



ANNEXURE C

NOTICE TO GROUP MEMBERS – OPT OUT AND CLAIM REGISTRATION COLES CLASS ACTION – *Pabalan v Coles Supermarkets Australia Pty Ltd ABN 45 004* 189 708 (NSD542/2020)

This Notice is important. It relates to your right to:

- (a) **register** your claim as part of this class action;
- (b) **opt out** of this class action;
- (c) **do nothing** which is outlined at paragraphs 37-39 of this Notice;
- (d) **apply to challenge or vary** the opt out and registration orders that have been made.

SECTION 1 – INFORMATION ABOUT THE CLASS ACTION

Why have you received this Notice?

1. A class action has been commenced in the Federal Court of Australia by the Applicant (Ms Maria Pabalan) on behalf of certain persons who were employed by the Respondent, Coles Supermarkets Australia Pty Ltd ABN 45 004 189 708 (**Coles**), as a manager, Coles Services Team Leader or Coles Services Team Leader Area Support in a Coles supermarket between 19 May 2014 and 18 May 2020 (**Coles Class Action**).
2. The Federal Court of Australia 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 class action. **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 this notice that you don't understand then you should seek legal advice.
3. **If you have received this notice and you do nothing then, subject to further order of the Court, you will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement of the proceeding before the trial of the common issues commences, but will be bound by the terms of any such settlement, which may include releases of Coles, its related entities and their current and former directors, officers, employees, contractors and agents, as described in paragraph 6 below. Any settlement will be subject to approval by the Court.**



What is a Class Action?

4. A class action is also called a 'representative proceeding'. It is a case brought by one party (**Applicant**) on their own behalf and on behalf of a class of people (**Group Members**) against another person or entity (**Respondent**) where the Applicant and the Group Members have similar claims against the Respondent.
5. 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.
6. Group Members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding outcome can happen in one of two ways: a *judgment* following a trial, or a *settlement* at any time that is approved by the Court. 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 *settlement* of a class action, where the settlement provides for compensation to Group Members, the settlement 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. Any settlement of the Coles Class Action may include releases that are commonly sought in relation to the settlements of class actions, which include releases of the Respondent, its related entities, and their current and former directors, officers, employees, contractors and agents, in respect of:
 - i. all claims made by Group Members against Coles in the class action; and
 - ii. any claims Group Members may have against Coles and its related entities:
 1. which are raised in the Coles Class Action;
 2. which were at any time the subject of the Coles Class Action or any part of the class action; or



3. which relate to the matters or issues the subject of the Coles Class Action or any part of the class action, whether arising at common law, equity or under statute; and
 - b. in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicant and Group Members. Group Members are bound by those findings, whether or not they are favourable to them (unless they are successfully appealed). Importantly, if there are other proceedings between a Group Member and Coles, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are decided against the Applicant, Group Members will be unable to pursue claims they have which are the same as the Applicant's claims, and will not be able to pursue other claims which are dependent upon common issues which have been decided against the Applicant.
7. If you consider you have claims against Coles which are based on your individual circumstances or are 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 Coles Class Action?

8. On 18 May 2020, the Coles Class Action was filed by Adero Law on behalf of former Coles employee, Ms Maria Pabalan (**Ms Pabalan**).
9. Ms Pabalan brings the claim on her own behalf and on behalf of all other persons who were:
 - a. employed by Coles at any time within the period 19 May 2014 to 18 May 2020 (**Relevant Period**);
 - b. in a position in a supermarket in the 'general retail industry' within the meaning of that phrase in the General Retail Industry Award 2010 (the **Award**);
 - c. with a title which was or included the word 'manager', 'Coles Services Team Leader' or 'Coles Services Team Leader Area Support';



- d. which was undertaken on a 'full time' or 'part time' basis as those terms are defined in the Award;
 - e. who worked in any 'pay period' in the Relevant Period a rostered hour:
 - i. which was on a Monday to Friday on what was for the purposes of the Award an evening;
 - ii. outside the spread of hours from time to time prescribed in the Award for undertaking ordinary hours; or
 - iii. on a Saturday, Sunday or Public Holiday; and
 - f. to whom the Award applied in relation to their employment with the Respondent during the Relevant Period.
10. If you meet these criteria, you may be a Group Member.
11. As part of the Coles Class Action, Ms Pabalan seeks orders from the Court, for the benefit of herself and Group Members, awarding compensation and imposing penalties upon Coles for alleged underpayments.
12. The allegations made by Ms Pabalan against Coles are set out in the Applicant's Further Amended Statement of Claim, a copy of which is available at: <https://www.aderolaw.com.au/class-actions/coles/>.
13. Coles is defending the claim brought by Ms Pabalan and has filed a defence in this proceeding. A copy of Coles' defence is available at the link set out above at paragraph 12.
14. On 24 November 2020, the Court made orders referring the Coles Class Action to a mediation to be conducted by 30 June 2021 (the **Mediation**). As part of this process, the Court also made orders (the **Registration and Opt Out Orders**) requiring Group Members to register if they wish to receive any benefit or monetary compensation from any settlement of the Coles Class Action agreed before the trial of the common issues commences, or alternatively giving Group Members an opportunity to opt out of the Coles Class Action. Any settlement agreed will be subject to Court approval.



How does this affect the Coles Award Covered Salaried Team Member Review?

15. You may have already received a letter from Coles regarding its review of remuneration paid to Award covered salaried team members, which it refers to as an 'Award Covered Salaried Team Member Review' (the **Review**).
16. You are able to accept any payments from Coles arising from the Review without affecting your eligibility to participate in the Coles Class Action, should you choose to do so. Any amount you have received or do receive from Coles as a part of the Review is unaffected by the Coles Class Action, however any amount you have received or do receive from Coles as part of the Review will be taken into account in the event that you are considered entitled to a financial distribution as part of the Coles Class Action. You do not have to pay anything to Adero Law for your participation in the Review.
17. The Coles Class Action is separate from the Review.

Will Group Members be liable for legal costs?

18. In the event that the Coles Class Action is successful (that is, if money compensation is recovered), the Court will be asked to distribute the legal costs incurred by the Applicant in pursuing the Coles Class Action from the money recovered, fairly among all persons who have benefitted from the class action. The effect of any such order, if made, would be that all Group Members who benefit will contribute to the legal costs. This ensures that all Group Members are treated equally.
19. In the event that the class action is unsuccessful, Group Members have no liability to pay any legal and/or funding costs.

What do Group Members need to do?

20. You have four options:
 - (a) Register and provide details of your employment with Coles so that your individual claim may be taken into account by the parties in the Mediation and any other settlement discussions;
 - (b) Opt out of the Coles Class Action;
 - (c) Do nothing; or



- (d) Apply to the Federal Court to challenge or vary the Registration and Opt Out Orders.
21. There are different consequences depending on which option you choose. If you wish to:
- a. Register or opt-out, then **you must do so by 16 April 2021 (Registration and Opt Out Deadline)**; or
 - b. Apply to challenge or vary the Registration and Opt Out Orders, then **you must do so by 29 March 2021 (Application Deadline)**.
22. For Group Members who wish to **register** to participate in the Coles Class Action:
- a. if the parties agree to settle the class action at the Mediation or before the commencement of the trial on common issues and the settlement agreement is approved by the court: you will be entitled to participate in that settlement, and will be bound by the settlement (including any releases given to Coles, its related entities and its current and former directors, officers, employees, contractors and agents in the settlement agreement, which may include the releases described in paragraph 6);
 - b. if the parties do not agree to settle the class action at the Mediation or before the commencement of the trial on common issues: the class action will proceed as usual. You will remain a registered Group Member. You will be entitled to participate in any subsequent settlement or judgment.
23. For Group Members who **do nothing** (i.e. neither register to participate in the Coles Class Action nor opt out of the proceeding):
- a. you will be bound by any judgment or settlement of the class action but, subject to further order of the Court, will not be entitled to receive any benefit or monetary compensation from any settlement of the class action agreed at the Mediation or before the commencement of the trial on common issues. Being bound by any settlement means that you will be bound by any releases provided to Coles, its related entities and their current and former directors, officers, employees, contractors and agents in the settlement agreement, which may include the releases described in paragraph 6. Any settlement will be subject to approval by the Court.



- b. if the parties do not agree to settle the class action at the Mediation or before the commencement of the trial on common issues: you will remain a Group Member. You may have your claim considered at any further mediation or as part of any settlement that takes place at some later time, or, if the matter does not settle but proceeds to trial and a successful judgment is obtained, you may be entitled to share in any monetary compensation that is obtained.
24. Further information about each of the options set out above is contained in Section 2 below. **Please read the information about your options carefully.**

Where can I get more information?

25. For more information about the Coles Class Action, you can visit the website of Adero Law at <https://www.aderolaw.com.au/class-actions/coles/>.

SECTION 2 – YOUR OPTIONS

Option 1: Register for the Coles Class Action

26. You do not have to register to remain a Group Member. However, subject to further order of the Court, if you wish to receive a share of any benefit or monetary compensation resulting from any settlement agreed at the Mediation or before the trial of the common issues commences, you must register. Any settlement will be subject to approval by the Court.



27. Registration is also a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the class action (including after any settlement, or after any judgment following the trial of common issues).
28. Registering for the Coles Class Action involves providing details about you and your claim to Adero Law. This allows Adero Law and the Respondent to consider your claim at the Mediation and any other settlement discussions.
29. If you have already signed a retainer agreement with Adero Law, you do not need to register again and no further action is required other than providing Adero with information about your employment with Coles if you have not already done so. If necessary, Adero Law may contact you requesting further information.
30. If you have not already signed a retainer agreement with Adero Law, you can register for the Coles Class Action by completing the Coles Class Action 'Group Member Registration' form attached as Schedule B to this Notice (the **Registration Form**). You may complete the Registration Form online at web address <https://www.aderolaw.com.au/class-actions/coles/> by the Registration and Opt Out Deadline or in hard-copy form in the form of the Registration Form attached as Schedule B to this Notice and returning that hard copy form to Adero Law before the Registration and Opt Out Deadline (**Registered Group Member**). As noted above, the Registration and Opt Out Deadline is 16 April 2021.
31. If you are considering becoming a Registered Group Member, you should read this Notice carefully and if you do not understand everything, you should get independent legal advice.
32. Please note that you are under no obligation to enter into a retainer with Adero Law if you choose to register.
33. You must provide (or take reasonable steps to provide) the information requested in the Registration Form by the Registration and Opt Out Deadline. Registrations received after the Registration and Opt Out Deadline will not be accepted, with the result that you will be treated as having not responded to this Notice unless you have completed and submitted an Opt Out Notice in accordance with Option 2 below.



Option 2: Opt out

34. If you opt out of the Coles Class Action, you will no longer be a Group Member. This means you will:

- (a) not be affected by any orders made in the Coles Class Action;
- (b) not be entitled to receive any distribution arising from any damages awarded or settlement sum paid in relation to any section of the Coles Class Action;
- (c) not be bound by any settlement or judgment in the Coles Class Action; and
- (d) be able to commence separate proceedings against Coles on your own behalf if you so wish.

35. If you wish to opt out of the Coles Class Action, you must complete the 'Opt Out Notice' attached at Schedule A below and submit it to the Court by the Registration and Opt Out Deadline. As noted above, the Registration and Opt Out Deadline is 16 April 2021.

36. The Opt Out Notice must be submitted to the New South Wales District Registry of the Federal Court of Australia by post or email at the following addresses:

- (a) nswdr@fedcourt.gov.au, with the email subject line: 'Opt Out Notice NSD542/2020'; or
- (b) Federal Court of Australia Registry, Locked Bag A6000, Sydney South, NSW 1235.

Option 3: Do nothing

37. If you do not register for or opt out of the Coles Class Action (and you have not already signed a Retainer Agreement with Adero Law), you will be an **Unregistered Group Member**.

38. If the parties agree to settle the Coles Class Action at the Mediation or before the trial of the common issues commences and the settlement agreement is approved by the Court, you will not be entitled to make a claim for part of any benefit or monetary compensation in connection with the settlement of the class action without the leave of the Court. You will be bound by the terms of any settlement, which may include the releases of Coles, its related entities and their current and former directors, officers,



employees, contractors and agents. Any settlement will be subject to approval by the Court.

39. You will also be bound by any settlement reached or judgment given in the Coles Class Action after the trial of common issues. If you do not register now, you may still need to register in future to participate in any such settlement reached after commencement of the trial of the common issues, or to pursue an individual claim to judgment. Registration now is a way of providing current contact details, which will facilitate the distribution of further notices to you in future with information about the progress of the class action (including after any settlement, or after any judgment following the trial of common issues).

Option 4: apply to challenge or vary the registration and opt out orders

40. If you wish to apply to the Federal Court of Australia to challenge or vary the Registration and Opt Out Orders, you must send a written notice to Adero Law setting out the challenge or variation you wish to make and the reasons for that challenge or variation by **29 March 2021**. You may then be required to attend the New South Wales District Registry of the Federal Court of Australia at a later date to have your application to challenge or vary the Registration and Opt Out Orders heard. Depending on the outcome of that application, you may be given a further opportunity to register to participate in a settlement of the Coles Class Action or opt out of the proceeding.
41. Any notice applying to challenge or vary the Registration and Opt Out Orders must be delivered to Adero Law before the Application Deadline. As noted above, the Application Deadline is **29 March 2021**. Any notice applying to challenge or vary the Registration and Opt Out Orders received after this time will not be accepted.



Schedule A

OPT OUT NOTICE

ONLY COMPLETE THIS FORM IF YOU WISH TO NOT PARTICIPATE IN THE CLASS ACTION

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Maria Pabalan
Applicant

Coles Supermarkets Australia Pty Ltd ABN 45 004 189 708
Respondent

To: nswdr@fedcourt.gov.au
Subject Line: Opt Out Notice NSD542/2020

OR

Federal Court of Australia Registry
Locked Bag A6000
Sydney South, NSW 1235

The person 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 Group Member is opting out of the class action.

<i>Name of Group Member (print):</i>	
<i>Postal address of Group Member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	

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

<i>Name of person completing this form (print):</i>	
<i>Authority of person completing this form (e.g. power of attorney, lawyer):</i>	
<i>Postal address of person completing this form:</i>	
<i>Telephone of person completing this form:</i>	
<i>Email of person completing this form:</i>	

Date:



Signature: Print name:

SCHEDULE B

GROUP MEMBER REGISTRATION FORM

COMPLETE THIS FORM IF YOU WISH TO REGISTER TO PARTICIPATE IN THE CLASS ACTION

If you do not complete this form you will not be entitled to participate in (or receive any benefit or monetary compensation from) any settlement (to be approved by the Court) agreed at the Mediation or before the trial of the common issues commences, but will be bound by the terms of any settlement approved by the Court, which may include releases of Coles, its related entities and their current and former directors, officers, employees, contractors and agents as described in paragraph 6 of the Notice to Group Members

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Maria Pabalan
Applicant

Coles Supermarkets Australia Pty Ltd ABN 45 004 189 708
Respondent

To: Adero Law
coles@aderolaw.com.au

OR

Adero Law
5 Torrens Street
Braddon ACT 2612



The Group Member named below *registers* to participate in the class action and to be bound by, and share in the benefit of any judgment or settlement of the class action.

1. FORM COMPLETION	
The person completing this form is	<input type="checkbox"/> An eligible group member – skip to 2. <input type="checkbox"/> Someone else, completing on behalf of an eligible group member – please complete below.
<i>Personal details of person completing this form</i>	
Title	
First name/s	
Last name	
Email address	
2. GROUP MEMBER DETAILS	
<i>Personal details of individual</i>	
Title	
First name/s	
Last name	
Email address	
Phone number	
Alternative phone number	
Street address	
Suburb/town	
State	
Postcode / ZIP	
Country	
5. DOCUMENTARY EVIDENCE	
<p><i>You are required to take reasonable steps to provide the following information. Please attach further sheets of paper if you need more space. Please also attach any supporting documents you want the parties to the class action to take into account.</i></p> <p><i>However, failure to do so will not invalidate your registration.</i></p>	
<i>Date your employment commenced with the Respondent?</i>	
<i>List of positions held during the course of your employment with the Respondent?</i>	
<i>What hours do you say that you were required to, and did work,</i>	



<i>during your employment with the Respondent? If you have documentary record of this information, please attach that material to this form.</i>	
<i>Date your employment with the Respondent ended (if applicable)?</i>	
I have attached documentary evidence in support of the information herein	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. EXECUTION	
Dated	
Signed by, or on behalf of and with the authority of, the Group Member (as specified above)	
Print name	

Please return this form to:

coles@aderolaw.com.au **OR**

5 Torrens Street Braddon ACT 2612

You should keep a copy for your records