remain an Unregistered Group Member and the Applicants will continue to bring the Estia Class Action on your behalf up to the point where the Court determines the substantial common issues of law and fact arising out of the claims of the Group Members.

In that case, you will be bound by the outcome of the Estia Class Action. If the Estia Class Action is successful, you will be entitled to share in the benefit of any order or judgment in favour of the Applicants, although you may have to satisfy certain conditions before your entitlement arises. If the Estia Class Action is unsuccessful or is not as successful as you might have wished, you will not be able to sue Estia on the same claim in any other proceeding.

If you wish to have the opportunity to participate or receive any benefit from a settlement of the Estia Class Action, the safest course is to register as per Option A above **now**.

### **Option C – Opt out**

If you do not wish to remain a group member in the Estia Class Action, you must opt out of the proceeding by completing an “Opt Out Notice” that is enclosed with this Notice.

If you opt out of the Estia Class Action, you:

1. will not be affected by any orders made in the Estia Class Action or by any settlement agreement entered into by the Applicants and the Respondent;
2. will not be permitted to receive any distribution from any damages award or settlement outcome arising from the Estia Class Action (including, but not limited to, any Court ordered settlement or judgment); and
3. will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) before **4:00 pm (AEST) on Monday 27 April 2020** . Opt Out Notices received after this time may not be accepted, with the result being that you will be treated as having not responded to this Notice (see Option B above).

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### **Options for Registered Group Members**

If you have already executed an LFA with ICP and returned that document to ICP or completed and returned a Group Member Registration Form, you are automatically registered to participate in the Estia Class Action.

However, if you do not wish to remain a group member in the Estia Class Action, you must opt out of the proceeding. Please refer to Option C above. If you do choose to opt out, please note that certain contractual obligations that you owe to ICP may continue to apply to you. In particular, please refer to clause 10 of the LFA.