



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD297/2017

KELVIN TURNER
Applicant

MYBUDGET PTY LTD ACN 82 093 118 597
Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 28 June 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

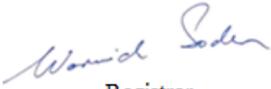
1. Pursuant to s 33J of *Federal Court of Australia Act 1976 (Cth) (Act)*, 4.00pm on 12 July 2017 be fixed as date on or before which a group member may opt out of this proceeding (**Class Deadline**).
2. Pursuant to s 33ZF of the Act, any group member who wishes to opt out of this proceeding must, before the Class Deadline, deliver an opt out notice in the form of the opt out notice at Schedule A to these Orders to a District Registry of the Federal Court of Australia.
3. Pursuant to s 33X and 33Y of the Act, the terms of the opt out notice set out in Schedule A to these Orders (**Notice**) are approved.
4. Pursuant to s 33Y of the Act, the Notice be given to group members according to the following procedure:
 - a. the respondent file with the Court the names, email addresses and/or postal addresses of the group members last known to the respondent (**Class Member Contact Schedule**) by 4.00pm on 12 July 2017;
 - b. the applicant have access to Class Member Contact Schedule for the purposes of facilitating and causing the distribution of the Notice by 26 July 2017 to the



email addresses and/or postal addresses referred to in the Class Member Contact Schedule;

- c. On or before 26 July 2017, the District Registrar of the New South Wales District Registry of the Federal Court cause the notice to be:
 - i. posted on the Federal Court website; and
 - ii. available for inspection at the District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin.
5. The parties' solicitors be granted leave to inspect the Court file and to copy any opt out notices filed by group members.
6. Pursuant to s 53A of the Act, the parties attend a mediation of the proceedings, with such mediation to commence prior to 20 October 2017, and with the mediation to be conducted by a mediator agreed by the parties, provided such agreement is reached prior to 21 July 2017, or, failing such agreement, to be conducted by by a Registrar of the Court.
7. The applicant serve any further evidence upon which he proposes to rely at the initial trial by 4.00pm on 10 August 2017.
8. The proceedings be listed for further case management at 9.30am on 27 October 2017.

Date that entry is stamped: 4 July 2017


Registrar



Schedule A
OPT OUT NOTICE
FEDERAL COURT OF AUSTRALIA

Kelvin Turner v MyBudget Pty Ltd

NSD 297 of 2017

IMPORTANT: This notice contains information about your legal rights.

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Mr Kelvin Turner against MyBudget Pty Ltd (**MyBudget**). The action arises out of MyBudget's alleged unauthorised retention of interest earned on customers' accounts.

The Federal Court has ordered that this notice be published for the information of people who might be members of the class on whose behalf the action is brought and may be affected by the 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 a lawsuit brought by one person, the applicant (in this case, Mr Turner), on their own behalf and on behalf of a group of people, the **Class members**, against another person, the respondent (in this case, MyBudget), where the Applicant and the class members have similar claims against the Respondent.

Class members in a class action **are not** individually responsible for the legal costs associated with bringing the class action – only the applicant is responsible for costs.

Class members will likely be bound by specified orders and judgments or any settlement reached in this class action **unless** they opt out of the class action. This means that:

- If the class action is successful, class members may be eligible for a share of any compensation, in this instance the refund of the interest earned on any money they deposited with MyBudget, whether this is through a settlement agreement or Court-awarded compensation;
- If the class action is unsuccessful, Class members are likely to be bound by that result and specified orders made during the proceeding; and
- Regardless of the outcome, class members cannot pursue their claims against the MyBudget individually about the same facts and circumstances – that is, about the interest earned on any funds they deposited, unless they opt out of the class action.

3. What is opt out?

In a class action, the applicant does not need to seek the consent of every class member in order to commence this action on their behalf. However, class members can opt out if they wish. This is explained further below.



4. What is this class action about?

Mr Turner alleges, in documents filed with the Federal Court, that:

1. when Class members deposited money with MyBudget, interest accrued on those deposits, which was retained by MyBudget;
2. without sufficient authority, in breach of trust and in breach of its fiduciary duty, MyBudget retained the interest thereby receiving an undisclosed benefit.

The remedy sought by Mr Turner include that MyBudget pay back the interest it retained on the funds deposited or alternatively, damages or compensation.

MyBudget denies the allegations and is defending the class action, in part, on the basis that it was authorised under the express terms of the client Service Agreement to retain the interest earned on client funds and to use such interest in its discretion to pay bank fees. As a result MyBudget alleges no trust or any other obligation arose in respect of the interest earned the subject of Mr Turner's claim.

5. Are you a Class member?

You are a Class member if you:

- (a) signed a standard form Service Agreement with MyBudget, and the terms of service contained the following clause:

Client funds are held in an interest bearing account arranged by MyBudget. Interest is not payable to clients on funds held in your MyBudget Account. Credit interest on client funds will be applied by MyBudget in its discretion to pay bank fees on the account; and

NB: This clause was contained in Service Agreements signed between 19 January 2011 to 1 September 2015 - if your agreement was signed outside those dates, it would not contain the above clause.

- (b) have not received the interest earned on funds deposited by MyBudget into accounts maintained, and held in trust by, MyBudget.

If you are unsure about whether you are a Class member, you should:

- A. If you have your Service Agreement with MyBudget, carefully review it and see if it contains the wording referred to above.
- B. If you do not have your Service Agreement with MyBudget, email Mr Turner's solicitors at mybudget@financialrights.org.au and:
 - i. provide the approximate date on which you contacted MyBudget or signed the Service Agreement; and,
 - ii. request a copy of the Service Agreement you signed.



By sending this request you are authorising Mr Turner's solicitors to obtain this information on your behalf and acknowledge that this request does not mean Mr Turner's solicitors are legally representing you; and/or,

C. seek your own legal advice.

6. Will you be liable for legal costs?

Only Mr Turner is responsible for legal costs in bringing this class action, not you.

If Mr Turner is unsuccessful in the proceedings, the Court may order that he pay MyBudget's legal costs.

7. What will happen if you choose to remain a member?

If you choose not to opt out, you will be bound by the outcome of the class action. If Mr Turner's claim is successful, you may be entitled to a share of any compensation under a judgment or settlement agreement, provided you satisfy any conditions set.

If Mr Turner's claim is unsuccessful, you will very likely to be unable to sue MyBudget in relation to the same claim in any other legal proceedings.

If you think that you have a claim against MyBudget that is different to the claim described above, you should **immediately** seek legal advice in advance of **6 September 2017, which is the last day to opt out.**

8. What will happen if you choose to leave ("opt out")?

If you opt out of this class action, you will not be affected by the outcome of this proceeding. You will not be entitled to any compensation should Mr Turner's claim be successful. You may be able to bring your own claim and you should seek legal advice about this **before** the date required to opt out of the proceeding which is **6 September 2017** including about any limitation periods.

9. What you need to do

▪ **Option A: If you want to remain a Class member**

In order to remain a member in this class action, **you do not need to do anything.**

You can contact the Financial Rights Legal Centre to be informed about the progress of this class action by e-mailing mybudget@financialrights.org.au or through the website <http://financialrights.org.au/>.

▪ **Option B: If you want to opt out**

To opt out of this class action, you must complete the attached notice and return it to the Registrar of the Federal Court at the address on the form or your capital cities Registry. Each class member should fill out a separate form.

IMPORTANT: the Notice must reach the Registrar by no later than 6 September 2017.

You should submit the notice to opt out if:

- You qualify as a Class member but wish to opt out of the class action
- You do not meet the criteria to be a class member set out above.



10. Obtaining copies of documents

Copies of relevant documents, including the application, statement of claim and defence, can be obtained by downloading them from <http://financialrights.org.au/>.

If there is anything that you are unsure of, you should contact the Financial Rights Legal Centre on mybudget@financialrights.org.au or seek your own legal advice. You should not delay in making this decision, as the deadline is **6 September 2017**.



Form 21
Rule 9.34

OPT OUT NOTICE

No. NSD297 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

Kelvin Turner

Applicant

MyBudget Pty Ltd ABN 82 093 118 597

Respondent

To: The Registrar
Federal Court of Australia
[] District Registry

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

Date:

Signed by [Your name / your lawyers name]:
Class member / Lawyer for the class member [cross out inapplicable]