



Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

No: NSD2004/2019

CAMERON BAKER and another named in the schedule
Applicants

WOOLWORTHS GROUP LIMITED ABN 88 000 014 675 and another named in the
schedule
Respondents

ORDER

JUDGE: JUSTICE PERRAM

DATE OF ORDER: 11 November 2021

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

Settlement Approval

1. By 12 November 2021, and pursuant to s 33V(1) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), the Applicants are to file and serve an application for settlement and discontinuance of the proceeding (**Approval Application**).
2. By 26 November 2021, any party seeking to file any material they consider confidential make an application for interim confidentiality orders in relation to that material.
3. The parties be granted leave to file any material in respect of which confidentiality orders are to be sought by email to the Associate of Justice Murphy marked in the subject line with the word 'CONFIDENTIAL'.
4. By 10 December 2021, the Applicants are to file and serve any material in support of the Approval Application with confidential materials redacted.
5. On 15 December 2021, the Approval Application be heard by Justice Murphy.



Display of Information

6. On 15 November 2021, Adero Law (**Adero**) is to display on its website the following documents in relation to the proceeding until the final hearing and determination of the Approval Application:
- (a) the Notice to Group Members;
 - (b) these Orders;
 - (c) the Applicants' further amended originating application and statement of claim; and
 - (d) the Respondents' defence.

Opt Out and Settlement Objection Deadline

7. By 4:00pm (AEDT) on 8 December 2021 (**Deadline**), and pursuant to s 33J(1) of the FCA Act, any group member who wishes to:
- (a) opt out of the proceeding must do so by completing and filing with the Court the required form at **Schedule A** to **Annexure A** to these Orders (**Opt Out Notice**); or
 - (b) oppose any aspect of the Approval Application must do so by completing and filing with the Court the required form at **Schedule B** to **Annexure A** to these Orders (**Objection Notice**) and serving it by email to Adero at woolworths@aderolaw.com.au.
8. If the lawyers for any party receive a notice purporting to be an Opt Out Notice or Objection Notice referable to the proceeding before the Deadline, the lawyers must file the notice within seven (7) days after receipt, with a notation as to the date of the receipt, and the notice shall be treated as an Opt Out Notice or Objection Notice received by the Court at the time it was received by the lawyers.
9. The parties' lawyers be granted leave to inspect the Court file for the purpose of copying any notices that have been filed in the proceeding.



Notice to Group Members

Form of Notice

10. Pursuant to s 33Y(2) of the FCA Act, the form and content of the notice in **Annexure A** to these orders (**Notice to Group Members**) is approved as the notice that must be given to group members pursuant to ss 33X(1)(a) and 33X(4) of the FCA Act.
11. The Notice to Group Members may be amended by the parties before the Notice to Group Members is distributed in order to correct any postal, website, email address, or telephone number or any typesetting, typographical, or other non-substantive errors.

Use of Mailing Provider

12. The third-party mailing service provider (**Mailing Provider**) used to distribute the notice to group members pursuant to the Court's orders dated 12 March 2021 is to be used for the purpose of distributing the Notice to Group Members.
13. The cost of the Mailing Provider engaged to undertake the distribution of the Notice to Group Members is to be paid by the Respondents.
14. By 12 November 2021, the Respondents shall provide a copy of these Orders the Mailing Provider.

Distribution of Notice

15. Pursuant to s 33Y(3) of the FCA Act, the Notice to Group Members is to be given to group members according to the following procedure:
 - (a) By 12 November 2021, the Respondents shall:
 - (i) for those group members who were sent a notice pursuant to the orders dated 12 March 2021:
 - (A) confirm with the Mailing Provider whether the last known name, address, and email for each group member (**Contact Details**) is the same as that previously provided to the Mailing Provider; and



- (B) if not, provide to the Mailing Provider any updated Contact Details for distribution of the Notice to Group Members;
- (ii) for group members who were employed by either of the Respondents and paid a salary during the period 29 November 2013 to 22 September 2021 and who were not sent a notice pursuant to the orders dated 12 March 2021, provide the Mailing Provider with Contact Details for those group members:
 - (A) using the 'Success Factors' or 'Preceda' databases; or
 - (B) as provided by the group member to Salaried Team Pay Review personnel; or
 - (C) otherwise identified by the Respondents.
- (b) On 15 November 2021, the Respondents shall cause the Mailing Provider to send the Notice to Group Members in accordance with the requirements set out in the protocol at **Annexure B** to these Orders (**Protocol**).
- 16. Should either party become aware of any actual or potential non-compliance with the Protocol by them or the Mailing Provider, that party is to notify the other within five (5) days of becoming so aware. The parties are directed to advise the Court of any such non-compliance by email to the Associate to Justice Murphy.

Communication to Group Members

- 17. The Respondents be granted leave to send communications to employees containing the wording set out in **Annexure C** to these orders.

Case Management

- 18. The parties be granted liberty to apply on three (3) days' notice.

Date that entry is stamped: 11 November 2021


Registrar



Schedule

No: NSD2004/2019

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Second Applicant RHYS PIRO

Second Respondent WOOLWORTHS (SOUTH AUSTRALIA) PTY LTD ABN 34 007
873 118



Annexure A

WOOLWORTHS SALARIED EMPLOYEE UNDERPAYMENT CLASS ACTION

Baker & Another v Woolworths Group Limited & Another
(NSD 2004 of 2019, Federal Court of Australia)

NOTICE OF PROPOSED SETTLEMENT & OPT OUT OF CLASS ACTION

KEY POINTS

You have received this notice because you are a class member in the salaried employee underpayment class action legal proceeding that was filed in the Federal Court of Australia against Woolworths. The parties have agreed to settle the proceeding on the basis that it be discontinued. The settlement is subject to approval by the Court.

The workplace regulator, the Fair Work Ombudsman has commenced a separate legal proceeding in relation to alleged underpayments of salaried staff, *Fair Work Ombudsman v Woolworths Group Limited & Anor* (NSD581/2021) ("**FWO Proceeding**"). The FWO Proceeding will continue.

You can do one of three things in response to this notice:

1. Opt out of the class action

You can exclude yourself from the class action by opting out, which means you are not bound by the settlement agreement (if approved) and will not receive any benefits flowing from it.

2. Object to the settlement

You can raise an objection to the settlement of the class action, which means you will remain in the class action but oppose the settlement. The Court will take into account your objection, but you will be bound by the terms of the settlement (if approved).

3. Do nothing (which means you will remain in the class action)

You can do nothing if you would like to remain in the class action, which means you will be bound by the terms of the settlement agreement (if approved). This will be the 'default' option unless you choose option 1 and opt out.

You should read this notice carefully. If there is anything in it that you don't understand, you should seek legal advice. The deadline to opt out or object to the settlement is 4:00pm of 8 December 2021.



ABOUT THE CLASS ACTION

A class action is a legal proceeding brought by someone on behalf of a group of people with similar claims (called a “class” or “group”).

This class action has been commenced in the Federal Court of Australia against Woolworths Group Limited and Woolworths (South Australia) Pty Ltd ("**Woolworths**") on behalf of salaried employees who worked at Woolworths Supermarkets, Woolworths Metro, or BIG W from 29 November 2013 to when the legal proceeding was filed.

The class action alleges that, if an employee's entitlement under the General Retail Industry Award 2010 ("**Award**") was higher than their annual salary, then they should have been paid the higher amount. The class action seeks to recover any additional amounts that should have been paid (beyond the amounts that Woolworths has already repaid under its Salaried Team Pay Review remediation process) and have penalties (like a fine) imposed on Woolworths and paid to class members.

THE SETTLEMENT

The Applicants and Woolworths have agreed to resolve the class action out of Court. This means they will not ask the Court to decide who should win the case. This is called a “settlement.”

The Court still needs to approve the settlement. The Court will need to decide if it is fair and reasonable and in the interests of all class members. The Applicants and Woolworths think it is.

Your legal rights may be affected by the settlement unless you choose to “opt out” of the class action. More information about what this means and how to opt out is set out below.

In deciding whether the settlement is fair and reasonable and in the interests of all class members, the Court will consider information provided by any class members who do not agree with the settlement and who provide an “objection notice”. More information about what this means and how to send an objection notice is set out below.

The Court will hold a hearing (like a trial) in order to decide whether to approve the settlement. It will be at 10.15 am on 15 December 2021 via Microsoft Teams. You can request a link to watch the hearing by emailing the Court at least 48 hours before the hearing at nswreg@fedcourt.gov.au, with the subject line: *Request to Observe Hearing NSD2004/2019*.

SETTLEMENT DETAILS

As part of the settlement, the Applicants and Woolworths have agreed to the following:

- (a) After the end of the FWO Proceeding, Woolworths will pay any outstanding money owed to the Applicants and class members between 29 November 2013 and 7 October 2021



("Relevant Period") according to the legal principles decided by the Court in the FWO Proceeding. In the event that the FWO Proceeding is discontinued or Woolworths does not pay any outstanding money, the Applicants and class members may recommence the class action or bring a new class action to enforce payment;

- (b) Woolworths will pay \$1,750,000 in full satisfaction of the legal costs of the Applicants and those class members who have retained Adero. Woolworths will also pay \$25,000 to the Applicants for their time and expenses in the class action. This means you will not be required to pay any legal costs for the class action (because Woolworths is paying these costs for you);
- (c) If the Court imposes any penalties on Woolworths in the FWO Proceeding, the Applicants will ask the Court that the penalties be paid to class members;
- (d) The class members will not be able to commence, or participate in, any further class actions against Woolworths and its related entities (including Endeavour Group Limited) in relation to underpayment claims during the Relevant Period. This only applies to class actions and does not release Woolworths and its related entities from any individual underpayment (or other) claims you may have;
- (e) The Applicants and Adero, but not class members, will release Woolworths and its related entities from any class action or individual underpayment claim during the Relevant Period. This means Adero cannot advise on underpayment claims or act on behalf of any individual making an underpayment claim against Woolworths and its related entities; and
- (f) The class action will be discontinued.

SETTLEMENT & YOU

If the settlement is approved by the Court, the class action will be discontinued.

However, the FWO Proceeding will continue. The FWO Proceeding makes similar claims that the class action makes against Woolworths, but about the period from 17 June 2015 to 30 September 2019 and only about Woolworths Supermarkets and Metro stores (that is, not BIG W).

As part of the settlement, Woolworths has agreed to apply the legal principles that the Court determines in the FWO Proceeding about the proper interpretation of the Award and contracts of employment, to calculate whether any class member is entitled to any further payment for the Relevant Period (beyond that already received from Woolworths under the Salaried Team Pay Review remediation process). If you are entitled to a further payment after the end of the FWO Proceeding, you will be paid that amount directly by Woolworths. The Fair Work Ombudsman does require any contributions by class members for its legal costs.

The settlement does not prevent you from making an individual claim against Woolworths, including claims for hours worked but not recorded. Adero cannot act for you in those claims. You can, however, speak to another lawyer for legal advice about an individual claim you may



have. If you have a retainer agreement with Adero, Adero will write to you separately regarding the termination of that retainer (if settlement is approved).

You can also access Woolworths' "Salaried Team Pay Review" (STPR) process, which Woolworths has set up as a way for you to be able to resolve any questions or concerns with Woolworths directly. If your question or concern is not resolved directly with Woolworths to your satisfaction, you may refer it for an independent external review under the STPR process. The STPR process is separate to a legal proceeding, and you can access it directly at no cost to you. You do not have to pay any part of a payment you may receive from that process to any lawyers. Details are available at: team.woolworths.com.au/faqs.html.

YOUR OPTIONS

You have three options:

1. Opt out of the class action

If you "opt out", you will no longer be a class member. This means that you will not be bound by any orders in the class action or the settlement (if approved). The key terms of the settlement are set out above under the heading "settlement details". If you "opt out" of the class action, it means:

- (a) you will not be bound by the restriction in the settlement agreement to not commence, or participate in, any further class actions against Woolworths and its related entities in relation to underpayment claims during the Relevant Period;
- (b) you will not get the benefit of the fact that Woolworths will apply the legal principles determined in the FWO Proceeding to class members for the Relevant Period; and
- (c) you will not get the benefit of any successful application by the Applicants in the FWO Proceeding to have any penalties imposed on Woolworths paid to class members.

If you would like to opt out, you need to fill in the form at Schedule A and send it to the Court by no later than 4:00pm on 8 December 2021 either:

- (a) by email to: nswreg@fedcourt.gov.au, with the subject line: *Opt Out Notice NSD2004/2019*; or
- (b) by post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South, NSW 1235.

2. Object to the settlement of the class action

If you do not wish to "opt out", but you oppose the settlement reached by the parties, you can object to the settlement. If the Court approves the settlement, despite your objection, you will be bound by the settlement.



If you would like to object to the settlement, you need to fill in the form at Schedule B and by no later than 4:00pm on 8 December 2021:

- (a) send it to the Court either:
 - (i) by email to: nswreg@fedcourt.gov.au, with the subject line: *Objection Notice NSD2004/2019*; or
 - (ii) by post to: Federal Court of Australia Registry, Locked Bag A6000, Sydney South, NSW 1235; and
- (b) send it to Adero by email to: woolworths@aderolaw.com.au, with the subject line: *Objection Notice NSD2004/2019*.

3. Do nothing (which, by default, means you will remain in the class action)

If you wish to remain a class member and participate in the settlement, you do not need to do anything. If the settlement is approved by the Court, you will be bound by the settlement agreement. The key terms of the settlement are set out above under the heading “settlement details”.

If the settlement is not approved by the Court, the class action will continue and you will remain a class member.



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

Cameron Baker and another
Applicants

Woolworths Group Limited (ABN 88 000 014 675) and another
Respondents

To: nswreg@fedcourt.gov.au
Subject Line: Opt Out Notice NSD2004/2019

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 representative of the group member:

<i>Name of person completing this form (print):</i>	
<i>Authority of person completing this form</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

NOTICE OF OBJECTION

**ONLY COMPLETE THIS FORM IF YOU WISH TO OBJECT TO THE
SETTLEMENT OF THE CLASS ACTION**

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

Cameron Baker and another
Applicants

Woolworths Group Limited (ABN 88 000 014 675) and another
Respondents

To: nswreg@fedcourt.gov.au
Subject Line: Objection Notice NSD2004/2019

OR

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

The person below gives notice that the person or entity **OBJECTS** to the proposed settlement of this proceeding.

DETAILS OF OBJECTOR

<i>Name of group member (print):</i>	
<i>Postal address of group member:</i>	
<i>Telephone:</i>	
<i>Email:</i>	

REASONS FOR OBJECTION

[Set out below any submissions, attaching additional pages if necessary and any affidavit evidence.]

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Date:
.....

Signature: Print name:

Annexure B
Notice Distribution Protocol

1. Scope and definitions

- 1.1. The third-party mailing service provider (**Mailing Provider**) will send the **Notice to Group Members** contained in Annexure A to these Orders to group members in accordance with this Protocol.

2. Communication

2.1. Email

- (a) The Notice to Group Members will be sent by email to group members for whom the Respondents hold an email address with the following content:
- (i) the subject line of the email shall read: 'IMPORTANT: Notice of Settlement and Opt Out for Woolworths Salaried Employee Class Action';
 - (ii) the body of the email shall be addressed to the group member and read: 'An important notice from the Federal Court of Australia concerning the Woolworths Salaried Employee Class Action is [attached/linked].'; and
 - (iii) the Notice to Group Members, including its schedules, will be sent as a PDF attachment or link to the email with the words 'Annexure A' at the top of the first page removed.
- (b) If the Mailing Provider receives notification that an email was not, or may not have been, delivered, then within three (3) days of receiving that notification it will:



- (i) provide the lawyers for the Respondents with an email delivery failure report identifying the email failures or potential failures; and
- (ii) send the Notice to Group Members by prepaid ordinary post in accordance with section 2.2 below to all group members identified in the delivery failure report.

2.2. *Post*

- (a) The Notice to Group Members will be sent by prepaid ordinary post to group members:
 - (i) for whom there is no email address in the Registration Data or in the Respondents' systems; or
 - (ii) for whom the Mailing Provider received a delivery failure notification in the course of sending the notice to Group Members pursuant to orders made on 12 March 2021; or
 - (iii) for whom the Mailing Provider receives notification that an email sent in accordance with section 2.1 above was or may not have been delivered.

3. Record of communications

- 3.1. By 29 November 2021, the Mailing Provider is to provide to the lawyers for the Respondents a document which lists all group members to whom the Notice to Group Members has been sent in accordance with sections 2.1 and 2.2 above, and which identifies in relation to each group member:
 - (a) the method by which the Notice to Group Members was sent;
 - (b) the date on which the Notice to Group Members was sent;
 - (c) whether and which distribution attempts failed; and
 - (d) the form of the evidence by which the failed distribution attempt was identified by the Mailing Provider, including, but not limited to, by way of receipt of an email delivery failure notification, or receipt of a prepaid ordinary post envelope marked 'return to sender' (or similar).
- 3.2. To the extent that it would not already do so in the ordinary course of its business, the Mailing Provider is to retain records for the duration of this proceeding of all



communications sent and received in the course of executing this Protocol, including:

- (a) the emails sent, and any delivery failure notifications received, in accordance with section 2.1 above;
- (b) postal records or receipts or similar, of the Notices to Group Members sent by prepaid ordinary post in accordance with section 2.2 above; and
- (c) any prepaid ordinary post envelopes received by the Mailing Provider marked 'return to sender' (or similar), in accordance with section 3.1(d) above.

3.3. Within seven (7) days of receiving the report referred to at 3.1 above, the lawyers for the Respondents will provide a copy of the report to the lawyers for the Applicants, which will not disclose the identity of any person to whom the Notice to Group Members was sent.

4. General Compliance with this Protocol

- 4.1. In the event that the Mailing Provider becomes aware that they are unable to comply with any requirements under this Protocol, they are to notify the lawyers for the Respondents in writing within 24 hours of so becoming aware.
- 4.2. In the event that the Mailing Provider becomes aware that they have failed to comply with any requirements under this Protocol, they are to notify the lawyers for the Respondents in writing within 24 hours of so becoming aware.

5. Amendment

- 5.1. This Protocol may be amended by agreement between the parties.



Annexure C

Group Message

Team Member Underpayment Class Action

[insert date]

Hi Team,

In November 2019, a "class action" legal proceeding was commenced in the Federal Court of Australia on behalf of salaried team members who worked in Supermarkets, Metro and BIG W stores during the period from 29 November 2013. The class action relates to claims of underpayments to these team members.

On 7 October 2021, the parties to the class action reached an agreement to resolve the class action. The settlement needs to be approved by the Federal Court.

Relevant salaried team members in the Supermarkets, Metro and BIG W businesses will receive an email or postal notice issued by the Federal Court relating to the proposed settlement of the class action. We understand the notice will be issued in the next two weeks.

It's important that the team members who receive the notice take the time to read the notice carefully.

[insert sign off]