

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST

S ECI 2020 02588

BETWEEN:

LYNDEN IDDLES
& ANOR (according to the attached schedule) Plaintiffs

- and -

FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665)
& ORS (according to the attached schedule) Defendants

ORDER

JUDICIAL OFFICER: Judicial Registrar Steffensen

DATE MADE: 11 May 2021

ORIGINATING PROCESS: Writ filed on 17 June 2020

HOW OBTAINED: At the discovery conference on 11 May 2021,
conducted via videoconference

ATTENDANCE: Ms L. Keily of Counsel for the Plaintiffs
Mr R. Heath QC with Ms L. Dawson of
Counsel for the Defendants

other matters: A. The Court is satisfied that the technical requirements in s 42G of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) ('Act') are met and has proceeded on the basis that the parties consent to the making of a direction under s 42E(1) of the Act. Accordingly, the Court directs that all persons shall appear, give evidence and make submissions in this proceeding this day by audio visual link.



- B. This order is made without prejudice to the plaintiffs' right to seek further discovery, and the defendants' right to seek orders at a later date to vary the scope of discovery, including on the grounds of oppression having regard to the volume of relevant material returned by the searches specified in these orders over the email mailboxes in the process of being retrieved by the defendants.
- C. Given the volume of email documents involved in the discovery exercise pursuant to these orders, the defendants will use continuous active learning (a form of technology assisted review) to seek to increase the efficiency and decrease the burden of the discovery exercise.
- D. The Court made Orders for the discovery of documents excluding emails on 21 April 2021, and those Orders require the defendants to discover certain categories of documents by 30 April 2021, 31 May 2021 and 30 June 2021.
- E. This order is authenticated by the Judicial Registrar pursuant to rule 60.02(1) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic).

THE COURT ORDERS THAT:

1. The defendants make discovery of the documents identified in Annexure A to these orders by the dates set out as follows in accordance with the discovery protocols ordered in this proceeding on 26 February 2021, such discovery in respect of emails and attachments being limited to emails generated by the email searches specified:
 - a. the categories under the headings D.3 and D.4 by 30 July 2021;
 - b. the categories under the headings D.1 and D.2 by 31 August 2021.



2. Liberty to apply.
3. The defendants pay the plaintiffs' costs of the hearing on 25 February 2021 and there otherwise be no order as to costs with respect to the plaintiffs' summons filed 9 February 2021.

DATE AUTHENTICATED: **11 May 2021**



JUDICIAL REGISTRAR STEFFENSEN



SCHEDULE OF PARTIES

S ECI 2020 02588

BETWEEN:

LYNDEN IDDLES

First Plaintiff

GEOFFREY IDDLES

Second Plaintiff

-and-

FONTERRA AUSTRALIA PTY LTD
(ACN 006 483 665)

First Defendant

FONTERRA MILK AUSTRALIA PTY LTD
(ACN 114 326 448)

Second Defendant

FONTERRA BRANDS (AUSTRALIA) PTY LTD
(ACN 095 181 669)

Third Defendant



Annexure A.

DEFENDANTS' DISCOVERY

A Definitions

In this document:

- (A) **2014/2015 Season** means the milk supply season in the period from 1 July 2014 to 30 June 2015.
- (B) **2015/2016 Season** means the milk supply season in the period from 1 July 2015 to 30 June 2016.
- (C) **Australian Farmgate Milk Price** means Fonterra's farmgate milk price that applied in a given season in the Regions, in its various related forms including the opening price, closing price, closing range, spring price, base price, and weighted average price as those terms are used and understood in the dairy industry.
- (D) **Bonlac** means the company formerly named Bonlac Supply Company Pty Ltd (ACN 095 271 266).
- (E) **Document** has the same meaning given to that word in the *Evidence Act 2008* (Vic) and includes file notes, diary entries and all other documents whether handwritten or typed.
- (F) **Email Searches** means searches for emails that:
 - (i) were sent or received by a Relevant Person in a specified date range; and
 - (ii) deal with Australian segments of Fonterra's business; and



- (iii) contain any of the following terms;
- a. “farmgate milk price”;
 - b. “FMP”;
 - c. “milk price”;
 - d. “base price”;
 - e. “bm price”
 - f. “base spring rate”
 - g. “spring price”;
 - h. “quarterly price review”;
 - i. “price review”;
 - j. “Milk Supply Support Package”;
 - k. “MSSP”;
 - l. “closing price”;
 - m. “opening price”;
 - n. “Iddles”;
 - o. (“Murray Goulburn” or “MG”) and “price” or one of the searches in paragraphs (a) to (l) above;
 - p. (“Bonlac” or “BSC”) and “price” or one of the searches in paragraphs (a) to (l) above;
 - q. “cluster meeting”;



- r. “price-matching” or “price matching”
- s. “MSAA Benchmark”
- t. “milk price review meetings”
- u. “Benchmark price” or
- v. “supplier meeting”.

(G) **Fonterra** means the Defendants in this proceeding.

(H) **Regions** has the meaning given to that word in the Defence.

(I) **Set, Hold or Change** includes without limitation, activities relating to, forecasting, comparing the prices of other milk processors and deciding whether to or not to implement the step-down and/or match the price, support packages or reversals of other milk processors.

(J) **Relevant Persons** means the following persons:

- (i) Matthew Watt;
- (ii) Judith Swales;
- (iii) Theo Spierings;
- (iv) Abhy Maharaj;
- (v) Chris Potts;
- (vi) Mark Conway;
- (vii) Sarah Counsell;
- (viii) Sarah Munday;



- (ix) Bruce Donnison;
- (x) Darren Steele;
- (xi) Nick Martin;
- (xii) Rachel Jones;
- (xiii) Lukas Paravicini;
- (xiv) Richard Managh;
- (xv) Richard Raymond;
- (xvi) Aubrey Pellet (if Fonterra maintained an email account for him);
- (xvii) Stuart Martin;
- (xviii) Michael Cronin;
- (xix) Adele Wilson;
- (xx) Paul Campbell;
- (xxi) Jorja Cleeland;
- (xxii) Will Kermode; or
- (xxiii) Tony Marwood.

(T) **SMH article** means the article titled “Aussie Farmers being overpaid amid global dairy rout, says Fonterra boss”, published in the Sydney Morning Herald on 28 August 2015.



B Documents not being emails

1. Documents (excluding emails and email attachments) prepared or received by each Relevant Person (as defined in Annexure A) relating to:
 - (a) any decisions to forecast, Set, Hold or Change the Australian Farmgate Milk Price for the 2015/2016 Season, including in connection with any assessment of the “Four Variables” (as defined in the Amended Statement of Claim);
 - (b) the impacts, or potential impacts, of any variation to the Australian Farmgate Milk Price for the 2015/2016 Season on Fonterra’s revenues and profits;
 - (c) the 2015/2016 Season farmgate milk price of Murray Goulburn;
 - (d) the statement made by Theo Spierings concerning the Australian farmgate milk price, being the statement reported in the SMH article; and
 - (e) any decisions to forecast, Set, Hold or Change the Australian Farmgate Milk Price for the 2014/2015 Season.

C Documents comprising emails and attachments

D.1 Emails recording communications between Fonterra and Bonlac

2. Emails or attachments of emails sent or received by Relevant Persons in the period from 1 June 2014 to 23 September 2016 recording or evidencing communications between Fonterra and Bonlac relating to the Australian Farmgate Milk Price or either of the plaintiffs explicitly.

D.2 Emails of Relevant Persons which concern certain matters



3. Emails or attachments of emails sent or received by Relevant Persons in the period from 1 June 2014 to 23 September 2016 relating to:
- (a) any decisions to Set, Hold or Change the Australian Farmgate Milk Price for the 2015/2016 Season, including in connection with any assessment of the “Four Variables” (as defined in the Amended Statement of Claim);
 - (b) the impacts, or potential impacts, of the Australian Farmgate Milk Price (or any change to it) for the 2015/2016 Season on Fonterra’s revenues and profits;
 - (c) the 2015/2016 Season farmgate milk price of Murray Goulburn;
 - (d) statements made or proposed to be made by Theo Spierings concerning the Australian farmgate milk price, as ultimately reported in the SMH article;
 - (e) either of the plaintiffs explicitly; or
 - (f) any decisions to Set, Hold or Change the Australian Farmgate Milk Price for the 2014/2015 Season.

D.3 Emails of Relevant Persons between 24 April 2017 to 26 May 2017

4. Emails or attachments of emails sent or received by Relevant Persons in the period from 24 April 2017 to 26 May 2017 relating to:
- (a) Murray Goulburn’s Milk Supply Support Package;
 - (b) the Overall Price Matching Term as defined in the ASOC or the MSAA Benchmark Price Term as defined in the Defence, in respect of the 2015/2016 season;
 - (c) either of the plaintiffs explicitly; or



- (d) any decisions to Set, Hold or Change the Australian Farmgate Milk Price in respect of the 2015/2016.

D.4 Emails of Relevant Persons between 1 December 2008 and 15 January 2009

5. Emails or attachments of emails sent or received by Relevant Persons in the period from 1 December 2008 to 15 January 2009 relating to the decreases to the Australian Farmgate Milk Price on 23 December 2008 and 7 January 2009 or either of the plaintiffs explicitly.

