



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

No. S-ECI 2021 03645

Case: S-ECI 2021 03645  
Filed on: 14/03/2024 04:14 PM

B E T W E E N

JAKE THOMAS

First Plaintiff

YUE XIAO

Second Plaintiff

and

THE A2 MILK COMPANY LIMITED (ARBN 158 331 965)

Defendant

**AMENDED CONSOLIDATED STATEMENT OF CLAIM**

*(filed pursuant to paragraph 3 of the orders of the Honourable Justice M Osborne  
made 13 December 2023)*

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Date of Document: ~~20 July 2022~~ 14 March 2024

Filed on behalf of: Jake Thomas (First Plaintiff) and Yue Xiao (Second Plaintiff)

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**NOTE:**

In this amended consolidated statement of claim (ACSOC), 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 C to this ACSOC consolidated statement of claim.

## A. THE PARTIES AND GROUP MEMBERS

### A.1 The Plaintiffs and Group Members

1. Jake Thomas (**Thomas**) and Yue Xiao (**Xiao**) (together, **Plaintiffs**) commence this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on their own behalf and on behalf of all the Group Members.
2. The Plaintiffs and the persons they represent (**Group Members**) are all persons who or which:
  - (a) at any time during the period from 19 August 2020 to 9 May 2021 inclusive (**Relevant Period**) held an interest in fully paid ordinary shares in the Defendant, The a2 Milk Company Limited (**a2** or the **Company**) that was:
    - (i) an interest they acquired in the Relevant Period (such interest being **Period Shares** and such persons being **Acquisition Claimants**); or ~~by buying these shares on either:~~
      - A. ~~the Australian Securities Exchange (**ASX**); or~~
      - B. ~~the NZSX Main Board (**NZSX**),~~  
  
~~(such interest being **Period Shares** and such persons being **Acquisition Claimants**); or~~
    - (ii) an interest they had already acquired before 19 August 2020 ~~by buying the shares on the ASX or NZSX,~~ and which they retained until a date after 28 September 2020 (such interest being **Pre-Period Shares**, and such persons being **Retention Claimants**);
  - (b) are alleged to have suffered loss or damage by or resulting from the conduct of a2 alleged in this ACSOC ~~consolidated 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 Plaintiffs' transactions during the Relevant Period are set out in Annexure A to this ACSOC consolidated 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 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**) and s12AC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (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 Australian Securities Exchange (ASX), being a financial market operated by ASX Limited;
- (e) made announcements and published information in Australia to the ASX;
- (f) was and is included in the NZSX Main Board (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;
- (g) 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;
- (h) made announcements and published information in New Zealand to the NZSX;

- (i) had and has on issue ordinary shares (**a2 Securities**) which were and are:
  - (i) traded on the ASX and Cboe Australia (formerly, and for the Relevant Period, Chi-X Australia), a licensed financial market operated by Chi-X Australia Pty Ltd in accordance with pt 7.2 of the Corporations Act (Chi-X), 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 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, Chi-X and NZSX;
  - (x) at all material times, likely to be affected, as to their traded price, by the information available in respect of a2 as a result of announcements and publications made by a2 to either the ASX or NZSX;
  
- (j) 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;

- (k) 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 1990* (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(h) and 4(j) 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 and on Chi-X (**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 19.12 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. From the beginning of 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. From the beginning of 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. From 23 March 2021 until the end of the Relevant Period, 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. From 23 March 2021 until the end of the Relevant Period, 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 of 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 Officer 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. David Akers was at all times during the Relevant Period the Head of Investor Relations of a2.
30. Julia Hoare was at all times during the Relevant Period the Deputy Chair of the Board, and an independent non-executive director of a2.
31. 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.

32. 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, David Akers, and Li Xiao (**a2 Executives**) and David Hearn, Julia Hoare, Jessie Wu, Pip Greenwood, Warwick 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) by reason of the matters pleaded in paragraph 9 above, 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).
33. 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) by reason of the matters pleaded in paragraph 16 above, 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**

34. 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.
35. 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; and
  - (d) the *UK* segment, the operation of which ceased in FY20.
36. 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**).
37. 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:

- (i) sales of infant formula products contributed approximately 82% of a2's revenue in FY20, page 70;
  - (ii) 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;
  - (iii) sales of Chinese Label Infant Formula Products contributed approximately 19.4% of a2's revenue in FY20, page 70; and
  - (iv) a significant portion of the infant formula products purchased by customers in the Aus NZ Segment (which comprised approximately 43% of a2's revenue in FY20) were ultimately consumed in China.
38. 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 (**CBEC**) 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.

39. 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:

- (i) its sales of English Label Infant Formula Products to China via the cross-border e-commerce channel in FY20 totalled \$341.1m, page 17;
- (ii) 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
- (iii) on JD.com, for a particular sales event, it was the bestselling cross-border e-commerce infant milk formula brand overall, page 17.

## **D. AUGUST 2020 CONTRAVENTIONS**

### **D.1 True Position at August 2020**

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

- (a) 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;

- (b) 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;
- (c) 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);
- (d) 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;
- (e) the likely effect of sub-paragraph 40(d) above was to:
  - (i) reduce the sale price of a2's infant formula products in China including in cross-border e-commerce sales;
  - (ii) reduce the sale price at which retail daigou resellers and corporate daigou resellers could compete with cross-border e-commerce suppliers; and
  - (iii) reduce the profit margins available to retail daigou resellers and corporate daigou resellers,
- (f) 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;
- (g) 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;
- (h) 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;

- (i) by reason of sub-paragraphs 40(a) to (h) above, an increase in supply of a2's English Label Infant Formula Products in the 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
- (j) by reason of sub-paragraphs 40(a) to (i) above, there was 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 a2 ASX and NZSX announcement dated 18 December 2020 entitled "Updated 1H21 and FY21 guidance" (**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) In the a2 ASX and NZSX announcement dated 25 February 2021 entitled "HY21 Results Commentary" (**February 2021 Update Announcement**) a2 confirmed that the daigou channel played an important role in stimulating demand across multiple points of distribution and the interdependence of CBEC with the daigou/reseller channel was relevant to performance in the CBEC channel:

*"The important role daigous play in stimulating demand across multiple points of distribution and the interdependence of CBEC with the daigou/reseller channel is relevant to performance in*

*the CBEC channel. With this interdependence in mind, the Company is actively rebalancing inventory in the channel and continuing to refine its promotional approach”, pages 3 – 4.*

- (iv) Each of the matters in (i) to (iii) above related to structural features of the products and markets in which a2 operated and were observable by and known to a2 in the period prior to the dates on which a2 referred to them in publications and announcements and the Plaintiffs refer to and repeats the particulars to paragraph 50.

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

41. 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 40 and 41 constitute the **August 2020 a2 China Market Conditions**).

#### **Particulars**

- (i) During the a2 December 2020 Update Announcement earnings call with analysts and investors dated 18 December 2020 attended by Geoffrey Babidge, Peter Nathan and Race Strauss (**December 2020 Call**), Peter Nathan 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 2021 Update Announcement earnings call with analysts and investors which took place on 25 February 2021 attended by David Akers, David Bortolussi, Peter Nathan and Race Strauss (**February 2021 Call**), Peter Nathan 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 a2's ASX and NZSX announcement dated 10 May 2021 entitled "Trading Update and Revised FY21 Outlook" (**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) a2 ASX and NZSX announcement dated 19 August 2020 entitled "2020 Annual Results Presentation", page 10.
- (vi) Each of the matters in (i) to (v) 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 and the Plaintiffs refer to and repeat the particulars to paragraph 50.

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

42. 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:
- (i) would not achieve continued strong revenue growth over its FY20 revenue of \$1.73bn, or an earnings before interest, taxes, depreciation and amortisation (**EBITDA**) to sales margin (**EBITDA margin**) of 30% to 31% in FY21; and
  - (ii) would achieve in FY21 revenue materially less than its FY20 result, and an EBITDA margin materially less than 30%,
- (separately or together, the **August 2020 a2 China Market Information**).

#### **Particulars**

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, variances of 5% to 10% or more were material to the a2 Securities Market.

Further particulars as to a2's likely financial performance will be provided following completion of discovery and receipt of expert reports.

43. As at 19 August 2020 (and all material times afterwards) a2's monitoring systems (**a2 Monitoring Systems**) were not adequate to enable a2 to reliably monitor levels of infant formula already held in supply chains directed at or within China (**China channel inventory**).

#### **Particulars**

The inadequacy of a2 Monitoring Systems in relation to China channel inventory is to be inferred from the circumstances that:

- (i) the December 2020 Call, page 8, disclosed difficulty in monitoring inventory levels;
- (ii) a2 in the February 2021 Update Announcement, at page 4, stated that it was actively rebalancing inventory in the cross-border e-commerce channel and identified that subdued online pricing and channel inventory unwinding had resulted in daigou being slower to fully re-enter the market to promote the brand;
- (iii) a2 in the February 2021 Update Announcement, page 4, and document published by a2 titled "Interim Results 2021 Half year interim results", dated 25 February 2021, (**February Results Presentation**), pages 16-17, stated that it was aiming to re-activate the daigou channel, including by improving traceability through the channel;
- (iv) a2 in the May 2021 Update Announcement, stated that:

- A. a2 had conducted a Board-initiated comprehensive inventory review, following which it was clear that challenges in the daigou and cross-border e-commerce channels were exacerbated by excess inventory and difficulties with visibility, page 1;
  - B. visibility into third party inventory levels is generally challenging and the data is incomplete, page 3;
  - C. a2 would work with its customers and distributors to improve the dating of (channel) inventory, page 3; and
  - D. would continue to rebalance inventory by further reducing sell-in to the daigou and CBEC channels to reduce channel inventory to target levels, page 3;
- (v) a2 in its “2021 Annual Results”, dated 26 August 2021 at page 5, disclosed that higher than anticipated level of channel inventory was primarily due to difficulties with the visibility that arises as a result of the highly complex and multi-layered Chinese distribution systems;
  - (vi) the matters in particulars (i) to (v) above were likely to have required weeks or months to develop, with the result that they were likely to have been in place by 19 August 2020;
  - (vii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) above were the same as the a2 Monitoring Systems which were in use in August 2020.
  - (viii) Further particulars will be provided following the completion of discovery.

## **D.2 August Representations**

44. On 19 August 2020, a2 announced its FY20 results, which included:
- (a) total revenue of \$1.73bn, representing an increase of 32.8% from FY19;
  - (b) EBITDA of \$549.7m, representing an increase of 32.9% from FY19;
  - (c) EBITDA to sales margin of 31.7%;
  - (d) revenue from the sale of all infant formula products of \$1.42bn, representing an increase of 33.8% from FY19;
  - (e) total English Label Infant Formula Product sales of \$1.09bn (representing 62.8% of a2’s total sales of all products);

- (f) total Aus NZ Segment sales of \$965m, including English Label Infant Formula Product sales of \$745m (the latter figure representing 43.1% of a2's total sales of all products); and
- (g) 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);
- (h) a2 had enjoyed robust performance throughout FY20 and its business had demonstrated significant resilience in the face of the COVID-19 global pandemic.

**Particulars**

2020 Annual Report, pages 12, 13, 69 and 70.

45. a2's actual FY20 performance was below market consensus as to a2's expected FY20 performance.

**Particulars**

Auerbach Grayson report, entitled "The a2 Milk Company", dated 12 August 2020, at page 3, reported that market consensus for expected FY20 revenue was \$1.75 billion, representing an increase of approximately 34.2% from FY19.

Further particulars will be provided following discovery and receipt of expert reports.

46. On 19 August 2020, a2 published and lodged with the ASX and NZSX documents and made accompanying comments in a call with analysts and investors attended by Geoffrey Babidge, Peter Nathan, Race Strauss and David Akers (**August 2020 Call**) by which a2 represented that:
- (a) the financial statements of the Group had been prepared using accounting policies which had been consistently applied and supported by reasonable judgments and estimates;
  - (b) notwithstanding the uncertainty resulting from COVID-19, a2 expected continued strong revenue growth for FY21;
  - (c) FY21 EBITDA margin was expected to be 30% to 31%;

- (d) it was comfortable with the levels of inventory of infant formula in China, in supply chains down to pantry stocks; and
- (e) reports of 3 to 4 months' inventory of infant formula held in Chinese supply chains, compared to the usual levels of 1 to 2 months' inventory, were "off",

(together, the **August Express 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, pages 21 and 56.
- (iv) Refinitiv transcript of the August 2020 Call, page 6.

47. By making the August Express Representations, a2 also made implied representations to the a2 Securities Market that:

- (a) the a2 Monitoring Systems were adequate to reliably monitor China channel inventory;
- (b) by reason of the matters in sub-paragraph (a) above, a2 was able to assess with reasonable accuracy:
  - (i) likely demand from sales to its various channels during FY21; and
  - (ii) the risk that elevated levels of China channel inventory supplied during FY20 may need clearing before there would be demand for new product to be supplied to a2's various channels;
- (c) a2's statements to the market and forecasts were prepared based on information derived from its monitoring systems;
- (d) a2 had reasonable grounds for making the August Express Representations,

(together, the **August Implied Representations**).

48. The August Express Representations and August Implied Representations (together, the **August 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 Representations were partially

qualified by each of the September 2020 Partial Disclosure, December 2020 Partial Disclosure and February 2021 Partial Disclosure as pleaded below.

#### *9 September Announcement*

49. On or about 9 September 2020, a2 published to the ASX and NZSX a market release entitled “CLSA Investors’ Forum Presentation” (**9 September Release**) in which a2 announced that or to the effect that:
- (a) COVID-19 had caused disruptions and changes to consumer behaviour including pantry stocking of infant nutrition products in 3Q20 across both cross-border e-commerce channels and daigou channels;
  - (b) a proportion of the pantry stocking had unwound in 4Q20 but a2 was unable to estimate the full extent of the unwind;
  - (c) there continued to be uncertainties resulting from COVID-19 that could impact consumer behaviour in core markets as well as participants in supply chains, most notably in China; and
  - (d) despite the said uncertainties, a2 affirmed the August Express Representations.

#### **Particulars**

a2 ASX and NZSX market release entitled “CLSA Investors’ Forum Presentation dated 9 September 2020, pages 9, 18, 20.

#### **D.3 August 2020 Misleading or Deceptive Conduct**

50. 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) That a2 knew or ought to have known the August 2020 a2 China Market Conditions can be inferred from the facts that:
  - A. the information the subject of the August 2020 a2 China Market Conditions related to the subject matter of the August Express Representations;
  - B. a2 had impliedly represented that it had reasonable grounds for making the August Express Representations.
- (ii) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.

- (iii) It can also be inferred that a2 knew or ought to have known the August 2020 a2 China Market Conditions from the facts that:
  - A. 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; when
  - B. the conditions which constitute the August 2020 a2 China Market Conditions required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 19 August 2020.

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

51. As at 19 August 2020 (and all material times afterwards) a2 knew or ought to have known that the a2 Monitoring Systems were not adequate to enable a2 to reliably monitor levels of China channel inventory (the **Inadequate Monitoring Systems Information**).

#### **Particulars**

That a2 knew or ought to have known Inadequate Monitoring Systems Information is to be inferred from the circumstances that:

- (i) the matters in particulars (i) to (v) to paragraph 43 above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 19 August 2020;
- (ii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) to paragraph 43 above were the same as the a2 Monitoring Systems which were in use in August 2020.

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

52. To the extent the August Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations.

#### **Particulars**

The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

The Plaintiffs refer to and repeat paragraphs 40, 41, 50 to 51 and the particulars thereto.

53. The August 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.

54. By reason of the matters alleged in 40 to 53 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 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 Representations to the NZSX, 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 18 of the Australian Consumer Law;
  - (iii) s 9 of the FT Act; and/or
  - (iv) s 19(2) of the FMC Act,

(the matters pleaded in paragraphs 54(a) and 54(b)(i) and (ii) constitute the **Australian Law August 2020 Misleading or Deceptive Conduct Contravention**; the matters pleaded in paragraphs 54(b)(iii) and (iv) constitute the **NZ Law August 2020 Misleading or Deceptive Conduct Contravention**; and the matters pleaded in paragraphs 54(a) and (b) constitute the **August 2020 Misleading or Deceptive Conduct Contravention**).



#### **D.4 August 2020 Continuous Disclosure Contravention**

55. 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:

- (a) the August 2020 a2 China Market Conditions;
- (b) the August 2020 a2 China Market Information; and
- (c) the Inadequate Monitoring Systems Information.

#### **Particulars**

- (i) As to the August 2020 a2 China Market Conditions, the Plaintiffs refer to and repeat the particulars to paragraph 50.
- (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 or ought to have known the August 2020 a2 China Market Conditions;
  - (b) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards; and
  - (c) a2 was subject to the ASX and NZSX Listing Rules and was required to provide information to the ASX and NZSX regarding its financial performance, including in relation to the August 2020 a2 China Market Information.
- (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:
  - A. a2 ultimately identified the August 2020 a2 China Market Conditions and the August 2020 a2 China Market Information as reasons for the September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
  - B. the conditions which constitute the August 2020 a2 China Market Conditions and August 2020 a2 China Market Information required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 19 August 2020.

- (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.
- (ii) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the Inadequate Monitoring Systems Information from the fact that:
  - (i) the matters in particulars (i) to (v) to paragraph 43 above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 19 August 2020; and
  - (ii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) to paragraph 43 above were the same as the a2 Monitoring Systems which were in use in August 2020.

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

~~ASX~~ Australian Law Contraventions

56. Each of:

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

was information that:

- (i) was not generally available within the meaning of s 676 of the Corporations Act;
- (ii) at all times during the Relevant Period until 22 March 2021:
  - A. 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;
  - B. 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
  - C. 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;

- (iii) 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, August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was material because of the features of the market for a2 Securities as set out in paragraphs 46 to 47 below, and the fact that it related to a2's future financial performance.
- (ii) The materiality of the August 2020 a2 China Market Conditions, August 2020 a2 China Market Information and the Inadequate Monitoring Systems 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 56(c)(ii), the plaintiffs refer to and rely on paragraph 57 below.
- (iv) As to the allegations of recklessness in sub-paragraphs 56(c)(ii)B) and 56(c)(ii)C), the plaintiffs refer to and rely on paragraph 58 below.

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

57. By reason of:

- (a) the awareness of one or more of the a2 Officers of the August 2020 a2 China Market Conditions, the August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information as pleaded in paragraph 55 above;
- (b) the materiality of the August 2020 a2 China Market Conditions, the August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information;
- (c) a2's incremental disclosure of information related to the subject matter of the August 2020 a2 China Market Conditions, the August 2020 a2 China Market Information and the Inadequate Monitoring Systems 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 69(d)(ii) to (iii), 95(d)(ii) to (iii), 120(d)(ii) to (iii) and 145(d)(ii) to (iii) below,

it is to be inferred that a2:

- (e) was aware of a substantial risk that the information, if it were generally available, 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 the information, if it were generally available, 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.

58. Having regard to the circumstances and substantial risks known to a2 pleaded in paragraph 57 above, it was unjustifiable for a2:

- (a) not to disclose the August 2020 a2 China Market Conditions, the August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information; and
- (b) in so doing to take the risk that, if generally available, the information:
  - (i) would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
  - (ii) would have a material effect on the price or value of a2 Securities.

59. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 55 to 58 above, on and from 19 August 2020, a2 became immediately obliged to inform the ASX of:

- (a) the August 2020 a2 China Market Conditions;

- (b) the August 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information.

60. a2 did not inform the ASX of:

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

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

61. By reason of the matters alleged in paragraphs 55 to 60, 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,

(the matters pleaded in paragraphs 55 to 61 constitute the **Australian Law August 2020 Continuous Disclosure Contraventions**).

~~NZSX~~ NZ Law Contraventions

62. Each of:

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

was information that:

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

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

63. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 55 and 62 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;
- (b) the August 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information.

64. a2 did not inform the NZSX of:

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

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

65. By reason of the matters alleged in paragraphs 55 and 62 to 64 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 55 and 62 to 65 above constitute the **NZ Law August 2020 Continuous Disclosure Contravention**, and the matters pleaded in paragraphs 55 to 65 above constitute the **August 2020 Continuous Disclosure Contravention**).

## **D.5 Market Effects of August Contraventions**

66. By reason of:

- (a) the matters set out in paragraphs 45 and 49 above:
  - (i) A2 reported FY20 results that were below market consensus;
  - (ii) by reason of (i) and the 9 September Release set out in paragraph 49:

- A. persons who held a2 Securities (**a2 Investors**) reduced the price at which they were willing to dispose of the a2 Securities; and
- B. persons who were considering acquiring a2 Securities (also **a2 Investors**) reduced the price at which they were willing to purchase the a2 Securities;

(b) the **August Contraventions** being (together and severally):

- (i) Australian Law August 2020 Misleading or Deceptive Conduct Contravention;
- (ii) NZ Law August 2020 Misleading or Deceptive Conduct Contravention;
- (iii) Australian Law August 2020 Continuous Disclosure Contravention; further or alternatively;
- (iv) NZ Law August 2020 Continuous Disclosure Contravention,

the reductions in (a) were materially smaller than they otherwise would have been.

67. In the premises, the August Contraventions caused the price at which a2 Securities traded on the ASX and NZSX (**Traded Price**) to be higher on and from 19 August 2020 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

#### **Particulars**

The said effects are to be inferred from:

- (i) the character of the market for a2 Securities, as set out in paragraphs 146 to 147;
- (ii) the changes in the Traded Prices on 19 August 2020 set out in Annexure B immediately following the August Representations;
- (iii) the changes in the Traded Prices on 9 September 2020 set out in Annexure B immediately following the 9 September Release; and
- (iv) the changes in the Traded Price set out in Annexure B following the partial disclosures and eventual corrective disclosure referred to below, some or all of which reflected the a2 Securities Market's response to the disclosure or correction of information not disclosed or not accurately disclosed by reason of the Australian Law August 2020 Misleading or Deceptive Conduct Contravention, the NZ Law August 2020 Misleading or Deceptive Conduct Contravention, the Australian Law August 2020 Continuous Disclosure Contravention and the NZ Law August 2020 Continuous Disclosure Contravention.

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

## D.6 September 2020 Partial Disclosure

68. 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 2020 Update Announcement**).

69. 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 Express 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 Plaintiffs refer to and repeat paragraph 76 below.

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

(d) by reason of the matters in sub-paragraph 69(a) to (c) above:

(i) by partly correcting the said information, caused a2 Investors:

A. who held a2 Securities – to reduce the price at which they were willing to dispose of the Securities; or

B. who were considering acquiring a2 Securities – to reduce the price at which they were willing to purchase the Securities;

(ii) 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%);

(iiA) caused the price at which a2 Securities traded on Chi-X to decline from a closing price of AUD\$17.21 on 25 September 2020, to a closing price of AUD\$15.30 on 28 September 2020 (a decline of approximately 11.10%);

(iii) caused the price at which a2 Securities traded on the NZSX to decline from a closing price of \$18.44 on 25 September 2020, to a closing price of \$16.65 on 28 September 2020 (a decline of approximately 9.71%);

(iv) caused the Traded Price of a2 Securities to adjust downward toward the price which would have existed if the:

A. Australian Law August 2020 Misleading or Deceptive Conduct Contravention;

B. Australian Law August 2020 Continuous Disclosure Contravention;

C. NZ Law August 2020 Misleading or Deceptive Conduct Contravention; and

D. NZ Law August 2020 Continuous Disclosure Contravention, or any combination of them, had not occurred;

(v) caused the Traded Price to adjust downward to correct or partly correct so as to remove the inflation effects of the Contraventions listed in sub-paragraph 69(d)(iv) or any one or combination of them; and

- (e) by reason of the matters alleged in sub-paragraphs 69(a) to (d) had a material adverse effect on the Traded Price of a2 Securities.

## **E. SEPTEMBER 2020 CONTRAVENTIONS**

### **E.1 True Position at September 2020**

70. 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;
- (c) there was a material risk that strong sales of a2's China Label Infant Formula Products in 2H20 and 1H21 reflected a build-up of channel inventory and would not be maintained into 2H21,

(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:
  - A. it finished 1H21 with inventory of \$198.6m, \$51.2m higher than at the end of FY20; and
  - B. a stock provision of \$23.3m was booked in 1H21 because running down of inventory in the daigou and CBEC channels had been slower than expected.
- (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) In the May 2021 Corrective Disclosure, a2 stated that the reduced rate of China Label Infant Formula Product sales relative to 3Q20 was reflective of the substantial uplift in the prior period due to COVID-related pantry stocking.

(vi) Each of the matters in (i) to (v) 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 and the Plaintiffs refer to and repeat the particulars to paragraph 76.

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

71. 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:
  - (i) would not achieve group revenue for 1H21 of \$725m to \$775m, group revenue for FY21 of \$1.80bn to \$1.90bn, or an EBITDA margin in the order of 31%; and
  - (ii) would achieve in FY21 revenue materially less than its FY20 result and an EBITDA margin materially less than 30%.

#### **Particulars**

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, variances of 5% to 10% or more were material to the a2 Securities Market.

Further particulars as to a2's likely financial performance will be provided following completion of discovery and receipt of expert reports.

- (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,

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

72. As at 28 September 2020 (and all material times afterwards) the a2 Monitoring Systems were not adequate to enable a2 to reliably monitor levels of China channel inventory.

#### **Particulars**

The Plaintiffs refer to paragraph 143 and repeat the particulars thereto.

#### **E.2 September Representations**

73. 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 Express Representations**).

#### **Particulars**

- (i) September 2020 Update Announcement, pages 1 to 2.
- (ii) a2's statement in the September 2020 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 2020 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.*

74. By making the September Express Representations, a2 also made implied representations to the a2 Securities Market that:
- (a) the a2 Monitoring Systems were adequate to reliably monitor China channel inventory;
  - (b) by reason of the matters in (a) above, a2 was able to assess with reasonable accuracy:
    - (i) likely demand from sales to its various channels during FY21; and
    - (ii) the risk that elevated levels of China channel inventory supplied during FY20 may need clearing before there would be demand for new product to be supplied to a2's various channels;
  - (c) a2's statements to the market and forecasts were prepared based on information derived from its monitoring systems;
  - (d) a2 had reasonable grounds for making the September Express Representations,
- (together, the **September Implied Representations**).
75. The September Express Representations and September Implied Representations (together, the **September 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 as pleaded below.

### **E.3 September 2020 Misleading or Deceptive Conduct**

76. 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) That a2 knew or ought to have known the September 2020 a2 China Market Conditions can be inferred from the facts that:
  - A. the information the subject of the September 2020 a2 China Market Conditions related to the subject matter of the September Express Representations;
  - B. a2 had impliedly represented that it had reasonable grounds for making the September Express Representations;
- (ii) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.
- (iii) It can also be inferred that a2 knew or ought to have known the September

2020 a2 China Market Conditions from the facts that:

- A. a2 ultimately identified these matters in each of the December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; when
- B. the conditions which constitute the September 2020 a2 China Market Conditions required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 28 September 2020

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

77. As at 28 September 2020 (and all material times afterwards) a2 knew or ought to have known the Inadequate Monitoring Systems Information.

### **Particulars**

That a2 knew or ought to have known the Inadequate Monitoring Systems Information is to be inferred from the circumstances that:

- (i) a2 in the December 2020 Call, page 8, disclosed difficulty in monitoring inventory levels;
- (ii) a2 in the February 2021 Update Announcement, at page 4, stated that it was actively rebalancing inventory in the cross-border e-commerce channel and identified that subdued online pricing and channel inventory unwinding had resulted in daigou being slower to fully re-enter the market to promote the brand;
- (iii) a2 in the February 2021 Update Announcement, page 4, and February Results Presentation, pages 16-17, stated that it was aiming to re-activate the daigou channel, including by improving traceability through the channel;
- (iv) a2 in the May 2021 Update Announcement, stated that:
  - A. a2 had conducted a Board-initiated comprehensive inventory review, following which it was clear that challenges in the daigou and cross-border e-commerce channels were exacerbated by excess inventory and difficulties with visibility, page 1;
  - B. visibility into third party inventory levels is generally challenging and the data is incomplete, page 3;
  - C. a2 would work with its customers and distributors to improve the dating of (channel) inventory, page 3; and
  - D. would continue to rebalance inventory by further reducing sell-in to the daigou and CBEC channels to reduce channel inventory to target levels, page 3;

- (v) a2 in its “2021 Annual Results”, dated 26 August 2021 at page 5, disclosed that higher than anticipated level of channel inventory was primarily due to difficulties with the visibility that arises as a result of the highly complex and multi-layered Chinese distribution systems.
- (vi) the matters in particulars (i) to (v) above likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 28 September 2020;
- (vii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) above were the same as the a2 Monitoring Systems which were in use in September 2020.

Further particulars will be provided following the completion of discovery.

78. To the extent the September Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations.

### **Particulars**

The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

The Plaintiffs refer to and repeat paragraphs 70 and 76 and the particulars thereto.

79. The September 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.
80. By reason of the matters alleged in paragraphs 70 to 79 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 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 Representations to the NZSX, 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 18 of the Australian Consumer Law;
  - (iii) s 9 of the FT Act; and/or
  - (iv) s 19(2) of the FMC Act,

(the matters pleaded in paragraphs 80(a) and 80(b)(i) and (ii) constitute the **Australian Law September 2020 Misleading or Deceptive Conduct Contravention**; the matters pleaded in paragraphs 80(b)(iii) and (iv) constitute the **NZ Law September 2020 Misleading or Deceptive Conduct Contravention**, and the matters pleaded in paragraphs 80(a) and (b) constitute the **September 2020 Misleading or Deceptive Conduct Contravention**).

#### **E.4 September 2020 Continuous Disclosure Contravention**

81. 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:
- (a) the September 2020 a2 China Market Conditions;
  - (b) the September 2020 a2 China Market Information; and
  - (c) the Inadequate Monitoring Systems Information.

#### **Particulars**

- (i) As to the September 2020 a2 China Market Conditions, the Plaintiffs refer to and repeat the particulars to paragraph 76.
- (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 or ought to have known the September 2020 a2 China Market Conditions;



- (b) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards; and
  - (c) a2 was subject to the ASX and NZSX Listing Rules and was required to provide information to the ASX and NZSX regarding its financial performance, including in relation to the September 2020 a2 China Market Information.
- (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:
- (a) a2 ultimately identified the September 2020 a2 China Market Conditions and September 2020 a2 China Market Information as reasons for the December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
  - (b) the conditions which constitute the September 2020 a2 China Market Conditions and September 2020 a2 China Market Information require weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 28 September 2020.
- (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 Express Representations.
- (v) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the Inadequate Monitoring Systems Information from the fact that:
- (a) the matters in particulars (i) to (v) to paragraph 43 above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 28 September 2020;
  - (b) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) to paragraph 43 above were the same as the a2 Monitoring Systems which were in use in September 2020.

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

~~ASX~~ Australian Law Contraventions

82. Each of:

- (a) the September 2020 a2 China Market Conditions;

- (b) the September 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information, was information that:
  - (i) was not generally available within the meaning of s 676 of the Corporations Act;
  - (ii) at all times during the Relevant Period until 22 March 2021:
    - A. 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;
    - B. 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
    - C. 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;
  - (iii) 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, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was material because of the features of the market for a2 Securities as set out in paragraphs 146 to 147 below, and the fact that 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 September 2020 Partial Disclosure, December 2020 Partial Disclosure, February 2021 Partial Disclosure and May 2021 Corrective Disclosure.
- (iii) As to subparagraph 82(c)(ii), the plaintiffs refer to and rely on paragraph 83 below.
- (iv) As to the allegations of recklessness in sub-paragraphs 82(c)(ii)B) and 82(c)(ii)C), the plaintiffs refer to and rely on paragraph 84 below.

83. By reason of:

- (a) the awareness of one or more of the a2 Officers of the September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information as pleaded in paragraph 81 above;
- (b) the materiality of the September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information;
- (c) a2's incremental disclosure of information related to the subject matter of the September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems 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 69(d)(ii) to (iii) above and 95(d)(ii) to (iii), 120(d)(ii) to (iii) and 145(d)(ii) to (iii) below,

it is to be inferred that a2:

- (e) was aware of a substantial risk that the information, if it were generally available, 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 the information, if it were generally available, 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.

84. Having regard to the circumstances and substantial risks known to a2 pleaded in paragraph 83 above, it was unjustifiable for a2:

- (a) not to disclose the September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information; and

- (b) in so doing to take the risk that, if generally available, the information:
  - (i) would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
  - (ii) would have a material effect on the price or value of a2 Securities.

85. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 81 to 84 above, on and from 28 September 2020, a2 become immediately obliged to inform the ASX of:

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

86. a2 did not inform the ASX of:

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

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

87. By reason of the matters alleged in paragraphs 81 to 86 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,

(the matters pleaded in paragraphs 81 to 87 constitute the **Australian Law September 2020 Continuous Disclosure Contravention**).

~~AZSX~~ NZ Law *Contraventions*

88. Each of:

- (a) the September 2020 a2 China Market Conditions;
- (b) the September 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information, was information that:
- (d) was not generally available within the meaning of s 232 of the FMC Act;
- (e) 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;
- (f) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

89. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 81 and 88 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;
- (b) the September 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information.

90. a2 did not inform the NZSX of:

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

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

91. By reason of the matters alleged in paragraphs 81 and 88 to 90 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 81 and 88 to 91 above constitute the **NZ Law September 2020 Continuous Disclosure Contravention**, and the matters pleaded in paragraphs 81 to

91 constitute the **September 2020 Continuous Disclosure Contravention**).

## **E.5 Market Effects of September Contraventions**

92. By reason of:

- (a) the matters set out in paragraph 68 above, a2 Investors:
  - (i) who held a2 Securities – reduced the price at which they were willing to dispose of the a2 Securities; and
  - (ii) who were considering acquiring a2 Securities – reduced the price at which they were willing to purchase the a2 Securities;
- (b) the **September Contraventions** being (together and severally):
  - (i) the Australian Law September 2020 Misleading or Deceptive Conduct Contravention;
  - (ii) the NZ Law September 2020 Misleading or Deceptive Conduct Contravention;
  - (iii) the Australian Law September 2020 Continuous Disclosure Contravention; further or alternatively,
  - (iv) the NZ Law September 2020 Continuous Disclosure Contravention;

the reductions in (a) were materially smaller than they otherwise would have been.

93. In the premises, the September Contraventions caused Traded Price of a2 Securities to be higher on and from 28 September 2020 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

### **Particulars**

The Inflation effects are to be inferred from:

- (i) the character of the market for a2 Securities, as set out in paragraphs 146 to 147;
- (ii) the changes to the Traded Price on 28 September 2020 as set out in Annexure B following the September 2020 Partial Disclosure.
- (iii) the changes in the Traded Price set out in Annexure B following the partial disclosures and eventual corrective disclosure referred to below, some or all of which reflected the a2 Securities Market's response to the disclosure or correction of information not disclosed or not accurately disclosed by reason of the Australian Law September 2020 Misleading or Deceptive

Conduct Contravention, the NZ Law September 2020 Misleading or Deceptive Conduct Contravention, the Australian Law September 2020 Continuous Disclosure Contravention, and the NZ Law September 2020 Continuous Disclosure Contravention.

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

## **E.6 December 2020 Partial Disclosure**

94. On 18 December 2020, a2 published and lodged with the ASX and NZSX a document and made accompanying comments in the December 2020 Call 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 December 2020 Update Announcement and the December 2020 Call.

95. 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 Express Representations and the September 2020 Express 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:
- (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 102 below.

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



- (d) by reason of the matters in sub-paragraph 95(c) above:
- (i) by partly correcting the said information, caused a2 Investors:
    - A. who held a2 Securities – to reduce the price at which they were willing to dispose of the Securities; or
    - B. who were considering acquiring a2 Securities – to reduce the price at which they were willing to purchase the Securities;
  - (ii) 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%);  
(iiA) caused the price at which a2 Securities traded on Chi-X to decline from a closing price of AUD\$13.30 on 16 December 2020, to a closing price of AUD\$10.165 on 18 December 2020 (a decline of approximately 23.57%);
  - (iii) 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%);
  - (iv) caused the Traded Price of a2 Securities to adjust downward toward the price which would have existed if the:
    - A. Australian Law August 2020 Misleading or Deceptive Conduct Contravention;
    - B. Australian Law August 2020 Continuous Disclosure Contravention;
    - C. NZ Law August 2020 Misleading or Deceptive Conduct Contravention;
    - D. NZ Law August 2020 Continuous Disclosure Contravention;
    - E. Australian Law September 2020 Misleading or Deceptive Conduct Contravention; and/or
    - F. Australian Law September 2020 Continuous Disclosure Contravention;
    - G. NZ Law September 2020 Misleading or Deceptive Conduct Contravention; and/or
    - H. NZ Law September 2020 Continuous Disclosure Contravention, or any combination of them, had not occurred;

- (v) caused the Traded Price to adjust downward to correct or partly correct so as to remove the inflation effects of the Contraventions listed in sub-paragraph 95(d)(iv), or any one or combination of them; and
- (vi) by reason of the matters alleged in sub-paragraphs 95(a) to (d), had a material adverse effect on the Traded Price of a2 Securities.

## **F. DECEMBER 2020 CONTRAVENTIONS**

### **F.1 True Position at December 2020**

96. 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 into 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;
- (c) there was a material risk that existing levels of inventory in the CBEC channel would:
  - (i) limit the effectiveness of a2's efforts to restrict sales into the CBEC channel; and
  - (ii) enable CBEC vendors to continue to offer a2 products at prices that were too low to drive a 'reboot' of daigou margins and therefore daigou demand;

#### **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.
- (i) 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.
- (ii) 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 at a rate which was consistent with its ability to achieve revenue consistent with the December 2020 Representations.

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

- (d) 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 and the Plaintiffs refer to and repeat the particulars to paragraph 102.

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

97. 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:
  - (i) would not achieve group revenue for FY21 of \$1.40bn to \$1.55bn or an EBITDA margin of between 26% and 29%;
  - (ii) would achieve in FY21 revenue materially less than \$1.4bn and an EBITDA margin materially less than 26%.

#### **Particulars**

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, variances of 5% to 10% or more were material to the a2 Securities Market.

Further particulars as to a2’s likely financial performance will be provided following completion of discovery and receipt of expert reports.

- (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,

(separately or together, the **December 2020 a2 China Market Information**).

98. As at 18 December 2020 (and all material times afterwards the a2 Monitoring Systems were not adequate to enable a2 to reliably monitor levels of China channel inventory.

#### **Particulars**

The Plaintiffs refer to paragraph 43 and repeat the particulars thereto.

#### **F.2 December Representations**

99. 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, and a2 was receiving financial information on an accurate and timely basis, (together, the **December Express Representations**).

#### **Particulars**

- (i) December 2020 Update Announcement, pages 2 to 3.
- (ii) As to sub-paragraph (b) the Plaintiffs refer 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.*

100. By making the December Express Representations, a2 also made implied representations to the a2 Securities Market that:

- (a) the a2 Monitoring Systems allowed a2 to reliably monitor the China channel inventory;

- (b) by reason of the matters in (a) above, a2 was able to assess with reasonable accuracy:
  - (i) likely demand from sales to its various channels during FY21; and
  - (ii) the risk that elevated levels of China channel inventory supplied during FY20 may need clearing before there would be demand for new product to be supplied to a2's various channels;
- (c) a2's statements to the market and forecasts were prepared based on information derived from its monitoring systems;
- (d) a2 had reasonable grounds for making the December Express Representations,  
  
(together, the **December Implied Representations**).

101. The December Express Representations and December Implied Representations (together, the **December 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 as pleaded below.

### **F.3 December 2020 Misleading or Deceptive Conduct**

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

#### **Particulars**

- (i) That a2 knew or ought to have known the December 2020 a2 China Market Conditions can be inferred from the facts that:
  - A. the information the subject of the December 2020 a2 China Market Conditions related to the subject matter of the December Express Representations;
  - B. a2 had impliedly represented that it had reasonable grounds for making the December Express Representations
- (ii) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.
- (iii) 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.

- (iv) a2 could be expected to have understood that the predominant 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
- (v) It can also be inferred that a2 knew or ought to have known the alleged information from the facts that:
  - A. a2 ultimately identified these matters as reasons for the February 2021 Partial Disclosure and May 2021 Corrective Disclosure; when
  - B. the conditions which constitute the December 2020 a2 China Market Conditions required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 18 December 2020.

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

103. As at 18 December 2020 (and all material times afterwards) a2 knew or ought to have known the Inadequate Monitoring Systems Information.

#### **Particulars**

That a2 knew or ought to have known the Inadequate Monitoring Systems Information is to be inferred from the circumstances that:

- (i) a2 in the December 2020 Call, page 8, disclosed difficulty in monitoring inventory levels;
- (ii) a2 in the February 2021 Update Announcement, at page 4, stated that it was actively rebalancing inventory in the cross-border e-commerce channel and identified that subdued online pricing and channel inventory unwinding had resulted in daigou being slower to fully re-enter the market to promote the brand;
- (iii) a2 in the February 2021 Update Announcement, page 4, and February Results Presentation, pages 16-17, stated that it was aiming to re-activate the daigou channel, including by improving traceability through the channel;
- (iv) a2 in the May 2021 Update Announcement, stated that:
  - A. a2 had conducted a Board-initiated comprehensive inventory review, following which it was clear that challenges in the daigou and cross-border e-commerce channels were exacerbated by excess inventory and difficulties with visibility, page 1;
  - B. visibility into third party inventory levels is generally challenging and the data is incomplete, page 3;

- C. a2 would work with its customers and distributors to improve the dating of (channel) inventory, page 3; and
  - D. would continue to rebalance inventory by further reducing sell- in to the daigou and CBEC channels to reduce channel inventory to target levels, page 3;
- (v) a2 in its “2021 Annual Results”, dated 26 August 2021 at page 5, disclosed that higher than anticipated level of channel inventory was primarily due to difficulties with the visibility that arises as a result of the highly complex and multi-layered Chinese distribution systems.
  - (vi) the matters in particulars (ii) to (v) above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 18 December 2020;
  - (vii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) above were the same as the a2 Monitoring Systems which were in use in December 2020.

Further particulars will be provided following the completion of discovery.

104. To the extent the December Representations were representations as to future matters, a2 did not have reasonable grounds for those representations.

#### **Particulars**

The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

The Plaintiffs refer to and repeat paragraphs 96 and 102 to 103 and the particulars subjoined thereto.

105. The December 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.

106. By reason of the matters alleged in paragraphs 96 to 105 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 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 Representations to the NZSX, 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 18 of the Australian Consumer Law;
- (iii) s 9 of the FT Act; and/or
- (iv) s 19(2) of the FMC Act,

(the matters pleaded in paragraphs 106(a) and 106(b)(i) and (ii) constitute the **Australian Law December 2020 Misleading or Deceptive Conduct Contravention**; the matters pleaded in paragraphs 106(b)(iii) and (iv) constitute the **NZ Law December 2020 Misleading or Deceptive Conduct Contravention**, and the matters pleaded in paragraphs 106(a) and (b) constitute the **December 2020 Misleading or Deceptive Conduct Contravention**).

#### **F.4 December 2020 Continuous Disclosure Contravention**

107. 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:

- (a) the December 2020 a2 China Market Conditions;
- (b) the December 2020 a2 China Market Information; and
- (c) the Inadequate Monitoring Systems Information.



## Particulars

- (i) As to the December 2020 a2 China Market Conditions, the Plaintiffs refer to and repeat the particulars to paragraph 102.
- (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 or ought to have known the December 2020 a2 China Market Conditions;
  - (b) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards; and
  - (c) a2 was subject to the ASX and NZSX Listing Rules and was required to provide information to the ASX and NZSX regarding its financial performance, including in relation to the December 2020 a2 China Market Information;
- (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:
  - (a) a2 ultimately identified the December 2020 a2 China Market Information and December 2020 a2 China Market Conditions as reasons for the February 2021 Partial Disclosure and May 2021 Corrective Disclosure; and
  - (b) the conditions which constitute the December 2020 a2 China Market Information and December 2020 a2 China Market Conditions required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 18 December 2020.
- (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 Representations.

It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the Inadequate Monitoring Systems Information from the fact that:

- (a) the matters in particulars (i) to (v) to paragraph 43 above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 18 December 2020;
- (b) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) to paragraph 43 above were the same

as the a2 Monitoring Systems which were in use in December 2020.

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

~~ASX~~ Australian Law Contraventions

108. Each of:

- (a) the December 2020 a2 China Market Conditions;
- (b) the December 2020 a2 China Market Information; and
- (c) the Inadequate Monitoring Systems Information, was information that:
  - (i) was not generally available within the meaning of s 676 of the Corporations Act;
  - (ii) at all times during the Relevant Period until 22 March 2021:
    - A. 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;
    - B. 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
    - C. 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;
  - (iii) 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, December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was material because of the features of the market for a2 Securities as set out in paragraphs 146 to 147 below, and the fact that it related to a2's future financial performance.
- (ii) The materiality of the December 2020 a2 China Market Conditions, December 2020 a2 China Market Information and the Inadequate Monitoring Systems 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 108(c)(ii), the plaintiffs refer to and rely on paragraph 109 below.
- (iv) As to sub-paragraph 108(c)(ii)B and 108(c)(ii)C, the plaintiffs refer to and rely on paragraph 110 below.

109. By reason of:

- (a) the awareness of one or more of the a2 Officers of the December 2020 a2 China Market Conditions, the December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information as pleaded in paragraph 107 above;
- (b) the materiality of the December 2020 a2 China Market Conditions, the December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information;
- (c) a2's incremental disclosure of information related to the subject matter of the December 2020 a2 China Market Conditions, the December 2020 a2 China Market Information and the Inadequate Monitoring Systems 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 69(d)(ii) to (iii) and 95(d)(ii) to (iii) above and 120(d)(ii) to (iii) and 145(d)(ii) to (iii) below,

it is to be inferred that a2:

- (e) was aware of a substantial risk that the information, if it were generally available, 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 the information, if it were generally available, 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.

110. Having regard to the circumstances and substantial risks known to a2 pleaded in paragraph 109 above, it was unjustifiable for a2:

- (a) not to disclose the December 2020 a2 China Market Conditions, the December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information; and
- (b) in so doing to take the risk that, if generally available, the information:
  - (i) would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
  - (ii) would have a material effect on the price or value of a2 Securities.

111. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 107 to 110 above, on and from 18 December 2020, a2 become immediately obliged to inform the ASX of:

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

112. a2 did not inform the ASX of:

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

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

113. By reason of the matters alleged in paragraphs 107 to 112 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,

(the matters pleaded in paragraphs 107 to 113 constitute the **Australian Law December 2020 Continuous Disclosure Contraventions**).

~~NZSX~~ NZ Law Contraventions

114. Each of:

- (a) the December 2020 a2 China Market Conditions;
- (b) the December 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information, was information that:
- (d) was not generally available within the meaning of s 232 of the FMC Act;
- (e) 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;
- (f) related to a particular financial product being a2 Securities and a particular listed issuer being a2.

115. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 107 and 114 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;
- (b) the December 2020 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information.

116. a2 did not inform the NZSX of:

- (a) the December 2020 a2 China Market Conditions;
- (b) the December 2020 a2 China Market Information, and/or
- (c) the Inadequate Monitoring Systems Information.

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

117. By reason of the matters alleged in paragraphs 107 and 114 to 116 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 107 and 114 to 117 above constitute the **NZ Law December 2020 Continuous Disclosure Contravention**, and the matters pleaded in paragraphs 107 to 117 above constitute the **December 2020 Continuous Disclosure Contravention**).

## **F.5 Market Effects of December Contraventions**

118. The:

- (a) Australian Law December 2020 Misleading or Deceptive Conduct Contravention;
- (b) NZ Law December 2020 Misleading or Deceptive Conduct Contravention;
- (c) Australian Law December 2020 Continuous Disclosure Contravention; and
- (d) NZ Law December 2020 Continuous Disclosure Contravention,

caused the Traded Price of a2 Securities to be higher on and from 18 December 2020 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

### **Particulars**

The said effects are to be inferred from:

- (i) the character of the market for a2 Securities, as set out in paragraphs 146 to 147;
- (ii) the changes in the Traded Price set out in Annexure B following the partial disclosures and eventual corrective disclosure referred to below, some or all of which reflected the a2 Securities Market's response to the disclosure or correction of information not disclosed or not accurately disclosed by reason of the Australian Law December 2020 Misleading or Deceptive Conduct Contravention, the NZ Law December 2020 Misleading or Deceptive Conduct Contravention, Australian Law December 2020 Continuous Disclosure Contravention, and the NZ Law December 2020 Continuous Disclosure Contravention.

## F.6 February 2021 Partial Disclosure

119. On 25 February 2021, a2 published and lodged with the ASX and NZSX a series of documents and made accompanying comments in the February 2021 Call 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 February 2021 Update Announcement and the a2 ASX and NZSX announcement dated 25 February 2021 entitled “1H21 Results Presentation”.
- (ii) As to sub-paragraph 119(b) the Plaintiffs refer 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.

120. 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 Express Representations, the September 2020 Express Representations and the December 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; and
  - (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 Plaintiffs refer to and repeat paragraph 127 below.

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

(d) by reason of the matters in sub-paragraph 120(a) above:

(i) by partly correcting the said information, caused a2 Investors:

A. who held a2 Securities – to reduce the price at which they were willing to dispose of the Securities; or

B. who were considering acquiring a2 Securities – to reduce the price at which they were willing to purchase the Securities;

(ii) 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%);

(iiA) caused the price at which a2 Securities traded on Chi-X to decline from a closing price of AUD\$10.45 on 24 February 2021, to a closing price of AUD\$8.77 on 25 February 2021 (a decline of approximately 16.08%);

(iii) 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%);

(iv) caused the Traded Price of a2 Securities to adjust downward toward the price which would have existed if the:

A. Australian Law August 2020 Misleading or Deceptive Conduct Contravention;

B. Australian Law August 2020 Continuous Disclosure Contravention;

C. NZ Law August 2020 Misleading or Deceptive Conduct Contravention;

D. NZ Law August 2020 Continuous Disclosure Contravention;

E. Australian Law September 2020 Misleading or Deceptive Conduct Contravention;

F. Australian Law September 2020 Continuous Disclosure Contravention;

- G. NZ Law September 2020 Misleading or Deceptive Conduct Contravention;
  - H. NZ Law September 2020 Continuous Disclosure Contravention;
  - I. Australian Law December 2020 Misleading or Deceptive Conduct Contravention; and/or
  - J. Australian Law December 2020 Continuous Disclosure Contravention,
  - K. NZ Law December 2020 Misleading or Deceptive Conduct Contravention; and/or
  - L. NZ Law December 2020 Continuous Disclosure Contravention, or any combination of them, had not occurred;
- (v) caused the Traded Price to adjust downward to correct or partly correct so as to remove the inflation effects of the Contraventions listed at sub-paragraph 120(d)(v), or any one or combination of them; and
  - (vi) by reason of the matters alleged in sub-paragraphs 120(a) to (d) had a material adverse effect on the Traded Price of a2 Securities.

## **G. FEBRUARY 2021 CONTRAVENTIONS**

### **G.1 True Position at February 2021**

121. 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**).
122. 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:
    - (i) would not achieve group revenue for FY21 in the order of \$1.40bn or an EBITDA margin of 24% to 26%; and

- (ii) would achieve in FY21 revenue materially less than \$1.40bn and an EBITDA margin materially less than 24%;

#### **Particulars**

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, variances of 5% to 10% or more were material to the a2 Securities Market.

Further particulars as to a2's likely financial performance will be provided following completion of discovery and receipt of expert reports.

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

123. As at 25 February 2021 (and all material times afterwards) the a2 Monitoring Systems were not adequate to enable a2 to reliably monitor levels of China channel inventory.

#### **Particulars**

The Plaintiffs refer to paragraph 43 and repeat the particulars thereto.

### **G.2 February Representations**

124. On 25 February 2021, a2 published and lodged with the ASX and NZSX a series of documents and made accompanying comments in in the February 2021 Call in which it represented or impliedly represented 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 Express 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.*

125. By making the February Express Representations, a2 also made implied representations to the a2 Securities Market that:

- (a) the a2 Monitoring Systems were adequate to reliably monitor the China channel inventory;
- (b) by reason of the matters in (a) above, a2 was able to assess with reasonable accuracy:
  - (i) likely demand from sales to its various channels during FY21; and
  - (ii) the risk that elevated levels of China channel inventory supplied during FY20 may need clearing before there would be demand for new product to be supplied to a2’s various channels;
- (c) a2’s statements to the market and forecasts were prepared based on information derived from its monitoring systems;
- (d) a2 had reasonable grounds for making the February Express Representations,  
(together, the **February Implied Representations**).

126. The February Express Representations and February Implied Representations (together, the **February 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 as pleaded below.

### G.3 February 2021 Misleading or Deceptive Conduct

127. 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) That a2 knew or ought to have known the February 2021 China Market Conditions can be inferred from the facts that:
  - A. the information the subject of the February 2020 a2 China Market Conditions related to the subject matter of the February Express Representations;
  - B. a2 had impliedly represented that it had reasonable grounds for making the February Express Representations;
- (ii) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) The fact that a2 knew or ought to have known the alleged information can also be inferred from the facts that:
  - A. a2 ultimately identified these matters as reasons for the May 2021 Corrective Disclosure; when
  - B. the conditions which constitute the February 2021 a2 China Market Conditions required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 25 February 2021.

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

128. As at 25 February 2021 (and all material times afterwards) a2 knew or ought to have known the Inadequate Monitoring Systems Information.

### Particulars

That a2 knew or ought to have known the Inadequate Monitoring Systems Information is to be inferred from the circumstances that:

- (i) a2 in the December 2020 Call, page 8, disclosed difficulty in monitoring inventory levels;
- (ii) a2 in the February 2021 Update Announcement, at page 4, stated that it was actively rebalancing inventory in the cross-border e-commerce channel and identified that subdued online pricing and channel inventory unwinding had resulted in daigou being slower to fully re-enter the market to promote the brand;
- (iii) a2 in the February 2021 Update Announcement, page 4, and February Results Presentation, pages 16-17, stated that it was aiming to re-activate the daigou channel, including by improving traceability through the channel;
- (iv) a2 in the May 2021 Update Announcement, stated that:
  - A. a2 had conducted a Board-initiated comprehensive inventory review, following which it was clear that challenges in the daigou and cross-border e-commerce channels were exacerbated by excess inventory and difficulties with visibility, page 1;
  - B. visibility into third party inventory levels is generally challenging and the data is incomplete, page 3;
  - C. a2 would work with its customers and distributors to improve the dating of (channel) inventory, page 3; and
  - D. would continue to rebalance inventory by further reducing sell-in to the daigou and CBEC channels to reduce channel inventory to target levels, page 3;
- (v) a2 in its "2021 Annual Results", dated 26 August 2021 at page 5, disclosed that higher than anticipated level of channel inventory was primarily due to difficulties with the visibility that arises as a result of the highly complex and multi-layered Chinese distribution systems.
- (vi) the matters in particulars (iv) to (v) above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 25 February 2021;
- (vii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) above were the same as the a2 Monitoring Systems which were in use in February 2021.

Further particulars will be provided following the completion of discovery.

129. To the extent the February Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations.

#### **Particulars**

The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.

The Plaintiffs refer to and repeat paragraphs 121 and 127 to 128 and the particulars subjoined thereto.

130. The February 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.

131. By reason of the matters alleged in paragraphs 121 to 130 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 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 Representations to the NZSX, 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 18 of the Australian Consumer Law;
  - (iii) s 9 of the FT Act; and/or

(iv) s 19(2) of the FMC Act,

(the matters pleaded in paragraphs 131(a) and 131(b)(i) and (ii) constitute the **Australian Law February 2020 Misleading or Deceptive Conduct Contravention**; the matters pleaded in paragraphs 131(b)(iii) and (iv) constitute the **NZ Law February 2020 Misleading or Deceptive Conduct Contravention**, and the matters pleaded in paragraphs 131(a) and (b) constitute the **February 2021 Misleading or Deceptive Conduct Contravention**).

#### **G.4 February 2021 Continuous Disclosure Contravention**

132. 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:

- (a) the February 2021 a2 China Market Conditions;
- (b) the February 2021 a2 China Market Information; and
- (c) the Inadequate ~~Mentoring~~Monitoring Systems Information.

#### **Particulars**

- (i) As to the February 2021 a2 China Market Conditions, the Plaintiffs refer to and repeat the particulars to paragraph 127.
- (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 or ought to have known the February 2021 a2 China Market Conditions;
  - (b) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards; and
  - (c) a2 was subject to the ASX and NZSX Listing Rules and was required to provide information to the ASX and NZSX regarding its financial performance, including in relation to the February 2021 China Market Information.
- (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:



- (a) a2 ultimately identified the February 2021 a2 China Market Conditions and the February 2021 a2 China Market Information as reasons for the May 2021 Corrective Disclosure; and
- (b) the conditions which constitute the February 2021 a2 China Market Conditions and the February 2021 a2 China Market Information required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 25 February 2021.
- (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 Representations.
- (v) It can be inferred that one or more of the a2 Officers had, or ought reasonably to have, come into possession of the Inadequate Monitoring Systems Information from the fact that:
  - (a) the matters in particulars (i) to (v) to paragraph 43 above were likely to have required weeks or months to develop, with the result that they were likely to have been indicated in information available to a2 by 25 February 2021;
  - (b) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars (i) to (v) to paragraph 43 above were the same as the a2 Monitoring Systems which were in use by 25 February 2021.

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

~~ASX~~ Australian Law *Contraventions*

133. Each of:

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

was information that:

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

- B. 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
  - C. 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;
- (iii) 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, February 2021 a2 China Market Information and the Inadequate Monitoring Systems Information was material because of the features of the market for a2 Securities as set out in paragraphs 146 to 147 below, and the fact that it related to a2's future financial performance.
- (ii) The materiality of the February 2021 a2 China Market Conditions, February 2021 a2 China Market Information and the Inadequate Monitoring Systems 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 133(c)(ii), the plaintiffs refer to and rely on paragraph 134 below.
- (iv) As to the allegations of recklessness in sub-paragraphs 133(c)(ii)B) and 133(c)(ii)C), the plaintiffs refer to and rely on paragraph 135 below.

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

134. By reason of:

- (a) the awareness of one or more of the a2 Officers of the February 2021 a2 China Market Conditions, the February 2021 a2 China Market Information the Inadequate Monitoring Systems Information as pleaded in paragraph 132 above;
- (b) the materiality of the February 2021 a2 China Market Conditions, the February 2021 a2 China Market Information and the Inadequate Monitoring Systems Information;

- (c) a2's incremental disclosure of information related to the subject matter of the February 2021 a2 China Market Conditions, the February 2021 a2 China Market Information and the Inadequate Monitoring Systems 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 69(d)(ii) to (iii), 95(d)(ii) to (iii) and 120(d)(ii) to (iii) above and 145(d)(ii) to (iii) below,

it is to be inferred that a2:

- (e) was aware of a substantial risk that the information, if it were generally available, 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 the information, if it were generally available, 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.

135. Having regard to the circumstances and substantial risks known to a2 pleaded in paragraph 134 above, it was unjustifiable for a2:

- (a) not to disclose the February 2021 a2 China Market Conditions, the February 2021 China Market Information and the Inadequate Monitoring Systems Information; and
- (b) in so doing to take the risk that, if generally available, the information:
  - (i) would or would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of a2 Securities; and/or
  - (ii) would have a material effect on the price or value of a2 Securities.

136. By reason of the Australian Continuous Disclosure Obligations and the matters alleged in paragraphs 132 to 135 above, on and from 25 February 2021, a2 become immediately obliged to inform the ASX of:

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

137. a2 did not inform the ASX of:

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

at any time prior to 10 May 2021.

138. By reason of the matters alleged in paragraphs 132 to 137 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,

(the matters pleaded in paragraphs 132 to 138 constitute the **Australian Law February 2021 Continuous Disclosure Contraventions**).

~~AZSX~~ NZ Law *Contraventions*

139. Each of:

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

was information that:

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

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

140. By reason of the New Zealand Continuous Disclosure Obligations and the matters alleged in paragraphs 132 and 139 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;
- (b) the February 2021 a2 China Market Information; and/or
- (c) the Inadequate Monitoring Systems Information.

141. a2 did not inform the NZSX of:

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

until the May 2021 Corrective Disclosure.

142. By reason of the matters alleged in paragraphs 132 and 139 to 141 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 132 and 139 to 142 above constitute the **NZ Law February 2021 Continuous Disclosure Contravention**, and the matters pleaded in paragraphs 132 to 142 above constitute the **February 2021 Continuous Disclosure Contravention**).

## **G.5 Market Effects of February Contraventions**

143. The:

- (a) Australian Law February 2021 Misleading or Deceptive Conduct Contravention;
- (b) Australian Law February 2021 Continuous Disclosure Contravention;

- (c) NZ Law February 2021 Misleading or Deceptive Conduct Contravention; and
- (d) NZ Law February 2021 Continuous Disclosure Contravention,

caused the Traded Price of a2 Securities to be higher on and from 25 February 2021 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

### Particulars

The said effects are to be inferred from:

- (i) the character of the market for a2 Securities, as set out in paragraphs 146 to 147; and
- (ii) the changes in the Traded Price set out in Annexure B following the partial disclosures and eventual corrective disclosure referred to below, some or all of which reflected the a2 Securities Market's response to the disclosure or correction of information not disclosed or not accurately disclosed by reason of the Australian Law February 2021 Misleading or Deceptive Conduct Contravention, the Australian Law February 2021 Continuous Disclosure Contravention, the NZ Law February 2021 Misleading or Deceptive Conduct Contravention, and the NZ Law February 2021 Continuous Disclosure Contravention.

### G.6 May 2021 Corrective Disclosure

144. 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) The May 2021 Update Announcement.
- (ii) As to sub-paragraph 144(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.

145. 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;
    - (viii) February 2021 a2 China Market Information; and
    - (ix) Inadequate Monitoring Systems 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 Express Representations, the September 2020 Express Representations, the December Representations and the February 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 145(c) above:
  - (i) by correcting the said information, caused a2 Investors:
    - A. who held a2 Securities – to reduce the price at which they were willing to dispose of the Securities; or
    - B. who were considering acquiring a2 Securities – to reduce the price at which they were willing to purchase the Securities;
  - (ii) 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%);  
(iiA) caused the price at which a2 Securities traded on Chi-X to decline from a closing price of AUD\$7.00 on 7 May 2021, to a closing price of AUD\$6.08 on 10 May 2021 (a decline of approximately 13.14%);
  - (iii) 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%);



(iv) caused the Traded Price of a2 Shares to adjust downward toward the price which would have existed if the:

- A. Australian Law August 2020 Misleading or Deceptive Conduct Contravention;
- B. Australian Law August 2020 Continuous Disclosure Contravention;
- C. Australian Law September 2020 Misleading or Deceptive Conduct Contravention;
- D. Australian Law September 2020 Continuous Disclosure Contravention;
- E. Australian Law December 2020 Misleading or Deceptive Conduct Contravention;
- F. Australian Law December 2020 Continuous Disclosure Contravention;
- G. Australian Law February 2021 Misleading or Deceptive Conduct Contravention; and/or
- H. Australian Law February 2021 Continuous Disclosure Contravention,
- I. NZ Law August 2020 Misleading or Deceptive Conduct Contravention;
- J. NZ Law August 2020 Continuous Disclosure Contravention;
- K. NZ Law September 2020 Misleading or Deceptive Conduct Contravention;
- L. NZ Law September 2020 Continuous Disclosure Contravention;
- M. NZ Law December 2020 Misleading or Deceptive Conduct Contravention;
- N. NZ Law December 2020 Continuous Disclosure Contravention;
- O. NZ Law February 2021 Misleading or Deceptive Conduct Contravention; and/or
- P. NZ Law February 2021 Continuous Disclosure Contravention,

together, or any combination of them, had not occurred (where the matters pleaded in subparagraphs 145(d)(iv)A) to (H) constitute the **Australian Law Contraventions**, the matters pleaded in subparagraphs 145(d)(iv)I) to (P) constitute the **New Zealand Law Contraventions**, and the matters pleaded in subparagraphs 145(d)(iv)A) to (P) constitute the, **Contraventions**);

- (v) caused the Traded Price to adjust downward to correct or partly correct so as to remove the inflation effects of the Contraventions listed at sub-paragraph 145(d)(iv), or any one or combination of them; and
- (vi) by reason of the matters alleged in sub-paragraphs 145(a) to (d), had a material adverse effect on the Traded Price of a2 Shares.

## H. MARKET EFFECTS

### H.1 Acquisition Claimants

146. 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 and Chi-X closely tracked the price at which a2 shares traded on the NZSX adjusted for the impact of the AUD-NZD exchange rate.

147. 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.

### *Market-based Causation*

148. The Plaintiffs and some of the Acquisition Claimants 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, Chi-X 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 Plaintiffs 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 Acquisition Claimants 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.

### *Individual Reliance*

149. Further or alternatively, the Second Plaintiff and some of the Acquisition Claimants acquired an interest in the a2 Securities directly in reliance upon the representations made at paragraphs 48, 75, 101 and 126 (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.

*Loss and damage – Australian Law Contraventions*

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

- (a) the Plaintiffs and Acquisition Claimants would have acquired their interests in a2 Securities at the lower market price that would have prevailed being a price which did not include the part or all of the Inflation; and/or
- (b) some of the Acquisition Claimants would not have acquired an interest in the a2 Securities.

151. By reason of the matters alleged in paragraph 150 above, the Plaintiffs and each of the Acquisition Claimants suffered loss and/or damage in relation to their interests in a2 Securities by and resulting from the Australian Law Contraventions (or any one or combination of the Australian Law Contraventions) when the market effects of the:

- (a) September 2020 Partial Disclosure;
- (b) December 2020 Partial Disclosure;
- (c) February 2021 Partial Disclosure;
- (d) May 2021 Corrective Disclosure,

(together and severally, **Disclosure Events**), caused the removal of some or all of the Inflation from the Trading Price of the Period Shares acquired by the Acquisition Claimants.

**Particulars**

- (i) The loss alleged in paragraph (b) is the greater of:
  - (a) the difference between the price at which the Plaintiffs and Acquisition Claimants acquired Period Shares during the Relevant Period and the price at which the Period Shares would have traded at that time had the Contraventions (or any one or combination of the Contraventions) not occurred (**Potts v Miller loss**);
  - (b) alternatively, the price at which some Acquisition Claimants acquired Period Shares during the Relevant Period, adjusted to deduct the true value of that interest at the time of the transaction (**True Value loss**);  
or
  - (c) the difference between the price at which the Plaintiffs and the Acquisition Claimants acquired Period Shares and the value of the Period Shares left in hand following a Disclosure Event (**Left in Hand loss**).

- (d) alternatively, the amount of the difference in (c) above attributable to the correction of the information effected by the Contraventions, net of market movements or unrelated movements in the Trading Price (**Peak Inflation loss**);
  - (e) alternatively, Peak Inflation loss on Period Shares, less any inflation recovered upon a sale of any of those shares during the Relevant Period (**Net Inflation loss**);
  - (f) alternatively for those Acquisition Claimants 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 (**No Transaction loss**).
- (ii) Particulars of the Plaintiffs' losses will be provided after the filing of expert reports.
  - (iii) Particulars in relation to Acquisition Claimants' losses will be obtained and provided following opt out, the determination the Plaintiffs' 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 Acquisition Claimants

*Loss and damage – NZ Law Contraventions*

152. Further, if a2 had not engaged in the NZ Law Contraventions (or any one or combination of the NZ Law Contraventions):

- (a) the Acquisition Claimants who acquired their interests in a2 Securities on the NZSX would have acquired those securities at the lower market price that would have prevailed being a price which did not include the part or all of the Inflation; and/or
- (b) some of the Acquisition Claimants would not have acquired an interest in the a2 Securities.

153. By reason of the matters alleged in paragraph 152 above, the Acquisition Claimants who purchased their interests in a2 Securities on the NZSX suffered loss and/or damage in relation to their interests in a2 Securities by and resulting from the NZ Law Contraventions or any one of combination of the NZ Law Contraventions, when the market effects of the Disclosure Events (together and severally), caused the removal of some or all of the Inflation from the Trading Price of the Period Shares acquired by those Acquisition Claimants.

## Particulars

- (i) The loss alleged in paragraph (b) is the greater of:
- (a) the difference between the price at which the Acquisition Claimants acquired Period Shares on the NZSX during the Relevant Period and the price at which the Period Shares would have traded at that time on the NZSX had the NZ Law Contraventions (or any one or combination of the NZ Law Contraventions) not occurred (**Potts v Miller loss**);
  - (b) alternatively, the price at which some Acquisition Claimants acquired Period Shares on the NZSX during the Relevant Period, adjusted to deduct the true value of that interest at the time of the transaction (**True Value loss**); or
  - (c) the difference between the price at which the Acquisition Claimants acquired Period Shares on the NZSX and the value of the Period Shares on the NZSX left in hand following a Disclosure Event (**Left in Hand loss**).
  - (d) alternatively, the amount of the difference in (c) above attributable to the correction of the information effected by the NZ Law Contraventions, net of market movements or unrelated movements in the Trading Price (**Peak Inflation loss**);
  - (e) alternatively, Peak Inflation loss on Period Shares, less any inflation recovered upon a sale of any of those shares during the Relevant Period (**Net Inflation loss**);
  - (f) alternatively for those Acquisition Claimants who would have, but for the NZ Law Contraventions (or any one or combination of the NZ Law 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 (**No Transaction loss**).
- (ii) Particulars in relation to Acquisition Claimants' losses will be obtained and provided following opt out, the determination the Plaintiffs' 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 Acquisition Claimants

## H.2 Retention Claimants

154. Further or in the alternative to [Section H.1](#), some Group Members:

- (a) acquired the Pre-Period Shares; and
- (b) retained the said interests until after the September 2020 Partial Disclosure; [1](#)

**(Retention Claimants).**

155. Some or all of the Retention Claimants retained their Pre-period Shares 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 prices at which the a2 Securities traded 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;
  - (ii) ss 674(2), 1041E and 1041H of the Corporations Act;
  - (iii) the NZX Listing Rules; and/or
  - (iv) ss 19 and 270 of the FMC Act;
- (b) in which a2 had not made any statements or representations that were likely to influence the a2 Securities Market, but that were false or misleading in a material particular, or misleading or deceptive or likely to mislead or deceive.

**Particulars**

Investors and potential investors in the a2 Securities Market are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2), 1041E and 1041H of the Corporations Act, and also the NZX Listing Rules and sections 19 and 270 of the FMC Act, which has 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.

Further particulars, including particulars of loss, for Retention Claimants will be provided following discovery and receipt of expert reports, and otherwise as the Court may direct.

156. Further or alternatively to paragraph 155, the Retention Claimants retained an interest in Pre-period Shares after 20 August 2020, in reliance upon one or more of the representations.

*Loss and damage – Australian Law Contraventions*

157. But for:

- (a) Australian Law August 2020 Misleading or Deceptive Conduct Contravention;
- (b) Australian Law August 2020 Continuous Disclosure Contravention;

- (c) Australian Law September 2020 Misleading or Deceptive Conduct Contravention;
- (d) Australian Law September 2020 Continuous Disclosure Contravention;
- (e) Australian Law December 2020 Misleading or Deceptive Conduct Contravention;
- (f) Australian Law December 2020 Continuous Disclosure Contravention;
- (g) Australian Law February 2021 Misleading or Deceptive Conduct Contravention; further or alternatively
- (h) Australian Law February 2021 Continuous Disclosure Contravention,

the Retention Claimants would have disposed of their Pre-Period Shares before the occurrence of the:

- (i) September 2020 Partial Disclosure; or
- (j) December 2020 Partial Disclosure; or
- (k) February 2021 Partial Disclosure; or
- (l) May 2021 Corrective Disclosure.

158. In the premises in the preceding paragraph, by reason of the Australian Law Contraventions the Retention Claimants lost the opportunity to avoid the losses resulting from the matters the subject of:

- (a) the September 2020 a2 China Market Conditions;
- (b) the September 2020 a2 China Market Information;
- (c) the December 2020 a2 China Market Conditions;
- (d) the December 2020 a2 China Market Information;
- (e) the February 2021 a2 China Market Conditions;
- (f) the February 2021 a2 China Market Information;
- (g) the Inadequate Monitoring Systems Information,

so far as those losses were caused by matters arising after the matters the subject of the August 2020 Information.



*Loss and damage – NZ Law Contraventions*

159. Further, but for:

- (a) NZ Law August 2020 Misleading or Deceptive Conduct Contravention;
- (b) NZ Law August 2020 Continuous Disclosure Contravention;
- (c) NZ Law September 2020 Misleading or Deceptive Conduct Contravention;
- (d) NZ Law September 2020 Continuous Disclosure Contravention;
- (e) NZ Law December 2020 Misleading or Deceptive Conduct Contravention;
- (f) NZ Law December 2020 Continuous Disclosure Contravention;
- (g) NZ Law February 2021 Misleading or Deceptive Conduct Contravention; further or alternatively
- (h) NZ Law February 2021 Continuous Disclosure Contravention,

the Retention Claimants who purchased their interests in a2 on the NZSX would have disposed of their Pre-Period Shares before the occurrence of the:

- (i) September 2020 Partial Disclosure; or
- (j) December 2020 Partial Disclosure; or
- (k) February 2021 Partial Disclosure; or
- (l) May 2021 Corrective Disclosure.

160. In the premises in the preceding paragraph, by reason of the NZ Law Contraventions the Retention Claimants who purchased their interests in a2 on the NZSX lost the opportunity to avoid the losses resulting from the matters the subject of:

- (a) the September 2020 a2 China Market Conditions;
- (b) the September 2020 a2 China Market Information;
- (c) the December 2020 a2 China Market Conditions;
- (d) the December 2020 a2 China Market Information;
- (e) the February 2021 a2 China Market Conditions;

- (f) the February 2021 a2 China Market Information;
- (g) the Inadequate Monitoring Systems Information,

so far as those losses were caused by matters arising after the matters the subject of the August 2020 Information.

## **I. ENTITLEMENT TO RELIEF**

161. By reason of the matters alleged in paragraphs 146 to 158 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 Plaintiffs and each of the Group Members who acquired an interest in the a2 Securities ~~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 ACSOC ~~consolidated statement of claim~~.
162. Further or alternatively, pursuant to s 1317HA alternatively s 1325 of the Corporations Act, the Plaintiffs and each of the Group Members who acquired an interest in the a2 Securities ~~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 ACSOC ~~consolidated statement of claim~~.
163. By reason of the matters alleged in paragraphs 146 to 158 above, pursuant to s 43 of the FT Act and/or ss 494 and 495 of the FMC Act, each of the Group Members who acquired an interest in the a2 Securities ~~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 respectively alleged in this ~~consolidated statement of claim~~ ACSOC.
164. 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 alleged in this ACSOC ~~consolidated statement of claim~~.

## **J. COMMON QUESTIONS OF FACT OR LAW**

165. The questions of law or fact common to the claims of the Plaintiffs and the Group Members are:
- (a) whether a2 made the August Representations, September Representations, December Representations and February Representations;

- (b) whether any of the August Representations, September Representations, December Representations and February 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 Representations, September Representations, December Representations and February 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 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 PLAINTIFFS CLAIM, for themselves 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 ACSOC consolidated 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) s 43 of the FT Act;
  - (b) ss 494 and 495 of the FMC Act;
  - (c) further or alternatively s29(2), s 33Z(1)(e) or (g) 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: ~~20 July 2022~~ 14 March 2024

~~Slater and Gordon Lawyers and Shine Lawyers~~ Lawyers for the Plaintiffs

This pleading was prepared by Rachel Doyle SC, Lachlan Armstrong QC, Alexandra Folie and Anna Batrouney of counsel, and the amendments were prepared by Slater and Gordon Lawyers and Shine Lawyers.

**ANNEXURE A**  
**First Plaintiff's transactions during the Relevant Period**

<b>Date of Purchase</b>	<b>Number of a2 Securities</b>	<b>Average price per share (AUD\$)</b>	<b>Amount paid (excl. brokerage) (AUD\$)</b>
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

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

**Second Plaintiff's transactions during the Relevant Period**

<b>Date of Purchase</b>	<b>Number of a2 Securities</b>	<b>Average price per share (AUD\$)</b>	<b>Amount paid (excl. brokerage) (AUD\$)</b>
28/09/2020	33	\$15.65	\$516.45

**ANNEXURE B**  
**Trading Price Movements**

Event	<u>ASX</u>			<u>Chi-X</u>			<u>NZSX</u>		
	<u>ASX Close Previous Trading Day (AUD)</u>	<u>ASX Close Day of Event (AUD)</u>	<u>ASX Decline %</u>	<u>Close Previous Trading Day (AUD)</u>	<u>Close Day of Event (AUD)</u>	<u>Decline %</u>	<u>NZSX Close Previous Trading Day (NZD)</u>	<u>NZSX Close Day of Event (NZD)</u>	<u>NZSX Decline %</u>
<b>August Representations</b>	\$19.49	\$18.25	6.36%	<u>\$19.50</u>	<u>\$18.31</u>	<u>6.10%</u>	\$21.50	\$20.35	5.35%
<b>9 September Release</b>	\$16.76	\$16.33	2.57%	<u>\$16.77</u>	<u>\$16.33</u>	<u>2.62%</u>	\$18.28	\$17.84	2.41%
<b>September 2020 Partial Disclosure</b>	\$17.16	\$15.20	11.46%	<u>\$17.21</u>	<u>\$15.30</u>	<u>11.10%</u>	\$18.44	\$16.65	9.71%
<b>December 2020 Partial Disclosure</b>	\$13.28	\$10.14	23.64%	<u>\$13.30</u>	<u>\$10.165</u>	<u>23.57%</u>	\$14.12	\$11.00	22.1%
<b>February 2021 Partial Disclosure</b>	\$10.45	\$8.76	16.17%	<u>\$10.45</u>	<u>\$8.77</u>	<u>16.08%</u>	\$11.13	\$9.34	16.1%
<b>May 2021 Corrective Disclosure</b>	\$7.02	\$6.10	13.11%	<u>\$7.00</u>	<u>\$6.08</u>	<u>13.14%</u>	\$7.59	\$6.62	12.8%

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<b>Definition</b>	<b>Paragraph</b>
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