

SUPREME COURT OF VICTORIA



NOTICE TO GROUP MEMBERS:

**NOUMI CLASS ACTION
(GROUP PROCEEDING)**

**NICHOLAS JOHN GEHRKE AND LESTER BUCH v NOUMI LIMITED
(FORMERLY FREEDOM FOODS GROUP LTD) AND DELOITTE TOUCHE
TOHMATSU
(S ECI 2020 04505)**

THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF
VICTORIA.

IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY
BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.

WHY HAVE YOU RECEIVED THIS NOTICE?

1. The Supreme Court of Victoria has ordered that you receive this Notice because you may be a group member in this class action proceeding. You are a **Group Member** if you:
 - (a) during the period between 7 December 2014 and 24 June 2020 (inclusive) (**Class Action Claim Period**) acquired shares in Noumi, American Depositary Receipts that represent shares in Noumi; and/or long exposure to Noumi shares by entering into equity swap confirmations in respect of ordinary Noumi shares during the Class Action Claim Period;
 - (b) are not a person or entity related to the Defendants;
 - (c) have suffered a loss by reason of the conduct alleged against Noumi and Deloitte in the class action; and
 - (d) did not opt out of the class action by the deadline on 15 November 2023.
2. If you believe you may be a Group Member because you meet the above description, you should read this Notice carefully as it will affect your rights. If there is anything in this Notice that you do not understand, you should seek legal advice.

Class Action Settlement

3. This proceeding has settled, subject to Court Approval. The plaintiffs and defendants have agreed that an amount of money (called the **Class Action Sum**) will be paid to the plaintiffs on behalf of group members.
4. Not all Group Members are eligible to participate in the proposed settlement and share in the Class Action Sum. The Court previously made orders that only those Group Members who registered their claims with the plaintiffs' lawyers by 15 November 2023 would be eligible to participate in the settlement, unless the Court makes further orders.
5. You are a **Registered Group Member** if you are a Group Member and, before 4:00pm AEDT on 15 November 2023, you provided your name, contact details and information about your shareholding to the litigation funder of the class action, Omni Bridgeway. If you are a Registered Group Member, you are eligible to participate in the settlement.
6. If you did not register your claim, you are not a Registered Group Member and are not eligible to participate in the settlement and distribution of the Class Action Sum. Options for Unregistered Group Members are described below (Options C and D at paragraphs 51 to 54).

ASIC Penalty Sum for shares purchased during 29 August 2019 to 25 May 2020

7. Separately from this class action, ASIC brought a proceeding against the First Defendant (Noumi). Noumi has been ordered to pay a penalty as a result of its conduct that affected shares purchased in the period **29 August 2019 to 25 May 2020** (inclusive).
8. The plaintiffs in this proceeding intend to apply for court orders making the penalty money (**ASIC Penalty Sum**) available to group members in this proceeding, who brought shares during that period. If the courts make those orders, the ASIC Penalty Sum will be available to those group members. If you are a group member in this proceeding and you acquired shares during the period 29 August 2019 to 25 May 2020 (inclusive) you may be eligible to share in the ASIC Penalty Sum regardless of whether you have registered your claim. You do not need to register to become eligible, but you should provide your contact information to the plaintiffs' lawyers.

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9. This notice explains your rights in relation to the proposed settlement and provides further information about the ASIC Penalty Sum. All Group Members should carefully read this notice **and take one of four Options A, B, C or D**, which are described at paragraphs 46 to 54 below.
 10. At 10am on 17 April 2025 the Supreme Court of Victoria will hear the application to approve the Proposed Settlement and the Settlement Distribution Scheme (**Settlement Approval Hearing**).

INFORMATION ABOUT THE NOUMI CLASS ACTION

11. The Noumi Class Action has two plaintiffs, Nicholas John Gehrke and Lester Buch. The class action is brought against Noumi Limited (formerly Freedom Foods Group Limited) (ACN 002 814 235) (**Noumi**) and Deloitte Touche Tohmatsu (a firm) (**Deloitte**) in the Supreme Court of Victoria on behalf of all persons who acquired an interest in fully paid ordinary shares in Noumi, an interest in American Depository Receipts that represents Noumi shares and/or a long exposure to Noumi shares by entering into equity swap confirmations in respect of ordinary shares in Noumi during the Class Action Claim Period.
12. The Noumi Class Action relates to allegations that Noumi and Deloitte made misleading representations about Noumi's accounts and further, that Noumi failed to comply with its continuous disclosure obligations as an ASX-listed company, breaching relevant provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**) and *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
13. The class action alleges that, because of this conduct, Group Members paid more for shares in Noumi than would have been the case had Noumi and/or Deloitte complied with their respective obligations. Alternatively, the class action alleges that some Group Members would not have purchased shares in Noumi had the alleged wrongdoing not occurred.
14. You can obtain further information about the Noumi Class Action by visiting the Supreme Court website or the Omni Bridgeway website: [Freedom Foods Class Action - Omni Bridgeway](#).

PROPOSED SETTLEMENT

15. On 16 October 2024, the parties exchanged an executed Deed of Settlement reflecting the parties' in-principle settlement of the Noumi Class Action. A copy of the Deed of Settlement is available to all Group Members if they provide a written undertaking to keep the Deed confidential. You may request to view a copy of the Deed of Settlement on this basis by contacting Omni Bridgeway by emailing freedomfoods@omnibridgeway.com, or alternatively by telephone on 1800 016 464.
16. By the time the parties reached the in-principle settlement of the proceeding the parties had been engaging in an ongoing mediation process before the Honourable Associate Justice Gobbo of the Supreme Court of Victoria since 14 September 2023.

17. Under the in-principle settlement, the defendants will pay \$43,000,000 (**Class Action Sum**), comprised of a \$11,565,000 contribution from Noumi and a \$31,435,000 contribution from Deloitte, to fully and finally settle all of the Plaintiffs' and Group Members' claims in the Noumi Class Action (**Proposed Settlement**).
18. The Proposed Settlement is subject to the Supreme Court of Victoria's approval. In determining whether to approve the Proposed Settlement, the Court must be persuaded that the Proposed Settlement is fair and reasonable, having regard to the claims made on behalf of Group Members and is in the interests of Group Members, and not just in the interests of the Plaintiffs and Defendants.

Why has the Noumi Class Action settled?

19. The Class Action Sum is materially less than the potential estimated collective losses of Group Members. It has been settled at this early stage of the Class Action as a result of the Plaintiffs' serious concerns as to Noumi's financial position.
20. The Plaintiffs believe that the Proposed Settlement is in the best interests of Group Members, for the following reasons (in summary):
 - (a) Before commencing the mediation process, Noumi made statements to the ASX which caused the Plaintiffs to hold serious concerns regarding Noumi's ongoing financial position and ability to recover compensation from Noumi if they were to continue to advance the Noumi Class Action. These statements included:

Its 1HFY23 Financial Report dated 28 February 2023, which provided that "should [it] be unsuccessful in its defence of the proceedings, [Noumi] may become liable for material compensation amounts. There is a material risk that [Noumi] will have insufficient funds to be able to pay these compensation amounts" and "the Directors are proactively taking steps to manage and mitigate the risks associated with the [litigation]", and

Its FY23 annual report, which provided that "due to the uncertainty surrounding the outcomes of [the Noumi Class Action and the ASIC Proceeding], the quantum of compensation, penalties and/or costs for which the Group may be liable, and whether the Group will have access to sufficient funds to pay these amounts, a material uncertainty exists which may cast significant doubt on the Group's ability to continue as a going concern and therefore whether it may be able to realise its assets and discharge its liabilities in the normal course of business".

- (b) The Plaintiffs required, as a condition of the in-principle settlement, that Noumi provide the Plaintiffs with information in relation to its financial position, and that the Plaintiffs reach a state of satisfaction that they and Group Members would likely recover more money from Noumi by way of the Proposed Settlement than if they were to continue advancing the Noumi Class Action, having regard to evidence provided by Noumi (**Conditions Precedent**). The evidence provided as part of the Conditions Precedent comprised affidavits sworn by the Group General Counsel & Company Secretary of Noumi addressing alternative restructuring outcomes for Noumi in the event the parties do not proceed with the Proposed Settlement and the relevant insurance position of Noumi, an independent expert report considering Noumi's financial position, and an independent expert report addressing alternative restructuring outcomes for Noumi in the event the parties do not proceed with the Proposed Settlement.
- (c) Based on the information provided by Noumi to the Plaintiffs as part of the Conditions Precedent, the Plaintiffs' lawyers formed the view that, based on Noumi's financial position (as disclosed in that information), the Plaintiffs and the Group Members would likely recover more money from Noumi by way of the Proposed Settlement than if the case continued.
- (d) On 31 October 2024, the Plaintiffs notified the Defendants that the Conditions Precedent were satisfied.
- (e) The Proposed Settlement provides certainty and allows payments to be made to Group Members at an earlier point in time, given the uncertainty and delays associated with a contested trial, including possible appeals and attempts to enforce any judgments against the Defendants.

ASIC PENALTY SUM

21. In a separate proceeding in the Federal Court of Australia between the Australian Securities and Investments Commission (**ASIC**) and Noumi (and others) (**ASIC Proceeding**), ASIC alleged breaches by Noumi of its continuous disclosure obligations under the Corporations Act during the period 29 August 2019 to 25 May 2020 (**ASIC Claim Period**). There is an overlap between the subject matter of the Noumi Class Action and the ASIC Proceeding. Noumi admitted the substance of the allegations against it in the ASIC Proceeding.

22. On 5 August 2024, the Federal Court of Australia ordered Noumi to pay a pecuniary penalty of \$5,000,000 in respect of Noumi's admitted continuous disclosure contraventions (**ASIC Penalty Sum**) during the ASIC Claim Period. The Penalty Sum is to be paid in three instalments over a period of 3 years.
23. Following intervention by the class action plaintiffs in the ASIC Proceeding, the Federal Court of Australia ordered that the ASIC Penalty Sum be held by the Court and is to remain available until 30 June 2028 (or a different date if subsequently ordered by the Court) as funds in Court for the payment of any compensation order made under s 1317HA of the Corporations Act, for damage that resulted from the contraventions the subject of the declarations made by the Federal Court of Australia on 5 August 2024.
24. The ASIC Penalty Sum would be available for distribution *in addition to* the Class Action Sum, if the Federal Court makes it available for distribution to Group Members who acquired shares in the ASIC Claim Period, and if the Supreme Court makes the orders that the plaintiffs intend to seek. The ASIC Penalty Sum will only be available for distribution to Group Members if the Courts make those orders.
25. In the Deed of Settlement, Noumi has agreed that, subject to the Proposed Settlement being approved by the Court, Noumi will:
 - (a) make in this proceeding the same admissions about its continuous disclosure contraventions in the Noumi Class Action as it made in the ASIC Proceeding for the ASIC Claim Period for the limited purpose of obtaining the Compensation Order referred to in paragraph (b) below; and
 - (b) consent to a compensation order being made by the Supreme Court of Victoria in the amount of \$5,000,000 in favour of Group Members who acquired Noumi shares during the ASIC Claim Period and who have suffered loss or damage caused by Noumi's admitted continuous disclosure contraventions during the ASIC Claim Period (**Compensation Order**).
26. The plaintiffs intend to apply to the Supreme Court of Victoria for the Compensation Order concurrently with their application for approval of the Proposed Settlement.
27. If the proposed Compensation Order is made by the Supreme Court of Victoria, the plaintiffs then intend to apply to the Federal Court of Australia in accordance with section 1317QF of the Corporations Act, for orders that provide for the plaintiffs to access the

Penalty Funds, in order for the Penalty Sum to also be distributed to Group Members who acquired shares in the ASIC Claim Period, irrespective of whether they are Registered Group Members for the purposes of the Noumi Class Action.

28. If the Penalty Sum is made available for distribution to Group Members who acquired shares in the ASIC Claim Period and if any legal costs incurred by the Plaintiffs as a result of steps taken to obtain the Penalty Sum, then those legal costs may be sought by the Plaintiffs' solicitors, subject to Court approval. Because further steps remain to be taken to make the Penalty Sum available to some Group Members in the Noumi Class Action, the Plaintiffs are not presently able to quantify those legal costs with any degree of certainty.

BINDING EFFECT OF SETTLEMENT IF APPROVED BY THE COURT

29. Under the Proposed Settlement, the common claims of all Group Members made in this proceeding will be finally determined by the terms of the Deed of Settlement and the Settlement Distribution Scheme.
30. All Group Members who have not validly opted out of the Noumi Class Action will be bound by the terms of the Proposed Settlement if approved by the Court, and will not be permitted to take any legal action against Noumi or Deloitte, their related parties or Noumi's insurers in respect of claims the subject of the Noumi Class Action or any claims which could have been made in the proceeding which gives rise to a common issue of law and/or fact in respect of the subject matter of the Noumi Class Action.
31. Registered Group Members who have suffered a loss will be entitled to receive part of the Class Action Sum.
32. If you did not register your claim in the Noumi Class Action, you are an Unregistered Group Member. Under the Proposed Settlement:
- (a) Unregistered Group Members are not entitled to receive a monetary sum from the Class Action Sum; and
 - (b) the claims of Unregistered Group Members made in the proceeding are finally determined by the terms of the Deed of Settlement and the Settlement Distribution Scheme.
33. If you are an Unregistered Group Member but wish to apply to the Court to be allowed to register your claim late, you must provide evidence of your circumstances by way of affidavit. For more information, please see **Option C**, below.

34. Group members who acquired shares in the ASIC Claim Period (29 August 2019 to 25 May 2020 inclusive) may still be eligible to receive a share of compensation out of the ASIC Penalty Sum if it is made available by court order, regardless of whether they are Registered or Unregistered Group Members.
35. You do not need to register to receive any compensation which may be made available to Group Members from the ASIC Penalty Sum. However, if you are an Unregistered Group Member and you purchased shares during the ASIC Claim Period, you should help us to attempt to contact you if the ASIC Penalty Sum becomes available, by sending an email to Omni Bridgeway at freedomfoods@omnibridgeway.com with:
- (a) your name;
 - (b) your contact details;
 - (c) detailed information about any Noumi shares that you held **between 29 August 2019 to 25 May 2020** (inclusive), or that you purchased or sold during this period.

NO OUT-OF-POCKET COSTS FOR GROUP MEMBERS

36. Group Members are not, and will not be, liable for any legal costs out of their own pocket.
37. By an order of the Supreme Court of Victoria dated 8 November 2022, Group Members' legal costs are to be calculated as a percentage of the amount of any settlement that may be recovered in the class action, the percentage being 22% inclusive of GST (**Group Costs Order**), that percentage being subject to further order.

THE SETTLEMENT DISTRIBUTION SCHEME

38. At the Settlement Approval Hearing the parties will ask the Court to approve the Settlement Distribution Scheme. The Settlement Distribution Scheme and the Loss Assessment Formula are subject to Court approval.
39. The purpose of the Settlement Distribution Scheme is:
- (a) to govern the proposed distribution of the settlement recovered in the proceeding as between the Registered Group Members;
 - (b) to determine how the monetary sum payable to each Registered Group Member is calculated (using a confidential "Loss Assessment Formula"); and

- (c) to propose when the monetary sum payable to each Registered Group Member will be distributed.
40. Under the Proposed Settlement, the monetary sum to be paid to each Registered Group Member under the Settlement Distribution Scheme will depend on a number of factors, including but not limited to:
- (a) the number of shares purchased by that Registered Group Member;
 - (b) the date of purchase, whether any of those shares were sold;
 - (c) the overall losses of all Registered Group Members sharing in the Proposed Settlement;
 - (d) the total amount of the deductions from the Class Action Sum which are approved by the Court; and
 - (e) any interest earned on the Class Action Sum prior to final distributions.
41. The Settlement Distribution Scheme will provide a regime for the timing of distribution of the Class Action Sum which the Supreme Court of Victoria considers to be fair and reasonable for Group Members.
42. The Plaintiffs will ask the Supreme Court of Victoria also to approve a Settlement Distribution Scheme that will provide a framework for distribution of the Penalty Sum to Group Members who acquired Noumi shares in the ASIC Claim Period, on the proviso that it will not finally be determined at the Settlement Approval Hearing whether the Penalty Sum will be made available in the Noumi Class Action.

Deductions from the Class Action Sum Prior to Distribution

43. If the Proposed Settlement is approved, the Settlement Distribution Scheme will provide for the following deductions to be made from the Class Action Sum, prior to individual Registered Group Member entitlements being calculated:
- (a) an amount of about \$35,000 in total, to be reimbursed to each of the plaintiffs, for the reasonable time and costs they incurred in prosecuting the Noumi Class Action on behalf of Group Members;
 - (b) an amount of up to about \$400,000 for the costs associated with administration of the Settlement Distribution Scheme; and
 - (c) any other amount as determined by the Supreme Court of Victoria as being fair and reasonable having regard to the matters outlined at paragraphs 28 and 37 above.

44. If the Court approves the Proposed Settlement, a Settlement Administrator will be appointed in order to distribute the Class Action Sum to Registered Group Members and administer the settlement in accordance with the Settlement Distribution Scheme under the directions of the Court.
45. As part of the Settlement Approval Application, the Plaintiffs intend to ask the Court to make an order that Jeremy Zimet, Principal Lawyer at Phi Finney McDonald, be appointed as Settlement Administrator.

YOUR FOUR OPTIONS

46. There are four options for responding to this notice which are now explained (**Options A, B, C and D**).

OPTION A - DO NOTHING

47. If you are in favour of the Proposed Settlement there is nothing you need to do in response to this notice. You will be kept informed of further developments.

OPTION B - OBJECT TO PROPOSED SETTLEMENT

48. If you wish to object to the Proposed Settlement then you **must** by no later than **4:00pm (AEDT) on Tuesday 1 April 2025** either:

- (a) complete and submit the Online Objection Notice through the Supreme Court of Victoria website at: <https://www.supremecourt.vic.gov.au/areas/group-proceedings/noumi/objection> **or**
- (b) complete and sign a Notice of Objection (which is at the end of this document and is also available for download from the Omni Bridgeway [website](#)) and email the completed Notice of Objection to the Supreme Court at this address: freedomfoodsclassaction@supcourt.vic.gov.au.

49. If you propose to object to the Proposed Settlement you may wish to request further information. See paragraphs 55 to 58 below for how to obtain further information.

50. If you object to the settlement you must, unless the Court otherwise orders, attend or send a legal representative to attend, the Supreme Court of Victoria on 17 April 2025 at 10:00am when the Settlement Approval Application will be heard. You, or your legal representative may address the Court with reasons why the proposed settlement should not be approved.

OPTION C - UNREGISTERED GROUP MEMBERS ONLY

51. If you are an Unregistered Group Member who would like to apply for the Court to consider your late registration (in order to be a Registered Group Member) you must provide evidence of your circumstances, addressing why you did not register on time. Your evidence must be in the form of an affidavit. You may also provide written submissions (of no more than 2 pages). You must submit your affidavit (and submissions if any) to the plaintiffs' solicitors at freedomfoods@omnibridgeway.com by no later than **4:00pm (AEDT) on 11 March 2025**. The Court has ordered that the plaintiffs' solicitors collect all applications for late registration and provide them to the Court.
52. The Court will consider applications for late registration filed by 11 March 2025, on the basis of the evidence received, and may decide to allow or refuse your application.
53. If you intend to obtain independent legal advice you should do so immediately.

OPTION D - UNREGISTERED GROUP MEMBERS WHO PURCHASED SHARES DURING THE ASIC CLAIM PERIOD

54. If you are not registered to participate in the Noumi Class Action but purchased shares during the period 29 August 2019 to 25 May 2020 (inclusive), to ensure that we have your correct contact and investment information so that we can attempt to contact you if the ASIC Penalty Sum become available, please send an email to Omni Bridgeway at freedomfoods@omnibridgeway.com with:
- (d) your name;
 - (e) your contact details;
 - (f) detailed information about any Noumi shares that you held between 29 August 2019 to 25 May 2020 (inclusive), or that you purchased or sold during this period.

IF YOU WOULD LIKE MORE INFORMATION

55. Pleadings, Court-ordered Notices previously sent to Group Members and other publicly available Court documents may be obtained by:
- (a) accessing the Supreme Court's [website](#);
 - (b) accessing Slater and Gordon's [website](#) or Phi Finney McDonald's [website](#) or Omni Bridgeway's [website](#); or

(c) contacting Omni Bridgeway by emailing freedomfoods@omnibridgeway.com, or alternatively by telephone on 1800 016 464.

56. You may also seek your own legal advice from a solicitor of your choice.

57. You may obtain a copy of the proposed Settlement Distribution Scheme and a copy of a statement of facts agreed between the parties, by request to Omni Bridgeway by email to freedomfoods@omnibridgeway.com. That material will be available on request, from 17 February 2025.

58. You may also obtain a copy of the Deed of Settlement, affidavit evidence and submissions that will be filed by the parties in support of the settlement approval application, and a confidential annexure to the Settlement Distribution Scheme, by request to Omni Bridgeway by email to freedomfoods@omnibridgeway.com. To obtain that material you must first sign a confidentiality undertaking, provided by Omni Bridgeway. That material will be available on request, from 21 March 2025.

OPTION B - NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

S ECI 2020 04505

BETWEEN

NICHOLAS JOHN GEHRKE & ANOR

Plaintiffs

and

NOUMI LIMITED (FORMERLY FREEDOM FOODS GROUP LIMITED (ACN 002 814 235))
& ANOR

Defendants

**ONLY COMPLETE THIS NOTICE IF YOU DO NOT WANT THE COURT TO APPROVE
THE PROPOSED SETTLEMENT**

Unregistered group members who wish to apply for late registration should not complete this form. Instead, follow the steps outlined in OPTION C of the Notice to Group Members

TO: freedomfoodsclassaction@supcourt.vic.gov.au

A DETAILS OF GROUP MEMBER OBJECTING

Name of person completing the Notice of Objection:	
Capacity of person completing Notice of Objection (<i>select one</i>)	<input type="checkbox"/> Group Member;
	<input type="checkbox"/> Director of [company name including ACN/ABN].....;
	<input type="checkbox"/> Executor for the Estate of [name].....;
	<input type="checkbox"/> Power of attorney for [name].....;
	<input type="checkbox"/> Solicitor acting for [name].....;
Telephone:	
Email:	

Postal address:	
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HIN/SRN under which Noumi securities were traded	
Total number of Noumi securities, American Depository Receipts and/or equity swap confirmations held by the objector at close of trade on 6 December 2014 (even if nil)	
<p>For each acquisition of Noumi securities, American Depository Receipts and/or equity swap confirmations during the period 7 December 2014 and 24 June 2020 (inclusive):</p> <p>(a) The date of acquisition</p> <p>(b) The quantity of securities acquired; and</p> <p>(c) Total amount paid (including brokerage where provided).</p>	
<p>For each sale and/or disposal of Noumi securities, American Depository Receipts and/or equity swap confirmations during the period 7 December 2014 and 24 June 2020 (inclusive):</p> <p>(a) The date of sale or disposal</p> <p>(b) Quantity of securities sold or disposed of; and</p> <p>(c) Total amount received (excluding brokerage).</p>	
Registered Group Member	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure

B REASONS

Explain why you object to the proposed settlement. Please include all details that you think relevant. *If you are completing this form online there is a 2,000 character limit.*

C SUBMISSION AND EVIDENCE

- I attach submissions and/or evidence in support of my objection (limited to 2 pages)
- I do not attach any submissions or evidence in support of my objection, but wish for my objection to be considered based on my reasons set out above

(please tick one of the above options)

D ATTENDANCE AT HEARING ON 17 APRIL 2025 at 10:00AM:

At the hearing:

- I will appear on my own behalf
- I will be represented by a lawyer: *[insert name]*.....

E SIGNING OF NOTICE:

.....

Please sign notice here

Date:.....

IMPORTANT NOTE - if you want this form to be considered by the Court you must ensure that you complete this form online via the Supreme Court of Victoria website **OR** ensure that it reaches the Supreme Court of Victoria at the email address above by **4:00pm (AEDT) on 1 April 2025.**