



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

Case: S ECI 2021 03645
No. S ECI 2021 03645
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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

SECOND AMENDED CONSOLIDATED STATEMENT OF CLAIM

*(filed pursuant to paragraph 1 of the Orders of the Honourable Justice M
Osborne made on 29 August 2025 August 2025)*

Date of Document: 1 September 2025

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

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NOTE:

In this second amended consolidated statement of claim (S**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 S**ACSOC**.

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
 - (ii) an interest they had already acquired before 19 August 2020 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 SACSOC; 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 SACSOC.
 - (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 764A(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 ~~46~~6 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 23 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~~ 23 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~~ 24 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~~ 24 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 (**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 (**CEO**).
20. David Bortolussi (**Bortolussi**) was from 8 February 2021 and at all times thereafter during the Relevant Period the Managing Director and Chief Executive Officer of a2 (**also CEO**).
21. Race Strauss (**Strauss**) was at all times during the Relevant Period the Chief Financial Officer (**CFO**) of a2.
22. Peter Nathan (**Nathan**) was at all times during the Relevant Period the Chief Executive ~~Officer of the~~ Asia Pacific ~~Region at of~~ a2 (**CEO APAC**).

23. Shareef Khan (**Khan**):

- (a) was at all times during the Relevant Period the Chief Operating Officer (**COO**) of a2;
- (b) at all times during the Relevant Period, reported to the CEO.

Particulars

Khan's role and responsibilities included:

- (i) approving and signing Group Operations Board Reports for inclusion in the papers for Board meetings;
- (ii) considering monthly IMF canning production recommendations from Supply Chain Director, John Attygalle;
- (iii) monitoring and managing IMF inventory; and
- (iv) monitoring and analysing the levels, composition and ageing of a2's inventory.

24. Jaron McVicar (**McVicar**) ~~at all times during the Relevant Period was:~~

- (a) from the start of the Relevant Period to April 2021, the Company Secretary and General Counsel of a2;
- (b) from April 2021 to the end of the Relevant Period, the Chief Legal and Sustainability Officer and the Company Secretary of a2.

25. Susan Massasso (**Massasso**) was:

- (a) from 24 February 2020 until 15 April 2021 the Chief Growth and Brand Officer of a2; and
- (b) in her role as Chief Growth and Brand Officer of a2, reported to the CEO.

Particulars

Massasso's role and responsibilities included:

- (i) approving and signing Chief Growth and Brand Officer Board Reports for inclusion in the papers for Board meetings;
- (ii) receiving and analysing information regarding IMF consumer demands and market trends, and reporting on such information to the CEO and Board;

(iii) monitoring IMF market share data for IMF;

(iv) monitoring the performance of a2 and its competitors for IMF sales in China.

26. Lisa Burquest (**Burquest**) was: ~~from around~~

(a) from November 2018 until 18 January 2021 July 2020, the Chief People, Safety and Sustainability Officer of a2;

(b) from July 2020 to 31 January 2021, the Chief People, Safety and Sustainability Officer of a2;

(c) during the Relevant Period until 31 January 2021, reported to the CEO.

Particulars

Burquest's role and responsibilities included approving and signing the Chief People Officer Board Reports for inclusion in the papers for Board meetings.

27. Li Xiao (**Xiao**):

(a) was at all times during the Relevant Period the Chief Executive of Greater China Region at a2;

(b) at all times during the Relevant Period, reported to Nathan.

Particulars

Xiao's role and responsibilities included:

(i) approving and signing the China Board Reports for inclusion in the papers for Board meetings;

(ii) monitoring market share data for IMF in China;

(iii) monitoring and managing pricing of IMF products in China;

(iv) monitoring a2's performance against its IMF sales forecasts in China;

(v) managing sales strategies for IMF in China.

28. David Hearn (**Hearn**) was at all times during the Relevant Period the Chairman of the Board, and a non-executive director of a2.

29. David Akers (**Akers**): ~~was at all times during the Relevant Period~~
- (a) ~~from the start of the Relevant Period to April 2021, was~~ the Head of Investor Relations of a2;
 - (b) ~~from April 2021 to the end of the Relevant Period, was the Group Head of Investor Relations and Sustainability; and~~
 - (c) ~~at all times during the Relevant Period, reported to Strauss.~~

Particulars

Akers' role and responsibilities included:

- (i) overseeing the preparation of communications to a2's investors, including: drafting Q&A documents for investor meetings; preparing supporting documentation for annual general meetings; and responding to queries from a2's shareholders;
 - (ii) overseeing the preparation of a monthly Investor Relations report that was delivered to Strauss, McVicar and others;
 - (iii) analysing and reporting on investment analysts' consensus earnings expectations for a2.
30. Julia Hoare (**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 (**Wu**) (until 26 February 2021), Pip Greenwood (**Greenwood**) and Warwick Every-Burns (**Every-Burns**) was at all times during the Relevant Period an independent non-executive director of a2, and Bessie Lee (**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.

33A. During the Relevant Period, each of the Non Executive Directors, Babidge (until 8 February 2021), Bortolussi (from 8 February 2021), Strauss and Nathan were, or ought reasonably to have been, aware of papers received by the Board and matters discussed at Board meetings, in relation to the Board meetings that each person attended.

Particulars

- (i) Bortolussi and each of the Non Executive Directors received Board papers via the platform Diligent in advance of each meeting.
- (ii) It is to be inferred that Babidge, Strauss and Nathan were, or ought reasonably to have been, aware of papers received by the Board and matters discussed at Board meetings, in relation to the parts of Board meetings that each person attended, by reason of:
 - A. their regular attendance at Board meetings during the Relevant period; and
 - B. the nature of their roles and responsibilities.

C.1A a2's Other Key Personnel

33B. At all times during the Relevant Period, John Attygalle (Attygalle):

- (a) was the Supply Chain Director of a2; and
- (b) reported to Khan.

Particulars

Attygalle's role and responsibilities included:

- (i) monitoring IMF demand and sales forecasts;
- (ii) providing the CEO, Strauss and Khan with monthly IMF production recommendations;
- (iii) monitoring and analysing the levels, composition and ageing of a2's inventory; and
- (iv) managing the sale of ageing inventory.

33C. At all times during the Relevant Period, Craig Louttit (Louttit):

- (a) was the Deputy Chief Financial Officer of a2; and
- (b) reported to Strauss.

Particulars

Louttit's role and responsibilities included:

- (i) preparing or assisting in the preparation of a2's financial budgets, forecasts and reforecasts;
- (ii) monitoring and analysing the levels, composition and ageing of a2's inventory; and
- (iii) conducting analysis for inventory provisions.

33D. At all times during the Relevant Period, Kevin Bush (Bush):

- (a) was the Sales Director of a2; and
- (b) reported to Nathan.

Particulars

Bush's role and responsibilities included:

- (i) monitoring and analysing IMF demand and sales forecasts;
- (ii) monitoring and analysing IMF inventory and distribution of IMF products;
- (iii) monitoring and analysing IMF market share data; and
- (iv) monitoring and analysing IMF pricing.

33E. At all times during the Relevant Period, Adrian Dubar (**Dubar**):

- (a) was the Finance Director of a2; and
- (b) reported to Nathan and Louttit.

Particulars

Dubar's role and responsibilities included:

- (i) analysing a2's sales as against its sales forecasts and analysing drivers of a2's performance against its forecasts;
- (ii) preparing reports to the Board, CFO and CEO APAC presenting and analysing the matters above;
- (iii) monitoring and analysing IMF inventory; and
- (iv) monitoring and analysing IMF pricing.

33F. At all times during the Relevant Period, Mahinthan Sundaranathan (**Sundaranathan**):

- (a) was the Marketing Director of a2; and
- (b) reported to Nathan.

Particulars

Sundaranathan's role and responsibilities included:

- (i) monitoring inventory held by direct customers and corporate daigou;
- (ii) monitoring and analysing IMF pricing; and
- (iii) monitoring and analysing IMF market share data.

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.

35A. During the Relevant Period, a2 reported its financial results:

- (a) for a2 as a whole (the **Group**); and
- (b) for each of the Segments.

Particulars

2020 Annual Results Presentation, 19 August 2020, at 6–7 (PEB.0001.0001.3735 at 3740–3741).

FY21 Interim Results Presentation, 25 February 2021, Appendix (PEB.0001.0001.3804 at 3832–3837).

36. a2 sold infant formula products with Chinese language labels (**Chinese Label Infant Formula Products** or CL IMF) and infant formula products with English language labels (**English Label Infant Formula Products** or EL IMF).
37. In FY20, 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 (PEB.0001.0001.0018 at 0053).

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 to its master distributor China State Farm (CSF), which:

- (i) through approximately 64 distributors, distributed products to:

A. retail outlets in China, including mother and baby stores (MBS) and modern supermarkets; and

B. Chinese domestic e-commerce marketplaces,

and

- (ii) ~~through Chinese domestic e-commerce retail channels~~ through domestic online distributors, sold products via domestic e-commerce platforms and online stores.

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' or 'master daigou' (**corporate daigou resellers**) who purchased the products in Australia or New Zealand, predominately directly from a2, and sold those products directly or indirectly to end-consumers in China; and

Particulars

Corporate daigou resellers sold a2's English Label Infant Formula Products to purchasers including:

- (i) retail daigou resellers;
 - (ii) gift stores in Australia that supply products to retail daigou and Chinese visitors;
 - (iii) directly to end-consumers in China under 'pick-and-pack' arrangements, whereby retail daigou resellers would purchase products that would be shipped by the corporate daigou reseller to the end-consumer;
 - (iv) CBEC platforms; and
 - (v) online-to-offline retail channels.
- (c) ~~cross-border e-commerce~~ CBEC channels, including the Tmall and JD.com sites, which stocked a2 product for purchase by end-consumers in China.

Particulars

- (i) a2 reported in its 2020 Annual Report that:
 - A. its sales of English Label Infant Formula Products to China via the ~~cross-border e-commerce~~ CBEC channel in FY20 totalled \$341.1m, page 17;

- B. on Tmall, it was the second best-selling ~~cross-border e-commerce~~ CBEC infant milk formula brand overall and the number one ~~cross-border e-commerce~~ CBEC flagship store, page 17; and
- C. on JD.com, for a particular sales event, it was the bestselling ~~cross-border e-commerce~~ CBEC infant milk formula brand overall, page 17 (PEB.0001.0001.0018 at 0026).

(ii) In:

- A. FY20, CBEC accounted for approximately 12 million tins of a total of 50 million tins of IMF sales (24%).
- B. FY21, as at 24 June 2020, CBEC was expected to account for approximately 13 million tins of a total of 58 million tins of IMF sales (22.4%).

FY21 Budget paper presented to the Board, AMC.0001.0001.0125 at 0056.

D. AUGUST 2020 CONTRAVENTIONS

D.1 ~~True Position~~ Market Conditions as 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~~ CBEC 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~~ CBEC 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~~ CBEC 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~~ CBEC sales;
 - (ii) reduce the sale price at which retail daigou resellers and corporate daigou resellers could compete with ~~cross-border e-commerce~~ CBEC 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~~ English Label 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~~ CBEC 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~~ CBEC 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.

(the EL Channel Dynamics).

Particulars

- (i) The Plaintiffs rely on the Expert Report of James Hudson dated 9 May 2025 (Hudson Report) at Part D.

- (ii) 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 (PEB.0001.0001.3767 at 3782).

- (iii) 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~~ **CBEC** 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 (PEB.0001.0001.0167 at 0167).

- (iv) 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 ([PEB.0001.0001.0188 at 0190-0191](#)).

- (v) Each of the matters in ~~(i)~~(ii) to ~~(iii)~~(iv) 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 repeat 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~~ CBEC channel;
- ~~(aa) the levels of inventory in a2’s sales channels into China were higher than usual as a result of the end of the COVID-19 demand surge in 3Q20;~~
- (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~~ IMF sales volumes through the daigou channel had been contracting;
- ~~(ba) consumer perceptions in China of Chinese domestic IMF brands were improving;~~
- ~~(bb) competition for sales on the CBEC channel was increasing;~~
- (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) As to paragraph 41(a):

- A. As at February 2020, a2's plan was to increase its production to meet a sudden surge in demand (paper presented to the Board for meeting on 26 February 2020, AMC.0001.0001.0122 at 0325; meeting minutes AMC.0001.0001.0226 at 0004).
- B. In March and April 2020, a2 was increasing its supply of English Label EL IMF to both the Aus NZ Segment and CBEC (paper presented to the Board for meeting on 25 March 2020 AMC.0001.0001.0126 at 0186; meeting minutes AMC.0001.0001.0227 at 0002; paper presented to the Board for meeting on 21 April 2020, AMC.0001.0001.0120 at 0161).

(ii) As to paragraph 41(aa):

- A. As at June and July 2020, EL IMF sales forecasting accuracy was low "due to higher than expected inventory build up in the market post COVID-19 demand surge" (Global Operations Dashboard presentation dated June 2020, AMC.5000.0202.4621 at 0002; Global Operations Dashboard presentation dated July 2020, AMC.5000.0561.0942 at 0002).
- B. As at 10 July 2020, a2's master corporate daigou reseller was holding approximately 1.5–2 months of stock, an "unusually high" holding compared to the normal 2 weeks' stock cover (email from Sundaranathan to Nathan dated 10 July 2020, AMC.5000.0336.0349).
- C. On 29 July 2020, a2's weak IMF sales volume in June 2020 was attributed in part to "inventory re-balancing" in the Australian retail and CBEC channels (paper presented to the Board for meeting on 29 July 2020, AMC.0001.0001.0394 at 0003).

(iii) As to paragraph 41(b):

- A. A paper presented to the Board for its meeting on 24 June 2020 stated that a miss to forecast revenue was expected in June 2020 "due to some evidence of pantry destocking in China deflating IMF demand" and "the ongoing weakness in retail daigou in ANZ" (AMC.0001.0001.0125 at 0008).

- B. A paper presented to the Board for its meeting on 29 July 2020 stated that the June 2020 month result “reflected continued IMF volume shortfalls in Australian retail and CBEC relating to inventory re-balancing, Daigou channel contraction [and] higher promotional competition” (AMC.0001.0001.0394 at 0003).
 - C. A report prepared by Nathan for the Board Meeting on 18 August 2020 stated that “Market share for a2TM Platinum of 15% (w/e 19.7.20) was well below the previous month due to the significant decline in the size of the Daigou channel” (AMC.5000.0471.5730 at 5730).
 - D. A document titled “China IMF review” dated 4 May 2021 identified that the overall daigou channel began declining in April 2019, and the decline accelerated during the COVID-19 pandemic (AMC.5000.0082.2424 at 2437).
- (iv) As to paragraphs 41(ba)–(bb):
- A. These matters were recorded in a report titled “Impact of COVID-19 on China IMF” dated March 2020 (AMC.5000.0550.5894 at 5896).
 - B. The minutes of the Board meeting dated 21 April 2020 record discussion of Chinese domestic IMF brands receiving government support, and one brand growing very strongly (AMC.0001.0001.0228).
 - C. A presentation titled “Understanding Imported Country Sentiment in China” dated 17 June 2020 indicated improving perception of Chinese domestic IMF brands (AMC.5000.0548.7204; AMC.5000.0548.7206 at 0003).
 - D. A presentation titled “Online consumer trend demo” indicated a decline in repeat customers on CBEC marketplaces (AMC.5000.0135.0298 at 0301).
- (v) As to paragraphs 41(c)–(d): 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~~ CBEC 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 ([PEB.0001.0001.0436 at 0440](#)).

- (vi) As to paragraphs 41(c)–(d): 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~~ CBEC 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 ([PEB.0001.0001.0453 at 0459](#)).

- (vii) As to paragraph 41(d): 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 ([PEB.0001.0001.0188 at 0191](#)).

- (viii) As to paragraphs 41(c)–(d): 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~~ CBEC channel to restore the overall health of the ~~cross-border e-commerce~~ CBEC and corporate daigou reseller and retail daigou reseller channels, page 3 ([PEB.0001.0001.0198 at 0200](#)).

- (ix) a2 ASX and NZSX announcement dated 19 August 2020 entitled “2020 Annual Results Presentation”, page 10 ([PEB.0001.0001.3735 at 3744](#)).

- (x) Each of the matters in ~~(i)(v)~~ to ~~(v)(ix)~~ 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. ~~[not used] 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**) (the **Inadequate Monitoring Systems**).

Particulars

- (i) a2's systems for receiving information from customers of EL IMF regarding the customers' stock-on-hand were as follows:

 - A. the stock-on-hand of retailers in Australia and New Zealand was recorded in Weekly Out-of-Stock reports and Weekly Consolidated Stock-on-Hand Reports;
 - B. corporate daigou resellers were asked by a2 to provide regular stock-on-hand reports from on or around 18 September 2020; and
 - C. Apex Logistics, a2's warehousing and logistics provider in Hong Kong, provided weekly reports to a2 of sales to distributors that distributed a2's EL IMF to CBEC platforms.
- (ii) The systems referred to in particular (i) above were inadequate for the following reasons:

 - A. the system for monitoring inventory held by retailers in Australia and New Zealand was unable to identify when inventory sold by those retailers were sold by "back-door deals" into other channels, rather than to end customers or retail daigou (see, e.g., email from Bush dated 8 September 2020 (AMC.5000.0240.7430));
 - B. the system for monitoring inventory held by corporate daigou resellers was inadequate in that corporate daigou resellers self-reported inventory to a2, and sub-distributors downstream of corporate daigou resellers did not report their inventory levels to a2 (see Hudson Report at [131(b)]);
 - C. the system for monitoring inventory held by CBEC platforms relied on data manually collected from the platforms (see IMF Inventory Assessment Report authored by Nathan included in Board report for meeting on 22 May 2020 (AMC.0001.0001.0127 0028); presentation titled "Overview of market share data" (AMC.5000.0130.7700 at 0003), attached to email from Justin Jin dated 1 June 2021 (AMC.5000.0130.7699)).
- (iii) a2 also estimated levels held in supply chains directed at or within China by using market share data obtained from Kantar, Nielsen and Smartpath. This system was inadequate in that consumption data obtained by Kantar was incomplete due to the structure and definition of Kantar's panel and its lack of full geographic coverage (see Interim Report for half year ended 31 December 2019, in Board Report dated 26 February 2020 (AMC.0001.0001.0122 at 0011)).

- (iv) a2's system for calculating inventory in the MBS channel was inadequate in that the data covered only around 5,000 stores out of a total of around 23,000, and only included on-shelf stock, not stock in warehouses or distribution centres (a2 Inventory Review dated 4 May 2021 (AMC.0001.0001.0706 at 0011)).
- (v) a2 did not have any system for monitoring levels of infant formula held by retail daigou resellers.

See Hudson Report, Part F.

- (vi) Further, as at 19 August 2020, a2 lacked an adequate system for tracing the product from New Zealand to its ultimate place of sale in China, which meant that a2 was not reliably able to identify the prices paid for IMF by consumers in China, giving rise to a risk of dislocation in pricing (as shown in a "Bow-tie representation of top risks" (AMC.5000.0273.9292 at 9299) as emailed to a2's Executive Committee on 17 August 2020 (email AMC.5000.0273.9290)).

The Plaintiffs repeat the particulars to paragraphs 55, 77, 103, and 128 below.

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

- (vii) the December 2020 Call, pages 8–9, disclosed difficulty in monitoring inventory levels (PEB.0001.0001.0436 at 0443–0444);
- (viii) a2 in the February 2021 Update Announcement, at page 4, stated that it was actively rebalancing inventory in the ~~cross-border e-commerce~~ CBEC 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 (PEB.0001.0001.0188 at 0191);
- (ix) a2 in the February 2021 Update Announcement, page 4 (PEB.0001.0001.0188 at 0191), and document published by a2 titled "Interim Results 2021 Half year interim results", dated 25 February 2021, (**February Results Presentation**), pages 16-17 (PEB.0001.0001.3804 at 3819–3820), stated that it was aiming to re-activate the daigou channel, including by improving traceability through the channel;
- (x) 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 (PEB.0001.0001.0198 at 0198);
 - B. visibility into third party inventory levels is generally challenging and the data is incomplete, page 3 (PEB.0001.0001.0198 at 0200);

C. a2 would work with its customers and distributors to improve the dating of (channel) inventory, page 3 ([PEB.0001.0001.0198 at 0200](#)); 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 ([PEB.0001.0001.0198 at 0200](#));

(xi) 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 ([PEB.0001.0001.0216 at 0222](#));

(xii) the matters in particulars (i) to ~~(v)~~(xi) 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;

(xiii) the a2 Monitoring Systems in use at the time a2 announced the matters in particulars ~~(i)~~(vii) to ~~(v)~~(xi) 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.~~

D.1A a2’s Performance as at 19 August 2020

43A. On 24 June 2020, the Board of a2 approved a budget for FY21 (FY21 Budget).

Particulars

The FY21 Budget is recorded in AMC.0001.0001.0766; AMC.0001.0001.0125 at 0045.

The FY21 Budget was approved by resolution of the Board on 24 June 2020 (AMC.0001.0001.0128 at 0003).

43B. The FY21 Budget:

(a) was a financial forecast for a2 for FY21;

(b) forecast Group net sales revenue of approximately \$2.056 billion; and

(c) forecast Group EBITDA margin of approximately 31%.

Particulars

AMC.0001.0001.0766, sheet “Group P&L Summary”.

43C. As at 19 August 2020, a2's IMF sales volumes had fallen short of the volumes forecast in the FY21 Budget for the months of June and July 2020.

Particulars

<u>Values in 000s of cans</u>	<u>June 2020</u>	<u>July 2020</u>
<u>ANZ and China IMF sales volumes forecast</u>	<u>3,294</u> <u>FY21 Budget Spreadsheet</u> <u>(AMC.0001.0001.0766)</u>	<u>2,802</u> <u>FY21 Budget Spreadsheet</u> <u>(AMC.0001.0001.0766)</u>
<u>Actual IMF sales</u>	<u>2,751</u> <u>Margin Analysis monthly</u> <u>report, June 2020</u> <u>(AMC.5000.0390.5401)</u>	<u>2,517</u> <u>Margin Analysis monthly</u> <u>report, July 2020</u> <u>(AMC.5000.0011.6049)</u>
<u>Difference to budget</u>	<u>- 544</u>	<u>- 286</u>

43D. As at 19 August 2020, a2's estimated retail market share in the Aus NZ Segment had declined substantially in the period May to July 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Australia IMF retail market share (%)</u>
<u>a2MC Board Report dated 22 May 2020</u> <u>(AMC.0001.0001.0127 at 0144)</u>	<u>April 2020</u>	<u>37.3</u>
<u>a2MC Board Report dated 24 June 2020</u> <u>(AMC.0001.0001.0125 at 0204)</u>	<u>May 2020</u>	<u>37.5</u>
<u>a2MC Board Report dated 29 July 2020</u> <u>(AMC.0001.0001.0394 at 0023)</u>	<u>June 2020</u>	<u>27.5</u>
<u>Chief Growth and Brand Officer Board</u> <u>Report – July FY21</u> <u>(AMC.5000.0533.7694 at 7695)</u>	<u>July 2020</u>	<u>15</u>

43E. As at 19 August 2020, average sale prices for a2's IMF as sold by corporate daigou resellers and CBEC channels had declined between April 2020 and July 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Price as sold by corporate daigou (AU\$)</u>				<u>Price as sold by CBEC (AU\$)</u>			
		<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>	<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>
<u>Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974 at 3974, 3976)</u>	<u>April 2020</u>	<u>34.8</u>	<u>43.3</u>	<u>33.5</u>	<u>37.2</u>	<u>51.1</u>	<u>51.3</u>	<u>48.1</u>	<u>46.9</u>
<u>Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347 at 1347, 1349)</u>	<u>May 2020</u>	<u>34.6</u>	<u>40.8</u>	<u>33.2</u>	<u>35.3</u>	<u>49.3</u>	<u>48.0</u>	<u>43.7</u>	<u>43.6</u>
<u>Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876 at 5876, 5878)</u>	<u>July 2020</u>	<u>33.6</u>	<u>38.8</u>	<u>31.0</u>	<u>33.4</u>	<u>46.6</u>	<u>46.3</u>	<u>44.0</u>	<u>42.3</u>
<u>Note: 'S' denotes IMF 'stage'. S1 is for newborns; S2 is for children aged 6–12 months; S3 is for children aged 12–24 months; and S4 is for children aged 24 months and over.</u>									

43F. As at 19 August 2020, a2's inventory of IMF was approximately 19 million cans, an increase of approximately 9 million cans since April 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>EL and CL Inventory (000 cans)</u>
<u>IMF inventory balance report dated 7 May 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3313 at 3314)</u>	<u>April 2020</u>	<u>8,935</u>
<u>IMF inventory balance report dated 5 June 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3317 at 3318)</u>	<u>May 2020</u>	<u>11,296</u>
<u>IMF inventory balance report dated 8 July 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3321 at 3322)</u>	<u>June 2020</u>	<u>14,167</u>
<u>IMF inventory balance report dated 10 August 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0017.1982 at 1983)</u>	<u>July 2020</u>	<u>18,638</u>

(The matters pleaded at paragraphs 43C to 43F, together or in any combination, are the August 2020 Commercial Factors).

D.1B Reasonable FY21 Guidance as at 19 August 2020

43G. By reason of the August 2020 Commercial Factors, themselves or in combination with one or both of the August 2020 a2 China Market Conditions and the Inadequate Monitoring Systems, as at 19 August 2020, a reasonable forecast for a2's FY21 revenue and EBITDA margin was:

(a) revenue of \$1.84 billion; and

(b) EBITDA margin of 28%.

(August 2020 Reasonable Forecast).

Particulars

Expert Report of Malcolm Paul Campbell dated 19 May 2025 (Campbell Report) at Section VI.C.

43H. As at 19 August 2020, reasonable earnings guidance for a2 for FY21 was:

a2 was not issuing FY21 revenue or EBITDA margin guidance because a2 Milk did not have sufficient certainty about market conditions to do so, arising from a decline in a2's Australian IMF retail market share and lower than expected IMF sales volumes in May 2020 to July 2020.

(the August 2020 Counterfactual Guidance).

Particulars

The August 2020 Counterfactual Guidance was reasonable by reason of:

(i) the August 2020 Reasonable Forecast; and

(ii) insufficient certainty regarding sales volumes and market conditions to have a reasonable basis to provide any revenue or EBITDA margin guidance for FY21 as at 19 August 2020.

Campbell Report at [206].

43I. In the alternative to paragraph 43H, as at 19 August 2020, reasonable earnings guidance for a2 for FY21 was:

a2 expected:

- FY21 revenue in the order of \$1.84bn; and
- FY21 EBITDA margin of 28%.

(the August 2020 Alternative Counterfactual Guidance).

Particulars

The August 2020 Alternative Counterfactual Guidance was reasonable by reason of being based on the August 2020 Reasonable Forecast.

Campbell Report, Section VI.C.

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
([PEB.0001.0001.0018 at 0024, 0025, 0052, 0053](#)).

45. ~~[not used] 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) ~~[not used] 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 2020 Guidance** ~~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 ([PEB.0001.0001.0076 at 0077, 0084](#)).
 - (ii) a2 ASX and NZSX announcement dated 19 August 2020 entitled “2020 Annual Results Presentation”, page 28 ([PEB.0001.0001.3735 at 3762](#)).
 - (iii) 2020 Annual Report, pages 21 ~~and 56~~ ([PEB.0001.0001.0018 at 0028](#)).
 - (iv) ~~Refinitiv transcript of the August 2020 Call, page 6.~~
- 47. ~~[not used] 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. ~~[not used] 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.~~

48A. The August 2020 Guidance:

- (a) was based on the FY21 Budget; and
- (b) was not informed by a financial forecast for the a2 Group prepared or updated after the approval of the FY21 Budget; and
- (c) was approved by an authorised subcommittee of the Board of a2 on or around 18 August 2020.

(the August 2020 Guidance Process).

Particulars

- (i) The matters pleaded in paragraphs (a) and (b) are to be inferred from the fact that no financial forecast for the a2 Group was presented to the Board between the approval of the FY21 Budget on 24 June 2020 and 18 August 2020.
- (ii) As to the matters pleaded in paragraph (c), the authorisation of the subcommittee is recorded in Board minutes dated 18 August 2020 (AMC.0001.0001.0230 at 0003). The subcommittee comprised Hearn and Hoare.

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~~ CBEC 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 2020 Express Representations Guidance.

Particulars

a2 ASX and NZSX market release entitled “CLSA Investors’ Forum Presentation dated 9 September 2020, pages 9, 18, 20 ([PEB.0001.0001.0089 at 0098, 0107, 0109](#)).

D.3 ~~August 2020 Misleading or Deceptive Conduct~~ a2’s Awareness as at 19 August 2020

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

Particulars

As at 19 August 2020, a2 Officers knew, or ought reasonably to have known, of the August 2020 a2 China Market Conditions by reason of the following matters:

(i) **EL Channel Dynamics** (pleaded at [40]):

- A. **The Board, Babidge, Strauss and Nathan.** The Board’s receipt of a paper for the 25 March 2020 Board meeting that stated that “[g]iven the inter-relationship between CBEC and Daigou pricing, being able to better manage the supply and demand interplay will positively impact retail pricing for both channels” (AMC.0001.0001.0126 at 0088). Further, each member of the Board, Babidge, Strauss, and Nathan, were present on 25 March 2020 for a discussion of that topic (minutes of 25 March 2020 Board meeting, AMC.0001.0001.0227 at 0005).
- B. The Board’s receipt of the FY21 Budget paper for the 24 June 2020 Board meeting, that stated that the FY21 Budget strategy included “[c]areful inventory management across channels to optimise Daigou margin”, maintaining “Daigou recommendation for IMF”, and “optimis[ing] Daigou margin to generate brand push” (AMC.0001.0001.0125 at 0092). Further, each member of the Board, Babidge, Strauss and Nathan were present on 24 June 2020 to review the FY21 Budget, and the paper was taken as read (AMC.0001.0001.0128 at 0002 – 0003).

- C. The papers for the Audit and Risk Management Committee meeting on 1 July 2020, which stated that “historically” e-commerce platforms “use aggressive pricing techniques and cease to price assets correctly”, and that “[c]ompetition between e-commerce platforms and Corporate daigou contributes to further price dislocation and impacts distributor profitability”, and which recorded that Nathan was assigned as the ‘Risk Owner’ of that risk (AMC.0001.0001.1099 at pg 11), in circumstances where each member of the Committee (which included ought reasonably to have reported the information in the papers to the Board).
- D. **Nathan.** Sundaranathan was aware of the relationship between the daigou and CBEC channels as a result of receiving “feedback on market conditions” from corporate daigou Lyn Xu (of AZ Global) who stated that “[w]e need to understand that [t]he panic buying is the concept, but the fundamental of the selling arise is because of profit margins [...] However, in the recent two months, two price crashes, were because of retail channel interfering with the daigou channel, and once more stock from retail, the lower of the pricing, the less stock movements. We are concerning in the next three weeks market outlook, the s3 is reducing further, daigou is stopping operating. and it will trigger more stock flowing in the local market” by email on 24 April 2020 (AMC.5000.0284.4023).
- E. Bush, Dubar, and Sundaranathan were aware that the daigou channel is a “key influencer” of Chinese consumer sales, and that maintaining profitability is “key” and “channel management is critical” to building daigou advocacy for a2, by receipt of a document titled “AUS: IMF & AMP SWOT” (AMC.5000.0011.9217 at 0002) by email on 4 May 2020 (AMC.5000.0011.9216).
- F. It is to be inferred that Nathan knew, or ought reasonably to have known of, the information in particulars (i)D–E above by reason of the receipt by Bush, Dubar, and Sundaranathan of the information in circumstances where Bush, Dubar, and Sundaranathan ought reasonably to have informed Nathan of the information in the document by reason of:
1. their roles and responsibilities (as pleaded at paragraphs 33D–33F above); and
 2. the nature and significance of the information in the document.

(ii) **3Q20 supply increase** (pleaded at [41(a)]):

- A. **The Board, Babidge, Strauss, Nathan and Khan.** The Board's receipt of a paper for the 26 February 2020 meeting setting out a plan to increase its production to meet a sudden surge in demand (AMC.0001.0001.0122 at 0325). Further, each member of the Board, Babidge, Strauss, and Khan were present at the meeting on 26 February 2020 at which the supply increase was discussed (AMC.0001.0001.0226 at 0004).
- B. The Board's receipt of papers for the 25 March 2020 and 21 April 2020 meetings that stated that a2 was increasing its supply of EL IMF to both the Aus NZ Segment and CBEC (AMC.0001.0001.0126 at 0186, AMC.0001.0001.0120 at 0161). Further, each member of the Board, Babidge, Strauss, and Khan were present at the meeting on 25 March 2020 at which the supply increase was discussed (AMC.0001.0001.0227 at 0002).

(iii) **Channel inventory** (pleaded at [41(aa)]):

- A. **The Board, Babidge, Strauss and Nathan.** The Board's receipt of a paper for the 29 July 2020 meeting that attributed a2's weak IMF sales volume in June 2020 in part to "inventory re-balancing" in the Australian retail and CBEC channels (AMC.0001.0001.0394 at 0003).
- B. **Nathan's** receipt of the email from Sundaranathan dated 10 July 2020 that noted an "unusually high" level of stock held by a2's master corporate daigou reseller (AMC.5000.0336.0349);
- C. **Khan** knew or ought reasonably to have known of this information by reason of Attygalle's receipt of each of the following documents:
1. Global Operations Dashboard presentation dated June 2020 (AMC.5000.0202.4621 at 0002);
 2. (Global Operations Dashboard presentation dated July 2020, AMC.5000.0561.0942 at 0002);
- in circumstances where Attygalle ought reasonably to have informed Khan of the information in the document by reason of:
3. Attygalle's role and responsibilities (as pleaded at paragraph 33B above); and
 4. the nature and significance of the information in the document.

D. Further, Nathan and Khan ought reasonably to have reported the information in particulars B and C above (respectively) to Babidge and/or Strauss by reason of:

1. their roles and responsibilities as CEO APAC and COO, respectively; and
2. the nature and significance of the information in the documents.

(iv) Contraction in daigou channel (pleaded at [41(b)]):

A. **The Board, Babidge, Strauss and Nathan.** The Board's receipt of a paper for the 24 June 2020 Board meeting that stated that a miss to forecast revenue was expected in June 2020 "due to some evidence of pantry destocking in China deflating IMF demand" and "the ongoing weakness in retail daigou in ANZ" (AMC.0001.0001.0125 at 0008).

B. The Board's receipt of a paper for the 29 July 2020 Board meeting that stated that the June 2020 month result "reflected continued IMF volume shortfalls in Australian retail and CBEC relating to inventory re-balancing, Daigou channel contraction [and] higher promotional competition" (AMC.0001.0001.0394 at 0003).

C. Nathan prepared a report for the Board Meeting on 18 August 2020 that stated that "Market share for a2™ Platinum of 15% (w/e 19.7.20) was well below the previous month due to the significant decline in the size of the Daigou channel" (AMC.5000.0471.5730 at .5730). It is to be inferred that the Board, Babidge, and Strauss knew of the matters in the paper by the discussion at the meeting of a2's performance in July 2020 (AMC.0001.0001.0230 at 0001– 0002).

(v) Consumer perceptions and competition (pleaded at [41(ba)–(bb)]):

A. **The Board, Babidge, and Strauss.** Each member of the Board, Babidge and Strauss were present for a discussion of Chinese domestic IMF brands receiving government support, and one brand growing very strongly (AMC.0001.0001.0228 at 0228).

B. **Strauss, Nathan and Massasso.** The receipt by Strauss, Nathan, and others of a report titled "Impact of COVID-19 on China IMF" sent by Massasso by email dated 1 April 2020 (AMC.5000.0550.5891), which recorded the matters alleged in [41(ba)–(bb)] (AMC.5000.0550.5894 at 5896).

C. Massasso received a presentation titled "Understanding Imported Country Sentiment in China" dated June 2020 indicating improving perception of Chinese domestic IMF brands (AMC.5000.0548.7206 at 0003) by email dated 17 June 2020 (AMC.5000.0548.7204).

D. Further, Massasso ought reasonably to have informed Babidge and/or Strauss of the information in particulars B and C above by reason of:

1. her role and responsibilities; and
2. the nature and significance of the information in the documents.

(vi) Oversupply of EL in China resulting in reduction of EL sales prices (pleaded at [41(c)]):

A. The Board, Babidge, Strauss and Nathan: The comments of Hearn and Nathan recorded in the minutes of the Board meeting on 21 April 2020 as follows (AMC.0001.0001.0228 at 0002 – 0003):

“The Chair noted that the Board and the team is very aware that the consequence of overloading the trade with inventory is very high risk, and that on that basis, as the team identifies sales opportunities, the Board’s preference is for the team to be cautious (and potentially miss out on some sales if necessary). PN [Nathan] confirmed that he fully agreed and understood.”

B. Nathan: The receipt on 12 June 2020 of an email from Dylan Lu stating that high trade inventory and low pricing might signal that there was too much stock in the market and distributors were facing pressure to sell the products out, to which Nathan replied that a2 would “cut July sell-in” and “must remain vigilant” (AMC.5000.0319.5414).

(vii) Reduction in EL sales prices in China resulting in a reduction in EL sales to daigou resellers (pleaded at [41(d)]):

A. The Board, Babidge, Strauss and Nathan: their awareness of the EL Channel Dynamics as set out in particular (i) above.

(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 reasonably 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) of the Inadequate Monitoring Systems.~~

Particulars

Each member of the Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known of, the Inadequate Monitoring Systems by reason of:

(i) **Limited scope of Kantar consumption data:**

A. The Board's receipt of the Audit and Risk Management Committee meeting materials in the Board Report dated 26 February 2020, which stated that "while Kantar remains the best single metric for consumption, it is a generally accepted view that it does not fully capture all consumption" (AMC.0001.0001.0122 at 0011).

B. The discussion recorded in the minutes of the Board meeting on 22 May 2020, which stated "It was noted that: ...the weighting of the Kantar panel doesn't reflect shift in the Company's business, which has seen very significant growth for O2O... The board noted the need to be careful not to talk up the Company's Kantar share when it is good and say it is wrong when the Company's share goes down or is flat" (AMC.0001.0001.0059 at 0004).

C. The Board's receipt of the May 2020 China Board Report in the Board Report dated 24 June 2020, which noted the limitations on data and discrepancy between Kantar and Nielsen CL IMF tracking (including monthly CL MBS data) (AMC.0001.0001.0125 at 0173- 0174).

- (ii) **Inherent difficulties in monitoring inventory held by retail daigou resellers:** The discussion recorded in the minutes of the Board meeting on 22 May 2020, which stated that “It was noted that the available data on stock levels is still less than comprehensive and management were asked to monitor the stock situation closely and also to continue to try and obtain a more accurate and ‘fuller’ data set” (AMC.0001.0001.0059 at 0004).
- (iii) **Manual provision of inventory data from CBEC:** The Board’s receipt of an IMF Inventory Assessment Report authored by Nathan, dated 8 May 2020 and included in the Board Report dated 22 May 2020, which stated “For CBEC: Inventory levels at DTs [distributors] and EC platforms based on data provided by each party. Sell-in (to platforms) and sell-out data (to consumers) are correlated on a monthly basis to reconcile inventory data provided by the platforms” (AMC.0001.0001.0127 at 0028).
- (iv) **Limited coverage of data from MBS stores for CL IMF:** The Board’s receipt of the May 2020 China Board Report in the Board Report dated 24 June 2020, which noted the limitations on data and discrepancy between Kantar and Nielsen CL IMF tracking (including monthly CL MBS data) (AMC.0001.0001.0125 at 0173- 0174).
- (v) **Back-door sales from Australian retailers:** Nathan’s receipt or possession of:
 - A. an email dated 10 June 2020, in which Nathan acknowledged the challenge of back-door volumes and stated “...Your plan is sound and the ANZ team will continue to drain the volume from potential back-door sources. We must all continue to be vigilant” (AMC.5000.0223.1447);
 - B. an email chain between Nathan, Sundaranathan and Bush titled ‘a2 Platinum share this week’ and dated 31 July 2020 in which Sundaranathan stated to Nathan and Bush “...As far as WW is willing to put on shelf no issues to give them in line with scan. They have got used to easy sales through the backdoor which they need to stop” (AMC.5000.0017.1135).

in circumstances where Nathan ought reasonably to have informed the Board, Babidge and Strauss of the information in the documents by reason of:

 - C. his role and responsibilities as CEO APAC; and
 - D. the nature and significance of the information in the documents.

(vi) **Limited visibility of sub-distributors under a2's major corporate daigou resellers:** Nathan's receipt of a presentation slide titled "Inventory tracking slide" which stated that "We have relatively less visibility for Daigou/O2O. However, we are looking into options to encourage EL consumers to 'self-scan' product, to give us some visibility into product in the market" (AMC.5000.0124.7160), by email dated 8 May 2020 (AMC.5000.0124.7159), in circumstances where Nathan ought reasonably to have informed the Board, Babidge and Strauss of the information in the documents by reason of:

A. his role and responsibilities as CEO APAC; and

B. the nature and significance of the information in the document.

(vii) **Lack of traceability:** the receipt by a2's Executive Committee of a "Bow-tie representation of top risks" (AMC.5000.0273.9292 at 9299) by email dated 17 August 2020 (email AMC.5000.0273.9290).

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

~~(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.~~

51A. As at 19 August 2020 (and all material times afterwards), a2 knew or ought reasonably to have known of the August 2020 Commercial Factors.

Particulars

(i) Each member of the Board, Babidge, Strauss and Nathan, knew, or ought reasonably to have known of, the August 2020 Commercial Factors by reason of the following:

A. **IMF sales volumes** (pleaded at [43C]):

1. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 29 July 2020, which stated that "[t]he June month result reflected continued IMF volume shortfalls in Australian retail and CBEC" (AMC. 0001.0001.0394 at 0003);

2. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 29 July 2020, which stated that for China "IMF volumes totalled 1,085k units (-12.8% vs. fcst); China Label 800k units (-4% vs. fcst); English Label CBEC 285k units (-27% vs. fcst)", and for ANZ, "ANZ IMF volumes -422k units (-20.3%) vs. forecast: IMF retail -666k units (-27%); IMF direct in line; IMF NZ +242k units (+152%)" (AMC.0001.0001.0394 at 0005, 0006);
3. The receipt by the Board, Babidge, Strauss and Nathan of the July Monthly Sales Flash by email dated 5 August 2020, which showed that Total IMF sales were below budget for the month of July 2020 (AMC.5000.0357.2986).

B. Decline in Aus NZ Segment market share (pleaded at [43D]):

1. The Board's receipt of the April market share data in the Chief Growth and Brand Officer in the Board Report dated 22 May 2020 (AMC.0001.0001.0127 at 0144);
2. The Board's receipt of the May market share data in the Chief Growth and Brand Officer in the Board Report dated 24 June 2020 (AMC.0001.0001.0125 at 0204);
3. The Board's receipt of the June market share data in the Group Operating and Financial Review in the Board Report dated 29 July 2020 (AMC.0001.0001.0394 at 0023); and
4. It is to be inferred that the Board received the Chief Growth and Brand Officer Board Report – July FY21, which included the July market share data (AMC.5000.0533.7694 at 7695), by the email sent from Massasso to McVicar dated 14 August 2020 with subject line "Board report" (AMC.5000.0533.7693).

C. Daigou and CBEC pricing (pleaded at [43E]): The receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974) by email dated 29 April 2020 (AMC.5000.0011.3973);
2. the Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347) by email dated 27 May 2020 (AMC.5000.0018.1346);
3. the Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876) by email dated 29 July 2020 (AMC.5000.0011.5875).

in circumstances where Strauss and Nathan ought reasonably to have informed the Board and Babidge of the information in the documents by reason of:

4. their roles and responsibilities as CFO and CEO APAC (respectively); and
5. the nature and significance of the information in the documents.

D. IMF Inventory (pleaded at [43F]):

1. The Board's receipt of the CEO Report in the Board Report dated 25 March 2020, which stated "A decision was recently made to increase production in May. Assuming that sales remain consistent with forecast this will lift closing inventory from 9.4m to 10.5m cans, which is considered appropriate" (AMC.0001.0001.0120 at 0005).
2. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 25 March 2020, which stated "Inventory on hand of \$113.9m represents ~56 days sales in inventory, in line with February" (AMC.0001.0001.0120 at 0011); and "As sales continue to exceed expectations and in order to mitigate potential supply disruptions caused by COVID-19, management have placed the first instalment of the July purchase order of 1.8 million (likely to be produced in June) [...] This uplift in ordering is consistent with the plan of holding a number of weeks additional inventory to mitigate potential supply chain disruptions related to COVID-19" (AMC.0001.0001.0120 at 0014).
3. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 24 June 2020, which stated that "Inventory on hand of \$129.4m represents ~60 days IMF sales in inventory, up from 56 days in April. Due to decline in APAC sales expected in June, inventory for the end of the FY20 year will be higher than planned" (AMC.0001.0001.0125 at 0009); and "The IMF inventory position at the end of May was elevated due to a drop in demand from ANZ (English Label). As a result, discussions are underway with Synlait to slow production June through August" (AMC.0001.0001.0125 at 0013).

4. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 29 July 2020, which stated "Inventory on hand of \$147.5m represents ~67 days IMF sales in inventory, up from 60 days in May" (AMC.0001.0001.0394 at 0004); "Inventory flows from Synlait were limited coming into year end. However, these flows will combine with low seasonal demand in July to further increase stock levels in early FY21, with stock settling back to more normalized cover by the end of Q1" (AMC.0001.0001.0394 at 0009); and "our inventory position will be directly impacted in the short term by-which stock levels will increase a further ~2 million cans." (AMC.0001.0001.0394 at 0410).
 5. The minutes of the Board meeting dated 29 July 2020 stated that "RS [Race Strauss] took the board through the FY20 Full Year Result [...] Key points discussed were as follows: [...] Inventory on hand of \$148m is deliberately higher than budget in response to market dynamics from Covid-19" (AMC.0001.0001.0397 at 0002).
- (ii) Further, Strauss and Nathan knew, or ought reasonably to have known of, the August 2020 Commercial Factors by reason of the following:
- A. **IMF sales volumes** (pleaded at [43C]):
 1. Louttit's possession of the Margin Analysis monthly report for June 2020 (AMC.5000.0390.5401) dated 9 July 2020;
 2. The receipt by Strauss and Nathan of the Margin Analysis monthly report for July 2020 (AMC.5000.0011.6049) by email dated 13 August 2020 (AMC.5000.0011.6046);
 - B. **Decline in Aus NZ Segment market share** (pleaded at [43D]): the attendance by Strauss and Nathan at Board meetings in each of May, June and July 2020 at which the market share information was presented in Board reports (May – AMC.0001.0001.0127 at 0144; June – AMC.0001.0001.0125 at 0204; July – AMC.0001.0001.0394 at 0023).
 - C. **Daigou and CBEC pricing** (pleaded at [43E]): the receipt by Strauss and Nathan of:
 1. the Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974) by email dated 29 April 2020 (AMC.5000.0011.3973);

2. the Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347) by email dated 27 May 2020 (AMC.5000.0018.1346);
3. the Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876) by email dated 29 July 2020 (AMC.5000.0011.5875).

D. **IMF Inventory** (pleaded at [43F]): Nathan's receipt of:

1. a document recording the April 2020 inventory balance by email dated 7 May 2020 (AMC.5000.0001.3313 at 3313);
2. a document recording the May 2020 inventory balance by email dated 5 June 2020 (AMC.5000.0001.3317 at 3318);
3. a document recording the June 2020 inventory balance by email dated 8 July 2020 (AMC.5000.0001.3321 at 3322); and
4. a document recording the July 2020 inventory balance by email dated 10 August 2020 (AMC.5000.0017.1982 at 1983).

Strauss knew or ought reasonably to have known of this information by reason of Louttit's receipt of each of the documents at particulars (ii)A.1 and (ii)D.1–4 in circumstances where Louttit ought reasonably to have informed Strauss of the information in the document by reason of:

5. Louttit's role and responsibilities (as pleaded at paragraph 33C above); and
6. the nature and significance of the information in the document.

51B. As at 19 August 2020 (and all material times afterwards), a2 knew or ought reasonably to have known of the August 2020 Guidance Process.

Particulars

The following officers of a2 were aware of the August 2020 Guidance Process by reason of the matters pleaded at paragraphs 43A and 48A:

- (i) each member of the Board (being Babidge, Hearn, Hoare, Wu, Greenwood, and Every-Burns); and
- (ii) Strauss, by his attendance at the Board meetings of 24 June 2020 (AMC.0001.0001.0128) and 18 August 2020 (AMC.0001.0001.0230).

D.3A August 2020 Misleading or Deceptive Conduct

52. ~~To the extent the August Representations Guidance were was a representations as to future matters, a2 did not have reasonable grounds for making those representations. a2 did not have reasonable grounds for giving the August 2020 Guidance.~~

Particulars

- (i) The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.
- (ii) The Plaintiffs refer to and repeat paragraphs ~~40, 41, 50 to 51~~ 40–43, 43C–43F, 48A, 50–51B, 55 and the particulars thereto.
- (iii) ~~a2 did not have reasonable grounds for giving the August 2020 Guidance by reason of:~~
 - A. ~~the August 2020 Commercial Factors together with the August 2020 Guidance Process and the August 2020 Counterfactual Guidance;~~
 - B. ~~alternatively, the August 2020 Commercial Factors together with the August 2020 Guidance Process and the August 2020 Alternative Counterfactual Guidance;~~

~~alone or in combination with one or both of:~~

 - C. ~~the August 2020 a2 China Market Conditions; and~~
 - D. ~~the Inadequate Monitoring Systems.~~
- (iv) ~~Alternatively to particular (iii), a2 did not have reasonable grounds for giving the August 2020 Guidance by reason of the August 2020 Commercial Factors together with the August 2020 Guidance Process in combination with one or both of:~~
 - A. ~~the August 2020 a2 China Market Conditions; and~~
 - B. ~~the Inadequate Monitoring Systems.~~

~~Campbell Report at Section VI.B.~~

53. The ~~August Representations were made~~ August 2020 Guidance was:

- (a) made in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;

- (b) made 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) made in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
 - (d) made in trade or commerce within the meaning of s 9 of the FT Act; ~~and~~
 - (e) made in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act~~;~~;
 - (f) a continuing representation that was maintained by a2 from 19 August 2020 until the publication of the September 2020 Guidance Downgrade on 28 September 2020 (as pleaded at paragraph 68 below); and
 - (g) a representation as to future matters.
54. By reason of the matters alleged in paragraphs 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)~~ until 28 September 2020:
- (a) by ~~making the August Representations~~ giving the August 2020 Guidance 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~~ giving the August 2020 Guidance 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~~On and from 19 August 2020 until 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 August 2020 a2 China Market Conditions~~the August 2020 Counterfactual Guidance;
- (b) ~~the August 2020 a2 China Market Information; and~~ alternatively, the August 2020 Alternative Counterfactual Guidance.
- (c) ~~[not used] the Inadequate Monitoring Systems Information.~~

Particulars

- (i) **The Board, Babidge, Strauss and Nathan** knew, or ought reasonably to have known of:
 - A. the August 2020 Commercial Factors by reason of the matters set out at particular (i) to paragraph 51A.
 - B. the August 2020 a2 China Market Conditions by reason of the matters set out at particulars (i)A to (i)C, (ii), (iii)A, (iv) and (v)A to paragraph 50.
 - C. the Inadequate Monitoring Systems by reason of the matters set out in particulars to paragraph 51.
- (ii) **Babidge and Strauss.** Further to the matters set out in particular (i) above, Babidge and Strauss knew, or ought reasonably to have known of, the August 2020 a2 China Market Conditions as set out at particulars (iii)B to (iii)D, and (v)B to (v)D, of paragraph 50;
- (iii) **Strauss and Nathan.** Further to the matters set out in particulars (i) and (ii) above, Strauss and Nathan knew, or ought reasonably to have known of, the matters set out in particular (ii) to paragraph 51A.

(iv) **Information.** By reason of knowing the August 2020 Commercial Factors, themselves or in combination with one or both of the August 2020 a2 China Market Conditions and the Inadequate Monitoring Systems (as set out above), each member of the Board, Babidge, Strauss, and/or Nathan ought reasonably to have known that the August 2020 Counterfactual Guidance, alternatively the August 2020 Alternative Counterfactual Guidance, was reasonable earnings guidance for a2 for FY21.

~~(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.~~

Australian Law Contraventions

56. Each of:

- (a) ~~the August 2020 a2 China Market Conditions; the August 2020 Counterfactual Guidance;~~
- (b) ~~the August 2020 a2 China Market Information alternatively, the August 2020 Alternative Counterfactual Guidance; and~~
- (c) ~~[not used] 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~~ 28 September 2020:

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) ~~[not used] 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 Plaintiffs rely on the Corrected Expert Report of Dr Ramsey Zein dated 11 July 2025 (**Corrected Zein Report**) at Section 7.
- (ii) The August 2020 a2 China Market Conditions, August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was Further, the August 2020 Counterfactual Guidance and the August 2020 Alternative Counterfactual Guidance were material because of the features of the market for a2 Securities as set out in paragraphs ~~46 to 47~~ 146 to 147 below, and the fact that ~~it~~ the information regarding a2's expected FY21 revenue and EBITDA margin related to a2's future financial performance and was viewed by market participants as a key input into the valuation of a2 shares during the Relevant Period.
- (iii) ~~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.~~
- (iv) Further, the materiality of the August 2020 Counterfactual Guidance and the August 2020 Alternative Counterfactual Guidance is to be inferred from the impact on the price of a2's Securities of the September 2020 Guidance Downgrade pleaded at paragraph 68 below.

(v) As to sub-paragraph 56(c)(ii), the plaintiffs refer to and rely on paragraph 57 below.

(vi) 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~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance as pleaded in paragraph 55 above; and
- (b) the materiality of the ~~August 2020 a2 China Market Conditions, the August 2020 a2 China Market Information and the Inadequate Monitoring Systems Information~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance;
- (c) ~~[not used] 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) ~~[not used] 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 (iv), 95(d)(ii) to (iii), 120(d)(ii) to (iv) and 145(d)(ii) to (iv) below;~~

it is to be inferred that a2:

- (e) was aware of a substantial risk that the ~~information~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance, 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 August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance, 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~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance 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~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance 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~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance; and
 - (b) in so doing to take the risk that, if generally available, the ~~information~~ August 2020 Counterfactual Guidance or the August 2020 Alternative Counterfactual Guidance:
 - (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 until 28 September 2020, a2 ~~became immediately~~ was obliged to inform the ASX immediately of:
- (a) ~~the August 2020 a2 China Market Conditions~~ the August 2020 Counterfactual Guidance;
 - (b) ~~the August 2020 a2 China Market Information~~ alternatively, the August 2020 Alternative Counterfactual Guidance.; and/or

(c) ~~[not used] the Inadequate Monitoring Systems Information.~~

60. a2 did not inform the ASX of:

(a) ~~the August 2020 a2 China Market Conditions~~ the August 2020 Counterfactual Guidance;

(b) ~~the August 2020 a2 China Market Information~~ alternatively, the August 2020 Alternative Counterfactual Guidance.; and/or

(c) ~~[not used] the Inadequate Monitoring Systems Information,~~

~~before 28 September 2020. 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~~ 28 September 2020, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations.; and

(c) ~~[not used] 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**).

NZ Law Contraventions

62. Each of:

(a) ~~the August 2020 a2 China Market Conditions~~ the August 2020 Counterfactual Guidance;

(b) ~~the August 2020 a2 China Market Information~~ alternatively, the August 2020 Alternative Counterfactual Guidance.; and/or

(c) ~~[not used] 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 until 28 September 2020, a2 ~~became immediately was~~ obliged to release to the NZSX, ~~promptly and without delay immediately:~~

- (a) ~~the August 2020 a2 China Market Conditions~~ the August 2020 Counterfactual Guidance;
- (b) ~~the August 2020 a2 China Market Information~~ alternatively, the August 2020 Alternative Counterfactual Guidance. ; and/or
- (c) [not used] the Inadequate Monitoring Systems Information,

64. a2 did not inform the NZSX of:

- (a) ~~the August 2020 a2 China Market Conditions~~ the August 2020 Counterfactual Guidance;
- (b) ~~the August 2020 a2 China Market Information~~ alternatively, the August 2020 Alternative Counterfactual Guidance. ; and/or
- (c) [not used] the Inadequate Monitoring Systems Information,

~~before 28 September 2020. 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. ~~[not used] 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;~~

~~(a) 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.~~

66A. If a2 had not engaged in the August 2020 Misleading or Deceptive Conduct Contravention, on 19 August 2020, a2 would have:

- (a) given the August 2020 Counterfactual Guidance in place of the August 2020 Guidance; alternatively
- (b) given the August 2020 Alternative Counterfactual Guidance in place of the August 2020 Guidance.

66B. If a2 had not engaged in the August 2020 Continuous Disclosure Contravention, on 19 August 2020, as alleged in paragraphs 59 and 63 above, a2 would have immediately, as it was obliged to do:

- (a) given the August 2020 Counterfactual Guidance in place of the August 2020 Guidance;
- (b) alternatively, given the August 2020 Alternative Counterfactual Guidance in place of the August 2020 Guidance.

66C. In the alternative to paragraph 66B, if a2 had not engaged in the August 2020 Continuous Disclosure Contravention, on 19 August 2020, a2 would have given the August 2020 Guidance, and then, as alleged in paragraphs 59 and 63 above, would have immediately, as it was obliged to do:

- (a) withdrawn the August 2020 Guidance and given the August 2020 Counterfactual Guidance;
- (b) alternatively, withdrawn the August 2020 Guidance and given the August 2020 Alternative Counterfactual Guidance.

67. In the premises, the **August Contraventions** being (together and severally) the:

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

caused the price at which a2 Securities traded (**Traded Price**) to be higher on and from 19 August 2020 to 28 September 2020 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

Particulars

The Plaintiffs rely on the Corrected Zein Report at Sections 6 and 7.

Further, tThe 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) ~~[not used] the changes in the Traded Prices on 19 August 2020 set out in Annexure B immediately following the August Representations;~~
- (iii) ~~[not used] 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 following the September 2020 Guidance Downgrade set out at paragraph 68A below. 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.~~
- ~~(v) Further particulars will be provided following the filing of expert reports.~~

E. SEPTEMBER 2020 CONTRAVENTIONS

E.1 **September 2020** ~~Partial Disclosure~~ Guidance Downgrade

68. On 28 September 2020, a2 published and lodged with the ASX and NZSX a document in by which it stated that it expected to achieve:

- (a) ~~group~~ Group revenue for 1H21 of \$725m to \$775m; ~~and~~
- (b) ~~group~~ Group revenue for FY21 of \$1.80bn to \$1.90bn.; ~~and~~
- (c) Group FY21 EBITDA margin in the order of 31%.

(together, the **September 2020** ~~Partial Disclosure~~ Guidance Downgrade).

Particulars

The September 2020 ~~Partial Disclosure~~ Guidance Downgrade was express and contained in the a2 ASX and NZSX announcement dated 28 September 2020 entitled “Updated FY21 Outlook” (**September 2020 Update Guidance Downgrade Announcement**) (PEB.0001.0001.0111).

68A. The September 2020 Guidance Downgrade caused the price at which a2 Securities traded on the ASX, Chi-X and NZSX to decline.

Particulars

- (i) The amount of the share price declines caused by the September 2020 Guidance Downgrade (as distinct from other information that may have affected the price of a2 Securities at or around the same time), and the number of trading days over which those declines are observed, are identified by an event study analysis of trading in a2 Securities over the Relevant Period.
- (ii) The September 2020 Guidance Downgrade:
 - A. caused the price at which a2 Securities traded on the ASX and Chi-X to decline by A\$2.45 or 14.3% from the close of trade on 25 September 2020 to the close of trade on 29 September 2020;
 - B. caused the price at which a2 Securities traded on the NZSX to decline by \$2.83 or 15.3% from the close of trade on 25 September 2020 to the close of trade on 29 September 2020.

Corrected Zein Report at Part 6 and Exhibits 6A-2 and 6B-2.

68B. The September 2020 Guidance Downgrade was based on a draft of the financial forecast for the a2 Group (the **Draft Q1 Preliminary Forecast**) that was finalised on or around 10 October 2020 (the **Q1 Preliminary Forecast**).

Particulars

- (i) The Draft Q1 Preliminary Forecast was provided to the Board in advance of a meeting on 26 September 2020 by McVicar uploading the draft Board’s information platform, Diligent (see email from McVicar (AMC.5000.0157.1464)). McVicar also sent the Draft Q1 Preliminary Forecast (AMC.0001.0001.0443) to Babidge, Strauss, Nathan, Massasso and Akers by email on 26 September 2020 (AMC.0001.0001.0441).
- (ii) Board minutes dated 26 September 2020 state that the Board considered an “FY21 preliminary reforecast paper that had been uploaded to Diligent in the board book set up for this meeting” (AMC.0001.0001.0062).

(iii) The September 2020 Guidance Downgrade Announcement was finalised following the Board's consideration of the Draft Q1 Preliminary Reforecast:

A. Board minutes dated 26 September 2020 show that the Board directed management to revise a draft announcement for further review by the Board (AMC.0001.0001.0062 at 0003);

B. The Board approved the September 2020 Guidance Downgrade Announcement by emails on 27 September 2020 (AMC.5000.0056.1092).

69. [not used] ~~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,~~

~~(iii) — (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%);~~

~~(iii) (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%);~~

~~(iv) 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%);~~

~~(v) 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;~~

- ~~(vi) 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)(v) 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.2 True Position Market Conditions 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:
- ~~(i) a2 continuing to sell substantial quantities of English Label Infant Formula Products through the cross border e-commerce CBEC channel; and~~
 - ~~(ii) reduced sales to retail daigou resellers and corporate daigou resellers as a result of lower demand and COVID-19 related travel restrictions and lockdowns;~~
- (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) ~~[not used] 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) Reduced sales to daigou resellers (paragraph 70(a)(ii)): Demand was affected by an alleged contamination issue, fewer retail daigou promoting a2's brand, and COVID-19 lockdowns in Victoria resulting in corporate daigou resellers closing temporarily their operations (Group Operating and Financial Review, September 2020, AMC.0001.0001.0133 at 0004; email from Nathan to Babidge, Strauss and others dated 8 September 2020, AMC.5000.0056.3077).~~

~~(ii) **Excess channel inventory** (paragraph 70(b)): As at 17 September 2020, a2's main corporate daigou reseller had approximately 9–10 weeks of inventory cover, in excess of the usual 1–2 weeks of cover (email from Sundaranathan to Lyn Xu, AZ Global, dated 17 September 2020, AMC.5000.0276.2484 at 2486).~~

~~(iii) In its 2020 Annual Report, a2 reported that it finished FY20 with inventory of \$147.3m page 14.~~

~~(iv) 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.~~

~~(v) 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.~~

~~(vi) 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.~~

~~(vii) 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.~~

~~(viii) 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. ~~[not used] 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~~ Inadequate Monitoring Systems persisted.

Particulars

The Plaintiffs refer to paragraph ~~143~~ 43 and repeat the particulars thereto.

E.2A a2's Performance as at 28 September 2020

72A. As at 28 September 2020, a2's IMF sales volumes had fallen short of the volumes forecast in the FY21 Budget for the months of June, July, and August 2020.

Particulars

<u>Values in 000s of cans</u>	<u>June 2020</u>	<u>July 2020</u>	<u>August 2020</u>
<u>ANZ and China IMF sales volumes forecast</u>	<u>3,294</u> <u>FY21 Budget Spreadsheet</u> <u>(AMC.0001.0001.0766)</u>	<u>2,802</u> <u>FY21 Budget Spreadsheet</u> <u>(AMC.0001.0001.0766)</u>	<u>3,267</u> <u>a2MC Board Report dated 25 September 2020</u> <u>(AMC.0001.0001.0133 at 0053)</u>
<u>Actual IMF sales</u>	<u>2,751</u> <u>Margin Analysis monthly report, June 2020</u> <u>(AMC.5000.0390.5401)</u>	<u>2,517</u> <u>Margin Analysis monthly report, July 2020</u> <u>(AMC.5000.0011.6049 at 'Product Consol')</u>	<u>2,954</u> <u>a2MC Board Report dated 25 September 2020</u> <u>(AMC.0001.0001.0133 at 0053)</u>
<u>Difference to budget</u>	<u>- 544</u>	<u>- 286</u>	<u>-313</u>

72B. As at 28 September 2020, a2's estimated retail market share in the Aus NZ Segment had declined substantially in the period May to August 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Australia IMF retail market share (%)</u>
<u>a2MC Board Report dated 22 May 2020</u> <u>(AMC.0001.0001.0127 at 0144)</u>	<u>April 2020</u>	<u>37.3</u>
<u>a2MC Board Report dated 24 June 2020</u> <u>(AMC.0001.0001.0125 at 0204)</u>	<u>May 2020</u>	<u>37.5</u>
<u>a2MC Board Report dated 29 July 2020</u> <u>(AMC.0001.0001.0394 at 0023)</u>	<u>June 2020</u>	<u>27.5</u>
<u>Chief Growth and Brand Officer Board Report – July FY21</u> <u>(AMC.5000.0533.7694 at 7695)</u>	<u>July 2020</u>	<u>15</u>
<u>a2MC Board Report dated 21 September 2020</u> <u>(AMC.0001.0001.0133 at 0024)</u>	<u>August 2020</u>	<u>13.8</u>

72C. As at 28 September 2020, average prices for a2's IMF as sold by corporate daigou resellers and CBEC channels had declined between April 2020 and August 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Price as sold by corporate daigou (AU\$)</u>				<u>Price as sold by CBEC (AU\$)</u>			
		<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>	<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>
<u>Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974 at 3974, 3976)</u>	<u>April 2020</u>	<u>34.8</u>	<u>43.3</u>	<u>33.5</u>	<u>37.2</u>	<u>51.1</u>	<u>51.3</u>	<u>48.1</u>	<u>46.9</u>
<u>Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347 at 1347, 1349)</u>	<u>May 2020</u>	<u>34.6</u>	<u>40.8</u>	<u>33.2</u>	<u>35.3</u>	<u>49.3</u>	<u>48.0</u>	<u>43.7</u>	<u>43.6</u>
<u>Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876 at 5876, 5878)</u>	<u>July 2020</u>	<u>33.6</u>	<u>38.8</u>	<u>31.0</u>	<u>33.4</u>	<u>46.6</u>	<u>46.3</u>	<u>44.0</u>	<u>42.3</u>
<u>Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771 at 8771, 8773)</u>	<u>August 2020</u>	<u>33.3</u>	<u>38.7</u>	<u>31.1</u>	<u>33.3</u>	<u>45.3</u>	<u>46.8</u>	<u>42.1</u>	<u>41.2</u>
<u>Note:</u> 'S' denotes IMF 'stage'. S1 is for newborns; S2 is for children aged 6–12 months; S3 is for children aged 12–24 months; and S4 is for children aged 24 months and over.									

72D. As at 28 September 2020, a2's inventory of IMF was approximately 16 million cans, an increase of approximately 7 million cans since April 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>EL and CL Inventory (000 cans)</u>
<u>IMF inventory balance report dated 7 May 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3313 at 3313)</u>	<u>April 2020</u>	<u>8,935</u>
<u>IMF inventory balance report dated 5 June 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3317 at 3318)</u>	<u>May 2020</u>	<u>11,296</u>
<u>IMF inventory balance report dated 8 July 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0001.3321 at 3322)</u>	<u>June 2020</u>	<u>14,167</u>
<u>IMF inventory balance report dated 10 August 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0017.1982 at 1983)</u>	<u>July 2020</u>	<u>18,638</u>

<u>IMF inventory balance report dated 8 September 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0004.4362 at 4363)</u>	<u>August 2020</u>	<u>16,345</u>
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(The matters pleaded at paragraphs 72A to 72D, together or in any combination, are the September 2020 Commercial Factors).

E.2B Reasonable FY21 Guidance as at 28 September 2020

72E. By reason of the September 2020 Commercial Factors, themselves or in combination with one or both of the September 2020 a2 China Market Conditions and the Inadequate Monitoring Systems, as at 28 September 2020, a reasonable forecast for a2's 1H21 revenue, FY21 revenue and EBITDA margin was:

- (a) 1H21 net revenue of \$739 million;
- (b) FY21 net revenue of \$1.64 billion; and
- (c) FY21 EBITDA margin of 27%.

(September 2020 Reasonable Forecast).

Particulars

Campbell Report at Section VII.C.

72F. As at 28 September 2020, reasonable earnings guidance for a2 for FY21 was:

- (a) 1H21 revenue of \$600 million to \$700 million;
- (b) FY21 revenue of \$1.45 billion to \$1.6 billion; and
- (c) FY21 EBITDA margin of 27%.

(the September 2020 Counterfactual Guidance).

Particulars

The September 2020 Counterfactual Guidance was reasonable by reason of the September 2020 Reasonable Forecast and the September 2020 Commercial Factors.

Campbell Report at [281]–[284], [292]–[293].

72G. In the alternative to paragraph 72F, as at 28 September 2020, reasonable earnings guidance for a2 for FY21 was:

- (a) 1H21 net revenue of \$739 million;
- (b) FY21 net revenue of \$1.64 billion; and
- (c) FY21 EBITDA margin of 27%.

(the September 2020 Alternative Counterfactual Guidance).

Particulars

The September 2020 Counterfactual Guidance was reasonable by reason of the September 2020 Reasonable Forecast.

Campbell Report, Section VII.C.

E.3 [not used] September Representations

73. ~~[not used] 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

- ~~(iv) September 2020 Update Announcement, pages 1 to 2.~~

~~(v) 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.~~

~~(vi) 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. ~~[not used] 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. ~~[not used] 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.4 ~~September 2020 Misleading or Deceptive Conduct~~
a2's Awareness as at 28 September 2020

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

Particulars

The Plaintiffs repeat the particulars to paragraph 50. Further:

- (i) **EL Channel Dynamics** (pleaded at [40]): It is to be inferred that Nathan knew or ought reasonably to have known of the EL Channel Dynamics by reason of the following:

- A. In a presentation titled "Risk: Bow-tie representation of top risks" dated 27 August 2020, Nathan is assigned as the "Risk owner" of the risk that "E-commerce platforms that have access to our brand use aggressive pricing techniques and cease to price assets correctly [...] Competition between e-commerce platforms and the Corporate daigou contributes to further price dislocation and impacts distributor profitability" (AMC.5000.0481.1228 at 0004).
- B. A document received by Nathan on 2 September 2020 (AMC.5000.0123.5625, received by email from Eleanor Khor, AMC.5000.0123.5624) noted slowing growth in the CBEC channel driven by disruption to the daigou channel, "potentially resulting in fewer brand 'ambassadors' actively pushing our brand and indirectly supporting CBEC sales".

- (ii) **Reduced sales to daigou resellers** (pleaded at [70(a)(ii)]):

- A. The Board, Babidge, Strauss and Nathan knew or ought reasonably to have known of this information by their receipt of the Group Operating and Financial Review in the Board Report dated 21 September 2020 (AMC.0001.0001.0133 at 0004).
- B. Babidge, Strauss and Nathan knew or ought reasonably to have known of this information by their receipt of the email from Nathan to Babidge, Strauss and others dated 8 September 2020 (AMC.5000.0056.3077).

(iii) Channel inventory (pleaded at [70(b)]):

A. Nathan knew or ought reasonably to have known of this information by reason of Sundaranathan's awareness of this information (as set out in the email from Sundaranathan to Lyn Xu, AZ Global, dated 17 September 2020, AMC.5000.0276.2484 at .2486), in circumstances where Sundaranathan ought reasonably to have informed Nathan of the information in the document by reason of:

1. Sundaranathan's roles and responsibilities (as pleaded at paragraph 33F above); and
2. the nature and significance of the information in the document.

Further, Nathan ought reasonably to have informed Babidge and Strauss of the information in the document by reason of:

3. his role and responsibilities as CEO APAC; and
4. the nature and significance of the information in the documents.

(iv) Reduction in EL sales prices in China resulting in a reduction in EL sales to daigou resellers (pleaded at [41(d)]): It is to be inferred that Nathan knew or ought reasonably to have known of this information by reason of his awareness of the EL Channel Dynamics as set out in particular (i) above.

~~(v) 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;~~

~~(vi) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.~~

~~(vii) 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 reasonably to have known of the Inadequate Monitoring Systems ~~Information~~.

Particulars

- (i) The Plaintiffs repeat the particulars to paragraph 51.
- (ii) Further, each member of the Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known of the manual provision of inventory data from CBEC by reason of Nathan instructing an employee to build, as a key project for FY21, “a robust business process and data visibility system for CBEC distributor and retailer platform sell in, sell out, inventory, growth, retail price (utilising data tracked by ANZ team), and share for Tmall and JD” and to “implement a CBEC and DOL monthly tracking tool by customer of rebate, margin subsidy, trade and marketing spend on the assumption that the data is provided by the distributors” by a document (AMC.5000.0123.8654) attached to an email dated 28 August 2020 (AMC.5000.0123.8653), in circumstances where Nathan ought reasonably to have informed the Board, Babidge and Strauss of the information by reason of:
 - A. his role and responsibilities as CEO APAC (respectively); and
 - B. the nature and significance of the information.

~~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.~~

77A. As at 28 September 2020 (and at all material times afterwards), a2 knew or ought reasonably to have known of the September 2020 Commercial Factors.

Particulars

(i) Each member of the Board, and Babidge, Strauss and Nathan knew, or ought reasonably to have known of, the September 2020 Commercial Factors by reason of the following:

A. IMF sales volumes (pleaded at [72A]):

1. The Board’s receipt of the Group Operating and Financial Review for August 2020 in the Board Report dated 21 September 2020, which stated:

(a) “YTD IMF volumes are (7.2%) behind budget” (AMC.0001.0001.0133 at 0004);

- (b) “IMF volumes totalled 2,607k units (vs. budget of 2,725); China Label 1,737k units (vs. budget of 1,776); English Label 870k units (vs. budget of 949)”, and for ANZ “Net sales for the month of \$53.7m were (\$5.5m) below budget, mostly reflecting volume shortfalls on a2 Platinum (-\$5.4m)” (AMC.0001.0001.0133 at 0005, 0006);
- (c) “Net revenue fell short of budget by (\$6.9m) (by (\$10.1m) in constant FX) largely reflecting IMF volume shortfall in AU Retail, Daigou and CBEC” (footnote omitted, AMC.0001.0001.0133 at 0038); and
- 2. The Board’s receipt of the “Month Result: Aug-20” presentation in the Board Report dated 21 September 2020, which reported August MTD IMF volume was 2.954m units and 9.6% behind budget, and August YTD IMF volume was 5.467m and 7.2% behind budget (AMC.0001.0001.0133 at 0053, 0054); and
- 3. The Board’s receipt of the Preliminary Forecast presentation dated 26 September 2020, which stated that “Lower net revenue assumptions due to weak Daigou trading conditions in ANZ (~7m unit shortfall) and unfavourable transactional FX” (AMC.0001.0001.0441, AMC.0001.0001.0443 at 0002).

B. Decline in Aus NZ Segment market share (pleaded at [72B]):

- 1. The Board’s receipt of the April market share data in the Chief Growth and Brand Officer in the Board Report dated 22 May 2020 (AMC.0001.0001.0127 at 0144);
- 2. The Board’s receipt of the May market share data in the Chief Growth and Brand Officer in the Board Report dated 24 June 2020 (AMC.0001.0001.0125 at 0204);
- 3. The Board’s receipt of the June market share data in the Group Operating and Financial Review in the Board Report dated 29 July 2020 (AMC.0001.0001.0394 at 0023);
- 4. It is to be inferred that the Board received the Chief Growth and Brand Officer Board Report – July FY21, which included the July market share data (AMC.5000.0533.7694 at 7695), by the email sent from Massasso to McVicar dated 14 August 2020 with subject line “Board report” (AMC.5000.0533.7693); and
- 5. The Board’s receipt of the August market share data in the Group Operating and Financial Review in the Board Report dated 21 September 2020 (AMC.0001.0001.0133 at 0024).

C. **Daigou and CBEC pricing** (pleaded at [72C]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974) by email dated 29 April 2020 (AMC.5000.0011.3973);
2. the Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347) by email dated 27 May 2020 (AMC.5000.0018.1346);
3. the Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876) by email dated 29 July 2020 (AMC.5000.0011.5875); and
4. the Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771) by email dated 26 August 2020 (AMC.5000.0011.8770).

in circumstances where Strauss and Nathan ought reasonably to have informed the Board and Babidge of the information in the documents by reason of:

5. their roles and responsibilities as CFO and CEO APAC (respectively); and
6. the nature and significance of the information in the documents.

D. **IMF Inventory** (pleaded at [72D]): The Board's receipt of the Group Operating and Financial Review in the Board Report dated 21 September 2020, which stated:

1. "Significant effort is being directed at managing increased inventory levels (both at our warehouses and in MBS distributors), including amendments to production schedules and re-deploying marketing spend to focus on sales activation to attempt to make up the expected shortfall via CBEC and China Label" (AMC.0001.0001.0133 at 0004);
2. "Inventory on hand of \$205.9m represents ~80 days sales in inventory, in line with the prior month. This elevated level of inventory reflects the decline in APAC IMF sales volumes. Managing inventory levels to more normalized levels remains a key focus of the operations team" (AMC.0001.0001.0133 at 0005, see also 0046);

3. “The value of IMF finished stock now exceeds NZ\$170m (~3-4 months SOH and mostly English Label) [...] Several initiatives are underway to manage this inventory position [...] It is anticipated that targeted inventory positions for CBEC and ANZ will not be achieved until October and November respectively” (AMC.0001.0001.0133 at 0010);
4. “Key themes being asked by the investors and which are creating uncertainty include: [...] Inventory levels in the market – perceived to be high” (AMC.0001.0001.0133 at 0012, see also 0182);
5. “[...] bringing stability back to our inventory position remains largely on-track however this will be heavily dependent on sales performance in the coming months. The Australian market continues to hold significant inventory which will only reduce to within targeted levels by November with the cross-border business [managing] to get there by end of October” (AMC.0001.0001.0133 at 0177).

(ii) It is to be inferred that Strauss and Nathan knew, or ought reasonably to have known of, the September 2020 Commercial Factors by reason of the following:

A. **IMF sales volumes** (pleaded at [72A]):

1. Louttit’s possession of the Margin Analysis monthly report for June 2020 (AMC.5000.0390.5401) dated 9 July 2020;
2. the receipt by Strauss and Nathan of the Margin Analysis monthly report for July 2020 (AMC.5000.0011.6049) by email dated 13 August 2020 (AMC.5000.0011.6046); and
3. the receipt by Strauss and Nathan of the Margin Analysis monthly report for August 2020 (AMC.5000.0016.3278) by email dated 9 September 2020 (AMC.5000.0016.3275).

B. **Decline in Aus NZ Segment market share** (pleaded at [72B]): the attendance by Strauss and Nathan at Board meetings in each of May, June, July and September 2020 at which the market share information was presented in Board reports (May – AMC.0001.0001.0127 at 0144; June – AMC.0001.0001.0125 at 0204; July – AMC.0001.0001.0394 at 0023; September – AMC.0001.0001.0133 at 0024, 0151).

C. **Daigou and CBEC pricing** (pleaded at [72C]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 19 April 2020 (AMC.5000.0011.3974) by email dated 29 April 2020 (AMC.5000.0011.3973);
2. the Weekly Price Observation Dashboard dated 27 May 2020 (AMC.5000.0018.1347) by email dated 27 May 2020 (AMC.5000.0018.1346);
3. the Weekly Price Observation Dashboard dated 29 July 2020 (AMC.5000.0011.5876) by email dated 29 July 2020 (AMC.5000.0011.5875); and
4. the Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771) by email dated 26 August 2020 (AMC.5000.0011.8770).

D. **IMF Inventory** (pleaded at [72D]): Nathan's receipt of:

1. a document recording the April 2020 inventory balance by email dated 7 May 2020 (AMC.5000.0001.3313 at 3313);
2. a document recording the May 2020 inventory balance by email dated 5 June 2020 (AMC.5000.0001.3317 at 3318);
3. a document recording the June 2020 inventory balance by email dated 8 July 2020 (AMC.5000.0001.3321 at 3322);
4. a document recording the June 2020 inventory balance by email dated 10 August 2020 (AMC.5000.0017.1982 at 1983); and
5. a document recording the August 2020 inventory balance by email dated 8 September 2020 (AMC.5000.0004.4362 at 4363).

Strauss knew or ought reasonably to have known of this information by reason of Louttit's receipt of each of the documents at particulars (ii)A.1 and (ii)D.1–5 in circumstances where Louttit ought reasonably to have informed Strauss of the information in the document by reason of:

6. Louttit's role and responsibilities (as pleaded at paragraph 33C above); and
7. the nature and significance of the information in the document.

E.4A September 2020 Misleading or Deceptive Conduct

78. ~~the extent the September Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations. a2 did not have reasonable grounds for the September 2020 Guidance Downgrade.~~

Particulars

- (i) The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.
- (ii) The Plaintiffs refer to and repeat paragraphs 70 ~~and 76~~ to 72D, 76 to 77A and 81 and the particulars thereto.
- (iii) a2 did not have reasonable grounds for giving the September 2020 Guidance Downgrade by reason of:
 - A. the September 2020 Commercial Factors together with the September 2020 Counterfactual Guidance;
 - B. alternatively, the September 2020 Commercial Factors together with the September 2020 Alternative Counterfactual Guidance;

alone or in combination with one or both of:

 - C. the September 2020 a2 China Market Conditions; and
 - D. the Inadequate Monitoring Systems.
- (iv) Alternatively to particular (iii), a2 did not have reasonable grounds for giving the September 2020 Guidance Downgrade by reason of the September 2020 Commercial Factors in combination with one or both of:
 - A. the September 2020 a2 China Market Conditions; and
 - B. the Inadequate Monitoring Systems.

Campbell Report at Section VII.B.

79. The ~~September Representations were made~~ September 2020 Guidance Downgrade was:
- (a) made in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
 - (b) made 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) made in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
 - (d) made in trade or commerce within the meaning of s 9 of the FT Act; ~~and/or~~
 - (e) made in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act; ~~;~~
 - (f) a continuing representation that was maintained by a2 from 28 September 2020 until the publication of the December 2020 Guidance Downgrade on 18 December 2020 (as pleaded at paragraph 94 below); and
 - (g) a representation as to future matters.
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)~~ until 18 December 2020:
- (a) by ~~making the September Representations giving the September 2020 Guidance Downgrade~~ 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 giving the September 2020 Guidance Downgrade~~ 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.5 September 2020 Continuous Disclosure Contravention

81. ~~Further or alternatively, by~~ On and from 28 September 2020 until 18 December 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~~ the September 2020 Counterfactual Guidance;
 - (b) ~~the September 2020 a2 China Market Information; and~~ alternatively, the September 2020 Alternative Counterfactual Guidance.
 - (c) ~~[not used] the Inadequate Monitoring Systems Information.~~

Particulars

The Plaintiffs repeat the particulars to paragraph 55. Further:

- (i) **The Board, Babidge, Strauss and Nathan** knew, or ought reasonably to have known of:
 - A. the September 2020 Commercial Factors by reason of the matters set out in particular (i) to paragraph 77A.
 - B. the September 2020 a2 China Market Conditions by reason of the matters set out in particular (ii)A to paragraph 76;
 - C. the Inadequate Monitoring Systems by reason of the matters set out in the particulars to paragraph 77.
- (ii) **Babidge, Strauss and Nathan.** Further to the matters set out in particular (i) above, Babidge, Strauss and Nathan knew, or ought reasonably to have known of the September 2020 a2 China Market Conditions by reason of the matters set out in particular (ii)B and (iii) to paragraph 76;

- (iii) **Strauss and Nathan.** Further to the matters set out in particulars (i) and (ii) above, Strauss and Nathan knew, or ought reasonably to have known of the matters set out in particular (ii) to paragraph 77A.
- (iv) **Nathan.** Further to the matters set out in particulars (i) to (iii) above, Nathan knew, or ought reasonably to have known of the matters set out in particulars (i) to paragraph 76.
- (v) **Information.** By reason of knowing the September 2020 Commercial Factors, themselves or in combination with one or both of the September 2020 a2 China Market Conditions and the Inadequate Monitoring Systems (as set out above), each member of the Board, Babidge, Strauss, and/or Nathan ought reasonably to have known that the September 2020 Counterfactual Guidance, alternatively the September 2020 Alternative Counterfactual Guidance, was reasonable earnings guidance for a2 for FY21.
- ~~(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.~~

Australian Law Contraventions

82. Each of:

- (a) ~~the September 2020 a2 China Market Conditions~~ the September 2020 Counterfactual Guidance; and
- (b) ~~the September 2020 a2 China Market Information~~ alternatively, the September Alternative 2020 Counterfactual Guidance, and/or
- (c) [not used] ~~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~~ 18 December 2020:
 - 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) ~~[not used] 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 Plaintiffs rely on the Corrected Zein Report at Section 7.
- (ii) ~~The September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was~~ The September 2020 Counterfactual Guidance and the September 2020 Alternative Counterfactual Guidance were 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 the information regarding a2's expected FY21 revenue and EBITDA margin related to a2's future financial performance and was viewed by market participants as a key input into the valuation of a2 shares during the Relevant Period.

~~(iii) 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.~~

~~(iv) The materiality of the September 2020 Counterfactual Guidance and the September 2020 Alternative Counterfactual Guidance is to be inferred from the impact on the price of a2's Securities of the December 2020 Guidance Downgrade pleaded at paragraph 94 below.~~

~~(v) As to subparagraph 82(c)(ii), the plaintiffs refer to and rely on paragraph 83 below.~~

~~(vi) 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~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance as pleaded in paragraph 81 above; and
- (b) the materiality of the ~~September 2020 a2 China Market Conditions, the September 2020 a2 China Market Information and the Inadequate Monitoring Systems Information~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance;
- (c) ~~[not used] 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) ~~[not used] 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 (iv) above and 95(d)(ii) to (iii), 120(d)(ii) to (iv) and 145(d)(ii) to (iv) below,~~

it is to be inferred that a2:

- (e) was aware of a substantial risk that the ~~information~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance, 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~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance, 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~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance 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~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance 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~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance; and
- (b) in so doing to take the risk that, if generally available, the ~~information~~ September 2020 Counterfactual Guidance or the September 2020 Alternative Counterfactual Guidance:
 - (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 until 18 December 2020, a2 ~~became immediately~~ was obliged to inform the ASX immediately of:

- (a) ~~the September 2020 a2 China Market Conditions~~ the September 2020 Counterfactual Guidance;
- (b) ~~the September 2020 a2 China Market Information~~ alternatively, the September 2020 Alternative Counterfactual Guidance.; ~~and/or~~
- (c) [not used] ~~the Inadequate Monitoring Systems Information.~~

86. a2 did not inform the ASX of:

- (a) ~~the September 2020 a2 China Market Conditions~~ September 2020 Counterfactual Guidance;
- (b) ~~the September 2020 a2 China Market Information~~ alternatively, the September 2020 Alternative Counterfactual Guidance.; ~~and/or~~
- (c) [not used] ~~the Inadequate Monitoring Systems Information,~~

~~before 18 December 2020. 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~~ 18 December 2020, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations.;
~~and~~
- (c) [not used] ~~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**).

NZ Law Contraventions

88. Each of:

- (a) ~~the September 2020 a2 China Market Conditions the September 2020 Counterfactual Guidance;~~
- (b) ~~the September 2020 a2 China Market Information alternatively, the September 2020 Alternative Counterfactual Guidance. ; and/or~~
- (c) ~~[not used] 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 until 18 December 2020, a2 ~~became immediately~~ was obliged to release to the NZSX, ~~promptly and without delay~~ immediately:

- (a) ~~the September 2020 a2 China Market Conditions the September 2020 Counterfactual Guidance;~~
- (b) ~~the September 2020 a2 China Market Information alternatively, the September 2020 Alternative Counterfactual Guidance. ; and/or~~
- (c) ~~[not used] the Inadequate Monitoring Systems Information.~~

90. a2 did not inform the NZSX of:

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

(b) ~~the September 2020 a2 China Market Information alternatively, the September 2020 Alternative Counterfactual Guidance,; and/or~~

(c) ~~[not used] the Inadequate Monitoring Systems Information,~~

~~before 18 December 2020. 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.6 Market Effects of September Contraventions

92. ~~[not used] 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.~~

92A. If a2 had not engaged in the September 2020 Misleading or Deceptive Conduct Contravention, on 28 September 2020, a2 would have:

(a) given the September 2020 Counterfactual Guidance in place of the September 2020 Guidance Downgrade;

(b) alternatively, given the September 2020 Alternative Counterfactual Guidance in place of the September 2020 Guidance Downgrade.

92B. If a2 had not engaged in the September 2020 Continuous Disclosure Contravention, on 28 September 2020, as alleged in paragraphs 85 and 89 above, a2 would have immediately, as it was obliged to do:

(a) given the September 2020 Counterfactual Guidance in place of the September 2020 Guidance Downgrade;

(b) alternatively, given the September 2020 Alternative Counterfactual Guidance in place of the September 2020 Guidance Downgrade.

93. September Contraventions caused Traded Price of a2 Securities to be higher on and from 28 September 2020 to 18 December 2020 than the Traded Price would have been had the contraventions not occurred (**Inflation**).

Particulars

The Plaintiffs rely on the Corrected Zein Report at Sections 6 and 7.

~~The~~ Further, 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 and after 28 September 2020 as set out in paragraph 68A above; and Annexure B following the September 2020 Partial Disclosure.

(iii) the changes in the Traded Price following the December 2020 Guidance Downgrade set out in paragraph 94A below. 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.~~

F. DECEMBER 2020 CONTRAVENTIONS

F.1 December 2020 Partial Disclosure Guidance Downgrade

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 by~~ which it stated that:

- (a) it expected to achieve ~~lower revenue and EBITDA margins than previously reported, as follows:~~
 - (i) ~~group-Group~~ revenue for 1H21 in the order of \$670m;
 - (ii) ~~group-Group~~ revenue for FY21 of \$1.40bn to \$1.55bn; and
 - (iii) ~~group-Group~~ EBITDA margin for FY21 of between 26% to 29% (excluding the costs relating to the potential acquisition of an interest in Mataura Valley Milk, MVM).
- (b) ~~[not used] 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) ~~[not used] 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) ~~[not used] the Company intended to strengthen its focus on reactivating the corporate and retail daigou resellers channel in 2H21,~~

~~(together, the December 2020 Partial Disclosure Guidance Downgrade).~~

Particulars

The December 2020 ~~Partial Disclosure~~ Guidance Downgrade was express and contained in the a2 ASX and NZSX announcement dated 18 December 2020 entitled “Updated 1H21 and FY21 Guidance” (December 2020 Update Announcement) (PEB.0001.0001.0167) and the December 2020 Call.

94A. The December 2020 Guidance Downgrade caused the price at which a2 Securities traded on the ASX, Chi-X and NZSX to decline.

Particulars

- (i) a2’s shares on the ASX, Chi-X and the NZSX were subject to a trading halt on 17 December 2020.
- (ii) The amount of the share price declines caused by the December 2020 Guidance Downgrade (as distinct from other information that may have affected the price of a2 Securities at or around the same time), and the number of trading days over which those declines are observed, are identified by an event study analysis of trading in a2 Securities over the Relevant Period.
- (iii) The December 2020 Guidance Downgrade:
 - A. caused the price at which a2 Securities traded on the ASX and Chi-X to decline by A\$3.19 or 24% from the close of trade on 16 December 2020 to the close of trade on 18 December 2020;
 - B. caused the price at which a2 Securities traded on the NZSX to decline by \$3.16 or 22.4% from the close of trade on 16 December 2020 to the close of trade on 18 December 2020.

Corrected Zein Report at Part 6 and Exhibits 6A-3 and 6B-3.

94B. The December 2020 Guidance Downgrade was based on a financial forecast for the a2 Group provided to a2’s Board on 18 December 2020 (the Q2 Preliminary Forecast).

Particulars

- (i) McVicar emailed the Q2 Preliminary Forecast (AMC.5000.0051.3476) to the Board on 18 December 2020 (AMC.5000.0051.3471), together with a draft of the December 2020 Update Announcement (AMC.5000.0051.3473).
- (ii) The Board considered the Q2 Preliminary Forecast at a meeting on 18 December 2020, as recorded in the minutes of the meeting (AMC.0001.0001.0067 at 0003– 0004).

- (iii) The making of the December 2020 Update Announcement was approved by the Board at the 18 December 2020 meeting, as recorded in the minutes of the meeting (AMC.0001.0001.0067 at 0005).

95. [not used] 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;~~
 - (v) ~~(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.2 ~~True Position~~ Market Conditions 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~~ CBEC channel and reduced sales to retail daigou resellers and corporate daigou resellers as a result of lower demand and COVID-19 related travel restrictions and lockdowns;
- (b) a2 had introduced initiatives designed to reactivate the corporate daigou reseller and retail daigou reseller channel, which included cash-back promotions; ~~holding back stock of English Label Infant Formula Products from a2's markets in Australia and New Zealand and in China~~;
- (ba) discounting by CBEC platforms and by competitors had further eroded margins available to daigou;
- (bb) CBEC channels had high inventory levels and were experiencing a build-up of aged a2 IMF stock, and began refusing to accept a2 stock on a first-expiry, first-out basis; and
- (c) there was a material risk that existing levels of inventory, and the aging of inventory, in the CBEC channel would:
 - (i) ~~[not used] 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,
- (d) ~~[not used] 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) Reduced sales to daigou (paragraph 96(a)):

- A. The Group Operating and Financial Review in the Board Report dated 19 October 2020 stated that volume shortfalls were “are driven primarily by a 2.5m unit shortfall in IMF sales — the result of a major contraction in demand through corporate daigou (77% behind budget)” (AMC.0001.0001.0130 at 0003).
- B. The Group Operating and Financial Review in the Board Report dated 17 November 2020 stated that there was “continued weakness in the CBEC channel” which was “still being constrained by the contraction of the Daigou channel” (AMC.0001.0001.0129 at 0003).
- C. The Group Operating and Financial Review in the Board Report dated 15 December 2020 stated that sales in November missed forecast “largely reflecting ongoing challenges with English Label IMF” (AMC.0001.0001.0121 at 0003).

(ii) Daigou support (paragraph 96(b)):

- A. The Group Operating and Financial Review in the Board Report dated 19 October 2020 noted an initiative to “re-invigorate the daigou’s, by offering cash back promotions to generate volumes throughout the channel” (AMC.0001.0001.0130 at 0002).
- B. The Group Operating and Financial Review in the Board Report dated 15 December 2020 stated that further margin support was given to corporate daigou resellers and online-to-offline customers “to drive new user recruitment and to offset the significant fall in retail Dagou customers” (AMC.0001.0001.0121 at 0005).

(iii) Discounting (paragraph 96(ba)):

- A. The Group Operating and Financial Review in the Board Report dated 17 November 2020 stated that shortfalls in CBEC were driven by “aggressive price discounting by competitors in advance of [the 11/11 shopping festival]” (AMC.0001.0001.0129 at 0003);
- B. The Group Operating and Financial Review in the Board Report dated 15 December 2020 stated that sales in the 11/11 sales event “were heavily discounted” by CBEC platforms (AMC.0001.0001.0121 at 0003).
- C. Minutes from the Board meeting on 18 December 2020 state that Nathan said that discounted CBEC sales during the 11/11 sales event “continues to negatively impact on daigou” (AMC.0001.0001.0067 at 0002).

(iv) Excess and ageing channel inventory (paragraph 96(bb)):

A. An email from Tim Zhou to Nathan, Khan, Li, Attygalle and others dated 14 December 2020 stated that “for CBEC orders we have recently started fulfilling orders using fresher stock as requested, as we understand CBEC distributors are refusing to take any stock based on our First Expiry Frist [sic] Out principle” (AMC.5000.0214.3663);

B. The Group Operating and Financial Review in the Board Report dated 15 December 2020 stated that CBEC platforms had not replenished stock sold during the 11/11 sales event, “indicating some excess stock in the channel” (AMC.0001.0001.0121 at _0003).

(i) In its February 2021 Update Announcement, a2 stated that it was recognising a stock provision of \$23.3m in 1H21 in respect of its inventory, due to a2 needing to re-activate the daigou/reseller channel by “rebalancing inventory levels and improving traceability through the channel”, page 4.

(ii) It is likely that an increase in inventory during the 6-month period between 1 July 2020 and 31 December 2020 of the magnitude of \$51.2m had been observed by a2 by 18 December 2020.

(iii) It was unlikely that a2 could correct the inventory imbalance in the Aus NZ Segment and China Segment without holding back stock of English Label Infant Formula Products from those Segments at a rate which was consistent with its ability to achieve revenue consistent with the December 2020 Representations.

(iv) 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.

(v) There was an 18% decline in China label infant nutrition sales in 3Q21 compared with 2Q21.

(vi) 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. [not used] 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.~~

- ~~(b) 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~~ Inadequate Monitoring Systems persisted.

Particulars

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

F.2A a2's Performance as at 18 December 2020

98A. As at 18 December 2020, the September Commercial Factors continued to exist.

98B. As at 18 December 2020, a2's IMF sales volumes had fallen short of the volumes forecast in the Q1 Preliminary Forecast for the months of October and November 2020 (cumulatively).

Particulars

<u>Values in 000s of cans</u>	<u>October 2020</u>	<u>November 2020</u>
<u>ANZ and China IMF sales volumes forecast</u>	<u>2,926</u> <u>a2MC Board Report dated 17 November 2020 (AMC.0001.0001.0129 at 0046)</u>	<u>3,404</u> <u>a2MC Board Report dated 15 December 2020 (AMC.0001.0001.0121 at 0019)</u>
<u>Actual IMF sales</u>	<u>2,934</u> <u>a2MC Board Report dated 17 November 2020 (AMC.0001.0001.0129 at 0046)</u>	<u>2,908</u> <u>a2MC Board Report dated 15 December 2020 (AMC.0001.0001.0121 at 0019)</u>
<u>Difference to forecast</u>	<u>8</u>	<u>-496</u>

98C. As at 18 December 2020, a2's estimated retail market share in the Aus NZ Segment had continued to decline from August 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Australia IMF retail market share (%)</u>
<u>a2MC Board Report dated 21 September 2020 (AMC.0001.0001.0133 at 0024)</u>	<u>August 2020</u>	<u>13.8</u>
<u>a2MC Board Report dated 19 October 2020 (AMC.0001.0001.0130 at 0060)</u>	<u>September 2020</u>	<u>11.6</u>
<u>a2MC Board Report dated 17 November 2020 (AMC.0001.0001.0129 at 0250)</u>	<u>October 2020</u>	<u>11.1</u>
<u>a2MC Board Report dated 15 December 2020 (AMC.0001.0001.0121 at 0131)</u>	<u>November 2020</u>	<u>10.8</u>

98D. As at 18 December 2020, average prices for a2's IMF as sold by CBEC channels had continued to decline from August 2020, while average prices as sold by corporate daigou resellers had stabilised.

Particulars

<u>Source</u>	<u>Month</u>	<u>Price as sold by corporate daigou (AU\$)</u>				<u>Price as sold by CBEC (AU\$)</u>			
		<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>	<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>
<u>Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771 at 8771, 8773)</u>	<u>August 2020</u>	<u>33.3</u>	<u>38.7</u>	<u>31.1</u>	<u>33.3</u>	<u>45.3</u>	<u>46.8</u>	<u>42.1</u>	<u>41.2</u>
<u>Weekly Price Observation Dashboard dated 30 September 2020 (AMC.5000.0004.4962 at 4962, 4964)</u>	<u>September 2020</u>	<u>32.2</u>	<u>36.8</u>	<u>30.7</u>	<u>31.9</u>	<u>46.6</u>	<u>46.4</u>	<u>43.5</u>	<u>42.3</u>
<u>Weekly Price Observation Dashboard dated 28 October 2020 (AMC.5000.0007.3781 at 3781, 3783)</u>	<u>October 2020</u>	<u>33.8</u>	<u>37.0</u>	<u>32.8</u>	<u>32.7</u>	<u>46.3</u>	<u>46.1</u>	<u>42.8</u>	<u>41.9</u>
<u>Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637 at 5637, 5639)</u>	<u>November 2020</u>	<u>33.7</u>	<u>36.8</u>	<u>32.3</u>	<u>32.6</u>	<u>42.3</u>	<u>42.5</u>	<u>36.9</u>	<u>38.5</u>

98E. As at 18 December 2020, a2's inventory of IMF was approximately 19 million cans, and had increased in each month since August 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>EL and CL Inventory (000 cans)</u>
<u>IMF inventory balance report dated 8 September 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0004.4362 at 4363)</u>	<u>August 2020</u>	<u>16,345</u>
<u>IMF inventory balance report dated 9 October 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0004.4780 at 4781)</u>	<u>September 2020</u>	<u>17,797</u>
<u>IMF inventory balance report dated 12 November 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0011.5689 at 5689)</u>	<u>October 2020</u>	<u>18,162</u>
<u>IMF inventory balance report dated 9 December 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0517.3189 at 3191)</u>	<u>November 2020</u>	<u>18,744</u>

(The matters pleaded at paragraphs 98A to 98E, together or in any combination, are the December 2020 Commercial Factors).

F.2B Reasonable FY21 Guidance as at 18 December 2020

98F. By reason of the December 2020 Commercial Factors themselves or in combination with one or both of the December 2020 a2 China Market Conditions and the Inadequate Monitoring Systems, as at 18 December 2020, a reasonable forecast for a2's FY21 revenue and EBITDA margin was:

- (a) FY21 net revenue of \$1.46 billion; and
- (b) FY21 EBITDA margin of 26%.

(December 2020 Reasonable Forecast).

Particulars

Campbell Report at Section VIII.C.

98G. As at 18 December 2020, reasonable earnings guidance for a2 for FY21 was:

(a) revenue of \$1.3 billion to \$1.45 billion; and

(b) EBITDA margin of 23% to 26%,

(the December 2020 Counterfactual Guidance).

Particulars

The December 2020 Counterfactual Guidance was reasonable by reason of the December 2020 Reasonable Forecast and the December 2020 Commercial Factors.

Campbell Report at [389]–[390], [395].

98H. In the alternative to paragraph 98G, as at 18 December 2020, reasonable earnings guidance for a2 for FY21 was:

(a) FY21 net revenue of \$1.46 billion; and

(b) FY21 EBITDA margin of 26%,

(the December 2020 Alternative Counterfactual Guidance).

Particulars

The December 2020 Alternative Counterfactual Guidance was reasonable by reason of the December 2020 Reasonable Forecast.

Campbell Report, Section VII.C.

F.3 [not used] December Representations

99. [not used] 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. ~~[not used] 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. ~~[not used] 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.4 ~~December 2020 Misleading or Deceptive Conduct~~
a2's Awareness as at 18 December 2020**

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

Particulars

The Plaintiffs repeat the particulars to paragraph 76. Further:

(i) **EL Channel Dynamics** (pleaded at [40]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:

A. The Board's receipt of the Group Operating and Financial Review for October 2020 in the Board Report dated 19 October 2020, which stated that "the lack of the daigou is having an adverse impact on the CBEC channel due to the lack of 'noise' being generated about the brand" (AMC.0001.0001.0130 at 0002).

B. The Board minutes of the meeting on 17 November 2020, at which a director queried whether "there will be enough demand being driven by daigou through CBEC for the forecast CBEC sales to be realised", and at which Babidge noted the importance of daigou "in stimulating demand for CBEC" (AMC.0001.0001.0064 at 0002– 0003).

C. An appendix to the Group Operating and Financial Review for November 2020 in the Board Report dated 15 December 2020 stated that margin support was being given to corporate daigou resellers "to drive new user recruitment due to the significant fall" in retail daigou resellers (AMC.0001.0001.0121 at 0005).

(ii) **Reduced sales to daigou** (pleaded at [96(a)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:

A. Their receipt of the Group Operating and Financial Review in the Board Report dated 19 October 2020, which stated that volume shortfalls were "are driven primarily by a 2.5m unit shortfall in IMF sales — the result of a major contraction in demand through corporate daigou (77% behind budget)" (AMC.0001.0001.0130 at 0003).

- B. Their receipt of the Group Operating and Financial Review in the Board Report dated 17 November 2020, which stated that there was “continued weakness in the CBEC channel” which was “still being constrained by the contraction of the Daigou channel” (AMC.0001.0001.0129 at 0003).
- C. Their receipt of the Group Operating and Financial Review in the Board Report dated 15 December 2020, which stated that sales in November missed forecast “largely reflecting ongoing challenges with English Label IMF” (AMC.0001.0001.0121 at 0003).
- (iii) **Daigou support** (pleaded at [96(b)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:
- A. Their receipt of the Group Operating and Financial Review in the Board Report dated 19 October 2020, which noted an initiative to “re-invigorate the daigou’s, by offering cash back promotions to generate volumes throughout the channel” (AMC.0001.0001.0130 at 0002).
- B. Their receipt of the Group Operating and Financial Review in the Board Report dated 15 December 2020, which stated that further margin support was given to corporate daigou resellers and online-to-offline customers “to drive new user recruitment and to offset the significant fall in retail Dagou customers” (AMC.0001.0001.0121 at 0005).
- (iv) **Discounting** (pleaded at [96(ba)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:
- A. Their receipt of the Group Operating and Financial Review in the Board Report dated 17 November 2020, which stated that shortfalls in CBEC were driven by “aggressive price discounting by competitors in advance of [the 11/11 shopping festival]” (AMC.0001.0001.0129 at 0003);
- B. Their receipt of the Group Operating and Financial Review in the Board Report dated 15 December 2020, which stated that sales in the 11/11 sales event “were heavily discounted” by CBEC platforms (AMC.0001.0001.0121 at 0003).
- C. Minutes from the Board meeting on 18 December 2020 state that Nathan said that discounted CBEC sales during the 11/11 sales event “continues to negatively impact on daigou” (AMC.0001.0001.0067 at 0002).

(v) **Excess and ageing channel inventory** (pleaded at [96(bb)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:

A. Their receipt of the Group Operating and Financial Review in the Board Report dated 15 December 2020, which stated that CBEC platforms had not replenished stock sold during the 11/11 sales event, “indicating some excess stock in the channel” (AMC.0001.0001.0121 at 0003).

B. Nathan’s receipt of the email from Tim Zhou to Nathan, Khan, Li, Attygalle and others dated 14 December 2020, which stated that “for CBEC orders we have recently started fulfilling orders using fresher stock as requested, as we understand CBEC distributors are refusing to take any stock based on our First Expiry Frist [sic] Out principle” (AMC.5000.0214.3663), in circumstances where Nathan ought reasonably to have informed the Board, Babidge, and/or Strauss of the information in the document by reason of:

1. Nathan’s role and responsibilities as CEO APAC; and
2. the nature and significance of the information in the document.

(vi) **Oversupply of EL in China resulting in reduction of EL sales prices** (pleaded at [41(c)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of the comments by Nathan recorded in the minutes of the Board meeting on 18 December 2020 to the effect that the strong sales performance in the 11/11 sales event had destabilised the pricing in the CBEC sales channel, with a consequent negative impact on daigou margins (AMC.0001.0001.0067 at 0002).

(vii) **Reduction in EL sales prices in China resulting in a reduction in EL sales to daigou resellers** (pleaded at [41(d)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:

A. their awareness of the EL Channel Dynamics as set out in particular (i) above; and

B. Nathan’s statement, during the December 2020 Call, to the effect 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 CBEC 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 (PEB.0001.0001.0436 at 0440).

~~(viii) 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~~

~~(ix) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.~~

~~(x) 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.~~

~~(xi) 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~~

~~(xii) 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 reasonably to have known of the Inadequate Monitoring Systems ~~Information~~.

Particulars

- (i) The Plaintiffs repeat the particulars to paragraph 77.
- (ii) Further, each member of the Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known of the Inadequate Monitoring Systems by reason of:

A. **Limited scope of Kantar consumption data:** The receipt by Nathan, Xiao and Massasso of an email dated 16 December 2020 that stated that, “in-line with previous analysis, that on a period basis, Kantar can be misleading” (AMC.5000.0132.7501) in circumstances where Nathan, Xiao and Massasso ought reasonably to have informed the Board, Babidge and Strauss of the information in the documents by reason of:

1. their roles and responsibilities as CEO APAC, CEO Greater China, and Chief Brand and Growth Officer (respectively); and
2. the nature and significance of the information in the document.

B. **Inherent difficulties in monitoring inventory held by retail daigou resellers:**

1. The Board’s receipt of the Quarterly Risk Update included in the November Board Report dated 17 November 2020, which stated “lack of robust traceability mechanisms” is a “risk cause” of the risk of “dislocation in pricing due to social e-commerce disruption” (AMC.0001.0001.0129 at 0158).
2. The meeting minutes of the Quarterly Risk Update to the Board attended by members of the Board, Strauss and Nathan, dated 15 December 2020, which stated in relation to the risk of “dislocation in pricing due to social e-commerce disruption” that “PN [Nathan] noted that the key controls are: ...Implementing a traceability system (currently hampered by COVID travel restrictions)” (AMC.5000.0479.2361 at 2361).
3. The Board’s receipt of the November Board Report dated 17 November 2020, which contained the final Annual General Meeting Q&A document stated (AMC.0001.0001.0129 at 0130):

“How much visibility do you have with regard to inventory within the Daigou channel?”

• We only have a small number of customers in the corporate Daigou / reseller channel.

• Visibility in the next tier of Daigou is more fragmented, however, we do have tools to measure inventory which we are continually improving”

4. Nathan’s comments in response to a question during the 18 December 2020 Earnings Call, in which Nathan stated: “Now the difficulty with daigou, of course, is that there’s no data point that can accurately measure what your guidance share is...” (Earning Call Transcript, 18 December 2020: PEB.0001.0001.0436 at 0440).

C. **Back-door sales from Australian retailers:** Nathan’s receipt of an email dated 9 October 2020 that stated that “[w]e are monitoring all direct customer inventory very closely and the aim is to hold only approx. 1-2 weeks with them. Implementation of traceability should give us better control and check on how platforms such as PDD are getting hold of stock” (AMC.5000.0283.6230), in circumstances where Nathan ought reasonably to have informed the Board, Babidge and Strauss of the information in the documents by reason of:

1. his role and responsibilities as CEO APAC; and
2. the nature and significance of the information in the document.

D. **Lack of traceability:** the statement in a “Bow tie presentation of top risks” in the Board pack for the meeting on 15 December 2020 that the implementation of a traceability mechanism was a “[k]ey control” against the consequences of “[d]islocation in pricing due to social e-commerce disruption” (AMC.0001.0001.0121 at 0087).

~~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.~~

103A. As at 18 December 2020 (and at all material times afterwards), a2 knew or ought reasonably to have known of the December 2020 Commercial Factors.

Particulars

(i) Each member of the Board, and Babidge, Strauss and Nathan knew, or ought reasonably to have known of, the December 2020 Commercial Factors by reason of the following:

A. IMF sales volumes (pleaded at [98B]):

1. The Board’s receipt of the Group Operating and Financial Review in the Board Report dated 19 October 2020, which stated:

- (a) “Revenue of \$98.8m was a substantial (\$78.0m) behind budget, ANZ (\$52.5m), China (\$25.7m). These shortfalls are driven primarily by a 2.5m unit shortfall in IMF sales [...] Notwithstanding the anticipated miss to budget, the Group delivered a result marginally ahead of the preliminary forecast” (AMC.0001.0001.0130 at 0003);
 - (b) China “IMF volumes totalled 1,942k units (vs. forecast of 1,821k, and vs. budget of 2,637k): China Label 1,095k units (vs. forecast of 966k); English Label 847k units (vs. forecast of 854)” (AMC.0001.0001.0130 at 0004).
 - (c) ANZ “IMF volumes totalled 572k units (vs. forecast of 546k, and vs. budget of 2,400k)” and “the majority of the IMF shortfall (\$38.9m) driven by the substantial volume deficit in the daigou channel”” (AMC.0001.0001.0130 at 0005);
2. The Board’s receipt of the “Month Result: Sep-20” presentation in the Board Report dated 19 October 2020, which reported September MTD IMF volume was 2.514m units and 50.1% behind budget, and September YTD IMF volume was 7.891m units and 27.1% behind budget (AMC.0001.0001.0130 at 0049, 0050);
 3. The Board’s receipt of the Group Operating and Financial Review for October 2020 in the Board Report dated 17 November 2020, which stated:
 - (a) “Whilst the month delivered to the forecast, of note was the regional mix, with ANZ over-delivering on earnings by \$5.1m, and China missing the forecast by \$6.4m, this was predominantly due to volumes” (AMC.0001.0001.0129 at 0003);
 - (b) For China “IMF volumes totalled 1,853k units (vs. forecast of 2,132k): China Label 1,030k units (vs. forecast of 1,103k); English Label 823k units (vs. forecast of 1,029)”, and for ANZ “IMF volumes totalled 1,080k units (vs. forecast of 794k)” (AMC.0001.0001.0129 at 0004, 0005);
 4. The Board’s receipt of the “Month Result: Oct-20” presentation in the Board Report dated 17 November 2020, which reported October MTD volume was 2.934m units and 0.3% ahead of forecast, and October YTD IMF volume was 10.911m units and 0.3% ahead of forecast, with IMF Australia YTD 6.8% ahead of forecast and IMF China YTD 4.2% behind forecast (AMC.0001.0001.0129 at 0046, 0047);

5. The Board's receipt of the FY21 Forecast Update Presentation in the Board Report dated 17 November 2020, which stated that the FY21 Preliminary Forecast compared to the FY21 Q1 Forecast had "Reduced IMF volume by 2.4m tins primarily driven by a CBEC reduction of (1.8m) tins (CL: (0.3m) units, ANZ: (0.3m) units) drives a net revenue reduction of (\$87m)" (AMC.0001.0001.0129 at 0051);
6. The Board's receipt of the Group Operating and Financial Review for November 2020 in the Board Report dated 15 December 2020, which stated:
 - (a) "Group Revenue of \$107.1m was (\$15.8m) below forecast and largely reflects volume shortfalls in EL IMF with CBEC down (\$9.9m) and Corporate Daigou down (\$3.1m)" (AMC.0001.0001.0121 at 0003);
 - (b) China "IMF volumes totalled 1,522k units (vs. forecast of 1,862k): China Label 1,176k units (vs. forecast of 1,191k); English Label 347k units (vs. forecast of 671)", and for ANZ "IMF volumes totalled 1,385k units (vs. forecast of 1,512k)" (AMC.0001.0001.0121 at 0004, 0005);
7. The Board's receipt of the "Month Result: Nov-20" presentation in the Board Report dated 15 December 2020, which reported November MTD IMF volume of 2.9m units and 14.6% behind forecast, and November YTD IMF volume of 13.8m units and 0.5m units behind forecast (AMC.0001.0001.0121 at 0014, 0018, 0019); and
8. Board Minutes dated 15 December 2020, which stated "RS [Race Strauss] took the board through the key financial results, as set out in the November Results presentation [...] In particular, it was noted that: net revenue for November was less than the forecast (undertaken 3 weeks ago, for the board meeting immediately prior to the Company's Annual Meeting) by \$15.7m driven by IMF volume shortfalls" (AMC.0001.0001.0065 at 0065).

B. Decline in Aus NZ Segment market share (pleaded at [98C]):

1. The Board's receipt of the August market share data in the Group Operating and Financial Review in the Board Report dated 21 September 2020 (AMC.0001.0001.0133 at 0024);
2. The Board's receipt of the September market share data in the Australia Board Report in the Board Report dated 19 October 2020 (AMC.0001.0001.0130 at 0060);

3. The Board's receipt of the October market share data in the Australia Board Report in the Board Report dated 17 November 2020 (AMC.0001.0001.0129 at 0250); and
4. The Board's receipt of the November market share data in the Australia Board Report in the Board Report dated 15 December 2020 (AMC.0001.0001.0121 at 0131).

C. **Daigou and CBEC pricing** (pleaded at [98D]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771) by email dated 26 August 2020 (AMC.5000.0011.8770);
2. the Weekly Price Observation Dashboard dated 30 September 2020 (AMC.5000.0004.4962) by email dated 30 September 2020 (AMC.5000.0004.4961);
3. the Weekly Price Observation Dashboard dated 28 October 2020 (AMC.5000.0007.3781) by email dated 28 October 2020 (AMC.5000.0007.3780); and
4. the Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637) by email dated 25 November 2020 (AMC.5000.0007.5636).

in circumstances where Strauss and Nathan ought reasonably to have informed the Board and Babidge of the information in the documents by reason of:

1. their roles and responsibilities as CFO and CEO APAC (respectively); and
2. the nature and significance of the information in the documents.

D. **IMF Inventory** (pleaded at [98E]):

1. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 19 October 2020, which stated:
 - (a) "[i]nventory on hand of \$218.5m represents ~85 days sales in inventory and is an increase on the prior month balance of \$208.5m. This elevated level of inventory reflects the decline in APAC IMF sales volumes." (AMC.0001.0001.0130 at 0003).

- (b) “[t]he CBEC channel continues to experience soft offtake and higher than expected inventory due to weakened retail pricing and consumer destocking” (AMC.0001.0001.0130 at 0003).
 - (c) “[t]he value of finished stock now totals ~NZ\$218.5m (~3-4 months SOH and mostly English Label), largely reflecting the changed trading conditions in ANZ.” (AMC.0001.0001.0130 at 0009).
2. The signed minutes of the Board meeting dated 19 October 2020 stated that “[t]he Board discussed IMF inventory levels. It was noted that there had been a very large uplift in July (primarily in EL in consequence of decisions made in March/April to build safety stock at a time when the business velocity was strong)” (AMC.0001.0001.0064 at 0002).
3. The Board’s receipt of the Group Operating and Financial Review in the Board Report dated 17 November 2020, which stated:
- (a) “Inventory on hand of \$222.4m represents ~97 days sales in Inventory and is an increase on the prior month balance of \$218.5m.” (AMC.0001.0001.0129 at 0003, 0004, see also 0037).
 - (b) “Continued softness in general demand in ANZ label has meant an increased period with higher levels of inventory...” (AMC.0001.0001.0129 at 0009, see also 0283).
4. The Board’s receipt of the Group Operating and Financial Review in the Board Report dated 15 December 2020, which stated:
- (a) “[i]nventory on hand represents ~90 days sales in inventory. This elevated level of inventory reflects the continued decline in APAC IMF sales volumes and the higher inventory cover implemented earlier in the year” (AMC.0001.0001.0121 at 0004);
 - (b) “[d]ue to the ongoing challenges with IMF demand in 1H, our inventory position at the close of December will be higher than previously anticipated” (AMC.0001.0001.0121 at 0008);

(c) “[w]ith the overall challenges in IMF demand and the resulting build in IMF inventory levels, the Operations and Finance teams are working on quantifying appropriate inventory provisions for potential stock write-downs” (AMC.0001.0001.0121 at 0008);

5. The minutes of the Board meeting dated 16 December 2020 stated that “inventory is higher than usual as a result of the strategy in the second half of FY20 to intentionally build internal inventory, so as to be ready to respond to the then expected increased demand for IMF in China” (AMC.0001.0001.0066 at 0002).

6. The signed minutes of the Board meeting dated 18 December 2020 stated that in response to questions from Directors in relation to inventory levels, Peter Nathan stated that “inventory levels are high relative to forecast (noting the conscious decision in early 2020 to build inventory to be able to respond to supply chain issues)” and “stock provisions now need to be taken because stock held is high relative to the revised forecast, albeit that the inventory volumes are declining/heading in the right direction” (AMC.0001.0001.0067 at 0003).

(ii) It is to be inferred that Strauss and Nathan knew, or ought reasonably to have known of, the December 2020 Commercial Factors by reason of the following:

A. **IMF sales volumes** (pleaded at [98B]): the receipt by Strauss and Nathan of:

1. the Margin Analysis monthly report for October 2020 (AMC.5000.0011.5695) by email dated 12 November 2020 (AMC.5000.0011.5692); and

2. the Margin Analysis monthly report for November 2020 (AMC.5000.0010.5052) by email dated 11 December 2020 (AMC.5000.0010.5049).

B. **Decline in Aus NZ Segment market share** (pleaded at [98C]): the attendance by Strauss and Nathan at Board meetings in each of September, October, November and December 2020 at which the market share information was presented in Board reports (September – AMC.0001.0001.0133 at 0024; October – AMC.0001.0001.0130 at 0060; November – AMC.0001.0001.0129 at 0250; December – AMC.0001.0001.0121 at 0131).

C. **Daigou and CBEC pricing** (pleaded at [98D]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 26 August 2020 (AMC.5000.0011.8771) by email dated 26 August 2020 (AMC.5000.0011.8770);
2. the Weekly Price Observation Dashboard dated 30 September 2020 (AMC.5000.0004.4962) by email dated 30 September 2020 (AMC.5000.0004.4961);
3. the Weekly Price Observation Dashboard dated 28 October 2020 (AMC.5000.0007.3781) by email dated 28 October 2020 (AMC.5000.0007.3780); and
4. the Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637) by email dated 25 November 2020 (AMC.5000.0007.5636).

D. **IMF Inventory** (pleaded at [98E]): Nathan's receipt of:

1. a document recording the August 2020 inventory balance by email dated 8 September 2020 (AMC.5000.0004.4362 at 4363);
2. a document recording September 2020 inventory balance by email dated 9 October 2020 (AMC.5000.0004.4780 at 4781);
3. a document recording October 2020 inventory balance by email dated 12 November 2020 (AMC.5000.0011.5689 at 5689); and
4. a document recording November 2020 inventory balance by email dated 9 December 2020 (AMC.5000.0517.3189 at 3191)

Strauss knew or ought reasonably to have known of this information by reason of Louttit's receipt of each of the documents at particulars (ii)D.1–4 in circumstances where Louttit ought reasonably to have informed Strauss of the information in the document by reason of:

5. Louttit's role and responsibilities (as pleaded at paragraph 33C above); and
6. the nature and significance of the information in the document.

F.4A December 2020 Misleading or Deceptive Conduct

104. ~~To the extent the December Representations were representations as to future matters, a2 did not have reasonable grounds for those representations. a2 did not have reasonable grounds for the December 2020 Guidance Downgrade.~~

Particulars

- (i) The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.
- (ii) The Plaintiffs refer to and repeat paragraphs 96 to 98E, and 102 to 103 A and 107 and the particulars subjoined thereto.
- (iii) a2 did not have reasonable grounds for giving the December 2020 Guidance Downgrade by reason of:
 - A. the December 2020 Commercial Factors together with the December 2020 Counterfactual Guidance;
 - B. alternatively, the December 2020 Commercial Factors together with the December 2020 Alternative Counterfactual Guidance;

alone or in combination with one or both of:

 - C. the December 2020 a2 China Market Conditions; and
 - D. the Inadequate Monitoring Systems.
- (iv) Alternatively to particular (iii), a2 did not have reasonable grounds for giving the December 2020 Guidance Downgrade by reason of the December 2020 Commercial Factors in combination with one or both of:
 - A. the December 2020 a2 China Market Conditions; and
 - B. the Inadequate Monitoring Systems.

Campbell Report at Section VIII.B.

105. The ~~December Representations were made~~ December 2020 Guidance Downgrade was:

- (a) made in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
- (b) made 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) made in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
- (d) made in trade or commerce within the meaning of s 9 of the FT Act; ~~and/or~~

(e) made in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act;

(f) a continuing representation that was maintained by a2 from 18 December 2020 until the publication of the February 2021 Guidance Downgrade on 25 February 2021 (as pleaded at paragraph 119 below); and

(g) a representation as to future matters.

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)~~ until 25 February 2021:

(a) by ~~making the December Representations~~ giving the December 2020 Guidance Downgrade 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~~ giving the December 2020 Guidance Downgrade 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.5 December 2020 Continuous Disclosure Contravention

107. ~~Further or alternatively, by~~ On and from 18 December 2020 until 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 December 2020 a2 China Market Conditions~~ the December 2020 Counterfactual Guidance;
- (b) ~~the December 2020 a2 China Market Information~~; and alternatively, the December 2020 Alternative Counterfactual Guidance.
- (c) [not used] ~~the Inadequate Monitoring Systems Information~~.

Particulars

The Plaintiffs repeat the particulars to paragraph 81. Further:

- (i) **The Board, Babidge, Strauss and Nathan** knew, or ought reasonably to have known of:
 - A. the December 2020 Commercial Factors by reason of the matters set out at particular (i) to paragraph 103A.
 - B. the December 2020 a2 China Market Conditions by reason of the matters set out in the particulars to paragraph 102.
 - C. the Inadequate Monitoring Systems by reason of the matters set out in particulars to paragraph 103.
- (ii) **Information.** By reason of knowing the December 2020 Commercial Factors, themselves or in combination with one or both of the December 2020 a2 China Market Conditions and the Inadequate Monitoring Systems (as set out above), each member of the Board, Babidge, Strauss, and/or Nathan ought reasonably to have known that the December 2020 Counterfactual Guidance, alternatively the December 2020 Alternative Counterfactual Guidance, was reasonable earnings guidance for a2 for FY21.
- ~~(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.~~

Australian Law Contraventions

108. Each of:

- (a) ~~the December 2020 a2 China Market Conditions~~ the December 2020 Counterfactual Guidance;
- (b) ~~the December 2020 a2 China Market Information; and~~ alternatively, the December 2020 Alternative Counterfactual Guidance;
- (c) [not used] ~~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~~ 25 February 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) ~~[not used] 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 Plaintiffs rely on the Corrected Zein Report at Section 7.
- (ii) The December 2020 a2 China Market Conditions, December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information was The December 2020 Counterfactual Guidance and the December 2020 Alternative Counterfactual Guidance were 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 the information regarding a2's expected FY21 revenue and EBITDA margin related to a2's future financial performance and was viewed by market participants as a key input into the valuation of a2 shares during the Relevant Period.
- ~~(iii) 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.~~
- (iv) The materiality of the December 2020 Counterfactual Guidance and the December 2020 Alternative Counterfactual Guidance is to be inferred from the impact on the price of a2's Securities of the February 2021 Guidance Downgrade pleaded at paragraph 119 below.
- (v) As to sub-paragraph 108(c)(ii), the plaintiffs refer to and rely on paragraph 109 below.
- (vi) 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~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance as pleaded in paragraph 107 above; and

- (b) the materiality of the ~~December 2020 a2 China Market Conditions, the December 2020 a2 China Market Information and the Inadequate Monitoring Systems Information~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance;
- (c) ~~[not used] 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) ~~[not used] 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 (iv) and 95(d)(ii) to (iii) above and 120(d)(ii) to (iv) and 145(d)(ii) to (iv) below;~~

it is to be inferred that a2:

- (e) was aware of a substantial risk that the ~~information~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance, 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~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance, 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~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance 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~~ December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance 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, December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance~~; and
- (b) in so doing to take the risk that, if generally available, the ~~information-December 2020 Counterfactual Guidance or the December 2020 Alternative Counterfactual Guidance~~:
 - (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 until 25 February 2021, a2 ~~became immediately~~ was obliged to inform the ASX immediately of:

- (a) ~~the December 2020 a2 China Market Conditions, the December 2020 Counterfactual Guidance~~;
- (b) ~~the December 2020 a2 China Market Information, alternatively, the December 2020 Alternative Counterfactual Guidance.~~; and/or
- (c) [not used] ~~the Inadequate Monitoring Systems Information.~~

112. a2 did not inform the ASX of:

- (a) ~~the December 2020 a2 China Market Conditions, the December 2020 Counterfactual Guidance~~;
- (b) ~~the December 2020 a2 China Market Information; and~~ alternatively, the December 2020 Alternative Counterfactual Guidance.
- (c) [not used] ~~the Inadequate Monitoring Systems Information.~~

~~before 25 February 2021. 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~~ 25 February 2021, s 674(2) of the Corporations Act as amended by the Coronavirus Determinations;
~~and~~
- (c) [not used] ~~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**).

NZ Law Contraventions

114. Each of:

- (a) ~~the December 2020 a2 China Market Conditions~~ the December 2020 Counterfactual Guidance;
- (b) ~~the December 2020 a2 China Market Information; and alternatively, the December 2020 Alternative Counterfactual Guidance.~~
- (c) [not used] ~~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 until 25 February 2021, a2 ~~became immediately~~ was obliged to release to the NZSX, ~~promptly and without delay~~ immediately:

- (a) ~~the December 2020 a2 China Market Conditions~~ the December 2020 Counterfactual Guidance;
- (b) ~~the December 2020 a2 China Market Information; and~~ alternatively, the December 2020 Alternative Counterfactual Guidance.
- (c) [not used] ~~the Inadequate Monitoring Systems Information.~~

116. a2 did not inform the NZSX of:

- (a) ~~the December 2020 a2 China Market Conditions~~ the December 2020 Counterfactual Guidance;
- (b) ~~the December 2020 a2 China Market Information; and~~ alternatively, the December 2020 Alternative Counterfactual Guidance.
- (c) [not used] ~~the Inadequate Monitoring Systems Information.~~

~~before 25 February 2021. 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.6 Market Effects of December Contraventions

117A. If a2 had not engaged in the December 2020 Misleading or Deceptive Conduct Contravention, on 18 December 2020, a2 would have:

- (a) given the December 2020 Counterfactual Guidance in place of the December 2020 Guidance Downgrade;
- (b) alternatively, given the December 2020 Alternative Counterfactual Guidance in place of the December 2020 Guidance Downgrade.

117B. If a2 had not engaged in the December 2020 Continuous Disclosure Contravention, on 18 December 2020, as alleged in paragraphs 111 and 115 above, a2 would have immediately, as it was obliged to do:

- (a) given the December 2020 Counterfactual Guidance in place of the December 2020 Guidance Downgrade;
- (b) alternatively, given the December 2020 Alternative Counterfactual Guidance in place of the December 2020 Guidance Downgrade.

118. ~~The~~In the premises, 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 Plaintiffs rely on the Corrected Zein Report at Parts 6 and 7.

~~The~~Further, the Inflation 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 to the Traded Price on 18 December 2020 as set out in paragraph 94A above; and
- (iii) the changes in the Traded Price following the 25 February Guidance Downgrade on 25 February 2021 as set out in paragraph 119A below. 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.

G. FEBRUARY 2021 CONTRAVENTIONS

G.1 February 2021 Partial Disclosure Guidance Downgrade

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 by~~ which it stated that:

- (a) it expected to achieve ~~lower revenue and EBITDA margins than previously reported, as follows:~~
 - (i) ~~group-Group~~ revenue for FY21 in the order of \$1.40bn; and
 - (ii) ~~group-Group~~ EBITDA margin for FY21 of between 24% to 26% (excluding the costs of acquiring Mataura Valley Milk, MVM); and
- (b) [not used] ~~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;₁
- (d) [not used] ~~subdued online pricing and channel inventory unwinding had resulted in a decline in corporate and retail daigou reseller sales; and~~
- (e) [not used] ~~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 Guidance Downgrade~~**).

Particulars

- (i) The February 2021 ~~Partial Disclosure Guidance Downgrade~~ 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” (~~PEB.0001.0001.3804~~).
- ~~(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.~~

119A. The February 2021 Guidance Downgrade caused the price at which a2 Securities traded on the ASX, Chi-X and NZSX to decline.

Particulars

- (i) The amount of the share price declines caused by the February 2021 Guidance Downgrade (as distinct from other information that may have affected the price of a2 Securities at or around the same time), and the number of trading days over which those declines are observed, are identified by an event study analysis of trading in a2 Securities over the Relevant Period.
- (ii) The February 2021 Guidance Downgrade:
 - A. caused the price at which a2 Securities traded on the ASX and Chi-X to decline by A\$1.39 or 13.3% from the close of trade on 24 February 2021 to the close of trade on 26 February 2021;
 - B. caused the price at which a2 Securities traded on the NZSX to decline by \$1.76 or 15.8% from the close of trade on 24 February 2021 to the close of trade on 25 February 2021.

Corrected Zein Report at Part 6 and Exhibits 6A-4 (Corrected) and 6B-4.

119B. The February 2021 Guidance Downgrade was based on a financial forecast for the a2 group provided to a2’s Board on or around 24 February 2021 (the **Q2 Reforecast**).

Particulars

- (i) The Board pack for the Board meeting of 25 February 2021 included a document titled “FY21 Forecast Update” (AMC.0001.0001.0123 at 0106).
- (ii) The FY21 Forecast Update was referred to in the Board minutes as the “Q2 Reforecast” (AMC.0001.0001.0069 at 0003– 0005).

- (iii) The February 2021 Update Announcement, which contained the February 2021 Guidance Downgrade, was approved by a subcommittee of the Board comprising Bortolussi and Hearne (AMC.0001.0001.0069 at 0005; AMC.5000.0108.2239).

120. [not used] 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;~~
 - ~~(vii) (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;~~
 - ~~(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%);~~

- ~~(iii) (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%);~~
- ~~(iv) 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%);~~
- ~~(v) 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;~~

~~(vi) 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)(vi), or any one or combination of them; and~~

~~(vii) 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.~~

~~FEBRUARY 2021 CONTRAVENTIONS~~

G.2 ~~True Position~~ Market Conditions at February 2021

121. As at 25 February 2021,÷

~~(a) 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~~

~~(b) aged inventory held by a2 was negatively impacting perception of a2's brand and causing downward pressure on wholesale and retail pricing.~~

(February 2021 a2 China Market Conditions).

Particulars

Memorandum re: Inventory Provisions dated 4 February 2021, authored by Craig Louttit and addressed to the Board Audit and Risk Management Committee, CEO and CFO (AMC.5000.0386.8254).

122. ~~[not used] 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,~~

~~—(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~~ Inadequate Monitoring Systems persisted.

Particulars

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

G.2A a2's Performance as at 25 February 2021

123A. As at 25 February 2021, the December Commercial Factors continued to exist.

123B. As at 25 February 2021, a2's IMF sales volumes were broadly in line with the "low" sales volume scenario of the Q2 Preliminary Forecast for the months of December 2020 and January 2021.

Particulars

<u>Values in 000s of cans</u>	<u>December 2020</u>	<u>January 2021</u>
<u>ANZ and China IMF sales volumes forecast</u>	<u>3,859</u> <u>a2MC Board Report dated 29 January 2021</u> <u>(AMC.0001.0001.0124 at 0004, 0005, 0013)</u>	<u>3,013</u> <u>a2MC Board Report dated 24 February 2021</u> <u>(AMC.0001.0001.0123 at 0046)</u>
<u>Actual IMF sales</u>	<u>3,981</u> <u>a2MC Board Report dated 29 January 2021</u> <u>(AMC.0001.0001.0124 at 0004, 0005, 0013)</u>	<u>3,086</u> <u>a2MC Board Report dated 24 February 2021</u> <u>(AMC.0001.0001.0123 at 0046)</u>
<u>Difference to forecast</u>	<u>122</u>	<u>73</u>

123C. As at 25 February 2021, a2's estimated retail market share in the Aus NZ Segment had remained steady in comparison to November 2020.

Particulars

<u>Source</u>	<u>Month</u>	<u>Australia IMF retail market share (%)</u>
<u>a2MC Board Report dated 15 December 2020</u> <u>(AMC.0001.0001.0121 at 0131)</u>	<u>November 2020</u>	<u>10.8</u>
<u>a2MC Board Report dated 21 January 2021</u> <u>(AMC.0001.0001.0124 at 0005)</u>	<u>December 2020</u>	<u>9.9</u>
<u>a2MC Board Report dated 24 February 2021</u> <u>(AMC.0001.0001.0122 at 0303)</u>	<u>January 2021</u>	<u>10.5</u>

123D. As at 25 February 2021, average prices for a2's IMF as sold by CBEC channels had recovered for some IMF products from November 2020, while average prices as sold by corporate daigou resellers remained stable.

Particulars

<u>Source</u>	<u>Month</u>	<u>Price as sold by corporate daigou (AU\$)</u>				<u>Price as sold by CBEC (AU\$)</u>			
		<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>	<u>S1</u>	<u>S2</u>	<u>S3</u>	<u>S4</u>
<u>Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637 at 5637, 5639)</u>	<u>November 2020</u>	<u>33.7</u>	<u>36.8</u>	<u>32.3</u>	<u>32.6</u>	<u>42.3</u>	<u>42.5</u>	<u>36.9</u>	<u>38.5</u>
<u>Weekly Price Observation Dashboard dated 31 December 2020 (AMC.5000.0007.3294 at 3294)</u>	<u>December 2020</u>	<u>32.2</u>	<u>35.6</u>	<u>31.0</u>	<u>31.6</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Weekly Price Observation Dashboard dated 27 January 2021 (AMC.5000.0007.1148 at 1148, 1150)</u>	<u>January 2021</u>	<u>32.0</u>	<u>35.3</u>	<u>32.0</u>	<u>32.2</u>	<u>42.4</u>	<u>47.1</u>	<u>43.7</u>	<u>42.6</u>
<u>Note: 'S' denotes IMF 'stage'. S1 is for newborns; S2 is for children aged 6–12 months; S3 is for children aged 12–24 months; and S4 is for children aged 24 months and over.</u>									

123E. As at 25 February 2021, a2's inventory of IMF was approximately 18 million cans.

Particulars

<u>Source</u>	<u>Month</u>	<u>EL and CL Inventory (000 cans)</u>
<u>IMF inventory balance report dated 9 December 2020 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0517.3189 at 3191)</u>	<u>November 2020</u>	<u>18,744</u>
<u>Inventory Report dated 29 January 2021 (AMC.5000.0517.3192 at 'Summary')</u>	<u>December 2020</u>	<u>18,534</u>
<u>IMF inventory balance report dated 17 February 2021 (sent to Khan, Louttit, Nathan, Attygalle, Dubar and others, AMC.5000.0006.8936 at 8937)</u>	<u>January 2021</u>	<u>17,823</u>

(The matters pleaded at paragraphs 123A to 123E, together or in any combination, are the February 2021 Commercial Factors).

G.2B Reasonable FY21 Guidance as at 25 February 2021

123F. By reason of the February 2021 Commercial Factors themselves or in combination with one or both of the February 2021 a2 China Market Conditions and the Inadequate Monitoring Systems, as at 25 February 2021, a2 ought reasonably to have decided to recognise a provision for aged IMF inventory of between \$105 million to \$135 million in its FY21 accounts (Counterfactual Inventory Provision).

Particulars

- (i) As at 31 December 2020, 10.3 million cans out of a total of 17.8 million cans (58%) held in inventory were expected to exceed six months of age at the time they were forecasted by a2 to be sold (AMC.5000.0204.3926).
- (ii) a2 ought reasonably to have determined that inventory was at risk if it was expected to exceed six months of age at the time it was were forecasted by a2 to be sold.
- (iii) As at 25 February 2021, between \$105 million to \$135 million worth of inventory was at risk.

Campbell Report, Section IX.C.

123G. By reason of the February 2021 Commercial Factors together with the Counterfactual Inventory Provision, themselves or in combination with one or both of the February 2021 a2 China Market Conditions and the Inadequate Monitoring Systems, as at 25 February 2021, a reasonable forecast for a2's FY21 revenue and EBITDA margin was:

- (a) FY21 net revenue of \$1.36 billion; and
- (b) FY21 EBITDA margin of 14% to 16%.

(February 2021 Reasonable Forecast).

Particulars

Campbell Report at Section IX.D.

123H. As at 25 February 2021, reasonable earnings guidance for a2 for FY21 was:

- (a) revenue in the order of \$1.3 billion; and
- (b) EBITDA margin of 12% to 14%, in light of a decision by a2 to recognise an inventory provision of between \$105 million to \$135 million in its FY21 accounts,

(the February 2021 Counterfactual Guidance).

Particulars

The February 2021 Counterfactual Guidance was reasonable by reason of the February 2021 Reasonable Forecast, the February 2021 Commercial Factors, and the Counterfactual Inventory Provision.

Campbell Report at [502], [510]–[511].

123I. In the alternative to paragraph 123H, at 25 February 2021, reasonable earnings guidance for a2 for FY21 was:

- (a) revenue in the order of \$1.36 billion; and
- (b) EBITDA margin of 14% to 16%, in light of a decision by a2 to recognise an inventory provision of between \$105 million to \$135 million in its FY21 accounts,

(the February 2021 Alternative Counterfactual Guidance).

Particulars

The February 2021 Alternative Counterfactual Guidance was reasonable by reason of the February 2021 Reasonable Forecast.

Campbell Report, Section IX.D.

123J. In the further alternative to paragraph 123H, at 25 February 2021, reasonable earnings guidance for a2 for FY21 was:

- (a) revenue in the order of \$1.3 billion; and
- (b) EBITDA margin in the order of 24%,

(the February 2021 Counterfactual Guidance (Without Provision)).

Particulars

The February 2021 Counterfactual Guidance (Without Provision) was reasonable by reason of the February 2021 Reasonable Forecast excluding (as an alternative) the effect of the Counterfactual Inventory Provision.

Campbell Report at [502], [510]–[511].

Supplementary Campbell Report at [7]–[9].

123K. In the further alternative to paragraph 123H, at 25 February 2021, reasonable earnings guidance for a2 for FY21 was:

(a) revenue in the order of \$1.36 billion; and

(b) EBITDA margin of 24%,

(the February 2021 Alternative Counterfactual Guidance (Without Provision)).

Particulars

The February 2021 Alternative Counterfactual Guidance (Without Provision) was reasonable by reason of the February 2021 Reasonable Forecast, excluding (as an alternative) the effect of the Counterfactual Inventory Provision.

Campbell Report, Section IX.D.

Supplementary Campbell Report at [4]–[6].

G.3 [not used] February Representations

~~124. [not used] 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. ~~[not used] 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. ~~[not used] 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.4 February 2021 Misleading or Deceptive Conduct
a2's Awareness as at 25 February 2021

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

Particulars

- (i) The Plaintiffs repeat the particulars to paragraph 102.
- (ii) Further, as to paragraph 121(b), it is to be inferred that the Board, Bortolussi and Strauss knew, or ought reasonably to have known, of these matters by reason of their receipt of the Memorandum re: Inventory Provisions dated 4 February 2021, authored by Craig Louttit and addressed to the Board Audit and Risk Management Committee, CEO and CFO (AMC.5000.0386.8254).
- (iii) **Reduction in EL sales prices in China resulting in a reduction in EL sales to daigou resellers** (pleaded at [41(d)]): The Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known, of these matters by reason of:
 - A. their awareness of the EL Channel Dynamics as set out in particular (i) to paragraph 102 above; and
 - B. Nathan's comment during the February 2021 Call to the effect that a2 needed to reverse its oversupply of the CBEC 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" (PEB.0001.0001.0453 at 0459).
 - C. The February 2021 Update Announcement, which stated that subdued online pricing and channel inventory unwinding had resulted in a decline in corporate daigou reseller sales and retail daigou reseller sales (PEB.0001.0001.0188 at 0191).

~~(iv) 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;~~

~~(v) a2 assessed its financial position for the purpose of facilitating compliance with relevant financial reporting and accounting standards.~~

~~(vi) 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.~~

~~(vii) 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.~~

~~(viii) 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.~~

~~(ix) 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 reasonably to have known of the Inadequate Monitoring Systems ~~Information~~.

Particulars

- (i) The Plaintiffs repeat the particulars to paragraph 103.
- (ii) Further, each member of the Board, Babidge, Strauss and Nathan knew, or ought reasonably to have known of, the Inadequate Monitoring Systems by reason of the discussion between Nathan and the Board at the 24 February 2021 Board meeting, recorded in the Board minutes as follows (AMC.0001.0001.0069 0004):

'The Chairman noted his understanding that the team had eased off selling in CBEC since October and so assumes that the stock pressure should be easing now - the Chairman's question for PN is what is causing the decline in pricing? In response PN noted that the other dynamic is the extent to which there was leakage of stock into Pinduoduo and similar platforms (and therefore the extent that has an impact on CBEC inventory and pricing), which is why product traceability is so important. PN noted that at the moment the team can't track the flow of product through different channels precisely. PN noted that Pinduoduo is critical to pricing, noting that it uses a2 Platinum™ as a loss leader to drive its broader platform sales. PN noted that there is not currently a clear picture of inventory in distributors. A key part of addressing this is the implementation of product traceability, so that the team can understand where product on different platforms is being sourced from. In terms of implementation, PN noted that traceability will be based on scanning of a QR code that will not be visible to consumers.'

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

- ~~(iii) a2 in the December 2020 Call, page 8, disclosed difficulty in monitoring inventory levels;~~
- ~~(iv) 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;~~
- ~~(v) 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;~~
- ~~(vi) 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;~~

~~(vii) — 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.~~

~~(viii) — 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;~~

~~(ix) — 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.~~

128A. As at 25 February 2021 (and at all material times afterwards), a2 knew or ought reasonably to have known of the February 2021 Commercial Factors.

Particulars

(i) Each member of the Board of a2, and Babidge, Strauss and Nathan knew, or ought reasonably to have known of, the February 2021 Commercial Factors by reason of the following:

A. IMF sales volumes (pleaded at [123B]):

1. The Board’s receipt of the Group Operating and Financial Review in the Board Report dated 29 January 2021, which stated:

(a) December “Group Revenue of \$141.1m was \$1.9m ahead of forecast and broadly reflects \$3.3m upside from ANZ IMF volume (led by Daigou) and \$1.6m upside from CBEC IMF volume; partially offset by shortfalls in CL IMF of (\$1.7m) or 51k units.” (AMC.0001.0001.0124 at 0003);

(b) for China “IMF volumes totalled 2,367k units (vs. forecast of 2,361k); China Label 1,491k units (vs. forecast of 1,542k); English Label 875k units (vs. forecast of 819k)”, and for ANZ “IMF volumes totalled 1,614k units (vs. forecast of 1,498k), with the positive variance largely driven by Corporate Daigou” (AMC.0001.0001.0124 at 0004, 0005);

2. The Board’s receipt of the Month & 1H21 Result: Dec 20 presentation in the Board Report dated 29 January 2021, which reported:

(a) December MTD “Group revenue of \$141.1m was \$1.9m ahead of forecast reflecting stronger EL IMF sales in Daigou and CBEC partially, offset by shortfalls in CL (despite CL achieving a record month)” and December YTD “Group revenue of \$676.6m is (\$129.8m) or (16.1%) behind PY, reflecting a significant contraction in EL IMF volumes driven by challenging 1H trading conditions” (AMC.0001.0001.0124 at 0012);

(b) December MTD IMF volume was 4m units and 3.2% ahead of forecast, and December YTD IMF volume was 17.8m units and 0.7% ahead of forecast (AMC.0001.0001.0124 at 0013);

3. The Board’s receipt of the Group Operating and Financial Review in the Board Report dated 24 February 2021, which stated: for China “Net sales for the month of \$47.9m were (\$1.0m) behind forecast, reflecting volume shortfalls in IMF and liquid Milk”, and for ANZ “IMF volumes totalled 1,605k units (vs. forecast of 1,468k), with the positive variance reflecting an additional 461k units sold to AU direct customers (incl. corporate Daigou), offset by shortfalls in retail and NZ direct” (AMC.0001.0001.0123 at 0030, 0031).

4. The Board’s receipt of the “Month Result: Jan-21” presentation in the Board Report dated 24 February 2021, which reported January MTD IMF volume was 3.1m units and 2.4% ahead of forecast, and January YTD volume was 20.9m units and 0.9% ahead of forecast (AMC.0001.0001.0123 at 0040, 0046, 0047).

B. Decline in Aus NZ Segment market share (pleaded at [123C]):

1. The Board’s receipt of the November market share data in the Australia Board Report in the Board Report dated 15 December 2020 (AMC.0001.0001.0121 at 0131).

2. The Board's receipt of the December market share data in the Group Operating and Financial Review in the Board Report dated 29 January 2021 (AMC.0001.0001.0124 at 0005).
3. The Board's receipt of the January market share data in the Australia Board Report in the Board Report dated 24 February 2021 (AMC.0001.0001.0123 at 0303).

C. **Daigou and CBEC pricing** (pleaded at [123D]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637) by email dated 25 November 2020 (AMC.5000.0007.5636).
2. the Weekly Price Observation Dashboard dated 31 December 2020 (AMC.5000.0007.3294) by email dated 31 December 2020 (AMC.5000.0007.3293); and
3. the Weekly Price Observation Dashboard dated 27 January 2021 (AMC.5000.0007.1148) by email dated 27 January 2021 (AMC.5000.0007.1147).

in circumstances where Strauss and Nathan ought reasonably to have informed the Board and Babidge of the information in the documents by reason of:

4. their roles and responsibilities as CFO and CEO APAC (respectively); and
5. the nature and significance of the information in the documents.

D. **IMF Inventory** (pleaded at [123E]):

1. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 29 January 2021, which stated that:
 - (a) "IMF stock levels continue to be above required levels" (AMC.0001.0001.0124 at 0002);
 - (b) "[i]nventory on hand of \$198.6m (down from \$226.3m in Nov-20) represents ~105 days sales in inventory. Days sales has increased from ~90 days as a result of the latest forecast reduction (Dec-20), which has reduced the level of annualised COGS, and consequently increased the time taken to turn inventory" (AMC.0001.0001.0124 at 0003).

2. The Board's receipt of the Group Operations Board Report in the Board Report dated 29 January 2021, which stated that "we ended the half with inventory sitting at a higher level for English label in both markets" (AMC.0001.0001.0124 at 0090).
 3. The Board's receipt of the Group Operating and Financial Review in the Board Report dated 24 February 2021, which stated:
 - (a) "[t]otal stock levels have improved but continue to be above required levels at \$189.5m, 92 days cover" (AMC.0001.0001.0123 at 0028);
 - (b) "[o]verall production volumes have been reduced significantly in English label to accommodate the recent changes in demand. Notwithstanding these reductions, we expect Stage 1 English Label in particular to be at elevated levels for the remainder of the financial year" (AMC.0001.0001.0123 at 0034).
 - (c) "[i]nventory is now a key focus area due to our higher inventory holdings and stock provisions" (AMC.0001.0001.0123 at 0034).
 4. The Board's receipt of the Group Operations Board Report in the Board Report dated 24 February 2021, which stated:
 - (a) "[a] reasonable performance through January has seen some of our shorter dated stocks be consumed at an early state than expected. While this is assisting in managing aged inventory, the broader issue around total stock holding remains" (AMC.0001.0001.0123 at 0339);
 - (b) "Stage 1 English label, the current drop in demand will mean some months with no production and even with this, our expected inventory levels at the end of June will still be on the higher side" (AMC.0001.0001.0123 at 0339).
- (ii) It is to be inferred that Strauss and Nathan knew, or ought reasonably to have known of, the February 2021 Commercial Factors by reason of the following:
- A. **IMF sales volumes** (pleaded at [123B]): the receipt by Strauss and Nathan of:
1. the Margin Analysis monthly report for December 2020 (AMC.5000.0240.4452) by email dated 20 January 2021 (AMC.5000.0240.4449); and

2. the Margin Analysis monthly report for January 2021 (AMC.5000.0365.7944) by email dated 12 February 2021 (AMC.5000.0365.7940).

B. **Decline in Aus NZ Segment market share** (pleaded at [123C]): the attendance by Strauss and Nathan at a Board meeting in each of December 2020, January 2021 and February 2021 at which market share information was presented in Board reports (December – AMC.0001.0001.0121 at 0131; January – AMC.0001.0001.0124 at 0005; February – AMC.0001.0001.0123 at 0303).

C. **Daigou and CBEC pricing** (pleaded at [123D]): the receipt by Strauss and Nathan of:

1. the Weekly Price Observation Dashboard dated 25 November 2020 (AMC.5000.0007.5637) by email dated 25 November 2020 (AMC.5000.0007.5636).
2. the Weekly Price Observation Dashboard dated 31 December 2020 (AMC.5000.0007.3294) by email dated 31 December 2020 (AMC.5000.0007.3293); and
3. the Weekly Price Observation Dashboard dated 27 January 2021 (AMC.5000.0007.1148) by email dated 27 January 2021 (AMC.5000.0007.1147).

D. **IMF Inventory** (pleaded at [123E]): Nathan's receipt of:

1. a document recording the November inventory balance by email dated 9 December 2020 (AMC.5000.0517.3189 at 3191); and
2. a document recording the January inventory balance by email dated 17 February 2021 (AMC.5000.0006.8936 at 8937).

Strauss knew or ought reasonably to have known of this information by reason of Louttit's receipt of each of the documents at particulars (ii)D.1–2 in circumstances where Louttit ought reasonably to have informed Strauss of the information in the document by reason of:

3. Louttit's role and responsibilities (as pleaded at paragraph 33C above); and
4. the nature and significance of the information in the document.

G.4A February 2021 Misleading or Deceptive Conduct

129. ~~To the extent the February Representations were representations as to future matters, a2 did not have reasonable grounds for making those representations. a2 did not have reasonable grounds for the February 2021 Guidance Downgrade.~~

Particulars

- (i) The Plaintiffs rely on s 12BB of the ASIC Act, s 769C of the Corporations Act and s 4 of the Australian Consumer Law.
- (ii) The Plaintiffs refer to and repeat paragraphs 121 ~~to 123E, and~~ 127 to 128A, and 132 and the particulars subjoined thereto.
- (iii) ~~a2 did not have reasonable grounds for giving the February 2021 Guidance Downgrade by reason of:~~
 - A. ~~the February 2021 Commercial Factors together with the February 2021 Counterfactual Guidance;~~
 - B. ~~alternatively, the February 2021 Commercial Factors together with the February 2021 Counterfactual Guidance (Without Provision);~~
 - C. ~~alternatively, the February 2021 Commercial Factors together with the February 2021 Alternative Counterfactual Guidance;~~
 - D. ~~alternatively, the February 2021 Commercial Factors together with the February 2021 Alternative Counterfactual Guidance (Without Provision);~~

~~alone or in combination with one or both of:~~

 - E. ~~the February 2021 a2 China Market Conditions; and~~
 - F. ~~the Inadequate Monitoring Systems.~~
- (iv) ~~Alternatively to particular (iii), a2 did not have reasonable grounds for giving the February 2021 Guidance Downgrade by reason of the February 2021 Commercial Factors in combination with one or both of:~~
 - A. ~~the February 2021 a2 China Market Conditions; and~~
 - B. ~~the Inadequate Monitoring Systems.~~

~~Campbell Report at Section IX.B.~~

130. The ~~February Representations were made~~ February 2021 Guidance Downgrade was:

- (a) made in trade or commerce, in relation to a financial service (being a2 Securities) within the meaning of s 12DA of the ASIC Act;
- (b) made 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) made in trade or commerce within the meaning of s 18 of the Australian Consumer Law;
- (d) made in trade or commerce within the meaning of s 9 of the FT Act; ~~and/or~~
- (e) made in relation to a dealing in a quoted financial product (being a2 Securities) within the meaning of s 19(2) of the FMC Act₁;
- (f) a continuing representation that was maintained by a2 from 25 February 2021 until the publication of the May 2021 Corrective Disclosure (as pleaded at paragraph 144 below); and
- (g) a representation as to future matters.

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 giving the February 2021 Guidance Downgrade~~ 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 giving the February 2021 Guidance Downgrade~~ 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 2021¹⁹ Misleading or Deceptive Conduct Contravention**; the matters pleaded in paragraphs 131(b)(iii) and (iv) constitute the **NZ Law February 2021¹⁹ 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.5 February 2021 Continuous Disclosure Contravention

132. ~~Further or alternatively, by~~On and from 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~~ the February 2021 Counterfactual Guidance;
- (b) ~~the February 2021 a2 China Market Information; and~~ alternatively, the February 2021 Alternative Counterfactual Guidance;
- (c) ~~the Inadequate Monitoring Systems Information.~~ alternatively, the February 2021 Counterfactual Guidance (Without Provision);
- (d) alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).

(this information, though pleaded in the alternative to one another, is referred to together as the **February Counterfactuals**).

Particulars

The Plaintiffs repeat the particulars to paragraph 107. Further:

(i) The Board, Bortolussi, Strauss and Nathan knew, or ought reasonably to have known of:

A. the February 2021 Commercial Factors by reason of the matters set out at particular (i) to paragraph 128A.

- B. the February 2021 a2 China Market Conditions by reason of the matters set out in the particulars to paragraph 127.
 - C. the Inadequate Monitoring Systems by reason of the matters set out in particulars to paragraph 128.
- (ii) **Strauss and Nathan.** Further to the matters set out in particular (ii) above, Strauss and Nathan knew, or ought reasonably to have known of, the February 2021 Commercial Factors by reason of the matters set out in particular (ii) to paragraph 128A.
- (iii) **Information.** By reason of knowing the February 2021 Commercial Factors, themselves or in combination with one or both of the February 2021 a2 China Market Conditions and the Inadequate Monitoring Systems (as set out above), each member of the Board, Bortolussi, Strauss, and/or Nathan ought reasonably to have known that the February 2021 Counterfactual Guidance, alternatively the February 2021 Alternative Counterfactual Guidance, alternatively the alternatively the February 2021 Counterfactual Guidance (Without Provision), alternatively the February 2021 Alternative Counterfactual Guidance (Without Provision), was reasonable earnings guidance for a2 for FY21.
- ~~(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.~~

Australian Law Contraventions

133. Each of the February Counterfactuals was information that:

- (a) [not used] ~~the February 2021 a2 China Market Conditions;~~
- (b) [not used] ~~the February 2021 a2 China Market Information; and/or~~
- (c) [not used] ~~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~~ 23 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~~ 24 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 Plaintiffs rely on the Corrected Zein Report at Section 7.
- (ii) The February 2021 a2 China Market Conditions, February 2021 a2 China Market Information and the Inadequate Monitoring Systems Information was Each of the February Counterfactuals 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 the information regarding a2's expected FY21 revenue and EBITDA margin related to a2's future financial performance and was viewed by market participants as a key input into the valuation of a2 shares during the Relevant Period.
- (iii) The materiality of each of the February 2021 a2 China Market Conditions, February 2021 a2 China Market Information and the Inadequate Monitoring Systems Information February Counterfactuals is to be inferred from the impact on a2's value and price of the May 2021 Corrective Disclosure.

(iv) As to sub-paragraph 133(c)(ii), the plaintiffs refer to and rely on paragraph 134 below.

(v) 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~~ any of the February Counterfactuals, as pleaded in paragraph 132 above; and
- (b) the materiality of each of the ~~February 2021 a2 China Market Conditions, the February 2021 a2 China Market Information and the Inadequate Monitoring Systems Information~~ February Counterfactuals;
- (c) ~~[not used] 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) ~~[not used] 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 (iv), 95(d)(ii) to (iii) and 120(d)(ii) to (iv) above and 145(d)(ii) to (iv) below;~~

it is to be inferred that a2:

- (e) was aware of a substantial risk that ~~the information~~ any of the February Counterfactuals, 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~~ any of the February Counterfactuals, 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~~ any of the February Counterfactuals 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~~ any of the February Counterfactuals 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, the February 2021 Counterfactual Guidance, the February 2021 Alternative Counterfactual Guidance, the February 2021 Counterfactual Guidance (Without Provision), or the February 2021 Alternative Counterfactual Guidance (Without Provision)~~; 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 until 10 May 2021, a2 ~~became immediately~~ was obliged to inform the ASX immediately of:
- (a) ~~the February 2021 a2 China Market Conditions~~ the February 2021 Counterfactual Guidance;
 - (b) ~~the February 2021 a2 China Market Information; and~~ alternatively, the February 2021 Alternative Counterfactual Guidance;
 - (c) ~~the Inadequate Monitoring Systems Information.~~ alternatively, the February 2021 Counterfactual Guidance (Without Provision);

- (d) alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).

137. a2 did not inform the ASX of:

- (a) ~~the February 2021 a2 China Market Conditions~~ the February 2021 Counterfactual Guidance;
- (b) ~~the February 2021 a2 China Market Information; and~~ alternatively, the February 2021 Alternative Counterfactual Guidance;
- (c) ~~the Inadequate Monitoring Systems Information.~~ alternatively, the February 2021 Counterfactual Guidance (Without Provision);
- (d) alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).

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~~ 23 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~~ 24 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**).

NZ Law Contraventions

139. Each of the February Counterfactuals was information that:

- (a) [not used] ~~the February 2021 a2 China Market Conditions;~~
- (b) [not used] ~~the February 2021 a2 China Market Information; and/or~~
- (c) [not used] ~~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 until 10 May 2021, a2 ~~became immediately was~~ obliged to release to the NZSX, ~~promptly and without delay immediately:~~

- (a) ~~the February 2021 a2 China Market Conditions~~ the February 2021 Counterfactual Guidance;
- (b) ~~the February 2021 a2 China Market Information; and~~ alternatively, the February 2021 Alternative Counterfactual Guidance;
- (c) ~~the Inadequate Monitoring Systems Information.~~ alternatively, the February 2021 Counterfactual Guidance (Without Provision);
- (d) alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).

141. a2 did not inform the NZSX of:

- (a) ~~the February 2021 a2 China Market Conditions~~ the February 2021 Counterfactual Guidance;
- (b) ~~the February 2021 a2 China Market Information; and~~ alternatively, the February 2021 Alternative Counterfactual Guidance;
- (c) ~~the Inadequate Monitoring Systems Information.~~ alternatively, the February 2021 Counterfactual Guidance (Without Provision);

- (d) alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision),

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.6 Market Effects of February Contraventions

142A. If a2 had not engaged in the February 2021 Misleading or Deceptive Conduct Contravention, on 25 February 2021, a2 would have:

- (a) given the February 2021 Counterfactual Guidance in place of the February 2021 Guidance Downgrade;
- (b) alternatively, given the February 2021 Alternative Counterfactual Guidance in place of the February 2021 Guidance Downgrade;
- (c) alternatively, given the February 2021 Counterfactual Guidance (Without Provision) in place of the February 2021 Guidance Downgrade;
- (d) alternatively, given the February 2021 Alternative Counterfactual Guidance (Without Provision) in place of the February 2021 Guidance Downgrade.

142B. If a2 had not engaged in the February 2021 Continuous Disclosure Contravention, on 25 February 2021, as alleged in paragraphs 136 and 140 above, a2 would have immediately, as it was obliged to do:

- (a) given the February 2021 Counterfactual Guidance in place of the February 2021 Guidance Downgrade;

- (b) alternatively, given the February 2021 Alternative Counterfactual Guidance in place of the February 2021 Guidance Downgrade;
- (c) alternatively, given the February 2021 Counterfactual Guidance (Without Provision) in place of the February 2021 Guidance Downgrade;
- (d) alternatively, given the February 2021 Alternative Counterfactual Guidance (Without Provision) in place of the February 2021 Guidance Downgrade.

143. ~~The:~~ In the premises, 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 Plaintiffs rely on the Corrected Zein Report at Parts 6 and 7.

~~The~~ Further, the said Inflation 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 on 25 February 2021 as set out in paragraph 119A above; and
- (iii) the changes in the Traded Price following the May 2021 Corrective Disclosure as set out in paragraph 144A below. ~~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.7 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~~ Group revenue for FY21 in the order of \$1.20bn to \$1.25bn; and
 - (ii) ~~group~~ 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

The May 2021 Update Announcement (PEB.0001.0001.0198).

~~(i) 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.~~

144A. The May 2021 Corrective Disclosure caused the price at which a2 Securities traded on the ASX and Chi-X to decline.

Particulars

- (i) The amount of the share price declines caused by the May 2021 Guidance Downgrade (as distinct from other information that may have affected the price of a2 Securities at or around the same time), and the number of trading days over which those declines are observed, are identified by an event study analysis of trading in a2 Securities over the Relevant Period.
- (ii) The May 2021 Corrective Disclosure
 - A. caused the price at which a2 Securities traded on the ASX and Chi-X to decline by A\$1.38 or 19.6% from the close of trade on 7 May 2021 to the close of trade on 11 May 2021;
 - B. caused the price at which a2 Securities traded on the NZSX to decline by \$1.39 or 18.4% from the close of trade on 24 February 2021 to the close of trade on 25 February 2021.

Corrected Zein Report at Part 6 and Exhibits 6A-5 and 6B-5.

145. [not used] ~~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,~~
- ~~(x) (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%);~~

- ~~(iii) (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%);~~
- ~~(iv) 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%);~~
- ~~(v) 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;~~

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

~~(vii) caused the Traded Price to adjust downward to correct or partly correct so as to remove the inflation effects of the Contraventions listed at subparagraph 145(d)(v), or any one or combination of them; and~~

~~(viii) 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 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

Particulars

The Plaintiffs rely on the Corrected Zein Report at Sections 6.4–6.5.

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

Particulars

The Plaintiffs rely on the Corrected Zein Report at Sections 6.4–6.5.

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~~ the August 2020 Guidance, September 2020 Guidance Downgrade, December 2020 Guidance Downgrade and February 2021 Guidance Downgrade.

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.

Particulars

The Inflation on the ASX and Chi-X as at each day in the Relevant Period is calculated in the Corrected Zein Report in Section 8.6 and set out in Exhibits 19 (Corrected), 20A, 21 (Corrected), 22A, 23 (Corrected), 24A, 25 (Corrected), 26A of the Corrected Zein Report.

The Inflation is summarised in **Annexure D.**

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~~ Guidance Downgrade;
- (b) December 2020 ~~Partial Disclosure~~ Guidance Downgrade;
- (c) February 2021 ~~Partial Disclosure~~ Guidance Downgrade;
- (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)~~ 151 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.~~ Particulars of the Plaintiffs' losses are set out in **Annexure E**.
 - (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.

Particulars

The Inflation on the NZSX as at each day in the Relevant Period is calculated in the Corrected Zein Report in Section 8.6 and set out in Exhibits 19 (Corrected), 20B, 21 (Corrected), 22B, 23 (Corrected), 24B, 25 (Corrected), 26B of the Corrected Zein Report.

The Inflation is summarised in **Annexure D.**

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)~~153 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~~ Guidance Downgrade,
(the 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 Guidance Downgrade; or
- (j) December 2020 Partial Disclosure Guidance Downgrade; or

- (k) February 2021 ~~Partial Disclosure~~ Guidance Downgrade; 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~~ nondisclosure of:

- (a) ~~the September 2020 a2 China Market Conditions; the August 2020 Counterfactual Guidance, alternatively, the August 2020 Alternative Counterfactual Guidance;~~
- (b) ~~the September 2020 a2 China Market Information; the September 2020 Counterfactual Guidance, alternatively, the September 2020 Alternative Counterfactual Guidance;~~
- (c) ~~the December 2020 a2 China Market Conditions; the December 2020 Counterfactual Guidance, alternatively, the December 2020 Alternative Counterfactual Guidance; or~~
- (d) ~~the December 2020 a2 China Market Information; the February 2021 Counterfactual Guidance, alternatively, the February 2021 Alternative Counterfactual Guidance; alternatively, the February 2021 Counterfactual Guidance (Without Provision), alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).~~
- (e) ~~[not used] the February 2021 a2 China Market Conditions;~~
- (f) ~~[not used] the February 2021 a2 China Market Information;~~
- (g) ~~[not used] 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.~~

Particulars

The value of the loss of a Retention Claimant's opportunity to avoid the losses resulting from the nondisclosure of the information pleaded above is to be determined as follows:

For each Pre-Period Share, the price at which the Retention Claimant would have sold the Pre-Period Share but-for a2's contravention, namely, the price of a2 Securities on the day on which the Retention Claimant would have sold the Pre-Period Share but-for a2's contravention, less the Inflation in the price of a2 Securities on that day,

less

the price for which the Retention Claimant actually sold the Pre-Period Share, or otherwise the value of the Pre-Period Share left in hand at trial.

The Inflation on the ASX and Chi-X as at each day in the Relevant Period is calculated in the Corrected Zein Report in Section 8.6 and set out in Exhibits 19 (Corrected), 20A, 21 (Corrected), 22A, 23 (Corrected), 24A, 25 (Corrected), 26A of the Corrected Zein Report.

The Inflation is summarised in **Annexure D**.

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 Guidance Downgrade~~; or
- (j) December 2020 ~~Partial Disclosure Guidance Downgrade~~; or
- (k) February 2021 ~~Partial Disclosure Guidance Downgrade~~; 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 nondisclosure~~ of:

- (a) ~~he September 2020 a2 China Market Conditions; the August 2020 Counterfactual Guidance, alternatively, the August 2020 Alternative Counterfactual Guidance;~~
- (b) ~~the September 2020 a2 China Market Information; the September 2020 Counterfactual Guidance, alternatively, the September 2020 Alternative Counterfactual Guidance;~~
- (c) ~~the December 2020 a2 China Market Conditions; the December 2020 Counterfactual Guidance, alternatively, the December 2020 Alternative Counterfactual Guidance; or~~
- (d) ~~the December 2020 a2 China Market Information; the February 2021 Counterfactual Guidance, alternatively, the February 2021 Alternative Counterfactual Guidance; alternatively, the February 2021 Counterfactual Guidance (Without Provision), alternatively, the February 2021 Alternative Counterfactual Guidance (Without Provision).~~
- (e) ~~[not used] the February 2021 a2 China Market Conditions;~~
- (f) ~~[not used] the February 2021 a2 China Market Information;~~
- (g) ~~[not used] 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.~~

Particulars

The value of the loss of a Retention Claimant's opportunity to avoid the losses resulting from the nondisclosure of the information pleaded above is to be determined as follows:

For each Pre-Period Share, the price at which the Retention Claimant would have sold the Pre-Period Share but-for a2's contravention, namely, the price of a2 Securities on the day on which the Retention Claimant would have sold the Pre-Period Share but-for a2's contravention, less the Inflation in the price of a2 Securities on that day,

less

the price for which the Retention Claimant actually sold the Pre-Period Share, or otherwise the value of the Pre-Period Share left in hand at trial.

The Inflation on the NZSX as at each day in the Relevant Period is calculated in the Corrected Zein Report in Section 8.6 and set out in Exhibits 19 (Corrected), 20B, 21 (Corrected), 22B, 23 (Corrected), 24B, 25 (Corrected), 26B of the Corrected Zein Report.

The Inflation is summarised in **Annexure D**.

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 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 SACSOC.
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 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 SACSOC.

163. By reason of the matters alleged in paragraphs 146 to ~~158~~ 156 and 159 to 160 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 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 SACSOC.
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 SACSOC.

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 2020 Guidance, September Representations 2020 Guidance Downgrade, December 2020 Guidance Downgrade and February Representations 2021 Guidance Downgrade;
 - (b) whether any of the August Representations 2020 Guidance, September Representations 2020 Guidance Downgrade, December Representations 2020 Guidance Downgrade and February 2021 Guidance Downgrade, 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 2020 Guidance, September Representations 2020 Guidance Downgrade, December Representations 2020 Guidance Downgrade and February 2021 Guidance Downgrade, 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~~ August 2020 Counterfactual Guidance, August 2020 Alternative Counterfactual Guidance, September 2020 Counterfactual Guidance, September 2020 Alternative Counterfactual Guidance, December 2020 Counterfactual Guidance, December 2020 Alternative Counterfactual Guidance, the February 2021 Counterfactual Guidance, the February 2021 Alternative Counterfactual Guidance, the February 2021 Counterfactual Guidance (Without Provision), and the February 2021 Alternative Counterfactual Guidance (Without Provision) **(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 reasonably 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 23 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 reasonably 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 reasonably to have been aware of that Information;
- (i) whether any of the Australian Law Contraventions and/or any NZ Law Contraventions (**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 SACSOC;
- 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: 1 September 2025

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

The further amendments were prepared by Rachel Doyle SC, Melanie Szydzik SC, Alexandra Folie and Thomas Rawlinson of counsel, and Slater and Gordon Lawyers and Shine Lawyers.

The particulars to paragraphs 158 and 160 were prepared by Melanie Szydzik SC and Thomas Rawlinson of counsel, and Shine Lawyers.

ANNEXURE A
First Plaintiff's transactions during the Relevant Period

Date of Purchase	Number of a2 Securities	Average price per share (AUD\$)	Amount paid (excl. brokerage) (AUD\$)
16/12/2020	70	\$13.24	\$9326.080
21/12/2020	30	\$10.46	\$3213.80
29/12/2020	200	\$11.47	\$2,313.95294.00
08/01/2021	50	\$10.94	\$547.00
20/021/2021	50	\$10.24	\$512.00
22/01/2021	100	\$10.08	\$1,008.00

Date of Sale	Number of a2 Securities	Average price per share (AUD\$)	Amount paid (excl. brokerage) (AUD\$)
15/04/2021	100	\$8.18	\$8018.00
20/04/2021	150	\$8.05	\$1,187207.550

Second Plaintiff's transactions during the Relevant Period

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

ANNEXURE B
Trading Price Movements

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

ANNEXURE C

Definition	Paragraph
2020 Annual Report	37
9 September Release	49
a2	2(a)
a2 Investors	66(a)(ii)
a2 Executives	32(a)
a2 Monitoring Systems	47 <u>43</u>
a2 Officers	32(a)
a2 Securities	4(i)
a2 Securities Market	7 and 18
<u>Acquisition Claimants</u>	<u>2(a)(i)</u>
<u>Akers</u>	<u>29</u>
ASIC Act	4(b)
ASX	4(d)
ASX Listing Rules	4(j)(ii)
<u>Attygalle</u>	<u>33B</u>
August 2020 a2 China Market Conditions	41
August 2020 a2 China Market Information	42
August 2020 Call	46
<u>August 2020 Commercial Factors</u>	<u>43F</u>
August 2020 Continuous Disclosure Contravention	65
<u>August 2020 Alternative Counterfactual Guidance</u>	<u>43I</u>
<u>August 2020 Counterfactual Guidance</u>	<u>43H</u>
<u>August 2020 Guidance</u>	<u>46</u>
<u>August 2020 Guidance Process</u>	<u>48A</u>
August Express Representations	46
August Implied Representations	47
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ANNEXURE D
Summary of Share Price Inflation

Ref	Counterfactual	Applicable Period	A2M Share Price Inflation at Disclosure (A\$/sh)	A2M Share Price Inflation (%) During Period	ATM Share Price Inflation at Disclosure (NZ\$/sh)	ATM Share Price Inflation (%) During Period
43H	August 2020 Counterfactual Guidance	19 August 2020 – 27 September 2020	1.00	5.5%	1.11	5.5%
43I	August 2020 Alternative Counterfactual Guidance		3.67	20.1%	4.09	20.1%
72F	September 2020 Counterfactual Guidance	28 September 2020 – 16 December 2020	4.15	28.5%	4.51	28.5%
72G	September 2020 Alternative Counterfactual Guidance		3.36	23.0%	3.64	23.0%
98G	December 2020 Counterfactual Guidance	18 December 2020 – 24 February 2021	1.78	17.5%	1.93	17.5%
98H	December 2020 Alternative Counterfactual Guidance		0.70	6.9%	0.76	6.9%
123H	February 2021 Counterfactual Guidance	25 February 2021 – 9 May 2021	2.21	24.6%	2.29	24.6%
123I	February 2021 Alternative Counterfactual Guidance		1.29	14.4%	1.34	14.4%
123J	February 2021 Counterfactual Guidance (Without Provision)		1.00	11.1%	1.03	11.1%
123K	February 2021 Alternative Counterfactual Guidance (Without Provision)		0.62	6.9%	0.64	6.9%

ANNEXURE E
Plaintiffs' loss based on Counterfactual Guidance

First Plaintiff's loss (full netting)

Date	Vol.	Type	Av. price per share (\$)	A2M Share Price Inflation (%)	Counterfactual Guidance share price (\$)	Difference A2M Share Price Inflation (\$)	Total of A2M Share Price Inflation (\$)
16/12/2020	70	Buy	\$13.24	28.5%	\$9.4666	\$3.7734	\$264.1380
21/12/2020	30	Buy	\$10.46	17.5%	\$8.6295	\$1.8305	\$54.9150
29/12/2020	200	Buy	\$11.47	17.5%	\$9.4628	\$2.0073	\$401.4500
08/01/2021	50	Buy	\$10.94	17.5%	\$9.0255	\$1.9145	\$95.7250
20/01/2021	50	Buy	\$10.24	17.5%	\$8.4480	\$1.7920	\$89.6000
22/01/2021	100	Buy	\$10.08	17.5%	\$8.3160	\$1.7640	\$176.4000
15/04/2021	100	Sell	\$8.18	24.6%	\$6.1677	\$2.0123	-\$201.2280
20/04/2021	150	Sell	\$8.05	24.6%	\$6.0697	\$1.9803	-\$297.0450
Total Loss							\$583.9550

First Plaintiff's loss (last in first out)

Date	Vol.	Type	Av. price per share (\$)	A2M Share Price Inflation (%)	Counterf actual Guidance share price (\$)	Diff. A2M Share Price Inflation (\$)	Match date	Match type	Match vol.	Match A2M Share Price Inflation (\$)	Loss (\$)	Loss zeroed (\$)
22/01/21	100	Buy	\$10.08	17.5%	\$8.3160	\$1.7640	15/04/21	Sell	100	\$2.0123	-\$24.8280	\$0.0000
22/01/21	0	Buy	\$10.08	17.5%	\$8.3160	\$1.7640	20/04/21	Sell	0	\$1.9803	\$0.0000	\$0.0000
20/01/21	50	Buy	\$10.24	17.5%	\$8.4480	\$1.7920	20/04/21	Sell	50	\$1.9803	-\$9.4150	\$0.0000
8/01/21	50	Buy	\$10.94	17.5%	\$9.0255	\$1.9145	20/04/21	Sell	50	\$1.9803	-\$3.2900	\$0.0000
29/12/20	50	Buy	\$11.47	17.5%	\$9.4628	\$2.0073	20/04/21	Sell	50	\$1.9803	\$1.3475	\$1.3475
29/12/20	150	Buy	\$11.47	17.5%	\$9.4628	\$2.0073					\$301.0875	\$301.0875
21/12/20	30	Buy	\$10.46	17.5%	\$8.6295	\$1.8305					\$54.9150	\$54.9150
16/12/20	70	Buy	\$13.24	17.5%	\$9.4666	\$3.7734					\$264.1380	\$264.1380
Total Loss												\$621.4880

Second Plaintiff's loss

Date	Vol.	Type	Av. price per share (\$)	A2M Share Price Inflation (%)	Counterfactual Guidance share price (\$)	Difference A2M Share Price Inflation (\$)	Total of A2M Share Price Inflation (\$)
28/09/2020	33	Buy	\$15.65	28.5%	\$11.1898	\$4.4602	\$147.1866
Total Loss							\$147.1866