



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

No. S ECI 2020 02588

Case: S ECI 2020 02588

Filed on: 17/08/2022 09:53 AM

BETWEEN:

GEOFFREY and LYNDEN IDDLES

Plaintiffs

- and -

**FONTERRA AUSTRALIA PTY LTD (ACN 006 483 665) and
Ors according to the attached Schedule**

Defendants

REPLY TO AMENDED DEFENCE

Date of document: 17 August 2022

Filed on behalf of: The Plaintiffs

Prepared by:

Adley Burstyner

124 Westbury Close

Balaclava VIC 3183

Solicitor's Code: CR113740

Tel: 0411 072 743

Ref: 22002399

Attention: David Burstyner

Email: dburstyner@adleyburstyner.com.au

To the amended defence dated 16 June 2022 (**Amended Defence**) the Plaintiffs say as follows:

Part A – Parties and group members

1. As to paragraph 1(b), the Plaintiffs admit that they supplied dairy milk to the Defendants under a GroPlan Incentive EMSA described in paragraph 4.24(a)(v) of the Amended Defence.

Part B.1 – Relevant contractual agreements

2. The Plaintiffs admit paragraph 4.2.
3. As to paragraph 4.3, subject to the Plaintiffs at trial referring to the terms of the MSAA for their full force and effect, the Plaintiffs admit that the MSAA contained the terms and conditions set out therein.
4. As to paragraph 4.4, the Plaintiffs:
 - 4.1. admit that in or about early 2015 Fonterra informed suppliers of the existence of its Fixed Base Milk Price program;

- 4.2. subject to the Plaintiffs at trial referring to the full terms of the documents particularised at subparagraph 4.4(b) for their full force and effect, the Plaintiffs admit that those documents contain the statements referred to in subparagraph 4.4(a); and
- 4.3. admit paragraph 4.4(b).
5. As to paragraph 4.5, subject to the Plaintiffs at trial referring to the terms of the Fixed Base Milk Price Agreement for their full force and effect, they admit the matters set out therein.
6. As to paragraph 4.6, subject to the Plaintiffs at trial referring to the terms of the Fixed Base Milk Price Agreement for their full force and effect, they admit the matters set out therein.
7. As to paragraph 4.7, subject to the Plaintiffs at trial referring to the terms of the emails and Fixed Base Milk Price Agreement for their full force and effect, they admit the matters set out therein.
8. As to paragraph 4.8, subject to the Plaintiffs at trial referring to the terms of the Fixed Milk Price Range agreement for their full force and effect, they admit the matters set out therein.
9. As to paragraph 4.9, subject to the Plaintiffs at trial referring to the terms of the Fixed Milk Price Range agreement for their full force and effect, they admit the matters set out therein.
10. As to paragraph 4.10, subject to the Plaintiffs at trial referring to the terms of the emails and Fixed Milk Price Range Agreements for their full force and effect, they admit the matters set out therein.
11. As to paragraph 4.11, subject to the Plaintiffs at trial referring to the terms of the Fixed Milk Price Range Agreement for their full force and effect, they admit the matters set out therein.
12. As to paragraph 4.12, the Plaintiffs admit the matters set out therein.
13. As to paragraph 4.13, the Plaintiffs:
 - 13.1. refer to and repeat the allegations in paragraphs 5, 6 and 7 of the ASOC;
 - 13.2. otherwise admit the matters set out therein.
14. As to paragraph 4.14, the Plaintiffs:
 - 14.1. refer to and repeat the allegations in paragraphs 5, 6 and 7 of the ASOC;

- 14.2. subject to them at trial referring to the terms of the Opening Price Letter – EW for their full force and effect, otherwise admit the matters set out therein.
15. As to paragraph 4.15, the Plaintiffs:
 - 15.1. refer to and repeat the allegations in paragraphs 5, 6 and 7 of the ASOC;
 - 15.2. subject to them at trial referring to the terms of the 2015/16 Handbook for their full force and effect, otherwise admit the matters set out therein.
16. As to paragraph 4.16, subject to the Plaintiffs at trial referring to the terms of the 2015/16 STCs for their full force and effect, they admit the matters set out therein.
17. As to paragraph 4.17, the Plaintiffs:
 - 17.1. say that cl.2.1 of the 2015/2016 Handbook sets out the order of priority in relation to the terms of written supply agreements; and
 - 17.2. otherwise, deny the matters contained therein.
18. As to paragraph 4.18, the Plaintiffs admit the matters set out therein.
19. As to paragraph 4.19, the Plaintiffs admit the matters set out therein.
20. As to paragraph 4.20, the Plaintiffs admit the matters set out therein.
21. As to paragraph 4.21, the Plaintiffs:
 - 21.1. refer to and repeat the allegations made in paragraphs 5, 6 and 7 of the ASOC;
 - 21.2. deny the matters contained therein; and
 - 21.3. say further that cl.2.1 of the 2015/2016 Handbook sets out the order of priority in relation to the terms of written supply agreements.
22. As to paragraph 4.22, the Plaintiffs admit the allegations set out therein.
23. As to paragraph 4.23, the Plaintiffs admit the allegations set out therein.
24. As to paragraph 4.24, the Plaintiffs:
 - 24.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC;

- 24.2. otherwise admit the allegations set out therein.
25. As to paragraph 4.25, the Plaintiffs:
- 25.1. refer to and repeat the allegations in paragraphs 8, 9 and 10 of the ASOC;
 - 25.2. assume that “without’ in subparagraph 4.25(d) should read “with”;
 - 25.3. subject to them at trial referring to the terms of the Standard EMSA Terms for their full force and effect, otherwise admit the matters set out therein.
26. As to paragraph 4.26, the Plaintiffs:
- 26.1. refer to and repeat the allegations in paragraphs 8, 9 and 10 of the ASOC;
 - 26.2. subject to them at trial referring to the terms of the Incentive EMSAs for their full force and effect, otherwise admit the matters set out therein.
27. As to paragraph 4.27, the Plaintiffs:
- 27.1. refer to and repeat the allegations in paragraphs 8, 9 and 10 of the ASOC;
 - 27.2. subject to them at trial referring to the terms of the North Fresh EMSAs for their full force and effect, otherwise admit the matters set out therein.
28. As to paragraph 4.28, the Plaintiffs:
- 28.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC;
 - 28.2. subject to them at trial referring to the terms of the West Fresh EMSAs for their full force and effect, otherwise admit the matters set out therein.
29. As to paragraph 4.29, the Plaintiffs:
- 29.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC;
 - 29.2. subject to them at trial referring to the terms of the VDL EMSA for their full force and effect, otherwise admit the matters set out therein.
30. As to paragraph 4.30, the Plaintiffs:
- 30.1. refer to and repeat the allegations made in paragraphs 8, 9 and 10 of the ASOC;

- 30.2. subject to them at trial referring to the terms of the Mother Liquor EMSA for their full force and effect, otherwise admit the matters set out therein.
31. As to paragraph 4.31, the Plaintiffs:
- 31.1. admit the matters in subparagraph 4.31(a);
- 31.2. admit the matters in subparagraph 4.31(b);
- 31.3. in relation to subparagraph 4.31(c):
- 31.3.1. admit that the agreement typically did not contain the term referred to at subparagraph 4.25(g) (namely, an express term providing that the Supplier had no right to terminate as a consequence of the variation to the price that Fonterra pays for cow's milk);
- 31.3.2. admit that the agreement typically did not contain the term referred to at subparagraph 4.25(h) (namely, an express term that if an amendment or alternation has a material adverse effect on the Supplier, then the Supplier may by notice in writing to Fonterra of not less than 3 months, terminate);
- 31.4. will at trial refer to the terms of the Fixed Base Milk Price Agreement for their full force and effect.
32. As to paragraph 4.32, the Plaintiffs:
- 32.1. admit the matters in subparagraph 4.32(a);
- 32.2. admit the matters in subparagraph 4.32(b);
- 32.3. in relation to subparagraph 4.31(c):
- 32.3.1. admit that the agreement typically did not contain the term referred to at subparagraph 4.25(g) (namely, an express term providing that the Supplier had no right to terminate as a consequence of the variation to the price that Fonterra pays for cow's milk);
- 32.3.2. admit that the agreement typically did not contain the term referred to at subparagraph 4.25(h) (namely, an express term that if an amendment or alternation has a material adverse effect on the Supplier, then the Supplier may by notice in writing to Fonterra of not less than 3 months, terminate);

- 32.4. will at trial refer to the terms of the Fixed Base Milk Price Agreement for their full force and effect.

Part B.2 – Setting of the opening farmgate milk price for the 2015/16 Season

33. As to paragraph 4.33, the Plaintiffs:
- 33.1. do not know and cannot admit which persons represent “Fonterra” for the purposes of paragraph 4.33; and
- 33.2. do not admit that “Fonterra” had regard to the matters set out in subparagraphs (a)-(e).

Part B.3 – Communications with suppliers from August 2015

34. As to paragraph 4.34, save that the Plaintiffs will refer at trial to the full terms of the said email, they admit the allegations therein.
35. As to paragraph 4.35, the Plaintiffs:
- 35.1. admit that on or about 13 August 2015 the July Price Review Letter was sent to Farmers;
- 35.2. deny the July Price Review Letter contained any statement which was a ‘warning’;
- 35.3. will at any trial refer to the terms of the July Price Review Letter for their full force and effect; and
- 35.4. otherwise admit the matters alleged in subparagraphs (a)-(f).
36. As to paragraph 4.36, the Plaintiffs:
- 36.1. admit that on 13 August 2015 a ‘Supplier Announcement’ email was sent to Farmers;
- 36.2. as to subparagraph (a):
- 36.2.1. refer to and repeat their response to paragraph 4.35 above and in particular:
- (a) deny that the email contained any statement that or to the effect that ‘extreme volatility ... was impacting domestic and global dairy markets’;

- (b) deny that the email contained any statement that or to the effect that the global market ‘was now at its lowest level in the last decade’;
- 36.2.2. deny that the reference in the email to the domestic market not being immune to global headwinds, and that the issue was not isolated to Fonterra, constituted any ‘warning’ to Farmers;
- 36.2.3. deny that the email contained any statement that or to the effect that Farmers had been advised that Fonterra had updated its full year commodity price forecasts to model the Australian product mix, and that the outlook remained very tough;
- 36.2.4. deny that the reference in the email to ‘a possibility of a step down in the months ahead’ constituted any ‘warning’ that Farmers ‘needed to prepare for the possibility of a stepdown in the milk price in the 2015/16 Season’;
- 36.2.5. otherwise admit the matters in subparagraph 4.36(a);
- 36.3. as to subparagraph (b), deny that the email contained or constituted any ‘warning’ to the effect alleged;
- 36.4. as to subparagraph (c), admit the matters alleged therein but refers to and repeats the matters in paragraph 36.3 above.
- 37. As to paragraph 4.37, the Plaintiffs do not admit the matters alleged therein.
- 38. As to paragraph 4.38, the Plaintiffs:
 - 38.1. admit that on 14 August 2015 an email was sent to Farmers;
 - 38.2. admit that the email contained the words: ‘[t]he current market is extremely volatile’;
 - 38.3. admit that the email contained the words: ‘there is a strong possibility of a step down in price this season’;
 - 38.4. admit that the email contained the words: ‘I urge you to do the work on contingency planning now in the event of a price reduction’;
 - 38.5. otherwise do not admit the matters contained therein.
- 39. As to paragraph 4.39, the Plaintiffs admit the matters alleged therein.

40. As to paragraph 4.40, the Plaintiffs:
- 40.1. admit that on or about 6 October 2015 the September Price Review Letter was sent to Farmers;
 - 40.2. deny the September Price Review Letter contained any statement which was a 'warning';
 - 40.3. say further that the September Price Review Letter:
 - 40.3.1. expressly stated Fonterra was 'more confident in delivering against [its] opening price';
 - 40.3.2. expressly advised Farmers to '[use] opening price as their guideline';
 - 40.3.3. did not contain any indication, reasonable or otherwise, that Fonterra would or might implement a step down at any time in the balance of the 2015/16 Season;
 - 40.4. will at any trial refer to the terms of the September Price Review Letter for their full force and effect;
 - 40.5. otherwise admit the matters alleged in subparagraphs (a)-(f).
41. As to paragraph 4.41, the Plaintiffs:
- 41.1. admit that on 6 October 2015 a 'Supplier Announcement' email was sent to Farmers;
 - 41.2. as to subparagraph (a), deny the allegations alleged therein;
 - 41.3. as to subparagraph (b), refer to and repeat the matters in paragraphs 40.2 to 40.5 of this Reply.
42. As to paragraph 4.42:
- 42.1. admit that on or about 6 October 2015 Fonterra made available to Farmers on Dairy Web a 'October Market Outlook slideshow';
 - 42.2. say further that the slideshow:
 - 42.2.1. expressly stated that Australian margins 'remain positive for most farmers';

- 42.2.2. was not drawn to the attention of Farmers by any communication specifically addressed to them;
 - 42.2.3. did not contain any indication that Fonterra would or might implement a step down at any time over the balance of the 2015/16 Season;
 - 42.3. otherwise do not admit the matters contained therein.
43. As to paragraph 4.43, the Plaintiffs:
- 43.1. admit that on or around 30 November 2015 the November Price Review Letter was sent to Farmers;
 - 43.2. deny the letter contained any statement which was a ‘warning’;
 - 43.3. say further that the November Price Review Letter:
 - 43.3.1. expressly advised Farmers to ‘[use] opening price as their guideline for closing price range’;
 - 43.3.2. did not contain any indication, that Fonterra would or might implement a step down at any time over the balance of the 2015/16 Season;
 - 43.4. will at any trial refer to the terms of the November Price Review Letter for their full force and effect;
 - 43.5. otherwise admit the matters alleged in subparagraphs 4.43(a)-(e).
44. As to paragraph 4.44, the Plaintiffs:
- 44.1. admit that on 30 November 2015 a ‘Supplier Announcement’ email was sent to Farmers;
 - 44.2. refer to and repeat the matters in paragraphs 43.2 to 43.5 of this Reply.
45. As to paragraph 4.45, the Plaintiffs:
- 45.1. admit that on or about 3 February 2016 the January Price Review Letter was sent to Farmers;
 - 45.2. deny the January Price Review Letter contained any statement which was a ‘warning’;

- 45.3. say further that the January Price Review Letter:
 - 45.3.1. expressly forecast a closing price of \$5.60/kgMS;
 - 45.3.2. insofar as it sought to qualify the statement that '[a]nalysts are continuing to predict a price recovery', did so by saying that 'the time frame for supply and demand rebalancing has been pushed out' without stating that such time frame was after the conclusion of the 2015/16 Season;
 - 45.3.3. did not contain any indication that Fonterra would or might implement a step down at any time over the balance of the 2015/16 Season:
 - 45.4. will at any trial refer to the terms of the January Price Review Letter for their full force and effect;
 - 45.5. otherwise admit the matters alleged in subparagraphs 4.45(a)-(e).
46. As to paragraph 4.46, the Plaintiffs:
- 46.1. admit that on 3 February 2016 a 'Supplier Announcement' email was sent to Farmers;
 - 46.2. refer to and repeat the matters in paragraphs 45.2 to 45.5 of this Reply.
47. As to paragraph 4.47, the Plaintiffs:
- 47.1. admit that on or about March 2016 Fonterra made available to Farmers on Dairy Web a 'March Market Outlook slideshow';
 - 47.2. say further that the slideshow:
 - 47.2.1. expressly stated that Australian margins 'remain positive for most farmers';
 - 47.2.2. was not drawn to the attention of Farmers by any communication specifically addressed to them;
 - 47.2.3. did not contain any indication that Fonterra would or might implement a step down at any time in the balance of the 2015/16 Season;
 - 47.3. otherwise do not admit the matters contained therein.

48. As to paragraph 4.48, the Plaintiffs:
- 48.1. refer to and repeat the allegations made in paragraphs 23, 28, 29, 30, 31 and 35(m) of the ASOC;
 - 48.2. admit that on or about 4 April 2016 the March Price Review Letter was sent to Farmers;
 - 48.3. deny the March Price Review Letter contained any statement which was a ‘warning’;
 - 48.4. say further that the March Price Review Letter:
 - 48.4.1. expressly forecast a closing price of \$5.60/kgMS;
 - 48.4.2. insofar as it sought to express any qualification ‘about the short-term outlook’ and that the ‘timeframe for a rebalancing of supply and demand has moved out’, did so without stating that such time frame was after the conclusion of the 2015/16 Season;
 - 48.4.3. did not contain any indication that Fonterra would or might implement a step down at any time in the balance of the 2015/16 Season:
 - 48.5. will at any trial refer to the terms of the March Price Review Letter for their full force and effect;
 - 48.6. otherwise admit the matters alleged in subparagraphs (a)-(e).
49. As to paragraph 4.49, the Plaintiffs:
- 49.1. admit that on 5 April 2016 a ‘Supplier Announcement’ email was sent to Farmers;
 - 49.2. refer to and repeat the matters in paragraphs 48.3 to 48.6 of this Reply.

Part B.4 – The price revision and associated matters

50. As to paragraph 4.50, the Plaintiffs admit the matters contained therein.
51. As to paragraph 4.51, the Plaintiffs:
- 51.1. refer to and repeat the allegations in paragraphs 15, 16, 17, 18 and 19 of the ASOC;

- 51.2. deny the matters in subparagraphs (a) and (b);
 - 51.3. say further that the Autumn Offset Payments and Additional 40c Payments:
 - 51.3.1. were not paid to all Farmers;
 - 51.3.2. were paid to suppliers who did not supply Fonterra as at 5 May 2016;
 - 51.3.3. were paid to suppliers who were not affected by the May 2016 Price Decrease;
 - 51.3.4. were not paid to Farmers at the time that payments for the 2015/16 Season were made;
 - 51.3.5. were not calculated by reference to the volumes of milk produced by Farmers in the 2015/16 Season;
 - 51.3.6. were characterised by Fonterra as part of subsequent seasons' price packages;
 - 51.3.7. were conditional for the reasons alleged at paragraph 4.62 of the Amended Defence and paragraph 63 below;
 - 51.3.8. were, in at least the case of the Autumn Offset Payments, not additional payments to Farmers but instead funded by reducing the 2016/17 farmgate milk price which would have been paid by Fonterra but for the said payments;
 - 51.4. otherwise do not admit the matters in subparagraph (c).
52. As to paragraph 4.52, the Plaintiffs:
- 52.1. do not know and cannot admit which persons represent "Fonterra" for the purposes of paragraph 4.52; and
 - 52.2. do not admit that "Fonterra" had regard to the matters set out in subparagraphs (a)-(f).
53. As to paragraph 4.53, the Plaintiffs:
- 53.1. refer to and repeat the allegations made in paragraphs 13 and 14 of the ASOC;
 - 53.2. as to subparagraph (a):
 - 53.2.1. admit that on 5 May 2016, Fonterra announced that it would offer a support loan pursuant to which Farmers would be able to borrow up to \$0.60/kgMS

based on actual milk that was supplied to Fonterra in May and June for the 2015/16 Season;

53.2.2. deny that such loans were ‘to support farm production for the remainder of the season’;

53.3. deny subparagraph (b) and say further that:

53.3.1. the Support Loans were subject to eligibility and other terms and conditions which were not disclosed to Farmers on 5 May 2016;

53.3.2. Farmers who took out the Support Loans were required to supply Fonterra for the next four years, and if they ceased supplying Fonterra during that period the Support Loans would become repayable in full on the date of cessation;

53.4. admit the matters in subparagraph (c).

54. As to paragraph 4.54, subject that they will refer at trial to the full terms of the documents referred to for their full force and effect, the Plaintiffs:

54.1. admit that the Support Loans provided to the Plaintiffs contained the terms set out at paragraph 4.54,

54.2. say further that:

54.2.1. the cost of the Support Loans was, initially, funded by deductions of around \$0.02/kgMS then \$0.01/kgMS from milk payments otherwise due to all Fonterra farmers in the 2016/2017 Season, including Farmers who had not taken a Support Loan;

54.2.2. in the premises in paragraph 54.2.1 – the cost of the Support Loan was borne by Fonterra farmers and not by Fonterra;

Particulars

*Fonterra Australia Support Loan brochure. May 2016
“Milk Price Revision. Fonterra Australia Support Loan Q
& A for suppliers” document. Fonterra publication on the
Australian Taxation Office website (as updated on 15
August 2016).*

54.2.3. the loan was payable over 36 monthly instalments commencing from 1 July 2017 and became immediately repayable if the Farmer ceased supplying Fonterra;

54.2.4. in the premises in paragraph 54.2.3 – required the borrower Farmer to commit to supplying Fonterra for four years from 1 July 2016.

Particulars

Clause 3.2 and 3.3(a) of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

54.2.5. Fonterra could require a Farmer to repay all or part of the loan, if, among other things, the Farmer’s production had dropped materially;

Particulars

Clause 3.4 of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

54.2.6. Fonterra has in fact issued recovery proceedings against a number of Claimants or related parties claiming repayment of loans.

Particulars

County Court of Victoria proceeding CI-19-02195 (Fonterra Brands (Australia) Pty Ltd (ACN 095 181 699) v Geoffrey Kenneth Iddles and Lynden Elizabeth Iddles) was issued on 14 May 2019 and transferred by order of Judicial Registrar Burchell to this Court on 4 August 2020, and on 30 September 2020 to be stayed until judgment in this proceeding or further order.

Magistrates Court of Victoria proceeding K12348439 (Fonterra Australia Pty Ltd (ACN 006483665) v Paul

O'Malley) was filed on about 6 September 2019 and dismissed by orders made on or about 21 November 2020.

County Court of Victoria proceeding CI-20-03489 (Fonterra Milk Australia Pty Ltd (ACN 114 326 448) and another v Mt Clay Farms Pty Ltd ACN 129 075 789) was filed on or about 4 August 2020.

54.2.7. Lawyers for the Third Defendant, Fonterra (Brands) Australia Pty Ltd, (CIE Legal) have sent letters of demand in respect of a number of Group Members who have ceased supplying milk to Fonterra in the period 3 August 2017 through to 17 August 2018.

Particulars

In about December 2018 at least seven group members received letters of demands from Fonterra, and during March to May 2020 CIE Legal stated that the debts would be pursued.

In about November 2020 at least two group members received letters of demands from Fonterra threatening legal proceedings.

Copies of the said demands are available from the Plaintiff's solicitors on request.

54.2.8. The Support Loan contained a clause that Fonterra was able to change any of the terms at any time by giving no less than 30 days' prior notice.

Particulars

Clause 5.3 of the Support Loan between Fonterra Australia and the Plaintiffs dated 31 May 2016.

55. As to paragraph 4.55, the Plaintiffs admit the matters contained therein.
56. As to paragraph 4.56, subject to the Plaintiffs referring at trial to the terms of the announcement for their full force and effect, the Plaintiffs admit the matters contained therein.
57. As to paragraph 4.57, save that the Plaintiffs refer to and repeat the allegations made in paragraphs 5 to 18, 27 to 31 and 35 to 39 of the ASOC, the Plaintiffs deny the matters contained therein, and say further that:
- 57.1. as to subparagraph (a), the May 2016 Price Decrease (being the “Revised 2015/2016 FMP” as defined in the Amended Defence) was not “mid season” but rather in the eleventh month of the season;
- 57.2. as to subparagraph (c), save that they admit step ups were effected under similar contractual arrangements as the arrangements that applied in the 2015 Season, they do not admit that the provisions as to step ups are identical to or the mirror of provisions relating to step downs;

Particulars

- (a) *Step ups are consistent with the system which Fonterra holds out as commencing with a conservative price which is low and will not be reduced save for the most exceptional of circumstances and is in fact intended to be increased (and the price is in fact labelled a base price).*
- (b) *The explicit wording is different for price increases and price decreases, including statements that price increases may have retrospective effect whereas there is no mention of similar possibility for a price decrease.*
- 57.3. as to subparagraph (d), the MSAA Benchmark Price Term, so far as the Plaintiffs are able to say, is a term of a contract between Fonterra Milk and Bonlac Supply Company:
- 57.3.1. to which contract the Farmers were not party; and
- 57.3.2. the terms of which were confidential and not disclosed (except by way of summaries) to Farmers.

58. As to paragraph 4.58, the Plaintiffs refer to and repeat paragraph 53 of this Reply, and otherwise admit the allegations therein.
59. As to paragraph 4.59, the Plaintiffs refer to and repeat paragraph 54 of this Reply, and otherwise admit the allegations therein.
60. As to paragraph 4.60, the Plaintiffs admit the allegations therein.
61. As to paragraph 4.61 the Plaintiffs:
- 61.1. refer to and repeat the allegations in paragraph 14 of the ASOC;
- 61.2. say further that on 10 May 2017 Fonterra made an announcement to the effect that:
- 61.2.1. Fonterra in the 2017 Season would pay an extra \$0.40/kgMS to Farmers who had continually supplied Fonterra since 30 April 2016 and supplied it during the 2017 Season, as well as suppliers who commenced supplying milk to Fonterra in the 2017 season (collectively the **2017 current Farmers**);
- 61.2.2. Fonterra would pay an extra \$0.40/kgMS for milk supplied during the 2015 Season by Farmers who had left the dairy industry between 30 April 2016 and 10 May 2017 and had not supplied any other processor during that period (**2017 retired Farmers**);
- 61.2.3. Fonterra would pay an extra \$0.40/kgMS for milk supplied during the 2017 Season by farmers who were not 2017 current Farmers or 2017 retired Farmers but who returned to supply Fonterra during the 2017 Season (**2017 recommencing Farmers**); and
- 61.2.4. otherwise do not admit the allegations in paragraph 4.61.
62. As to paragraph 4.62, the Plaintiffs refer to and repeat paragraph 61 of this Reply and otherwise admit the matters in paragraph 4.62.
63. As to paragraph 4.63:
- 63.1. the Plaintiffs deny the allegations contained therein;
- 63.2. say further that:

- 63.2.1. Fonterra did not offer the Additional 40c Payment to all Farmers who supplied dairy milk to Fonterra in the 2015 season;
- 63.2.2. Farmers were eligible to receive the Additional 40c Payment even if they did not supply dairy milk to Fonterra in the 2015 season;
- 63.2.3. in relation to 2017 current Farmers and 2017 recommencing Farmers who supplied dairy milk to Fonterra in the 2015 season, the Additional 40c Payment was calculated on the volume of dairy milk supplied during the 2017 season and not the 2015 season;
- 63.2.4. in relation to the 2017 retired Farmers the Additional 40c Payment was calculated on the volume of dairy milk supplied during the 2015 season;
- 63.2.5. 2017 current Farmers or 2017 recommencing Farmers who received the Additional 40c Payment as an advance, were required to apply that advance to pay off outstanding debts (if any) owed to Fonterra under the Support Loan;
- 63.2.6. 2017 retired Farmers who received the Additional 40c Payment as an advance were required to apply that advance towards any outstanding amount owed by them to Fonterra;
- 63.2.7. Farmers who were not 2017 current Farmers, 2017 retired Farmers nor 2017 recommencing Farmers were not eligible to receive the Additional 40c Payment even if they had supplied Fonterra in the 2015 season;
- 63.2.8. Fonterra announced that the Additional 40c Payment increased the forecast full year range for the 2017 season – not the 2015 Season - from \$5.70/kgMS to \$6.10/kgMS.

Particulars

Information in relation to the Additional 40c Payment was contained in documents including the Fonterra Australia Media Release dated 10 May 2017 FON.100.270.2162 and a letter sent to suppliers dated 12 May 2017 FON100.272.1674.

64. As to paragraph 4.64 the Plaintiffs refer to and repeat paragraph 63 of this Reply and do not admit the allegations contained in paragraph 4.64.
65. As to paragraph 4.65 the Plaintiffs refer to and repeat paragraph 63 of this Reply and do not admit the allegations contained in paragraph 4.65.
66. The Plaintiffs admit the matters in paragraph 4.66.
67. As to paragraph 4.67, the Plaintiffs:
- 67.1. admit that they have not repaid their Support Loan;
- 67.2. otherwise deny the allegations therein;
- 67.3. say further that by email correspondence from Fonterra's lawyers on 11 September 2019, Fonterra waived any contractual right it might have had pursuant to the Support Loan to claim interest.

Particulars

The email correspondence is available for inspection at the offices of the Plaintiffs' solicitors.

Part C – Contract Claims

68. As to paragraph 6(d)(i)(B)(1) the Plaintiffs admit that the 2015/2016 Handbook contained the Handbook MSA Statement.
69. As to paragraph 6(e)(i) the Plaintiffs admit that the 2015/2016 Handbook contained the statement alleged.
70. As to paragraph 6(m), the Plaintiffs:
- 70.1. admit that the Opening Price Letter contained the statements and references alleged;
- 70.2. deny that any statement in the letter constituted a 'warning'; and
- 70.3. otherwise do not admit the allegations contained therein.

71. As to paragraph 7(b), the Plaintiffs:
- 71.1. deny the matters in paragraph 7(b)(ii); and
 - 71.2. otherwise admit the allegations contained therein.
72. As to paragraph 10(b), the Plaintiffs:
- 72.1. deny the matters in paragraph 10(b)(ii); and
 - 72.2. otherwise admit the allegations contained therein.
73. As to paragraph 13(b), the Plaintiffs:
- 73.1. refer to and repeat the allegations made in ASOC paragraphs 13 and 14;
 - 73.2. admit that the ASX announcements contained statements as noted in paragraphs 13(b)(i), (ii) and (iv);
 - 73.3. say that in the ASX announcement Murray Goulburn also said that the milk support payment would be introduced ‘so that suppliers receive payments during FY16 equivalent to an FMP of \$5.47 per kgms’;
 - 73.4. deny the allegations made in (iii) and say that Murray Goulburn’s ASX announcement stated to the effect that Murray Goulburn would be funding the MSSP by additional group borrowings, not cash on balance sheet; and
 - 73.5. otherwise do not admit the matters contained therein.
74. As to paragraph 14.1, the Plaintiffs:
- 74.1. refer to and repeat the allegations made in ASOC paragraphs 13 and 14 and paragraph 51 of this Reply;
 - 74.2. admit that the ASX Announcement contained the statement in paragraph 14.1(b)(i)(ii) and say further that the announcement also contained the statement that “this delivered an average cash price for milk to our suppliers of \$5.53 per kgms”;
 - 74.3. say further that the Annual Report of Murray Goulburn dated 24 August 2016 (p.2) states that Murray Goulburn “delivered an average cash price for milk to suppliers of

\$5.53 per kg/ms in FY16, made up of the final FMP of \$4.80 per kg/ms and \$0.73 cents of MSSP support”; and

74.4. otherwise deny the allegations made therein.

75. As to paragraph 15, the Plaintiffs:

75.1. admit that the announcement also contained the statements set out therein;

75.2. refer to and repeat paragraphs 51, 61 and 62 of this Reply;

75.3. deny the matters in subparagraph 15(b)(ii); and

75.4. otherwise do not admit the allegations set out in paragraph 15.

Part D – Misleading and deceptive conduct

76. As to paragraph 22, the Plaintiffs admit the allegations contained therein.

77. As to paragraph 27, the Plaintiffs:

77.1. as to subparagraph 27(a)(i):

77.1.1. admit the matters in subparagraphs 27(a)(i)A, B and C;

77.1.2. otherwise do not admit the allegations therein;

77.2. as to subparagraph 27(a)(ii):

77.2.1. admit the matters in subparagraphs 27(a)(ii)D, E and G;

77.2.2. otherwise do not admit the allegations therein;

77.3. otherwise deny the allegations therein.

Part E – Unconscionable conduct

78. As to paragraph 35(t)(ii)(A)-(C), the Plaintiffs admit the allegations contained therein.

Save as aforesaid, and save as to admissions contained in the Amended Defence, the Plaintiffs join issue with the Defendants upon the whole of their Amended Defence.

Dated: 17 August 2022

LWL Armstrong

MW Guo

PE Kelly

P Wakhlu



.....
Adley Burstyn

solicitors for the plaintiffs

SCHEDULE OF PARTIES

Geoffrey and Lynden Iddles

Plaintiffs

-and-

Fonterra Australia Pty Ltd ACN 006 483 665

First Defendant

-and-

Fonterra Milk Australia Pty Ltd ACN 114 326 448

Second Defendant

-and-

Fonterra Brands (Australia) Pty Ltd ACN 095 181 669

Third Defendant