

CLASS ACTION NOTICE AND OPT OUT NOTICE
SUPREME COURT OF NEW SOUTH WALES PROCEEDINGS 2016/35575

Famularo – Westpac (St George Bank) Class Action

A class action has been brought in the Supreme Court of NSW against the late Anthony (“Tony”) Famularo and Westpac Banking Corporation (which in 2010 became responsible for the liabilities of St George). The action relates to investments made by clients of Mr Famularo.

This notice tells people who are class members in the class action what they need to do if they do not want to be a part of it (their “opt-out rights”). It also tells them about the proposed withdrawal of the claim against Mr Famularo’s deceased estate and what they can do about that withdrawal.

The court has ordered that this notice should be published for the information of people who might be class members. **If you made investments acting on Tony Famularo’s advice, you should read this notice carefully.** If there is anything in it that you do not understand, you should seek legal advice.

You might be a class member if you claim that:

- (1) you received financial advice or other financial services from Mr Famularo or a person or entity related to Mr Famularo; **and**
- (2) pursuant to that advice:
 - a. you borrowed money from St George Bank and used that money to make investments that were recommended to you by Mr Famularo; and/or
 - b. you provided money or property to, or purchased or were issued shares in, a company controlled by Mr Famularo and that company had a margin loan account with St George Bank, or it transferred the money or property to another company controlled by Mr Famularo which had a margin loan with St George Bank; **and**
- (3) you suffered loss or damage as a result; **and**
- (4) you have not settled your claim that is the subject of the class action.

If you are unsure whether or not you are a class member, you should contact Levitt Robinson, the lawyers for the plaintiffs, on 02 9286 3133 or email famularo@levittrobinson.com or seek your own legal advice without delay.

A. What is this class action?

A class action (also called "representative proceedings") is a lawsuit that is brought by one or more people (who are called the "**plaintiffs**") on behalf of a class of people (who are called the "**class members**") against one or more other people (who are called the "**defendants**"). It is a class action if the plaintiffs and the class members have similar claims against the defendants.

In this class action the plaintiffs are Diana O'Dea and Thomas Vaarzon-Morel. The first defendant is the late Tony Famularo and the second defendant is Westpac Bank, which is the "successor in law" to St George Bank because it took over St George Bank in 2010.

The plaintiffs say in the amended statement of claim that from about 2005 until 2008, Tony Famularo was working as a financial advisor and running a managed investment scheme without the licenses and approvals that he needed. They also say that St George Bank knew about Mr Famularo's scheme and was involved in Mr Famularo's breaches of the law because it lent money to him and his companies.

The plaintiffs also say that Mr Famularo took their money and used it to pay off his companies' loans with St George without their authority, and that St George knew that Mr Famularo was acting without authority. The plaintiffs say that they and the class members suffered losses because of the defendants' conduct and should be paid compensation by them.

St George Bank denies the allegations against it and is defending the class action.

As is explained in more detail in Section D of this notice, the plaintiffs want to withdraw the claim against Mr Famularo's deceased estate because they do not think that he had any assets when he passed away in mid-2016.

B. What is “Opting Out”?

The plaintiffs can commence the class action on behalf of the class members without the class members agreeing. However, if you, as a class member, do not wish to participate in the class action, you may “**opt out**”, which means that you stop being a class member.

There are a range of reasons why a class member might elect to opt out including that it might want to bring its own lawsuit against SGB or Mr Famularo or it does not think that it has a valid claim against SGB or Mr Famularo.

There are two ways that there can be a final result in a class action that is “binding” on the class members. The first is where there is a “**judgment**”, which means that the case goes to court and a judge makes a ruling after a trial. The second way is where there is a “**settlement**”, which means that the plaintiffs and the defendants agree on an appropriate outcome (such as whether the defendants should compensate the class members).

If you **do not** opt out and you are a class member, you will be “bound” by the outcome in the class action, which means that if the court makes a ruling about the class action, then you will be bound by the court’s decision and you will not be able to change that decision unless there is an appeal. If you do not opt out and there is a settlement of the class action before any decision by the court, you will have to be a part of that settlement (although the court will have to approve the settlement for it to have any effect).

For class members who do not opt out, if the class action is successful and you have a suitable claim against the defendants, you will be paid compensation by the defendants without needing to bring your own lawsuit (in some cases, you may have to satisfy certain conditions before you are entitled to compensation from the defendants). If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against the defendants in other legal proceedings.

If you **do** opt out of the class action, you will not be bound by the outcome or any settlement agreement or court judgment in the class action, but you will be at liberty to bring your own claim against all or any of the defendants (provided that you issue court proceedings within the time limit applicable to your claim). An explanation of how class members can opt out is below under the heading “What should you do now?”.

If you think that you might have claims against a defendant which are different or 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).

C. Will you have to pay legal fees?

You will **not have to pay any legal fees** just because you remain as a class member and do not opt out of the class action.

If the class action settles or if it goes to trial and you wish to participate in a damages award or settlement payment (if any), it might be necessary for you to satisfy certain conditions before you are entitled to any damages award or settlement payment. It might be necessary or convenient for you to hire a lawyer to help you with that.

The law firm Levitt Robinson is representing the plaintiffs and some of the class members. Levitt Robinson's contact details are set out later in this notice.

If you want a lawyer to represent you, you do not need to hire Levitt Robinson and you are free to hire another lawyer.

If you get any compensation in the class action, the court might order that some of that compensation will be used to help pay for some of the costs that the plaintiffs have to pay for running the class action.

D. Proposed withdrawal of claim against Tony Famularo

Tony Famularo passed away in mid-2016. After his death, the plaintiffs came to the view that Mr Famularo's deceased estate did not have any assets. The executor of Mr Famularo's estate, his wife Angela Famularo, has sworn an affidavit that says that she decided not to apply for probate because of the minor and general nature of the estate's assets.

The plaintiffs have decided that it is not worthwhile to keep suing Mr Famularo because they have formed the view that his estate does not have any assets and because Mrs Famularo has not applied for probate. The plaintiffs think that the lawsuit against Mr Famularo would be very expensive and would be unlikely to result in the plaintiffs or the class members being paid any money.

The plaintiffs need the court's consent if they want to withdraw the claim against Mr Famularo (which is called a "**discontinuance**"). Withdrawing the claim against Mr Famularo affects the claims being brought on behalf of the class members, so the Court has given the class members an opportunity to object to the discontinuance.

E. What should you do now?

- (1) **If you want to be a class member and you do not object to the discontinuance of the claim against Mr Famularo's estate** there is nothing you need to do right now. The plaintiffs will continue bringing the class action until there is a judgment or a settlement. If there is a judgment or a settlement, there will be another notice published which will tell you about it.

If you want to:

- receive updates from Levitt Robinson (which is the law firm that acts for the plaintiffs in the class action) on what is happening in the class action;
- provide Levitt Robinson with details for contacting you in the event of any future notices about the class action (including in relation to any settlement or judgment); and
- make sure that your claim is considered in any settlement;

you can register as a class member, without cost, with Levitt Robinson.

By registering with Levitt Robinson, you are not hiring them and you are not required to pay any legal fees. Those are matters that you can discuss separately with Levitt Robinson if you wish to hire them.

To register with Levitt Robinson, you should:

- (a) call 02 9286 3133;
- (b) email famularo@levittrobinson.com; or
- (c) complete the "**Levitt Robinson Registration Form**" at the end of this notice and post it to the address on the form.

- (2) **If you do not want to be a class member** or you want to start your own lawsuit against Westpac (St George Bank) in relation to your investments with Tony Famularo, you must opt out of the class action. You should seek legal advice before doing so.

To opt out, you must complete the "**Opt Out Notice**" form at the end of this notice and file it with the Court. You can file the form in person at the "Phillip Street" address on the form, or you can send it to the "PO Box" address on the form.

If you wish to opt out, your form must be filed with the Court **by 27 October 2017**.

Each class member who wants 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).

- (3) **If you do not wish to opt out, but you want to object to the discontinuance against Tony Famularo** and you want the plaintiffs to continue suing Mr Famularo's deceased estate on your behalf, you should fill out the **“Objection to Discontinuance”** form at the end of this notice and send it to the address on the form, together with any evidence in support of your objection, so that it is delivered **before 27 October 2017**.

- (4) **If there is anything you do not understand** then you should seek legal advice. You can seek legal advice from Levitt Robinson after you have registered with them, for a fee which they will tell you. Otherwise, you should hire another lawyer.

F. Where can you find copies of relevant documents?

Copies of relevant documents, including the amended statement of claim, Westpac Bank's defence, and the reply to the defence may be obtained by:

- (1) downloading them from www.levittrobinson.com/Famularo;
- (2) inspecting them between 9am and 5pm at the offices of Levitt Robinson, contact details for which are available from www.levittrobinson.com or by calling 02 9286 3133 or emailing famularo@levittrobinson.com;
- (3) contacting the Sydney Civil Registry of the Supreme Court of NSW by calling 1300 679 272 or emailing sc.fileaccess@justice.nsw.gov.au.

Levitt Robinson Registration Form

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
List General
Registry Sydney
Case number 2016/35575

TITLE OF PROCEEDINGS

First Plaintiff **Diana Leonie O'Dea**
Second Plaintiff **Thomas Vaarzon-Morel**
First Defendant **Anthony Samuel Famularo**
Second Defendant **Westpac Banking Corporation Limited (ABN 33 007 457 141)**

To: Levitt Robinson
PO Box 850
Darlinghurst NSW 1300

Name of class member:

Phone number:

Email address:

Postal address:

Today's date:

I give notice that:

1. I am a class member in this class action.
2. I **want to** be a part of this class action.
3. I would like to be updated on what is happening in the class action and I would like my claim to be considered in any settlement.

Signature of class member

Objection to Discontinuance

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2016/35575

TITLE OF PROCEEDINGS

First Plaintiff	Diana Leonie O'Dea
Second Plaintiff	Thomas Vaarzon-Morel
First Defendant	Anthony Samuel Famularo
Second Defendant	Westpac Banking Corporation (ABN 33 007 457 141)

To: The Registrar in Equity
Supreme Court of NSW
GPO Box 3
Sydney NSW 2001

Name of class member:

Phone number:

Email address:

Postal address:

Today's date:

I give notice that:

1. I am a class member in this class action.
2. I **do not** want the claim against Anthony Famularo to be discontinued.

Signature of class member

Reasons for objection:

(attach additional pages as required)

Opt Out Notice

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
List General
Registry Sydney
Case number 2016/35575

TITLE OF PROCEEDINGS

First Plaintiff **Diana Leonie O'Dea**
Second Plaintiff **Thomas Vaarzon-Morel**
First Defendant **Anthony Samuel Famularo**
Second Defendant **Westpac Banking Corporation
Limited (ABN 33 007 457 141)**

To: The Registrar in Equity
Supreme Court of NSW
GPO Box 3
Sydney NSW 2001

Name of class member:

Phone number:

Email address:

Postal address:

Today's date:

I give notice that:

1. I am a class member in this class action.
2. I wish to opt out of the class action.
3. **I do not want to participate** in any judgment or settlement in the class action.

Signature of class member