

OPT OUT NOTICE

This is a notice about the COUNT FINANCIAL CLASS ACTION.

This has been sent to you because you might be a Group Member.

**THIS NOTICE IS IMPORTANT. IT IS NOT A SCAM
PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS**

As explained further below, you have three options in response to this notice:

1. Do nothing - you will remain a Group Member;
2. Register with Piper Alderman - you will remain a Group Member and receive ongoing updates in the class action; or
3. Return the Opt-Out form at Annexure A by 4pm on 1 December 2023 you will no longer be a Group Member.

FEDERAL COURT OF AUSTRALIA COUNT FINANCIAL CLASS ACTION

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia against Count Financial Ltd (**Count**). The action arises out of allegations that Count and its financial advisers contravened obligations owed to you when receiving commissions on products that they recommended to you. The class action affects you if you:

1. received personal advice from a financial adviser in the Count network;
2. acquired, renewed and/or continued to hold insurance, financial or platform products; and
3. paid commissions in respect of those products between 21 August 2014 until 21 August 2020.

The Federal Court of Australia has ordered that this notice be published for the information of people who might be part of the group on whose behalf this case has been brought and who may be affected by the action. You have been identified as a potential group member. **You should read this notice carefully. Any questions you have concerning the matters**

Filed on behalf of the Applicant	
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[Form approved 09/10/2013]

contained in this notice should not be directed to the Court. If there is anything that you do not understand you should seek legal advice.

The class action is being run by law firm Piper Alderman and is being funded by [Woodsford](#). If you require any information, you can visit Piper Alderman's webpage at <https://tinyurl.com/CountClassAction>.

2. What is a class action

A class action is an action that is brought by one person (the **Applicant**) on his or her own behalf and on behalf of a class of people (the **Group Members**) against another person (the Respondent) where the Applicant 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 Applicant is responsible for the costs.

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 either a judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action Group Members will not be able 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, 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 which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against the Respondent 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 legal advice about the potential binding effects of the class action before the deadline for opting out (see below).

3. What is this class action?

This class action, the Count Financial Class Action, is brought by the **Lead Applicant**, R and N Hunter Pty Ltd (ACN 105 163 522) atf the Hunter Family Super Fund on its own behalf

and on behalf of all persons who are Group Members as defined in the proceeding. You might be a Group Member.

The Applicant alleges that some of Count's financial advisers breached the law by failing to comply with duties to act in their clients' best interests and failing to give priority to their clients' interests. The Applicant alleges that Count as Licensee is liable for the conduct of its financial advisers and that Count itself breached the law by both failing to take reasonable steps to ensure that its financial advisers complied with those duties and by engaging in misleading or deceptive conduct (or conduct that was likely to mislead or deceive). The Applicant alleges that Count and its financial advisers breached fiduciary duties owed to the Applicant and Group Members. The Applicant also alleges that, for some Group Members, Count's financial advisers entered into ongoing services agreements pursuant to which they promised to provide services on an ongoing fee basis, which they did not provide on some or all occasions. Finally the Applicant alleges that Count incorrectly advised its financial advisers that conflicted remuneration could continue to be paid on arrangements entered into between the financial advisers and their clients where the arrangement was entered into prior to 1 July 2014.

Conflicted remuneration means any benefit, whether monetary or non-monetary, given to a financial services licensee (in this case Count), or a representative of a financial services licensee (in this case the financial advisers) who provide financial product advice to persons as retail clients, that, because of the nature of the benefit or circumstance in which it is given could reasonably be expected to influence the (i) choice of financial product recommended by the licensee or representative to retail clients; or (ii) the financial product advice given to retail clients by the licensee or representative.

The Respondent to the class action is Count (who authorised a number of financial advice firms and advisers to provide financial services under Count's trademark and its Australian financial services licence). Count denies the allegations and is defending the class action. In summary Count defends the class action including on the basis that:

- (a) the receipt and retention of commission payments by Count's financial advisers (including in circumstances expressly permitted by legislation) is not conduct in breach of the law and not contrary to the best interests duty and duty of priority;
- (b) Count took reasonable steps to ensure Count financial advisers complied with their legal obligations described above;
- (c) Count did not engage in the alleged misleading and deceptive conduct;
- (d) the alleged fiduciary duties are not owed by Count, or by each financial adviser, to clients;
- (e) there was no breach of the ongoing service arrangement entered into by the Applicant;
and
- (f) Count did not incorrectly advise its financial advisers in relation to the acceptance of conflicted remuneration.

Please be aware, you may have still received personal advice from a Count financial adviser even if you were dealing with a company that was not called Count. This is because for part of the period, Count included a range of financial advice franchises that were part of the Count network. If you are unsure as to whether your financial adviser was part of the Count network, you can see a list of the franchisees (businesses) that were part of the Count network during the Relevant Period at <https://tinyurl.com/CountClassAction>.

4. What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of the 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 the section headed "I am a Group Member, what are my options?".

5. Are you a Group Member?

You are a Group Member if you:

- (a) received personal advice from a financial adviser authorised by Count;
- (b) acquired, renewed and/or continued to hold insurance, platform and other financial products; and
- (c) paid initial and/or trail commissions in respect of those products between 21 August 2014 until 21 August 2020.

If you are unsure whether or not you are a Group Member, you should contact Piper Alderman at countclassaction@piperalderman.com.au or seek your own legal advice without delay.

6. Will you be liable for legal costs if you remain a Group Member or register for more information?

You will **not become liable for any "out of pocket" legal expenses** simply by remaining as a Group Member. Group Members are not, and will not be, liable for any "out of pocket" legal costs by remaining in this class action.

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 may be able to engage Piper Alderman or other lawyers to do that work for you. A copy of the terms on which Piper Alderman are acting in the class action may be obtained from them using the contact details provided in the section headed " **What do I do if I have further questions?**" below. Please note, if you engage Piper Alderman to act for

you in preparing or finalising your personal claim, that engagement may require you to enter into a retainer with Piper Alderman (including a separate retainer if you have already entered into a retainer with Piper Alderman for the purposes of the Class Action) and pay fees for that work;

- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Lead Applicant in running the class action but which are not able to be recovered from the Respondent (as to which see further below); and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

The costs of running the class action are being funded by Woodsford and the lawyers Piper Alderman, and, if the class action is unsuccessful, Woodsford will pay or procure payment by an insurer of any of Count's costs that the Lead Applicant is ordered to pay. To clarify further, if the class action is unsuccessful, you will not be liable for any legal costs.

In order to bring the class action, the Lead Applicant signed a litigation funding agreement (**Funding Agreement**) with Woodsford. In doing so, the Lead Applicant agreed that if the class action is successful, and the Lead Applicant obtains proceeds from a settlement or judgment, it will repay to Woodsford from those proceeds any reasonable costs advanced by Woodford (including any interim adverse costs, security, or upfront insurance premiums), Woodsford's 'Success Fee', unpaid (including deferred and contingent) insurance premiums due under any After the Event insurance policy, as well as fees deferred by Piper Alderman for recovery from any settlement or judgment, together with an uplift of 25% on those deferred fees.

Pursuant to the Funding Agreement, the Lead Applicant has agreed to apply for an order that will fairly distribute the Lead Applicant's obligations under its funding agreement among all people who have benefited from the action. This may be by way of what is known as a Common Fund Order, a Funding Equalisation Order, or may be by another order of the Court.

Lead Applicant's costs and Woodsford's Success Fee

In return for the funding that Woodsford provides under the Funding Agreement for the Lead Applicant's 'own-side' costs (as distinct from the adverse costs risk, which is discussed further below), Woodsford charges a 'Success Fee' payable from any Gross Proceeds.

Gross Proceeds are the total amount received (including but not limited to any settlement sum, or compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Lead Applicant or group members, by the Respondent (Count) or any third party which relates to the subject matter of the class action.

The Lead Applicant has agreed to apply for a Common Fund Order consistent in amount with Woodsford's Success Fee, defined in the Funding Agreement as:

- If Woodsford's Cash Outlay is less than \$4m on the day that Gross Proceeds are received, the greater of 22.5% of Gross Proceeds or 2.5x the Cash Outlay; or
- If Woodsford's Cash Outlay is greater than \$4m on the day that Gross Proceeds are received, the greater of 27.5% of Gross Proceeds or 3.5x the Cash Outlay.

The Cash Outlay is the total amount of legal and other fees and costs (incl. GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford. Those costs include:

- (a) Piper Alderman's fees; and
- (b) third party costs, including barristers' fees, upfront (but not deferred and contingent) premiums for after-the-event (**ATE**) insurance and the costs of any deeds of indemnity purchased from the ATE insurers to satisfy the Respondent's requests and/or applications for security for costs.

Adverse Costs and ATE Insurance

If the class action is unsuccessful, the Court may order the Lead Applicant (and/or other third parties such as Woodsford) to pay some part of a successful Respondent's costs (known as **Adverse Costs**).

To protect against the risk of adverse costs, Woodsford has:

- (a) indemnified the Lead Applicant (and Group Members who participate) against liability for any Adverse Costs order made against the Lead Applicant; and
- (b) obtained ATE insurance to:
 - i. provide the Lead Applicant and Group Members with additional protection against the risk of adverse costs (the ATE insurance, provided by an A-rated ATE insurer, expressly covers Adverse Costs payable by the Lead Applicant); and
 - ii. enable the Lead Applicant to provide security for the Respondent's costs (for example by purchasing deeds of indemnity from the ATE insurer).

In return for this protection against the Adverse Costs risk, the Lead Applicant has agreed to apply for a Court order that the cost of any such ATE insurance, including any deferred and contingent ATE insurance premiums, be payable from Gross Proceeds (in addition to other costs mentioned above, including Woodsford's Success Fee).

To summarise, and to assist you in understanding the effect of the Lead Applicant's agreements with Woodsford and Piper Alderman, strictly subject to the Court's approval, the Lead Applicant will apply for a Court order to have Gross Proceeds obtained from a settlement or judgment distributed as follows:

- First, repayment of reasonable costs (Cash Outlay) advanced by Woodsford as described above;
- Secondly, payment of:
 - Woodsford's Success Fee; plus
 - Piper Alderman's deferred fees and an uplift on those deferred fees; plus
 - any unpaid insurance premiums due, including any deferred and contingent premiums; and
- Thirdly, payment of the balance to all Group Members (including the Applicant) in accordance with a distribution scheme approved by the Court.

The Lead Applicant also intends to apply to have any fees incurred for their own time involved in the class action paid from proceeds obtained from a settlement or judgment.

7. I am a Group Member, what are my options?

Option 1 – Do nothing and remain a Group Member.

Unless you choose Option 3 below, you will remain a Group Member. This means that you will be bound by any settlement or judgment of the class action.

If the case is successful you will be entitled to share in the benefit of any compensation that is awarded.

If the case is not successful (or less successful than you would like) then you will not be able to later sue Court for the same or possibly related claims in a different case. You do not have to do anything to remain a Group Member.

Option 2 – Register your interest in the class action. You do not need to do this to remain a Group Member, but it will provide you with updated information about the case. You can register via Piper Alderman's webpage at <https://tinyurl.com/CountClassAction>.

Option 3 – Opt-Out of the class action. If you do not wish to remain a Group Member you can Opt-Out. This means that you will not participate in the class action.

If you opt out you will not be bound by, entitled to share in or included in the benefit of any order, judgment or settlement in the class action. If you Opt-Out you can still bring your own claim against Court, provided that you issue Court proceedings within the time limit applicable to your claim. You should seek your own legal advice about that and any time limits that may apply.

If you wish to Opt-Out you must complete the form which is at **Annexure A** and return it to the Registrar of the Federal Court of Australia at the address on the form by no later than 4:00pm on 1 December 2023.

You should submit the Notice of opting out by Group Member if:

1. you qualify as a Group Member and you wish to opt out of the class action; or
2. you believe that you have been incorrectly identified as someone that might be a Group Member, because you do not meet the criteria set out in the section headed "Are you a group member" above. As mentioned above, if you are unsure whether or not you are a Group Member, you should seek legal advice without delay.

Each Group Member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

8. Where can you obtain copies of relevant documents?

Copies of the relevant documents may be obtained by contacting a District Registry of the Federal Court (contact details are available at www.fedcourt.gov.au) and paying the appropriate inspection fee.

The Applicant's Further Amended Statement of Claim which sets out the allegations against Count is available here: <https://tinyurl.com/CountClassAction>.

Count denies the allegations and is defending the class action. Count's Defence is available here: <https://tinyurl.com/CountClassAction>.

A copy of the Applicant's funding agreement can be accessed on registration.

9. What do I do if I have further questions?

You can also get more information by visiting the Piper Alderman website at <https://tinyurl.com/CountClassAction>.

Form 21
Rule 9.34

ANNEXURE A
OPT OUT NOTICE

No. VID565 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General Division

R and N Hunter Pty Ltd (ACN 105 163 522) atf the Hunter Family Superannuation Fund
Applicant

Count Financial Limited (ACN 001 974 625)
Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
Federal Court of Australia, 305 William Street, Melbourne VIC 3000

....., a group member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that is opting out of the class action.

Date:

.....
Signed by

Group Member/Lawyer for the Group Member (*circle as applicable*)

Group Member details

Telephone:

Email:

Address:

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

Name:

Capacity:

Telephone:

Email:

Address: