

FEDERAL COURT OF AUSTRALIA

NUROFEN SPECIFIC PAIN RANGE CLASS ACTION – PROPOSED SETTLEMENT

1. Why is this notice important?

On 24 February 2016, a representative proceeding or “**class action**” was commenced in the Federal Court of Australia against Reckitt Benckiser (Australia) Pty Ltd (**Respondent**). The class action is brought by Keith Hardy and Yasminka Jang (**Applicants**) on their own behalf and on behalf of all group members (defined below). The class action arises out of the packaging of, and certain webpages in relation to, the following pain relief products which were marketed, sold and supplied in Australia by the Respondent in the period 1 January 2011 to 31 December 2015 (**Relevant Period**):

- **Nurofen Migraine Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Tension Headache** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Period Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Back Pain** ibuprofen lysine 342 mg tablet blister pack,

(together, “**Nurofen Specific Pain Range**”).

The Federal Court has ordered that this notice be published for the information of persons who might have claims 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 it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one or more persons, the Applicants, on their own behalf and on behalf of a group of people, “**group members**”, against another person, the Respondent, where the Applicants and the group members have similar claims against the Respondent.

Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

3. What is this class action?

This class action is brought by the Applicants on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

The Applicants allege in the statement of claim in Federal Court proceeding *Keith George Hardy & Anor v Reckitt Benckiser (Australia) Pty Ltd*, NSD 273 of 2016, that in the Relevant Period, certain packaging and website representations made by the Respondent were misleading or deceptive, and in breach of various provisions of the Australian Consumer Law. Those representations included: (1) that each product in the Nurofen Specific Pain Range was specifically formulated to treat the particular type of pain specified on the packaging; and (2) that each product solely or specifically treated the particular type of pain specified on the packaging.

Remedies being sought by the Applicants include damages or compensation.

The Respondent admits that certain packaging and website representations made in the Relevant Period were misleading or deceptive but does not admit or otherwise denies the other claims made in the statement of claim, denies that it is liable to the Applicants as alleged or at all, and is defending the class action.

4. Are you a group member?

You are a group member if you are a consumer who purchased one or more of the Nurofen Specific Pain Range products in Australia in the Relevant Period.

If you are unsure whether or not you are a group member, you should contact Bannister Law on 1300 763 950 or email nurofen@bannisterlaw.com.au or seek your own legal advice without delay.

5. Proposed settlement of the class action

The Applicants have reached an agreement with the Respondent to settle the class action on the basis that the Respondent pay a sum of \$3,500,000 into a settlement fund and the class action be dismissed. The settlement requires the approval of the Federal Court before it takes effect.

If the settlement is approved by the Federal Court, it will be legally binding on all group members in the Proceeding. In that event, a settlement scheme to distribute the money paid by the Respondent will be administered by Sapere Research Group (**Administrator**).

Under the scheme:

- (a) following approval of the settlement by the Federal Court, group members must swear or affirm and submit to the Administrator a prescribed statutory declaration in relation to their purchases of Nurofen Specific Pain Range products in the Relevant Period;
- (b) before any payment is made to a group member, the Respondent will have the right to request additional information from group members who claim to have purchased more than \$200 of Nurofen Specific Pain Range products, including by requesting additional documents or requesting (with the Administrator's approval) the group member to answer questions in person before the Administrator;
- (c) the amount available for distribution to group members will be \$3,500,000, less the Administrator's administrative costs of administering the settlement fund (**Settlement Distribution Fund**);
- (d) subject to paragraph (e) below, participating group members will be entitled to receive a payment of \$5.70 for each 24-tablet sized pack and \$3.16 for each 12-tablet sized pack purchased in the Relevant Period, less 20% which represents a payment to Second Floor Litigation Services Pty Ltd (**Second Floor**) in consideration for their funding of the legal costs of the class action;
- (e) if the total claims of participating group members (inclusive of the payment to Second Floor) exceed the Settlement Distribution Fund, then the amount payable to participating group members for each 12- and 24-tablet sized pack of Nurofen Specific Pain Range product purchased in the Relevant Period will be reduced on a pro rata basis; and
- (f) any portion of the Settlement Distribution Fund remaining after payments to participating group members are determined will be remitted to the Respondent.

The full terms of the settlement, including the settlement scheme, can be reviewed on the Federal Court website (<http://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions/documents>), or on Bannister Law's website (<http://nurofenclassaction.com.au/>).

6. Court approval

The Applicants will seek the Court's approval of the settlement, including the total settlement sum, the payment to Second Floor, a payment to Bannister Law, the Applicants' solicitors, for their reasonable costs and

disbursements, the distribution of the Settlement Distribution Fund among group members, and each aspect of the proposed settlement scheme, at a hearing at the Federal Court in Sydney at 9.30am, Wednesday, 20 September 2017. If the Court approves the settlement, then the settlement will be legally binding on every group member.

7. What you must do

If you are a group member and you are in favour of the settlement, then there is nothing you need to do at this time. If the settlement is approved and you are a group member, you may submit a proof of claim at that stage. A further notice will be published in newspapers and on Bannister Law's website after the settlement has been approved, and it will tell you what you need to do then. If the settlement is not approved, the class action will continue in the Federal Court.

If you are a group member and you wish to object to the settlement or the settlement scheme, then you must send a written notice to the Federal Court. You should use the form set out in the Schedule below. It must have the heading shown. It must be received by the Court by 4.00pm, Wednesday, 6 September 2017. If you send a notice objecting to the settlement you may appear in person, or engage a lawyer, to explain your objection to the Federal Court at 9.30am, Wednesday, 20 September 2017.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Bannister Law on 1300 763 950 or email nurofenclassaction@bannisterlaw.com.au or seek your own legal advice. You should not delay in making your decision.

If any group member wishes to engage separate solicitors then that person will need to make a separate costs agreement with those solicitors.

SCHEDULE

Notice in relation to Proposed Settlement of the Proceeding

(Filed in the New South Wales District Registry)

Keith George Hardy & Anor v Reckitt Benckiser (Australia) Pty Ltd

No. NSD 273 of 2016

To: The Registrar
Federal Court of Australia (New South Wales District Registry)
Level 16, Law Courts Building
Queens Square
Sydney NSW 2000

I, _____,

a group member in the above proceeding, give notice that I object to the proposed settlement of the representative proceeding on the terms proposed because [SET OUT IN THE SPACE BELOW THE REASONS WHY YOU OBJECT TO THE PROPOSED SETTLEMENT]:

Signed: _____

Name: _____

Address: _____

Phone number: _____

Email address
(if available): _____

Date: _____