



FORM 5A

Rule 5.02(1)

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

Case: S ECI 2021 03645

Filed on: 05/10/2021 03:41 PM

No.

B E T W E E N

JAKE THOMAS

Plaintiff

and

THE A2 MILK COMPANY LIMITED (ARBN 158 331 965)

Defendant

WRIT

Date of Document:	5 October 2021	Solicitors Code: 339
Filed on behalf of:	The Plaintiff	DX: 229
Prepared by:	Slater and Gordon Level 12, 485 La Trobe St Melbourne VIC 3000	Telephone: (03) 8644 8474 Ref: M643194 Email: Kaitlin.Ferris@slatergordon.com.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff 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 [####]

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.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

No. S ECI

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STATEMENT OF CLAIM

Date of Document:	5 October 2021	Solicitors Code: 339
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Prepared by:	Slater and Gordon Level 12, 485 La Trobe St Melbourne VIC 3000	Telephone: (03) 8644 8474 Ref: M6431194 Email: Kaitlin.Ferris@slatergordon.com.au

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NOTE:

In this statement of claim, the following conventions are used in referring to financial results:

- (a) FY20, FY21, etc refer to the financial years ended 30 June 2020, 30 June 2021, etc;
- (b) 1H, 2H refer to the first half and second half of the relevant financial year (1H20 being the six-month period ended 31 December 2019, 2H20 being the six-month period ended 30 June 2020, etc.);
- (c) 1Q, 2Q, 3Q, 4Q refer to the quarters of the relevant financial year (2Q20 being the three-month period ended 31 December 2019, 3Q20 being the three-month period ended 31 March 2020, etc.).

All references to currency (including the symbol '\$') are to New Zealand Dollars unless otherwise stated.

The defined terms are set out in Annexure B to this statement of claim.

A. THE PARTIES AND GROUP MEMBERS

A.1 The Plaintiff and Group Members

- 1. Jake Thomas (**Plaintiff**) commences this proceeding as a group proceeding pursuant to Part

4A of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of all the Group Members.

2. The Plaintiff and the persons he represents (**Group Members**) are persons who or which:
 - (a) at any time during the period from 19 August 2020 to 9 May 2021 inclusive (**Relevant Period**) acquired an interest in fully paid ordinary shares in the Defendant, The a2 Milk Company Limited (**a2** or the **Company**) by buying those shares on either:
 - (i) the Australian Securities Exchange (**ASX**); or
 - (ii) the NZSX Main Board (**NZSX**); and
 - (b) suffered loss or damage by or resulting from the conduct of a2 alleged in this statement of claim; and
 - (c) were not during any part of the Relevant Period, and were not as at the date of commencement of this proceeding:
 - (i) a director or officer of a2, or a close associate (as defined by s 9 of the *Corporations Act 2001* (Cth)) (**Corporations Act**) of such a person; or
 - (ii) a related party (as defined in s 228 of the *Corporations Act*) of a2; or
 - (iii) a related body corporate (as defined in s 50 of the *Corporations Act*) of a2; or
 - (iv) an associated entity (as defined in s 50AAA of the *Corporations Act*) of a2; or
 - (v) related, within the meaning of s 291A(1)(a), (b), (c), (d) or (e) of the *Companies Act 1993* (NZ) (**Companies Act**), to a2; or
 - (vi) a Chief Justice, Justice, Associate Justice or Registrar of the Supreme Court of Victoria or the High Court of Australia.

Particulars

- (i) Particulars of the Plaintiff's transactions during the Relevant Period are set out in Annexure A to this statement of claim.
 - (ii) Particulars of the transactions of the Group Members during the Relevant Period will be provided after the trial and determination of the common questions.
3. As at the date of the commencement of this proceeding there were more than seven Group Members.

A.2 The business of a2

4. At all material times, a2:

- (a) was and is a company incorporated under the Companies Act and capable of being sued;
- (b) was and is a body corporate incorporated in Australia and carrying on a business within Australia and engaged in conduct outside Australia (namely in New Zealand) within the meaning of s 5(1)(g) of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
- (c) was and is a registered foreign company under Part 5B.2 of the Corporations Act;
- (d) was and is included in the official list of the ASX, being a financial market operated by ASX Limited;
- (e) was and is included in the NZSX, being a licensed market within the meaning of s 6(1) of the *Financial Markets Conduct Act 2013* (NZ) (**FMC Act**) operated by NZX Limited;
- (f) was and is a party to a listing agreement with NZX Limited, which is a licensed market operator within the meaning of that term in s 6(1) of the FMC Act;
- (g) had and has on issue ordinary shares (**a2 Securities**) which were and are:
 - (i) traded on the ASX under the ticker code "A2M";
 - (ii) traded on the NZSX under the ticker code "ATM";
 - (iii) ED securities within the meaning of s 111AE of the Corporations Act;
 - (iv) quoted ED securities within the meaning of s 111AM of the Corporations Act;
 - (v) a financial product within the meaning of s 763A(1)(a) and s 764(1)(a) of the Corporations Act and s 12BAA(1)(a) and s 12BAA(7)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (vi) a financial service for the purpose of Division 2 of Part 1 of the ASIC Act by reason of s 12BAB(1AA) of the ASIC Act;
 - (vii) a financial product within the meaning of s 7 and s 18 of the FMC Act;
 - (viii) quoted financial products within the meaning of s 6 and s 19(2) of the FMC Act;
 - (ix) able to be acquired and sold by investors and potential investors in a2 Securities on the ASX and NZSX.

- (h) as the issuer of the a2 Securities, has been and is:
 - (i) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
 - (ii) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
 - (iii) subject to the requirements of s 674 of the Corporations Act;
 - (iv) a listed issuer within the meaning of s 6(1) of the FMC Act;
 - (v) subject to and bound by the Listing Rules of the NZSX (**NZSX Listing Rules**);
 - (vi) subject to the requirements of s 270 of the FMC Act;
- (i) was and is a person within the meaning of:
 - (i) s 1041H of the Corporations Act;
 - (ii) s 12DA of the ASIC Act;
 - (iii) s 18 of the Australian Consumer Law being Schedule 2 of the CCA, as applicable pursuant to:
 - A. s 131 of CCA;
 - B. s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
 - C. s 28 of the *Fair Trading Act 1987* (NSW);
 - D. s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - E. s 16 of the *Fair Trading Act 1989* (Qld);
 - F. s 16 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - G. s 19 of the *Fair Trading Act 2010* (WA);
 - H. s 14 of the *Fair Trading Act 1987* (SA); and/or
 - I. s 27 of the *Consumer Affairs and Fair Trading Act* (NT),

(individually or together, the **Australian Consumer Law**);
 - (iv) s 19 of the FMC Act;
 - (v) s 9 of the *Fair Trading Act 1986* (NZ) (**FT Act**).

B. a2'S CONTINUOUS DISCLOSURE OBLIGATIONS

B.1 Australian Continuous Disclosure Obligations

5. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to the a2 Securities, for the purposes of s 674(1) of the Corporations Act.
6. At all material times, s 674(2) of the Corporations Act applied to a2 by reason of:
 - (a) the matters set out in paragraphs 4(a) to 4(f) and 4(h) above; and
 - (b) ss 111AP(1) and/or s 674(1) of the Corporations Act.
7. At all material times, there existed a market of investors and potential investors in a2 Securities on the ASX (**a2 Securities Market**).
8. At all material times, Rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rules 3.1A apply, immediately tell ASX Limited that information.
9. At all material times, Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
10. At all material times, Rule 19.3 of the ASX Listing Rules and s 677 of the Corporations Act had the effect that, for the purpose of Rule 3.1 of the ASX Listing Rules, a reasonable person would be taken to expect information to have a material effect on the price or value of an entity's securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the entity's securities.
11. At all times during the Relevant Period until 22 March 2021, Rule 3.1 of the ASX Listing Rules was affected by s 674(2) of the Corporations Act, as modified by the *Corporations (Coronavirus Economic Response) Determination (No. 2) 2020* and the *Corporations (Coronavirus Economic Response) Determination (No. 4) 2020* (together, **Coronavirus Determinations**) with the effect that an entity was required to notify ASX Limited of information within the meaning of Rule 3.1 if:
 - (a) that information was not generally available; and
 - (b) the entity knew, or was reckless or negligent with respect to whether, that information

would, if it were generally available, have a material effect on the price or value of the ED Securities of that entity.

12. At all times during the Relevant Period until 22 March 2021, by reason of s 677 of the Corporations Act (as modified by the Coronavirus Determinations), for the purpose of s 674(2) of the Corporations Act (as modified by the Coronavirus Determinations), an entity knew, or was reckless or negligent with respect to whether, information would have a material effect on the price or value of ED Securities of the entity, if the entity knew, or was reckless or negligent with respect to whether, the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED Securities.
13. At all times during the Relevant Period after 23 March 2021, Rule 3.1 of the ASX Listing Rules required an entity to notify ASX Limited of information within the meaning of Rule 3.1 if:
 - (a) that information was not generally available; and
 - (b) that information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of that entity.
14. At all times during the Relevant Period after 23 March 2021, by reason of s 677 of the Corporations Act, for the purpose of s 674(2) of the Corporations Act, a reasonable person would be taken to expect information to have a material effect on the price or value of ED securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of the ED securities.

B.2 New Zealand Continuous Disclosure Obligations

15. During the Relevant Period, once a2 became aware of any information that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of a2 Securities, and which related to a2 Securities or a2 rather than to financial products or listed issuers generally, a2 was required by Rule 3.1.1 of the NZSX Listing Rules to promptly and without delay release that information through the NZSX market announcement platform, except if and when the exception in Rule 3.1.2 applied to the information.
16. Pursuant to Rule 3.1.1. the NZSX Listing Rules and therefore s 270 of the FMC Act, a2 became aware of information if, and as soon as, a Director or Senior Manager (each as defined) of a2 had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties.
17. During the Relevant Period, whenever a2 was required by Rule 3.1.1 of the NZSX Listing Rules

to release information through the NZSX market announcement platform, a2 was also required by s 270 of the FMC Act to release that information through the NZSX market announcement platform.

18. At all material times, there existed a market of investors and potential investors in a2 Securities on the NZSX (also, **a2 Securities Market**).

C. a2'S BUSINESS

C.1 a2's Directors, Officers and Senior Managers

19. Geoffrey Babidge was from about April 2014 to 16 July 2018 the Managing Director and Chief Executive Officer of a2 and between 9 December 2019 until 8 February 2021 the Interim Chief Executive Officer of a2.
20. David Bortolussi was from 8 February 2021 and at all times thereafter during the Relevant Period the Managing Director and Chief Executive Officer of a2.
21. Race Strauss was at all times during the Relevant Period the Chief Financial Officer of a2.
22. Peter Nathan was at all times during the Relevant Period the Chief Executive of the Asia Pacific Region at a2.
23. Shareef Khan was at all times during the Relevant Period the Chief Operating Officer of a2.
24. Jaron McVicar at all times during the Relevant Period the Company Secretary and General Counsel of a2.
25. Susan Massasso was from 24 February 2020 until 15 April 2021 the Chief Growth and Brand Officer of a2.
26. Lisa Burquest was from around November 2018 until 18 January 2021 the Chief People, Safety and Sustainability Officer of a2.
27. Li Xiao was at all times during the Relevant Period the Chief Executive of Greater China Region at a2.
28. David Hearn was at all times during the Relevant Period the Chairman of the Board, and a non-executive director of a2.
29. Julia Hoare was at all times during the Relevant Period the Deputy Chair of the Board, and an independent non-executive director of a2.

30. Each of Jesse Wu, Pip Greenwood and Warwick Every-Burns was at all times during the Relevant Period an independent non-executive director of a2, and Bessie Lee was an independent non-executive director from 26 February 2021 and all times thereafter during the Relevant Period.
31. During the period in which they held their respective positions:
- (a) each of Geoffrey Babidge, David Bortolussi, Race Strauss, Peter Nathan, Shareef Khan, Jaron McVicar, Susan Massasso, Lisa Burquest and Li Xiao (**a2 Executives**) and David Hearn, Julia Hoare, Jessie Wu, Pip Greenwood, Warrwick Every-Burns and Bessie Lee (**Non Executive Directors**) was an officer of a2 within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 (together, the **a2 Officers**); and
 - (b) any information which any of the a2 Officers came into possession of, or which ought reasonably to have come into their possession in the course of the performance of their respective duties, was information of which a2 was aware (as awareness is defined in ASX Listing Rule 19.12).
32. During the period in which they held their respective positions:
- (a) each of the a2 Executives was a senior manager of a2 within the meaning of s 6 of the FMC Act; and
 - (b) David Bortolussi and each of the Non Executive Directors was a director of a2 within the meaning of the NZSX Listing Rules; and
 - (c) any information of which any of the a2 Executives or Non Executive Directors came into possession of, or which ought reasonably to have come into their possession in the course of the performance of their respective duties, was information which a2 was aware of for the purposes of Rule 3.1.1 of the NZSX Listing Rules, and therefore s 270 of the FMC Act.

C.2 a2's Business

33. a2 carries on a business of selling branded products made with milk from cows that produce milk naturally containing only the A2 protein type, including infant formula products, liquid milk and other nutrition products.
34. a2 was organised into business units based on geographical location, and had four reportable operating **Segments** as follows:
- (a) the *Australia and New Zealand* segment (**Aus NZ Segment**), which received external revenue from sales of infant formula products, liquid milk and other dairy products in

Australia and New Zealand, and royalty and licence fee income;

- (b) the *China and Other Asia* segment (**China Segment**), which received external revenue from sales of infant formula products, liquid milk and other dairy products in China and other parts of Asia;
 - (c) the *USA* segment, which received external revenue from sales of liquid milk in the USA;
 - (d) the *UK* segment, which was discontinued in FY20.
35. a2 sold infant formula products with Chinese language labels (**Chinese Label Infant Formula Products**) and infant formula products with English language labels (**English Label Infant Formula Products**).
36. a2 derived the majority of its revenue from sales of infant formula products, the majority of which was derived from sales of English Label Infant Formula Products.

Particulars

a2 reported revenue figures in its 2020 Annual Report published to the ASX and NZSX on 19 August 2020 (**2020 Annual Report**) which showed that:

- (a) sales of infant formula products contributed approximately 82% of a2's revenue in FY20, page 70;
 - (b) sales of English Label Infant Formula Products in the Aus NZ Segment and China Segment contributed at least 62.8% of a2's revenue in FY20, page 70; and
 - (c) sales of Chinese Label Infant Formula Products contributed approximately 19.4% of a2's revenue in FY20, page 70.
37. a2 sold:
- (a) English Label Infant Formula Products:
 - (i) through retailers in Australia and New Zealand including supermarkets;
 - (ii) to resellers based in Australia and New Zealand; and
 - (iii) through cross-border e-commerce channels, which were online retailing platforms hosting multiple stores;
 - (b) Chinese Label Infant Formula Products:
 - (i) through retail outlets in China, including mother and baby stores and modern supermarkets; and
 - (ii) through Chinese domestic e-commerce retail channels.

38. a2's English Label Infant Formula Products were available for purchase by end-consumers in China via the following channels:
- (a) retail resellers, also referred to as retail 'daigou' (**retail daigou resellers**) who purchased the products in Australia or New Zealand, predominantly through retailers, and sold those products to end-consumers in China;
 - (b) corporate resellers, also referred to as corporate 'daigou' (**corporate daigou resellers**) who purchased the products in Australia or New Zealand, predominately directly from a2, and sold those products to end-consumers in China; and
 - (c) cross-border e-commerce channels, including the Tmall and JD.com sites, which stocked a2 product for purchase by end-consumers in China.

Particulars

a2 reported in its 2020 Annual Report that:

- (a) its sales of English Label Infant Formula Products to China via the cross-border e-commerce channel in FY20 totalled \$341.1m, page 17;
- (b) on Tmall, it was the second best-selling cross-border e-commerce infant milk formula brand overall and the number one cross-border e-commerce flagship store, page 17; and
- (c) on JD.com, for a particular sales event, it was the bestselling cross-border e-commerce infant milk formula brand overall, page 17.

D. REPRESENTATIONS FOLLOWED BY CORRECTIVE DISCLOSURES AND SHARE PRICE FALLS

D.1 Representations: Summary

39. Between 19 August 2020 and 25 February 2021, a2 made four Representations:
- (a) On 19 August 2020, a2 made the **August 2020 Growth Representations** (pleaded, particularised and defined at paragraph 53 below) to the effect that a2 expected "continued strong revenue growth for FY21" and that a2's FY21 total earnings before interest, taxes, depreciation and amortisation (**EBITDA**) to sales margin (**EBITDA margin**) was expected to be 30% to 31%.
 - (b) On 28 September 2020, a2 made the **September 2020 Growth Representations** (pleaded, particularised and defined at paragraph 71 below) to the effect that a2 expected group revenue for FY21 of \$1.80bn to \$1.90bn and group FY21 EBITDA margin in the order of 31%.

- (c) On 18 December 2020, a2 made the **December 2020 Representations** (pleaded, particularised and defined at paragraph 89 below) to the effect that a2 expected group revenue for FY21 of \$1.40bn to \$1.55bn and group FY21 EBITDA margin of between 26% to 29%.
- (d) On 25 February 2021, a2 made the **February 2021 Representations** (pleaded, particularised and defined at paragraph 107 below) to the effect that a2 expected group revenue for FY21 in the order of \$1.40bn and group FY21 EBITDA margin of between 24% to 26%.

D.2 Partial Disclosures and Corrective Disclosures

- 40. Between 28 September 2020 and 10 May 2021, a2 published three partial corrective disclosures and one corrective disclosure (defined below) which related to the subject matter of the August 2020 Growth Representations, the September 2020 Growth Representations, the December 2020 Representations and the February 2021 Representations.
- 41. On 28 September 2020, a2 published and lodged with the ASX and NZSX a document in which it stated that it expected to achieve:
 - (a) group revenue for 1H21 of \$725m to \$775m; and
 - (b) group revenue for FY21 of \$1.80bn to \$1.90bn,(together, the **September 2020 Partial Disclosure**).

Particulars

The September 2020 Partial Disclosure was express and contained in the a2 ASX and NZSX announcement dated 28 September 2020 entitled “Updated FY21 Outlook” (**September Update Announcement**).

- 42. On 18 December 2020, a2 published and lodged with the ASX and NZSX a document and made accompanying comments in a call with analysts and investors in which it stated that:
 - (a) it expected to achieve lower revenue and EBITDA margins than previously reported, as follows:
 - (i) group revenue for 1H21 in the order of \$670m;
 - (ii) group revenue for FY21 of \$1.40bn to \$1.55bn; and
 - (iii) group EBITDA margin for FY21 of between 26% to 29%;
 - (b) the sales disruption the Company was experiencing in the reseller channel was having

a significant impact on its cross-border e-commerce channel sales;

- (c) the Company had materially lowered its sales forecasts for both the corporate and retail daigou reseller and the cross-border e-commerce channels for the remainder of FY21; and
- (d) the Company intended to strengthen its focus on reactivating the corporate and retail daigou resellers channel in 2H21,

(together, the **December 2020 Partial Disclosure**).

Particulars

The December 2020 Partial Disclosure was express and contained in the a2 ASX and NZSX announcement dated 18 December 2020 entitled "Updated 1H21 and FY21 guidance" (**December 2020 Update Announcement**) and in the a2 December 2020 Update Announcement Earnings Call with analysts and investors dated 18 December 2020 (**December 2020 Call**).

43. On 25 February 2021, a2 published and lodged with the ASX and NZSX a series of documents and made accompanying comments in a call with analysts and investors in which it stated that:

- (a) it expected to achieve lower revenue and EBITDA margins than previously reported, as follows:
 - (i) group revenue for FY21 in the order of \$1.40bn; and
 - (ii) group EBITDA margin for FY21 of between 24% to 26%;
- (b) the amelioration of some COVID-19 impacts had not improved sales performance in the corporate and retail daigou reseller channels, such that the Company had pulled back English Label Infant Formula Products from the Aus NZ Segment and China Segment;
- (c) the Company was booking a stock provision of \$23.3m in 1H21;
- (d) subdued online pricing and channel inventory unwinding had resulted in a decline in corporate and retail daigou reseller sales; and
- (e) the Company intended to provide temporary support to corporate and retail daigou resellers which would impact its EBITDA margin,

(together, the **February 2021 Partial Disclosure**).

Particulars

- (i) The February 2021 Partial Disclosure was express and contained in the a2

ASX and NZSX announcement dated 25 February 2021 entitled “HY21 Results Commentary” (**February 2021 Update Announcement**) and the a2 ASX and NZSX announcement dated 25 February 2021 entitled “1H21 Results Presentation”.

- (ii) As to sub-paragraph 43(b) the Plaintiff refers to a2’s statement in the February 2021 Update Announcement that it was “*actively rebalancing inventory in the channel and continuing to refine its promotional approach*”, pages 3 to 4.

44. On 10 May 2021, a2 published and lodged with the ASX and NZSX a trading update, which stated that:

- (a) it expected to achieve lower revenue and EBITDA margins than previously reported, as follows:

- (i) group revenue for FY21 in the order of \$1.20bn to \$1.25bn; and

- (ii) group EBITDA margin for FY21 of between 11% to 12%;

- (b) the Board had tasked management to undertake a comprehensive review of inventory in the trade and this work had indicated that the level of channel inventory was higher than had been anticipated;

- (c) challenges in the corporate and retail daigou reseller and cross-border e-commerce channels had been exacerbated by excess inventory and difficulties with visibility;

- (d) English Label Infant Formula Product sales in 3Q21 had declined significantly against prior corresponding periods;

- (e) Chinese Label Infant Formula Product sales in 3Q21 had declined significantly against prior corresponding periods;

- (f) rebalancing inventory by further reducing sell-in to the corporate and retail daigou reseller and cross-border e-commerce channels would need to continue for the rest of 4Q21 and this may continue into 1Q22;

- (g) the Company was booking a further stock provision of \$80m to \$90m in FY21,

(together, the **May 2021 Corrective Disclosure**).

Particulars

- (i) a2 ASX announcement dated 10 May 2021 entitled “Trading Update and Revised FY21 Outlook” (**May 2021 Update Announcement**).

- (ii) As to sub-paragraph 44(d), English Label Infant Formula Product sales in 3Q21:
 - (a) in the Aus NZ Segment were \$99.5m, an 11% decline on 2Q21 and a 56% decline on 3Q20; and
 - (b) in the China Segment were \$22.1m, a 57% decline on 2Q21 and 77% decline on 3Q20.

D.3 Share price falls after disclosures

45. Following the September 2020 Partial Disclosure, a2's share price fell:

- (a) by 11.42% on the ASX; and
- (b) by 9.71% on the NZSX.

46. Following the December 2020 Partial Disclosure, a2's share price fell:

- (a) by 23.64% on the ASX; and
- (b) by 22.10% on the NZSX.

47. Following the February 2021 Partial Disclosure, a2's share price fell:

- (a) by 16.17% on the ASX; and
- (b) by 16.08% on the NZSX.

48. Following the May 2021 Corrective Disclosure, a2's share price fell:

- (a) by 13.11% on the ASX; and
- (b) by 12.78% on the NZSX.

E. AUGUST 2020 CONTRAVENTIONS

E.1 True Position at August 2020

49. As at 19 August 2020, a2's market for English Label Infant Formula Products possessed the following characteristics:

- (a) retail daigou resellers and corporate daigou resellers derived their profit from the margin between the price at which they purchased a2's English Label Infant Formula Products in Australia or New Zealand and the sale price those resellers were able to obtain from sales to end-consumers in China;

- (b) the ability of retail daigou resellers and corporate daigou resellers to sell a2's English Label Infant Formula Products to end-consumers in China depended upon the sale price offered by them to their end customers remaining competitive with the price at which a2's English Label Infant Formula Products were also available to those end-consumers in China from other sales channels (including cross border e-commerce sales);
- (c) an increase in the amount of stock supplied by a2 of English Label Infant Formula Products into China via cross-border e-commerce channels increased the amount of stock available for purchase by all end-consumers in China, including those end-consumers purchasing stock from retail daigou resellers and corporate daigou resellers, and as a result, was likely to cause a material reduction in the sale price of a2's infant formula products in China across all channels, including in the retail daigou reseller and corporate daigou reseller channels;
- (d) a reduction in the sale price at which a2's English Label Infant Formula Products were available to end-consumers in China, was likely to materially reduce the volume of sales of a2's English Label Infant Formula products to retail daigou resellers and corporate daigou resellers in the Aus NZ Segment;
- (e) the sales and marketing activities undertaken by retail daigou resellers and corporate daigou resellers of a2's English Label Infant Formula Products to end-consumers in China also stimulated demand for those products in China via cross-border e-commerce sales channels, including by recruiting new consumers of a2 English Label Infant Formula products;
- (f) any material reduction in the sale price of a2's infant formula products in China was likely to cause the retail daigou reseller and corporate daigou reseller channels to reduce the marketing undertaken by them of a2's English Label Infant Formula Products to end-consumers in China;
- (g) any reduction in marketing activities undertaken by retail daigou resellers and corporate daigou resellers of a2's English Label Infant Formula Products to end-consumers in China was likely to materially reduce the volume of sales of a2's English Label Infant Formula Products via cross-border e-commerce channels in the China Segment;
- (h) by reason of sub-paragraphs 49(a) to (g) above, an increase in sales of a2's English Label Infant Formula Products made via cross-border e-commerce channels in the China Segment was likely to have the impact of reducing the profit margin on and volume of sales made to retail daigou resellers and corporate daigou resellers in a2's Aus NZ Segment; and

- (i) by reason of sub-paragraphs 49(a) to (h) above, there was an inter-relationship and an interdependency between the sales channels through which end-consumers in China could purchase a2's English Label Infant Formula Products, which required a2 to manage the overall total volume of stock supplied through those channels as well as the ratio of stock supplied through each of those channels of English Label Infant Formula Products.

Particulars

- (i) In the a2 ASX and NZSX announcement dated 18 November 2020 entitled "AGM Presentation", a2 stated that:

"Our multi-channel approach is strategically important with each channel playing an interrelated role. Despite short term challenges, we remain committed to the daigou channel which is an attractive pathway to consumers in China and builds brand awareness which stimulates demand across multiple sales channels", page 15.

- (ii) In the December 2020 Update Announcement a2 confirmed that reduced marketing activity by corporate daigou resellers and retail daigou resellers had caused a decline in sales performance in the cross-border e-commerce channel:

"Notwithstanding our recent focus on activating the CBEC channel in a manner which complements our daigou business, the disruption we are experiencing in the daigou channel is now having a more significant impact in CBEC. As previously noted, the daigou channel plays an important role in stimulating demand across multiple sales channels, including CBEC", page 1.

- (iii) Each of the matters in (i) to (ii) above were observable by and known to a2 in the period prior to the dates on which a2 referred to them in publications and announcements.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

50. As at 19 August 2020:

- (a) since at least 3Q20, a2 had increased the volume of stock of English Label Infant Formula Products it supplied for sale in China through the cross-border e-commerce channel;
- (b) underlying consumer demand for a2's English Label Infant Formula Products in China was not growing at a sufficiently high rate to absorb the increased volume of stock of English Label Infant Formula Products available for sale in China;

- (c) the oversupply of English Label Infant Formula Products in China was likely to cause a material reduction in the sale price of a2's English Label Infant Formula Products in China;
- (d) the reduction in the sale price of a2's English Label Infant Formula Products in China was likely to cause a material reduction in the volume of sales of a2's English Label Infant Formula Products to retail daigou resellers and corporate daigou resellers in the Aus NZ Segment,

(the matters pleaded in paragraphs 49 and 50 constitute the **August 2020 a2 China Market Conditions**).

Particulars

- (i) During the December 2020 Call Geoffrey Babidge said that a2's poor sales performance in the corporate daigou resellers and retail daigou reseller channel was a consequence of increasing the volume of stock sold to the cross-border e-commerce channel and consequent price deflation:

"As we indicated, the reality is that there is a strong interplay between CBEC and daigou. And the fact of the matter is that the price – we haven't been able to get the pricing level to where we need to for daigou to drive incremental volume that we would have required to hit the forecast, and that's largely due to the fact that CBEC – the ratios of CBEC and daigou are not where they need to be for us to deliver on that", page 5.

- (ii) During the a2 February Earnings Update Call with analysts and investors which took place on 25 February 2021 (**February 2021 Call**), Geoffrey Babidge said that a2 needed to reverse its oversupply of the cross-border e-commerce channel in order to lift the price of goods in the China Segment, and in turn stimulate demand amongst corporate daigou resellers and retail daigou resellers:

"The other point to make is that the extent to which pricing is uplifted is a consequence of reduced inventory. And therefore, what we're saying is that the inventory that we need going forward will be lower than what it has been in the past in order to uplift the daigou pricing", page 7.

- (iii) In the February 2021 Update Announcement a2 stated that subdued online pricing and channel inventory unwinding had resulted in a decline in corporate daigou reseller sales and retail daigou reseller sales, page 4.
- (iv) In the May 2021 Update Announcement, a2 stated that it was working with customers and distributors to improve the dating of inventory in the Aus NZ Segment and China Segment, including reducing sell-in to the cross-border e-commerce channel to restore the overall health of the cross-border e-

commerce and corporate daigou reseller and retail daigou reseller channels, page 3.

- (v) Each of the matters in (i) to (iv) above were observable by and known to a2 in the period prior to the dates on which a2 referred to them in publications and announcements.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

51. As at 19 August 2020, the August 2020 a2 China Market Conditions were likely to:
- (a) reduce the volume of a2's sales in the Aus NZ Segment;
 - (b) reduce the volume of a2's sales in the China Segment;
 - (c) have a material negative impact on a2's financial performance in future periods; and
 - (d) create a material risk that a2 would not achieve continued strong revenue growth, or an EBITDA margin of 30% to 31% in FY21,

(together, the **August 2020 a2 China Market Information**).

E.2 August 2020 Growth Representations

52. On 19 August 2020, a2 announced its FY20 results, which included:
- (a) total revenue of \$1.73bn;
 - (b) revenue growth of 32.8% from FY19;
 - (c) EBITDA of \$549.7m;
 - (d) EBITDA margin of 31.7%;
 - (e) revenue from sale of all infant formula products of \$1.42bn;
 - (f) total English Label Infant Formula Product sales of \$1.09bn (representing 62.8% of a2's total sales of all products)
 - (g) total Aus NZ Segment sales of \$965m, including English Label Infant Formula Product sales of \$745m (representing 43.1% of a2's total sales of all products); and
 - (h) total China Segment sales of \$699.3m, including:
 - (i) English Label Infant Formula Product Sales of \$341.1m (representing 19.7% of a2's total sales from all products).

- (ii) Chinese Label Infant Formula Product sales of \$337.7m (representing 19.4% of a2's total sales from all products);

Particulars

2020 Annual Report, pages 12, 69 and 70.

53. On 19 August 2020, a2 published and lodged with the ASX and NZSX documents by which a2 represented that:

- (a) notwithstanding the uncertainty resulting from COVID-19, a2 expected continued strong revenue growth for FY21;
- (b) FY21 EBITDA margin was expected to be 30% to 31%,

(together, the **August 2020 Growth Representations**).

Particulars

- (i) a2 ASX and NZSX announcement dated 19 August 2020 entitled "Results Commentary FY20: Strong financial results and execution continuing", pages 2 and 9.
- (ii) a2 ASX and NZSX announcement dated 19 August 2020 entitled "2020 Annual Results Presentation", page 28.
- (iii) 2020 Annual Report, page 21.

54. The August 2020 Growth Representations were continuing representations that were maintained by a2 from 19 August 2020 until the making of the May 2021 Corrective Disclosure at the end of the Relevant Period, other than to the extent that the August 2020 Growth Representations were partially qualified by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure and February 2021 Partial Disclosure.

E.3 August 2020 Misleading or Deceptive Conduct

55. As at 19 August 2020 (and at all material times afterwards), a2 knew or ought to have known the August 2020 a2 China Market Conditions.

Particulars

- (i) At all material times, a2 had systems and processes to track its sales and financial performance, including by:
 - (a) tracking the sales in the cross-border e-commerce channel using Smartpath data;
 - (b) tracking the sales in the mother and baby store channel using Nielsen

scan data;

- (c) monitoring the operating results of its business units and operating Segments;
- (d) monitoring receivable balances on an ongoing basis; and
- (e) assessing the financial position of a2 for the purpose of facilitating compliance with relevant financial reporting and accounting standards,

(together, the **a2 Monitoring Systems**).

- (ii) It can be inferred that a2 knew or ought to have known the August 2020 a2 China Market Conditions from the fact that a2 ultimately identified these matters in each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

56. To the extent the August 2020 Growth Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations and the Plaintiff relies on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

Particulars

The Plaintiff refers to and repeats paragraphs 49,50 and 55 and the particulars thereto.

57. By making the August 2020 Growth Representations, a2 engaged in conduct which was misleading and deceptive because:

- (a) the August 2020 Growth Representations were not true and a2 did not have reasonable grounds for making the August 2020 Growth Representations; and
- (b) at all times during which the August 2020 Growth Representations were continuing, a2 also omitted to inform the market of the August 2020 a2 China Market Conditions (the **August 2020 Contravening Omission**); and
- (c) the August 2020 Contravening Omission had the effect that the market was deprived of the knowledge of information which rendered the August 2020 Growth Representations untrue.

58. The August 2020 Growth Representations were made:

- (a) in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
- (b) in relation to a financial product (being a2 Securities) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act;
- (c) in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
- (d) in trade or commerce within the meaning of s 9 of the FT Act; and
- (e) in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act.

59. By reason of the matters alleged in 49 to 58 above, on and from 19 August 2020 and at all material times thereafter until the end of the Relevant Period (to the extent they were not qualified or corrected):

- (a) by making the August 2020 Growth Representations to the ASX, a2 engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) s 12DA of the ASIC Act;
 - (ii) s 1041H of the Corporations Act; and/or
 - (iii) s 18 of the Australian Consumer Law;
- (b) by making the August 2020 Growth Representations to the NZSX, a2 engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) s 9 of the FT Act; and/or
 - (ii) s 19(2) of the FMC Act,

(the **August 2020 Misleading or Deceptive Conduct Contravention**).

E.4 August 2020 Continuous Disclosure Contravention

60. Further or alternatively, by 19 August 2020 one or more of the a2 Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules and for the purposes of Rule 3.1.1 of the NZSX Listing Rules, and therefore s 270 of the FMC Act) of the August 2020 a2 China Market Conditions and the August 2020 a2 China Market Information.

Particulars

- (i) As to the August 2020 a2 China Market Conditions, the Plaintiff refers to and repeats the particulars to paragraph 55.
- (ii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into the possession of the August 2020 a2 China Market Information in the proper performance of their duties by reason that:
 - (a) the a2 Officers knew the August 2020 a2 China Market Conditions; and
 - (b) a2 undertook regular reviews of the a2 Monitoring Systems and the financial performance of its operating Segments.
- (iii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the August 2020 a2 China Market Information from the fact that a2 ultimately identified these matters as reasons for the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iv) It can be inferred that based on their knowledge of the August 2020 a2 China Market Conditions that one or more a2 Officers had formed the opinion that there was a material risk that a2 would not achieve continued strong revenue growth, or an EBITDA margin of 30 to 31% in FY21.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

61. Each of:

- (a) the August 2020 a2 China Market Conditions; and
- (b) the August 2020 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 676 of the Corporations Act;
- (d) at all times during the Relevant Period until 22 March 2021:
 - (i) a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules;
 - (ii) a2 was reckless or negligent with respect to whether it would or would be likely to, if it were generally available, influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
 - (iii) a2 was reckless or negligent with respect to whether it would, if it were generally available, have a material effect on the price or value of a2 Securities within the

meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act as modified by the Coronavirus Determinations;

- (e) at all times during the Relevant Period from 23 March 2021, a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act.

Particulars

- (i) The August 2020 a2 China Market Conditions and August 2020 a2 China Market Information was material because it related to a2's future financial performance.
- (ii) The materiality of the August 2020 a2 China Market Conditions and August 2020 a2 China Market Information is to be inferred from the impact on a2's value and price of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iii) As to sub-paragraph 61(d), by reason of:
- (a) the awareness of one or more of the a2 Officers of the August 2020 a2 China Market Conditions and the August 2020 a2 China Market Information as pleaded in paragraph 60 above;
- (b) the materiality of the August 2020 a2 China Market Conditions and the August 2020 a2 China Market Information;
- (c) a2's incremental disclosure of information related to the subject matter of the August 2020 a2 China Market Conditions and the August 2020 a2 China Market Information by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
- (d) the price impact on a2 Securities of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure as pleaded in paragraphs 45 to 48 above,

it is to be inferred that a2:

- (e) was aware of a substantial risk that, if it were generally available, the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (f) was aware of a substantial risk that, if it were generally available, the information would have a material effect on the price or value of a2 Securities;

- (g) ought reasonably to have known or by the exercise of reasonable care would have known that the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (h) ought reasonably to have known or by the exercise of reasonable care would have known that the information would have a material effect on the price or value of a2 Securities.

Further particulars will be provided after discovery and the filing of expert reports.

62. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 60 to 61 above, on and from 19 August 2020, a2 become immediately obliged to inform the ASX of:

- (a) the August 2020 a2 China Market Conditions; and/or
- (b) the August 2020 a2 China Market Information.

63. a2 did not inform the ASX of:

- (a) the August 2020 a2 China Market Conditions; and/or
- (b) the August 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the August 2020 Growth Representations were partially qualified by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure and February 2021 Partial Disclosure.

64. By reason of the matters alleged in paragraphs 60 to 63, a2 contravened:

- (a) rule 3.1 of the ASX Listing Rules;
- (b) at all times from 19 August 2020 until 22 March 2021, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations; and
- (c) at all times from 23 March 2021 to 10 May 2021, s 674(2) of the Corporations Act.

65. Each of:

- (a) the August 2020 a2 China Market Conditions; and/or
- (b) the August 2020 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 232 of the FMC Act;
- (d) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of a2 Securities within the meaning of Rule 3.1.1 of the NZSX Listing Rules and s 231 of the FMC Act;
- (e) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

66. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 60 and 65 above, on and from 19 August 2020, a2 became immediately obliged to release to the NZSX, promptly and without delay:

- (a) the August 2020 a2 China Market Conditions; and/or
- (b) the August 2020 a2 China Market Information.

67. a2 did not inform the NZSX of:

- (a) the August 2020 a2 China Market Conditions; and/or
- (b) the August 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the August 2020 Growth Representations were partially qualified by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure and February 2021 Partial Disclosure.

68. By reason of the matters alleged in paragraphs 60 and 65 to 67 above, a2 contravened:

- (a) rule 3.1.1. of the NZSX Listing Rules; and
- (b) s 270 of the FMC Act,

(the matters pleaded in paragraphs 60 to 68 above constitute the **August 2020 Continuous Disclosure Contravention**).

F. SEPTEMBER 2020 CONTRAVENTIONS

F.1 True Position at September 2020

69. As at 28 September 2020:

- (a) the August 2020 a2 China Market Conditions remained in existence and were deteriorating, due primarily to a2 continuing to sell substantial quantities of English Label

Infant Formula Products through the cross-border e-commerce channel;

- (b) there was an excess of inventory of a2's English Label Infant Formula Products in a2's markets in Australia and New Zealand and in China, presenting a material risk that a2 would need to recognise a stock provision in respect of its inventory,

(together, the **September 2020 a2 China Market Conditions**).

Particulars

- (i) In its 2020 Annual Report, a2 reported that it finished FY20 with inventory of \$147.3m page 14.
- (ii) In the February 2021 Update Announcement a2 reported that it finished 1H21 with inventory of \$198.6m, \$51.2m higher than at the end of FY20.
- (iii) In the May 2021 Corrective Disclosure, a2 stated that it was recognising a stock provision of approximately \$80m to \$90m in order to:

“rebalance inventory by further reducing sell-in to the daigou/reseller and CBEC channels...this is also aimed at reducing customer and distributor inventory to target levels”,
page 3.

- (iv) An increase in inventory during a 6-month period between 19 August 2020 and 25 February 2021 of the magnitude of \$51.2m would have been observable to a2 by no later than 28 September 2020.
- (v) Each of the matters in (i) to (iv) above were observable by and known to a2 in the period prior to the dates on which a2 referred to them in publications and announcements

Further particulars will be provided following the completion of discovery and the filing of expert reports.

70. As at 28 September 2020, the September 2020 a2 China Market Conditions were likely to:

- (a) negatively impact a2's sales in the Aus NZ Segment;
- (b) negatively impact a2's sales in the China Segment;
- (c) materially adversely impact a2's financial performance in future periods;
- (d) create a material risk that a2 would not achieve:
- (i) group revenue for 1H21 of \$725m to \$775m;
- (ii) group revenue for FY21 of \$1.80bn to \$1.90bn;

- (iii) group FY21 EBITDA margin in the order of 31%; and
- (e) require a2 to reduce supply of English Label Infant Formula Product stock to the Aus NZ and China Segments, creating a material risk that it would need to recognise a stock provision,

(together, the **September 2020 a2 China Market Information**).

F.2 September 2020 Growth Representations

71. On 28 September 2020, a2 published and lodged with the ASX and NZSX a document in which it represented that:

- (a) it expected:
 - (i) group revenue for 1H21 of \$725m to \$775m;
 - (ii) group revenue for FY21 of \$1.80bn to \$1.90bn;
 - (iii) group FY21 EBITDA margin in the order of 31%;
- (b) the corporate and retail daigou reseller channel had been negatively impacted by disruptions caused by COVID-19 related restrictions, and that this short-term impact would prove to be temporary;
- (c) the decline of sales was contained to the corporate and retail daigou reseller channel, and sales in other channels would not be impacted by the decline in the reseller trade owing to continuing growth in underlying demand,

(together, the **September 2020 Growth Representations**).

Particulars

- (i) September Update Announcement, pages 1 to 2.
- (ii) a2's statement in the September Update Announcement that:

"We are of the view that this short-term impact to the daigou channel will prove to be temporary, assuming stabilisation of COVID-19 related issues in Australia", page 1.

- (iii) a2's statement in the September Update Announcement that:

"It should be noted that the sale of infant milk formula through the daigou channel is only one component of our multi-channel and multi-product sales strategy into China. Our growth plan assumes MBS and CBEC sales will represent an increasing

proportion of our infant nutrition business over time, driven by the continuing growth in underlying demand', page 2.

72. The September 2020 Growth Representations were continuing representations that were maintained by a2 from 28 September 2020 until the making of May 2021 Corrective Disclosure at the end of the Relevant Period, other than to the extent that they were partially qualified by each of the December 2020 Partial Disclosure and February 2021 Partial Disclosure.

F.3 September 2020 Misleading or Deceptive Conduct

73. As at 28 September 2020 (and at all material times afterwards), a2 knew or ought to have known the September 2020 a2 China Market Conditions.

Particulars

- (i) At all material times, a2 had systems and processes to track its sales and financial performance, including through the a2 Monitoring Systems.
- (ii) It can be inferred that a2 knew or ought to have known the September 2020 a2 China Market Conditions from the fact that a2 ultimately identified these matters in each of the December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

74. To the extent the September 2020 Growth Representations were representations as to future matters, a2 did not have reasonable grounds for making the representations and the Plaintiff relies on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

Particulars

The Plaintiff refers to and repeats paragraphs 69 and 73 and the particulars thereto.

75. By making the September 2020 Growth Representations, a2 engaged in conduct which was misleading and deceptive because:
- (a) the September 2020 Growth Representations were not true and a2 did not have reasonable grounds for the September 2020 Growth Representations;
 - (b) at all times during which the September 2020 Growth Representations were continuing, a2 also omitted to inform the market of the September 2020 a2 China Market Conditions (the **September 2020 Contravening Omission**); and
 - (c) the September 2020 Contravening Omission had the effect that the market was deprived

of the knowledge of information which rendered the September 2020 Growth Representations untrue.

76. The September 2020 Growth Representations were made:
- (a) in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
 - (b) in relation to a financial product (being a2 Securities) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act;
 - (c) in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
 - (d) in trade or commerce within the meaning of s 9 of the FT Act; and/or
 - (e) in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act.
77. By reason of the matters alleged in 69 to 75 above, on and from 28 September 2020 and at all material times thereafter until the end of the Relevant Period (to the extent they were not qualified or corrected):
- (a) by making the September 2020 Growth Representations to the ASX, a2 engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) s 12DA of the ASIC Act;
 - (ii) s 1041H of the Corporations Act; and/or
 - (iii) s 18 of the Australian Consumer Law;
 - (b) by making the September 2020 Growth Representations to the NZSX, a2 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
 - (i) s 9 of the FT Act; and/or
 - (ii) s 19(2) of the FMC Act,
- (the **September 2020 Misleading or Deceptive Conduct Contravention**).

F.4 September 2020 Continuous Disclosure Contravention

78. Further or alternatively, by 28 September 2020, one or more of the a2 Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules and for the purposes of Rule 3.1.1 of the NZSX Listing Rules, and therefore s 270 of the FMC Act) of the September 2020 a2 China Market Conditions and the September 2020 a2 China Market Information.

Particulars

- (i) As to the September 2020 a2 China Market Conditions, the Plaintiff refers to and repeats the particulars to paragraph 73.
- (ii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into the possession of the September 2020 a2 China Market Information in the proper performance of their duties by reason that:
 - (a) the a2 Officers knew the September 2020 a2 China Market Conditions; and
 - (b) a2 undertook regular reviews of the a2 Monitoring Systems and the financial performance of operating Segments.
- (iii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the September 2020 a2 China Market Conditions and September 2020 a2 China Market Information from the fact that a2 ultimately identified these matters as reasons for the December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iv) It can be inferred that based on its knowledge of September 2020 a2 China Market Conditions that one or more a2 Officers had formed the opinion that there was a material risk that the Company would not achieve revenue growth or an EBITDA margin consistent with the September 2020 Growth Representations.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

79. Each of:

- (a) the September 2020 a2 China Market Conditions; and/or
- (b) the September 2020 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 676 of the Corporations Act;
- (d) at all times during the Relevant Period until 22 March 2021:

- (i) a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules;
 - (ii) a2 was reckless or negligent with respect to whether it would or would be likely to, if it were generally available, influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
 - (iii) a2 was reckless or negligent with respect to whether it would, if it were generally available, have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act as modified by the Coronavirus Determinations;
- (e) at all times during the Relevant Period from 23 March 2021, a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act.

Particulars

- (i) The September 2020 a2 China Market Conditions and the September 2020 a2 China Market Information related to a2's future financial performance.
- (ii) The materiality of the information is to be inferred from the impact on a2's value and price of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iii) As to sub-paragraph 79(d), by reason of:
 - (a) the awareness of one or more of the a2 Officers of the September 2020 a2 China Market Conditions and the September 2020 a2 China Market Information as pleaded in paragraph 78 above;
 - (b) the materiality of the September 2020 a2 China Market Conditions and the September 2020 a2 China Market Information;
 - (c) a2's incremental disclosure of information related to the subject matter of the September 2020 a2 China Market Conditions and the September 2020 a2 China Market Information by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
 - (d) the price impact on a2 Securities of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure as pleaded in paragraphs 45 to 48 above,

it is to be inferred that a2:

- (e) was aware of a substantial risk that, if it were generally available, the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (f) was aware of a substantial risk that, if it were generally available, the information would have a material effect on the price or value of a2 Securities;
- (g) ought reasonably to have known or by the exercise of reasonable care would have known that the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (h) ought reasonably to have known or by the exercise of reasonable care would have known that the information would have a material effect on the price or value of a2 Securities.

Further particulars will be provided after discovery and the filing of expert reports.

80. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 78 to 79 above, on and from 28 September 2020, a2 become immediately obliged to inform the ASX of:

- (a) the September 2020 a2 China Market Conditions; and/or
- (b) the September 2020 a2 China Market Information.

81. a2 did not inform the ASX of:

- (a) the September 2020 a2 China Market Conditions; and/or
- (b) the September 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the September 2020 Growth Representations were partially qualified by each of the December 2020 Partial Disclosure and February 2021 Partial Disclosure.

82. By reason of the matters alleged in paragraphs 78 to 81 above, a2 contravened:

- (a) rule 3.1 of the ASX Listing Rules;
- (b) at all times during the Relevant Period until 22 March 2021, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations; and
- (c) at all times during the Relevant Period from 23 March 2021, s 674(2) of the Corporations

Act.

83. Each of:

(a) the September 2020 a2 China Market Conditions; and/or

(b) the September 2020 a2 China Market Information,

was information that:

(c) was not generally available within the meaning of s 232 of the FMC Act;

(d) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of a2 Securities within the meaning of Rule 3.1.1. of the NZSX Listing Rules and s 231 of the FMC Act;

(e) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

84. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 78 and 83 above, on and from 28 September 2020, a2 became immediately obliged to release to the NZSX, promptly and without delay:

(a) the September 2020 a2 China Market Conditions; and/or

(b) the September 2020 a2 China Market Information.

85. a2 did not inform the NZSX of:

(a) the September 2020 a2 China Market Conditions; and/or

(b) the September 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the September 2020 Growth Representations were partially qualified by each of the December 2020 Partial Disclosure and February 2021 Partial Disclosure.

86. By reason of the matters alleged in paragraphs 78 and 83 to 85 above, a2 contravened:

(a) rule 3.1.1. of the NZSX Listing Rules; and

(b) s 270 of the FMC Act,

(the matters pleaded in paragraphs 78 to 86 constitute the **September 2020 Continuous Disclosure Contravention**).

G. DECEMBER 2020 CONTRAVENTIONS

G.1 True Position at December 2020

87. As at 18 December 2020:

- (a) The September 2020 a2 China Market Conditions remained in existence and were deteriorating, due primarily to a2 having already sold substantial quantities of English Label Infant Formula Products through the cross-border e-commerce channel;
- (b) a2 had introduced initiatives designed to reactivate the corporate daigou reseller and retail daigou reseller channel, which included holding back stock of English Label Infant Formula Products from a2's markets in Australia and New Zealand and in China;

Particulars

- (i) In its February 2021 Update Announcement, a2 stated that it was recognising a stock provision of \$23.3m in 1H21 in respect of its inventory, due to a2 needing to re-activate the daigou/reseller channel by "*rebalancing inventory levels and improving traceability through the channel*", page 4.
- (ii) It is likely that an increase in inventory during the 6-month period between 1 July 2020 and 31 December 2020 of the magnitude of \$51.2m had been observed by a2 by 18 December 2020.
- (iii) It was unlikely that a2 could correct the inventory imbalance in the Aus NZ Segment and China Segment without holding back stock of English Label Infant Formula Products from those Segments.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

- (c) a2 had achieved temporary and exceptional sales growth in respect of Chinese Label Infant Formula Products in 1H21, which would not be repeated,

(together, the **December 2020 a2 China Market Conditions**).

Particulars

- (i) In the May 2021 Corrective Disclosure a2 stated that the increase in Chinese Label Infant Formula Product sales in 1H21 was the consequence of "*increasing distributor inventory to mitigate the risk of the potential of a second-wave of COVID-19 in China in 1H21*", page 2.
- (ii) There was an 18% decline in China label infant nutrition sales in 3Q21 compared with 2Q21.
- (iii) Each of the matters in (i) to (ii) above were observable by and known to a2 in the period prior to the dates on which a2 referred to them in publications

and announcements.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

88. As at 18 December 2020, the December 2020 a2 China Market Conditions were likely to:
- (a) negatively impact a2's sales in the Aus NZ Segment;
 - (b) negatively impact a2's sales in the China Segment;
 - (c) materially adversely impact a2's financial performance in future periods;
 - (d) create a material risk that a2 would not achieve:
 - (i) group revenue for 1H21 of \$725m to \$775m;
 - (ii) group revenue for FY21 of \$1.80bn to \$1.90bn;
 - (iii) group FY21 EBITDA margin in the order of 31%; and
 - (e) create a material risk that a2 would need to recognise a stock provision by reason of it holding back stock from its Aus NZ and China markets as part of its initiatives to reactivate the corporate daigou reseller and retail daigou reseller channels,
- (together, the **December 2020 a2 China Market Information**).

G.2 December 2020 Representations

89. On 18 December 2020, a2 published and lodged with the ASX and NZSX a document titled December 2020 Update Announcement and made accompanying comments in a call with analysts and investors in which it stated that:
- (a) performance in sales of its Chinese Label Infant Formula Products was strong;
 - (b) it expected:
 - (i) group revenue for FY21 of \$1.40bn to \$1.55bn;
 - (ii) group FY21 EBITDA margin of between 26% to 29%; and
 - (c) inventory across all of its sales channels was not excessive,
- (together, the **December 2020 Representations**).

Particulars

- (i) December 2020 Update Announcement, pages 2 to 3.
- (ii) As to sub-paragraph 89(b), the Plaintiff refers to the comments of Peter Nathan on the December 2020 Call:

“Look, firstly, with respect to inventory, yes, we still continue to believe that inventory is not excessive. So that still continues to the case across our channels”, page 9.

90. The December 2020 Representations were continuing representations that were maintained by a2 from 18 December 2020 until the making of the May 2021 Corrective Disclosure at the end of the Relevant Period, other than to the extent that they were partially qualified by the February 2021 Partial Disclosure.

G.3 December 2020 Misleading or Deceptive Conduct

91. As at 18 December 2020 (and at all material times afterwards), a2 knew or ought to have known information being the December 2020 a2 China Market Conditions.

Particulars

- (i) At all material times, a2 had systems and processes to track its sales and financial performance, including through the a2 Monitoring Systems.
- (ii) During the December 2020 Call, Peter Nathan said that a2 believed its inventory was not excessive. To be able to make that statement, he was aware or ought to have been aware of the current and projected inventory levels of a2’s English Label Infant Formula Product stock across its channels and Segments.
- (iii) a2 could be expected to have understood that the reason for growth in Chinese Label Infant Formula Product sales in 1H21 was a2’s deliberate strategy to increase sales of its Chinese Label Infant Formula Products in that period to mitigate the risk of a potential second-wave of COVID-19 in China, and that 2H21 sales would not continue at that level and would be negatively impacted by cycling of this supply increase.
- (iv) It can be inferred that a2 knew or ought to have known the alleged information from the fact that a2 ultimately identified these matters as reasons for the February 2021 Partial Disclosure and May 2021 Corrective Disclosure.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

92. To the extent the December 2020 Representations were representations as to future matters, a2 did not have reasonable grounds for the representations, and the Plaintiff relies on s 12BB

of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

Particulars

The Plaintiff refers to and repeats paragraphs 87 and 91 and the particulars subjoined thereto.

93. By making the December 2020 Representations, a2 engaged in conduct which was misleading and deceptive because:
- (a) the December 2020 Representations were not true and a2 did not have reasonable grounds for making the December 2020 Representations;
 - (b) at all times during which the December 2020 Representations were continuing, a2 also omitted to inform the market of the December 2020 a2 China Market Conditions (the **December 2020 Contravening Omission**); and
 - (c) the December 2020 Contravening Omission had the effect that the market was deprived of the knowledge of information which rendered the December 2020 Representations untrue.
94. The December 2020 Representations were made:
- (a) in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
 - (b) in relation to a financial product (being a2 Securities) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act;
 - (c) in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
 - (d) in trade or commerce within the meaning of s 9 of the FT Act; and/or
 - (e) in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act.
95. By reason of the matters alleged in paragraphs 87 to 94 above, on and from 18 December 2020 and at all material times thereafter until the end of the Relevant Period (to the extent they were not qualified or corrected):
- (a) by making the December 2020 Representations to the ASX, a2 engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) s 12DA of the ASIC Act;

- (ii) s 1041H of the Corporations Act; and/or
 - (iii) s 18 of the Australian Consumer Law;
- (b) by making the December 2020 Representations to the NZSX, a2 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- (i) s 9 of the FT Act; and/or
 - (ii) s 19(2) of the FMC Act,

(the **December 2020 Misleading or Deceptive Conduct Contravention**).

G.4 December 2020 Continuous Disclosure Contravention

96. Further or alternatively, by 18 December 2020 and at all material times thereafter during the Relevant Period, one or more of the a2 Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules and for the purposes of Rule 3.1.1 of the NZSX Listing Rules, and therefore s 270 of the FMC Act) of the December 2020 a2 China Market Conditions and the December 2020 a2 China Market Information.

Particulars

- (i) As to the December 2020 a2 China Market Conditions, the Plaintiff refers to and repeats the particulars to paragraph 91.
- (ii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into the possession of the December 2020 a2 China Market Information in the proper performance of their duties by reason that:
 - (a) the a2 Officers knew the December 2020 a2 China Market Conditions; and
 - (b) a2 undertook regular reviews of the a2 Monitoring Systems and the financial performance of its operating Segments.
- (iii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the December 2020 a2 China Market Information from the fact that a2 ultimately identified these matters as reasons for the February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iv) It can be inferred that based on its knowledge of the December 2020 a2 China Market Conditions that one or more a2 Officers had formed the opinion that there was a material risk that the Company would not achieve revenue or an EBITDA margin consistent with the December 2020 Representations.

Further particulars will be provided following the completion of discovery and

the filing of expert reports.

97. Each of:

- (a) the December 2020 a2 China Market Conditions; and
- (b) the December 2020 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 676 of the Corporations Act;
- (d) at all times during the Relevant Period until 22 March 2021:
 - (i) a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules;
 - (ii) a2 was reckless or negligent with respect to whether, it would or would be likely to, if it were generally available, influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
 - (iii) a2 was reckless or negligent with respect to whether it would, if it were generally available, have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act as modified by the Coronavirus Determinations;
- (e) at all times during the Relevant Period from 23 March 2021, a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act.

Particulars

- (i) The December 2020 a2 China Market Conditions and December 2020 a2 China Market Information related to a2's future financial performance.
- (ii) The materiality of the information is to be inferred from the impact on a2's value and price of the February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iii) As to sub-paragraph 97(d), by reason of:
 - (a) the awareness of one or more of the a2 Officers of the December 2020 a2 China Market Conditions and the December 2020 a2 China Market Information as pleaded in paragraph 96 above;
 - (b) the materiality of the December 2020 a2 China Market Conditions and the December 2020 a2 China Market Information;

- (c) a2's incremental disclosure of information related to the subject matter of the December 2020 a2 China Market Conditions and the December 2020 a2 China Market Information by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
- (d) the price impact on a2 Securities of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure as pleaded in paragraphs 45 to 48 above,

it is to be inferred that a2:

- (e) was aware of a substantial risk that, if it were generally available, the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (f) was aware of a substantial risk that, if it were generally available, the information would have a material effect on the price or value of a2 Securities;
- (g) ought reasonably to have known or by the exercise of reasonable care would have known that the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (h) ought reasonably to have known or by the exercise of reasonable care would have known that the information would have a material effect on the price or value of a2 Securities.

Further particulars will be provided after discovery and the filing of expert reports.

98. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 96 to 97 above, on and from 18 December 2020, a2 become immediately obliged to inform the ASX of:

- (a) the December 2020 a2 China Market Conditions; and/or
- (b) the December 2020 a2 China Market Information.

99. a2 did not inform the ASX of:

- (a) the December 2020 a2 China Market Conditions; and/or
- (b) the December 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the December 2020 Representations were partially qualified by the February 2021 Partial Disclosure.

100. By reason of the matters alleged in paragraphs 96 to 99 above, a2 contravened:

- (a) rule 3.1 of the ASX Listing Rules;
- (b) at all times during the Relevant Period until 22 March 2021, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations; and
- (c) at all times during the Relevant Period from 23 March 2021, s 674(2) of the Corporations Act.

101. Each of:

- (a) the December 2020 a2 China Market Conditions; and/or
- (b) the December 2020 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 232 of the FMC Act;
- (d) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of a2 Securities within the meaning of Rule 3.1.1. of the NZSX Listing Rules and s 231 of the FMC Act;
- (e) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

102. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 96 and 101 above, on and from 18 December 2020, a2 became immediately obliged to release to the NZSX, promptly and without delay:

- (a) the December 2020 a2 China Market Conditions; and/or
- (b) the December 2020 a2 China Market Information.

103. a2 did not inform the NZSX of:

- (a) the December 2020 a2 China Market Conditions; and/or
- (b) the December 2020 a2 China Market Information,

until the May 2021 Corrective Disclosure other than to the extent that the December 2020 Representations were partially qualified by the February 2021 Partial Disclosure.

104. By reason of the matters alleged in paragraphs 96 and 101 to 103 above, a2 contravened:

(a) rule 3.1.1. of the NZSX Listing Rules; and

(b) s 270 of the FMC Act,

(the matters pleaded in paragraphs 96 to 104 above constitute the **December 2020 Continuous Disclosure Contravention**).

H. FEBRUARY 2021 CONTRAVENTIONS

H.1 True Position at February 2021

105. As at 25 February 2021, the December 2020 a2 China Market Conditions remained in existence and were deteriorating due primarily to a2 having previously sold substantial quantities of English Label Infant Formula Products into the cross-border e-commerce channel which remained available for sale to end-consumers (**February 2021 a2 China Market Conditions**).

106. As at 25 February 2021, the February 2021 a2 China Market Conditions were likely to:

(a) negatively impact a2's sales in the Aus NZ Segment;

(b) negatively impact a2's sales in the China Segment;

(c) materially adversely impact a2's financial performance in future periods;

(d) create a material risk that a2 would not achieve:

(i) group revenue for FY21 of \$1.80bn to \$1.90bn; and

(ii) group FY21 EBITDA margin in the order of 31%;

(e) create a material risk that a2 would need to recognise a stock provision by reason of it holding back stock from its Aus NZ and China markets as part of its initiatives to reactivate the corporate daigou reseller and retail daigou reseller channels,

(together, the **February 2021 a2 China Market Information**).

H.2 February 2021 Representations

107. On 25 February 2021, a2 published and lodged with the ASX and NZSX a series of documents

and made accompanying comments in a call with analysts and investors in which it announced that:

- (a) it expected:
 - (i) group revenue for FY21 in the order of \$1.40bn;
 - (ii) group FY21 EBITDA margin of between 24% to 26%; and
- (b) it had achieved sustainable growth in Chinese Label Infant Formula Product sales in 1H21,

(together, the **February 2021 Representations**).

Particulars

- (i) February 2021 Update Announcement, page 8.
- (ii) In the February 2021 Update Announcement a2 stated that:

“[it had achieved] Strong performance in China label infant nutrition, with revenue growth of 45.2%, an increase in market value share to 2.4%”, page 1.

“This performance is pleasing given the strategic importance and size of the channel and the increasing competitive intensity. There will continue to be an opportunity to gain market share given the strong resonance the brand has with customers”, page 3.

- (iii) In the February 2021 Call, Race Strauss stated that a2 was:

“especially pleased with the strong growth of our China label business”, page 3.

108. The February 2021 Representations were continuing representations that were maintained by a2 from 25 February 2021 until the making of the May 2021 Corrective Disclosure at the end of the Relevant Period.

H.3 February 2021 Misleading or Deceptive Conduct

109. As at 25 February 2021 (and at all material times afterwards), a2 knew or ought to have known information being the February 2021 a2 China Market Conditions.

Particulars

- (i) At all material times, a2 had systems and processes to track its sales and financial performance, including through the a2 Monitoring Systems.

- (ii) In 1H21, a2 made a provision for impairment of its inventory balance to account for stock that would expire by reason of a2 holding stock back from the Aus NZ and China markets. It is to be inferred that at all times thereafter a2 regularly analysed whether stock was reaching its expiration date and the status of its inventory balance.
- (iii) a2 could be expected to have understood that the reason for growth in Chinese Label Infant Formula Product sales in 1H21 was a2's deliberate strategy to increase sales of its Chinese Label Infant Formula Products in that period to mitigate the risk of a potential second-wave of COVID-19 in China, and that 2H21 sales would not continue at that level and would be negatively impacted by cycling of this supply increase.
- (iv) a2 had sales data and results for January and part of February 2021 and had the ability to identify the reduction in China Label Infant Formula Product sales.
- (v) The fact that a2 knew or ought to have known the alleged information can be inferred from the fact that a2 ultimately identified these matters as reasons for the May 2021 Corrective Disclosure.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

110. To the extent the February 2021 Representations were representations as to future matters, a2 did not have reasonable grounds for making the representations, and the Plaintiff relies on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

Particulars

The Plaintiff refers to and repeats paragraphs 105 and 109 and the particulars subjoined thereto.

111. By making the February 2021 Representations, a2 engaged in conduct which was misleading and deceptive because:
- (a) the February 2021 Representations were not true and a2 did not have reasonable grounds for the February 2021 Representations.
 - (b) at all times during which the February 2021 Representations were continuing, a2 also omitted to inform the market of the February 2021 a2 China Market Conditions (the **February 2021 Contravening Omission**); and
 - (c) the February 2021 Contravening Omission had the effect that the market was deprived of the knowledge of information which rendered the February 2021 Representations

untrue.

112. The February 2021 Representations were made:

- (a) in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
- (b) in relation to a financial product (being a2 Securities) within the meaning of s 1041H(1) and s 1041H(2) of the Corporations Act;
- (c) in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
- (d) in trade or commerce within the meaning of s 9 of the FT Act; and/or
- (e) in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act.

113. By reason of the matters alleged in paragraphs 105 to 112 above, on and from 25 February 2021 and at all material times thereafter until the end of the Relevant Period:

- (a) by making the February 2021 Representations to the ASX, a2 engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - (i) s 12DA of the ASIC Act;
 - (ii) s 1041H of the Corporations Act; and/or
 - (iii) s 18 of the Australian Consumer Law;
- (b) by making the February 2021 Representations to the NZSX, a2 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
 - (i) s 9 of the FT Act; and/or
 - (ii) s 19(2) of the FMC Act,

(the **February 2021 Misleading or Deceptive Conduct Contravention**).

H.4 February 2021 Continuous Disclosure Contravention

114. Further or alternatively, by 25 February 2021 and at all material times thereafter during the Relevant Period, one or more of the a2 Officers were aware (within the meaning of Rule 19.12 of the ASX Listing Rules and for the purposes of Rule 3.1.1 of the NZSX Listing Rules, and therefore s 270 of the FMC Act) of the February 2021 a2 China Market Conditions and the

February 2021 a2 China Market Information.

Particulars

- (i) As to the February 2021 a2 China Market Conditions, the Plaintiff refers to and repeats the particulars to paragraph 109.
- (ii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into the possession of the February 2021 a2 China Market Information in the proper performance of their duties by reason that:
 - (a) the a2 Officers knew the February 2021 a2 China Market Conditions; and
 - (b) a2 undertook regular reviews of the a2 Monitoring Systems and the financial performance of the operating Segments.
- (iii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the February 2021 a2 China Market Information from the fact that a2 ultimately identified these matters as reasons for the May 2021 Corrective Disclosure.
- (iv) It can be inferred that based on its knowledge of the February 2021 a2 China Market Conditions that one or more a2 Officers had formed the opinion that there was a material risk that the Company would not achieve revenue growth or an EBITDA margin consistent with the February 2021 Representations.

Further particulars will be provided following the completion of discovery and the filing of expert reports.

115. Each of:

- (a) the February 2021 a2 China Market Conditions; and/or
- (b) the February 2021 a2 China Market Information;

was information that:

- (c) was not generally available within the meaning of s 676 of the Corporations Act;
- (d) at all times during the Relevant Period until 22 March 2021:
 - (i) a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules;
 - (ii) a2 was reckless or negligent with respect to whether it would or would be likely to, if it were generally available, influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or

- (iii) a2 was reckless or negligent with respect to whether it would, if it were generally available, have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act as modified by the Coronavirus Determinations;
- (e) at all times during the Relevant Period from 23 March 2021, a reasonable person would expect to have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act.

Particulars

- (i) The February 2021 a2 China Market Conditions and February 2021 a2 China Market Information was material because it related to a2's future financial performance.
- (ii) The materiality of the information is to be inferred from the impact on a2's value and price of the May 2021 Corrective Disclosure.
- (iii) As to sub-paragraph 115(d), by reason of:
 - (a) the awareness of one or more of the a2 Officers of the February 2021 a2 China Market Conditions and the February 2021 a2 China Market Information as pleaded in paragraph 114 above;
 - (b) the materiality of the February 2021 a2 China Market Conditions and the February 2021 a2 China Market Information;
 - (c) a2's incremental disclosure of information related to the subject matter of the February 2021 a2 China Market Conditions and the February 2021 a2 China Market Information by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
 - (d) the price impact on a2 Securities of the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure as pleaded in paragraphs 45 to 48 above,

it is to be inferred that a2:

- (e) was aware of a substantial risk that, if it were generally available, the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;
- (f) was aware of a substantial risk that, if it were generally available, the information would have a material effect on the price or value of a2 Securities;
- (g) ought reasonably to have known or by the exercise of reasonable care

would have known that the information would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities;

- (h) ought reasonably to have known or by the exercise of reasonable care would have known that the information would have a material effect on the price or value of a2 Securities.

Further particulars will be provided after discovery and the filing of expert reports.

116. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 114 to 115 above, on and from 25 February 2021, a2 become immediately obliged to inform the ASX of:

- (a) the February 2021 a2 China Market Conditions; and/or
- (b) the February 2021 a2 China Market Information.

117. a2 did not inform the ASX of:

- (a) the February 2021 a2 China Market Conditions; and/or
- (b) the February 2021 a2 China Market Information,

at any time prior to 10 May 2021.

118. By reason of the matters alleged in paragraphs 114 to 117 above, a2 contravened:

- (a) rule 3.1 of the ASX Listing Rules;
- (b) at all times during the Relevant Period until 22 March 2021, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations; and
- (c) at all times during the Relevant Period from 23 March 2021, and s 674(2) of the Corporations Act.

119. Each of:

- (a) the February 2021 a2 China Market Conditions; and/or
- (b) the February 2021 a2 China Market Information,

was information that:

- (c) was not generally available within the meaning of s 232 of the FMC Act;

- (d) a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of a2 Securities within the meaning of Rule 3.1.1. of the NZSX Listing Rules and s 231 of the FMC Act;
- (e) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

120. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 114 and 119 above, on and from 25 February 2021, a2 became immediately obliged to release to the NZSX, promptly and without delay:

- (a) the February 2021 a2 China Market Conditions; and/or
- (b) the February 2021 a2 China Market Information.

121. a2 did not inform the NZSX of:

- (a) the February 2021 a2 China Market Conditions; and/or
 - (b) the February 2021 a2 China Market Information,
- until the May 2021 Corrective Disclosure.

122. By reason of the matters alleged in paragraphs 114 and 119 to 121 above, a2 contravened:

- (a) rule 3.1.1. of the NZSX Listing Rules; and
- (b) s 270 of the FMC Act,

(the matters pleaded in paragraphs 114 to 122 above constitute the **February 2021 Continuous Disclosure Contravention**).

I. CONTRAVENTIONS CAUSED LOSS OR DAMAGE

I.1 September 2020 Partial Disclosure

123. The information the subject of the September 2020 Partial Disclosure:

- (a) related to the subject matter of the:
 - (i) August 2020 a2 China Market Conditions; and/or
 - (ii) August 2020 a2 China Market Information,
- (together, the **August 2020 Information**);

- (b) was information that a reasonable person would expect to have a material effect on the price or value of a2 Securities;
- (c) operated to qualify, supplement or partly correct the information available to the a2 Securities Market relating to the subject matter of the August 2020 Information;

Particulars

- (i) The September 2020 Partial Disclosure qualified, supplemented or partially corrected the information available to the a2 Securities Market about the subject matter of the August 2020 Information, by forecasting lower FY21 revenue than the forecast conveyed in the August 2020 Growth Representations.
- (ii) The correction was partial because, by 28 September 2020, a2 knew or ought reasonably to have known that:
 - (a) it was not likely, alternatively there was a material risk that a2 would not achieve:
 - A. group revenue for FY21 of \$1.80bn to \$1.90bn; and/or
 - B. group EBITDA margin for FY21 of 31%.
- (iii) The Applicant refers to and repeats paragraph 73 above.

Further particulars may be provided following discovery and the filing of expert reports.

- (d) by reason of the matters in sub-paragraph 123(c) above:
 - (i) caused the price at which a2 Securities traded on the ASX to decline from a closing price of AUD\$17.16 on 25 September 2020, to a closing price of AUD\$15.20 on 28 September 2020 (a decline of approximately 11.46%);
 - (ii) caused the price at which a2 Securities traded on the NZSX to decline from a closing price of \$18.44 on 28 September 2020, to a closing price of \$16.65 on 28 September 2020 (a decline of approximately 9.71%);
 - (iii) caused the price at which a2 Securities traded on the ASX and NZSX (**Traded Price**) to adjust downward toward the price which would have existed if the:
 - A. August 2020 Misleading or Deceptive Conduct Contravention,
 - B. August 2020 Continuous Disclosure Contravention; and
 - C. August 2020 Contravening Omission,

or any combination of them, had not occurred;

- (iv) caused the Traded Price to adjust downward to correct or partly correct the effects of the Contraventions listed in sub-paragraph 123(d)(iii), or any one or combination of them; and
- (e) by reason of the matters alleged in sub-paragraphs 123(a) to (d), had a material adverse effect on the Traded Price of a2 Securities.

I.2 December 2020 Partial Disclosure

124. The information the subject of the December 2020 Partial Disclosure:

- (a) related to the subject matter of the:
 - (i) August 2020 a2 China Market Conditions;
 - (ii) August 2020 a2 China Market Information;
 - (iii) September 2020 a2 China Market Conditions; and/or
 - (iv) September 2020 a2 China Market Information,(together, the **August to September 2020 Information**);
- (b) was information that a reasonable person would expect to have a material effect on the price or value of a2 Securities;
- (c) operated to qualify, supplement or partly correct the information available to the a2 Securities Market relating to the subject matter of the August to September 2020 Information;

Particulars

- (i) The December 2020 Partial Disclosure qualified, supplemented or partially corrected the information available to the a2 Securities Market about the subject matter of the August to September 2020 Information, by:
 - (a) forecasting lower FY21 revenue and a lower EBITDA margin than the forecasts in the August 2020 Growth Representations and the September 2020 Growth Representations; and
 - (b) providing information about the ongoing decline in sales of a2's English Label Infant Formula Products and a2's revised sales forecasts for English Label Infant Formula Products for the remainder of FY21.
- (ii) The correction was partial because, by 18 December 2020, a2 knew or ought

reasonably to have known that:

- (a) it was not likely, alternatively there was a material risk that a2 would not achieve:
 - A. group revenue for FY21 of \$1.40bn to \$1.55bn; and/or
 - B. group EBITDA margin for FY21 of between 26% to 29%; and
- (b) the 1H20 growth in Chinese Label Infant Formula Products was temporary, exceptional and unlikely to continue in 2H20;
- (c) it was likely that a2's initiatives to reactivate the corporate daigou reseller and retail daigou reseller channel would require it to hold stock back from its Aus NZ and China Segments, creating a material risk that it would need to recognise a stock provision.

(iii) The Applicant refers to and repeats paragraph 91 above.

Further particulars may be provided following discovery and the filing of expert reports.

(d) by reason of the matters in sub-paragraph 124(c) above:

- (i) caused the price at which a2 Securities traded on the ASX to decline from a closing price of AUD\$13.28 on 16 December 2020, to a closing price of AUD\$10.14 on 18 December 2020 (a decline of approximately 23.64%);
- (ii) caused the price at which a2 Securities traded on the NZSX to decline from a closing price of \$14.12 on 16 December 2020, to a closing price of \$11.00 on 18 December 2020 (a decline of approximately 22.1%);
- (iii) caused the Traded Price of a2 Securities to adjust downward toward the price which would have existed if the:
 - A. August 2020 Misleading or Deceptive Conduct Contravention;
 - B. August 2020 Continuous Disclosure Contravention;
 - C. August 2020 Contravening Omission
 - D. September 2020 Misleading or Deceptive Conduct Contravention;
 - E. September 2020 Continuous Disclosure Contravention; and/or
 - F. September 2020 Contravening Omission,

or any combination of them, had not occurred;

- (iv) caused the Traded Price to adjust downward to correct or partly correct the effects of the Contraventions listed in sub-paragraph 124(d)(iii), or any one or combination of them; and
- (v) by reason of the matters alleged in sub-paragraphs 124(a) to (d), had a material adverse effect on the Traded Price of a2 Securities.

I.3 February 2021 Partial Disclosure

125. The information the subject of the February 2021 Partial Disclosure:

- (a) related to the subject matter of the:
 - (i) August 2020 a2 China Market Conditions;
 - (ii) August 2020 a2 China Market Information;
 - (iii) September 2020 a2 China Market Conditions;
 - (iv) September 2020 a2 China Market Information;
 - (v) December 2020 a2 China Market Conditions; and
 - (vi) December 2020 a2 China Market Information,(together, the **August to December 2020 Information**);
- (b) was information that a reasonable person would expect to have a material effect on the price or value of a2 Securities;
- (c) operated to qualify, supplement or partly correct the information available to the a2 Securities Market relating to the subject matter of the August to December 2020 Information;

Particulars

- (i) The February 2021 Partial Disclosure qualified, supplemented or partially corrected the information available to the a2 Securities Market the subject of the August to December 2020 Information, by:
 - (a) forecasting lower FY21 revenue and a lower EBITDA margin than the forecasts in the August 2020 Growth Representations, the September 2020 Growth Representations and the December 2020 Representations; and

- (b) providing information about the ongoing decline in sales of a2's English Label Infant Formula Products and a2's revised sales forecasts for English Label Infant Formula Products for the remainder of FY21;
 - (c) providing information about the stock provision to be booked for 1H21 which would impact the financial projections which had previously been made;
 - (d) providing information about a2's intention to provide temporary support to corporate and retail daigou resellers which would impact its EBITDA margin than had previously been forecast.
- (ii) The correction was partial because, by 25 February 2021, a2 knew or ought reasonably to have known that:
- (a) it was not likely to achieve, alternatively there was a material risk that a2 would not achieve:
 - A. group revenue for FY21 of \$1.40bn; and/or
 - B. group EBITDA margin for FY21 of between 24% to 26%;
 - (b) the 1H20 growth in Chinese Label Infant Formula Products was temporary, exceptional and unlikely to continue in 2H21; and
 - (c) there was a material risk that a2 would be required to book a further stock provision in FY21.
- (iii) The Plaintiff refers to a repeats paragraph 109 above.

Further particulars may be provided following the filing of expert reports.

- (d) by reason of the matters in sub-paragraph 125(c) above:
- (i) caused the price at which a2 Securities traded on the ASX to decline from a closing price of AUD\$10.45 on 24 February 2021, to a closing price of AUD\$8.76 on 25 February 2021 (a decline of approximately 16.17%);
 - (ii) caused the price at which a2 Securities traded on the NZSX to decline from a closing price of \$11.13 on 24 February 2021, to a closing price of \$9.34 on 25 February 2021 (a decline of approximately 16.1%);
 - (iii) caused the Traded Price of a2 Securities to adjust downward toward the price which would have existed if the:
 - A. August 2020 Misleading or Deceptive Conduct Contravention;
 - B. August 2020 Continuous Disclosure Contravention;

- C. August 2020 Contravening Omission;
- D. September 2020 Misleading or Deceptive Conduct Contravention;
- E. September 2020 Continuous Disclosure Contravention;
- F. September 2020 Contravening Omission;
- G. December 2020 Misleading or Deceptive Conduct Contravention;
- H. December 2020 Continuous Disclosure Contravention; and/or
- I. December 2020 Contravening Omission,

or any combination of them, had not occurred;

- (iv) caused the Traded Price to adjust downward to correct or partly correct the effects of the Contraventions listed at sub-paragraph 125(d)(iii), or any one or combination of them; and
- (v) by reason of the matters alleged in sub-paragraphs 125(a) to (d), had a material adverse effect on the Traded Price of a2 Securities.

I.4 May 2021 Corrective Disclosure

126. The information the subject of the May 2021 Corrective Disclosure:

- (a) related to the subject matter of the:
 - (i) August 2020 a2 China Market Conditions;
 - (ii) August 2020 a2 China Market Information;
 - (iii) September 2020 a2 China Market Conditions;
 - (iv) September 2020 a2 China Market Information;
 - (v) December 2020 a2 China Market Conditions;
 - (vi) December 2020 a2 China Market Information;
 - (vii) February 2021 a2 China Market Conditions; and
 - (viii) February 2021 a2 China Market Information,
- (together, the **Information**);

- (b) was information that a reasonable person would expect to have a material effect on the price or value of a2 Shares;
- (c) operated to correct or partly correct the information available to the a2 Securities Market relating to the subject matter of the Information;

Particulars

The May 2021 Corrective Disclosure corrected or partially corrected the information available to the a2 Securities Markets by:

- (a) forecasting lower FY21 revenue and a lower EBITDA margin than the forecasts in the August 2020 Growth Representations, the September 2020 Growth Representations, the December 2020 Representations and the February 2021 Representations;
- (b) providing information about the systemic nature of the structural market conditions that had caused a2's financial underperformance; and
- (c) providing information about the stock provision to be booked for FY21.

Further particulars may be provided following the filing of expert reports.

- (d) by reason of the matters in sub-paragraph 126(c) above:
 - (i) caused the price at which a2 Securities traded on the ASX to decline from a closing price of AUD\$7.02 on 7 May 2021, to a closing price of AUD\$6.10 on 10 May 2021 (a decline of approximately 13.11%);
 - (ii) caused the price at which a2 Securities traded on the NZSX to decline from a closing price of \$7.59 on 7 May 2021, to a closing price of \$6.62 on 10 May 2021 (a decline of approximately 12.8%);
 - (iii) caused the Traded Price of a2 Shares to adjust downward toward the price which would have existed if the:
 - A. August 2020 Misleading or Deceptive Conduct Contravention;
 - B. August 2020 Continuous Disclosure Contravention;
 - C. August 2020 Contravening Omission;
 - D. September 2020 Misleading or Deceptive Conduct Contravention;
 - E. September 2020 Continuous Disclosure Contravention;

- F. September 2020 Contravening Omission;
- G. December 2020 Misleading or Deceptive Conduct Contravention;
- H. December 2020 Continuous Disclosure Contravention;
- I. December 2020 Contravening Omission;
- J. February 2021 Misleading or Deceptive Conduct Contravention;
- K. February 2021 Continuous Disclosure Contravention;
- L. February 2021 Contravening Omission,

together, **Contraventions** or any combination of them, had not occurred;

- (iv) caused the Traded Price to adjust downward to correct or partly correct the effects of the Contraventions listed at sub-paragraph 126(d)(iii), or any one or combination of them; and
- (v) by reason of the matters alleged in sub-paragraphs 126(a) to (d), had a material adverse effect on the Traded Price of a2 Shares.

I.5 Market Effects

127. During the Relevant Period, the a2 Securities Market was a market:

- (a) regulated by, inter alia:
 - (i) ss 674(2) and 1041H of the Corporations Act, Rule 3.1 of the ASX Listing Rules and s 12DA of the ASIC Act; and
 - (ii) ss 19 and 270 of the FMC Act, Rule 3.1.1 of the NZSX Listing Rules and s 9 of the FT Act.
- (b) in which the price at which a2 Securities traded on the ASX and NZSX was, or was reasonably expected to have been, influenced by the material information concerning a2 that was published on the ASX or NZSX or that otherwise became publicly available; and
- (c) in which the price at which a2 Securities traded on the ASX closely tracked the price at which a2 shares traded on the NZSX adjusted for the impact of the AUD-NZD exchange rate.

128. Further, throughout the Relevant Period, the a2 Securities Market was a market for listed

securities that was sufficiently efficient so that at all relevant times:

- (a) the Traded Price for a2 Securities on the ASX and NZSX reflected all generally available information; and
- (b) the Traded Price for a2 Securities quickly adjusted to reflect any additional information that became generally available.

129. During the Relevant Period, the Contraventions separately or together caused the price at which a2 Securities traded on the ASX and NZSX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) listed.

Particulars

- (i) This is to be inferred from paragraphs above 45, to 48 and 123 to 126 above, and the particulars subjoined thereto.
- (ii) Particulars of the extent to which the Contraventions caused the price at which a2 Securities traded on the ASX and NZSX to be higher than their true value and/or the market price that would have prevailed but for the Contraventions (or any of them) will be provided following the filing of expert reports.

130. By reason of the matters alleged in paragraph 129 above, at the times during the Relevant Period when the Plaintiff and all of the Group Members acquired interests in a2 Securities, the price of the shares they acquired had been inflated by one or more of the Contraventions.

Particulars

- (i) Particulars of the Plaintiff's shareholding in a2 during the Relevant Period are set out in Annexure A to this statement of claim.
- (ii) Particulars of the shareholdings of Group Members during the Relevant Period will be provided after the trial and determination of the common questions, or otherwise as the Court may direct.

131. Further and in the alternative to the matters alleged in paragraphs 129 and 130 above, the Plaintiff and some of the Group Members acquired interests in a2 Securities during the Relevant Period as a result of holding and acting upon the assumption, being an assumption generally made in the a2 Securities Market and on which they were entitled to act, that the Traded Price represented the market price in a market:

- (a) that had been informed of all material information concerning a2 that was required to be disclosed by it in accordance with:
 - (i) the ASX Listing Rules and s 674(2) of the Corporations Act;

- (ii) the NZSX Listing Rules and s 270 of the FMC Act; and
- (b) in which a2 had not made any statements or representations that were misleading or deceptive or likely to mislead or deceive.

Particulars

- (i) Investors and potential investors in shares on the ASX and NZSX, including a2 Securities, are generally aware that there is a comprehensive regulatory regime including, inter alia, the ASX Listing Rules and ss 674(2) and 1041H of the Corporations Act, the NZSX Listing Rules and s 270 of the FMC Act (as applicable) which have as one of their purposes to ensure that the market is promptly informed of all information which is relevant to the price at which securities are traded and that representations made to the market are not misleading or deceptive.
- (ii) Particulars of the Plaintiff holding and relying upon the alleged assumption will be provided prior to trial.
- (iii) Particulars with respect to the assumptions held by some of the Group Members will be provided following the determination of the common questions to the extent that they are relevant to the question of whether they have suffered loss and damage.

132. Further or alternatively, some of the Group Members acquired an interest in the a2 Securities directly in reliance upon the Representations, or one of or more of them.

Particulars

Particulars of the identified Group Members who relied upon any of the Representations will be provided following the determination of the common questions to the extent that they are relevant to the question of whether they have suffered loss and damage.

133. If a2 had not engaged in the Contraventions (or any one or combination of the Contraventions):

- (a) the Plaintiff and Group Members would have acquired their interests in a2 Securities at the lower market price that would have prevailed; and/or
- (b) some of the Group Members would not have acquired an interest in the a2 Securities.

134. By reason of the matters alleged in paragraph 133 above, the Plaintiff and the Group Members suffered loss and/or damage in relation to their interests in a2 Securities by and resulting from the Contraventions (or any one or combination of the Contraventions).

Particulars

- (i) The loss alleged in paragraph 134 is calculated by reference to:

- (a) the difference between the price at which the Plaintiff and Group Members acquired an interest in a2 Securities during the Relevant Period and the price at which the a2 Securities would have traded at that time had the Contraventions (or any one or combination of the Contraventions) not occurred;
 - (b) alternatively, the price at which some Group Members acquired an interest in a2 Securities during the Relevant Period, adjusted to deduct the true value of that interest at the time of the transaction; or
 - (c) for those Group Members who would have, but for the Contraventions (or any one or combination of the Contraventions) retained or acquired an alternative investment, the difference between the actual position as a result of having acquired an interest in a2 Securities during the Relevant Period and the position they would have been in had they made that alternative investment.
- (ii) Particulars of the Plaintiff's losses will be provided after the filing of expert reports.
 - (iii) Particulars in relation to Group Members' losses will be obtained and provided following opt out, the determination the Plaintiff's claims and identified common issues at an initial trial and if, and when, it is necessary for a determination to be made of the individual claims of those Group Members.

J. ENTITLEMENT TO RELIEF

135. By reason of the matters alleged in paragraphs 127 to 134 above, pursuant to s 1041I of the Corporations Act and/or s 12GF of the ASIC Act and/or s 236 of the Australian Consumer Law, the Plaintiff and each of the Group Members who acquired shares on the ASX or on the NZSX are entitled to recover from a2 the amount of the loss and damage suffered by them as a result of a2's contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law respectively alleged in this statement of claim.
136. Further or alternatively, pursuant to s 1317HA alternatively s 1325 of the Corporations Act, the Plaintiff and each of the Group Members who acquired shares on the ASX or on the NZSX are entitled to recover from a2 the amount of loss and damage suffered by them as a result of a2's contraventions of s 674(2) of the Corporations Act alleged in this statement of claim.
137. By reason of the matters alleged in paragraphs 127 to 134 above, pursuant to ss 494 and 495 of the FMC Act, each of the Group Members who acquired shares on the NZSX are entitled to recover from a2 the amount of the loss and damage suffered by them as a result of a2's contraventions of s 9 of the FT Act and s 19 of the FMC Act.

138. Further or alternatively, pursuant to ss 494 and 495 of the FMC Act, each of the Group Members who acquired shares on the NZSX are entitled to recover from a2 the amount of the loss and damage suffered by them as a result of a2's contraventions of rule 3.1.1. of the NZSX Listing Rules and s 270 of the FMC Act.

K. COMMON QUESTIONS OF FACT OR LAW

139. The questions of law or fact common to the claims of the Plaintiff and the Group Members are:

- (a) whether a2 made the August 2020 Growth Representations, September 2020 Growth Representations, December 2020 Representations and February 2021 Representations;
- (b) whether any of the August 2020 Growth Representations, September 2020 Growth Representations, December 2020 Representations and February 2021 Representations, if made, were misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA of the ASIC Act, s 1041H of the Corporations Act and/or s 18 of the Australian Consumer Law;
- (c) whether any of the August 2020 Growth Representations, September 2020 Growth Representations, December 2020 Representations and February 2021 Representations, if made, were misleading or deceptive or likely to mislead or deceive, in contravention of s 9 of the FT Act and/or s 19(2) of the FMC Act;
- (d) whether during the Relevant Period, the August 2020 a2 China Market Conditions, August 2020 a2 China Market Impact, September 2020 a2 China Market Conditions, September 2020 a2 China Market Information, December 2020 a2 China Market Conditions, December 2020 a2 China Market Conditions, December 2020 a2 China Market Information, February 2021 a2 China Market Conditions, February 2021 a2 China Market Information and February 2021 a2 China Market Information (**Information**) was:
 - (i) information that a reasonable person would expect to have a material effect on the price or value of a2 Securities; and
 - (ii) not generally available;
- (e) whether a2 was or ought to have been aware of the Information and if so, at what time if any during the Relevant Period;
- (f) whether and if so at what time during the Relevant Period until 22 March 2021:
 - (i) a2 was reckless or negligent with respect to whether the Information would or would be likely to, if it were generally available, influence persons who commonly

invest in securities in deciding whether to acquire or dispose of a2 Securities;
and/or

- (ii) a2 was reckless or negligent with respect to whether the Disclosure Information would, if it were generally available, have a material effect on the price or value of a2 Securities within the meaning of Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act as modified by the Coronavirus Determinations;
- (g) whether a2 contravened s 674(2) of the Corporations Act by failing to disclose the Information as soon as it was or ought to have been aware of that information;
- (h) whether a2 contravened rule 3.1.1 of the NZSX Listing Rules and s 270 of the FMC Act by failing to disclose the Information as it was or ought to have been aware of that Information;
- (i) whether any of the Contravening Conduct caused the price or value of a2 Securities to be higher during the Relevant Period than it would have been had a2 not engaged in the conduct and if so, to what extent or by what amount.

AND THE PLAINTIFF CLAIMS, for himself and on behalf of the Group Members:

- A. Declarations that the Defendant has contravened the Corporations Act, the ASIC Act, the Australian Consumer Law, the FT Act and the FMC Act in the manner alleged in this statement of claim;
- B. Damages and/or statutory compensation pursuant to s 1317HA of the Corporations Act, s 1041I(1) of the Corporations Act, s 12GF(1) of the ASIC Act and/or s 236(1) of the Australian Consumer Law;
- C. The amount of loss or damage suffered because of the Defendant's contraventions of s 9 of the FT Act, s 19 of the FMC Act, rule 3.1.1 of the NZSX Listing Rules and s 270 of the FMC Act, pursuant to:
 - (a) ss 494 and 495 of the FMC Act;
 - (b) s 43 of the FT Act;
 - (c) further or alternatively s29(2) of the *Supreme Court Act 1986* (Vic), s 85(1) of the *Constitution Act 1975* (Vic) and the inherent jurisdiction of the Court.
- D. Interest pursuant to statute;
- E. Costs; and

F. Such other orders as the Court deems fit.

Dated: 5 October 2021

Slater and Gordon

Slater and Gordon Lawyers

Lawyers for the Plaintiff

This pleading was prepared by Kaitlin Ferris, lawyer for the Plaintiff, and settled by Rachel Doyle SC and Alexandra Folie of counsel.

1. Place of trial: Melbourne.
2. Mode of trial: Judge alone.
3. This writ was filed for the Plaintiff by Slater and Gordon Lawyers of 485 La Trobe Street, Melbourne 3000.
4. The address of the Plaintiff is Unit 6, 44 Nepean Highway, Seaford, Victoria.
5. The address for service of the Plaintiff is c/o Slater and Gordon Lawyers, 485 La Trobe Street, Melbourne 3000.
6. The email address for service of the Plaintiff is Kaitlin.Ferris@slatgordon.com.au
7. The address of the defendant is Level 10, 51 Shortland Street, Auckland 1010 NEW ZEALAND.

ANNEXURE A
Plaintiff's transactions during the Relevant Period

Date of Purchase	Number of a2 Securities	Average price per share (AUD\$)	Amount paid (excl. brokerage) (AUD\$)
16/12/2020	70	\$13.24	\$936.00
21/12/2020	30	\$10.46	\$323.80
29/12/2020	200	\$11.47	\$2,313.95
08/01/2021	50	\$10.94	\$547.00
20/02/2021	50	\$10.24	\$512.00
22/01/2021	100	\$10.08	\$1,008.00

Date of Sale	Number of a2 Securities	Average price per share (AUD\$)	Amount paid (excl. brokerage) (AUD\$)
15/04/2021	100	\$8.18	\$808.00
20/04/2021	150	\$8.05	\$1,187.55

ANNEXURE B
Defined Terms

Definition	Paragraph
2020 Annual Report	36
a2	2(a)
a2 Executives	31(a)
a2 Monitoring Systems	55
a2 Officers	31(b)
a2 Securities	4(g)
a2 Securities Market	7 and 18
ASIC Act	4(g)(v)
ASX	2(a)(i)
ASX Listing Rules	4(h)(ii)
August 2020 a2 China Market Conditions	50
August 2020 a2 China Market Information	51
August 2020 Continuous Disclosure Contravention	68
August 2020 Contravening Omission	57(b)
August 2020 Growth Representations	53
August 2020 Misleading or Deceptive Conduct Contravention	59
August 2020 Information	123
August to December 2020 Information	125(a)
August to September 2020 Information	124(a)
Aus NZ Segment	34(a)
Australian Consumer Law	4(i)(iii)
CCA	4(b)
China Segment	34(b)
Chinese Label Infant Formula Products	35
Companies Act	2(c)(v)
Company	2(a)
Contraventions	126(d)(iii)
Coronavirus Determinations	11
Corporations Act	2(c)(i)
Corporate daigou reseller	38(b)
December 2020 a2 China Market Conditions	87
December 2020 a2 China Market Information	88
December 2020 Call	42
December 2020 Continuous Disclosure Contravention	104
December 2020 Contravening Omission	93(b)
December 2020 Representations	89
December 2020 Misleading or Deceptive Conduct Contravention	95
December 2020 Partial Disclosure	42
December 2020 Update Announcement	42

Definition	Paragraph
EBITDA	39(a)
EBITDA margin	39(a)
English Label Infant Formula Products	35
February 2021 a2 China Market Conditions	105
February 2021 a2 China Market Information	106
February 2021 Call	50
February 2021 Continuous Disclosure Contravention	122
February 2021 Contravening Omission	111(b)
February 2021 Representations	107
February 2021 Misleading or Deceptive Conduct Contravention	113
February 2021 Partial Disclosure	43
February 2021 Update Announcement	43
FMC Act	4(e)
FT Act	4(i)(v)
Group Members	2
Information	126(a)
May 2021 Corrective Disclosure	44
May 2021 Update Announcement	44
Non Executive Directors	31(a)
NZSX	2(a)
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