

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NOUMI LIMITED & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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.



Statement of claim

NSD 163 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General
NPA: Commercial and Corporations, Regulator and Consumer Protection

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**Noumi Limited (ACN 002 814 235) AND OTHERS NAMED IN THE SCHEDULE TO THE
ORIGINATING PROCESS**

Defendant

A. The Parties

1. The Plaintiff (**ASIC**) is a body corporate:
 - a. established by s 7 of the Australian Securities Commission Act 1989 (Cth);
 - b. continuing in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - c. able to sue in its corporate name by reason of s 8 of the ASIC Act.
2. The first defendant, Noumi Ltd, formerly named Freedom Foods Limited, (**FFG**), was incorporated on 30 July 1984 and is and was at all material times since 1 June 2019:
 - a. a public company registered under the provisions of the *Corporations Act 2001* (Cth) (**Act**); and
 - b. able to be sued.
3. On and from 1 May 2008 to 29 June 2020, the Second Defendant, Rory Macleod (**Macleod**), was:

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- a. a director of FFG;
 - b. the Chief Executive Officer of FFG;
 - c. the Managing Director of FFG; and
 - d. a member of the Audit, Risk and Compliance Committee of FFG.
4. The Third Defendant, Campbell Nicholas (**Nicholas**), was:
- a. the Chief Financial Officer of FFG between 1 September 2016 and 23 June 2020; and
 - b. the Company Secretary of FFG between 12 September 2016 and 23 June 2020.

B. Factual Background

FFG's business and inventory practices

5. Between 1 January 2019 and 30 June 2020:
- a. FFG was in the business of manufacturing and selling dairy, plant-based beverages, nutritional products, cereal and snack foods;
 - b. FFG had four main sites from which it conducted its business (**Main Sites**), which were:
 - i. 102 Old Dookie Road, Shepparton VIC 3630 (**Shepparton** or **Shepparton Warehouse**);
 - ii. 8a Williamson Road, Ingleburn NSW 2565 (**Ingleburn**);
 - iii. 379 Murrumbidgee Road, Stanbridge NSW 2705 (**Leeton**); and
 - iv. 2/333 Frankston-Dandenong Road, Dandenong South VIC 3175, and 73 Monash Drive, Dandenong South VIC 3175 (**Dandenong**);
 - c. FFG used an inventory management software named QAD (**QAD**);
 - d. FFG monitored its inventory by use of QAD;
 - e. FFG produced, from time to time, inventory reports exported or extracted from QAD, referred to internally variously as “inventory review reports”, “inventory movement reports” and “inventory analysis reports”;

- f. QAD contained a record of FFG's inventory levels (by number of items) and inventory values (in dollars);
 - g. each item of inventory recorded in QAD had assigned to it a status code (**Status Code**);
 - h. each QAD Status Code was assigned as either:
 - i. "non-nettable", or
 - ii. "nettable";
 - i. FFG could only raise invoices against items of inventory coded in QAD as having a Status Code that was "nettable";
 - j. FFG could not raise invoices against items recorded in QAD as having a Status Code that was "non-nettable";
 - k. only inventory coded in QAD as having a Status Code that was "nettable" was available for sale;
 - l. inventory coded in QAD as having a Status Code that was "non-nettable" was not available for sale; and
 - m. the inventory that was assigned a Status Code that was "non-nettable" (**Non-Nettable Inventory**) included stock that was non-existent (or "virtual"), reject, expired or otherwise unsaleable stock for which no sale price or other monetary benefit was likely to be received (**Unsaleable Inventory**).
6. On and from 1 January 2019, by reason of his position as CEO and Managing Director of FFG, Macleod knew or ought to have known of the facts referred to in paragraph 5.
7. On and from 1 January 2019, by reason of his position as CFO and Company Secretary of FFG, Nicholas knew or ought to have known of the facts referred to in paragraph 5.

Relevant FFG Policies

8. On and from about 1 January 2018 until 30 June 2020, FFG stated that it had in place an accounting policy that inventory would be valued at the lower of cost and net realisable value, being the estimated selling price in the ordinary course of business, less estimated costs of completion and the estimated costs necessary to make the sale (**Inventory Accounting Policy**).

Particulars

FY19 Financial Report (FRG.0003.0003.0993), HY20 Financial Report, (FRG.0003.0008.0766).

9. One consequence of FFG's Inventory Accounting Policy was that the value of Unsaleable Inventory was required to be written down and recorded as an expense in the period that the write-down or loss occurred.
10. On and from about 1 January 2018 until 30 June 2020, Macleod knew of the matters pleaded in paragraphs 8 and 9 above.

Particulars

The Inventory Accounting Policy was disclosed in the FY18, FY19 and FY20 Financial Reports of FFG.

Macleod's knowledge of the accounting treatment of inventory that did not have any realisable value is to be inferred from his position as CEO of FFG, from his dissemination of the No-Write Off Policy referred to in paragraph 12 below and from his further knowledge of the matters set out in the particulars below. Alternatively, he knew of the matters referred to in paragraph 8 above and in the particulars below and deliberately failed to make inquiries that would have confirmed the matters in paragraph 9 above.

The FY17 Annual Report disclosed that FFG expected to incur one off costs of closure of the Taren Point factory, including write down of inventory on product formats to be discontinued, which costs would be written off and classified as a non-operating expense in the FY18 full year financial reporting.

The FY18 Annual Report disclosed that FFG incurred costs associated with the ceasing of production of plant-based beverages at Taren Point and the write down of inventory on discontinued product formats.

Macleod, by reason of his position in FFG, authorised and knew of the write downs of inventory at Taren Point, and that the effect of those write downs was to cause FFG to incur an expense.

11. On and from about 1 January 2018 until 30 June 2020, Nicholas knew of the matters pleaded in paragraphs 8 and 9 above.

Particulars

The Inventory Accounting Policy was disclosed in the FY18, FY19 and FY20 Financial Reports of FFG.

Nicholas, by reason of his training and experience and position as CFO of a listed company, knew of the operation and effect of AASB 102 Inventories, and the provisions in AASB 102 dealing with the write down of inventories.

The FY17 Annual Report disclosed that FFG expected to incur one off costs of closure of the Taren Point factory, including write down of inventory on product formats to be discontinued, which costs would be

written off and classified as a non-operating expense in the FY18 full year financial reporting.

The FY18 Annual Report disclosed that FFG incurred costs associated with the ceasing of production of plant-based beverages at Taren Point and the write down of inventory on discontinued product formats.

Nicholas' knowledge is to be inferred by reason of his position in FFG, his knowledge of the write downs of inventory at Taren Point, and that the effect of those write downs was to cause FFG to incur an expense.

12. From no later than May 2019, FFG had a standing policy, disseminated by Macleod, that stock was not to be disposed of, and/or written off, unless Macleod had given authority or permission to do so (**No Write-Off Policy**).

Particulars

Email from Macleod to Scott Eastwood with Tim Moses and Abdul Badreddine dated 28 May 2019 (FFG.0001.0250.3695). Email from Macleod to Abdul Badreddine dated 24 May 2019 (FFG.0001.0147.3531). Email from Macleod to Maria Makris dated 29 November 2019 (FFG.0001.0169.0073). Email from Macleod to Colm Donnelly dated 8 April 2020 (FFG.0001.0078.8682).

13. On and from about May 2019 until May 2020, Macleod did not authorise any significant disposal or write-down of inventory of FFG, and no such significant disposal or write-down of inventory occurred.
14. On and from about 1 January 2019 until 30 June 2020, by reason of their position as officers of FFG and their direct involvement in those matters, Macleod and Nicholas knew of the matters pleaded in paragraphs 12 and 13 above.

Particulars

Macleod's knowledge is to be inferred from his conduct as alleged in paragraphs 12 and 13 above and the particulars thereto. Nicholas' knowledge is to be inferred from his position as CFO, being one of Macleod's direct reports, and from his knowledge of FFG's financial statements, including from his preparation and signing of the FY19 Financial Report and the HY20 Financial Report.

15. On and from about 1 January 2019 until 30 June 2020, FFG had in place a policy regarding continuous disclosure (**CD Policy**).

Particulars

Freedom Foods Group Limited, Corporate Governance Policy – Continuous Disclosure, updated August 2014.

16. On and from about 1 January 2019 until 30 June 2020, by reason of their position as officers of FFG and the matter pleaded at paragraph 15 above, Macleod and Nicholas each knew of:

- a. the terms of the CD Policy; and
- b. FFG's continuous disclosure obligations under Chapter 3 of the ASX Listing Rules.

Particulars

Macleod and Nicholas' knowledge is to be inferred from their respective positions as officers of FFG (being a listed entity). ASIC also relies on the fact that each of Macleod and Nicholas signed the HY20 Financial Report which referred to the continuous disclosure requirements under the Act.

Value of inventories in June and July 2019

17. On 27 May 2019, Nicholas was informed that as at 3 May 2019, FFG had approximately \$40.9 million worth of stock located at Shepparton, of which approximately:
- a. \$8 million was "virtual stock", meaning it did not physically exist;
 - b. \$8.7 million was "physical stock at risk"; and
 - c. \$0.7 million was "uncertain stock".

Particulars

On 27 May 2019, Nicholas attended a Skype meeting in which Jacqueline Shepherd showed a Powerpoint slide entitled "Inventory Overview, Shepparton Sites @ 3/5/2019" (FFG.0001.0005.2184, FRG.1018.0001.0014).

On 27 May 2019, during that meeting Nicholas received an email from Jacqueline Shepherd attaching an excel workbook which recorded "reject stock" at Shepparton as \$11.3m and "virtual stock" as \$8.3m (FRG.1018.0001.0040; FRG.1018.0001.0041).

18. On 5 June 2019, Nicholas was informed that as at 5 June 2019, FFG had approximately \$41.9 million worth of stock located at Shepparton, of which approximately:
- a. \$18.9 million of stock was "at risk";
 - b. \$7.9 million was "virtual stock", meaning it did not physically exist;
 - c. \$10.3 million was "reject" or "expired stock"; and
 - d. \$0.6 million was "uncertain stock".

Particulars

On 5 June 2019, Nicholas received an email from Harpreet Singh which recorded the pleaded information and attached a PowerPoint presentation entitled "Inventory Overview, Shepparton Sites @ 5/6/2019" and an excel workbook which recorded that there was "reject stock" at Shepparton in

the amount of \$12.6m (FFG.0001.0045.0334, FFG.0001.0045.0335, FFG.0001.0045.0338, FFG.0001.0045.0339).

19. In around July 2019, FFG started using a business intelligence software program and application named "Power BI", which displayed, amongst other data, FFG's inventory levels and value, the balance of Non-Nettable Inventory (as those balances changed from time to time) and the value of FFG's inventory for each Status Code.
20. On 1 July 2019, Nicholas was informed that in the period of 30 June 2018 to 31 May 2019:
 - a. FFG's inventory had increased by \$29.9 million; and
 - b. \$13.7 million of the \$29.9 million referred to in subparagraph (a) above, or 46%, was Non-Nettable Inventory.

Particulars

Email from Andy Sun to Nicholas dated 1 July 2019 and email from Nicholas to Stephanie Graham dated 1 July 2019 attaching an excel workbook titled "Inventory Movement.xlsx" (FFG.0001.0048.6737, FFG.0001.0048.6739).

21. On or around 5 July 2019, Nicholas was informed that, as at 31 May 2019, FFG had total inventory valued at \$113.9 million of which \$30.9 million was Non-Nettable Inventory.

Particulars

Email from Nicholas to Tim Moses, Maria Makris, James Abraham, Mathew Nardi and Stephanie Graham attaching an excel workbook titled "Inventory Movement Copy.xlsx" (FFG.0001.0048.7059; FFG.0001.0048.7060).

Introduction of Power BI for inventory reporting and display

22. From around 26 July 2019, Macleod received access to and commenced using Power BI on his desktop computer and mobile phone.

Particulars

Email from Macleod to Djalal Benkrouk dated 26 July 2019 (FFG.0001.0168.4090). At a meeting at FFG's offices on 30 July 2019, Martin Figueroa explained to Macleod and Nicholas how to use Power BI.

Meeting Invitation from Stephanie Graham to Macleod for a meeting in respect of Power BI app on 30 July 2019 (FFG.0001.0046.6212).

23. From around 26 July 2019, Nicholas received access to and commenced using Power BI on his desktop computer and mobile phone.

Particulars

At a meeting at FFG's offices on 30 July 2019, Martin Figueroa explained to Macleod and Nicholas how to use Power BI.

Meeting Invitation from Stephanie Graham to Nicholas for a meeting in respect of Power BI app on 30 July 2019 (FFG.0001.0046.6212).

24. On and from about 30 July 2019 until 12 November 2019, Macleod instructed Martin Figueroa and/or Maria Makris to restrict access to Power BI so that Non-Nettable Inventory on Power BI would only be visible to senior leadership of FFG.

Particulars

Meeting between Macleod and Martin Figueora on or about 30 July 2019 (FFG.0001.0046.6212).

Email from Maria Makris to Macleod and Nicholas dated 4 November 2019 (FFG.0001.0035.6001). Email from Maria Makris to Macleod dated 7 November 2019 (FFG.0001.0241.1384). Email from Maria Makris to Macleod and Nicholas dated 12 November 2019 (FFG.0001.0035.7744).

Power BI Display of inventory for FY20

25. On and from about 31 July 2019 until 30 April 2020, FFG had total inventories valued as follows:

	Sum of balance of nettable inventory	Sum of balance of Non-Nettable Inventory	Sum of balance of all inventory
(a) 31 July 2019	\$84,583,027.49	\$33,795,867.70	\$118,378,895.19
(b) 31 August 2019	\$80,150,676.92	\$36,830,795.00	\$116,981,471.92
(c) 30 September 2019	\$78,335,089.56	\$39,607,877.10	\$117,942,966.66
(d) 31 October 2019	\$72,876,633.14	\$39,695,553.50	\$112,572,186.64
(e) 30 November 2019	\$70,127,644.56	\$45,037,149.10	\$115,164,793.66
(f) 31 December 2019	\$74,051,477.37	\$42,516,287.33	\$116,567,764.70
(g) 31 January 2020	\$73,914,326.76	\$43,979,518.41	\$117,893,845.17
(h) 29 February 2020	\$73,021,402.55	\$45,586,807.40	\$118,608,209.95
(i) 31 March 2020	\$66,251,376.88	\$43,957,051.52	\$110,208,428.40
(j) 30 April 2020	\$72,633,374.08	\$44,751,395.10	\$117,384,769.18

Particulars

Power BI data for FY2020 (FFG.0001.0812.0001).

26. Macleod and Nicholas each knew:
- from about 31 July 2019 until 30 April 2020, at or around the time that the relevant values were displayed on Power BI, that FFG had total inventory, nettable inventory and Non-Nettable Inventory valued in approximately the amounts pleaded in each of rows (a) to (j) of paragraph 25 above;

- b. from about 31 July 2019 until 31 December 2019, that the value of FFG's total inventory was in the range of approximately \$110 million to \$120 million, and Non-Nettable Inventory was valued in the range of approximately \$30 million to \$45 million;
- c. from about 1 January 2020 until 30 April 2020, that the value of FFG's total inventory was in the range of approximately \$110 million to \$120 million and Non-Nettable inventory was valued in the range of \$43 million to \$45 million; and
- d. from about 31 July 2019 until 31 December 2019, that the value of FFG's Non-Nettable Inventory was increasing.

Particulars

Each of Macleod and Nicholas received regular updates from Power BI. ASIC repeats the allegations in paragraphs 22 to 25 above and the particulars thereto.

Further and in the alternative, Macleod knew of the matters referred to in paragraphs 8 to 14 (to the extent it refers to them) and deliberately failed to make inquiries that would have confirmed the matters in paragraph 25 above.

- 27. On 12 August 2019, Nicholas was informed that FFG's total inventories (excluding North America and China) as at 30 June 2019 were valued at \$114.6 million and included \$31.3 million of Non-Nettable Inventory.

Particulars

Email from Andy Sun to Nicholas dated 12 August 2019 attaching excel workbook titled "Inventory Movement Analysis.xlsx" (FFG.0001.0039.5504; FFG.0001.0039.5505). Email from Nicholas to Stephanie Graham dated 12 August 2019 (FFG.0001.0039.5534).

- 28. From at least 30 June 2019, Unsaleable Inventory included (but was not limited to) inventory that had been recorded under the following Status Codes (**Unsaleable Status Codes**):
 - a. DAMAGNNN, referring to damaged stock;
 - b. DATEDNNN, referring to stock expired or under Minimum Life on Receipt (**MLOR**);
 - c. MISS-NNN, referring to stock that could not be sold because it was old or missing from its location as specified on QAD for a significant period of time and unlikely to be found;
 - d. OBSOL, referring to obsolete items; and

- e. REJECT, referring to goods that failed quality assurance testing and could not be sold for a quality reason.

Particulars

Email from Andy Sun to Nicholas dated 12 August 2019 attaching an excel workbook titled "Inventory Movement Analysis.xlsx" (FFG.0001.0039.5504; FFG.0001.0039.5505). Email from Nicholas to Stephanie Graham dated 12 August 2019 (FFG.0001.0039.5534).

- 29. From at least 30 June 2019, the balance of Non-Nettable Inventory included Unsaleable Inventory recorded in the following Unsaleable Status Codes, and in the following amounts:
 - a. DAMAGNNN, in the amount of approximately \$5,400;
 - b. DATEDNNN, in the amount of approximately \$4.7 million;
 - c. MISS-NNN, in the amount of approximately \$2.5 million;
 - d. OBSOL, in the amount of approximately \$2.6 million; and
 - e. REJECT, in the amount of approximately \$17 million.

Particulars

Email from Andy Sun to Nicholas dated 12 August 2019 attaching an excel workbook titled "Inventory Movement Analysis.xlsx" (FFG.0001.0039.5504; FFG.0001.0039.5505). Email from Nicholas to Stephanie Graham dated 12 August 2019 (FFG.0001.0039.5534).

- 30. On and from about 12 August 2019, Nicholas knew the matters referred to in paragraphs 28 and 29 above.

Particulars

ASIC relies on the particulars to paragraphs 28 and 29 above.

- 31. On and from at least 26 July 2019 until 25 May 2020, Nicholas knew, in respect of the balances of FFG's inventories recorded in FFG's financial accounts as at 30 June 2019:
 - a. Non-Nettable Inventory included Unsaleable Inventory recorded with the Unsaleable Status Codes;
 - b. the total value of Unsaleable Inventory exceeded \$20 million, or alternatively, was a material value; and
 - c. there had been no write down authorised in respect of the Unsaleable Inventory.

Particulars

ASIC relies on the matters pleaded in paragraphs 4, 7, 8, 9, 11 to 21 and 23 to 30 above and the particulars thereto.

FY19 Full Year Results

32. On 29 August 2019, FFG released to the Australian Securities Exchange (**ASX**) its financial report for the financial year ending 30 June 2019 (**FY19 Financial Report**) which disclosed that:
- a. as at 30 June 2019, FFG had current assets consisting of inventories valued at \$120.2 million (**FY19 Disclosed Inventories**);
 - b. FFG had prepared the FY19 Financial Report in accordance with the accounting policies disclosed in that report – Note 2;
 - c. FFG had valued its inventories in accordance with its Inventory Accounting Policy;
 - d. revenue was measured at the fair value of the consideration received or receivable. Revenue from the sale of goods was recognised when all the following conditions were satisfied: identification of contract, identification of the performance obligations in the contract, determination of the transaction price, allocation of the transaction price to the performance obligations in the contract and recognition of revenue when performance obligations are satisfied – Note 5 (**Revenue Accounting Policy**); and
 - e. the financial statements and notes in the FY19 Financial Report gave a true and fair view of FFG's financial position as at 30 June 2019 and of its performance for the financial year ended on that date.
33. Each of Macleod and Nicholas authorised the release of the FY19 Financial Report.

Particulars

The FY19 Financial Report is signed by Macleod as Managing Director and Chief Executive Officer (FRG.0003.0003.0993). Nicholas authorised the release of the FY19 Financial Report by providing the draft FY19 Financial Report to the Audit Committee for approval at the meeting held on 28 August 2019 (FFG.0001.0525.1203). Each of Macleod and Nicholas also authorised the release of the FY19 Financial Report by providing the Board with their representation letter dated 28 August 2019.

34. On and from 29 August 2019 until 25 May 2020 (**FY19 Information**):

- a. the FY19 Disclosed Inventories included Unsaleable Inventory which was recorded in the FY19 Financial Report at a value of at least \$20 million, or alternatively, at a material value;
 - b. further or alternatively, FFG had not made sufficient or adequate provisions and/or had failed to write down the value of the FY19 Disclosed Inventories to account for the Unsaleable Inventory;
 - c. further or alternatively, the FY19 Disclosed Inventories were overstated by at least \$20 million, or alternatively by a material value, as a result of the inclusion of the value of Unsaleable Inventory;
 - d. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(c) above, the FY19 Disclosed Inventories were not recorded in the FY19 Financial Report in accordance with FFG's Inventory Accounting Policy; and
 - e. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(d) above, the financial statements and notes in the FY19 Financial Report did not give a true or fair view of the financial position and performance of FFG.
35. On 11 October 2019, FFG released its annual report which repeated the FY19 Disclosed Inventories and the matters set out in paragraph 32 above.

Value of FFG's Inventories in August 2019 to February 2020

36. On 19 September 2019, Nicholas was informed that FFG's total inventories (excluding North America and China) as at 31 August 2019 were valued at \$116.5 million which included \$36.8 million of Non-Nettable Inventory.

Particulars

Email from Andy Sun to Nicholas dated 19 September 2019 and attaching an excel workbook titled "Inventory Movement Analysis.xlsx" (FFG.0001.0034.4885; FFG.0001.0034.4886).

37. On or about 2 October 2019, Stephanie Graham (**Graham**), who was the General Manager of Commercial Strategy at FFG, and Jacqueline Shepherd, who was the Commercial Finance Manager at FFG, attended FFG warehouses located at 45 Toolamba Road, Mooroopna VIC 3629 (**Mooroopna Warehouse**) and 54-56 Benalla Road, Shepparton VIC 3630 (**Campbells Cash & Carry Warehouse**).

38. While visiting the Mooroopna Warehouse on about 2 October 2019, Graham took photographs of Unsaleable Inventory.

Particulars

FRG.1008.0001.0008; FRG.1008.0001.0009; FRG.1008.0001.0012;
FRG.1008.0001.0013; FRG.1008.0001.0015; FRG.1008.0001.0016;
FRG.1008.0001.0017; FRG.1008.0001.0020; FRG.1008.0001.0021.

39. On or about 2 October 2019, or shortly afterwards:
- a. Graham showed Macleod and Nicholas the photographs she took of Unsaleable Inventory at the Mooroopna Warehouse on or about 2 October 2019;
 - b. Graham informed Macleod and Nicholas that there was an “enormous” amount of Unsaleable Inventory stored at the Mooroopna Warehouse;
 - c. Graham informed Macleod and Nicholas that there was also Unsaleable Inventory stored at the Campbells Cash & Carry Warehouse; and
 - d. the disposal of the Unsaleable Inventory needed to be done properly to avoid injury or illness to employees of FFG.
40. As at 1 October 2019, FFG had total inventories (excluding North America and China) valued at \$115.2 million which included \$38.1 million of Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Macleod, Nicholas and others attaching five excel workbooks (FFG.0001.0035.0784, FFG.0001.0035.0785 (National), FFG.0001.0035.0786 (Dandenong), FFG.0001.0035.0787 (Ingleburn), FFG.0001.0035.0788 (Leeton) and FFG.0001.0035.0789 (Shepparton)).

41. On 11 October 2019, Macleod and Nicholas were informed that FFG’s total inventories as at 1 October 2019 (excluding North America and China) were valued at \$115.2 million which included \$38.1 million of Non-Nettable Inventory.

Particulars

ASIC refers to the particulars to paragraph 40 above.

42. On 18 October 2019, Nicholas was informed that FFG’s total inventories (excluding North America and China) as at 30 September 2019 were valued at \$117.3 million which included \$39.1 million of Non-Nettable Inventory.

Particulars

Email from Andy Sun to Nicholas dated 18 October 2019 attaching an excel spreadsheet (FFG.0001.0035.1929 and FFG.0001.0035.1930)

43. On or about 4 November 2019, Macleod and Nicholas were each informed that the Non-Nettable Inventory levels would only be visible for senior leadership of FFG on Power BI.

Particulars

Email from Maria Makris to Macleod and Nicholas dated 4 November 2019 (FFG.0001.0035.6001). Email from Maria Makris to Macleod dated 7 November 2019 (FFG.0001.0241.1384). Email from Maria Makris to Macleod and Nicholas dated 12 November 2019 (FFG.0001.0035.7744).

44. On or about 5 or 6 November 2019, Macleod, Nicholas and Timothy Moses, who was then the Chief Operating Officer at FFG, attended the Mooroopna Warehouse and the Shepparton Warehouse and viewed Non-Nettable and Unsaleable Inventory held at both sites.
45. On 3 December 2019, Nicholas was informed that FFG's total inventories for FFG's Main Sites, as at 1 December 2019, was \$69.6 million which included \$28.6 million of Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Nicholas dated 3 December 2019 attaching the Dandenong Working Capital Report (FFG.0001.0036.6834, FFG.0001.0036.6835).

Email from Martin Figueroa to Nicholas dated 3 December 2019 attaching the Ingleburn Working Capital Report (FFG.0001.0036.6836, FFG.0001.0036.6837).

Email from Martin Figueroa to Nicholas dated 3 December 2019 attaching the Leeton Working Capital Report (FFG.0001.0036.6549, FFG.0001.0036.6550).

Email from Martin Figueroa to Nicholas dated 3 December 2019 attaching the Shepparton Working Capital Report (FFG.0001.0036.6554, FFG.0001.0036.6555).

46. On 5 February 2020, Nicholas was informed that as at 1 February 2020, FFG's total inventories for the Main Sites was \$75.1 million which included \$29.9 million of Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Nicholas dated 5 February 2020 attaching the Dandenong Working Capital Report (FFG.0001.0285.3698, FFG.0001.0285.3699).

Email from Martin Figueroa to Nicholas dated 5 February 2020 attaching the Ingleburn Working Capital Report (FFG.0001.0013.6429, FFG.0001.0013.6430).

Email from Martin Figueroa to Nicholas dated 5 February 2020 attaching the Leeton Working Capital Report (FFG.0001.0013.6423, FFG.0001.0013.6424).

Email from Martin Figueroa to Nicholas dated 5 February 2020 attaching the Shepparton Working Capital Report (FFG.0001.0013.6427, FFG.0001.0013.6428).

47. In or around mid-February 2020, Graham and Macleod had a meeting in which Graham advised that she would be leaving FFG and raised the following concerns:
 - a. the fact she had shown Macleod the photographs of Unsaleable Inventory at the Maroopna Warehouse and no action had been taken in respect of Unsaleable Inventory; and
 - b. with the way that FFG was dealing with accounting issues arising in relation to inventory and lactoferrin.
48. In the meeting referred to in paragraph 47:
 - a. Macleod said he needed until April 2020 to in fact sell the lactoferrin that had already been recognised as revenue; and
 - b. Macleod and Graham agreed to set up a committee called “the Inventory Review Committee” to resolve issues relating to FFG’s Non-Nettable and Unsaleable Inventory.
49. In or around mid-February 2020:
 - a. a committee called “the Inventory Review Committee” was established;
 - b. members of the Inventory Review Committee were Nicholas, Macleod, Graham, Matthew Nardi, Timothy Moses and Maria Makris; and
 - c. the Inventory Review Committee was established to resolve the issues with Non-Nettable Inventory held by FFG.
50. Between about March 2020 and May 2020:
 - a. the Inventory Review Committee met about five times;
 - b. Graham chaired the meetings of the Inventory Review Committee;
 - c. Nicholas attended meetings of the Inventory Review Committee; and

- d. Macleod did not attend any of the meetings of the Inventory Review Committee.
51. On and from about 26 July 2019, alternatively on and from about 1 October 2019 to 25 May 2020, Macleod knew, in respect of the balances of FFG's inventories recorded in FFG's financial accounts as at 30 June 2019:
- a. the inventory balance disclosed included Non-Nettable Inventory;
 - b. Non-Nettable Inventory included Unsaleable Inventory;
 - c. the total value of Unsaleable Inventory exceeded \$20 million, or alternatively, was a material value; and
 - d. there had been no significant write-down authorised in respect of the Unsaleable Inventory included in the value of Non-Nettable Inventory as at 30 June 2019.

Particulars

ASIC relies on paragraphs 3, 5, 6, 8 to 10, 12 to 16, 19, 22, 24 to 26, 32, 33, 37 to 41, 43, 44 and 47 to 49 and the particulars thereto.

Alternatively, Macleod knew of the matters referred to in paragraphs 3, 6, 8 to 10, 12 to 16, 19, 22, 24 to 26, 32 to 33, 37 to 41, 43, 44 and 47 to 49 above and deliberately failed to make inquiries that would have confirmed the matters in this paragraph 51.

52. On and from about 26 July 2019, Nicholas knew, in respect of the balances of FFG's inventories recorded in FFG's financial accounts as at 30 June 2019:
- a. the inventory balance disclosed included Non-Nettable Inventory;
 - b. Non-Nettable Inventory included Unsaleable Inventory;
 - c. the total value of Unsaleable Inventory exceeded \$20 million, or alternatively, was a material value; and
 - d. there had been no significant write down authorised in respect of the Unsaleable Inventory included in the value of Non-Nettable Inventory as at 30 June 2019.

Particulars

ASIC relies on paragraphs 31, 36 to 46, 49 and 50 and the particulars thereto.

53. On and from about 1 February 2020 to 25 May 2020, Macleod knew, in respect of the balances of FFG's inventories recorded in FFG's financial accounts as at 31 December 2019:

- a. the inventory balance disclosed included Non-Nettable Inventory;
- b. Non-Nettable Inventory included Unsaleable Inventory;
- c. the total value of Unsaleable Inventory exceeded \$20 million, or alternatively, was a material value; and
- d. there had been no significant write-down authorised in respect of the Unsaleable Inventory included in the value of Non-Nettable Inventory as at 31 December 2019.

Particulars

ASIC relies on paragraphs 3, 6, 8 to 10, 12 to 16, 19, 22, 24 to 26, 32, 33, 37 to 41, 43, 44, 47 to 49 and the particulars thereto.

54. On and from about 1 February 2020 to 25 May 2020, Nicholas knew, in respect of the balances of FFG's inventories recorded in FFG's financial accounts as at 31 December 2019:

- a. the inventory balance disclosed included Non-Nettable Inventory;
- b. Non-Nettable Inventory included Unsaleable Inventory;
- c. the total value of Unsaleable Inventory exceeded \$20 million, or alternatively, was a material value; and
- d. there had been no significant write down authorised in respect of the Unsaleable Inventory included in the value of Non-Nettable Inventory as at 30 June 2019.

Particulars

ASIC relies on paragraphs 31, 36 to 46, 49 and 50 and the particulars thereto.

FY20 Half-Year Results: Inventory

55. On 27 February 2020, FFG released its HY20 Financial Report in which FFG disclosed that:
- a. as at 31 December 2019, FFG had current assets which included inventories valued at \$122.3 million (**HY20 Disclosed Inventories**);
 - b. for the half year ending 31 December 2019, FFG received revenue from sale of goods of \$299.7 million (**HY20 Disclosed Revenue**);

- c. for the half year ending 31 December 2019, FFG achieved gross profit of \$81.2 million and profit before tax of \$6.9 million (**HY20 Disclosed Profit**);
 - d. the HY20 Financial Report did not include all the notes of the type normally included in annual financial statements and that the financial statements were to be read in conjunction with the FY19 Financial Report – Note 1;
 - e. the principal accounting policies adopted were consistent with those of the previous financial year; and
 - f. the financial statements and notes in the HY20 Financial Report gave a true and fair view of FFG's financial position as at 31 December 2019 and of its performance for the financial half-year ended on that date.
56. Each of Macleod and Nicholas authorised the release of the HY20 Financial Report.

Particulars

The HY20 Financial Report is signed by Macleod as Managing Director and Chief Executive Officer FRG.0003.0008.0766. Campbell Nicholas authorised the release of the HY20 Financial Report by providing the draft HY20 Financial Report to the Audit Committee for approval at the meeting held on 26 February 2020 FFG.0001.0525.1769. Each of Macleod and Nicholas also authorised the release of the HY20 Financial Report by providing the Board with their representation letter dated 26 February 2020 FFG.0001.0048.8682.

57. On and from 27 February 2020 until 25 May 2020 (**HY20 Inventory Information**):
- a. the HY20 Disclosed Inventories included Unsaleable Inventory which was recorded in the HY20 Financial Report at a value of at least \$20 million, or alternatively, at a material value;
 - b. further or alternatively, FFG had not made sufficient or adequate provisions and/or had failed to write-down the value of the HY20 Disclosed Inventories, to account for the Unsaleable Inventory;
 - c. further or alternatively, the HY20 Disclosed Inventories were overstated by at least \$20 million, or alternatively by a material value, as a result of the Unsaleable Inventory;
 - d. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(c) above, the HY20 Disclosed Inventories were not recorded in the HY20 Financial Report in accordance with the Inventory Accounting Policy; and

- e. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(d) above, the financial statements and notes in the HY20 Financial Report did not give a true or fair view of the financial position and performance of FFG.

Value of FFG's Inventories in March to May 2020

58. On 6 March 2020, Nicholas was informed that as at 1 March 2020, FFG's total inventories for the Main Sites was \$73.4 million which included \$29.3 million of Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Nicholas dated 6 March 2020 attaching the Dandenong Working Capital Report (FFG.0001.0047.2315, FFG.0001.0047.2316).

Email from Martin Figueroa to Nicholas dated 6 March 2020 attaching the Ingleburn Working Capital Report (FFG.0001.0047.2306, FFG.0001.0047.2307).

Email from Martin Figueroa to Nicholas dated 6 March 2020 attaching the Leeton Working Capital Report and Darlington Pt Working Capital Summary (FFG.0001.0047.1971, FFG.0001.0047.1972, FFG.0001.0047.1973).

Email from Martin Figueroa to Nicholas dated 6 March 2020 attaching the Shepparton Working Capital Report (FFG.0001.0047.1974, FFG.0001.0047.1975).

59. On 3 April 2020, Nicholas was informed that as at 1 April 2020, FFG's total inventories for the Main Sites was \$68.0 million of which \$28.8 million was Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Nicholas dated 3 April 2020 attaching the Dandenong Working Capital Report (FFG.0001.0644.4603, FFG.0001.0644.4604).

Email from Martin Figueroa to Nicholas dated 3 April 2020 attaching the Ingleburn Working Capital Report (FFG.0001.0239.0418, FFG.0001.0239.0419).

Email from Martin Figueroa to Nicholas dated 3 April 2020 attaching the Leeton Working Capital Report (FFG.0001.0644.4609, FFG.0001.0644.4610).

Email from Martin Figueroa to Nicholas dated 3 April 2020 attaching the Shepparton Working Capital Report (FFG.0001.0644.4594, FFG.0001.0644.4595).

60. On 5 May 2020, Nicholas was informed that as at 1 May 2020, FFG's total inventories for the Main Sites was \$73.7 million which included \$29.3 million of Non-Nettable Inventory.

Particulars

Email from Martin Figueroa to Nicholas dated 5 May 2020 attaching the Dandenong Working Capital Report (FFG.0001.0239.0721, FFG.0001.0239.0722).

Email from Martin Figueroa to Nicholas dated 5 May 2020 attaching the Ingleburn Working Capital Report (FFG.0001.0239.0717, FFG.0001.0239.0718).

Email from Martin Figueroa to Nicholas dated 5 May 2020 attaching the Leeton Working Capital Report (FFG.0001.0239.0723, FFG.0001.0239.0724).

Email from Martin Figueroa to Nicholas dated 3 April 2020 attaching the Shepparton Working Capital Report (FFG.0001.0239.0719, FFG.0001.0239.0720).

FY19 Full Year Results: Lactoferrin

61. On and from about 1 July 2019 until 31 December 2019:
 - a. FFG produced and sold a product named lactoferrin;
 - b. lactoferrin was a protein by-product, extracted from milk;
 - c. the costs of goods sold allocated to the sale of lactoferrin once payment was received was between 5-8% of the sale price;
 - d. lactoferrin was a high margin and/or profitable product;
 - e. FFG's practice was that it would not ship lactoferrin unless it had received payment; and
 - f. FFG's practice was to record the cost of goods sold for lactoferrin in its accounts only following receipt of payment of an invoice for lactoferrin.
62. At all material times, each of Macleod and Nicholas knew each of the matters set out in paragraph 61 above.

Particulars

Macleod and Nicholas' knowledge is to be inferred from their position as Chief Executive Officer and Chief Financial Officer, respectively and from Board Minutes dated 7 February 2019 (FFG.0001.0048.8360), Board Minutes dated 6 June 2019 (FFG.0001.0041.3897) and email from Graham to Macleod dated 4 June 2019 (FFG.0001.0064.1788 & FFG.0001.0064.1789).

63. On 26 April 2019, FFG received a purchase order from Interfood Singapore Pte Ltd (**Interfood**) for 4,000kg of lactoferrin at USD\$1,950 per kg (**Purchase Order**).

Particulars

Email from Neil Senauer to Frank Baldi, Tim Moses and Luke Collis dated 26 April 2019 attaching the Purchase Order (FFG.0001.0204.0495; FFG.0001.0204.0498).

64. The Purchase Order:
- a. was subject to customer sample approval, Certification and Accreditation Administration of China (**CNCA**) approval and the granting of an export licence to China; and
 - b. provided Interfood with the right to cancel the order if the CNCA and/or sample approval was not obtained by June 2019.
65. Between 1 July 2019 and 31 December 2019, FFG raised 16 invoices in respect of the sale of lactoferrin to Interfood (**Lactoferrin Invoices**).

Particulars

Invoice numbers 20V07046 (INT.002.001.1352), 20V08565 (INT.002.001.1350), 20V08566 (INT.002.001.1349), 20V10257 (FFG.0001.0275.7529), 20V10258 (FFG.0001.0275.7528), 20V11430 (FFG.0001.0520.0049), 20V11556 (FFG.0001.0520.0050), 20V13911 (FFG.0001.0650.3904), 20V14638 (FFG.0001.0520.0052), 20V14709 (FFG.0001.0520.0051), 20V15534 (FFG.0001.0520.0048), 20V17231 (FFG.0001.0650.3870), 20V17232 (FFG.0001.0650.3871), 20V17233 (FFG.0001.0650.3872), 20V17234 (FFG.0001.0650.3873), 20V17235 (FFG.0001.0650.3874).

66. The Lactoferrin Invoices:
- a. amounted to a total sale price of USD\$6.4 million being at least AUD\$9.3 million (**Lactoferrin Invoice Amounts**); and

Particulars

The total Lactoferrin Invoice Amounts takes into account the following credit notes: 20C01195 (FFG.0001.0656.0175), 20C01196 (FFG.0001.0656.0174), 20C01197 (FFG.0001.0656.0173).

- b. were on payment terms of 7 days.
67. FFG recognised and recorded in its accounts the sale price on the Lactoferrin Invoices as revenue when the Lactoferrin Invoices were raised.
68. FFG did not record any cost of goods sold for the Lactoferrin Invoice Amounts in its accounts.

Particulars

Lactoferrin Invoicing: Final Paper for approval by the Audit Committee dated 26 July 2020 (COA.0010.0004.3880).

69. On and from about 1 July 2019 until 31 December 2019, no lactoferrin the subject of the Lactoferrin Invoices was delivered to Interfood and/or no payment was made by Interfood to FFG in respect of the Lactoferrin Invoices (**Non-Revenue Information**).
70. On and from 27 February 2020, Macleod and Nicholas each knew the Non-Revenue Information.

Particulars

Macleod and Nicholas' knowledge is to be inferred from their positions as Chief Executive Officer and Chief Financial Officer respectively and from the following matters:

- (a) email from FFG's National Credit Manager, Mr Voytek Bradford (**Bradford**) dated 4 December 2019 to Macleod and Nicholas (FFG.0001.0036.8501);
- (b) email from Bradford dated 7 February 2020 to Macleod and Nicholas attaching an excel workbook(FFG.0001.0026.3513, FFG.0001.0026.3514); and
- (c) by reason of paragraphs 61 and 62, each of Macleod and Nicholas knew that if payment had not been received by FFG, then the lactoferrin had not been shipped to Interfood.

Macleod's knowledge is also to be inferred by the facts referred to in paragraphs 47 and 48 above.

Further and in alternative, Macleod knew of the matters referred to paragraphs 47, 48, 61 and 62 and the particulars in this paragraph above and deliberately failed to make inquiries that would have confirmed the matters in the paragraphs 69 and 70.

Nicholas' knowledge is also to be inferred by:

- (d) in December 2019, Luke Collis (**Collis**), who was Group General Manager (Commercial Finance), told Nicholas that the lactoferrin which was the subject of the Lactoferrin Invoices had not been produced, shipped or paid for;
- (e) in March 2020, Collis said to Nicholas that lactoferrin sales recognised in the HY20 Financial Report included sales for lactoferrin that had not been produced, shipped or paid for; and
- (f) email from Jacqueline Shepherd to Nicholas dated 26 March 2020 (FFG.0001.0372.0230).

Further and in the alternative, Nicholas knew of the matters referred to in paragraphs 61 and 62 and the particulars in the paragraph above and deliberately failed to make inquiries that would have confirmed the matters in the paragraphs 69 and 70.

71. The Lactoferrin Invoice Amounts contributed at least \$8.5 million towards FFG's gross profit recorded in the HY20 Financial Report (**Lactoferrin Profit Information**).

Particulars

Lactoferrin Invoicing: Final Paper for approval by the Audit Committee dated 26 July 2020 (COA.0010.0004.3880).

72. On and from 27 February 2020, Macleod and Nicholas each knew the Lactoferrin Profit Information.

Particulars

See particulars to paragraphs 62 and 70 above.

Further or in the alternative, each of Macleod and Nicholas knew of the matters in paragraphs 62 and 70 and deliberately failed to make inquiries that would have confirmed the matters in paragraphs 71 and 72.

73. From 27 February 2020 until 25 May 2020 (**HY20 Revenue Information**):
- a. the HY20 Disclosed Revenue included the Lactoferrin Invoice Amounts despite the existence of the Non-Revenue Information;
 - b. further or alternatively, FFG had failed to reduce the value of the HY20 Disclosed Revenue to account for the Non-Revenue Information;
 - c. further or alternatively, the HY20 Disclosed Revenue was overstated by at least \$9.3 million, or alternatively by a material value, as a result of the Non-Revenue Information;
 - d. the HY20 Disclosed Profit included the Lactoferrin Invoice Amounts despite the existence of the Non-Revenue Information and the Lactoferrin Profit Information;
 - e. further or alternatively, the HY20 Disclosed Profit was overstated by at least \$8.5 million, or alternatively by a material value, as a result of the Non-Revenue Information and the Lactoferrin Profit Information;
 - f. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(e) above, the HY20 Disclosed Revenue and the HY20 Disclosed Profit were not recorded in the HY20 Financial Report in accordance with the Revenue Accounting Policy; and
 - g. further or alternatively, by reason of one or more of the matters referred to in subparagraphs (a)-(f) above, the financial statements and notes in the HY20 Financial Report did not give a true or fair view of the financial position and performance of FFG..

May and June 2020 ASX Announcements

74. On 28 May 2020, FFG's share price closed at \$4.36.
75. On 29 May 2020:
 - a. FFG announced to the ASX that there would be "a one-off non-cash write down of the carrying value of inventory in FY 20"; and "[i]nitial estimates indicate that the write down will be approximately \$25 million" (FRG.0003.0004.0002);
 - b. FFG's share price closed at \$3.72; and
 - c. the volume of shares traded was 885.58% higher than the previous seven-day average.
76. On 24 June 2020:
 - a. FFG's securities went into a trading halt at FFG's request; and
 - b. at the time of the trading halt, FFG's shares were trading at \$3.01.
77. On 25 June 2020:
 - a. FFG announced to the ASX that it estimated that there would be an aggregate inventory write down for the financial year ended 30 June 2020 (**FY2020**) of \$60 million;
 - b. FFG requested that its securities be suspended pending the release of an announcement regarding the outcome of further investigation of the company's financial position; and
 - c. FFG's securities were suspended as a result of FFG's request referred to in (b) above (FRG.0003.0004.0041).
78. On 30 November 2020, FFG released its full year results for the financial year ending 30 June 2020 (**FY20 Results**) (FRG.0003.0003.1076, FRG.0003.0003.1078 FRG.0003.0003.1223).
79. The FY20 Results stated:
 - a. the value of inventories as at 30 June 2019 was restated from \$120.2 million to \$79.5 million, including a write-down of \$26.7 million;
 - b. the value of inventories as at 30 June 2020 was \$59.8 million, including a write-down of inventories of \$18.5 million; and

- c. the value of inventories was written down in FY2020 in the total amount of \$60.1 million in respect of out-of-date, unsaleable and obsolete inventory in respect of FY2020 and prior periods.
- 80. On 1 March 2021, FFG released its Appendix 4D Half Year Financial report for the half year ended December 2020 (**Restated Results for HY20**) (FRG.0003.0004.0296).
- 81. The Restated Results for HY20 disclosed that:
 - a. the value of inventories as at 31 December 2019 was restated from \$122.3 million to \$75.7 million;
 - b. the value of net sales as at 31 December 2019 was restated from \$299.7 million to \$253.1 million;
 - c. the value of gross profit as at 31 December 2019 was restated from \$81.2 million to \$18.0 million; and
 - d. the value of profit/loss before tax was restated from a profit of \$6.9 million to a loss of \$50.2 million.
- 82. On 22 March 2021:
 - a. FFG's shares resumed trading;
 - b. FFG's shares opened at \$0.20 per share;
 - c. FFG's shares closed at \$0.53 per share;
 - d. the closing price of FFG's shares was 82.39% lower than 24 June 2020;
 - e. the volume of shares traded was 172,882,615 shares; and
 - f. the volume of shares traded was 1,042.81% higher than the volume traded on 24 June 2020.

C. CONTINUOUS DISCLOSURE CONTRAVENTION BY FFG

- 83. At all material times on and from about 1 May 2019 until 25 May 2020:
 - a. the ASX was a "listing market" within the meaning of s 111AE(1) of the Act;
 - b. FFG's shares were:
 - i. "ED Securities" within the meaning of s 111AE(1) of the Act;

- ii. “quoted ED securities” within the meaning of s 111AM of the Act;
 - c. FFG was:
 - i. a “disclosing entity” within the meaning of s 111AC(1) of the Act;
 - ii. a “listed disclosing entity” within the meaning of s 111AL(1) of the Act;
 - iii. subject to the continuous disclosure requirements of s 674 of the Act pursuant to s 111AP(1) of the Act; and
 - iv. subject to, and bound, by the ASX Listing Rules.
 - d. ASX Listing Rule 3.1 provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity’s securities, the entity must immediately tell the ASX that information.
84. On and from about 29 August 2019 until 25 May 2020:

- a. FFG was aware of the FY19 Information;

Particulars

ASIC refers to ASX Listing Rule 19.12 and says that the information was information that officers of FFG had, or ought reasonably to have, come into possession of in the course of the performance of their duties as officers of FFG, including by reason of the matters referred to in paragraphs 3 to 33 and 35 to 56 and 58 to 60 above.

- b. the FY19 Information was not generally available;
 - c. the FY19 Information (either separately, together, or in any combination) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG’s shares;
 - d. ASX Listing Rule 3.1 required immediate disclosure to the ASX of the FY19 Information; and
 - e. FFG did not notify or disclose to the ASX the FY19 Information.
85. On and from about 27 February 2020 until 25 May 2020:
- a. FFG was aware of the HY20 Inventory Information;

Particulars

ASIC refers to ASX Listing Rule 19.12 and says that the information was information that officers of FFG had, or ought reasonably to have, come into possession of in the course of the performance of their duties as officers of FFG, including by reason of the matters referred to in paragraphs 3 to 33 and 35 to 56 and 58 to 60 above.

- b. the HY20 Inventory Information was not generally available;
 - c. the HY20 Inventory Information (either separately, together, or in any combination) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - d. ASX listing Rule 3.1 required immediate disclosure to the ASX of the HY20 Inventory Information; and
 - e. FFG did not notify or disclose to the ASX the HY20 Inventory Information.
86. On and from about 27 February 2020 until 25 May 2020:
- a. FFG was aware of the HY20 Revenue Information;

Particulars

ASIC refers to ASX Listing Rule 19.12 and says that the information was information that officers of FFG had, or ought reasonably to have, come into possession of in the course of the performance of their duties as officers of FFG, including by reason of the matters referred to in paragraphs 61 to 72 above.

- b. the HY20 Revenue Information was not generally available;
 - c. the HY20 Revenue Information (either separately, together, or in any combination) was information a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - d. ASX Listing Rule 3.1 required immediate disclosure to the ASX of the HY20 Revenue Information; and
 - e. FFG did not disclose to the ASX the HY20 Revenue Information.
87. Further or alternatively to paragraphs 85 and 86 above, on and from about 27 February 2020 until 25 May 2020:
- a. FFG was aware of the HY20 Inventory Information and the HY20 Revenue Information (together, the **HY20 Combined Information**);

Particulars

ASIC refers to ASX Listing Rule 19.12 and says that the information was information that officers of FFG had, or ought reasonably to have, come into possession of in the course of the performance of their duties as officers of FFG, including by reason of the matters referred to in paragraphs 3 to 33 and 35 to 56, 58 to 60 and 61 to 72. Macleod's knowledge is also inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG. Nicholas' knowledge is also inferred from his position as the Chief Financial Officer.

- b. the HY20 Combined Information was not generally available;
 - c. the HY20 Combined Information (either separately, together, or in any combination) was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - d. ASX listing Rule 3.1 required immediate disclosure to the ASX of the HY20 Combined Information; and
 - e. FFG did not notify or disclose to the ASX the HY20 Combined Information.
88. FFG contravened s 674(2) of the Act:
- a. by reason of the matters referred to in paragraph 84 above, by failing to notify the ASX of the FY19 Information on and from about 29 August 2019 until 25 May 2020;
 - b. by reason of the matters referred to in paragraph 85 above, by failing to notify the ASX of the HY20 Inventory Information on and from about 27 February 2020 until 25 May 2020;
 - c. by reason of the matters referred to in paragraph 86 above, by failing to notify the ASX of the HY20 Revenue Information on and from about 27 February 2020 until 25 May 2020; and
 - d. by reason of the matters referred to in paragraph 87 above, by failing to notify the ASX of the HY20 Combined Information on and from about 27 February 2020 until 25 May 2020.

D. CONTINUOUS DISCLOSURE CONTRAVENTIONS BY MACLEOD AND NICHOLAS

Macleod: FY19 Information

89. From on or about 29 August 2019, alternatively from on or about 1 October 2019, until 25 May 2020, Macleod knew:
- a. FFG had released the FY19 Financial Report to the ASX on 29 August 2019;
 - b. the FY19 Information;
 - c. FFG was aware of the FY19 Information;
 - d. the FY19 Information was not generally available;
 - e. the FY19 Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the FY19 Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the FY19 Information.

Particulars

ASIC relies on paragraphs 3, 5 to 6, 8 to 10, 12 to 16, 19, 22, 24 to 26, 32 to 33, 37 to 41, 43, 44 and 47 to 49, 51 and 53 and the particulars thereto. Macleod's knowledge is also to be inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

90. Macleod participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.a above by engaging in the conduct referred to in paragraphs 33 above and 130 below, and by failing to cause FFG to take any steps to notify the ASX of the FY19 Information from on or about 29 August 2019, alternatively from on or about 1 October 2019 until 25 May 2020.
91. By reason of paragraphs 89 and 90 above, Macleod was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contravention by FFG of s 674(2) as alleged in paragraph 88.a above, and thereby involved in that contravention.
92. By reason of paragraph 91 above, from on or about 29 August 2019, alternatively from on or about 1 October 2019 until 25 May 2020, Macleod contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.

93. The contraventions referred to in paragraph 92 above:
- a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Macleod: HY20 Inventory Information

94. From on or about 27 February 2020 until 25 May 2020, Macleod knew:
- a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Inventory Information;
 - c. FFG was aware of the HY20 Inventory Information;
 - d. the HY20 Inventory Information was not generally available;
 - e. the HY20 Inventory Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Inventory Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Inventory Information.

Particulars

ASIC relies on paragraphs 3, 5 to 6, 8 to 10, 12 to 16, 19, 22, 24 to 26, 32 to 33, 37 to 41, 43, 44 and 47 to 49, 51 and 53, 55 and 56 above and the particulars thereto. Macleod's knowledge is also to be inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

95. Macleod participated in the contraventions by FFG of s 674(2) as alleged in paragraphs 88.b above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Inventory Information from on or about 27 February 2020 until 25 May 2020.
96. By reason of paragraph 94 and 95 above, Macleod was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contravention by FFG of s 674(2) as alleged in paragraphs 88.b above, and thereby involved in that contravention.

97. By reason of paragraph 96 above, from on or about 27 February 2020 until 25 May 2020, Macleod contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
98. The contraventions referred to in paragraph 97 above:
- a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Macleod: HY20 Revenue Information

99. From on or about 27 February 2020 until 25 May 2020, Macleod knew:
- a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Revenue Information;
 - c. FFG was aware of the HY20 Revenue Information;
 - d. the HY20 Revenue Information was not generally available;
 - e. the HY20 Revenue Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Revenue Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Revenue Information.

Particulars

ASIC repeats paragraphs 3, 15, 16, and 61 to 72 above and the particulars thereto. Macleod's knowledge is also to be inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

100. Macleod participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.c above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Revenue Information from on or about 27 February 2020 until 25 May 2020.

101. By reason of paragraphs 99 and 100 above, Macleod was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contravention of FFG of s 674(2) as alleged in paragraph 88.c above, and thereby involved in that contravention.
102. By reason of paragraph 101 above, from on or about 27 February 2020 until 25 May 2020, Macleod contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
103. The contraventions referred to in paragraph 102 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Macleod: HY20 Combined Information

104. From on or about 27 February 2020 until 25 May 2020, Macleod knew:
 - a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Combined Information;
 - c. FFG was aware of the HY20 Combined Information;
 - d. the HY20 Combined Information was not generally available;
 - e. the HY20 Combined Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Combined Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Combined Information.

Particulars

ASIC repeats the particulars to paragraphs 94 and 99 above. Macleod's knowledge is also to be inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

105. Macleod participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.d above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Combined Information from on or about 27 February 2020 until 25 May 2020.

106. By reason of paragraphs 104 and 105 above, Macleod was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contravention of FFG of s 674(2) as alleged in paragraph 88.d, and thereby involved in that contravention.
107. By reason of paragraph 106 above, from on or about 27 February 2020 until 25 May 2020, Macleod contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
108. The contraventions referred to in paragraph 107 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Nicholas: FY19 Information

109. From on or about 29 August 2019 until 25 May 2020, Nicholas knew:
 - a. FFG released the FY19 Financial Report to the ASX on 29 August 2019;
 - b. the FY19 Information;
 - c. FFG was aware of the FY19 Information;
 - d. the FY19 Information was not generally available;
 - e. the FY19 Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the FY19 Information required immediate disclosure pursuant to ASX Listing Rule 3.1;
 - g. FFG had not notified the ASX of the FY19 Information.

Particulars

ASIC relies on paragraphs 4, 5, 7, 8, 9, 11 to 21 and 23 to 30, 36 to 46, 49 and 50, 52, 54, 55, 56, 58 to 60 and the particulars thereto. Nicholas' knowledge is also to be inferred from his position as the Chief Financial Officer.

110. Nicholas participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.a above by engaging in the conduct referred to in paragraphs 33 above and 130 below,

and by failing to cause FFG to take any steps to notify the ASX of the FY19 Information from on or about 29 August 2019 until 25 May 2020.

111. By reason of paragraphs 109 and 110 above, Nicholas was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contraventions of FFG of s 674(2) as alleged in paragraphs 88.a above, and thereby involved in that contravention.
112. By reason of paragraph 111 above, from on or about 29 August 2019 until 25 May 2020, Nicholas contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
113. The contraventions referred to in paragraph 112 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Nicholas: HY20 Inventory Information

114. From on or about 27 February 2020 until 25 May 2020, Nicholas knew:
 - a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Inventory Information;
 - c. FFG was aware of the HY20 Inventory Information;
 - d. the HY20 Inventory Information was not generally available;
 - e. the HY20 Inventory Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Inventory Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Inventory Information.

Particulars

ASIC relies on paragraphs 4,5, 7, 8, 9, 11 to 21 and 23 to 30, 36 to 46, 49 and 50, 52 54, 55, 56, 58 to 60 and the particulars thereto. Nicholas' knowledge is also to be inferred from his position as the Chief Financial Officer.

115. Nicholas participated in the contraventions by FFG of s 674(2) as alleged in paragraphs 88.b above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Inventory Information from on or about 27 February 2020 until 25 May 2020.
116. By reason of paragraphs 114 and 115 above, Nicholas was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contraventions by FFG of s 674(2) as alleged in paragraph 88.b above, and thereby involved in that contravention.
117. By reason of paragraph 116 above, from on or about 27 February 2020 until 25 May 2020, Nicholas contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
118. The contraventions referred to in paragraph 117 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Nicholas: HY20 Revenue Information

119. From on or about 27 February 2020 until 25 May 2020, Nicholas knew:
 - a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Revenue Information;
 - c. FFG was aware of the HY20 Revenue Information;
 - d. the HY20 Revenue Information was not generally available;
 - e. the HY20 Revenue Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Revenue Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Revenue Information.

Particulars

ASIC relies on paragraphs 4, 150, 16 and 61 to 72 above and the particulars thereto. Nicholas' knowledge is also to be inferred from his position as the Chief Financial Officer.

120. Nicholas participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.c above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Revenue Information from on or about 27 February 2020 until 25 May 2020.
121. By reason of paragraphs 119 and 120 above, Nicholas was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contraventions by FFG of s 674(2) as alleged in paragraph 88.c above, and thereby involved in that contravention.
122. By reason of paragraph 121 above, from on or about 27 February 2020 until 25 May 2020, Nicholas contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
123. The contraventions referred to in paragraph 122 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

Nicholas: HY20 Combined Information

124. From on or about 27 February 2020 until 25 May 2020, Nicholas knew:
 - a. FFG released the HY20 Financial Report to the ASX on 27 February 2020;
 - b. the HY20 Combined Information;
 - c. FFG was aware of the HY20 Combined Information;
 - d. the HY20 Combined Information was not generally available;
 - e. the HY20 Combined Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of FFG's shares;
 - f. the HY20 Combined Information required immediate disclosure pursuant to ASX Listing Rule 3.1; and
 - g. FFG had not notified the ASX of the HY20 Combined Information.

Particulars

ASIC repeats the particulars to paragraphs 114 and 119 above. Nicholas' knowledge is also to be inferred from his position as the Chief Financial Officer.

125. Nicholas participated in the contraventions by FFG of s 674(2) as alleged in paragraph 88.d above by engaging in the conduct referred to in paragraphs 56 above and 146 below, and by failing to cause FFG to take any steps to notify the ASX of the HY20 Combined Information from on or about 27 February 2020 until 25 May 2020.
126. By reason of paragraphs 124 and 125 above, Nicholas was directly or indirectly, knowingly concerned within the meaning of s 79 of the Act, in the contraventions by FFG of s 674(2) as alleged in paragraph 88.d above, and thereby involved in that contravention.
127. By reason of paragraph 126 above, from on or about 27 February 2020 until 25 May 2020, Nicholas contravened s 674(2A) of the Act on each day that FFG contravened s 674(2) of the Act.
128. The contraventions referred to in paragraph 127 above:
 - a. materially prejudiced the interests of acquirers or disposers of FFG's shares within the meaning of s 1317G(1)(c)(i) of the Act; and
 - b. were "serious" within the meaning of s 1317G(1)(c)(iii) of the Act.

E. FALSE OR MISLEADING CONDUCT

129. At all material times between 1 July 2018 and 1 March 2021, Deloitte Touche Tohmatsu (**Deloitte**) were FFG's auditors.

FY19 Financial Report Representations

130. On 28 August 2019, Macleod and Nicholas each gave, or made available, to:
 - a. the Board of Directors of FFG; and
 - b. Deloitte;
 - a representation letter dated 28 August 2019 signed by each of them (**August 2019 Representation Letter**).
131. The August 2019 Representation Letter contained the following express representations (**FY19 Financial Report Representations**):
 - a. the FY19 Financial Report was prepared and presented in accordance with the Act;
 - b. the FY19 Financial Report gave a true and fair view of FFG's financial position as at 30 June 2019 and of its performance for the financial year ended on that date;
 - c. the FY19 Financial Report complied with Australian Accounting Standards; and

- d. no inventory was stated in the financial statements for the FY19 Financial Report at an amount in excess of net realisable value.

Particulars

Letter from Macleod and Nicholas to FFG's Board of Directors dated 28 August 2019 (FFG.0001.0525.1203 at 1324) and letter from Macleod and Nicholas to Deloitte dated 28 August 2019 (FFG.0001.0525.1203 at 1328).

132. Each of the FY19 Financial Report Representations:
- a. were information that relates to the affairs of FFG;
 - b. were false or misleading in a material particular by reason of the FY19 Information; and/or
 - c. further or alternatively, had omitted from it the FY19 Information, being a matter or thing the omission of which rendered the information comprising the FY19 Financial Report Representations misleading in a material respect.

FY19 Financial Report Representations: Macleod's contravention

133. By about 29 August 2019 until 30 April 2020, Macleod:
- a. did not ensure that FFG had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - b. did not ensure that FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - c. failed take all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of Unsalable Inventory;
 - d. disseminated the No Write Off Policy; and
 - e. failed 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.
134. Macleod:
- a. on and from about 29 August 2019 until 30 April 2020, alternatively on and from 1 about October 2019 until 30 April 2020, knew the FY19 Information; and/or

Particulars

ASIC repeats the particulars to paragraphs 89 above. Macleod's knowledge is also inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

- b. on and from about 29 August 2019 until 30 April 2020 failed to take reasonable steps to inform the Board of Directors of FFG and Deloitte of the FY19 Information.
135. By reason of paragraph 134 above, on and from about 29 August 2019 until 30 April 2020 Macleod did not take reasonable steps to ensure that the FY19 Financial Report Representations:
- a. were not false or misleading in a material particular; or
 - b. did not have omitted from them the FY19 Information, being a matter or thing the omission of which rendered the information comprising the FY19 Financial Report Representations misleading in a material respect.
136. By reason of paragraphs 130 to 132 and 133 to 135, between on and from about 29 August 2019 until 30 April 2020, Macleod contravened s 1309(2) of the Act.

FY19 Financial Report Representations: Nicholas' contravention

137. On and from about 29 August 2019 until 30 April 2020, Nicholas:
- a. knew the FY19 Information; and/or

Particulars

ASIC repeats the particulars to paragraph 109 above. Nicholas' knowledge is also inferred from his position as the Chief Financial Officer.

- b. failed to take reasonable steps to inform the Board of Directors of FFG and/or Deloitte of the FY19 Information.
138. By reason of paragraph 137, between 29 August 2019 and 30 April 2020, Nicholas did not take reasonable steps to ensure the FY19 Financial Report Representations:
- a. were not false or misleading in a material particular; or
 - b. did not have omitted from them the FY19 Information, being a matter or thing the omission of which rendered the information comprising the FY19 Financial Report Representations misleading in a material respect.
139. By reason of paragraphs 130 to 138 above, between 29 August 2019 and 30 April 2020 Nicholas contravened s 1309(2) of the Act.

FY19 Fair View Representation

140. On 29 August 2019, Macleod gave, or made available to the ASX (being the operator of a financial market) his director's declaration dated 29 August 2019 (**FY19 Declaration**).

Particulars

The FY19 Declaration was in writing (FRG.0003.0003.0993).

141. The FY19 Declaration stated that the FY19 Financial Report gave a true and fair view of FFG's financial position as at 30 June 2019 and of its performance for the financial year ended on that date (**FY19 Fair View Representation**).
142. The FY19 Fair View Representation:
- a. was information that related to the affairs of FFG;
 - b. was false or misleading in a material particular by reason of the FY19 Information;
 - c. further or alternatively, had omitted from it the FY19 Information, being a matter or thing the omission of which rendered the information comprising the FY19 Fair View Representation misleading in a material respect; and
143. On and from about 1 October 2019 until 30 April 2020, Macleod:
- a. knew the FY19 Information; and/or

Particulars

ASIC repeats the particulars to paragraphs 89 above. Macleod's knowledge is also inferred from his position and responsibilities as the Chief Executive Officer and Managing Director of FFG.

- b. failed to take reasonable steps to inform the ASX of the FY19 Information.

Particulars

ASIC repeats the particulars to paragraph 133 above.

144. By reason of paragraph 143 above, from 1 October 2019, Macleod did not take reasonable steps to ensure that the FY19 Fair View Representation:
- a. was not false or misleading in a material particular; or
 - b. did not have omitted from it the FY19 Information, being a matter or thing the omission of which rendered the information comprising the FY19 Fair View Representation misleading in a material respect.

145. By reason of paragraphs 140 to 144 above, between 1 October 2019 and 30 April 2020, Macleod contravened s 1309(2) of the Act.

HY20 Financial Report Representations

146. On 26 February 2020, Macleod and Nicholas each gave, or made available, to the Board of Directors of FFG a representation letter dated 26 February 2020 signed by each of them (**February 2020 Representation Letter**).

Particulars

Letter from Macleod and Nicholas to FFG's Board of Directors dated 26 February 2020 (FFG.0001.0048.8682).

147. On 27 February 2020, Macleod and Nicholas each gave, or made available, to Deloitte a representation letter dated 26 February 2020 signed by each of them (**February 2020 Representation Letter**).

Particulars

Letter from Macleod and Nicholas to Deloitte dated 27 February 2020 (F45.1001.0001.3029).

148. The February 2020 Representation Letter contained the following express representations (**HY20 Financial Report Representations**):

- a. the HY20 Financial Report was prepared and presented in accordance with the Act;
- b. the HY20 Financial Report gave a true and fair view of FFG's financial position as at 31 December 2019 and of its performance for the financial half-year ended on that date;
- c. the HY20 Financial Report complied with Accounting Standards; and
- d. no inventory was stated in the financial statements for the HY20 Financial Report at an amount in excess of net realisable value.

149. Each of the HY20 Financial Report Representations:

- a. were information that related to the affairs of FFG;
- b. were false or misleading in a material particular by reason of the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information;
- c. further or alternatively, had omitted from it the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information, being a matter or

thing the omission of which rendered the information comprising the HY20 Financial Report Representations misleading in a material respect.

150. Between 27 February 2020 and 30 April 2020, each of Macleod and Nicholas:

- a. knew the HY20 Inventory Information;
- b. further or in the alternative, knew the HY20 Revenue Information;
- c. further or in the alternative, knew the HY20 Combined Information;

Particulars

ASIC repeats the particulars to paragraphs 94 and 99 above (Macleod) and paragraphs 114 and 119 above (Nicholas).

- d. failed to take reasonable steps to inform the Board of Directors of FFG of the HY20 Inventory Information, the HY20 Revenue Information or the HY20 Combined Information; and/or
 - e. failed to take reasonable steps to inform Deloitte of the HY20 Inventory Information, the HY20 Revenue Information or the HY20 Combined Information.
151. By reason of paragraph 150, each of Macleod and Nicholas did not take reasonable steps to ensure the HY20 Financial Report Representations:
- a. were not false or misleading in a material particular; or
 - b. did not have omitted from them the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information, being a matter or thing the omission of which rendered the HY20 Financial Report Representations misleading in a material particular.
152. By reason of paragraphs 146 to 151, between 27 February 2020 and 30 April 2020, each of Macleod and Nicholas contravened s 1309(2) of the Act.

HY20 Fair View Representation

153. On 27 February 2020, Macleod gave, or made available to the ASX (being the operator of a financial market) his director's declaration dated 27 February 2020 (**HY20 Declaration**).

Particulars

The HY20 Declaration was in writing (FRG.0003.0008.0766).

154. The HY20 Declaration stated that the HY20 Financial Report gave a true and fair view of FFG's financial position as at 31 December 2019 and of its performance for the financial half-year ended on that date (**HY20 Fair View Representation**).
155. The HY20 Fair View Representation:
 - a. was information that relates to the affairs of FFG;
 - b. was false or misleading in a material particular by reason of the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information;
 - c. further or alternatively, had omitted from it the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information, being a matter or thing the omission of which rendered the information comprising the HY20 Fair View Representation misleading in a material respect.
156. On and from about 27 February 2020 until 30 April 2020, Macleod:
 - a. knew the HY20 Inventory Information;
 - b. further or in the alternative, knew the HY20 Revenue Information;
 - c. further or in the alternative, knew the HY20 Combined Information; and/or

Particulars

ASIC repeats the particulars to paragraphs 94 and 99 above.

- d. failed to take reasonable steps to inform the Board of Directors of FFG or Deloitte of the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information.
157. By reason of paragraph 156, Macleod did not take reasonable steps to ensure the HY20 Fair View Representation:
 - a. was not false or misleading in a material particular; or
 - b. did not have omitted from it the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information, being a matter or thing the omission of which rendered the information comprising the HY20 Fair View Representation misleading in a material respect.

158. By reason of paragraphs 153 to 157 above, between 27 February 2020 and 30 April 2020, Macleod contravened s 1309(2) of the Act.

F. CONTRAVENTIONS OF SECTION 180 OF THE ACT BY THE MACLEOD AND NICHOLAS

Section 180 Contravention: Macleod

159. ASIC repeats paragraph 3, 5, 6, 8 to 10 and 12 to 16.
160. At all material times, pursuant to s 180(1) of the Act, Macleod was required to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
- a. were a director and officer of a corporation in FFG's circumstances;
 - b. occupied the office held by, and had the same responsibilities within FFG as, Macleod.
161. At all material times, Macleod's responsibilities within FFG included:
- a. serving FFG as its Chief Executive Officer and Managing Director;
 - b. serving as a member of the Board of Directors; and
 - c. serving as a member of the Audit, Risk and Compliance Committee.
162. A reasonable director or officer of a corporation in FFG's circumstances and who occupied the offices held by Macleod and had the same respective responsibilities as Macleod, would have, in acting with care and diligence:
- a. ensured that FFG devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - b. ensured that FFG devised and implemented adequate policies and procedures for the recognition of revenue;
 - c. ensured that FFG devised and implemented adequate policies for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - d. obtained sufficient knowledge of conventional accounting practices including knowledge of circumstances that might require a write down in assets, to ensure that FFG's statutory financial reports did not contain false, misleading or deceptive information;

- e. taken all steps necessary to ensure that FFG's statutory financial reports were accurate, including by making adequate inquiries regarding the value of FFG's Unsaleable Inventory;
- f. taken all reasonable steps to ensure that FFG complied with its obligations under the Act and any applicable requirements imposed by a securities exchange, including the ASX Listing Rules, including FFG's continuous disclosure obligations; and
- g. appreciated the real and foreseeable possibility that:
 - i. any contraventions of FFG's continuous disclosure obligations may come to the attention of ASIC;
 - ii. ASIC may take regulatory action in relation to contraventions of those obligations; and
 - iii. FFG could be exposed to litigation and/or reputational damage because of contraventions of those obligations.

Section 180 Contravention: Macleod, in respect of FY19

- 163. ASIC repeats the particulars at paragraph 89 above.
- 164. Prior to the issue of the FY19 Financial Report on 29 August 2019 until 30 April 2020, Macleod failed to exercise the degree of care and diligence that a reasonable person acting as chief executive officer and a director of a company in FFG's circumstances would have exercised in:
 - a. failing to ensure that FFG had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - b. failing to ensure that FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - c. failing to take all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of Unsaleable Inventory;
 - d. failing to take reasonable steps ensure that the FY19 Financial Report gave a true and fair view of FFG's financial position and performance of FFG;
 - e. disseminating the No Write Off Policy; and

- f. 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.
165. Further or in the alternative to paragraph 164 above, on and from about 29 August 2019 until 30 April 2020, Macleod failed to exercise the degree of care and diligence that a reasonable person acting as chief executive officer and a director of a company in FFG's circumstances would have exercised in:
- a. failing to take reasonable steps to qualify, withdraw or correct the FY19 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading; and
 - b. failing to take all reasonable steps to disclose the FY19 Information to the Board of Directors and to the ASX or to mitigate the risk of such non-disclosure.
166. Further or alternatively, on and from about 29 August 2019 until 30 April 2020, Macleod failed to exercise the degree of care and diligence that a reasonable person acting as chief executive officer and a director of a company in FFG's circumstances would have exercised in:
- a. causing or permitting FFG to contravene s 674(2) of the Act, or failing to prevent FFG from contravening s 674(2) of the Act, as alleged in paragraphs 84, 88.a, 89 to 93 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company; and
 - b. further or alternatively, exposing FFG to the risk of legal proceedings for contraventions of the Act, legal costs and penalties.
167. By reason of the matters pleaded in paragraphs 163 to 166 above, Macleod contravened s 180(1) of the Act.

Section 180 Contravention: Macleod, in respect of HY20

168. ASIC repeats paragraphs 94, 99 and 104 above.
169. Prior to the issue of HY20 Financial Report on 27 February 2020 until 30 April 2020, Macleod failed to exercise care and diligence by:
- a. causing or permitting FFG to disclose the HY20 Financial Report;
 - b. failing to ensure FFG had devised and implemented adequate policies and procedures for the write down Unsaleable Inventory,

- c. failing to ensure FFG had devised and implemented adequate policies and procedures for the recognition of revenue;
 - d. failing to ensure FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting standards;
 - e. failing to take reasonable steps to qualify, withdraw or correct the HY20 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading;
 - f. failing to take all reasonable steps to disclose the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
 - g. failing to take all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of the Unsaleable Inventory;
 - h. failure to take all reasonable steps to ensure that the HY20 Financial Report gave a true and fair view of the financial position and performance of FFG;
 - i. disseminating the No Write Off Policy; and
 - j. 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.
170. Further or alternatively, on and from about 27 February 2020 until 30 April 2020, Macleod failed to exercise the degree of care and diligence that a reasonable person acting as chief executive officer and a director of a company in FFG's circumstances would have exercised in:
- a. causing or permitting FFG to contravene s 674(2) of the Act, or failed to prevent FFG from contravening s 674(2) of the Act, in each of the instances alleged in paragraphs 85 to 87, 88b.-d., 89 to 92, 94 to 97, 99 to 102 and 104 to 107 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company; and
 - b. further or alternatively, exposing FFG to the risk of legal proceedings for contraventions of the Act, legal costs and penalties.

171. By reason of the matters referred to in paragraphs 168 to 170 above, Macleod contravened s 180(1) of the Act.
172. Each of the contraventions pleaded in paragraphs 167 and 171:
- a. materially prejudiced the interests of FFG and/or its members within the meaning of s 1317G(1)(b)(i); and
 - b. were “serious” within the meaning of s 1317G(1)(b)(iii).

Section 180 Contravention: Nicholas

173. ASIC repeats paragraphs 4, 5, 7 to 9 and 11 to 16.
174. At all material times, pursuant to s 180(1) of the Act, Nicholas was required to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they:
- a. were an officer of a corporation in FFG’s circumstances; and/or
 - b. occupied the office held by, and had the same responsibilities within FFG as, Nicholas.
175. At all material times, Nicholas’ responsibilities within FFG have included serving FFG as its Chief Financial Officer and Company Secretary.
176. A reasonable officer of a corporation in FFG’s circumstances and who occupied the offices held by Nicholas and had the same respective responsibilities as Nicholas, would have, in acting with care and diligence:
- a. ensured that FFG devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - b. ensured that FFG devised and implemented adequate policies and procedures for the recognition of revenue;
 - c. ensured that FFG devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - d. obtained sufficient knowledge of conventional accounting practices including knowledge of circumstances that might require a write down in assets, to ensure that FFG’s statutory financial reports did not contain false, misleading or deceptive information;

- e. taken all steps necessary to ensure that FFG's statutory financial reports were accurate, including by making adequate inquiries regarding the value of FFG's Unsaleable Inventory;
- f. taken all reasonable steps to ensure that FFG complied with its obligations under the Act and any applicable requirements imposed by a securities exchange, including the ASX Listing Rules, including FFG's continuous disclosure obligations; and
- g. appreciated the real and foreseeable possibility that:
 - i. any contraventions of FFG's continuous disclosure obligations may come to the attention of ASIC;
 - ii. ASIC may take regulatory action in relation to contraventions of those obligations; and
 - iii. FFG could be exposed to litigation and/or reputational damage because of contraventions of those obligations.

Section 180 Contravention: Nicholas, in respect of FY19

- 177. ASIC repeats the particulars to paragraph 109.
- 178. Prior to the issue of the FY19 Financial Report on 29 August 2019 until 30 April 2020, Nicholas failed to exercise the degree of care and diligence that a reasonable person acting as Chief Financial Officer and a company secretary of a company in FFG's circumstances would have exercised in:
 - a. causing or permitting FFG to disclose the FY19 Financial Report;
 - b. failing to ensure that FFG had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - c. failing to ensure that FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - d. failing to take reasonable steps to qualify, withdraw or correct the FY19 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading;

- e. failing to take all reasonable steps to disclose the FY19 Information to the Board of Directors and to the ASX or to mitigate the risk of such non-disclosure;
 - f. failing to take all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of Unsalable Inventory; and
 - g. failing to take reasonable steps ensure that the FY19 Financial Report gave a true and fair view of FFG's financial position and performance of FFG.
179. Further or alternatively, on and from about 29 August 2019 until 30 April 2020, Nicholas failed to exercise the degree of care and diligence that a reasonable person acting as Chief Financial Officer and an officer of a company in FFG's circumstances would have exercised in:
- a. causing or permitting FFG to contravene s 674(2) of the Act, or failed to prevent FFG from contravening s 674(2) of the Act, in each of the instances alleged in paragraphs 84, 88a, 109 to 112 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company; and
 - b. further or alternatively, exposing FFG to the risk of legal proceedings for contraventions of the Act, legal costs and penalties.
180. By reason of the matters pleaded in paragraphs 177 to 179, Nicholas contravened s 180(1) of the Act.

Section 180 Contravention: Nicholas: In respect of HY20

181. ASIC repeats paragraphs 114, 119 and 124
182. Prior to the issue of HY20 Financial Report on 27 February 2020 until 30 April 2020, Nicholas failed to exercise the degree of care and diligence that a reasonable person acting as Chief Financial Officer and a company secretary of a company in FFG's circumstances would have exercised in:
- a. causing or permitting FFG to disclose the HY20 Financial Report;
 - b. failing to ensure FFG had devised and implemented adequate policies and procedures for the write down Unsaleable Inventory;
 - c. failing to ensure FFG had devised and implemented adequate policies and procedures for the recognition of revenue;

- d. failing to ensure FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting standards;
 - e. failing to take reasonable steps to qualify, withdraw or correct the HY20 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading;
 - f. failing to take all reasonable steps to disclose the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information to the Board and to the ASX, or alternatively, mitigate the risk of such non-disclosure;
 - g. failing to take all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of the Unsaleable Inventory; and
 - h. failure to take all reasonable steps to ensure that the HY20 Financial Report gave a true and fair view of the financial position and performance of FFG.
183. Further or alternatively, on and from about 27 February 2020 until 30 April 2020, Nicholas failed to exercise the degree of care and diligence that a reasonable person acting as Chief Financial Officer and an officer of a company in FFG's circumstances would have exercised in:
- a. causing or permitting FFG to contravene s 674(2) of the Act, or failed to prevent FFG from contravening s 674(2) of the Act, in each of the instances alleged in paragraphs 85 to 87, 88b-d. 109 to 112, 114 to 117, 119 to 122 and 124 to 127 above, in circumstances where it was reasonably foreseeable that such conduct might harm the interests of the company; and
 - b. further or alternatively, exposing FFG to the risk of legal proceedings for contraventions of the Act, legal costs and penalties.
184. By reason of the matters referred to in paragraphs to 181 to 183 above, Nicholas contravened s 180(1) of the Act.
185. Each of the contraventions pleaded in paragraphs 180 and 184:
- a. materially prejudiced the interests of FFG and/or its members within the meaning of s 1317G(1)(b)(i); and/or
 - b. were "serious" within the meaning of s 1317G(1)(b)(iii) of the Act.

CONTRAVENTION OF S 344 OF THE ACT BY MACLEOD

FY19 Financial Report

186. On and from about 29 August 2019 until 30 April 2020, the FY19 Financial Report:
- a. did not include the FY19 Information;
 - b. by reason of subparagraph (a) above, did not give a true and fair view of the financial position and performance of FFG; and
 - c. by reason of subparagraph (b) above, did not comply with s 297 of the Act.
187. Macleod failed to take all reasonable steps to secure the FY19 Financial Report's compliance with s 297 of the Act.

Particulars

The reasonable steps which Macleod failed to take to secure compliance with s 297 of the Act include:

- (a) taking all reasonable steps to disclose the FY19 Information to the Board of Directors and to the ASX or to mitigate the risk of such non-disclosure;
 - (b) ensuring that FFG had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - (c) ensuring that FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - (d) taking reasonable steps to qualify, withdraw or correct the FY19 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading; and
 - (e) taking all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of Unsaleable Inventory.
188. By reason of paragraphs 186 and 187 above, between 29 August 2019 and 30 April 2020, Macleod contravened of s 344 of the Act.
189. The contravention referred to in paragraph 188:
- a. materially prejudiced the interests of FFG and/or its members within the meaning of s 1317G(1)(b)(i); and/or
 - b. was "serious" within the meaning of s 1317G(1)(b)(iii).

HY20 Financial Report

190. On and from about 27 February 2020 until 30 April 2020, the HY20 Financial Report:
- a. did not include the HY20 Inventory Information, the HY20 Revenue Information and/or the HY20 Combined Information;
 - b. by reason of subparagraph (a) above, did not give a true and fair view of the financial position and performance of FFG; and
 - c. by reason of subparagraph (b) above, did not comply with s 304 of the Act.
191. Macleod failed to take all reasonable steps to secure the HY20 Financial Report's compliance with s 304 of the Act.

Particulars

The reasonable steps which Macleod failed to take include to secure compliance with s 304 of the Act include:

- (a) taking all reasonable steps to disclose the HY20 Inventory Information and the HY20 Revenue Information to the Board of Directors and to the ASX or to mitigate the risk of such non-disclosure;
 - (b) ensuring that FFG had devised and implemented adequate policies and procedures for the write down of Unsaleable Inventory;
 - (c) ensuring that FFG had devised and implemented adequate policies and procedures for the preparation of financial statements in accordance with the Act and Australian Accounting Standards;
 - (d) taking reasonable steps to qualify, withdraw or correct the HY20 Financial Report to mitigate the risk that FFG's financial statements were inaccurate or misleading; and
 - (e) taking all reasonable steps to ensure that he had sufficient knowledge of FFG's inventories including the value of Unsaleable Inventory.
192. By reason of paragraphs 190 and 191 above, between 27 February 2020 and 30 April 2020, Macleod contravened of s 344 of the Act.
193. The contravention referred to in paragraph 192:
- a. materially prejudiced the interests of FFG and/or its members within the meaning of s 1317G(1)(b)(i); and/or
 - b. was "serious" within the meaning of s 1317G(1)(b)(iii).

DISQUALIFICATION

Disqualification of Macleod

194. Macleod was a director of FFG when FFG, on at least two occasions, contravened s 674(2) of the Act as alleged in paragraph 88 above.
195. On each of the occasions referred to in paragraph 194 above, when FFG contravened s 674(2) of the Act, Macleod failed to take reasonable steps to prevent the contraventions as set out in paragraphs 166 and 170 above.
196. By reason of:
 - a. the contraventions of the Act committed by FFG while he was director of FFG;
 - b. his failure to take reasonable steps to prevent the contraventions;
 - c. further or alternatively, his contraventions of s 674(2A) of the Act while he was a director of FFG, as alleged in paragraphs 92, 97, 102 and 107 above;
 - d. further or alternatively, his contraventions of s 1309(2) of the Act while he was a director of FFG, as alleged in paragraphs 136, 145, 152 and 158 above;
 - e. further or alternatively, his contraventions of s 344 of the Act while he was director of FFG, as alleged in paragraphs 188 and 192 above; and

Macleod should be disqualified pursuant to s 206E of the Act from managing a corporation for a period that the Court considers appropriate.

197. Alternatively, by reason of his contraventions of s 180(1) of the Act as alleged in paragraphs 167 and 171 above and of s 344(1) as alleged in paragraphs 188 and 192 above, Macleod should be disqualified pursuant to s 206C of the Act from managing a corporation for a period that the Court considers appropriate.

Disqualification of Nicholas

198. Nicholas was an officer of FFG and the Chief Financial Officer of FFG when FFG, on at least two occasions, contravened s 674(2) of the Act as alleged in paragraph 88 above.
199. On each of the occasions referred to in paragraph 198 when FFG contravened s 674(2) of the Act, Nicholas failed to take reasonable steps to prevent the contraventions as set out in paragraphs 179 and 183 above.
200. By reason of:

- a. the contraventions of the Act committed by FFG while he was an officer and Chief Financial Officer of FFG;
- b. his failure to take reasonable steps to prevent the contraventions;
- c. further or alternatively, his contraventions of s 674(2A) of the Act while he was an officer and Chief Financial Officer of FFG, as alleged in paragraphs 112, 117, 122 and 127 above; and
- d. further or alternatively, his contraventions of s 1309(2) of the Act while he was an officer and Chief Financial Officer of FFG, as alleged in paragraphs 139 and 152 above,

Nicholas should be disqualified pursuant to s 206E of the Act from managing a corporation for a period that the Court considers appropriate.

201. Alternatively, by reason of his contraventions of s 180(1) of the Act as alleged in paragraphs 180 and 184 above, Nicholas should be disqualified pursuant to s 206C of the Act from managing a corporation for a period that the Court considers appropriate.

Date: 26 April 2023



Signed by Caitlin Maria Murray
Lawyer for the Plaintiff

This pleading was prepared by Tiffany Wong SC, Nina Moncrief and Georgina Westgarth.

Certificate of lawyer

I Caitlin Maria Murray certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 26 April 2023

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

Signed by Caitlin Maria Murray
Lawyer for the Plaintiff