

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/06/2019 3:59:08 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID682/2019
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v GARY HELOU & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	02/08/2019, 9:30 AM
Place:	Please check Daily Court List for details



A handwritten signature in blue ink, which appears to read "Warwick Soden".

Dated: 24/06/2019 3:33:39 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

ORIGINATING PROCESS



FORM 2

IN THE FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

NPA: Commercial and Corporations, Regulator and Consumer Protection

No VID of

2010

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

and

GARY HELOU and BRADLEY HINGLE

Defendants

DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and sections 206C(1), 206E(1), 1317E of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), disqualification orders and costs.

On the grounds stated in the accompanying statement of claim, the Plaintiff claims:

AGAINST THE FIRST DEFENDANT (HELOU):

A Helou – Misleading or deceptive conduct declarations

- 1 A declaration pursuant to section 21 of the Federal Court Act 1976 (that on 29 February 2016, the First Respondent, Gary Helou (**Helou**) by preparing and approving an announcement by MG Responsible Entity Limited (**MGRE**) for release to the ASX (**February Announcement**) which contained the following statements:

Filed on behalf of	Australian Securities and Investments Commission, Applicant
Prepared by	Mr Tim Honey
Tel (03) 9280 4439	Fax (03) 9280 3545
Email tim.honey@asic.gov.au	
Address for service	Level 7, 120 Collins Street Melbourne VIC 3000



- (a) since issuing the PDS in May 2015, and again since MG's Annual General Meeting in October 2015, dairy commodity prices had continued to decline;
- (b) the weakness in dairy commodity prices was now expected to result in the Ingredients and Nutritionals segment materially underperforming against the PDS forecasts in FY16;
- (c) International Dairy Foods revenue continues to experience significant growth;
- (d) the underperformance of the Ingredients and Nutritionals segment was expected to be partially offset by the growth in [the] Dairy Foods segment ... and the expected strong performance of domestic and international ready-to-consume dairy foods product sales;
- (e) internationally, Dairy Foods sales revenue growth was up strongly by 21.4 percent (compared to the half year ended 31 December 2014) and was supported by:
 - (i) a broadened distribution network that extended MG's reach to tier two and tier three cities across China; and
 - (ii) very strong demand for Devondale branded consumer milk powders;
- (f) [in the context of Dairy Foods International division]...MG advanced its Asian distribution strategy in this period by securing:
 - (i) valuable supply agreements with major retailers; and
 - (ii) entering into joint business plans with global eCommerce platforms including JD.com and Tmall.com;
- (g) Dairy Foods International performance was driven by growing demand for Consumer Milk Powder and that the joint business plans referred to in subparagraph (f)(ii) above added to MG's access to this growing demand,
- (h) MG expected to maintain [an FMP] of \$5.60 per kgms in FY16, however this was subject to there being no further material deterioration in dairy commodity prices or unfavourable changes to the current AUD:USD exchange rate;
- (i) under the Profit Sharing Mechanism, a \$5.60 per kgms milk price would be expected to generate for the full year FY16 NPAT attributable to shareholders and unitholders of approximately \$63 million,



Helou engaged in conduct:

- (j) in this jurisdiction, in relation to a financial product or a financial service, and was misleading or deceptive or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act 2001;
- (k) in trade or commerce, in relation to a financial service, and was misleading or deceptive or likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act,

by reason of the fact that:

- (l) the statements in subparagraphs (c) to (g) were false by reason of the February Circumstances (as defined in the Schedule);
- (m) the statements in subparagraphs (d), (h) and (i) were representations as to future matters and were made without reasonable grounds;
- (n) the February Announcement omitted the February Circumstances which the market, unitholders and potential investors were entitled to expect would be disclosed.

2 A declaration pursuant to section 21 of the Federal Court Act that Helou by:

- (a) preparing and approving the February Announcement for release to the ASX;
- (b) failing to correct the statements in the February Announcement by disclosure to the ASX of the following information (which the market, unitholders and potential investors were entitled to expect would be disclosed):
 - (i) between 1 March 2016 and 26 April 2016, the February Circumstances (as defined in the Schedule);
 - (ii) between 8 March 2016 and 26 April 2016, the February Circumstances and the Early March Risks (as defined in the Schedule);
 - (iii) between 22 March 2016 and 26 April 2016, the February Circumstances, the Early March Risks and the Late March Risks (as defined in the Schedule);
 - (iv) between 13 April 2016 and 26 April 2016, the February Circumstances, the Early March Risks, the Late March Risks and the April Risks (as defined in the Schedule),

engaged in conduct that was:

- (c) in this jurisdiction, in relation to a financial product or a financial service and was misleading or deceptive or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act;
- (d) in trade or commerce, in relation to a financial service, and was misleading or deceptive or likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act.

B Helou – Continuous disclosure declarations

3 Declarations pursuant to s 1317E of the Corporations Act that Helou contravened section 674(2A) of the Corporations Act in that he was knowingly concerned in or party to a contravention by MGRE of section 674(2), whereby MGRE failed to disclose to the ASX that:

- (a) there was likely to be a material decrease in MG's forecast NPAT and FMP for FY16 which it had published on 29 February 2016, namely \$63 million and \$5.60 respectively, (**February Earnings Guidance**); and

- (b) the February Earnings Guidance was unlikely to be achieved,

during each of the following periods:

- (c) between 29 February 2016 and 8.48am on 27 April 2016, by reason of the February Circumstances;
- (d) between 8 March 2016 and 8.48am on 27 April 2016, by reason of the Early March Risks;
- (e) between 22 March 2016 and 8.48am on 27 April 2016, by reason of the Late March Risks; and
- (f) between 13 April 2016 and 8.48am on 27 April 2016, by reason of the April Risks,

in circumstances where:

- (g) in each of the periods referred to in subparagraphs (c) to (f) above, MGRE and Helou were each aware of the information referred to in subparagraphs (a) and (b) above;



- (h) MGRE was, by rule 3.1 of the ASX Listing Rules, required to notify the information to the ASX;
- (i) the information was not generally available; and
- (j) a reasonable person would expect the information to have a material effect on the price or value of the fully paid units (**Units**) in the MG Unit Trust.

4 Declarations pursuant to section 1317E of the Corporations Act that Helou contravened section 675(2A) of the Corporations Act in that he was knowingly concerned in or party to a contravention by MG of section 675(2), whereby MG failed to disclose to ASIC that:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and
- (b) the February Earnings Guidance was unlikely to be achieved,

during each of the following periods:

- (c) between 29 February 2016 and 8.48am on 27 April 2016, by reason of the February Circumstances;
- (d) between 8 March 2016 and 8.48am on 27 April 2016, by reason of the Early March Risks;
- (e) between 22 March 2016 and 8.48am on 27 April 2016, by reason of the Late March Risks; and
- (f) between 13 April 2016 and 8.48am on 27 April 2016, by reason of the April Risks,

in circumstances where:

- (g) in each of the periods referred to in subparagraphs (c) to (f) above, MG and Helou were each aware of the information referred to in subparagraphs (a) and (b) above;
- (h) the information was not generally available; and
- (i) a reasonable person would expect the information to have a material effect on the price or value of the fully paid ordinary shares in MG.

C Helou – Directors’ duties declarations – February 2016

5 A declaration that Helou contravened section 180(1) of the Corporations Act between 26 February and 29 February 2016 by failing to exercise his powers and discharge his duties as a director of MG and MGRE with reasonable care and diligence in that he:

- (a) failed to adequately assess and give due consideration to the effect of the February Risks and the Sachet Volume Risk on the financial position and performance of MG and MGRE;
- (b) failed to inform the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter of the February Risks;
- (c) failed to inform the Board of MG and MGRE the February Material Information;
- (d) failed to consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (e) failed to recommend to the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (f) failed to recommend to the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Material Information required disclosure to the market;
- (g) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (h) caused or permitted MGRE to contravene section 674(2) of the Act
- (i) caused or permitted MG to contravene section 675(2) of the Act;
- (j) and thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.

6 A declaration that Helou contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 1 February and 29 February 2016 by failing to exercise his

powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:



- (a) failed to adequately assess and give due consideration to the effect of the February Risks on the financial position and performance of MG and MGRE;
- (b) failed to inform the Board of MGRE on 26 February 2016, or at a reasonable time thereafter of the February Risks;
- (c) failed to inform the Board of MGRE of the February Material Information;
- (d) failed to consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (e) failed to recommend to the Board of MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (f) failed to recommend to the Board of MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the February Material Information required disclosure to the market;
- (g) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (h) caused or permitted MGRE to contravene section 674(2) of the Act;
- (i) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties; and
- (j) thereby failed to ensure that MGRE complied with the Corporations Act.

D Helou – Directors’ duties declarations – Early March 2016

7 A declaration that Helou contravened section 180(1) of the Corporations Act between 29 February and 8 March 2016 by failing to exercise his powers and discharge his duties as a director of MG and MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;

- (b) failed to adequately assess and give due consideration to the effect of the Early March Risks on the financial position and performance of MG and MGRE;
 - (c) failed to inform the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter of the Early March Risks;
 - (d) failed to inform the Board of MG and MGRE of the Early March Material Information;
 - (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the Early March Risks;
 - (f) failed to recommend to the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Earnings Guidance should be downgraded, to account for the Early March Risks;
 - (g) failed to recommend to the Board of MG and MGRE on 8 March 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the Early March Material Information required disclosure to the market.
 - (h) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
 - (i) caused or permitted MGRE to contravene section 674(2) of the Act; and
 - (j) caused or permitted MG to contravene section 675(2) of the Act; and
 - (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.
- 8 A declaration that Helou contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 29 February and 8 March 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to assess and give due consideration to the effect of the Early March Risks on the financial position and performance of MG and MGRE;



- (c) failed to inform the Board of MGRE on 8 March 2016 or a reasonable time thereafter of the Early March Risks;
- (d) failed to inform the Board of MGRE of the Early March Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the Early March Risks;
- (f) failed to recommend to the Board of MGRE on 8 March 2016 or a reasonable time thereafter that the Board should consider whether the February Earnings Guidance should be downgraded, to account for the Early March Risks;
- (g) failed to recommend to the Board of MGRE on 8 March 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the Early March Material Information required disclosure to the market.
- (h) caused or permitted MGRE to contravene section 1041H of the Corporations Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Corporations Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Corporations Act.

E Helou – Directors’ duties declarations – Late March 2016

- 9 A declaration that Helou contravened section 180(1) of the Corporations Act between 8 March and 22 March 2016 by failing to exercise his powers and discharge his duties as a director of MG and MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to adequately assess and give due consideration to the effect of the Late March Risks on the financial position and performance of MG and MGRE;
 - (c) failed to inform the Board of MG and MGRE on 22 March 2016 or a reasonable time thereafter of the Late March Risks;



- (d) failed to inform the Board of MG and MGRE of the Late March Material Information;
 - (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the Late March Risks;
 - (f) failed to recommend to the Board of MG and MGRE on 22 March 2016 or a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Earnings Guidance should be downgraded to account for the Late March Risks;
 - (g) failed to recommend to the Board of MG and MGRE on 8 March 2016, or at a reasonable time thereafter that the Board should consider whether the Late March Material Information required disclosure to the market;
 - (h) caused or permitted MG and MGRE to contravene section 1041H of the Corporations Act, further or alternatively section 12DA of the ASIC Act;
 - (i) caused or permitted MGRE to contravene section 674(2) of the Corporations Act;
 - (j) caused or permitted MG to contravene section 675(2) of the Corporations Act;
 - (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.
- 10 A declaration that Helou contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 8 March and 22 March 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to adequately assess and give due consideration to the effect of the Late March Risks on the financial position and performance of MG and MGRE;
 - (c) failed to inform the Board of MGRE on 22 March 2016 or a reasonable time thereafter of the Late March Risks;
 - (d) failed to inform the Board of MGRE of the Late March Material Information;



- (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the Late March Risks;
- (f) failed to recommend to the Board of MGRE on 22 March 2016 or a reasonable time thereafter that the Board of MGRE should consider whether the February Earnings Guidance should be downgraded to account for the Late March Risks;
- (g) failed to recommend to the Board of MGRE on 8 March 2016, or at a reasonable time thereafter that the Board should consider whether the Late March Material Information required disclosure to the market;
- (h) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Act.

F Helou – Directors’ duties declarations – April 2016

- 11 A declaration that Helou contravened section 180(1) of the Corporations Act between 22 March and 26 April 2016 by failing to exercise his powers and discharge his duties as a director of MG and MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to adequately assess and give due consideration to the effect of the April Risks on the financial position and performance of MG and MGRE;
 - (c) failed to inform the Board of MG and MGRE on 13 April 2016 or a reasonable time thereafter of the April Risks;
 - (d) failed to inform the Board of MG and MGRE of the April Material Information;
 - (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the April Risks;
 - (f) failed to recommend to the Board of MG and MGRE on 13 April 2016 or a reasonable time thereafter that the Board should consider whether the



February Earnings Guidance should be downgraded to account for the April Risks;

- (g) failed to recommend to the Board of MG and MGRE on 13 April 2016, or at a reasonable time thereafter that the Board should consider whether the April Material Information required disclosure to the market.
- (h) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) caused or permitted MG to contravene section 675(2) of the Act;
- (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.

12 A declaration that Helou contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 22 March and 26 April 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
- (b) failed to adequately assess and give due consideration to the effect of the April Risks on the financial position and performance of MG and MGRE;
- (c) failed to inform the Board of MGRE on 13 April 2016 or a reasonable time thereafter of the April Risks;
- (d) failed to inform the Board of MGRE of the April Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the April Risks;
- (f) failed to recommend to the Board of MGRE on 13 April 2016 or a reasonable time thereafter that the Board should consider whether the February Earnings Guidance should be downgraded, to account for the April Risks;
- (g) failed to recommend to the Board of MG and MGRE on 13 April 2016, or at a reasonable time thereafter that the Board should consider whether the April Material Information required disclosure to the market.



- (h) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Act.

G Helou – Disqualification order

- 13 An order pursuant to section 206C, alternatively section 206E, of the Corporations Act that Helou be disqualified from managing corporations for such period as the Court considers appropriate.

AGAINST THE SECOND DEFENDANT (HINGLE)

H Hingle – Continuous disclosure declarations

- 14 Declarations pursuant to section 1317E of the Corporations Act that Hingle contravened section 674(2A) of the Corporations Act in that he was knowingly concerned in or party to a contravention by MGRE of section 674(2), whereby MGRE failed to disclose to the ASX that:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and

- (b) the February Earnings Guidance was unlikely to be achieved,

during each of the following periods:

- (c) between 29 February 2016 and 8.48am on 27 April 2016, by reason of the February Circumstances;
- (d) between 8 March 2016 and 8.48am on 27 April 2016, by reason of the Early March Risks;
- (e) between 22 March 2016 and 8.48am on 27 April 2016, by reason of the Late March Risks; and
- (f) between 13 April 2016 and 8.48am on 27 April 2016, by reason of the April Risks,

in circumstances where:



- (g) in each of the periods referred to in subparagraphs (c) to (f) above, MGRE and Hingle were each aware of the information referred to in subparagraphs (a) and (b) above;
- (h) MGRE was, by rule 3.1 of the ASX Listing Rules, required to notify the information to the ASX;
- (i) the information was not generally available; and
- (j) a reasonable person would expect the information to have a material effect on the price or value of the Units.

15 Declarations pursuant to section 1317E of the Corporations Act that Hingle contravened section 675(2A) of the Corporations Act in that he was knowingly concerned in or party to a contravention by MG of section 675(2), whereby MG failed to disclose to ASIC that:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and
- (b) the February Earnings Guidance was unlikely to be achieved,

during each of the following periods:

- (c) between 29 February 2016 and 8.48am on 27 April 2016, by reason of the February Circumstances;
- (d) between 8 March 2016 and 8.48am on 27 April 2016, by reason of the Early March Risks;
- (e) between 22 March 2016 and 8.48am on 27 April 2016, by reason of the Late March Risks; and
- (f) between 13 April 2016 and 8.48am on 27 April 2016, by reason of the April Risks,

in circumstances where:

- (g) in each of the periods referred to in subparagraphs (c) to (f) above, MG and Hingle were each aware of the information referred to in subparagraphs (a) and (b) above;
- (h) the information was not generally available; and



- (i) a reasonable person would expect the information to have a material effect on the price or value of the fully paid ordinary shares in MG.

I Hingle – Officers’ duties declarations – February 2016

16 A declaration that Hingle contravened section 180(1) of the Corporations Act between 26 February and 29 February 2016 by failing to exercise his powers and discharge his duties as an officer of MG and MGRE with reasonable care and diligence in that he:

- (a) failed to adequately assess and give due consideration to the effect of the February Risks and the Sachet Volume Risk on the financial position and performance of MG and MGRE;
- (b) failed to inform the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter of the February Risks;
- (c) failed to inform the Board of MG and MGRE the February Material Information;
- (d) failed to consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (e) failed to recommend to the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (f) failed to recommend to the Board of MG and MGRE on 26 February 2016, or at a reasonable time thereafter that the Board should consider whether the February Material Information required disclosure to the market;
- (g) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (h) caused or permitted MGRE to contravene section 674(2) of the Act
- (i) caused or permitted MG to contravene section 675(2) of the Act;
- (j) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.



17 A declaration that Hingle contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 26 February and 29 February 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:

- (a) failed to adequately assess and give due consideration to the effect of the February Risks on the financial position and performance of MG and MGRE;
- (b) failed to inform the Board of MGRE on 26 February 2016, or at a reasonable time thereafter of the February Risks;
- (c) failed to inform the Board of MGRE of the February Material Information;
- (d) failed to consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (e) failed to recommend to the Board of MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the forecast NPAT and FMP in the February RIF should be downgraded to account for the February Risks and the Sachet Volume Risk;
- (f) failed to recommend to the Board of MGRE on 26 February 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the February Material Information required disclosure to the market;
- (g) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively s 12DA of the ASIC Act;
- (h) caused or permitted MGRE to contravene section 674(2) of the Act;
- (i) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties; and
- (j) thereby failed to ensure that MGRE complied with the Corporations Act.

J Hingle – Officers’ duties declarations – Early March 2016

18 A declaration that Hingle contravened section 180(1) of the Corporations Act between 29 February and 8 March 2016 by failing to exercise his powers and discharge his duties as an officer of MG and MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;

- (b) failed to adequately assess and give due consideration to the effect of the Early March Risks on the financial position and performance of MG and MGRE;
- (c) failed to inform the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter of the Early March Risks;
- (d) failed to inform the Board of MG and MGRE of the Early March Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the Early March Risks;
- (f) failed to recommend to the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Earnings Guidance should be downgraded, to account for the Early March Risks;
- (g) failed to recommend to the Board of MG and MGRE on 8 March 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the Early March Material Information required disclosure to the market;
- (h) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) caused or permitted MG to contravene section 675(2) of the Act; and
- (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.

19 A declaration that Hingle contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 29 February and 8 March 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
- (b) failed to adequately assess and give due consideration to the effect of the March Risks on the financial position and performance of MG and MGRE;



- (c) failed to inform the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter of the Early March Risks;
- (d) failed to inform the Board of MG and MGRE of the Early March Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the Early March Risks;
- (f) failed to recommend to the Board of MG and MGRE on 8 March 2016 or a reasonable time thereafter that the Board should consider whether the February Earnings Guidance should be downgraded, to account for the Early March Risks;
- (g) failed to recommend to the Board of MG and MGRE on 8 March 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the Early March Material Information required disclosure to the market;
- (h) caused or permitted MGRE to contravene section 1041H of the Corporations Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Corporations Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Corporations Act.

K Hingle – Officers’ duties declarations – Late March 2016

- 20 A declaration that Hingle contravened section 180(1) of the Corporations Act between 8 March and 22 March 2016 by failing to exercise his powers and discharge his duties as an officer of MG and MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to adequately assess and give due consideration to the effect of the Late March Risks on the financial position and performance of MG and MGRE;



- (c) failed to inform the Board of MG and MGRE on 22 March 2016 or a reasonable time thereafter of the Late March Risks;
- (d) failed to inform the Board of MG and MGRE of the Late March Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the Late March Risks;
- (f) failed to recommend to the Board of MG and MGRE on 22 March 2016 or a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Earnings Guidance should be downgraded to account for the Late March Risks;
- (g) failed to recommend to the Board of MG and MGRE on 22 March 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the Late March Material Information required disclosure to the market;
- (h) caused or permitted MG and MGRE to contravene section 1041H of the Corporations Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Corporations Act;
- (j) caused or permitted MG to contravene section 675(2) of the Corporations Act;
- (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.

21 A declaration that Hingle contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 8 March and 22 March 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
- (b) failed to adequately assess and give due consideration to the effect of the Late March Risks on the financial position and performance of MG and MGRE;
- (c) failed to inform the Board of MGRE on 22 March 2016 or a reasonable time thereafter of the Late March Risks;

- (d) failed to inform the Board of MGRE of the Late March Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the Late March Risks;
- (f) failed to recommend to the Board of MGRE on 22 March 2016 or a reasonable time thereafter that the Board should consider whether the February Earnings Guidance should be downgraded to account for the Late March Risks;
- (g) failed to recommend to the Board of MGRE on 22 March 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the Late March Material Information required disclosure to the market;
- (h) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Act.

L Hingle – Officers’ duties declarations – April 2016

- 22 A declaration that Hingle contravened section 180(1) of the Corporations Act between 22 March and 26 April 2016 by failing to exercise his powers and discharge his duties as a director of MG and MGRE with reasonable care and diligence in that he:
- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
 - (b) failed to adequately assess and give due consideration to the effect of the April Risks on the financial position and performance of MG and MGRE;
 - (c) failed to inform the Board of MG and MGRE on 13 April 2016 or a reasonable time thereafter of the April Risks;
 - (d) failed to inform the Board of MG and MGRE of the April Material Information;
 - (e) failed to consider whether the February Earnings Guidance should be downgraded to take account of the April Risks;



- (f) failed to recommend to the Board of MG and MGRE on 13 April 2016 or a reasonable time thereafter that the Board of MG and MGRE should consider whether the February Earnings Guidance should be downgraded to account for the April Risks;
- (g) failed to recommend to the Board of MG and MGRE on 13 April 2016, or at a reasonable time thereafter that the Board of MG and MGRE should consider whether the April Material Information required disclosure to the market;
- (h) caused or permitted MG and MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) caused or permitted MG to contravene section 675(2) of the Act;
- (k) thereby exposed MG and MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties.

23 A declaration that Hingle contravened section 601FD(1)(b) and 601FD(1)(f) of the Corporations Act between 22 March and 26 April 2016 by failing to exercise his powers and discharge his duties as an officer of MGRE with reasonable care and diligence in that he:

- (a) failed to adequately monitor the financial position and performance of MG and MGRE against forecasts and against the February Earnings Guidance;
- (b) failed to assess and give due consideration to the effect of April Risks on the financial position and performance of MG and MGRE;
- (c) failed to inform the Board of MGRE on 13 April 2016 or a reasonable time thereafter of the April Risks;
- (d) failed to inform the Board of MGRE of the April Material Information;
- (e) failed to consider whether the February Earnings Guidance should be downgraded, to take account of the April Risks;
- (f) failed to recommend to the Board of MGRE on 13 April 2016 or a reasonable time thereafter that the Board should consider whether the February Earnings Guidance should be downgraded, to account for the April Risks;



- (g) failed to recommend to the Board of MGRE on 13 April 2016, or at a reasonable time thereafter that the Board of MGRE should consider whether the April Material Information required disclosure to the market;
- (h) caused or permitted MGRE to contravene section 1041H of the Act, further or alternatively section 12DA of the ASIC Act;
- (i) caused or permitted MGRE to contravene section 674(2) of the Act;
- (j) thereby exposed MGRE to the risk of proceedings for contraventions of the Act, legal costs and penalties;
- (k) thereby failed to ensure that MGRE complied with the Act.

M Hingle - disqualification

- 24 An order under section 206C, alternatively section 206E, of the Corporations Act that Hingle be disqualified from managing corporations for such period as the Court considers appropriate.

N Other orders

- 25 Costs.
- 26 Such further or other orders as the Court considers appropriate.

Date: 20 June 2019

Tim Honey
Litigation Counsel
Lawyer for the Plaintiff

This application will be heard by at Owen Dixon
Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at
*am/*pm on



NOTICE TO DEFENDANT(S) (IF ANY)

TO: Gary Helou

6 Malabar Road
Dural, NSW, 2158

AND Brad Hingle

105 Pebble Beach Drive
Runaway Bay, QLD, 4216

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

FILING

Date of filing:

Registrar

This Originating Process is filed by for the Plaintiff.

SERVICE

The Plaintiff's address for service is Level 7, 120 Collins Street, Melbourne, 3000.

It is intended to serve a copy of this Originating Process on each Defendant and on any person listed below:

Schedule A – Defined terms



April Material Information means as at 13 April 2016:

- (a) there was likely to be a material decrease in the February Earnings Guidance;
and
- (b) the February Earnings Guidance was unlikely to be achieved.

April Risks means, individually or collectively, the following material or significant risks, which were likely to adversely affect MG and MGRE's ability to achieve the February Earnings Guidance:

- (a) the February Risks, Early March Risks, Late March Risks had not been mitigated and, in fact, had increased;
- (b) the April RIF forecasted:
 - (i) the FY16 NPAT was likely to be \$52.4 million;
 - (ii) the FY16 FMP was likely to be \$5.33;
 - (iii) MG would sell 27,900 tonnes of Sachets from April to June 2016;
- (c) actual Sachet sales for April 2016 were materially below forecast, in that:
 - (i) 45% of the month had passed;
 - (ii) the month to date sales volume for Sachets was 738.8 tonnes (materially below the 8,176 tonnes forecast for April); and
 - (iii) the month to date gross sales revenue for Sachets was \$5.468 million (materially below the \$66.939 million forecast for April);
- (d) MG's finance team had reported that recent and forecast performance suggests an FMP of \$5.60 for FY16 is untenable;
- (e) Carbone had informed Helou and Hingle that:
 - (i) historically the forecast for Sachets had only ever been achieved in December 2015 when significant stock was sold for Chinese New Year;
 - (ii) no other historical forecast had been met to date in FY16;
 - (iii) supply was exceeding demand;



- (iv) sales orders from the major Australian customers like Costco, Woolworths and Coles had decreased; and
- (v) MG had reduced prices to international customers.

Early March Material Information means as at 8 March 2016:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and
- (b) the February Earnings Guidance was unlikely to be achieved.

Early March Risks means individually or collectively, the following material or significant risks, which were likely to adversely affect MG and MGRE's ability to achieve the February Earnings Guidance:

- (a) the February Risks had not been mitigated and in fact, had increased;
- (b) on 8 March 2016, the Executive General Manager of Dairy Foods at MG, Albert Moncau (**Moncau**) provided Helou and Hingle with an analysis of the risk profile for Sachet sales (**March Sachet Risk Profile**) which forecasted as the mid-case or "more realistic" scenario:
 - (i) 47,800 tonnes of Sachets would be sold during FY16 which was likely to result in a FY16 NPAT of approximately \$54.2 million and FMP of approximately \$5.37;
 - (ii) MG would sell 26,829 tonnes of Sachets from March to June 2016;
 - (iii) 18,934 tonnes of Sachets would be sold by Dairy Foods International between March to June 2016 at an average unit price of \$8.00 per unit;
- (c) actual sales for February 2016 were materially below forecast, in that 1645 tonnes of Sachets had been sold as against a forecast of 4560 tonnes in the February RIF;
- (d) actual sales for March 2016 were materially below forecast, in that:
 - (i) 25% of the month had passed;
 - (ii) the month to date sales volume for Sachets was 295.9 tonnes (materially below the 8,366.4 tonnes forecast for March);
 - (iii) the month to date gross sales revenue for Sachets was \$2.143 million (materially below the \$67.97 million forecast for March);

- (e) the March Sachet Risk Profile also forecasted:
- (i) that if the volume in the February RIF was to be maintained for the period 1 February to 30 June 2016, the estimated price for the higher volumes would need to be in line with domestic pricing, namely \$6.70 per kg;
 - (ii) 47,800 tonnes of Sachets would be sold during FY16 instead of the 56,500 tonnes which had been forecast in the February RIF for Sachets for FY16;
 - (iii) gross profit from Sachet sales of \$81.1 million instead of \$110.4 million (the latter of which had been forecasted for Sachet sales in the February RIF) representing a gross profit downgrade of -\$29.3 million.

February Circumstances means, together, the February Risks and the Sachet Volume Risk.

February Material Information means, as at 29 February 2016:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and
- (b) the February Earnings Guidance was unlikely to be achieved.

February Risks means, individually or collectively, the following material or significant risks, which were likely to adversely affect MG and MGRE's ability to achieve the forecast NPAT and FMP contained in the February RIF:

- (c) actual Sachet sales for February 2016 were below forecast in that:
 - (i) 90% of the month had passed;
 - (ii) total actual Sachet sales in Dairy Foods were 1,646 tonnes (materially below the 4,483 tonnes forecast for February in the February RIF and below the monthly figures that had been achieved in the previous 5 months);
 - (iii) total actual Sachet sales in Dairy Foods International were 464 tonnes (materially below the 1,658 tonnes forecast for February);
 - (iv) total actual Sachet sales in Dairy Foods Domestic/Australia were 782 tonnes (materially below the forecast of 2,018 tonnes for February);



- (d) of the 37,192 tonnes Sachet sales forecast for February to June 2016:
- (i) MG did not have in place contracts or firm commitments from customers for the entirety of the 37,192 tonnes forecast Sachet sales;
 - (ii) approximately half had not been allocated for sales to existing customers;
 - (iii) the unallocated amounts were forecast to be taken up by new distributors in the period from March to June 2016, who had not previously purchased from MG and had no distribution agreements in place with MG;
 - (iv) there were no significant forward orders for sales allocated to existing customers for March or April to June 2016;
 - (v) the Sachet sales forecast was based on production capacity, not sales capacity;
- (e) save for a minor exception, MG did not have physical distribution channels in China to enable MG to achieve the forecast sales in the February RIF:
- (i) MG had, to February 2016, sold its Sachets predominantly through online, e-commerce distributors and achieving the February Earnings Guidance required MG to develop MG's physical ("offline") distribution channels into stores in China;
 - (ii) MG's only existing physical, "offline" distributor for China, Foodgears, had historically purchased Sachets volumes of less than 100 tonnes per month representing less than 1.5% of the forecast Sachet volume in the February RIF;
 - (iii) no distribution agreements had been signed with offline distributors in China during FY16 (save for Foodgears);
 - (iv) Foodgears had advised that there was an oversupply of Sachets in the market;
- (f) there were no valuable supply agreements with major retailers in Asia;
- (g) there were no documented joint business plans with global eCommerce platforms such as JD.com and Tmall.com, or any other global eCommerce platform;

- (h) demand for Sachets in China was not well understood by MG and no research or analysis had been undertaken to determine the likely long term demand or ceiling for the demand for Sachets in China;
- (i) Foodgears had told MG that the market for milk powder had slowed down as there was an oversupply of milk powder and competitive prices from other channels and origins;
- (j) as for customers of MG in the domestic market:
 - (i) Costco was not taking all of its allocated Sachet volumes;
 - (ii) Woolworths had indicated that some stores were overstocked with Sachets;
 - (iii) Senior staff reported that there were high stocks of Sachets held by the biggest distributors;
- (k) the Head of Commercial Finance, Chris Carbone (**Carbone**) had advised Hingle on 23 February 2016 that the forecasted gross profit for FY16 was likely to decrease from approximately \$136.4 million to approximately \$91 million (a decrease of approximately \$45 million);
- (l) by reason of the matters in subparagraphs (a) to (i) above (individually or collectively), there was a material risk that the forecast Sachet sales in the February RIF would not be achieved.

Late March Material Information means as at 22 March 2016:

- (a) there was likely to be a material decrease in the February Earnings Guidance; and
- (b) the February Earnings Guidance was unlikely to be achieved.

Late March Risks means individually or collectively, the following material or significant risks, which were likely to adversely affect MG and MGRE's ability to achieve the February Earnings Guidance:

- (a) the February Risks and the Early March Risks continued, had not been mitigated and in fact, had increased;
- (b) the March RIF forecasted that:
 - (i) the FY16 NPAT was likely to be \$52.4 million;



- (ii) the FY16 FMP was likely to be \$5.32;
 - (iii) MG would sell 26,675 tonnes of Sachets from March to June 2016;
- (c) actual Sachet sales for March 2016 were materially below forecast, in that:
- (i) 65% of the month had passed;
 - (ii) the month to date sales volume for Sachets was 1,138.8 tonnes (materially below the 8,366.4 tonnes forecast for March);
 - (iii) the month to date gross sales revenue for Sachets was \$8.268 million (materially below the \$67.974 million forecast for March); and
- (d) Moncau had advised Helou and Hingle that:
- (i) March sales of sachet powder were looking better than January and February but were not good enough to achieve the forecast for the month of March set out in the March Sachet Risk Profile;
 - (ii) customers had surplus stock and did not need to place new orders with MG to meet their existing demand; and
 - (iii) MG had very limited offline distribution;
- (e) Head of Group Finance of MG, Daniel Egan had prepared an analysis which showed that:
- (i) even if the maximum number of Sachets that were able to be produced by MG for FY16 were sold by 30 June 2016 (ie 60,000 tonnes), the resulting NPAT and FMP would fall below the February Earnings Guidance, namely to \$60.1 million and \$5.52 respectively;
 - (ii) if a total of 35,000 tonnes of Sachets for FY16 were sold by 30 June 2016, the resulting NPAT and FMP were likely to be \$48.5 million and \$5.21 respectively;
 - (iii) if a total of 47,635 tonnes of Sachets for FY16 were sold by 30 June 2016 consistent with the "mid-case" of the March Sachet Risk Profile, the resulting NPAT and FMP were likely to be \$54.2 million and \$5.37 respectively,

Sachet Volume Risk means the risk identified in the February RIF as “Sachet volume” which:



- (a) was forecasted to have an impact to gross profit of -\$23.6 million;
- (b) was forecasted to have an impact to FMP of -10 cents; and
- (c) if it eventuated to the exclusion of all other risks and opportunities identified in the February RIF, would have resulted in an FMP materially below the February Earnings Guidance.

Schedule

No. VID



of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Plaintiff: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

First Defendant **GARY HELOU**

Second Defendant: **BRADLEY HINGLE**