

**FORM 5A**



Rule 5.02(1)

**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE**

Case: S ECI 2020 02588

Filed on: 17/06/2020 02:25 PM

**COMMERCIAL COURT  
GENERAL COMMERCIAL LIST**

**No. S ECI**

**B E T W E E N**

Geoffrey and Lynden Iddles

Plaintiffs

-and-

Fonterra Australia Pty Ltd (ABN 52 006 483 665)  
& Ors according to the Schedule

Defendants

**WRIT**

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Date of document: 17 June 2020  
Filed on behalf of: The Plaintiffs  
Prepared by:  
**Adley Burstyner**  
131 Westbury Close  
Balaclava VIC 3183

Solicitor's Code: CR113740  
Tel: 0411 072 743  
Ref: 22002399  
Attention: David Burstyner  
Email: dburstyner@adleyburstyner.com.au

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**TO THE DEFENDANTS**

**TAKE NOTICE** that this proceeding has been brought against you by the Plaintiffs for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** *[insert date]*

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

## **RELIEF CLAIMED**

On the grounds stated in the accompanying statement of claim (**Statement of Claim**), the Plaintiffs claim:

1. Declarations that the Defendants:
  - a. by the misleading or deceptive conduct alleged in the Statement of Claim contravened section 18 of the Australian Consumer Law (**ACL**); further or alternatively
  - b. by the unconscionable conduct alleged in the Statement of Claim contravened section 21 of the ACL; and
2. Damages; further or alternatively

3. Damages pursuant to section 236 of the ACL in respect of:
  - a. Fonterra's misleading or deceptive conduct alleged in the Statement of Claim;  
further or alternatively
  - b. Fonterra's unconscionable conduct alleged in the Statement of Claim;
4. Interest; and
5. Costs.

### **GROUP PROCEEDING**

The Plaintiffs commence this group proceeding as representative parties under Part 4A of the *Supreme Court Act 1986*.

Capitalised terms in this Writ if not otherwise defined have the meaning given to them in the Statement of Claim.

The Plaintiffs commence this proceeding on their own behalf and on behalf of all persons who:

- (a) during the milk-supply season (**Season**) from 1 July 2015 to 30 June 2016 (**2015 Season**) supplied milk to the Defendants from farms located in Victoria, Tasmania or New South Wales pursuant to:
  - (i) a Fonterra Australia "Milk Supply Handbook" (such persons being **Handbook Farmers**); and / or
  - (ii) a Fonterra Australia "Exclusive Milk Supply Agreement" or other formalized agreement relating to the supply of milk (**EMSA**) (such persons being **EMSA Farmers**);
- (b) were not a director or officer of the Defendants during the period from 1 June 2015 to 31 July 2016, or a related entity of such a director or officer (within the meaning of the Corporations Act); and
- (c) are not a justice of the High Court of Australia, the Supreme Court of Victoria or the Federal Court of Australia;

(together **Group Members**).

### **Questions common to claims of Plaintiffs and Group Members**

The questions of law or fact common to the claims of the Plaintiffs and Group Members (**Claimants**) are:

- (a) for the claims in respect of breach of contract –

- (i) whether the Considered Estimates term is to be implied into:
  - A. the 2015 Handbook Agreements (for the Handbook Farmers); or
  - B. the 2015 EMSA Agreements (for the EMSA Farmers);
- (ii) whether the Reasonable Step-downs term is to be implied into:
  - A. the 2015 Handbook Agreements (for the Handbook Farmers); or
  - B. the 2015 EMSA Agreements (for the EMSA Farmers);
- (iii) whether Fonterra breached the Considered Estimates term;
- (iv) whether Fonterra breached the Reasonable Step-downs term, and in particular:
  - A. whether the May 2016 Price Decrease was warranted according to the terms of the 2015 Handbook Agreements (for the Handbook Farmers) or the 2015 EMSA Agreements (for the EMSA Farmers);
  - B. what if any prior notice of the May 2016 Price Decrease was required, in order to give reasonable notice;
  - C. what if any decrements were permitted or required, in order to implement the Price Decrease in reasonable amounts;
- (v) whether Fonterra breached the Overall Price Match Term;
- (vi) what principles apply to the identification and measurement of compensable loss and damage caused by the alleged breaches of the:
  - A. 2015 Handbook Agreements (for the Handbook Farmers); or
  - B. the 2015 EMSA Agreements (for the EMSA Farmers);
- (b) for the claims of misleading and deceptive conduct –
  - (i) whether, and if so over what periods, Fonterra made the Pricing Representations;
  - (ii) so far as the Pricing Representations were representations as to present matters:
    - A. whether, and if so over what periods, the Pricing Representations were misleading or deceptive to, or likely to mislead or deceive, Farmers;
    - B. whether, and if so, at what times, there were material risks that the Closing Price would be substantially below the Closing Range, about which risks Fonterra ought reasonably to have been aware from monitoring international and domestic markets and the performance of its own business, but which had not been notified to Farmers;

- (iii) so far as the Pricing Representations were as to future matters – whether Fonterra had reasonable grounds for making the Representations at the time they were made, or at any time while they were continuing;
  - (iv) what principles apply to the identification and measurement of compensable loss and damage caused to Farmers by Fonterra’s contraventions of section 18 of the ACL;
- (c) for the claims of unconscionable conduct –
  - (i) whether, and if so, at what times, the matters alleged in paragraph 35 or 38 of the Statement of Claim existed;
  - (ii) whether Fonterra, by the conduct alleged in paragraph 36 or 39 of the Statement of Claim, or any of the said conduct, engaged in conduct that was in all the circumstances unconscionable, within the meaning of section 21 of the ACL;
  - (iii) what principles apply to the identification and measurement of compensable loss and damage caused by the contraventions of section 21 of the ACL;
- (d) whether the declaratory relief sought above ought to be granted.

1. Place of trial— Melbourne
2. Mode of trial— Judge alone
3. This writ was filed — for the plaintiffs by Adley Burstyner of 131 Westbury Close, Balaclava VIC 3183
4. The address of the plaintiffs is— 1796 Bearii East Road, Strathmerton VIC 3641
5. The address for service of the plaintiffs is — 131 Westbury Close, Balaclava VIC 3183
6. The email address for service of the plaintiffs is — dburstyner@adleyburstyner.com.au
7. The address of the defendants is — Level 2, 40 River Boulevard, Richmond VIC 3121

## **SCHEDULE OF PARTIES**

Geoffrey and Lynden Iddles

Plaintiffs

-and-

Fonterra Australia Pty Ltd ACN 006 483 665

First Defendant

-and-

Fonterra Milk Australia Pty Ltd ACN 114 326 448

Second Defendant

-and-

Fonterra Brands (Australia) Pty Ltd ACN 095 181 669

Third Defendant