

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: SAD187/2023
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
OPEN4SALE GLOBAL LTD ACN 159 248 067 & ORS
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Form 2 Originating process

(rules 2.2 and 15A.3)

No. _____ of 2023

Federal Court of Australia
District Registry: South Australia
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

OPEN4SALE GLOBAL LTD (ACN 159 248 067) and others
(named in the attached schedule)

Defendants

A. DETAILS OF APPLICATION

This is an application for:

- (a) declaratory relief pursuant to s 1317E of the *Corporations Act 2001* (Cth) (the **Act**);
- (b) orders for pecuniary penalties pursuant to s 1317G of the Act;
- (c) disqualification orders pursuant to ss 206C and/or 206E of the Act;
- (d) orders for injunctive relief pursuant to s 1324(1) of the Act and/or s 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**); and
- (e) costs,

in respect of:

- (f) the First Defendant, the Second Defendant and the Third Defendant each contravening ss 727(1), (2) and (6) of the Act, in relation to offers made, and the distribution of application forms, to issue shares in the First Defendant during the period 13 March 2019 to 26 July 2023 (**Relevant Period**), where the offers needed disclosure to investors under Part 6D.2 of the Act, without the First Defendant lodging a disclosure document with

Filed on behalf of: Australian Securities & Investments Commission, Plaintiff

Prepared by: Cynthia Di Blasio

Tel +61 431 909 334 Fax 1300 729 000

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Address for service Australian Securities and Investments Commission
Level 5, 100 Market Street, New South Wales, 2000



ASIC and without the offers being included in, or the application forms accompanying, a disclosure document.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s 1337B(1) of the Act and s 39B(1A)(c) of the *Judiciary Act 1903* (Cth).

In this Originating Process, the terms which are defined in the accompanying Concise Statement have the same meaning as they do in that document.

On the grounds stated in the accompanying Concise Statement, the Plaintiff claims:

DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF CHAPTER 6D OF THE CORPORATIONS ACT

Declarations pursuant to s 1317E of the Act that:

1. On each of the occasions described in the Schedule hereto, the First Defendant, Open4Sale Global Ltd (**Open4Sale Global**), contravened s 727(6) of the Act by making offers to Australian investors for the issue of shares in Open4Sale Global, and distributing application forms to Australian investors for the issue of shares in Open4Sale Global, in circumstances where the offers needed disclosure to investors under Part 6D.2 of the Act:
 - 1.1. without a disclosure document for the offer(s) being lodged with ASIC as required by, and in contravention of, s 727(1) of the Act; and
 - 1.2. where those offers and application forms were not included in or accompanied by a disclosure document as required by, and in contravention of, s 727(2) of the Act.
2. On each of the occasions described in the Schedule hereto, the Second Defendant, Simeon Michael La Barrie (**Mr La Barrie**), contravened s 727(6) of the Act by making, or causing to be made, offers to Australian investors for the issue of shares in Open4Sale Global, and causing the distribution of application forms to Australian investors for the issue of shares in Open4Sale Global, in circumstances where the offers needed disclosure to investors under Part 6D.2 of the Act:
 - 2.1. without a disclosure document for the offer(s) being lodged with ASIC as required by, and in contravention of, s 727(1) of the Act; and
 - 2.2. where those offers and application forms were not included in or accompanied by a disclosure document as required by, and in contravention of, s 727(2) of the Act.



3. On each of the occasions described in the Schedule hereto, the Third Defendant, Ewald Hafer (**Mr Hafer**), contravened s 727(6) of the Act by distributing or causing the distribution of application forms to Australian investors for the issue of shares in Open4Sale Global, in circumstances where the offers needed disclosure to investors under Part 6D.2 of the Act:
 - 3.1. without a disclosure document for the offer(s) being lodged with ASIC as required by, and in contravention of, s 727(1) of the Act; and
 - 3.2. where those application forms were not included in or accompanied by a disclosure document as required by, and in contravention of, s 727(2) of the Act.
4. Further or in the alternative to the declarations sought by prayer 2, Mr La Barrie was involved in the contraventions of s 727(6) by Open4Sale Global described in prayer 1 and the contraventions of s 727(6) by Mr Hafer described in prayer 3, within the meaning of s 1317E(4)(b) of the Act and is taken to have contravened s 727(6).
5. Further or in the alternative to the declarations sought by prayer 3, Mr Hafer was involved in the contraventions of s 727(6) by Open4Sale Global described in prayer 1 and the contraventions of s 727(6) by Mr La Barrie described in prayer 2, within the meaning of s 1317E(4)(b) of the Act and is taken to have contravened s 727(6).

DISQUALIFICATION ORDERS IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT

6. An order pursuant to s 206C of the Act that Mr La Barrie be disqualified from managing corporations for such period as the Court considers appropriate.
7. Further, or in the alternative, an order pursuant to s 206E of the Act that Mr La Barrie be disqualified from managing corporations for such period as the Court considers appropriate.
8. An order pursuant to s 206C of the Act that Mr Hafer be disqualified from managing corporations for such period as the Court considers appropriate.
9. Further, or in the alternative, an order pursuant to s 206E of the Act that Mr Hafer be disqualified from managing corporations for such period as the Court considers appropriate.



INJUNCTIVE RELIEF

10. An order pursuant to s 1324 of the Act or s 23 of the FCA Act, to operate in Australia for such period as the Court considers appropriate, restraining Open4Sale Global by itself, its servants, agents, employees or otherwise from:
 - 10.1. offering securities, or distributing application forms for such offers, that need disclosure under Part 6D.2 of the Act, unless (a) a disclosure document for the offer(s) has been lodged with ASIC as required under s 727(1) of the Act; and (b) the offers and application forms are included in or accompanied by a compliant disclosure document as required under s 727(2) of the Act;
 - 10.2. soliciting or accepting any monies from an existing shareholder in Open4Sale Global or any associate of such shareholder pursuant to any arrangement, where the existing shareholder:
 - 10.2.1. was issued securities in connection with an offer of securities which needed disclosure under Part 6D.2 of the Act; and
 - 10.2.2. was not provided with, and has not since been provided with, a compliant disclosure document as required under s 727(2) of the Act.
11. An order pursuant to s 1324 of the Act or s 23 of the FCA Act, to operate in Australia for such period as the Court considers appropriate, restraining Mr La Barrie by himself, his servants, agents, employees or otherwise from:
 - 11.1. offering securities, or distributing application forms for such offers, that need disclosure under Part 6D.2 of the Act, or from causing, assisting or procuring any other person to do so, or being in any way, directly or indirectly, knowingly concerned in or party to such conduct, unless (a) a disclosure document for the offer(s) has been lodged with ASIC as required under s 727(1) of the Act; and (b) the offers and application forms are included in or accompanied by a compliant disclosure document as required under s 727(2) of the Act;
 - 11.2. soliciting or accepting any monies from an existing shareholder in Open4Sale Global or any associate of such shareholder pursuant to any arrangement, where the existing shareholder:
 - 11.2.1. was issued securities in connection with an offer of securities which needed disclosure under Part 6D.2 of the Act; and



- 11.2.2. was not provided with, and has not since been provided with, a compliant disclosure document as required under s 727(2) of the Act.
12. An order pursuant to s 1324 of the Act or s 23 of the FCA Act, to operate in Australia for such period as the Court considers appropriate, restraining Mr Hafer by himself, his servants, agents, employees or otherwise from:
- 12.1. offering securities, or distributing application forms for such offers, that need disclosure under Part 6D.2 of the Act, or from causing, assisting or procuring any other person to do so, or being in any way, directly or indirectly, knowingly concerned in or party to such conduct, unless (a) a disclosure document for the offer(s) has been lodged with ASIC as required under s 727(1) of the Act; and (b) the offers and application forms are included in or accompanied by a compliant disclosure document as required under s 727(2) of the Act;
- 12.2. soliciting or accepting any monies from an existing shareholder in Open4Sale Global or any associate of such shareholder pursuant to any arrangement, where the existing shareholder:
- 12.2.1. was issued securities in connection with an offer of securities which needed disclosure under Part 6D.2 of the Act; and
- 12.2.2. was not provided with, and has not since been provided with, a compliant disclosure document as required under s 727(2) of the Act.

PECUNIARY PENALTIES IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT

13. An order pursuant to s 1317G of the Act that within 28 days of the order Open4Sale Global pay to the Commonwealth of Australia pecuniary penalties in the amount that the Court considers appropriate in respect of contraventions of the Act by Open4Sale Global described in prayer 1.
14. An order pursuant to s 1317G of the Act that within 28 days of the order Mr La Barrie pay to the Commonwealth of Australia pecuniary penalties in the amount that the Court considers appropriate in respect of contraventions of the Act described in prayer 2, and further or in the alternative, prayer 4.



15. An order pursuant to s 1317G of the Act that within 28 days of the order Mr Hafer pay to the Commonwealth of Australia pecuniary penalties in the amount that the Court considers appropriate in respect of the contraventions of the Act described in prayer 3, and further or in the alternative, prayer 5.

OTHER

16. An order that the Defendants pay the Plaintiff's costs of the proceeding.
17. Such further or other orders as the Court considers appropriate.

Date: 19 December 2023

A handwritten signature in black ink, appearing to read 'Cynthia Di Blasio', is written over a faint circular stamp.

Cynthia Di Blasio
Plaintiff's legal practitioner

This Originating Process was prepared by Suzanne Mackenzie and Stephen Phillips of Counsel and Cynthia Di Blasio, Lawyer.

This application will be heard by the Federal Court of Australia, 3 Angas Street, Adelaide South Australia at _____ am/pm on _____ 2024.



SCHEDULE CONTRAVENING OFFERS

Offers were made, and application forms distributed, during the Relevant Period in connection with the following issuances of shares.

Contravention No.	Deposit Date	Application Form Date or Distribution Date	Investor or Potential Investor	Amount Invested
1.	07/09/2019	17/09/2019	Investor 1	\$5,000.00
2.	12/09/2019	04/09/2019	Investor 2	\$5,000.00
3.	16/09/2019	15/09/2019	Investor 1	\$7,000.00
4.	20/09/2019	09/10/2019	Investor 3	\$3,000.00
5.	20/09/2019	21/09/2019	Investor 4	\$5,000.00
6.	20/09/2019	01/10/2019	Investor 5	\$3,000.00
7.	03/10/2019	02/10/2019	Investor 6	\$5,000.00
8.	03/10/2019	03/10/2019	Investor 7	\$10,000.00
9.	03/10/2019	03/10/2019	Investor 8	\$10,000.00
10.	03/10/2019	03/10/2019	Investor 9	\$10,000.00
11.	03/10/2019	03/10/2019	Investor 10	\$5,000.00
12.	14/10/2019	10/10/2019	Investor 11	\$30,000.00
13.	01/11/2019	31/10/2019	Investor 1	\$5,000.00
14.	08/11/2019	02/11/2019	Investor 12	\$10,000.00
	08/11/2019	02/11/2019	Investor 12	\$10,000.00
15.	10/11/2019	02/11/2019	Investor 13	\$10,000.00
16.	21/11/2019	25/11/2019	Investor 14	\$15,000.00
	22/11/2019	25/11/2019	Investor 14	\$5,000.00
	22/11/2019	25/11/2019	Investor 14	\$5,000.00
	23/11/2019	25/11/2019	Investor 14	\$5,000.00
	25/11/2019	25/11/2019	Investor 14	\$10,000.00
17.	02/12/2019	24/11/2019	Investor 15	\$20,000.00
	03/12/2019	24/11/2019	Investor 15	\$16,000.00
	05/12/2019	24/11/2019	Investor 15	\$24,650.00
18.	04/12/2019	05/12/2019	Investor 16	\$15,000.00

Filed on behalf of:

Australian Securities & Investments Commission, Plaintiff

Prepared by:

Cynthia Di Blasio

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Address for service

Australian Securities and Investments Commission
Level 5, 100 Market Street, New South Wales, 2000



Contravention No.	Deposit Date	Application Form Date or Distribution Date	Investor or Potential Investor	Amount Invested
19.	05/12/2019	05/12/2019	Investor 17	\$10,000.00
20.	05/12/2019	04/12/2019	Investor 18	\$3,000.00
	05/12/2019	04/12/2019	Investor 18	\$2,000.00
21.	11/12/2019	08/12/2019	Investor 19	\$13,000.00
22.	11/12/2019	12/12/2019	Investor 20	\$26,000.00
23.	14/12/2019	17/12/2019	Investor 16	\$5,000.00
24.	30/12/2019	26/12/2019	Investor 21	\$15,000.00
25.	28/01/2020	02/02/2020	Investor 22	\$1,000.00
26.	08/02/2020	08/02/2020	Investor 23	\$10,000.00
27.	13/02/2020	14/02/2020	Investor 24	\$10,000.00
28.	13/02/2020	12/02/2020	Investor 25	\$10,000.00
29.	20/02/2020	22/02/2020	Investor 26	\$2,000.00
30.	21/02/2020	24/02/2020	Investor 27	\$10,000.00
	24/02/2020	24/02/2020	Investor 27	\$5,000.00
31.	27/02/2020	28/02/2020	Investor 15	\$23,500.00
32.	28/02/2020	28/02/2020	Investor 28	\$15,000.00
33.	28/02/2020	28/02/2020	Investor 29	\$12,100.00
34.	28/02/2020	01/03/2020	Investor 27	\$7,500.00
35.	10/03/2020	15/02/2020	Investor 30	\$10,000.00
36.	13/03/2020	14/03/2020	Investor 31	\$20,000.00
37.	16/03/2020	15/03/2020	Investor 32	\$10,000.00
38.	19/03/2020	15/03/2020	Investor 27	\$10,000.00
39.	01/04/2020	07/04/2020	Investor 33	\$15,000.00
	08/04/2020	07/04/2020	Investor 33	\$15,000.00
40.	16/04/2020	02/05/2020	Investor 34	\$5,000.00
41.	28/04/2020	02/05/2020	Investor 35	\$10,000.00
	29/04/2020	02/05/2020	Investor 35	\$10,000.00
42.	06/05/2020	12/05/2020	Investor 21	\$10,000.00
	06/05/2020	12/05/2020	Investor 21	\$15,000.00
43.	06/05/2020	07/05/2020	Investor 36	\$7,500.00
44.	08/05/2020	10/05/2020	Investor 37	\$10,000.00
	11/05/2020	10/05/2020	Investor 37	\$6,000.00



Contravention No.	Deposit Date	Application Form Date or Distribution Date	Investor or Potential Investor	Amount Invested
45.	08/05/2020	09/05/2020	Investor 38	\$10,000.00
46.	26/05/2020	26/05/2020	Investor 39	\$20,000.00
47.	05/08/2020	04/08/2020	Investor 40	\$10,000.00
48.	12/10/2020	13/10/2020	Investor 41	\$5,000.00
49.	28/10/2020	20/11/2020	Investor 35	\$40,000.00
	29/10/2020	20/11/2020	Investor 35	\$10,000.00
50.	02/11/2020	28/10/2020	Investor 42	\$5,000.00
51.	20/11/2020	24/11/2020	Investor 17	\$10,000.00
52.	24/11/2020	24/11/2020	Investor 40	\$5,000.00
53.	24/11/2020	24/11/2020	Investor 43	\$10,000.00
54.	28/11/2020	30/11/2020*	Investor 20	\$10,000.00
55.	03/12/2020	01/12/2020	Investor 44	\$10,000.00
56.	16/12/2020	15/12/2020	Investor 45	\$5,000.00
57.	16/12/2020	15/12/2020	Investor 46	\$5,000.00
58.	17/12/2020	28/12/2020	Investor 47	\$50,000.00
59.	22/12/2020	28/12/2020	Investor 48	\$10,000.00
	23/12/2020	28/12/2020	Investor 48	\$5,000.00
60.	22/12/2020	23/11/2020	Investor 49	\$9,000.00
61.	20/01/2021	21/01/2021	Investor 25	\$20,000.00
62.	21/01/2021	21/01/2021	Investor 50	\$5,000.00
63.	21/01/2021	20/01/2021	Investor 51	\$5,500.00
64.	21/01/2021	22/01/2021	Investor 43	\$5,000.00
65.	14/02/2021	15/02/2021	Investor 52	\$20,000.00
	15/02/2021	15/02/2021	Investor 52	\$2,000.00
66.	21/02/2021	20/02/2021	Investor 53	\$5,000.00
67.	25/02/2021	27/02/2021	Investor 54	\$5,000.00
68.	29/03/2021	28/03/2021	Investor 55	\$10,000.00
69.	29/03/2021	28/03/2021	Investor 56	\$10,000.00
70.	25/05/2021	25/05/2021	Investor 56	\$5,000.00
71.	25/05/2021	25/05/2021	Investor 57	\$25,000.00
	28/05/2021	25/05/2021	Investor 57	\$20,000.00
72.	26/05/2021	25/05/2021	Investor 58	\$20,000.00



Contravention No.	Deposit Date	Application Form Date or Distribution Date	Investor or Potential Investor	Amount Invested
73.	27/05/2021	25/05/2021	Investor 59	\$10,000.00
74.	27/05/2021	25/05/2021	Investor 60	\$10,000.00
75.	27/05/2021	25/05/2021	Investor 61	\$10,000.00
76.	27/05/2021	26/05/2021	Investor 62	\$10,000.00
77.	28/05/2021	27/05/2021	Investor 63	\$25,000.00
78.	01/06/2021	29/05/2021	Investor 64	\$10,000.00
79.	04/07/2021	05/07/2021	Investor 40	\$5,000.00
80.	04/07/2021	03/07/2021	Investor 43	\$5,000.00
81.	17/08/2021	13/08/2021	Investor 65	\$20,000.00
	18/08/2021	13/08/2021	Investor 65	\$10,000.00
82.	26/08/2021	26/08/2021	Investor 66	\$50,000.00
83.	10/10/2021	10/10/2021	Investor 60	\$10,000.00
	10/10/2021	10/10/2021	Investor 60	\$5,000.00
84.	01/11/2021	01/11/2021	Investor 67	\$10,000.00
85.	01/11/2021	05/11/2021*	Investor 68	\$10,000.00
86.	01/11/2021	05/11/2021*	Investor 69	\$1,000.00
87.	01/11/2021	05/11/2021*	Investor 70	\$20,000.00
88.	02/11/2021	02/11/2021	Investor 71	\$20,000.00
89.	03/11/2021	01/11/2021	Investor 72	\$15,000.00
	04/11/2021	01/11/2021	Investor 72	\$15,000.00
90.	17/12/2021	15/12/2021	Investor 73	\$15,000.00
91.	17/12/2021	23/12/2021*	Investor 74	\$2,500.00
92.	17/12/2021	23/12/2021*	Investor 75	\$2,500.00
93.	31/12/2021	30/12/2021	Investor 76	\$30,000.00
94.	18/01/2022	18/01/2022	Investor 77	\$5,000.00
95.	10/02/2022	09/02/2022	Investor 78	\$10,000.00
96.	10/02/2022	10/02/2022	Investor 79	\$5,000.00
97.	10/02/2022	10/02/2022	Investor 80	\$10,000.00
98.	29/09/2019	01/10/2019	Investor 81	\$10,000.00
	30/09/2019	01/10/2019	Investor 81	\$10,000.00
99.	10/01/2020	10/01/2020	Investor 82	\$10,000.00
100.	20/02/2020	19/02/2020	Investor 83	\$10,000.00



Contra- vention No.	Deposit Date	Application Form Date or Distribution Date	Investor or Potential Investor	Amount Invested
101.	29/01/2021	28/01/2021	Investor 83	\$20,000.00

* Asterisk denotes the date identified is the date of the share certificate.

In addition to the offers made and application forms distributed in connection with the issuances of shares identified in the Table above, the Contravening Offers include the distribution of application forms to (i) Investor 84, by email sent on 30 November 2020; and (ii) Investor 85 by email sent on 4 March 2021.

**B. NOTICE TO DEFENDANTS****TO:**

First Defendant – OPEN4SALE GLOBAL LTD (ACN 159 248 067)
c/- Belperio Connell Lawyers
Attention: Mr Brendan Connell
94 Sturt Street
ADELAIDE SA 5000
Email: brendan@bclaw.au

Second Defendant – SIMEON MICHAEL LA BARRIE
c/- Belperio Connell Lawyers
Attention: Mr Brendan Connell
94 Sturt Street
ADELAIDE SA 5000
Email: brendan@bclaw.au

Third Defendant – EWALD HAFER
c/- Belperio Connell Lawyers
Attention: Mr Brendan Connell
94 Sturt Street
ADELAIDE SA 5000
Email: brendan@bclaw.au

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.



C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

D. FILING

Date of filing:

.....
Registrar

This originating process is filed by Cynthia Di Blasio for the Plaintiff.

E. SERVICE

The Plaintiff's address for service is:

Place: Australian Securities and Investments Commission
Level 5
100 Market Street
SYDNEY NSW 2000

Email: cynthia.diblasio@asic.gov.au / andrew.smith3@asic.gov.au

It is intended to serve a copy of this originating process on each Defendant.



SCHEDULE OF PARTIES

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

OPEN4SALE GLOBAL LTD (ACN 159 248 067)

First Defendant

SIMEON MICHAEL LA BARRIE

Second Defendant

EWALD HAFER

Third Defendant