

## 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)
Date of Lodgment:	7/03/2023 10:04:58 AM AEDT
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File Number:	NSD163/2023
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NOUMI LIMITED & ORS
Registry:	NEW SOUTH WALES 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.



No. of 20

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

**Australian Securities and Investments Commission**

Plaintiff

**NOUMI LIMITED ACN 002 814 235 and the others listed in the schedule**

Defendants

**ORIGINATING PROCESS**

**A. DETAILS OF APPLICATION**

This application is made under sections 206C(1), 206E(1), 1317E, 1317G and 1324 of the *Corporations Act 2001* (Cth) (**Corporations Act**), and sections 21 and 23 of the *Federal Court of Australia Act 1976* (Cth).

The plaintiff seeks declarations of contraventions by the First Defendant (Noumi Limited, formerly named Freedom Foods Limited, **FFG**) of section 674(2) of the Corporations Act (as in force during the period from 29 August 2019 to 25 May 2020), declarations of contraventions by the Second Defendant and Third Defendant of sections 180(1), 344, 674(2A) and 1309(2) of the Corporations Act, orders that the First to Third Defendants each pay to the Commonwealth a pecuniary penalty or penalties, and orders that the Second and Third Defendants be disqualified.

In this Originating Process, terms which are defined in the Concise Statement dated 24 February 2023 have the same meaning in this document. The following terms used below and defined in the Concise Statement have the same meaning as the Concise Statement as follows: FY19 Fair View Representation ([37(a)]); FY19 Financial Report ([3]); FY19 Financial Report Representations ([35]); FY19 Information ([13]); HY20 Fair View Representation ([37(b)]); HY20 Financial Report ([3]); HY20 Financial Report Representations ([36]); HY20 Inventory Information ([24]); HY20 Revenue Information ([25]); No Write-Off Policy ([27]).

On the facts stated in the plaintiff's Concise Statement, the plaintiff seeks the following orders:

**Against the First Defendant (FFG)**

1. A declaration that in the period between 29 August 2019 and 25 May 2020, the First Defendant contravened s 674(2) of the Corporations Act by failing to notify the ASX of the FY19 Information.
2. A declaration that in the period between 27 February 2020 and 25 May 2020, the First Defendant contravened s 674(2) of the Corporations Act by failing to notify the ASX of each of the following:

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Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Caitlin Murray		
Law firm (if applicable)	MinterEllison		
Tel	+61 2 9921 4279	Fax	+61 2 9921 8123
Email	caitlin.murray@minterellison.com		
<b>Address for service</b>	40 Governor Macquarie Tower, 1 Farrer Pl, Sydney NSW 2000		
(include state and postcode)	Our reference: 1345533		

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- (a) the HY20 Inventory Information; and
  - (b) the HY20 Revenue Information.
3. An order pursuant to s 1317G(1) of the Corporations Act that the First Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 674(2) of the Corporations Act.
  4. Costs.
  5. Such further orders or other orders or relief as the Court thinks fit.

**Against the Second Defendant (Rory Macleod)**

6. A declaration that the Second Defendant contravened s 674(2A) of the Corporations Act:
  - (a) between 1 October 2019 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the FY19 Information;
  - (b) between 27 February 2020 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the HY20 Inventory Information; and
  - (c) between 27 February 2020 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the HY20 Revenue Information.
7. A declaration that the Second Defendant contravened s 344(1) of the Corporations Act in that:
  - (a) he failed to take all reasonable steps to comply with or to secure compliance by the First Defendant with respect to s 297 of the Corporations Act in respect of the FY19 Financial Report; and
  - (b) he failed to take all reasonable steps to comply with or to secure compliance by the First Defendant with respect to s 305 of the Corporations Act in respect of the HY20 Financial Report.
8. A declaration that the Second Defendant contravened s 1309(2) of the Corporations Act by making available or giving the FY19 Financial Report Representations, or authorising or permitting the making available or giving of the information comprising the FY19 Financial Report Representations, to directors and auditors of the First Defendant being information that:
  - (a) was false or misleading in a material particular; or
  - (b) had omitted from it the FY19 Information, the omission of which rendered the FY19 Financial Report Representations misleading in a material respect,
 without having taken reasonable steps to ensure that the FY19 Financial Report Representations were not false or misleading in a material particular and/or did not have omitted from them the FY19 Information.
9. A declaration that the Second Defendant contravened s 1309(2) of the Corporations Act by making available or giving the information, comprising the HY20 Financial Report Representations, or authorising or permitting the making available or giving of the HY20 Financial Report Representations, to directors and auditors of the First Defendant being information that:
  - (a) was false or misleading in a material particular; or



- (b) had omitted from it the HY20 Inventory Information and/or the HY20 Revenue Information, the omission of which rendered the HY20 Financial Report Representations misleading in a material respect,

without having taken reasonable steps to ensure that the HY20 Financial Report Representations were not false or misleading in a material particular and/or did not have omitted from them the HY20 Inventory Information and/or the HY20 Revenue Information.

10. A declaration that the Second Defendant contravened s 1309(2) of the Corporations Act by making available or giving the information, comprising the FY19 Fair View Representation, or authorising or permitting the making available or giving of the FY19 Fair View Representation to the members of FFG and the ASX, being information that:

- (a) was false or misleading in a material particular; or
- (b) omitted from it the FY19 Information, the omission of which rendered the FY19 Fair View Representation misleading in a material respect,

without having taken reasonable steps to ensure the FY19 Fair View Representation was not false or misleading in a material particular and/or did not have omitted from it the FY19 Information.

11. A declaration that the Second Defendant contravened s 1309(2) of the Corporations Act by making available or giving the information comprising the HY20 Fair View Representation, or authorising or permitting the making available or giving of the HY20 Fair View Representation, to the members of FFG and the ASX, being information that:

- (a) was false or misleading in a material particular; or
- (b) omitted from it the HY20 Inventory Information and/or the HY20 Revenue Information, the omission of which rendered the HY20 Fair View Representation misleading in a material respect,

without having taken reasonable steps to ensure the HY20 Fair View Representation was not false or misleading in a material particular and/or did not have omitted from it the HY20 Inventory Information and/or the HY20 Revenue Information.

12. A declaration that during the period 29 August 2019 to 30 April 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer and Managing Director of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation:

- (a) by failing to ensure that the First Defendant had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory and the preparation of financial statements in accordance with the Corporations Act and Australian Accounting Standards;
- (b) by failing to take all reasonable steps to qualify, withdraw or correct the FY19 Financial Report to mitigate the risk that the First Defendant's financial statements were inaccurate or misleading;
- (c) by failing to take all reasonable steps to disclose the FY19 Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
- (d) by failing to take all reasonable steps to ensure that the Second Defendant had sufficient knowledge of the First Defendant's inventories including the value of Unsaleable Inventory;
- (e) by disseminating the No-Write Off Policy;



- (f) by failing to take all reasonable steps to ensure that he had sufficient knowledge of conventional accounting practices to enable him to carry out adequately his responsibilities, including knowledge of circumstances that might require a write down of assets in connection with the preparation and release of the FY19 Financial Report;
  - (g) by failing to take all steps necessary to ensure the FY19 Financial Report gave a true and fair view of the financial position and performance of FFG.
13. A declaration pursuant to s 1317E(1) of the Corporations Act that, during the period 27 February 2020 to 30 April 2020, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer and Managing Director of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation:
- (a) in causing or otherwise permitting the First Defendant to disclose the HY20 Financial Report;
  - (b) by failing to ensure that the First Defendant had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory, the recognition of revenue and the preparation of financial statements in accordance with the Corporations Act and Australian Accounting Standards;
  - (c) by failing to take all reasonable steps to qualify, withdraw or correct the HY20 Financial Report to mitigate the risk that the First Defendant's financial statements were inaccurate or misleading;
  - (d) by failing to take all reasonable steps to disclose the HY20 Inventory Information and the HY20 Revenue Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
  - (e) by failing to take all reasonable steps to ensure that the Second Defendant had sufficient knowledge of the First Defendant's inventories including the value of Unsaleable Inventory;
  - (f) by disseminating the No Write-Off Policy;
  - (g) by failing to take all reasonable steps to ensure that the Second Defendant had sufficient knowledge of conventional accounting practices to enable him to carry out adequately his responsibilities, including:
    - (i) knowledge of circumstances that might require a write down of assets in connection with the preparation and release of the HY20 Financial Report;
    - (ii) knowledge of circumstances where sales revenue ought not be recognised; and
  - (h) by failing to take all steps necessary to ensure the HY20 Financial Report gave a true and fair view of the financial position and performance of FFG.
14. A declaration pursuant to s 1317E(1) of the Corporations Act that the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Executive Officer and Managing Director of a corporation in the First Defendant's circumstances and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation in causing or otherwise permitting the First Defendant to contravene s 674(2) of the Corporations Act, or alternatively, in creating a significant risk of such non-compliance, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company and thereby expose the First Defendant to the risk of legal proceedings, including declarations of contraventions and civil pecuniary penalties.



15. Orders pursuant to s 1317G(1) of the Corporations Act that the Second Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of ss 180(1), 344, 674(2A), and 1309(2) of the Corporations Act.
16. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Second Defendant from managing corporations for a period to be determined by the Court.
17. Costs.
18. Such further or other orders as the Court thinks fit.

**Against the Third Defendant (Campbell Nicholas)**

19. A declaration that the Third Defendant contravened s 674(2A) of the Corporation Act:
  - (a) between 29 August 2019 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the FY19 Information;
  - (b) between 27 February 2020 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the HY20 Inventory Information; and
  - (c) between 27 February 2020 and 25 May 2020, by reason of his involvement in the First Defendant's contravention of s 674(2) by its failure to notify the ASX of the HY20 Revenue Information.
20. A declaration that the Third Defendant contravened s 1309(2) of the Corporations Act by making available or giving the information comprising FY19 Financial Report Representations, or authorising or permitting the making available or giving of the FY19 Financial Report Representations, to directors and auditors of the First Defendant being information that:
  - (a) was false or misleading in a material particular; or
  - (b) had omitted from it the FY 19 Information, the omission of which rendered the FY19 Financial Report Representations misleading in a material respect,

without having taken reasonable steps to ensure that the FY19 Financial Report Representations were not false or misleading in a material particular and/or did not have omitted from them the FY19 Information.
21. A declaration that the Third Defendant contravened s 1309(2) of the Corporations Act by making available or giving the information comprising the HY20 Financial Report Representations, or authorising or permitting the making available or giving of the HY20 Financial Report Representations to directors and auditors of the First Defendant being information that:
  - (a) was false or misleading in a material particular; or
  - (b) had omitted from it the HY20 Inventory Information and/or the HY20 Revenue Information, the omission of which rendered the HY20 Financial Report Representations misleading in a material respect,

without having taken reasonable steps to ensure the HY20 Financial Report Representations were not false or misleading in a material particular and/or did not have omitted from them the HY20 Inventory Information and/or the HY20 Revenue Information.
22. A declaration that during the period 29 August 2019 to 30 April 2020, the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of





a corporation in FFG's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation:

- (a) in causing or otherwise permitting FFG to disclose the FY19 Financial Report;
- (b) by failing to ensure that the First Defendant had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory and the preparation of financial statements in accordance with the Corporations Act and Australian Accounting Standards;
- (c) by failing to take all reasonable steps to qualify, withdraw or correct the FY19 Financial Report to mitigate the risk that the First Defendant's financial statements were inaccurate or misleading;
- (d) by failing to take all reasonable steps to disclose the FY19 Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
- (e) by failing to take all reasonable steps to ensure that the Third Defendant had sufficient knowledge of the First Defendant's inventories including the value of Unsaleable Inventory; and
- (f) by failing to take all steps necessary to ensure the FY19 Financial Report gave a true and fair view of the financial position and performance of FFG.

23. A declaration pursuant to s 1317E(1) of the Corporations Act that, during the period 27 February 2020 to 30 April 2020, the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in the First Defendant's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation:

- (a) in causing or otherwise permitting the First Defendant to disclose the HY20 Financial Report;
- (b) by failing to ensure that the First Defendant had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory, the recognition of revenue and the preparation of financial statements in accordance with the Corporations Act and Australian Accounting Standards;
- (c) by failing to take all reasonable steps to qualify, withdraw or correct the HY20 Financial Report to mitigate the risk that the First Defendant's financial statements were inaccurate or misleading;
- (d) by failing to take all reasonable steps to disclose the HY20 Inventory Information and the HY20 Revenue Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
- (e) by failing to take all reasonable steps to ensure that the Third Defendant had sufficient knowledge of the First Defendant's inventories including the value of Unsaleable Inventory; and
- (f) by failing to take all steps necessary to ensure the HY20 Financial Report gave a true and fair view of the financial position and performance of FFG.

24. A declaration pursuant to s 1317E(1) of the Corporations Act that the Third Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person would exercise, if he or she were the Chief Financial Officer of a corporation in FFG's circumstances and occupied the office held by the Third Defendant, and had the same responsibilities within the corporation in causing or otherwise permitting FFG to contravene s 674(2) of the Corporations Act, or alternatively, in creating a significant risk of such



non-compliance, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company and thereby exposing the First Defendant to the risk of legal proceedings, including declarations of contraventions and civil pecuniary penalties.

25. An order pursuant to s 1317G(1) of the Corporations Act that the Third Defendant pay to the Commonwealth of Australia a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of ss 180(1), 674(2A) and 1309(2) of the Corporations Act.
26. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Third Defendant from managing corporations for a period to be determined by the Court.
27. Costs.
28. Such further or other orders as the Court thinks fit.

Date: 24 February 2023

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

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Signed by Caitlin Maria Murray  
Lawyer for the Plaintiff



**B. NOTICE TO DEFENDANTS**

TO:

NOUMI LIMITED ACN 002 814 235 of Level 11, 5 Martin Place, Sydney NSW 2000

Rory Macleod of Level 5, 60 Martin Place, Sydney NSW 2000

Campbell Nicholas of Level 7, 60 Carrington Street, Sydney NSW 2000

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.

Before appearing before the Court, you must if you have already done so file a notice of

appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

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. FILING**

Date of filing: 24 February 2023

Registrar

This originating process is filed by Australian Securities and Investments Commission.

**D. SERVICE**

The Plaintiff's address for service is:

Place: 40 Governor Macquarie Tower, 1 Farrer Pl, Sydney NSW 2000 (Attention: Caitlin Murray)

Email: [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

The Plaintiff's address is Level 5, 100 Market Street, Sydney, NSW, 2000.

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

## Schedule



No.     NSD     of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

### Defendants

First Defendant:                NOUMI LIMITED ACN 002 814 235

Second Defendant:            Rory Macleod

Third Defendant:                Campbell Nicholas

Date: 7 March 2023