



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

No. S ECI 2020 02588
Case: S ECI 2020 02588
Filed on: 11/07/2022 04:42 PM

BETWEEN:

GEOFFREY and LYNDEN IDDLES

Plaintiffs

- and -

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

Defendants

**PLAINTIFFS' REQUEST FOR FURTHER AND BETTER PARTICULARS OF
AMENDED DEFENCE DATED 16 JUNE 2022**

Date of document: 11 July 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 Defendants

AND to their lawyers Arnold Bloch Leibler

TAKE NOTICE that plaintiffs require further and better particulars of the defendants' amended defence dated 16 June 2022 (**Amended Defence**) within **30 days** after the date of service upon you of this request.

NOTE:

1. Wherever in this request "the **usual particulars**" are sought of any agreement, contract, arrangement, representation, statement, term, condition, notification, advice, information, instruction, direction, transaction or any other matter or thing, state:
 - 1.1. whether it was wholly or partly (stating which) in writing, oral or to be implied;
 - 1.2. insofar as it was in writing, identify sufficiently the document or (if more than one) each of the documents constituting the same and say where such document or documents now may be inspected or in whose possession it is or they are (and if any

such document has been lost or destroyed, set out its terms as well as they can be recalled);

- 1.3. insofar as it was oral, give the substance of the conversation or each of the conversations (if more than one) constituting the same and say when, where and between which actual persons each such conversation or each of such conversations took place; and
 - 1.4. insofar as it was to be implied, state the acts, facts, matters, things and circumstances giving rise to such implication with all material dates and places.
2. Wherever in this request "the **usual details**" are sought, specify each act, fact, matter, thing, circumstance, event, happening, occurrence, omission, error, neglect or default relied on (with all material dates and places) and, in the case of any person, the name and office or role of the person in respect of any defendant.
 3. Wherever in this request "the **usual calculations**" are sought of any amount, estimate or number, state the integers used and method of calculation applied to derive the same.

PARTICULARS REQUESTED:

4. As to paragraph 4.51, give the usual calculation of the following figures:
 - 4.1. the \$5.66 pleaded in (a);
 - 4.2. the \$5.36 pleaded in (b); and
 - 4.3. the \$5.13 pleaded in (c);including for each of them, the volume(s) of milk used to calculate the figures, by relevant month if that is required for the calculation, and the corresponding fat and protein figures used for such calculations.
5. As to paragraph 4.56, give:
 - 5.1. the usual calculation of the \$2.50 pleaded;
 - 5.2. the usual details of the payment to Farmers which is alleged, including when they were paid and:

- 5.2.1. whether there were any conditions for receipt of the payments;
- 5.2.2. whether Farmers who ceased supply prior to the payments being made (whether before one or more dates across which the payments were spread) received the Autumn Offset Payment in full or at all;
- 5.2.3. as to payments made to Farmers supplying the defendants on and before 5 May 2016:
 - 5.2.3.1. whether such group of persons is the same group of persons as Group Members;
 - 5.2.3.2. the number of Farmers in that group; and
 - 5.2.3.3. the amount of such payment (in aggregate), and the usual calculation of it;
- 5.2.4. as to Farmers not falling within 5.2.3 who received the payments:
 - 5.2.4.1. how many there were;
 - 5.2.4.2. the amount they received (in aggregate), and the usual calculation of it; and
 - 5.2.4.3. why they received any payment which the defendants allege was in effect for the 2015/2016 year;
- 5.2.5. in respect of both categories of Farmers mentioned in paragraphs 5.2.3. and 5.2.4 above, the month or months, upon which the volume(s) of milk the payment was calculated on;
- 5.2.6. whether the payments were, at any time, accounted for in calculating any FMP, in particular the average weighted FMP for 2016/2017, that year's

opening price upon its announcement, the opening price as adjusted, forecast closing FMP, or final closing FMP;

5.2.7. how the payments were recorded in the defendants' financial records, including whether they were recorded:

5.2.7.1. as payments for the 2015/2016 season;

5.2.7.2. as amounts to be deducted from the milk payments paid to some or all suppliers of the defendants for the 2016/2017 season and subsequent seasons;

5.2.8. how, if at all, the amount paid for the Autumn Offset Payments altered, or was said to alter, the milk price payments made in the 2016/2017 year and subsequent years;

5.2.9. whether the Autumn Offset Payments were accounted for in the defendants' 2016/2017 closing price;

5.2.10. whether the Autumn Offset Payments were accounted for in the defendants' FMP which was used to compare with Murray Goulburn's price for 2016/2017 for the purposes of the Price Matching Obligation.

6. As to paragraph 4.61, provide the usual particulars and the usual details of the 10 May 2017 announcement by Fonterra.

7. As to paragraph 4.63:

7.1. provide the usual details of the allegation that the Additional 40c Payment was *“connected or referable to, and / or relevantly would not have been made but for, the 2015 / 2016 Price Revision or the conduct relied on by the plaintiffs...”*. In answering this request provide particulars of any conduct of Fonterra which

indicated to the recipients that the Additional 40c Payment was made in this way or intended to have the effect of forming part of the 2015/2016 milk price or offsetting any liability of the defendants to the recipients.

7.2. Provide the usual details of the “general reference” referred to in paragraph (b), being vague and imprecise language.

7.3. Provide the usual details of the intention to compensate referred to in paragraph (c), including:

7.3.1. where, how or in what conduct or documents of the defendants that intention existed; and

7.3.2. whether that intention was conveyed to the recipients of the Additional 40c Payment.

8. As to paragraph 4.64, give:

8.1. the usual calculation of the \$54,120,803.58 referred to under the heading Particulars, including the milk volumes by individual supplier (which may be anonymised for present purposes); and

8.2. the usual calculation of the \$1,842,033.23 referred to under the heading Particulars, including the milk volumes by individual supplier (which may be anonymised for present purposes);

including in both cases, when and how the payments were made to suppliers.

9. As to paragraph 4.64, provide the usual details, alternatively an explanation, as to whether and how the Additional 40c Payment was accounted for in:

9.1.1. the defendants’ 2017/2018 closing price; and

9.1.2. the FMP of the defendants which was used to compare with Murray Goulburn's price for 2017/2018 for the purposes of the Price Matching Obligation.

10. As to paragraph 4.65, give the usual calculations of:

10.1. the \$35,330,839.23; and

10.2. the \$33,488,806 referred to under the heading Particulars;

and in doing so include the milk volumes by individual supplier (which may be anonymised for present purposes).

11. As to paragraph 4.65 provide the usual particulars of the "*suppliers who supplied Fonterra in the 2015/2016 season*". To avoid the defendants' considering any onerous obligation by this question, the plaintiffs clarify that they seek to know if that group is no more, and no less, than:

11.1. Farmers who supplied the defendants on 5 May 2016 and before that in the 2015/2016 season; or

11.2. Group Members (in the event the defendants allege Group Members to comprise a group of persons different from the group specified in the preceding paragraph).

12. As to paragraph 14.1(g) give:

12.1. the usual calculations of the \$0.23 pleaded in sub-paragraph (i);

12.2. the usual calculations of the \$0.30 pleaded in sub-paragraph (ii); and

12.3. the usual details of the "*payments made to suppliers who supplied Fonterra in the 2015/2016 season*" pleaded in sub-paragraph (ii).

13. As to paragraph 15(b)(ii) provide the usual calculations of the:

13.1. \$4.41 pleaded;

13.2. \$2.66 pleaded; and

13.3. \$6.65 pleaded;

including the volumes of milk used in such calculation (kg/MS as well as the fat and protein proportions if that is part of the calculation), and the usual details of those volumes, by month, and an explanation of what they represent.

14. As to paragraph 21(c), provide:

14.1. the usual details of the accrued interest alleged; and

14.2. the usual particulars and usual details which the defendants rely on to allege a liability of the plaintiffs to pay interest.

15. As to paragraph 34(b) provide the usual details of “*any Support Loan, to the extent it has not been repaid*”, specifically the amount the defendants allege this relates to, separated for principal and any interest claimed.

Dated: 11 July 2022



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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