

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 REGISTRAR: Judicial Registrar Steffensen

DATE MADE: 21 April 2021

ORIGINATING PROCESS: Writ filed 17 June 2020

HOW OBTAINED: At the discovery conference on 30 March 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 continue the conferral process that is underway.
- C. That searches and discovery of emails by the defendants are to be dealt with on the next return of the plaintiffs' application on summons filed 9 February 2021, in particular the Email Search chapter in the Revised Discovery Proposal emailed by the plaintiffs to the Court on 29 March 2021 ("Revised Discovery Proposal").
- D. 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 as follows:
 - a. the categories under the headings B.2, B.8, B.9, B.12 and B.13 by 30 April 2021;
 - b. the categories under the headings B.1, B.6, B.7, B.10, B.11, and B.11a by 31 May 2021;
 - c. the categories under the headings B.3, B.4 and B.5 by 30 June 2021.
2. By 23 April 2021 the parties shall confer in respect of:
 - a. Any further hardcopy document discovery categories.
 - b. Email discovery, including keyword search terms and the definition of the term 'Relevant Persons'.
 - c. The use of technology assisted review (TAR).
3. The discovery conference is adjourned to a date to be determined.



4. For the purpose of order 3, the parties are to notify the court of mutually suitable dates for the discovery conference before 4.00 pm on 23 April 2021.
5. Costs reserved.

DATE AUTHENTICATED: **22 April 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 OF DOCUMENTS EXCLUDING EMAILS

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) **2016 Pricing Investigation** means the investigation by the Australian Competition and Consumer Commission between May 2016 and April 2017 into whether Fonterra Australia breached the *Competition and Consumer Act 2010* in connection with its decision to step down its Australian farmgate milk price in the 2015/2016 Season and its pricing guidance during that season.
- (D) **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.
- (E) **Australian Leadership Team** or **ALT** means the top-level management group for Fonterra.
- (F) **Bonlac** means the company formerly named Bonlac Supply Company Pty Ltd (ACN 095 271 266).



- (G) **Dairy Inquiry** means the inquiry of the Australian Competition and Consumer Commission conducted from around October 2016 to April 2018 into a range of topics, including the competitiveness of prices, trading practices, retail contracts and the supply chain in the Australian dairy industry.
- (H) **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.
- (I) **Fonterra** means the Defendants in this proceeding.
- (J) **Fonterra Management Team** or **FMT** means the top-level management group for Fonterra NZ.
- (K) **Fonterra NZ** means Fonterra Co-operative Group Ltd, a New Zealand entity.
- (L) **Fonterra NZ Board** means the board of Fonterra NZ.
- (M) **Income Estimates** has the same meaning given to that phrase in the Amended Statement of Claim.
- (N) **Lees Affidavit** means the affidavit of Matthew David Lees sworn 22 February 2021.
- (O) **Minutes** means the minutes of the Board meeting of Fonterra NZ on 4 May 2016, being ex. "MDL-5" to the Lees Affidavit.
- (P) **Regions** has the meaning given to that word in the Defence.
- (Q) **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.

- (R) **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 (excluding emails)

B.1 Documents referred to in the Minutes

1. In relation to the Minutes, the following documents (if any):
 - (a) “the information presented to the Board in August 2015” (see the first paragraph of section 2.1 of the Minutes);
 - (b) the summary of information provided by Judith Swales (see the second paragraph of section 2.1 of the Minutes);
 - (c) documents recording the “positive discussions” (see the third paragraph of section 2.1 of the Minutes);
 - (d) the communications strategy and / or documents recording it (see the fourth paragraph of section 2.1 of the minutes); and
 - (e) the paper referred to in the final paragraph of section 2.1 of the Minutes.

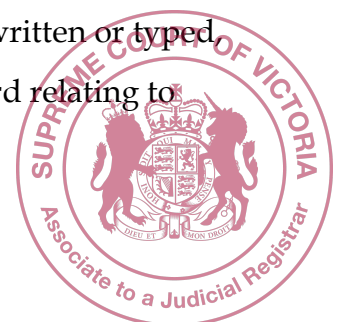


B.2 Identification of persons who decided to Set, hold or change the Australian Farmgate Milk Price

2. A document or documents showing or explaining the persons (or groups of persons) within Fonterra who decided to:
 - (a) Set, hold or change the Australian Farmgate Milk Price for the 2015/2016 Season;
 - (b) introduce the autumn offset scheme announced by Fonterra on or around 15 May 2016; and
 - (c) Set, hold or change the Australian Farmgate Milk Price for the 2014/2015 Season.

B.3 Documents provided to or created by the Fonterra NZ Board and its subcommittees

3. Board meeting pack documents provided to the Fonterra NZ Board relating to any decision to Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those board packs were prepared for:
 - (a) the 2015/2016 Season;
 - (b) the 2014/2015 Season and the month before it;
 - (c) the period between 1 December 2008 and 15 January 2009; and
 - (d) the period between 26 April 2017 to 24 May 2017.
- 3a. Any notes or other hard copy communications, whether handwritten or typed provided to or created by any member of the Fonterra NZ Board relating to



any decision to Set, hold or change the Australian Farmgate Milk Price in the 2015/16 Season.

4. Board subcommittee meeting pack documents provided to a board subcommittee of Fonterra NZ relating to any decisions to Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those packs were prepared for:

- (a) the 2015/2016 Season;
- (b) the 2014/2015 Season and the month before it;
- (c) the period between 1 December 2008 and 15 January 2009; and
- (d) the period between 26 April 2017 to 24 May 2017.

B.4 Documents provided to or created by the board of each Defendant and any subcommittees

5. Board meeting pack documents provided to each Defendant's board relating to any decision to Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those packs were prepared for:

- (a) the 2015/2016 Season;
- (b) the 2014/2015 Season and the month before it;
- (c) the period between 1 December 2008 and 15 January 2009; and
- (d) the period between 26 April 2017 to 24 May 2017.



- 5a. Any notes or other hard copy communications, whether handwritten or typed, provided to or created by any member of each Defendant's board relating to any decision to Set, hold or change the Australian Farmgate Milk Price in the 2015/16 Season.
6. Board subcommittee meeting pack documents provided to any board subcommittee of a Defendant relating to any decisions to Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those packs were prepared for:
- (a) the 2015/2016 Season;
 - (b) the 2014/2015 Season and the month before it;
 - (c) the period between 1 December 2008 and 15 January 2009; and
 - (d) the period between 26 April 2017 to 24 May 2017.

B.5 Documents provided to or created by Fonterra management

7. Fonterra Management Team meeting pack documents relating to any decisions to forecast, Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those packs were prepared for:
- (a) the 2015/2016 Season;
 - (b) the 2014/2015 Season and the month before it;
 - (c) the period between 1 December 2008 and 15 January 2009; and
 - (d) the period between 26 April 2017 to 24 May 2017.



8. Fonterra Australian Leadership Team meeting pack documents relating to any decisions to Set, hold or change the Australian Farmgate Milk Price in the periods described in subparagraphs (a) to (d) below, and the minutes of the meetings those packs were prepared for:
 - (a) the 2015/2016 Season;
 - (b) the 2014/2015 Season and the month before it;
 - (c) the period between 1 December 2008 and 15 January 2009; and
 - (d) the period between 26 April 2017 to 24 May 2017.
- 8a. Any notes or other hard copy communications, whether handwritten or typed, provided to or created by any member of the Fonterra Australian Leadership Team relating to any decision to Set, hold or change the Australian Farmgate Milk Price in the 2015/16 Season.
9. Any milk price review meeting pack documents in the periods described in subparagraphs (a) to (d) below, and any minutes or notes of the meetings those packs were prepared for:
 - (a) the 2015/2016 Season;
 - (b) the 2014/2015 Season and the month before it;
 - (c) the period between 1 December 2008 and 15 January 2009; and
 - (d) the period between 26 April 2017 to 24 May 2017.
- 9a. Any notes or other hard copy communications, whether handwritten or typed, provided or created in relation to any milk price review meeting relating to any decision to Set, hold or change the Australian Farmgate Milk Price in the 2015/16 Season.



B.6 A document or documents recording or describing any formulae used to set the Australian Farmgate Milk Price

10. A document or documents recording or describing any formulae used to set the Australian Farmgate Milk Price in:

- (a) the period between 1 June 2014 and 23 September 2016; and
- (b) the period between 1 December 2008 and 15 January 2009.

B.7 A document or documents recording or describing any formulae used to produce Income Estimates

11. A document or documents recording or describing any formulae used to produce Income Estimates for the Plaintiffs in respect of:

- (a) the period between 1 June 2014 and 23 September 2016; and
- (b) the period between 1 December 2008 and 15 January 2009.

B.8 A document or documents recording the actual volume and composition of milk supplied

12. A document or documents recording the actual volume and composition of milk supplied by the Plaintiffs to Fonterra over the 2015/2016 Season.

13. A document or documents recording the actual volume and composition of milk supplied in the Regions to Fonterra over the whole 2015/2016 Season, and in each of May 2016 and June 2016 respectively.



B.9 A document or documents recording Fonterra's estimate of the volume and composition of milk to be supplied

14. A document or documents recording Fonterra's most recent estimate prior to 5 May 2016 of the volume and composition of milk to be supplied by the Plaintiffs to Fonterra in respect of the whole 2015/2016 Season, and in each of May 2016 and June 2016 respectively.

15. A document or documents recording Fonterra's most recent estimate prior to 5 May 2016 of the volume and composition of milk to be supplied in the Regions to Fonterra over the 2015/2016 Season, and in each of May 2016 and June 2016 respectively.

B.10 Documents recording or evidencing communications in meetings with the Plaintiffs

16. Documents (excluding emails and email attachments, and including file notes, diary entries or other documents, whether handwritten or typed) recording or evidencing communications in face-to-face meetings between any directors, officers, employees or agents of Fonterra (on the one hand) and one or both of the Plaintiffs (on the other) relating to the Australian Farmgate Milk Price in the period from 1 June 2015 to 30 September 2016.

17. Documents (excluding emails and email attachments, and including file notes, diary entries or other documents, whether handwritten or typed) recording or evidencing communications in face-to-face meetings between any directors, officers, employees or agents of Fonterra (on the one hand) and any group of five or more suppliers of which one or both of the Plaintiffs were members (on



the other) relating to the Australian Farmgate Milk Price in the period from 1 June 2015 to 30 September 2016.

B.11 Communications to Farmers

18. Documents recording or evidencing standardised communications between Fonterra and all Farmers in the Regions (or all Farmers in a Region) relating to any decisions to Set, hold or change the Australian Farmgate Milk Price in:
 - (a) the period between 1 June 2014 to 23 September 2016;
 - (b) the period between 1 December 2008 and 10 January 2009; and
 - (c) the period between 26 April 2017 to 24 May 2017.

19. Documents (excluding emails and email attachments) recording or evidencing communications between Fonterra and the Plaintiffs relating to any decisions to Set, hold or change the Australian Farmgate Milk Price in:
 - (a) the period between 1 June 2014 to 23 September 2016;
 - (b) the period between 1 December 2008 and 10 January 2009; and
 - (c) the period between 26 April 2017 to 24 May 2017.



B.11a Communications at cluster meetings

19a. Documents (excluding emails and email attachments) recording or evidencing communications between Fonterra and group members at cluster meetings in the Regions during or in relation to the 2015/2016 Season.

B.12 Documents provided by Fonterra to the ACCC in the 2016 Pricing Investigation

20. Documents (excluding correspondence to the ACCC which is purely administrative) provided by Fonterra to the ACCC in the 2016 Pricing Investigation.

20a. Any notices issued by the ACCC to Fonterra under s 155 of the Competition and Consumer Act 2010 (Cth) in the 2016 Pricing Investigation.

B.13 Transcripts of ACCC examinations

21. Transcripts of any examinations conducted by the ACCC as part of:
- (a) the Dairy Inquiry, to the extent that the transcript relates to the May 2016 Price Decrease or the Australian Farmgate Milk Price; and
 - (b) the 2016 Pricing Investigation.

